

New Laws for 2023

**The most important
new statutes, rules, and forms
for
California Criminal Law, 2023**

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GUIDE TO THIS MATERIAL

Each bill number is also a link to its full official text.

Many new statutes and rules fit under two or more categories but are included under only one. There are many cross references.

Only the most important new laws, rules and forms are included.

A complete list of new statutes is at “California Legislative Information, Publications, “New Laws Report.” Largely complete lists of new criminal statutes, with brief explanations, are published by the “Senate Comm. on Public Safety and the “Assembly Public Safety Comm. The Judicial Council’s New Rules and Forms are at the CA Courts web site.

This treatise is for information only and is not legal advice.

New statutory text is in this font. Existing statutory text is in this font.
~~Deleted text is in this font.~~

Abbreviations:

AB = Assembly Bill

SB = Senate Bill

Stats. = Statutes and Amendments to the Codes (Published annually)

BP = Business and Professions Code

CCP = Code of Civil Procedure

CCR = California Code of Regulations

EC = Evidence Code

FC = Family Code

GC = Government Code

HS = Health and Safety Code

PC = Penal Code

VC = Vehicle Code

WI = Welfare and Inst. Code

Def. = Defendant, or Defense

P = People, or Prosecution

V = the Victim.

M = Minor

W = Witness

DV = Domestic Violence

DOJ = CA Dept. of Justice

CDCR = CA Dept. of Corrections and Rehab.

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Dec. 9, 2022.

HIGHLIGHTS AND LOWLIGHTS

- California outlaws “ghost guns” (i.e., unserialized guns). See Firearms
- California regulates, and mostly prohibits, 3D printer guns. See Firearms
- The penalty for driving with no CDL is reduced. See Vehicles.
- New CDL suspensions for FTA on traffic tickets “effectively ... stopped,” 1/1/23, and all such suspension terminated 1/1/27. See Vehicles
- The Penal Code now has a “Recall and Resentencing” article, PC 1172 et seg., collecting many major such-statutes. See Recall & Resentencing
- Plea bargains now permitted to “Nuisance” (PC 370) in lieu of many drug crimes, to avoid immigration consequences. See Immigration and Crimes
- PC 1203.41 (similar to PC 1203.4) extended to some state prison felonies. See Criminal Records, Relief From
- Several parts of 2021’s SB 2, requiring peace officer agencies to report certain misconduct to POST, and permitting revocation of certificates required to be a peace officer, become effective in 2023. See Peace Officers
- The California Public Records Act [CPRA] recodified and made more “user friendly,” a 2021 law operative January 1, 2023. See [CPRA]
- Youth Bill of Rights expanded, and applied to “juvenile facilities,” places of confinement operated by, or for probation or courts. See Juv. Justice

Early Notices: New Laws This Year with Delayed Operative Dates

- Starting Jan. 1, 2024, DOJ must develop “Race-Blind Charging” guidelines; prosecution agencies must then develop a 2-step process, with exceptions, starting Jan. 1, 2025. See Criminal Procedure
- The Racial Justice Act, expanded and retroactive to different categories of cases beginning in 2023, 2024, 2025, and 2026 . See Criminal Procedure

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ARRESTS AND DETENTIONS

***New Reason for Non-Release of Misdemeanor Arrestee on Citation:
Prior and Current Theft Issues***

[AB 2294 \(Stats. 2022, Ch. 856\)](#)

Amends PC 853.6

Urgency, effective Sept. 30, 2022.

For other aspects of AB 2294, see Criminal Procedure. And see Diversion....

From the Legislative Counsel’s Digest

(1) Existing law requires a peace officer to release a person who has been arrested for a misdemeanor, after securing that person’s promise to appear ..., unless certain conditions are met for non-release.

This bill, until January 1, 2026, ... include[s] in the reasons for non-release that the person has been cited, arrested, or convicted for misdemeanor or felony theft from a store in the previous 6 months [or] ... there is probable cause to believe that the person ... is guilty of committing organized retail theft.

Excerpt from Penal Code section 853.6 *as amended*.

(a) to (h)

(i) ~~Whenever any~~ *When a* person is arrested ... for a misdemeanor, that person shall be released [in the manner specified] unless one of the following is a reason for nonrelease, ... [and the] officer ... indicate[s], on a form ..., which of the following was a reason for the non-release:

(1) ... [to] ... (10)

(11) The person has been cited, arrested, or convicted for misdemeanor or felony theft from a store in the previous six months.

(12) There is probable cause to believe that the person ... is guilty of ... organized retail theft, as defined in [PC 490.4, subd. (a)].

(j) (m) This section shall [sunset on] January 1, 2026, and as of that date is repealed [and a prior version of PC 853.6 is reinstated].



ATTORNEYS

See also: Rules of Professional Conduct



The New “Client Trust Account Protection Program” (CTAPP).

New Rule of Court 9.8.5: State Bar Client Trust Account Protection Program [CTAPP]

From the Bar’s “Ethics News” page, <https://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Ethics/Publications/Ethics-News> (Accessed Dec 4, 2022.)

... Rule ... [9.8.5](#) [is the] enabling rule for the State Bar’s ... program for the handling of entrusted funds and property received or held by a lawyer.... [T]his program is to promote compliance and avoid misconduct before a client is harmed by mismanagement of entrusted funds or property.

CTAPP will be implemented in phases. The first phase ... focuses on reporting and registration. By February 1, 2023, and annually thereafter, licensees are required to report to the State Bar if they are responsible for complying with any of the duties related to ... trust funds under rule 1.15 of the Rules of Professional Conduct. Those ... attorneys must ... register each account online through either their My State Bar Profile or the State Bar’s agency billing system, [allowing them] to comply with the account registration requirement by having their firm submit the information required.

Those responsible attorneys must ... complete an annual self-assessment ... about the duties and practices for the ... handling of entrusted funds....

... [R]esponsible attorneys [must] certify that they are ... in compliance with ... rules and statutes governing client trust accounts and the safekeeping of funds.

More information ... is available at the [CTAPP](#) webpage....

New State Bar Rule 2.5 [CTAPP] Annual Reporting, Account Registration and Self-Assessment Completion Requirements]

... State Bar Rule 2.5 [is] operative on January 1, 2023. [It] addresses the administrative implementation of CTAPP and includes, ..., definitions of key terms, fees for failure to timely comply, and the exemptions for certain lawyers.... [E]xempt licensees are [those] who w[ere] not on active status for the ... reportable ... period or ... who [were] not entitled to practice law at the ... reporting deadline for any reason other than voluntary inactive status.



BACKGROUND CHECKS

Specified Old Drug Convictions, For Which Relief Was Granted, Cannot Be Used to Deny a Teacher’s Credential.

[SB 731 \(Stats. 2022, Ch. 814\)](#)

Amends Education Code sections 44243.5 and 44346.

For two other aspects of SB 731, see [Criminal Records: Relief From](#)

From the Legislative Counsel’s Digest:

[Before this bill, the] law require[d] the [Commission on Teacher Credentialing] to deny an application for ... a credential or the renewal of [one] for a person who has been convicted of a [drug] offense.

This bill ... prohibit[s] the record of a conviction for possession of specified [drugs] that is more than 5 years old and for which relief was granted from [going] to the committee or from being used to deny a credential.



CALIFORNIA PUBLIC RECORDS ACT

California Public Records Act Recodified and Made “User Friendly”

[AB 473 \(Stats. 2021, Ch. 614\)](#)

Delayed effective date, to January 1, 2023.

About 420 conforming changes were made by [AB 474 \(Stats.. 2021, Ch. 615\)](#)

The California Public Records Act (CPRA, a.k.a. PRA) is moved, from GC 6250 et seq. to GC 7920.000 et seq.

[The CPRA is an *important investigative tool* for criminal law practitioners, e.g., to investigate issues under the Racial Justice Act, PC 745.]

[Note: LEA = Law Enforcement Agency]

From uncodified section 8 of AB 473:

“This act [recodifies and re-writes] the [CPRA] ... in a more user-friendly manner without changing its substance. (Underline added. GB)

From GC 7920.100:

“Nothing in the CPRA Recodification Act of 2021 is intended to substantively change the law relating to inspection of public records....”

The rewritten and recodified CPRA, is divided into seven parts:

Part 1, “*General Provisions*,” is §§ 7920.000 to 7920.545

Part 2, “*Disclosure and Exemptions Generally*,” is §§ 7921.000 to 7922.210.

Part 3, “*Procedures and Related Matters*,” is §§ 7922.505 to 7922.725.

Part 4, “*Enforcement*,” [by “[seeking] injunctive or declarative relief, or ... a writ of mandate....”] is §§ 7923.000 to 7923.500. See § 12.15, below.

Part 5, “*Specific Types of Records*,” is §§ 7923.600 to 7929.610. Part 5, Ch. 1 is “Crimes, Weapons, and Law Enforcement.”

Part 6, “*Other Exemptions from Disclosure*,” §§ 7930.000 to 7930.125. This “Secrecy Code,” lists, in alphabetical order, scores of specific exemptions.

Part 7, GC 7931.000. “*[The operative date is] January 1, 2023.*”

Part 5, Ch 1: “Crimes, Weapons, and Law Enforcement.”

Chapter 1 has five Articles.

Article 1: “Law Enforcement Records Generally. (§§ 7923.600 to 7923.630.)

Article 2: “Obtaining Access to Law Enforcement Records. (§§ 7923.650 to 7923.655.)

Article 3: “Records of Emergency Communications to Public Safety Authorities. (§ 7923.700.)

Article 4: “Records ... Relating to Crime Victims” (§§ 7923.700 to 7923.755.)

Article 5: “Firearm Licenses and Related Records (§§ 7923.800 to 7923.805.)

Article 1. Law Enforcement Records Generally

[This replaces the former, PC 6254, subd (f). (PC 7923.630.)]

From § 7923.600. [Information that need not be disclosed. But see GC 7923.615, below, for disclosure of info. about “complaints” and “reports.”]

(a) [With exceptions,^[1] the CPRA] does not require the disclosure of ... complaints to, or investigations conducted by, or ... intelligence information or security procedures of, the [AG, DOJ,] the Office of Emergency Services and any ... police agency, ..., or ... any other ... agency for correctional, law enforcement, or licensing purposes....

From § 7923.605. [Information that must be disclosed to victims, persons with injury or property damage and the like.]

(a) ... [An LEA] shall disclose the names and addresses of persons involved in, or witnesses, other than [Cis], to, the incident, [property descriptions], the date, time, and location of the incident, all ... statements of the parties

¹ See PC 832.7 for rules for certain incidents of LEA firearm use, or use of force with death or injury; and for sustained misconduct findings of specified sexual assaults, dishonesty, prejudice, and unlawful arrests or searches.

... [and] ... witnesses, other than [Cis], to [Vs or their] representative ..., an insurance carrier [facing a claim], and [anyone] suffering ... injury or property damage ..., [due to a crime], unless the disclosure would endanger ...:

- (1) The safety of a witness or other person involved [or]*
- (2) The successful completion of [this] or a related investigation.*

(b) ... [The investigator's] analysis or conclusions [can be held back].

*From § 7923.610. **Publicly Available Information About Arrests***

... [An LEA] shall make public ... the following ..., except [when] disclosure ... would endanger the safety of a person involved ... or ... the successful completion of [this] ... or a related investigation:

- (a) The full name and occupation of [everyone] arrested*
- (b) The individual's ,, description [as specified].*
- (c) The time and date of arrest. (d) The time and date of booking.*
- [(e) & (f)] The location [and circumstances] of the arrest.*
- (g) The amount of bail set. (h) The time and manner of release or the location where the individual is ... being held.*
- (i) All charges [holding] the individual ..., [and] outstanding warrants from other jurisdictions, parole ... and probation holds.*

*From § 7923.615. **Public Information About Calls for Help.***

(a)(1) ... [An] LEA [shall make public the information ... in para[.] (2),] except [when that] ... would endanger the safety of a person involved [or] the successful completion of [this] or a related investigation.

(2) Subject to ... [PC] 841.5^[2] ..., [this] applies to the time, substance, and location of all complaints or requests for assistance ... and the time and nature of the response ..., including [the] crimes or incidents] alleged ...:

(A) The time, date, and location of occurrence.

(B) The time and date of the report.

(C) The name and age of [V]. [But see subd. (b) below; GB]

(D) The factual circumstances [of] the crime or incident.

(E) A general description of any injuries, property, or weapons....

(b)(1) ... [V]'s name [in any of 30 listed, sex crimes, DV, and others] may be withheld at [V's] request, or ... [a minor V's] parent or guardian

(2) [For Vs] of more than one crime [for one of which V (or M's parent or guardian) can request confidentiality, V's name can be withheld from all].

(c)(1) Subject to [PC] 841.5, the names and images of a ... human trafficking [V, and V's] immediate family..., other than a family member ... charged with a [the crime involved], may be withheld at [V's] request [as specified].

From § 7923.620. [Disclosure to licensed private investigators, journalists, researchers, and specified others.]

(a) ... [I]f the ... request is made for a scholarly, journalistic, political, or governmental purpose, or ... for investigation purposes by a licensed private investigator ..., [an LEA] shall make public the following ..., except [when] disclosure of a particular item ... would endanger the safety of a

² PC 841.5 says a peace officer, or LEA, cannot disclose to anyone arrested, or who may be a [Def], the address or phone number of any V or W.

person involved ... or ... the successful completion of [this] ... or a related investigation:

(1) Subject to [PC] 841.5 ... and this article, the current address of every individual arrested

(2) Subject to [PC] 841.5 ... and this article, [V's] ... address [unless the crime is among the 30 listed in [GC] 7923.615, subd. (b)].

(b) [This subd. says that address records can't be used for sales purposes.]

From § 7923.625. ... [A] ... recording that relates to a critical incident, as defined..., may be withheld only as follows:

(a)(1) During [a] criminal or administrative investigation, disclosure ... may be delayed [up to] 45 ... days after ... the agency knew or ... should have known about the incident, if ... disclosure would ... interfere with the investigation.... [Agencies] shall provide in writing ... the ... basis for [any delay] ... and the estimated date for disclosure.

(2) [This paragraph has conditions for continued withholding after 45 days.]

(b)(1) [This paragraph states when, and how, the agency] may use redaction technology, including blurring or distorting images or audio, to ... protect [privacy] interest[s].... [This] shall not interfere with the viewer's ability to fully, completely, and accurately comprehend the events ... [recorded]

(2) Except as provided in paragraph (3), if the agency [shows that] privacy of a subject depicted ... cannot ... be protected through redaction ... and that ...outweighs the public interest in disclosure, the agency may withhold the recording ..., [but it], ..., shall be disclosed ..., upon request, to ...:

(A) The subject of the recording whose privacy is to be protected....

Amends VC 21451 to 21453, 21462, 21950, 21953 to 21956, 21961, 21966, and adds VC 21456 and 21949.5

From the Legislative Counsel's Digest

This bill ... prohibit[s] a peace officer,... from stopping a pedestrian for specified traffic infractions unless ... there is an immediate danger of collision with a moving vehicle or other device moving exclusively by human power.

Most of these infractions are commonly called “jaywalking.”

Effective January 1, 2024, the bill also adds to one section for bicycles.

To each one of the following infractions, is added the following language:

A peace officer ... shall not stop a pedestrian for a violation of [the covered infraction] unless a reasonably careful person would realize there is an immediate danger of a collision with a moving vehicle or [specified] device....

The infractions covered are:

- VC 21451, subs. (c) and (d). [On a green light, cross in the crosswalk.]
- VC 21452, subd. (b). [On a yellow light, do not enter the roadway]
- VC 21453, subd. d). [On a red light, do not enter the roadway.]
- VC 21456, subs. (a)(1) to (a)(3). [The rules for “Walk, “Walking Person,” “Don’t Walk,” “Wait,” or “Upraised Hand.”]
- *[Eff. Jan. 1, 2014, rules for bicycles are added to VC 21456, subd. (a)(1).]*
- VC 21461.5 [Pedestrians must obey signs and signals.]
- VC 21462 [Drivers, animal handlers, pedestrians, and streetcars must obey applicable traffic signals, with exceptions.]
- VC 21950 [Pedestrians must use due care; can’t take dangerous actions; and, while in a crosswalk, can’t unnecessarily stop or delay traffic.]

- VC 21953 [Where there is a pedestrian tunnel or overhead, pedestrians crossing the road ... must yield ... to ... [immediately hazardous vehicles].
- VC 21954. [Pedestrians on a roadway other than within a crosswalk at an intersection must yield to all vehicles that are an immediate hazard.]
- VC 21955. [Between adjacent intersections controlled by traffic control devices, pedestrians shall not cross except in a crosswalk.]
- VC 212956 [Pedestrians can walk on a road outside of a business or residence district only close to their left-hand roadway edge; with exceptions.]
- VC 21961 [Local authorities can have ordinances prohibiting pedestrians from crossing at other than crosswalks.]
- VC 21966 [Pedestrians cannot use a bicycle path where there is an adjacent pedestrian facility.]



Repealed: Loitering with Intent to Commit Prostitution (PC 653.20)

[SB 357 \(Stats. 2022, Ch. 86\)](#)

Repeals PC 653.20 and 653.22.

Amends EC 782.1, PC 647.3, 653.23, & 1203.47, WI 18259 and 18259.3.

Adds PC 653.29, for conviction-relief. See Criminal Records: Relief From.

From the Legislative Counsel's Digest

[Before this bill, the law] prohibit[ed] ... loitering in a public place with the intent to commit prostitution ... or directing, supervising, recruiting, or aiding a person who is loitering with th[at] intent [A misdemeanor.]

This bill ... repeal[s] those provisions.

[This bill also makes conforming changes to EC 782.1, PC 647.3, 653.22, and 1203.47, and others.]



False Personation Expanded to Include Websites and Electronic Means, When Done to Defraud

[AB 1899 \(Stats. 2022, Ch. 954\)](#)

Amends PC 538d to 538h

From PC 538d, subdivision (a): re: Peace Officers (*as amended*)

Any person other than one who [has] the authority of a peace officer, who willfully wears [etc.] the authorized uniform, insignia, [etc.] certificate, [etc.], of a peace officer, with the intent of fraudulently impersonating a peace officer, or of fraudulently induc[e] the belief that ~~he or she is~~ *they are* a peace officer, *or who willfully and credibly impersonates a peace officer through or on an internet website, or by other electronic means, for purposes of defrauding another,* is guilty of a misdemeanor.

Similar amendments are made to:

PC 538e, subd. (a), re: officers or members of a fire department

PC 538f, subd. (a), re: public utility employees

PC 538g, subd. (a), re: government officers or employees.

PC 538h, subd. (a), re: “officer or member of a government ... managed or affiliated search and rescue unit or team.”



Vehicular Manslaughter: Sideshows and Specified Speeding Added to Definition of “Gross Negligence”

[SB 1472 \(Stats. 2022, Ch. 626\)](#)

Amends PC 192

From the Legislative Counsel’s Digest

... [V]ehicular manslaughter [i]s the unlawful killing of a human being without malice while driving ... under specified circumstances, including in the [committing] an unlawful act, not amounting to felony, with or without gross negligence....

This bill ... specif[ies] a list of circumstances that may, based on the totality of the circumstances, constitute gross negligence ..., including, ... when a person has participated in a sideshow or has sped over 100 [m.p.h.].

From PC 192, subdivision (e) [gross negligence] as amended

(e) (1) (2) “Gross negligence,” as used in this section, may include, based on the totality of the circumstances, any of the following:

(A) Participating in a sideshow [as defined].

(B) An exhibition of speed [as defined].

(C) Speeding over 100 miles per hour.



One Count of Grand Theft Is Committed by Distinct Related Thefts Motivated by One Intent, Impulse, and Plan, Aggregate to Over \$950.

[AB 2356 \(Stats. 2022, Ch. 22\)](#)

Amends PC 487

This act adds a new subd. (e) to PC 487 (defining grand theft), and an uncodified statement that this is declaratory of existing law.

From New Subdivision (e) of PC 487:

(e) If the value of the money, labor, ... property, [etc.] taken exceeds ... \$950 ... over the course of distinct but related acts, the value of the money, labor, real property, or personal property taken may properly be aggregated to charge a count of grand theft, if the acts are motivated by one intention, one general impulse, and one plan.

Uncodified section 2 of AB 2356

The amendment of Section 487 of the Penal Code made by this act is declaratory of existing law in People v. Bailey (1961) 55 Cal.2d 514.

From the Senate Committee on Public Safety report for May 31, 2022

The California Supreme Court addressed the *Bailey* rule in *People v. Whitmer* (2014) 59 Cal.4th 733.... In a concurring opinion. Justice Liu distinguished acts committed with a common scheme from acts committed as part of a single impulse.... “[S]eparate and distinct takings do not fall under *Bailey*’s aggregation rule simply because... they were all done the same way. But neither does the mere fact that multiple takings are separate and distinct entail a finding of multiple thefts in every case. If the takings were committed pursuant to a single intention, impulse, and plan, then under *Bailey* they amount to only one theft.”



CRIMINAL PROCEDURE

See also Early Notices: Race Blind Charging Procedures to be Developed.



Bench Warrant for Failure to Appear (FTA) with Certain Prior FTAs.

[AB 2294 \(Stats. 2022, Ch. 856\)](#)

Amends PC 978.5

Urgency, effective on Sept. 30, 2022.

For other aspects of AB 2294, see Arrests and Detention; and see Diversion and Deferred Entry of Judgment: Theft and Repeated Theft.

From the Legislative Counsel’s Digest:

.... Existing law authorizes ... a bench warrant in specified situations, including when [Def] fails to appear ... [FTA] after being ordered [to appear].

This bill, until January 1, 2026, ... authorize[s] the court to issue a bench warrant when [Def] [FTA’d] and [was] cited or arrested for misdemeanor or felony theft from a store and [was FTA] in connection with that charge ... in the previous 6 months.

From PC 978.5 *as amended*.

(a) A bench warrant of arrest may be issued ~~whenever~~ *when* [Def is FTA] ..., including, but not limited to, the following situations:

(1) to (6)

(7) If [Def] has been cited or arrested for misdemeanor or felony theft from a store and [was FTA on] that charge ... in the previous six months.

(b) (c) This section shall ~~...~~ *[sunset on January 1, 2026].*



Racial Justice Act Expanded and Made Retroactive in Stages

[AB 256 \(Stats. 2022, Ch. 739\)](#)

Amends PC 745

The Racial Justice Act (RJA, PC 745), is amended in two ways. The first way concerns how RJA violations are proved. The second way is in how the RJA reaches back to older convictions.

From the Legislative Counsel’s Digest:

[PC 745, the Racial Justice Act (RJA)] prohibits the state from seeking a ... conviction or sentence [based on] race, ethnicity, or national origin, as specified, and, [when] judgment has not been entered prior to January 1, 2021, allows a petition to be filed alleging a violation of that prohibition.

Existing law authorizes a court that finds [an RJA violation] to impose specified remedies, including, among other things, vacating the conviction or sentence and ordering new proceedings.

This bill ... additionally authorize[s] that petition to be filed for cases in which a judgment was entered as final prior to January 1, 2021, as specified, and in cases in which a juvenile disposition resulted in a commitment to the Division of Juvenile Justice, as specified.

The bill ..., [for motions] ... based on the conduct or statements by the judge, require[s] the judge to disqualify themselves from those proceedings.^{3]}

Existing law allows a defendant to file a motion requesting disclosure of all evidence related to a potential [RJA] violation... and requires the court to order the records to be released upon a showing of good cause. If the records are not privileged, existing law allows the court to permit the prosecution to redact information prior to disclosure.

³ PC 745, subd. (b): “[Def] may file a motion in the trial court or, if judgment has been imposed, may file a petition for writ of habeas corpus or a motion under [PC] 1473.7 in a court of competent jurisdiction, alleging a violation of [the RJA]. ***If the motion is based in whole or in part on conduct or statements by the judge, the judge shall disqualify themselves from any further proceedings under this section.***”

This bill ... require[s] the court, upon a showing of good cause, to order disclosure unless a statutory privilege or constitutional privacy right cannot be adequately protected by redaction or a protective order. ⁴

Under existing law, a conviction or sentence [violates the RJA] if [Def] proves, among other things, that [Def] was charged or convicted of a more serious offense than [Defs] of other races, ethnicities, or national origins, or received a longer or more severe sentence, and the evidence establishes that [P] more frequently sought or obtained convictions for more serious offenses against people who share [Def's] race, ethnicity, or national origin, as specified, or if a longer or more severe sentence was more frequently imposed on [Defs] of a particular race, ethnicity, or national origin, as specified.

Existing law requires this determination to be made pursuant to statistical evidence or aggregate data, as specified.

This bill ... allow[s] that evidence to include nonstatistical evidence

The bill ... require[s] the court to consider whether systemic and institutional racial bias, racial profiling, and historical patterns of racially biased policing and prosecution may have contributed to, or caused differences observed in, the data or impacted the availability of data overall.

Additional material on RJA's Discussion by GB:

⁴ Here is that portion of PC 745, subd. (d), that shows this amendment: **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~~ *in order to protect a privacy right or privilege, the* court may permit the prosecution to redact information prior to ~~disclosure. disclosure or may subject disclosure to a protective order. If a statutory privilege or constitutional privacy right cannot be adequately protected by redaction or a protective order, the court shall not order the release of the records.~~**

The amendments to the RJA clarify some terms and expands on others.

As originally enacted, PC 745, subd. (j) said, in its entirety, “**This section applies only prospectively in cases in which judgment has not been entered prior to [the effective date of the RJA, namely,] January 1, 2021.**”

This current bill begins with uncodified Section 1, saying, “*It is the intent of the Legislature to apply the California Racial Justice Act of 2020 retroactively, to ensure equal access to justice for all.*”

From PC 745, subd. (j), as amended:

(j) This section applies as follows.”

(1) To all cases in which judgment is not final.”

(2) Commencing January 1, 2023, to all cases in which, at the time of the filing of a petition pursuant to subdivision (f) of Section 1473 [habeas corpus] raising a claim under this section, the petitioner is sentenced to death or to cases in which the motion is filed pursuant to Section 1473.7 [RJA violations and other issues] because of actual or potential immigration consequences related to the conviction or sentence, regardless of when the judgment or disposition became final.

(3) Commencing January 1, 2024, to all cases in which, at the time of the filing of a petition pursuant to subdivision (f) of Section 1473 raising a claim under this section, the petitioner is currently serving a sentence in the state prison or in a county jail pursuant to subdivision (h) of Section 1170, or committed to the Division of Juvenile Justice for a juvenile disposition, regardless of when the judgment or disposition became final.

(4) Commencing January 1, 2025, to all cases filed pursuant to Section 1473.7 or subdivision (f) of Section 1473 in which judgment became final for a felony conviction or juvenile disposition that resulted in a commitment to the Division of Juvenile Justice on or after January 1, 2015.

(5) Commencing January 1, 2026, to all cases filed pursuant to Section 1473.7 or subdivision (f) of Section 1473 in which judgment was for a felony conviction or juvenile disposition that resulted in a commitment to the Division of Juvenile Justice, regardless of when the judgment or disposition became final.



CRIMINAL RECORDS; RELIEF FROM

See also Background Checks



PC 1203.41 Relief Extended to State Prison Felonies (with Exceptions).

[SB 731 \(Stats. 2022, Ch. 814\)](#)

Amends PC 1203.41

For 2 other aspects of SB 731, see this section, and see “Background Checks.”

From the Legislative Counsel’s Digest, with comments by GB in brackets and footnotes.

Existing law authorizes a [Def] who [has completed a county jail felony] sentence], ..., and who has met specified criteria, to petition to withdraw their plea of guilty or nolo contendere and enter a plea of not guilty. [Sic⁵]



⁵ Existing law also allows the person to petition to vacate a jury’s verdict.

Existing law requires [sic⁶]the court to dismiss the accusations or information [sic: presumably, indictments can also be dismissed] against [Def] and release them from all penalties and disabilities resulting from the offense, except as specified.

This bill ... make[s] this relief available to a [Def] who has been convicted of a felony [including one with a state prison sentence], [if] that conviction does not require registration as a sex offender.

From PC 1203.41, as amended.

(a) If a [Def] is ~~sentenced pursuant to paragraph [PC 1170, subd. (h)(5) (5) of subdivision (h) of Section 1170,~~ *convicted of a felony*, the court, in its discretion and in the interests of justice, may order the following relief, [subject] to ... subd[.] (b):

(1) The court may permit [Def.] to withdraw ~~his or her~~ *their* plea of guilty or ... nolo contendere and [plead] not guilty, or [the court may] set aside [a] verdict of guilty, and, ... ~~thereupon~~ dismiss the accusations or information ... and ~~he or she~~ *[Def]* shall ... be released from all penalties and disabilities ... from the offense ... except as provided in [VC] 13555.

(2) Th[is] relief ... may be granted only after the lapse of one year following [Def's] completion of the sentence, if the sentence was imposed pursuant to subparagraph (B) of paragraph (5) of subdivision (h) of Section 1170 [sic], or after the lapse of two years following [Def's] completion of the sen-

⁶ The court has “discretion” and “may” grant this relief.

tence, if the sentence was imposed pursuant to subparagraph (A) of paragraph (5) of subdivision (h) of Section ~~1170.1170~~ *or if [Def] was sentenced to the state prison.*

(3) [This] relief ... may be granted only if [Def] is not *on parole or* under [mandatory] supervision pursuant to [PC 1170, subd. (h)(5)(B)], and is not serving a sentence for, on probation for, or charged with ... any offense.

(4) ... (5)

(6) [This relief cannot be granted to a Def. who went to state prison on a felony that requires registration as a sex offender under PC 290].

(b) [This relief] is subject to ... the following conditions:

(1) In any subsequent prosecution ... the prior conviction may be pleaded and proved [just] as if [it] had not been dismissed.

(2) [Def. must] disclose the conviction in response to any direct question ... in any questionnaire or application for public office, for licensure by any state or local ~~agency, or~~ *agency or by a federally recognized tribe, or* for contracting with the California State Lottery Commission.

(3) Dismissal ... does not permit a person to own, possess, or have in ~~his or her~~ *their* custody or control any firearm or prevent ~~his or her~~ *their* conviction under [PC 29800 et seq.].

(4) Dismissal ... does not permit a person prohibited from holding public office as a result of that conviction to hold public office.

(c) This ... applies to any [conviction listed, regardless of when it occurred].

(d) [Costs may be assessed as specified, as in accordance with PC 987.8].

(e)(1) [P is entitled to at least 15 days' notice]. (2)

(f) If, [after getting notice] [P] fails to appear and object to ... dismissal, [P] ~~may~~ *shall* not move to set aside or ... appeal the grant of that petition.

(g) [This] ... does not release [Def] from ... any unexpired criminal protective orders... issued ... pursuant to [PC 136.2, subd. (i)(1)] or [PC 368, subd. (l)] or [PC 646.9, subd. (k)]

(h) [This] ... does not affect the authority to receive, or take adverse action based on, criminal history information, including ... receiv[ing] certified court records ... pursuant to [four listed HS sections on residential care facilities] ..., or pursuant to any statutory or regulatory provisions [incorporating those] criteria [This] ... does not make eligible a person who is ... ineligible to provide ... in-home supportive services pursuant to [several listed WI sections].

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The Automatic Relief from Certain Arrest Records Not Resulting in Conviction, And Certain Conviction Records Program Delayed Again.

[SB 731 \(Stats. 2022, Ch. 814\)](#)

Amends PC 851.3 and 1203.425

Existing law [and subject to a legislative appropriation of funds, which may not have been made yet] requires [DOJ], [monthly], to review the records in the statewide criminal justice databases and identify persons who are eligible for records of arrest relief without requiring the filing of a petition or motion.... [A] person [is] eligible for [that] if they were arrested on or after January 1, 1973, ... the arrest was for a misdemeanor[,] and the charge was dismissed or criminal proceedings have not [started] within one year after the arrest, or the arrest was for a felony punishable in the county jail and criminal proceedings have not been [started] within 3 years after the date of the arrest.

This bill ... commencing July 1, 2023, generally [now] make[s] this arrest record relief available to a person who has been arrested for a felony, including

a felony punishable in the state prison, as specified. [Still, implementation is subject to an appropriation.]

Existing law, [starting] January 1, 2022 [subject to an appropriation which apparently has not yet been made], requires [DOJ], [monthly], to review the records in the statewide criminal justice databases and identify persons who are eligible for automatic conviction record relief. ... [A] person is eligible for [this] if, on or after January 1, 1973, they were sentenced to probation, and completed it without revocation, or if they were convicted of an infraction or a misdemeanor, and other criteria are met, as specified.

The bill, [starting] July 1, 2023, [will] ... make this conviction record relief available for [Def] convicted, on or after January 1, 2005, of a felony for which they did not complete probation without revocation if [Def] [has] completed all terms of incarceration, probation, mandatory supervision, postrelease community supervision, and parole, and ... 4 years has elapsed during which [Def] was not convicted of a new felony offense, except as specified....



Relief from Conviction of the Now-Repealed Loitering with Intent to Commit Prostitution.

[SB 357 \(Stats. 2022, Ch. 86\)](#) Adds PC 653.29.

See also: Crimes for the repeal of PC 653.20 and 652.22.

See also Evidence for conforming amendment to EC 782.1

From the Legislative Counsel’s Digest

.... This bill ... authorize[s] a person convicted of ... [the now repealed] loitering with the intent to commit prostitution [PC 653.22] to petition the court for... dismissal and sealing of their case, and resentencing if applicable.

From added PC 653.29:

(a)(1) A person ... serving a sentence for a conviction of ... former [PC] 653.22, whether by trial or by open or negotiated plea, may petition for a recall or dismissal of sentence ..., and sealing....

(2) ... [T]he court shall presume the petitioner satisfies the criteria ... unless the party opposing the petition proves by clear and convincing evidence that the petitioner does not satisfy the[m]. If the petitioner satisfies the[m] ..., the court shall grant the petition ... because [the conviction] is legally invalid, and shall seal the conviction....

(b)(1) A person who has completed their sentence for ...violating [PC] 653.22, whether by trial or open or negotiated plea, may file an application ... to have the conviction dismissed and sealed because the prior conviction is now legally invalid.

(2) The court shall presume the petitioner satisfies the criteria ... unless the party opposing the application proves by clear and convincing evidence that the petitioner does not satisfy the[m]. Once the applicant satisfies the criteria ..., the court shall seal the conviction as legally invalid.

(c) Unless requested by the applicant, no hearing is necessary to grant or deny an application filed under subdivision (b).

(d) (e) (f) The Judicial Council shall promulgate ... all necessary forms [to file for and receive this relief].



Courts and DOJ, Required to Complete the Job of Dismissing or Re-designating Old Cannabis Convictions.

[AB 1706 \(Stats. 2022, Ch. 387\)](#)

Amends HS 11361.9

From the Senate Committee on Public Safety report for June 21, 2022:

.... In 2018, ... California passed ... [AB 1793, Stats. 2018, Ch. 993] that provides for automatic sealing of cannabis criminal records for old offenses that are no longer illegal....

.... [T]here is wide variance in county compliance with the law, resulting in many Californians not receiving the relief for which they are eligible. ([DOJ] has yet to seal approximately 10,000 eligible cases).

AB 1706 establishes a hard deadline by which local courts ... must process these cases.... The bill ...require[s] the Judicial Council to monitor the process and produce joint monthly reports ... to ensure compliance

AB 1706 require[s] the DOJ to conduct a public awareness campaign so that individuals ... become aware of updates to their criminal history.

Lastly, AB 1706 directs the Attorney General to declare records as re-sentenced, sealed and dismissed in the absence of local action

[From HS 11361.9 as amended](#)

(d)(1) If the prosecution ~~does~~ *did* not challenge the recall or dismissal of sentence, dismissal and sealing, or redesignation ~~by~~ *of a conviction on or before July 1, 2020, the ~~...~~ conviction shall be deemed unchallenged, recalled, dismissed, and redesignated, as applicable, and the court shall issue an order, [doing so] in each case ... no later than March 1, 2023.*

(2) On or before March 1, 2023, the court shall...report all convictions that have been recalled, dismissed, redesignated, or sealed to [DOJ]

~~(e)(3)~~ *On or before July 1, 2023, [DOJ] shall ensure that all ... records in the state summary criminal history information database ... have been updated and... that inaccurate ... criminal history is not disseminated....*

~~(f)~~ *(e) The ... [DOJ] shall post general information on its ... internet website about [this process].... [DOJ] shall conduct an awareness campaign about the recall or dismissal of sentences, dismissal and sealing, or redesignation ..., so that individuals ... are informed of [how]..., to request their criminal history information to verify the updates or how to contact the courts, prosecution, or public defenders'... to assist in verifying the updates.... [DOJ] may provide a one-time fee waiver ... for ... responding to the request.*

(f) A conviction, arrest, or other proceeding that has been ordered sealed pursuant to Section 11361.8, is deemed never to have occurred, and the person may reply accordingly to any inquiry about the events.



DISCOVERY

Cf. California Public Records Act.



DIVERSION; DEFERRED ENTRY OF JUDGMENT

Mental Health Diversion: Eligibility Criteria Changed.

[SB 1223 \(Stats. 2022, Ch. 735\)](#)

Amends PC 1001.36, 1370, and 1370.1

From the Legislative Counsel's Digest: (Paragraph breaks added)

This bill ... change[s] the eligibility criteria [for Mental Health Diversion] to include a diagnosis of a mental disorder instead of the court finding ... [the] mental disorder[,] and ... require[s] that the diagnosis or treatment for [that] be within the last 5 years.

.... The bill ... require[s] the court ... to find that [Def's] mental disorder was a significant factor in the commission of [the] offense unless there is clear and convincing evidence that it was not a motivating factor, causal factor, or contributing factor

The bill ..., for ... a misdemeanor, limit[s] the...diversion to one year....

From PC 1001.36 *as amended.*

(a) On an accusatory pleading alleging [an eligible offense] ~~offense, ...,~~ the court may, ... after considering the positions of [Def and P], grant pretrial diversion to [Def] ... if [Def] ~~meets ... the requirements specified in paragraph (1) of subdivision (b).~~ *satisfies the eligibility requirements ... and the court [finds Def] is suitable ... under ... subd[.] (c).*

(b)~~(1)~~ *A Pretrial diversion may be granted [Def] is eligible ...* if ~~all both~~ of the following ... are met:

~~(A)(1)~~ The ~~court is satisfied that the defendant suffers from~~ *[Def] has been diagnosed with* a mental disorder as identified in the ...Diagnostic and Statistical Manual of Mental Disorders, including, but not limited to [a list of disorders (unchanged by this amendment)], but excluding [a list of disorders (unchanged by this amendment)]. Evidence of [Def's] mental disorder shall be provided by [Def.] and shall include a ~~recent diagnosis or treatment for a diagnosed mental disorder within the last five years~~ *by a qualified mental health expert....*

~~(B)~~ (2) The ~~court is satisfied~~ [Def's] mental disorder was a significant factor in the commission of the charged offense. If [Def.] has been diagnosed with a mental disorder, the court shall find that [Def's] mental disorder was a significant factor in the commission of the ~~charged offense. A court may conclude that a defendant's mental disorder was a significant factor in the commission of the charged offense if, after reviewing~~ offense unless there is clear and convincing evidence that it was not a motivating factor, causal factor, or contributing factor to [Def's] involvement in the alleged offense. A court may consider any relevant and credible evidence, including, but not limited to [a wide variety of documents and evidence are listed.] ...

(c) ... [Def] is suitable for pretrial diversion if ...:

~~(C)~~ (1) In the opinion of [the] expert, [Def's] symptoms of the mental disorder *causing, contributing to, or* motivating the criminal behavior would respond to mental health treatment.

~~(D)~~ (2) [Def] consents to diversion and waives the ... right to a speedy trial, unless [Def is getting diversion in lieu of commitment as mentally incompetent to stand trial [IST] pursuant to PC 1370 subd. (a)(1)(B)(iv) and cannot waive the speedy trial right].

~~(E)~~ (3) [Def.] agrees to comply with treatment as a condition of diversion, unless [Def getting diversion in lieu of commitment as IST and cannot agree to comply with treatment].

~~(F)~~ (4) The ~~court is satisfied that the~~ [Def] will not pose an unreasonable [safety risk], as defined.... The court may consider the opinions of [P], the defense, or [the] expert, [Def's] *treatment plan, [Def's]* violence and criminal history, the ... charged offense, and any other factors ... deem[ed] appropriate.

~~(2)~~ *(d)* [Def] may not be [diverted], for the following ... offenses: [The list of 8 offenses is not changed by this amendment.]

~~(3)~~ *(e)* At any stage ..., the court may require [Def] to ... show[] that [Def] will meet the ... [eligibility] requirements ... and that [Def] and the offense are suitable for diversion....

(f) ... [T]he following terms have the following meanings:

~~(c)~~ *(1)* ~~As used in this chapter, “pretrial~~ *“Pretrial* diversion” means the postponement of prosecution ..., at any point ..., [for Def] to undergo mental health treatment, subject to ...:

~~(1)(A)~~ *(A)* *(i) [and (ii)]* [These first two criteria, (i) requiring that the program meet Def’s needs, and (ii) stating the type of program involved, are re-lettered but are otherwise unchanged.]

(iii) If the court refers [Def.] to a county mental health agency ... [which] determines that it is unable to provide services to [Def], the court shall accept [the agency’s] written declaration That declaration ... [is] not ... evidence that [Def] is unqualified or unsuitable for diversion

~~(2)~~ *(B)* The ... program ... shall provide regular reports to the court, the defense, and the prosecutor

~~(3)~~ *(C)* The [diversion] period ~~shall be no longer than two years. Is[:]~~

(i) If [the charge is] a felony, ... no longer than two years.

(ii) If [the charge is] a misdemeanor, ... no longer than one year.

~~(4)~~ *(D)* Upon request, the court shall ... determine [if] restitution ... is owed.... [This para[.] is renumbered, but not changed].

(2) “Qualified mental health expert” [defined]. ¶....¶



Theft, and Repeat Theft, Crimes: Diversion or Deferred Entry of Judgment Program....

[AB 2294 \(Stats. 2022, Ch. 856\)](#)

Adds, Ch. 2.9D (§§ 1001.81 et seq.) to PC, Part 2, Title 6; and adds PC 1210.2. (The program sunsets on January 1, 2026.)

For other aspects of AB 2294, see “Arrest and Detention:” “New Reasons for Non-Release...”; and “Criminal Procedure:” Bench Warrant for [FTA]....”

From the Legislative Counsel’s Digest

.... This [bill] ..., until January 1, 2026, ... authorize[s] a city or county prosecuting authority or county probation department to create a diversion or deferred entry of judgment program for persons who commit a theft offense or repeat theft offenses, as specified....

From New PC 1001.81

(a) The city or county [P] or ... probation ... may create a diversion or deferred entry of judgment [DEJ] program ... for persons who commit a theft ... or repeat theft[s].... The program may be conducted by [P] or ... probation

(b) Except as provided in subd[.] (e), this chapter does not limit the power of [P] to prosecute theft or repeat theft.

(c) If a county creates a diversion or [DEJ] program ..., on receipt of a case or at arraignment, [P] shall either refer the case to ... probation ... to assess [the case for] ... program placement or, if [P’s]

office operates the program, determine if the case is ... appropriate [for] the program.... [The] probation department or [P] shall consider, [at least], the following:

- (1) Any profiling ... report ... by ... probation ... or [a] nonprofit ... agency operating the program that evaluates [Def's] risk and needs and the appropriateness of program placement.*
- (2) If [Def] demonstrates a willingness to engage in community service, restitution, or other mechanisms to repair the harm caused ... and address the ... drivers of the criminal activity.*
- (3) [Whether there are] underlying substance abuse or mental health needs or other drivers of criminal activity that can be addressed through the ... program.*
- (4) If [Def] has a violent or serious prior... record or has previously been referred to [, but failed,] a diversion program*
- (5) Any ... information concerning the [program's] efficacy ... in reducing the likelihood of [Def's] committing future offenses.*

(d) On referral ... to the program, a notice shall be provided ... to [Def] with ... the following information:

- (1) The date by which [Def] must contact the ... program*
- (2) A statement of the penalty for the offense ... charged.*

(e) [P] may enter into a written agreement with [Def] to refrain from, or defer, prosecution ... on the following conditions:

- (1) Completion of the ... requirements such as community service[,] or courses ... required by [P].*
- (2) Making ... restitution or an appropriate substitute for [that] to the establishment or person from which property was stolen at [its] face value ..., if required*



DOMESTIC VIOLENCE

Medical Evidentiary Exams: Free of Charge and Enhanced

[AB 2185 \(Stats. 2022, Ch. 557\)](#)

Amends PC 11161.2

From the Legislative Counsel’s Digest

Existing law requires the Office of Emergency Services to establish medical forensic forms, instructions, and examination protocols for [Vs] of domestic violence [DV] and elder and dependent adult abuse and neglect

This bill ... require[s] that [Vs] of [DV] have access to medical evidentiary examinations, free of charge, by Local Sexual Assault Response Teams (SART), Sexual Assault Forensic Examiner (SAFE) teams, or other qualified medical evidentiary examiners. This bill ... require[s] the forms to include information regarding history and evidence of strangulation.

....

This bill, instead, ... require[s] a ... medical facility where medical evidentiary examinations are conducted to ... implement written policies and procedures for maintaining the confidentiality of medical evidentiary examination reports.

The bill ... also require[s] a ... medical facility, on or before July 1, 2023, to implement a system to facilitate the release of those reports....

This bill ... prohibit[s] the costs incurred for the medical evidentiary portion of the examination from being charged directly or indirectly to [V].

The bill ... also permit[s] [Vs] to have a qualified social worker, victim advocate, or a support person of [V’s] choosing to be present during the examination, when available....

From PC 11161.2 as amended.

(a) The Legislature findsthat ... ~~Enhancing~~ *Medical evidentiary examinations, offered to [Vs] free of charge, and enhanced* examination procedures, documentation, and evidence collection will improve ~~investigation~~ *patient outcomes, investigation,* and prosecution efforts.

¶...¶

(b)(1)(I) When strangulation is suspected, documentation may be included on a supplemental strangulation form as part of the ... exam.

(2) The forms shall be made accessible for use in an electronic format....

(c) When strangulation is suspected, additional diagnostic testing may be necessary to prevent adverse health outcomes or morbidity.

(d) [Vs] receiving forensic medical exams for [DV] have the right to a qualified social worker, victim advocate, or a support person of the victim’s choosing to be present during the examination, when available.

¶...¶



EVIDENCE

See Crimes, “Loitering with intent to commit prostitution, repealed” re: EC 782.1, which is amended to reflect that repealer.



EC 782.1 Amended to Reflect the Repeal of PC 653.22, Loitering with Intent to Commit Prostitution.

[SB 357 \(Stats. 2022, Ch. 86.\)](#)

Amends EC 782.1

For the repeal itself of PC 653.22, see “Crimes,” above.

From EC 782.1 *as amended*.

The possession of a condom is not admissible as evidence in the prosecution of a violation of [PC] 372 of, *or* [PC 647 subds. (a) or (b)], or *former* Section 653.22 of, the Penal Code, if the offense is related to prostitution.

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Disclosure of Immigration Status in Open Court Prohibited Without a Court Hearing (with Exceptions): Re-enacts Prior Law.

[SB 836 \(Stats.. 2022, Ch. 168\)](#)

Reenacts EC 351.4

Urgency, effective August 22, 2022.

EC 351.4, first enacted by SB 785 (Stats.. 2018, Ch. 12), prohibited disclosure in open court of a person’s immigration status, without a court hearing (with exceptions).... [P]ursuant to [its] sunset clause[], [it was] automatically repealed on January 1, 2022.

This bill reenacts [EC 351.4], identically.

Uncodified section 4 says ***“This act does not alter a prosecutor’s existing obligation to disclose exculpatory evidence.”***

Re-enacted EC 351.4:

(a) In a criminal action, evidence of a person’s immigration status shall not be disclosed in open court by a party or their attorney unless the judge ... first determines that the evidence is admissible in an in-camera hearing requested by the party seeking disclosure

(b) This section does not:

- (1) Apply to cases in which a person’s immigration status is necessary to prove an element of an offense or an affirmative defense.*
- (2) Limit discovery in a criminal action.*
- (3) Prohibit a person or their attorney from voluntarily revealing the person’s immigration status to the court.*



Limits On Admissibility of Creative Expressions

AB 2799 (Stats. 2022, Ch. 973)

Adds EC 352.2

From uncodified Section 1

(a) Existing precedent allows artists’ creative expression to be admitted as evidence ... without a ... robust inquiry into whether [this] introduces bias or prejudice into the proceedings.... [Citing 3 research articles].

(b)... [T]his Legislature [intends] to provide a framework by which courts can ensure that the use of an accused [Def’s] creative expression will not be used to introduce stereotypes or activate bias against [Def], nor as character or propensity evidence; and to recognize that the use of rap lyrics and other creative expression as circumstantial evidence of motive or intent is not a sufficient justification to overcome substantial evidence that the introduction of rap lyrics creates a substantial risk of unfair prejudice.

From Added EC 352.2:

(a) In any criminal proceeding where a party seeks to admit as evidence a form of creative expression, the court, while balancing the probative value

of that evidence against the substantial danger of undue prejudice under [EC] 352, shall consider, [inter alia], that:

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

(2) undue prejudice includes, [inter alia], the possibility that the trier of fact will ... treat the expression as evidence of the defendant’s propensity for violence or general criminal disposition [and] the possibility that the evidence will ... inject racial bias into the proceedings.

(b) If proffered and relevant ..., the court shall consider...:

(1) Credible testimony [about] creative expression as to the social or cultural context, rules, conventions, and ... techniques....

(2) Experimental or social science research [showing] that the introduction of a particular type of expression... introduces racial bias....

(3) Evidence to rebut such research or testimony.

(c) ... “[C]reative expression” [is] the expression or application of creativity or imagination in the production or arrangement of forms, sounds, words, movements, or symbols, including, but not limited to, music, dance, performance art, visual art, poetry, literature, film, and other ... objects or media.

(d) The question of the admissibility of a ... creative expression shall be heard in limine and determined by the court, outside the presence ... of the jury.... The court shall state on the record its ruling and its reasons therefor.

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FIREARMS

Unserialized Firearms (Ghost Guns) Heavily Regulated.

[AB 1621 \(Stats. 2022, Ch. 76\)](#)

Amends, or repeals, or adds (or combinations of these), dozens of sections in Penal Code, Part 6, “Control of Deadly Weapons.”

Urgency, effective June 30, 2022, but some sections specify Jan. 1, 2024.

From the Legislative Counsel’s Digest

(1) This bill ... redefine[s] a firearm precursor part as any forging, casting, printing, extrusion, machined body or similar article that has reached a stage in manufacture where it may readily be completed, assembled or converted to be used as the frame or receiver of a functional firearm, or that is marketed or sold ... to become or be used as the frame or receiver of a functional firearm once completed, assembled or converted.

This bill ... extend[s] the definition of a firearm to include a firearm precursor part for ... most criminal and regulatory provisions [on] possession, sale, and transfer of a firearm, including [those] which [did not, before this bill] apply to a frame or receiver

The bill ... prohibit[s] the sale, transfer, or possession of an unserialized firearm precursor part, except as specified.

The bill ... create[s] a process [for] a person [to] apply to [DOJ] for a determination that a particular item or kit is or is not a firearm precursor part.

(2) This bill ... require[s] any person [with] an unserialized firearm to apply to [DOJ] for a unique mark of identification and to affix [it] to the firearm before]1/1/24[.

From the Legislative Counsel’s Digest

... [F]ederal law requires a manufacturer of firearms to be licensed by the federal government. Existing [California] law requires any federally licensed ... manufacturer [producing] 50 or more firearms in the state in a calendar year to also be licensed ... by [Calif.]. [Violation is a misdemeanor.]

This bill ... prohibit[s] any person, regardless of federal licensure, from manufacturing firearms in the state without being licensed by the state.

The ... manufacturing threshold requiring state licensure [is decreased down] to 4 or more firearms in a calendar year.

The bill ... prohibit[s] any person, unless licensed as a firearm manufacturer, from [making] any firearm or precursor part by... a 3D printer....

From PC 29010 *as amended*. (Paragraph break added)

(a) A person, firm, or corporation ~~licensed to manufacture firearms pursuant to [Federal law]~~ shall not manufacture *more than three* firearms within this state *in a calendar year* unless that person, firm, or corporation is licensed pursuant to Chapter 2 (commencing with [PC] 29030).

(b) ~~Subdivision (a) does not apply to a person licensed to manufacture firearms~~ *A person, firm, or corporation shall not use a [3D] printer to manufacture any firearm, including a frame or receiver, or any ... precursor part, unless that person, [or, etc.] is licensed pursuant to [PC 29030 [et seq.]].... “[T]hree-dimensional printer” [is defined].*

(c).... (d) A violation of this section is a misdemeanor.



Gun Shows Regulated Concerning Ghost Guns

[AB 2552 \(Stats. 2022, Ch. 696\)](#)

Amends PC 27240, 27245, 27305, 27310, and 27350

From the Legislative Counsel's Digest (Editing added)

Existing law ... regulates gun shows ... and requires [specified personnel] to possess a ... certificate of eligibility from [DOJ]. Existing law requires ... specified notices at each public entrance ... and a specified notice in the parking lot. A violation of this ... or other requirements is ... a misdemeanor and makes a person ineligible for a certificate of eligibility for ... one year.

This bill ... require[s] additional notices at each public entrance

This bill ... double[s] the maximum fines for a violation of this and other requirements and make the person ineligible for a certificate of eligibility for a period of 2 years....

Existing law requires a vendor at a gun show or event to make certain certifications, in writing....

This bill ... additionally require[s] a vendor to certify that they will not display, possess, or offer for sale any unserialized frame or receiver, including an unfinished frame or receiver or any handgun conversion kits, as specified.

Under existing law, a violation of this and other requirements is punishable as an infraction or misdemeanor, as specified.

This bill would add a fine and a suspension from participating as a vendor for a period of one year to the punishment for these violations.

....

Existing law ... authorizes [DOJ] to inspect [specified persons and businesses] participating in a gun show ... to ensure [compliance] with [specified] applicable state and federal laws.

This bill ... authorize[s] [DOJ] to also inspect any firearm precursor part vendors participating in a gun show

The bill ..., commencing July 1, 2023, require[s] [DOJ] to conduct enforcement and inspections at [at least] one-half of all gun shows ... to ensure compliance with gun show ... laws.

The bill ... also require[s] [DOJ] to post certain violations on their internet website



FORMS

Only new (not revised) statewide (not local) forms, promulgated by the Judicial Council through Dec. 6, 2022 (except as below), are included.



Expected New Forms.

At this writing, December 6, 2022, there are no new forms for 2023 at the “Forms & Rules” tab at the “California Courts” website homepage. <https://www.courts.ca.gov/home.htm> .

At least four new forms are expected quickly, however, because revised California Rules of Court, Rule 5.625 (“Orders after filing of petition under section 601 or 602”), and revised Rule 5.630 (“Restraining Orders”), both effective on January 1, 2023, refer to four forms that are not, at this writing, available on the California Courts web site, <https://www.courts.ca.gov/forms.htm> .

See Rule 5.625(a) (rev. eff. 11/2023), referring to “Notice of Court Hearing and Temporary Restraining Order Against a Child” (form JV-260); and “Juvenile Restraining Order After Hearing – Against a Child” (form JV-265).

And see Rule 5.630(c)(3) (rev. 1/1/2023), referring to “Request for Juvenile Restraining Order Against a Child” (form JV-258).

And see Rule 5.630(d)(4), referring to “Order on Request to Reschedule Restraining 24 Order Hearing” (form JV-253).

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HABEAS CORPUS

See: Recall and Resentence.

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Petition Allowed When Significant Dispute Develops About Expert Evidence Used to Convict.

[SB 467 \(Stats. 2022, Ch. 467\)](#)

Amends PC 1473.

From the Legislative Counsel’s Digest

[Before this bill, one ground for which] a habeas corpus [action can] be prosecuted [is that] false evidence ... was introduced at trial. [This includes] the opinions of experts that have been repudiated by the expert or that have been undermined by later scientific research or technological advances.

This bill ... additionally allow[s] a person to prosecute a writ of habeas corpus if a significant dispute has emerged or further developed ... regarding expert medical, scientific, or forensic testimony that was introduced at trial and contributed to the conviction, such that it would have more likely than not changed the outcome at trial, as specified.

The bill ... also expand[s] the definition of false evidence to include the opinions of experts that are undermined by the state of scientific knowledge.

From PC 1473, *as amended*.

(a) A person unlawfully imprisoned or restrained of their liberty, under any pretense, may prosecute a writ of habeas corpus to inquire into the cause of the imprisonment or restraint.

(b) A writ of habeas corpus may be prosecuted for, but not limited to, the following reasons:

(1) False evidence ... was introduced against Def] at [the] hearing or trial....

(2) False physical evidence, believed by a person to be factual, probative, or material on the issue of guilt, which was known by the person at the time of entering a plea of guilty, which was a material factor directly related to the plea of guilty by the person. [sic.]

(3)(A) New evidence [as defined] exists that ... would have more likely than not changed the outcome at trial. (B)

(4) A significant dispute has emerged or further developed ... regarding expert medical, scientific, or forensic testimony that was introduced at trial ..., such that it would have more likely than not changed the outcome

(A)... [T]he expert ... testimony includes the expert's conclusion or the scientific, forensic, or medical facts upon which their opinion is based.

(B)...[T]he significant dispute may be as to the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which [the] expert based their testimony.

(C) ... [A] significant dispute can be established by credible expert testimony or declaration, or by peer reviewed literature showing that experts in the relevant ... community, substantial in number or expertise, have concluded that developments ... undermine the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which [the] expert based their testimony.

(D) In assessing whether a dispute is significant, the court shall give great weight to evidence that a consensus has developed in the relevant ... community undermining the reliability or validity of the diagnosis,

From the Senate Committee on Public Safety report for hearing date of June 21, 2022, “Need for This Bill” at pp. 2-3:

AB 2195 disrupts the legacy of the drug war by protecting individuals from the draconian collateral consequences that flow from any drug conviction, and that have a disproportionate impact on economically disadvantaged communities of color.... A single drug conviction can cause a person to end up homeless, limit their employment opportunities and for immigrants the consequences are far worse, a drug conviction can subject non-citizens to mandatory ... deportation, regardless of their ties to the U.S.

¶...¶

... [T]o address these issues, AB 2195 ... create[s] an alternate plea for those charged with drug offenses. It gives the prosecution the discretion of offering an alternate public nuisance plea, on a case-by-case basis, as a substitute for a drug charge including possession and drug sales. Public nuisance would carry the same criminal penalty but without triggering the collateral consequences for both immigrants and non-citizens....

From Added PC 372.5:

[Note: the list of drug charges in subdivision (a), for infractions, and subdivision (b), for misdemeanors, are:

“unlawfully cultivating, manufacturing, transporting, giving away or selling a drug, or offering to transport, give away, or sell a drug, or unlawful use of a drug or unlawful possession or use of a drug or ...paraphernalia.”

[The list of drug charges in subdivision (c), for felonies, are ***all of those offenses***, except paraphernalia, and unlawful drug use.]

(a) Notwithstanding [PC] 372 [punishment for public nuisance], if a [Def.] is sentenced for a violation of Section 370 [defining a criminal public nuisance] based on a disposition negotiated between the defendant and the prosecution, or pursuant to an indicated sentence of the court, a term of which [is] the dismissal of one or more infraction charges that allege [any of the drug offenses listed in the “Note,” above for subd (a)] public nuisance is an infraction punishable by a fine not to exceed ... \$250....

(b) Notwithstanding Section 372, if a [Def.] is sentenced for a violation of [PC] 370 based on a disposition negotiated between [Def] and [P], a term of which [is] the dismissal of one or more misdemeanor charges that allege [any of the drug offenses listed in the “Note” above for subd. (b)] public nuisance is punishable by a fine of [up to] \$1,000 ..., or ... county jail for [up to] one year, or by both ..., or as an infraction punishable by... [up to] \$250....

(c) Notwithstanding [PC] 372, if [Def.] is sentenced for a violation of [PC] 370 based on a disposition negotiated between [Def] and [P], a term of which [is] the dismissal of one or more felony charges that allege [any of the drug offenses listed in the “Note” above for subd. (c)], public nuisance is punishable pursuant to [PC 1170, subd. (h)] for ... 16 months, or two or three years, or by ... county jail for [up to] one year.

[All three subds. permit this to be by plea bargain between Def and P; but only subd. (a) (infraction) also permits this by the court’s indicated sentence.]



JAIL

See Prisons and Jails



JUVENILE JUSTICE

See Rules of Court for rules about appeals from orders transferring Minors from Juvenile Court to a Court of Criminal Jurisdiction.

See Early Notices, for interrogation of juveniles effective July 1, 2024.



Transfer to Adult Court Requires Clear and Convincing Evidence that Minor is Not Amenable to Rehabilitation in Juvenile Court

[AB 2361 \(Stats. 2022, Ch. 330\)](#)

Amends WI 707

From the Legislative Counsel’s Digest’s About the Law Before this Bill.

[Prop. 57, from 2016] ... authorizes [P] to make a motion to transfer a minor (M) from juvenile court to a court of criminal jurisdiction [when M] is alleged to have committed a felony when ... 16 years ... or older, or [when] a specified serious offense is alleged to have been committed by [M] when ... 14 or 15 years of age, but [M] was not apprehended prior to the end of juvenile court jurisdiction....

From California Rules of Court 5.770(a), at the time this bill passed:

“In a transfer of jurisdiction hearing under [WI] 707, the burden of proving that there should be a transfer ... is on the petitioner, by a preponderance of the evidence.”

From the Legislative Counsel's Digest

This bill ... require[s] the court to find by clear and convincing evidence that [M] is not amenable to rehabilitation while [in] the juvenile court[‘s] [jurisdiction], to find that [M] should be transferred to [adult] court ...

From WI 707, subd. (a)(3), *as amended*.

Following ... consideration of the [probation] report [required for transfer hearings], and of any other relevant evidence ..., the juvenile court shall decide whether the minor should be transferred.... *[T]o find that the minor should be transferred to [criminal court], the court shall find by clear and convincing evidence that the minor is not amenable to rehabilitation while [in] juvenile court...* [T]he court shall consider [specified] ... criteria.... If the court orders a transfer ..., the court shall recite the basis for [that] in an order entered upon the ~~minutes~~.*minutes, ... includ[ing] the reasons [for] the court’s finding that the minor is not amenable to rehabilitation while under the jurisdiction of the juvenile court...*

[See “Rules of Court.” For several Rules reflecting this bill; note, however, that Rule 5.770, subd. (a) has not changed the standard of proof. Presumably, the Judicial Council will change that rule soon.]



Dismissal in the Interests of Justice and M’s Welfare (WI 782)

[AB 2629 \(Stats. 2022, Ch. 970\)](#)

Amends WI 782

From the Legislative Counsel's Digest: [Paragraph breaks added]

Existing law authorizes a judge of the juvenile court in which a petition was filed to dismiss the petition, or [to] set aside the findings and dismiss the petition, if the court finds that the interests of justice and [M's] welfare ... require that dismissal, or if the court finds that [M] is not in need of treatment or rehabilitation, regardless of whether [M] is, at the time of the order, a ward or dependent child of the court.

....

This bill ... also authorize[s] a judge of a juvenile court to dismiss a petition ... at any time after the filing of a petition, and regardless of whether the petition was sustained at trial, by admission or plea agreement.

The bill ... require[s] a court, at the time the court terminates jurisdiction or any time thereafter, to consider and afford great weight to evidence ...[proving] that specified mitigating circumstances are present unless the person seeking relief ... has been convicted of a serious or violent felony....

....

The bill ... specif[ies] that dismissal of a petition ... [does] not prohibit a court from enforcing a civil judgment for an unfulfilled order of restitution.

WI 782 *as amended*

(a)(1) A judge of the juvenile court in which a petition was filed ***or that has taken jurisdiction ... pursuant to [WI] 750 [transfer between counties]*** may dismiss the petition, or ... set aside the findings and dismiss the petition, if ... the interests of justice and the [person's] welfare ... require that dismissal, or if ... ~~he or she is~~ ***they are*** not in need of treatment or rehabilitation. The court [can] order dismissal or setting aside of the findings and dismissal regardless of whether the person ... is, at the time..., a ward or dependent child of the court....

(2)(A) ***When exercising its discretion ... [when] the court terminates jurisdiction or ... thereafter, the court shall ... afford great weight to evidence***

... [of] mitigating circumstances ..., including, but not limited to, satisfactory completion of ... probation, that rehabilitation has been attained ..., that dismissal ... would not endanger public safety, or that the underlying offense is connected to mental illness, prior victimization, or childhood trauma. Proof of the presence of one or more mitigating circumstances weighs greatly in favor of dismissing the petition.

(B).... (C) (D)

(E) The great weight standard ... [is] not ... applicable ... where [M was] convicted in criminal court of a serious or violent felony.

(F) (G) The absence of the great weight standard [as described does] not affect the court's authority under para[.] (1).

(b)The reasons for a decision ... shall be stated orally on the record. The court shall also set [them] forth ... [in] the minutes if requested by either party or [when] the proceedings are not being recorded electronically or reported by a court reporter.

(c) The court [can] exercise [this] discretion ... at any time

(d) The court [can] exercise [this] discretion ... regardless of whether a petition was sustained at trial, by admission or plea agreement.

(e) Dismissal of a petition, or setting aside of the findings and dismissal of a petition ..., after the person was declared a ward, does not alone constitute a sealing of records Any unsealed records ... may be ... inspected, or used by the court, ... probation ..., [P], or [M's] counsel ... in juvenile court proceedings commenced by ... a new [WI 602] petition

(f) Dismissal of the petition, or setting aside the findings and dismissal of the petition, ... does not relieve a person from the obligation to pay restitution ... [under] a civil judgment under [WI] 730.6.



Room Confinement Must Include Access to A Toilet.

[AB 2321 \(Stats.. 2022, Ch. 781\)](#)

Amends WI 208.3

From the Legislative Counsel's Digest

Existing law places restrictions on the use of room confinement of minors or wards who are confined in a juvenile facility, as specified, and requires the placement of a minor or ward in room confinement to be conducted in accordance with specified guidelines. Existing law excludes from the definition of room confinement the confinement of a minor or ward in a single-person room or cell for brief periods of locked room confinement necessary for required institutional operations.

This bill would limit that exclusion to periods of confinement no longer than 2 hours. The bill would also require minors and wards who are confined to be provided reasonable access to toilets at all hours.



Juvenile Court Must Award One Day Credit for Each Day that M Serves on Electronic Monitoring [EM]

[AB 2658 \(Stats. 2022, Ch. 796\)](#)

Adds PC 13012.4 and WI 628.2)

From the Legislative Counsel's Digest

This bill ... entitle[s] [M] to have one day credited against [M's] maximum term of confinement for each day ... that [M] serves on [EM].

This bill ... require[s] the court to hold a hearing every 30 days to ensure that [M] does not remain on [EM] for an unreasonable length of time.

From Section 1. Legislative Findings and Declarations

*(a) ... [M's] may remain on [EM] for months..., often for minor crimes....
[Y]outh, unlike adults, do not [get] custody credit for time... on [EM]....
[T]here is no statutory limit to how long youth can be [on EM].*

(b) [EM] ... can lead to depression, anxiety, and ... isolation.

(c) The restrictions and rules [for EM] often set youth up to fail, especially those with disabilities or cognitive impairments....

(d) Even when youth [get] permission to leave ... home, [EMs are] often visible, and most ... emanate [noises], or verbal commands[,] [undermining] the ... confidential[ity] ... of juvenile court....

Added WI 628.2

(a) [Definitions of "Minor" and of "EM"]:

(b) [EM] shall not be used to converse ...or to eavesdrop....

(c) [M is] entitled to ... one day credit[] against [M's] maximum term ... for each day ...on [EM].... beginning January 1, 2023.

(d) [T]he court shall hold a hearing every 30 days to ensure that [M] [is not] on [EM] for an unreasonable ... time. ... [T]he court [shall consider less restrictive alternatives, and if they] would achieve the [court’s] rehabilitative purpose...., the court shall [modify EM terms or] order [EM’s] removal



Several Rights Are Added to The Youth Bill of Rights, Which Now Applies to All “Juvenile Facilities.”

[AB 2417 \(Stats. 2022, Ch. 786\)](#)

Amends WI 224.70, 224.71, 224.72, 224.73, 224.74, 2200, 2200.2, and 2200.5.

From the Legislative Counsel’s Digest

... [Before this bill,], the Youth Bill of Rights applie[d] to youth ... in a facility of the Division of Juvenile Justice [DJJ] in [CDCR]. [DJJ is set to end on June 30, 2023.]

This bill ... make[s] the Youth Bill of Rights applicable to youth confined in any juvenile facility [as defined].

The bill ... further require[s],... that youth have access [to specified education] and ... access to information regarding parental rights....

Existing law requires ... [DJJ] to provide ... services to youth in their custody without discriminating on [several listed bases]....

The bill ... additionally prohibit[s] discrimination against youth on the basis of gender expression or immigration status.

[GB: This bill makes several other changes to the Youth Bill of Rights, and to the function of the Ombudsman in the Office of Youth and Community Restoration in the California Health and Human Services Agency.]

From WI 224.70 *as amended*.

~~(d) (b) “Facility of the Division of Juvenile Facilities [DJF]”~~ “Juvenile facility” means a place of confinement that is operated by, or contracted for, the ~~[CDCR], county probation department or juvenile court~~ for the ... ~~de-~~ detention or commitment confinement of youth who are ... in custody and [are] ... within [WI] 601 or 602 ~~or~~... [or] are ... a ward of the court.

From WI 224.71 *as amended*.

It is the policy of the state that all youth confined in a ~~DJF: juvenile facility~~ shall have the following rights....

(a) (b).... (c) To ... ~~food and water, meals and snacks, clean water at any time, timely access to toilets, access to daily showers,~~ ... personal hygiene items, clean bedding, and ~~[clean clothing]~~ clothing in good repair, including clean undergarments ...daily ..., and new underwear that fits. Clothing, grooming, and hygiene products shall be adequate and respect the child’s culture, ethnicity, and gender identity and expression.

(d) To ..., appropriate, and ~~appropriate~~ timely medical, reproductive, dental, vision, and mental health ~~services.~~ services provided by qualified professionals and consistent with current professional standards of care.

(e)... (f) To not be searched for... harassment or ~~humiliation or as humiliation,~~ a form of discipline or ~~punishment.~~ punishment, or to verify the youth’s gender. To ... have access to a written search policy at any time, including the policy on who may perform searches.

(g) (h) (i) To have ... equal access to all available services, ~~placement,~~ *housing*, ..., and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ~~ethnic group ...,~~ *ethnicity*, ancestry, national origin, *language*, color, religion, sex, sexual orientation, gender identity, *gender expression*, mental or physical disability, *immigration status*, or HIV status.

(j) ... (k) (l) (m) ...

(n) To receive a *rigorous*, quality education [that] *prepares them for high school graduation, career entry, and postsecondary education; to attend appropriate level school classes and vocational training, and to training; to have access to postsecondary academic and career technical education courses and programs; to have access to computer technology and the internet for ... education and to* continue to receive educational services while on disciplinary or medical ~~status-~~ *status*

(o) To information about their rights as parents, including available parental support, reunification advocacy, and opportunities to maintain or develop a connection with their children; to access educational information or programming about pregnancy, infant care, parenting, and breastfeeding, and childhood development; to proper prenatal care, diet, vitamins, nutrition, and medical treatment; to counseling for pregnant and postpartum youth; to not be restrained by the use of leg irons, waist chains, or handcuffs behind the body while pregnant or in recovery after delivery; to not be restrained during a medical emergency, labor, delivery, or recovery unless ... necessary for their safety and security, and to have restraints removed when a medical professional determines removal is

medically necessary; and to access written policies about pregnant, post-partum, and lactating youth....

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MENTAL HEALTH

See “Diversion,” for major changes in Mental Health Diversion pursuant to PC 1001.36 made by SB 1223.

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When Inmates Are Transferred Between CDCR And the State Hospital or County Agencies, Mental Health Records Must Accompany.

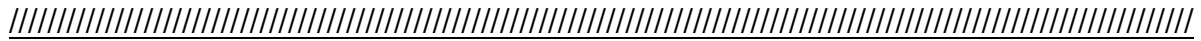
[AB 2526 \(Stats.. 2022, Ch. 968\)](#) Adds PC 5073; amends Civ. C. 56.10

From Added PC 5073:

(a) When jurisdiction of an inmate is transferred from or between CDCR, the [Dept.] of State Hospitals, and county agencies caring for inmates, these agencies shall disclose ... mental health records for any ... inmate who received mental health services ... in ... the transferring facility. [They] shall be disclosed at the time of transfer or within seven days of [that], except when the person is transferred to a state hospital ... the records shall be provided prior to, or at the time of, transfer.

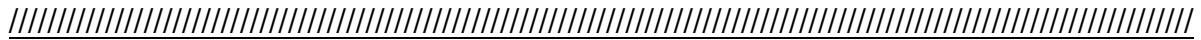
(b) Mental health records shall be disclosed by and between a county correctional facility, county medical facility, state correctional facility, state hospital, or state-assigned mental health provider to ensure sufficient

mental health history is available for the purpose of satisfying the requirements of [PC] 2962 for inmate evaluations and to ensure the continuity of mental health treatment of an inmate being transferred



PAROLE and POSTRELEASE COMMUNITY SUPERVISION (PRCS)”

See also: Probation and Mandatory Supervision., about Flash Incarceration.



PEACE OFFICERS

The new “Peace Officer Standards Accountability Advisory Board”

[SB 2 \(Stats.. 2021, Ch. 409\)](#)

[Adds PC 13509.5 and 13509.6](#)

See POST’s Senate Bill 2 page: <https://post.ca.gov/sb-2> .

For other aspects of SB 2, see other entries in “Peace Officers,” & “Evidence”

From the Legislative Counsel’s Digest for this part of SB 2:

The bill ... create[s] the Peace Officer Standards Accountability Division within the [Peace Officer Standards and Training (POST)] commission to review investigations conducted by law enforcement agencies and to conduct additional investigations into serious misconduct that may provide grounds for suspension or revocation of a peace officer’s certification,....

The ... division [must] review grounds for decertification and make findings as to whether grounds for action against an officer’s certification exist.... [T]he division [must] notify the officer subject to decertification of their findings and allow the officer to request review.

The bill ... also create[s] the Peace Officer Standards Accountability Advisory Board with 9 members ... appointed as specified.

The ... board [must] hold public meetings to review the findings after [a division] investigation ... and ... make a recommendation to the commission.

The bill ... require[s] the commission [i.e., POST] to review the [board's] recommendation ... and, if action is to be taken against an officer's certification, return the determination to the division to commence formal proceedings.... The bill ... require[s] the commission to notify the employing agency and the [district attorney]....

The bill ... require[s] an agency employing peace officers to report to the commission the employment, appointment, or separation from employment of a peace officer, any complaint, charge, allegation, or investigation into the conduct of a peace officer that could render the officer subject to suspension or revocation, findings by civil oversight entities, and civil judgments that could affect the officer's certification.

New PC 13510.9, subds. (a)(3) and (b) implements the requirement that the peace officer agency give the commission findings made by a civilian oversight entity that could affect the officer's certification:

(a) Beginning January 1, 2023, any agency employing peace officers shall report to the commission within 10 days, in a form specified by the commission, any of the following events:... (1).... (2)

(3) Any finding or recommendation by a civilian oversight entity, including a civilian review board, [or similar civilian watchdog], [or] police chief, ..., that [that agency's] peace officer ... engaged in conduct that could render [the] officer subject to suspension or revocation of certification....

(b) By July 1, 2023, any agency employing peace officers shall report to the commission any events described in subd[.] (a) that [were] between January 1, 2020, and January 1, 2023.

Compassionate Release Recodified and Streamlined.

[AB 960 \(Stats. 2022, Ch. 744\)](#) (Amends PC 1170 & 1170.02; adds 1172.2)

Compassionate is recodified from PC 1170, subd. (e), to new PC 1172.2.

From the Legislative Counsel’s Digest

Existing law authorizes a court, upon recommendation ... [CDCR], to resentence or recall the sentence of a prisoner if ... the prisoner is terminally ill or ... is permanently medically incapacitated and ... release... [is not] a threat to public safety....

This bill ... reorganize[s] these provisions....

The bill ... remov[es] the 24-hour total care requirement[,] and ... include[s] functional impairments resulting in the permanent inability to complete activities of daily living[,] and progressive end-stage dementia

The bill ... create[s] a presumption in favor of recall and resentencing if the court finds [the person is eligible], unless the court finds [Def] is an unreasonable risk of danger to public safety, as defined.

The bill ... require[s] appointment of counsel

From the Senate Committee on Public Safety report for June 28, 2022.

.... The eligibility criteria for the Compassionate Release program [had been] too narrow and the process too cumbersome for a population that poses the lowest risk to public safety. [So], very few people [were] granted relief and, [so], many die[d] while awaiting a referral to the court.... [T]he State [was] spending more money to cover costly health care services for a population that is nearing death or requiring thoughtful medical attention. ...

... This bill authorizes the chief medical officer [as defined], instead of the [CDCR] Secretary, to determine that [a] person [is medically eligible]

From Added PC 1172.2. (Emphasis added)

(a) [I]f the statewide chief medical executive, in consultation with [specified] other[s] ... determines that an incarcerated person satisfies the medical criteria ... in subd[.] (b), [CDCR] shall recommend ... that the incarcerated person's sentence be recalled.

(b) There[is] a presumption favoring recall and resentencing ... if ... [Def is] eligible [per items (1) and (2), below], which may only be overcome if ... [Def] is an unreasonable risk of danger to public safety, as defined ..., based on the ... current physical and mental condition.

(1) The ... person has a[n] ... advanced [terminal] illness, [listing 4 conditions as examples].

(2) The ... person is permanently ... incapacitated with a medical condition or functional impairment [and is] unable to [do] basic activities of daily living, ... or has ... end-stage dementia,

(c) Within 10 days of receipt of a ... recommendation by [CDCR], the court shall hold a hearing [on] ... [sentence] recall[.]

(d) Any [CDCR] physician ...or ... designee, who determines that [a] person [is eligible] shall notify the chief medical executive If [they agree]..., they shall notify the warden. Within 48 hours ..., the warden or ... [designee] shall notify the ... person of the recall and resentencing procedures, and ... [let] ... [the] person ... designate a family member or ... [an] agent to be notified [of] the ...person's ... condition and prognosis, and [of] the recall and resentencing procedures. If the ...person is ... mentally unfit, [the] contact [shall be with] the ... person's emergency contact

(e) The department shall refer the matter to the court ... within 45 days of the ... referral to the chief medical executive.

(f) The warden ... shall provide the ... person and their family member, agent, or emergency contact, ..., information throughout ... [about] the ... person's ... condition and the status of the ... recall ... proceedings.

(g)... [T]he ... person or their family member or designee may independently request consideration for recall and resentencing by contacting the chief medical executive Upon [that] request, the chief medical executive and the warden or [designee] shall follow the procedures ... in subd[.] (d). If [CDCR] determines that the ... person satisfies the criteria ..., [CDCR] shall [within 45 days] recommend to the court that the... person's sentence be recalled.

(h) (i).... (j).... (k)... [T]he ... person shall have the right to counsel and, if indigent, the right to court appointed counsel. (l)

(m) [Medical and correctional staff must be [told] the procedures].

(n) The[se] provisions ... [are] available to ... person[s] ...sentenced to a county jail pursuant to [PC 1170. subd (h)] ...

(o) [Inmates with death or LWOP sentences are not eligible].



Wardens required to deliver process on an incarcerated person.

[AB 1974 \(Stats.. 2022, Ch. 255\)](#)

Amends PC 4013

From the Legislative Counsel’s Digest:

Existing law requires a sheriff or jailer upon whom a paper in a judicial proceeding, which is directed to a prisoner in their custody, is served, to deliver the paper to the prisoner, with a note of the time of its service....

This bill ... require[s] a warden upon whom a paper is served to deliver [it] to an incarcerated person in their custody



Jail Discharge: Information and Phone Calls Must Be Provided.

[AB 2023 \(Stats.. 2022, Ch. 327\)](#)

Adds PC 4024.5

From the Legislative Counsel’s Digest:

Existing law [PC 4024] authorizes a ... sheriff to discharge a person from a county jail at any time on the last day that [Def] may be confined that [is] in the best interests of [Def].... [A] sheriff [can] offer... to [Def] ... to stay in jail for up to 16 [more] hours or until normal business hours, ... to [let Def] ... be discharged to a treatment center or during daytime hours.... [The] sheriff [must let Def] make a ... call ... for transportation or notify a bail agent.

This bill ... require[s] a sheriff to make the release standards, release processes, and release schedules ... available to [Defs], as specified. The bill ... also grant[s] a [Def] in, or recently released from, a ... jail up to 3 free telephone calls from ... the ... jail to plan for a safe and successful release.

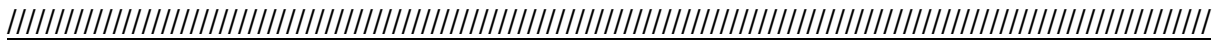
From Added PC 4024.5.

(a)

(b)(1) The sheriff shall make the release standards, release processes, and release schedules of the county jail available to a person following the determination to release that person.

(2) The release standards shall include the list of rights enumerated in this section and the timeframe for ... release

(c) A person incarcerated in, or recently released from, a ...jail shall have access to up to three free telephone calls from ... the county jail to plan for a safe and successful release.



Deaths in Custody Must Be Reported on Institution Web Sites

[AB 2761 \(Stats. 2022, Ch. 802\)](#)

Adds PC 10008

From PC 10008.

(a) When a person who is in custody dies, the agency with jurisdiction over the state or local correctional facility [involved], consistent with reporting requirements ... pursuant to [GC] 12525, ... [must] post ... the following on its internet website:

- (1) The full name of the agency [involved] at the time of death.*
- (2) The county in which the death occurred.*
- (3) The facility ..., and ... location within [it] where the death occurred.*
- (4) The race, gender, and age of the decedent.*
- (5) The date on which the death occurred.*
- (6) The custodial status of the decedent, including ... whether the person was awaiting arraignment, awaiting trial, or incarcerated.*
- (7) The manner and means of death.*

(b) [This subdivision. states requirements for notifying the next of kin.]

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Prisons and Youth Residential Placement or Detention Centers Must Provide Free Phone Calls to Incarcerated Persons

SB 1008 (Stats.. 2022, Ch. 827)

Adds PC 2084.5, WI 208.1, and Public Utilities Code 2899

From New PC 2084.5:

(a) A state prison or youth residential placement or detention center operated by [CDCR] shall provide persons ... confined in a correctional or detention facility with accessible, functional voice communication services free of charge to the person initiating and the person receiving the communication. ... [F]ree voice communication services [shall] not interfere with necessary programming.

(b) A state agency shall not receive revenue from [providing] voice communication ... or ... other communication services to a person confined in a state correctional or detention facility.

From New WI 208.1.

(a) A county or city youth residential placement or detention center shall provide persons in their custody with accessible, functional voice communication services free of charge to the person initiating and the person receiving the communication.

(b) A county or city agency shall not receive revenue from the ... voice communication services or any other communication services to any person confined in a ... youth residential placement or detention center.

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CDCR’s Updated (through 11/18/22) Credit-Earning Opportunities

Here are links:

[California Code of Regulations \[CCR\], Title 15, Division 3, Chapter 1, Article 3.3 Credits, sections 3043 to 3043.6, current through 11/18/22 Register 2022, No. 46.](#)

See also [CDCR’s Proposition 57 web page.](#)

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PROBATION and MANDATORY SUPERVISION

See also [Parole and Postrelease Community Supervision \(PRCS\)](#)

See also [Diversion and Deferred Entry of Judgment](#) for a diversion program concerning theft, that the probation department may create.

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Flash Incarceration Sunset Date Extended to Jan. 1, 2028

[AB 1744 \(Stats., 2022, Ch. 756\)](#) Amends PC 1203, 1203.35 & 4019

Flash incarceration is a period of detention, between 1 and 10 days, in a county jail due to a violation of conditions of probation or mandatory supervision. (PC 1203.35, subd. (b)).

PC 1203.35 had been scheduled to sunset on January 1, 2023. This bill extends that date to January 1, 2028.

PC 4019, subd. (i)(1) currently says no sentence reduction credit can be earned against days of flash incarceration, but subd. (i)(2) says that if probation or mandatory supervision is revoked, those days count toward the term to be served.

On January 1, 2028, PC 4019, is also sunsets, but AB 1744’s section 4, in effect, adds it back, but without subd. (i)(2).



PROFESSIONAL LICENSES AND CERTIFICATES

See Background Checks



RECALL AND RESENTENCING

See also: Prisons and Jails

See also: Habeas Corpus



The New “Recall and Resentencing” Penal Code Article

[AB 200 \(Stats. 2022, Ch. 58\)](#) Urgency, effective June 30, 2022

This 47-section omnibus bill, at its sections 7 to 12, renumbered and moved five sections of the Penal Code to a new Article 1.5, “Recall and Resentencing” (commencing with § 1172), in Ch. 4.5 of Title 7 of part 2, of the PC.

Renumbered and moved are:

- 1170.01 = 1172 (A pilot resentencing program)
- 1170.03 = 1172.1 (Recall within 120 days of the initial sentence)
- 1170.95 = 1172.6 (Felony murder resentencing; see below.)
- 1171 = 1172.7 (Resentence for the 3-yr. drug prior of former HS 11370.2.)
- 1171.1 = 1172.75 (Resentence for the former 1-year prison prior.)

See Prisons and Jails for 2022’s AB 960, recodifying into this Article, and expanding, compassionate release.



Eligibility Expanded for Traumatized Veterans to Petition for a Lower Sentence.

[SB 1209 \(Stats. 2022, Ch. 721\)](#) Amends PC 1170.91

From the Legislative Counsel’s Digest.

Existing law requires a [sentencing] court, if it concludes that a [Def] convicted of a felony... is or was a member of the [U.S.] military who may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of [Def’s] military service, to consider that circumstance as a factor in mitigation when imposing a sentence.

Existing law allows a [Def] who is currently serving a felony sentence ... to petition for resentencing if those criteria were not considered at the ... sentencing [that] was prior to January 1, 2015.

This bill ... allow[s] a [Def.] meeting these criteria to petition for recall of sentence and resentencing, as specified, without regard to whether [Def] was sentenced prior to January 1, 2015.

The bill ... exclude[s] from special consideration and from resentencing, any person convicted of, or having a prior conviction for, certain violent and sexual offenses.

[Note by GB: The Digest does not mention that existing law limited this to people with a determinate sentence; and this bill extends that to [Def's] with indeterminate sentences.]

From PC 1170.91, *as amended*.

(a) If the court concludes that a [Def] convicted of a felony ... is, or was, a member of the [U.S.] military who may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of ~~his or her~~ [Def's] military service, the court shall consider the circumstance as a factor in mitigation when imposing a ~~term under subdivision (b) of Section 1170.~~ *sentence*....

(b)(1) A person [described above] currently serving a sentence for a felony ..., whether by trial or plea, ... may petition for a recall of sentence, ... [and] request resentencing ~~pursuant to subdivision (a) if the person meets both of the following conditions:~~ *if the circumstance of suffering from [any of the above traumas] as a result of [Def's] military service was not considered as a factor in mitigation at the time of sentencing.*

~~(A) ... [The trauma or problems] ... as a result of ... military service was not considered ... in mitigation at ... sentencing.~~

~~(B) The person was sentenced prior to January 1, 2015.~~

(2) (3) Upon receiving a petition ..., the court shall determine, at a ... hearing ... whether the person satisfies the criteria.... If [so], the court may, in ~~...~~ *the interest of justice, and regardless of whether the original sentence was imposed after a trial or plea, do either of the following:*

(A) Reduce [Def's] term ... by modifying the sentence.

(B) Vacate the conviction and impose judgment on any necessarily included lesser offense or lesser related offense, whether or not that offense was charged in the original pleading, and ... resentence [Def] to a reduced term of imprisonment with the concurrence of both [Def.] and [P] or [the Atty. Gen., if DOJ prosecuted the case].

(4) (5).... ... [Resentencing] *shall not* result in ... a [longer] term

(6).... (7).... (8).... (9)....

(10) This subdivision shall apply retroactively.

(c) This section does not apply to [a Def] convicted of ... an offense specified in [PC 667, subd. (e)(2)(C)(iv)] or an offense requiring registration pursuant to [PC 290, subd. (c)].

From the Assembly Committee on Public Safety report for Jun. 14, 2022 (Emphasis added)

.... “The key point of this bill is to ensure that veterans that have experienced trauma related to their military service are provided with the sentencing mitigation and resentencing opportunities we have already passed into law....

[Unfortunately] this [law, as originally passed in 2014, and amended since,] ... has ... been applied [so] unevenly, ... that Supreme Court Justice Godwin Liu noted this section ... ‘fails to ensure equal treatment of all veterans.’ [Statement concurring in denial of review, in *P. v. Valliant*, Case no. S265734, available on the Supreme Court’s website.] SB 1209 ... correct[s] this injustice against those who have served our country.

¶...¶

This bill ... remove[s] the requirement that persons must have been sentenced prior to January 1, 2015, ... to be eligible for resentencing.

.... The ... resentencing law that this bill ... amend[ed] applies to persons who were sentenced to a determinate term. ... impos[ed] ... under [PC 1170, subd. (b); i.e., to determinate terms only)] This bill ... expand[s] the law to additionally apply to life sentences – i.e., indeterminate sentences.

However, this bill ... specifically exclude[s] [Def’s] ... required to register as a sex offender and those who have a prior conviction of a “super-strike” [under PC 667, subd. (e)(2)(c)(iv) from benefiting from the law....

... [A] court [can] consider military related trauma in deciding whether to ... vacate the ... conviction ... (e.g., first degree malice murder) and impose judgment on a necessarily included or related offense (e.g., second degree murder or manslaughter). However, this would require the concurrence of the defense and prosecution.

.... [PC] 1170.91’s procedures for resentencing have been held not to apply to individuals who were sentenced to a stipulated term pursuant to a plea agreement. (*People v. Brooks* (2020) 58 Cal.App.5th 1099, 1106.) This bill would expressly state that if [Def] is eligible for resentencing, the court may [grant relief] regardless of whether the original sentence was imposed after a trial or plea.



RESTITUTION

A Petition for Relief from a Conviction Cannot Be Denied Solely Because Of An Unfulfilled Order of Restitution or Restitution Fine.

[SB 1106 \(Stats. 2022, Ch. 734\)](#)

Amends PC 17, 1203.4, 1203.4a, 1203.4b, 1203.41, 1203.42, and 1203.45.

Adds PC 1210.6. Repeals PC 11177.2.

From the Legislative Counsel’s Digest

Existing law requires a court to order [Def] ... to pay full restitution to [V] and a separate restitution fine....

Existing law, in specified cases ... requires a court to dismiss the accusation, as described, thus releasing the person of any penalties and disabilities of conviction, except as otherwise provided.

Existing law authorizes the court, in its discretion ..., in specified cases to provide that relief to a [Def] who does not meet the stated requirements.

This bill ... prohibit[s] a petition for relief, whether statutorily authorized or in the court's discretion, from being denied due to an unfulfilled order of restitution or restitution fine.

[Before this bill, the] law prohibit[ed] a parolee or inmate from being released on parole to reside in another ... state if the parolee or inmate is subject to an unsatisfied order for restitution ... or a restitution fine ... except as specified.

This bill [repeals] that prohibition.

Section 1 of SB 1106 is 15 uncodified legislative findings and declarations, (a) to . Here are portions of subdivisions (d), (f), and (h):

(d) Courts impose restitution against Black and Brown people at disproportionate rates.... [I]n Los Angeles County, Black people make up 8 percent of the population but were charged 20 percent of all ... restitution....

[W]omen are ordered to pay restitution in amounts that are 2.5 times greater than men.

.... (f) ... [M]ost people with restitution debt cannot afford to pay it.

.... (h) People who cannot afford to pay restitution, and restitution fines, are subject to harsher and prolonged punitive outcomes that often create long-lasting harm for individuals and their families.

New subdivision (f) of PC 17: "When the court exercises its discretion under this section, an unfulfilled order of restitution or a restitution fine shall not be grounds for denial of a request or application for reduction."

New subdivision (c)(3) of PC 1203.4:

(3)(A) A petition for relief under this section shall not be denied due to an unfulfilled order of restitution or restitution fine.

(B) An unfulfilled order of restitution or a restitution fine shall not be grounds for finding that a defendant did not fulfil the condition of probation for the entire period of probation.

(C) When the court considers a petition for relief under this section, in its discretion and in the interest of justice, an unpaid order of restitution or restitution fine shall not be grounds for denial of the petition for relief.

PC 1203.4a has added subdivision (e), PC 1203.4b has added subdivision (c)(4), and PC 1203.45 has added subdivision (f) that are all similar to the subdivision added to PC 12034

PC 1203.41 has added subdivision (d), and PC 1203.42 has added subdivision (c) that are both similar to the subdivision added to PC 17.

Here is added PC 1210.6. It is added, presumably, to Chapter 1 (sections 1191 to 1210.5, including PC 1203.4 et seq.), of PC Part 2, Title 8. “The Judgment”

(a) When the court considers a petition for relief under this chapter, in its discretion and in the interests of justice, an unfulfilled order of restitution or restitution fine shall not be grounds to deny relief ... to a person whose probation was conditioned on making victim restitution, if the person otherwise qualifies for relief....

(b) An unfulfilled order of restitution or restitution fine shall not be grounds for finding that a [Def] did not fulfill the conditions of probation for the entire period of probation.

(c) An unfulfilled order of restitution or restitution fine shall not be grounds for finding that a [Def] did not fully comply with, and perform the sentence of, the court or finding that a [Def] has not lived an honest and upright life and has not conformed to and obeyed the laws of the land.

[Query the extent to which the court can consider Def’s efforts to pay restitution. GB]

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RULES OF COURT

For new Rule 9.8.5, about the new Client T A P Program, see “Attorneys.
See also: “Forms,” Above.

Only California Rules, promulgated by the Judicial Council through Dec. 6, 2022, are included.

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New or Revised Rules Effective January 1, 2023.

Amended text is in this font. Deleted text is in this font.

Rule 5.618. “Placement in short-term residential therapeutic program or community treatment facility (§§ 361.22, 727.12)”

This five-page Rule is revised throughout, effective January 1, 2023, to reflect that a M under WI 602 might be placed in a Community Treatment Facility. See, generally, HS 1502, WI 727.12, WI 4094.

Rule 5.625. “Orders after filing of petition under section 601 or 602”

Amended is subdivision (a), concerning which forms to use when a petition has been filed under 601, or 602, and if the restrained person is the subject of a such a petition.

Two of the forms referred to in Rule 5.625(a) are not available at the California Courts web site at this writing, December 6, 2022. See Forms.

Rule 5.630 “Restraining Orders.”

Every subdivision of this five-page Rule has been amended.

Two of the forms referred to in Rule 5.630, one in subdivision (c)(3), and one in subdivision (d)(4,) are not available at the California Courts web site at this writing, December 6, 2022. See [Forms](#).

Rule 5.766 General Provisions [re: Transfer hearings]

Rule 5.768 Report of Probation Officer [re: transfer, and other, hearings]

Rule 5.770 Conduct of Transfer Hearing under Section 707, ***But R. 5.770(a) is not changed, despite AB 2361 changing the standard of proof in from preponderance of the evidence (as currently stated in R. 5.770(a)), up to clear and convincing.*** *The changes to R. 5.770 were adopted by the Judicial Counsel on September 20, 2022, and AB 2361 was signed by Gov. Newsome on September 15, 2022, Presumably, the Judicial Counsel will adopt a new R. 5.770 quickly.*

Rule 8.60 (“Extending Time”) and **Rule 8.63** (“Policies and factors governing extension of time”) have both been amended to cover cases, such as those in new rule 8.417, discussed below, where an extension of time requires “an exceptional showing of good cause”

Rule 8.404 (Stay pending appeal) has been amended to state “***does not apply to a court’s order under rule 5.770(e)(2) staying the criminal court proceedings during the pendency of an appeal of an order transferring the minor from juvenile court to a court of criminal jurisdiction***”

Rule 8.406 (“Time to appeal”) has been amended by adding to subdivision (a), a new paragraph (2) stating special rules “***To appeal from an order transferring a minor to a court of criminal jurisdiction.***”

Rule 8.409 (“Preparing and sending the record”) has been amended to state that it does not apply in cases governed by Rule 8.417 [Transfer cases, discussed below].

Rule 8.412 (“Briefs by parties and amici curiae”), subdivisions (b), (c), and (d), have been amended to state exceptions for Rule 8.417. [Transfer cases, discussed below].

Rule 8.417 (“Appeals from orders transferring a minor from juvenile court to a court of criminal jurisdiction”) is a new rule, effective January 1,2023.

Subdivisions are:

(a) Application

(b) Form of Record

(c) Record on Appeal

(d) Preparing, certifying, and sending the record.

(e) Augmenting or correcting the record

(f) Time to file briefs

(g) Extensions of time.. These require “an exceptional showing of good cause.”

(h) Failure to file a brief.

(i) Oral argument and submission of the cause.



Determinate Sentencing Rules Were Updated eff. March 14, 2022.

Rule 4.405. Definitions

Rule 4.406. Reasons

- Rule 4.408. Listing of factors not exclusive; sequence not significant
- Rule 4.411.5. Probation officer’s presentence investigation report
- Rule 4.414. Criteria affecting probation
- Rule 4.420. Selection of term of imprisonment for offense
- Rule 4.421. Circumstances in aggravation
- Rule 4.423. Circumstances in mitigation
- Rule 4.424. Consideration of applicability of section 654
- Rule 4.425. Factors affecting concurrent or consecutive sentences
- Rule 4.427. Hate crimes
- Rule 4.428. Factors affecting imposition of enhancements
- Rule 4.437. Statements in aggravation and mitigation
- Rule 4.447. Sentencing of enhancements



RULES OF PROFESSIONAL CONDUCT

See “Attorneys” above: for the new CTAPP.

Rules 1.4 and 1.15 Amended for the New CTAPP, effective Jan. 1, 2023

From the Bar’s “Ethics News” page, <https://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Ethics/Publications/Ethics-News> (accessed Dec. 4, 2022).

[Rule 1.4](#) addresses ... a lawyer’s duty to keep a client informed about significant developments ... (rule 1.4(a)(3)). As amended, Comment [1] to rule 1.4 ... provides that: “Whether a ... development is significant ... depend[s] on the surrounding facts and circumstances. [E.g.], a lawyer’s receipt

Section 1 of this bill has five uncodified legislative findings and declarations:

The Legislature finds and declares ...:

¶...¶

(e) It is the intent of the Legislature that the court ... impose an alternative to incarceration, except where [that] is necessary to prevent physical injury to others or the interests of justice would best be served by incarceration.

Section 2 of this bill *adds PC 17.2:*

(a) It is the intent of the Legislature that the disposition of any criminal case use the least restrictive means available.

(b) The court ... shall consider alternatives to incarceration, including, without limitation, collaborative justice court programs, diversion, restorative justice, and probation.

(c) The court shall have the discretion to determine the appropriate sentence according to relevant statutes and the sentencing rules of [court].

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STATUTES OF LIMITATION

Limitations Period for Mandated Reporters of Child Abuse to Report Abuse or Severe Neglect Increased.

[AB 2274 \(Stats. 2022, Ch. 587\)](#)

Amends PC 801.6, adds PC 801.8

From the Legislative Counsel's Digest

...[T]he Child Abuse and Neglect Reporting Act, makes certain persons, including teachers and social workers, mandated reporters.

... [M]andated reporters are required to report whenever [they], in their professional capacity or ... employment, has knowledge of or observes a child whom [they] know[] or reasonably suspect[] has been the victim of child abuse or neglect. Failure b... to report... is a misdemeanor.

... [F]ailure to report an incident [of] sexual assault may be filed [up to] 5 years from the ... occurrence of the offense. [Other failures to report, before this bill, the normal one-year misdemeanor statute of limitations.]

This bill ... allow[s] a case involving the failure to report an incident known or reasonably suspected by the mandated reporter to be child abuse or severe neglect, as defined, to be filed within one year of the discovery of the offense, but in no case later than 4 years after the commission of the offense.

PC 801.6, as amended.

... [P]rosecution for any offense proscribed by Section 368, except for a violation of any provision of law proscribing theft or embezzlement, ~~or for the failure of a mandated reporter to report an incident under [PC] 11166 known or reasonably suspected by the mandated reporter to be sexual assault ...~~, may be filed at any time within five years from the date of occurrence of such offense.

From Added PC 801.8.

(a) ... [P]rosecution for the failure of a mandated reporter to report an incident under [PC] 11166 known or reasonably suspected by the mandated reporter to be sexual assault as defined ..., may be filed at any time within five years from the date of occurrence of such offense.

(b) ... [P]rosecution for the failure of a mandated reporter to report an incident under [PC]11166 known or reasonably suspected ... to be child abuse or severe neglect ..., may be filed within one year of the discovery of the offense, but [not] later than four years after [its] commission

The penalties for most non-DUI VC violations are in VC 40000.1 to 40008. (The penalties for DUI offenses are in VC 23500 to 23675.)

The Penalties for Driving with No CDL Issued (VC 12500).

Before this bill, and until Jan. 1, 2023, they were in VC 11000.11, subdivision (b). This bill **deletes** that provision:

[VC] 40000.11. A violation of any of the following provisions is a misdemeanor, and not an infraction: (a) ~~(b) Section 12500, subdivision (a), relating to unlicensed drivers....~~....

Added VC 40000.10.

A violation of subdivision (a) of Section 12500 shall be punished as follows:

(a) Except as provided in subdivision (b), as an infraction by a fine of one hundred dollars (\$100) for a first or second violation.

(b) As a misdemeanor or an infraction as [per] [PC] 19.8^[7] if a person has a prior driver's license suspension or revocation for a violation of [PC 192, subd. (c)], [VC 12809, subd. (e)]; or of [VC] 13353, 13353.1, 13353.2, 23103, 23104, 23105, 23109, 23152, 23153, or 23154.

(c) As a misdemeanor or an infraction as [per] [PC] 19.8 for a third or subsequent violation.

This is effective January 1, 2023.

⁷ PC 19.8 permits P to file, and permits the Court to reduce, for a listed misdemeanor, including VC 12500, instead of a misdemeanor, an infraction.

Some sections of AB 2746 have delayed operative dates to January 1, 2027, and an early version of this CDL section was once one of them. But the bill was amended on May 19, 2022, to delete that delayed date.

“[The] Senate Amendments ... Allow the provision of this bill reducing penalties for driving without a license to take effect on January 1, 2023,” says the “Assembly Floor Analysis” of August 29, 2002, at p. 1. (See also, the general law on when new bills take effect, at Cal. Const. Art. IV, Section 8(c).)

This is Probably Retroactive to Cases that Were Not Final on 1/1/23..

This section of this bill (Section 20 of AB 2746) reduces punishment and does not contain a savings clause that preserves the old punishment for cases coming before this bill’s effective date. Therefore it is probably retroactive to non-final cases that arose before this bill’s effective date of January 1, 2023. (See *In re Estrada* (1965) 63 Cal.2d. 740) when, after it is committed, the punishment for a crime is reduced, the punishment is not the old one, but the new, reduced one (unless there is a savings clause).)

Also, the amendment to this provision, deleting the delay of its effective date to 2027 is evidence of Legislative Intent to apply this reduction of punishment widely.



Driver License Suspensions for Failure to Appear, are “Effectively ... Stop[ped].”

[AB 2746 \(Stats. 2022, Ch. 800\)](#)

Repeals VC 40509 and 40509.5 on Jan. 1, 2023.

Amends VC 13365 & 13365.2 on Jan. 1, 2023; repeals them on Jan. 1, 2027.

Amends, repeals, and adds, several other sections of GC and VC.

Section 27 of this bill is an uncodified provision, requiring DMV to terminate suspensions that were pursuant to VC 13365 and 13365.2, on Jan. 1, 2027.

For another aspect of AB 2746, lowering penalties for driving with no CDL issued, see above.

Discussion by GB.

When a person who signed a promise to appear on a traffic citation (ticket) fails to appear (FTA) in court as promised (or is FTA on a lawful continuance of that promise), the court may, and in some cases must, notify DMV, pursuant to VC 40509 and 40509.5.

Upon receiving such notifications, DMV is, in many cases, required, to suspend the person's California Driver License (CDL or DL.), by VC 13365 and 13365.2.

AB 2746 repeals VC 40509 and 40509.5 on January 1, 2023. The court will no longer have the authority to notify DMV of those FTAs.

Thus, "Effectively, license suspensions for failing to appear should stop occurring beginning on January 1, 2023," says the "Assembly Floor Analysis (Concurrence in Senate Amendments)" of August 29, 2022.

That is because DMV can only suspend licenses under VC 13365 and 13365.2, upon receipt of a court notice pursuant to VC 40509 or 40509.5. Repealing the court's authority to give those notices, effectively stops DMV from suspending CDLs for that reason.

DMV still has the authority, however, to suspend CDLs upon receiving 40509 and 40509.5 notices, and, on January 1, 2023, there likely will still be some out there that have not yet been processed.

VC 13365 and 13365.2 have been amended, effective January 1, 2023, until January 1, 2027, to permit DMV to suspend licenses upon receipt of notices pursuant to *former* VC 40509 and 40509.5.

Obviously, as DMV processes the outstanding notices, there soon will not be any more such notices remaining to be processed. Thus, the repeal of VC 40509 and 40509.5 effectively stops those suspensions.

On January 1, 2027, VC 13365 and 13365.2 are repealed. In addition, **uncodified Section 27 of AB 2746 says:**

SEC. 27. Any suspension of a person's driving privilege issued by [DMV] pursuant to Section 13365 or Section 13365.2 of the Vehicle Code prior to January 1, 2027, shall be terminated on January 1, 2027.

That will not only completely stop such suspensions (if they have not stopped already), but will end any such suspension that might still be extant.

Failure to appear can still be a misdemeanor, under VC 40508. AB 2746 does not affect that section.

The repeal of VC 40509 and 40509.5 may not have retroactive effect.

The general rule is that when, after a crime is committed, the punishment for that crime is reduced, the reduced punishment applies, unless there is a savings clause. (See *In re Estrada* (1965) 63 Cal.2d. 740)

An older case held, however, that “The suspension or revocation of a license (by the Department of Motor Vehicles) is not penal. (*Talley v. Municipal Court* (1978) 87 Cal.App.3d 109, 113, holding that entry into a program that would avoid DMV suspension of CDL for DUIs, was not retroactive (internal quotation marks, and citations, omitted).)

Moreover, the amendment of VC 13365 and 13365.2, effective on January 1, 2023, to include notices received under *former* VC 40509 or 40509.5, may be considered as having the effect of a savings clause.



VICTIM’S RIGHTS

Probation Must, On Request, Advise A Domestic Violence or Stalking [V] When Def Is Released on Probation.

[AB 547 \(Stats. 2022, Ch. 941\)](#) [Adds PC 679.06](#)

From New PC 679.06.

(a) The ... probation department shall notify a [V] of domestic violence or abuse ... or a victim of stalking ... of [Def’s] current community of residence or proposed community of residence upon release, when [Def] ... is placed on or being released on probation ... under [probation] supervision....

(b) [This] shall only apply if [V] has requested notification and has provided ... probation ... with [their] current [notification] address....

(c) [P] shall advise every [such V] of their right to request [this].



Family Access to Information of a Minor’s Death Being Investigated

[SB 1268 \(Stats. 2022, Ch. 227\)](#) [Adds PC 679.09](#)

From New PC 679.09.

(a) [When] a minor[‘s] [death is] being investigated by law enforcement, the ... agency [with] primary responsibility ... shall provide [V’s] parent or guardian, with the following....:

(1) Contact information for each law enforcement agency involved ... and the identification of the primary contact, if known, for the ... investigation

....

(2) The case number referencing the investigation....

(3) A list of the personal effects found with [V] and ... information necessary [for] an immediate family member to collect [V’s] personal effects....

The list of [V’s] personal effects may be withheld ... if providing information about [them] would interfere with the investigation

(4) Information regarding the status of the investigation, at the discretion of the law enforcement agency.

(b) [If] a parent or guardian is not located, ... law enforcement ... shall provide [V]s immediate family [as defined], at their request, ... the ... information [listed above].

(c) Law enforcement shall not be required to provide any information that would jeopardize or ... interfere with the ongoing investigation....



EARLY NOTICES

A matrix, by July 1, 2023, of offense-based classifications to be applied by the Juvenile Courts in all counties.

SB 92 (Stats. 2021, Ch. 18) added WI 875, subd. (h)(1), which requires that the Judicial Council to develop and adopt a matrix, by July 1, 2023, of offense-based classifications to be applied by all juvenile courts.

(a) A peace officer making a traffic or pedestrian stop, before engaging in questioning related to a criminal investigation or traffic violation, shall state the reason for the stop. The officer shall document the reason for the stop on any citation or police report resulting from the stop.

(b) Subd[.] (a) does not apply when the officer ... believes that withholding the reason for the stop is necessary to protect life or property from imminent threat, including, but not limited to, cases of terrorism or kidnaping.

(c) This section shall become operative on January 1, 2024.

Violation of this new law might not result in suppression of evidence. Custodial arrest in violation of a state law is not necessarily a violation of the Fourth Amendment. (*Atwater v. City of Lago Vista* (2001) 532 U.S. 318.)



Race Blind Charging Procedures to be Developed by DOJ Starting Jan. 1, 2024, and by Prosecution Agencies Starting Jan. 1, 2025

[AB 2778 \(Stats. 2022, Ch. 806\)](#)

Adds PC 741

From the Legislative Counsel's Digest [Edited.]

... [B]eginning on January 1, 2024, [DOJ must] develop and publish “Race-Blind Charging” guidelines whereby all prosecuting agencies, as specified, implement a process to review a case for charging based on information, from which all means of identifying the race of the suspect, victim, or witness have been removed or redacted.

Following [DOJ's] guidelines, ... prosecution agencies [must] independently develop and execute a process to review and to redact information

Existing law authorizes a peace officer to take a minor into temporary custody when that officer has reasonable cause to believe that the minor has committed a crime or violated an order of the juvenile court.... [E]xisting law requires the peace officer to advise [M of *Miranda*].

Existing law requires that a youth 17 years of age or younger consult with legal counsel in person, by telephone, or by video conference prior to a custodial interrogation and before waiving any of the above-specified rights.

This bill ..., commencing January 1, 2024, prohibit[s] law enforcement officers from employing threats, physical harm, deception, or psychologically manipulative interrogation tactics, as specified, during a custodial interrogation of a person 17 years of age or younger.

From Added WI 625.7.

(a) During a custodial interrogation of a person 17 years of age or younger ..., a law enforcement officer shall not employ threats, physical harm, deception, or psychologically manipulative interrogation tactics.

(b)[Definitions]:

(1) “Deception,” includes, but is not limited to, the knowing communication of false facts about evidence, misrepresenting the accuracy of the facts, or false statements regarding leniency.

(2) “Psychologically manipulative interrogation tactics” include, but are not limited to the following:

(A) Maximization and minimization and other interrogation practices that rely on a presumption of guilt or deceit.

(i) ... [M]aximization includes techniques to scare or intimidate [M] by repetitively asserting [that M] is guilty despite [M’s] denials, or exaggerating the ...charges or the strength of the evidence, including suggesting the existence of evidence that does not exist.

(ii) ... [M]inimization involves minimizing the moral seriousness of the offense, a tactic that falsely communicates that the conduct is justified, excusable, or accidental.

(B) Making direct or indirect promises of leniency, such as indicating the person will be released if the person cooperates.

(C) Employing the "false" or "forced" choice strategy, where the person is encouraged to select one of two options, both incriminatory, but one is characterized as morally or legally justified or excusable.

(c) Subd[.] (a) does not apply to interrogations of a person 17 years of age or younger if both of the following criteria are met:

(1) The law enforcement officer who questioned the person reasonably believed the information ... sought was necessary to protect life or property from an imminent threat.

(2) The questions ... were limited to those ... that were reasonably necessary to obtain information related to the imminent threat.

(d) This ... does not prevent [use of] a lie detector test [that] is voluntary and ... not obtained [by] threats, physical harm, deception, or psychologically manipulative ... tactics ..., and the officer does not suggest that the ... results are admissible in court or misrepresent the ... results to the person.



BRIEFLY NOTED

Peace officers cannot carry electroshock devices (e.g. Tasers) on the same side as their primary firearms. [AB 1406](#) (adds PC 13660)



other public benefits, or who has a monthly income of 125% or less of the current poverty guidelines. [AB 1803 \(Stats. 2022, Ch. 494\)](#), adding PC 1203.426

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To permit people to legally possess kits to test for fentanyl, fentanyl analogs, ketamine, and GHB, thus saving lives by helping people avoid ingesting those, those test kits are removed from the definition of drug paraphernalia in HS 11014.5 and HS 11364.5. [AB 1598 \(Stats. 2022 Ch. 201\)](#)

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DOJ had been required to examine its records and notify the firearms dealer and the local law enforcement agency (LEA) if a purchaser of a firearm is prohibited by state or federal law from possessing a firearm. This bill expands that duty. Now, in addition, if DOJ, determines that a person who is prohibited from possessing a firearm because of specified convictions, has attempted to acquire a firearm, it must notify the local LEA. If the person is prohibited from owning or possessing a firearm for specified mental health reasons, DOJ must also notify the county department of mental health. If a person prohibited from possessing ammunition attempts to purchase that, DOJ must notify the relevant LEA. [AB 2551 \(Stats 2022, Ch. 100\)](#) adding 3 PC sections.

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