

**New Laws for 2022 for  
Criminal Law Attorneys**

**January 27, 2022  
for the  
CRIMINAL LAW SECTION,  
CONTRA COSTA COUNTY BAR ASSOCIATION**

**By  
Garrick Byers, Statute Decoder**

**[gbyerslaw@comcast.net](mailto:gbyerslaw@comcast.net)**

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**Today's Goals**

**To tell you about some major new statutes and rules for 2022 of interest especially on appeal.**

**This is a memory-jogger. You're not going to remember many details. But when these come up again in your daily practice, you will remember to look them up for details.**

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## **Features**

**Many of the important new laws are:**

- **Social justice, or other, reform laws, or expand on previous reforms.**
- **Old laws with delayed operative dates.**
- **Complex or have many different parts.**
- **Aimed at reducing time in custody.**

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## **Trivia Question**

**How many California Supreme Court Justices are likely to be on the November 2022 ballot?**

**Hint: there have not been this many on the ballot since 1930.**

**Answer: at the end of today's presentation.**

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## **17 administrative fees repealed**

**AB 177.** A list of affected statutes is in my written material, and in PC 1469.5

**[This bill]** Eliminates 17 ... administrative fees as of Jan[.] 1, 2022, and ... makes the remaining balance of these ...[,] as of Dec. 31, 2021, *unenforceable, uncollectible, and vacates any portion of a judgment imposing [them]....*

Many of these are the 10% or 15% fee for paying in installments.

For example, the fee eliminated in PC 1202.4, the general restitution statute, is the fee for paying the restitution fine in installments, but no other restitution or cost is changed.

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## **Last year, 23 criminal administrative fees were eliminated.**

**Last year's bill was AB 1869. Stats. 2020, Ch. 92.**

Easiest way to find a partial list from **last year** is **PC 1465.9, subd. (a):**

(a) The balance of any court-imposed costs pursuant to Section 987.4, subdivision (a) of Section 987.5, Sections 987.8, 1203, 1203.1e, 1203.016, 1203.018, 1203.1b, 1208.2, 1210.15, 1463.07, 3010.8, 4024.2, and 6266, **as those sections read on June 30, 2021**, shall be unenforceable and uncollectible and any portion of a judgment imposing those costs shall be vacated.

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## **17 administrative fees repealed**

Easiest way to find this year's list is PC 1465.9, subd. (b):

(b) On and after Jan[.] 1, 2022 the balance of any court-imposed costs pursuant to [PC] 1001.15, 1001.16, 1001.90, 1202.4, 1203.1, 1203.1ab, 1203.1c, 1203.1m, 1203.4a, 1203.9, 1205, 1214.5, 2085.5, 2085.6, or 2085.7, as [they] read on Dec[.] 31, 2021, shall be unenforceable and uncollectible and any portion of a judgment imposing those costs shall be vacated.

**and, Vehicle Code 42240.**

On and after Jan[.] 1, 2022, the unpaid balance of any court-imposed costs pursuant to [VC] 40508.5 and [VC 40510.5,] subd[.] (g) ..., as [they] read on Dec[.] 31, 2021, shall be unenforceable and uncollectible and any portion of a judgment imposing those costs shall be vacated.

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## **Four Changes to PC 1170**

**1:** The aggravated sentence can't be imposed unless the aggravators are proven to a jury (or court, in a court trial) beyond a reasonable doubt [or admitted by Def.] (except prior convictions) **(PC 11770 (b)).**

**2:** Three contributing factors can require low term . **Subd. (b)(6).**

**3:** For resentencing of juveniles who had gotten LWOP, new mitigating factors. (PC 1170, subd. (d)(8); see also (d)(9).)

**4:** Resentencing expanded, taken out of 1170, subd. (d), and moved to **new 1170.03.**

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## **1. Proof at Trial, BRD, of Aggravating Factors Required**

**SB 567 (Stats 2021, Ch. 731, Sec. 1.3) Amends PC 1170**

PC 1170 applies to felonies with 3 possible prison terms, lower (mitigated), middle, or upper (aggravated).

Since 2007, PC 1170 said that when the court imposes a prison term (rather than, e.g., suspending sentence and granting probation), it can impose any of the 3 terms.

This new law changes that by saying the upper term can't be imposed, unless aggravators (except priors) are either admitted by Def. or proven to a jury (or the court, in a court trial) beyond a reasonable doubt.

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## **Proof of Aggravating Factors Required**

**PC 1170. rewritten subd. (b):**

**(b)(1) When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall ... order imposition of a sentence not to exceed the middle term, except as otherwise provided in paragraph(2).**

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## **Proof of Aggravating Factors Required**

PC 1170, subd. (b)(2): The court may ... exceed [the middle term] only when there are circumstances in aggravation of the crime ... [the underlying facts of which] have been stipulated ..., or ...been found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial.

[continued next slide]

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## **Proof of Aggravating Factors Required**

**PC 1170, subd. (b)(2) [continued]**

Except where evidence [of] an aggravating circumstance is admissible to prove or defend against the charged offense or enhancement at trial, or it is otherwise authorized by law,

upon request of [Def,] trial on the circumstances in aggravation alleged in the indictment or information shall be bifurcated from the trial of charges and enhancements....

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## **One of Myriad Questions about PC 1170, subd. (b)(2)**

Must all aggravating facts be expressly alleged in the accusatory pleading?

I think the ones that will go to the jury do,

But I am less sure about facts **admissible to prove or defend against the charged offense or enhancement at trial, or are otherwise authorized by law.**

**One issue is whether and how Def. is entitled to notice of aggravating facts.**

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Must aggravating facts be expressly  
alleged in the accusatory pleading?

**What notice is Def't entitled to, when and how?**

**What if Def't introduces the aggravating fact during the defense case?**

**What if Def't brings out the aggravating fact during cross-x of P's case?**

**Etc., etc.**

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### **Proof of Aggravating Factors Required**

**(b)(3) ... [T]he court may consider [Def's] prior convictions ... without submitting [this] to a jury. This ... does not apply to enhancements imposed on [priors].**

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### **2. Certain mitigating factors often require the lower term**

**(b)(6) ... [U]nless the court finds that ... aggravating circumstances outweigh [such] that ... [the] lower term [is not in] the interests of justice, the court shall order ... the lower term if any of the following was a contributing factor in the ... offense:**

**(A) [Def] has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence. (Continued)**

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## **Certain mitigating factors often require the lower term**

(amended PC 1170, subd. (b)(6), continued)

(B) [Def] is ..., or was [under age 26]... at the time of the ... offense.

(C) Prior to [or at the time of] the ... offense, ..., [Def] is or was a victim of intimate partner violence or human trafficking.

(7) [T]he court [can impose] the lower term even if there is no evidence of those circumstances ....

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## **How to tell if one of these was a contributing factor.**

Here is one illustration for (2) “The person is [under age 26], or was, ... at the time ....”

Suppose Client had to make rapid judgments and decisions.

Uncodified § 2, subd. (b), of Stats. 2021, Ch. 405 (A.B. 89) [raising the minimum age to be a peace officer from 18 to 21], says:

“The Legislature has repeatedly relied on neurological research with respect to criminal sentencing law reflecting a growing understanding that cognitive brain development continues well beyond age 18 and into early adulthood. Scientific evidence on young adult development and neuroscience shows that certain areas of the brain, particularly those affecting judgment and decision-making, do not develop until the early to mid-20s.”

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### **3 mitigating factors P must consider in plea bargaining.**

[AB 124](#) Adds PC 1016.7

(a) ... [P] shall consider during plea negotiations, [inter alia] [these]... [mitigating] factors ... if any ... [was] a contributing factor....:

- (1) The person has experienced psychological, physical, or childhood trauma, including, ..., abuse, neglect, exploitation, or sexual violence.
- (2) The person is [under age 26], or was ... at the time ....
- (3) Prior to the ... offense, or during the ... offense, the person is or was a victim of intimate partner violence or human trafficking.

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### **Does PC 1170, subd. (b), apply to cases convicted before, but not sentenced until after Jan. 1?**

Mitigating facts in PC 1170, subd. (b)(6):

Yes: nonpub. *P. v. Tamrat* (A159390, Dec. 22, '21) 2021 WL 6061548. 2021 Cal.App. Unpub. LEXIS 8060. Def't was convicted and sentence before Jan. 1; on appeal Def't raised this Q.)

"The [AG] recognizes the new sentencing provision applies to [Def't.]. Because the new law is ameliorative ..., we agree ...that [Def't] is entitled to the benefit of [PC] 1170(b)(6). (See [*P.*] *v. Conley* (2016) 63 Cal.4th 646, 657 ...; and [*P.*] *v. Superior Court (Lara)* (2018) 4 Cal.5th 299, 308-309...." (Slip op. at pp. 43-44.) (remanded for a hearing on whether aggravating factors outweigh).

See also, Couzens, *infra*.

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**Does PC 1170, subd. (b), apply to cases  
convicted before, but not sentenced until after Jan. 1?**

**Aggravating facts, yes, per nonpub. *P. v. Edwards*  
(A159264, Dec. 15, '21), 2021 WL 5914706. Case sentenced  
before Jan. 1 and on appeal when Def't raised this Q.:**

**"The [AG] concedes Edwards must be resentenced [under  
SB 567] as the trial court imposed the aggravated term on  
count 2 and the record does not make clear whether the  
aggravating factors ... were admitted by Edwards or found  
true beyond a reasonable doubt.... (See *People v. Frahs*  
(2020) 9 Cal.5th 618, 627–633; Couzens, [coming up].) We  
accept the Attorney General's concessions and remand ...  
for resentencing."**

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**Does PC 1170, subd. (b), apply to sentences  
before Jan. 1, '22, not yet final on appeal.**

***Frahs, supra*, 9 Cal.5th at pp. 627-  
630, holding the then-new mental  
health diversion program, PC  
1001.36, is retroactive. Pages 627-  
30 are a general analysis of  
"Retroactive Application of  
Ameliorative Criminal Law."**

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## **Does PC 1170, subd. (b), apply to sentences before Jan. 1, '22, not yet final on appeal.**

Couzens, "Selected Changes to California Sentencing Laws Effective 2022, p. 7 et seq.

<https://www.fdap.org/wp-content/uploads/2022/01/Selected-Changes-to-California-Sentencing-Laws-Effective-2022.pdf>

"Because the ... changes confer a substantial benefit on [Def.] at sentencing, likely *Estrada* will apply, at least to some extent. Whether *Estrada* will apply in a particular case ... depend[s] on the ... circumstances...."

[The next 3 pages consider retroactivity in various circumstances.]

*Hey! Is it too late to file a Notice of Appeal?*

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## **3. Resentencing Juveniles with LWOP: New mitigating factors**

Resentencing an eligible juvenile who got LWOP is now in PC 1170, subd. (d). The new mitigating factors are in (d) (8):

(8) : [T]he court may also resentence [Def.] to a term ... less than the initial sentence if any of the following were a contributing factor in the commission of the ... offense:

(A) [Def] has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence.

(B) [Def] is ..., or was a youth ... at the time of the ...the offense.

(C) Prior to ..., or at the time of the ... offense, [Def] is or was a victim of intimate partner violence or human trafficking.

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## **4. Resentencing recodified and expanded**

[AB 1540 \(Stats 2021, Ch. 719\)](#)

Adds PC 1170.03

This bill moved PC 1170, Subd. (d)(1) [sentence recall], to new and expanded PC 1170.03. Uncodified § 1 makes it plain this is particularly aimed at the 35,000 (38%) of prisoners, many over 50, serving life sentences, saving \$83K per year per inmate.

**“(a)(1) When [Def], ..., has been [sent to prison] or [county jail on a felony], the court may, within 120 days ... on its own motion, at any time upon the recommendation of [1] [CDCR] or [2] the Board of Parole Hearings, [3] the county [jail], [4] [P] ..., or the [5] Attorney General if [DOJ] prosecuted the case, recall the sentence ... and resentence [Def] ..., whether or not [Def] is ... in custody...”**

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## **Resentencing recodified and expanded**

[New PC 1170.03, continued](#)

**[(a)(2) and (a)(3): Various ways the court can reduce the sentence.]**

**(4) ... [The] court may consider [a wide variety of postconviction factors]....**

**The court shall [also] consider [if these contributed to the offense:]**

- **[Def] [has or had] psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence,**
- **if [Def] was a [V] of intimate partner violence or human trafficking prior to or at the time of the ... offense,**
- **or if [Def] is ...or was a youth ... at the time ..., and whether those ... were a contributing factor ....**

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## Resentencing recodified and expanded

### New PC 1170.03 (continued) (5)....

(6) *The court shall state on the record [its] reasons ....*

(7) .... (8) Resentencing shall not be denied, nor a stipulation rejected, without a hearing.... [Def] may appear remotely....

(b) [Except for resentencing on the court's motion ...]:

...(2) There [is] a presumption favoring recall and resentencing..., which may only be overcome if a court finds [Def.] is an unreasonable risk of danger to public safety....].

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## A Pilot Resentencing Program

[AB 145 \(Stats 2021, Ch. 80\)](#) (eff. July 16, 2021) Adds PC 1170.01

Nine counties "will be involved in the initial program: **Contra Costa, Humboldt, Los Angeles, Merced, Riverside, San Diego, San Francisco, Santa Clara, and Yolo**" ("San Quentin News" ["Written by the Incarcerated – Advancing Social Justice"] 9/30/2021. <https://sanquentinnews.com/%C2%A71170-resentencing-pilot-program-receives-funding/>

### New PC 1170.01

(a) The County Resentencing Pilot Program (pilot) is ... established to support and evaluate a collaborative approach to ... prosecutorial resentencing discretion pursuant to [PC 1170.03]. Participants ... shall include a ... [D.A.'s] office, a ... public defender's office, and may include a community-based organization in each [pilot] county.

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## **A Pilot Resentencing Program**

- (c) [The D.A.'s] office may contract with a qualifying community-based organization.
- (e) [The Pub. Defender.] may provide input to the ... [D.A.] ....
- (f) Each participating [D.A.] ...shall ...identify and track specific measures .... [and] ... factors, ] ....
- (j) The evaluator shall ... prepare ...reports.... [to the Legislature] [by specified dates up to January 31. 2025].....
- (k) The pilot term [ends] Sept. 1,] 2024....

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## **Nunchakus no longer illegal**

SB 827 (Stats. 2021, Ch. 434)

Nunchaku is defined at PC 16940.

PC 16590 is the PC's list of "generally prohibited weapons." The amendment deletes former subd. "(f), ~~A nunchaku, as prohibited by Section 22040.~~"

PC 18010 is a list of crimes for which P may bring an action to enjoin as being a nuisance. This bill deletes former subdivision (a)(10), "~~[a](10) Section 22090, relating to a nunchaku.~~" ~~PC 22040, 22045, are also repealed.~~

There is no savings clause, so this is retroactive to cases not final on appeal.  
(*In re Estrada* (1965) 63 Cal.2d. 740.)

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## **Discovery: Info. that Counsel Can't Give to D expanded; but Misdo. Repealed.**

AB 419 Amends PC 1054.2

(a)(1) Except [for employees assisting the defense], no attorney ~~may~~ **shall** disclose or permit to be disclosed to [Def], members of [Def's] family, or anyone else, ~~the address or telephone number~~ **personal identifying information** of a [V] or [W] whose name is disclosed to the attorney pursuant to [PC 0154.1, subd. (a)], **other than the name of the victim or witness**, unless ... permitted to do so by the court after a hearing ... showing ... good cause.

(continued)

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## **Discovery: Info. that Counsel Can't Give to D expanded; but Misdo. Repealed.**

PC 1054.2, subd. (a) [continued]

~~(3) Willful violation of this subdivision by an attorney, persons employed by the attorney, or persons appointed by the court is a misdemeanor.~~

**(c) ...[P]ersonal identifying information [PII] has the same definition as in [PC] 530.55, except that it does not include name, place of employment, or an equivalent form of identification.**

PC 530.55 lists some 30 types of PII, including "or an equivalent form of identification." So, its easiest to stick with name only, and no other identifying info.

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## 2 New Misdemeanors

- “Theft of wages,” including “intentional deprivation of wages” or “gratuities,” over \$950 from one, or \$2,350 from two, over 12 months “may be punished as grand theft.” [AB 1003](#), [adding PC 487m.](#)
- Knowingly coming within a specified distance of a person on foot or in a car who is entering or exiting a vaccine site, intending to obstruct, harass, etc., them is a misdemeanor. [SB 742](#), [adding PC 594.39.](#)  
*Federal Courts have stayed portions of this bill.*

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## “The Step Forward Act”

[AB 333 \(Stats. 2021, Ch. 669\)](#) [Adds PC 1109](#)

(a) If requested by [Def,] a ... gang enhancement ... under [PC 186.22, subds. (b) or (d)] shall be tried in separate phases... :

(1) ...[Def’s.] guilt ...shall be first determined.

(2) If [Def] is found guilty ..., there shall be further proceedings to the trier of fact on ... the truth of the enhancement....

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## **“The Step Forward Act”**

(b) If [Def] is charged with ... [PC 186.22, subd. (a)], this ... shall be tried separately from ... counts [that do not have elements requiring] gang evidence ....

This may be tried in the same proceeding with an [enhancement under PC 186.22, subds. (b) or (d)].

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## **“The Step Forward Act”**

The list of predicate offenses for a pattern of gang activity is shortened, and can't include the current offense.

A “pattern of criminal gang activity” is conviction of two or more of a list of specified offenses within the last 3 years (as defined), on separate occasions or by 2 or more persons.

This bill removes **looting, felony vandalism, and five personal identity fraud violations, such as felony theft of an access card.**

The list of predicate offenses now with only 26 offenses, is now at PC 186.22, subds. (e)(1)(A) to (e)(1)(Z).

New PC 186.22, subd. (e)(2): “The currently charged offense shall not be used to establish the pattern of criminal gang activity.”

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## **“The Step Forward Act”**

The benefit to the gang from the predicate offenses must be more than reputational.

PC 186.22, subd. (e)(1), introductory sentence:

... “[P]attern of criminal gang activity” means the commission of [crimes, as defined], [within a specified time period] ...of two or more of the following ..., provided ... [that] the last of those ... [was] within [3] years ~~after a~~ **of the** prior offense, and the committed on separate occasions or by two or more persons ~~persons~~ **members. the offenses commonly benefited a criminal street gang, and the common benefit ... is more than reputational....**

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## **“The Step Forward Act”**

PC 186.22, new subd. (g):

(g) ..., [T]o benefit, promote, further, or assist means to provide a common benefit to [gang] members ... [that] is more than reputational.

Examples of a common benefit that are more than reputational may include, but are not limited to, financial gain or motivation, retaliation, targeting a perceived or actual gang rival, or intimidation or silencing of a potential current or previous witness or informant.

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## **“The Step Forward Act”**

The definition of “criminal street gang” changed.

PC 186.22, subd. (f): “[C]riminal street gang” means ~~any ongoing organization, association, an~~ **ongoing, organized association** ...of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the [predicate] criminal acts enumerated in ... subdivision (e), having a common name or common identifying sign or symbol, and whose members ~~individually or~~ collectively engage in, or have engaged in, a pattern of criminal gang activity.

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## **“The Step Forward Act”**

**How is it proven that a gang is “organized”?**

From the Sen. Public Safety Committee report for July 6, 2021, quoting from the supporting argument by the S. F. Public Defender:

In [S.F.], ... any knowledgeable community member will tell you “there are no organized Black criminal street gangs,” our Black clients who live in housing project areas have been prosecuted as gang members — for crimes like burglary or gun possession — **even though the police testify that there is no formal leadership [no shot-callers], no hierarchy, no economic organization, no initiation process, no specific colors or articles of clothing, no code of conduct, etc.** Thus, entire neighborhoods are criminalized on the basis of “he was in this picture on Instagram, or he was in this rap video throwing hand signs.”

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## **Does SB 333 apply to cases convicted before, but not sentenced until after Jan. 1?**

Yes, as to the predicate offenses. (*P. v. Lopez* (B301050, Dec. 29, '21), \_\_ Cal.App.5th \_\_, at slip op. pp. 27-39 (abbreviated analysis after P concedes applicability)).

### **Re: P's contention that they were proved in other ways:**

"Although [P] did submit evidence of two predicate offenses ... committed in the new time frame, [P] did not prove that [they] commonly benefitted a criminal street gang [in a way that] was more than reputational. (Slip op. at p. 33.)

### **Re: the effect on sentencing:**

[AB] 333's changes to [PC] 186.22 affect ... [also] other statutes that expressly incorporate [PC] 186.22.... Here, ... [PC]190.2, subd[.] (a)(22) and [PC] 12022.53, subd[.] (e)(1). (Slip op. at p. 35.)

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## **Recodification of "Spousal Rape."**

[AB 1171 \(Stats. 2021, Ch. 626.\)](#) Repeals PC 262, amends PC 261, and conforms 73 other statutes to this new codification.

PC 261, subd. (a), as amended:

(a) Rape is an act of sexual intercourse accomplished ~~with a person not the spouse of the perpetrator,~~ under any of the following circumstances:

(1) ~~Where~~ **If** a person ~~is~~ **who is not the spouse of the person committing the act is** incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act.... **This ... does not preclude the prosecution of a spouse committing the act from being prosecuted under any other paragraph of this subdivision or any other law.**

(2) ~~Where~~ **If** it is accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another.

[continued]

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## **Recodification of “Spousal Rape.”**

PC 261, subd. (a), retains paragraphs (2) to (7), which are ways of committing rape, such as where the person is prevented from resisting by alcohol, each with changes like those of para. (1).

### **How this amended statute works:**

Subd. (a)(1) first says that sexual intercourse with a person unable to give legal consent because of disability is rape, unless the two people are married.

It then says that the spouse can be prosecuted for sexual intercourse under any of the other circumstances listed, such that the act was accomplished by force.

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## **Pitchess discovery now reaches back more than five years.**

SB 16 (Stats. 2021, Ch. 402)

Amends EC 1045 and PC 832.5

EC 1045, subd. (b) In determining relevance [of records to be disclosed], the court shall examine the information in chambers ..., and shall exclude from disclosure: **disclosure both of the following:**

~~(1) Information consisting of complaints concerning conduct occurring more than five years before the event or transaction that is the subject of the litigation in aid of which discovery or disclosure is sought.~~

~~(2)~~ **(1)** In any criminal proceeding the conclusions of any officer investigating a complaint filed pursuant to Section 832.5 of the Penal Code.

~~(3)~~ **(2)** Facts sought to be disclosed that are so remote as to make disclosure of little or no practical benefit.

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## Pitchess discovery now reaches back more than five years.

Amended PC 832.5, subd. (b).

(b) Complaints and any reports or findings relating to these...  
**complaints, including all complaints and any reports**  
**currently in the possession of the department or agency.**  
shall be retained for a period of

~~at least five years.~~ **no less than 5 years for records where**  
**there was not a sustained finding of misconduct**

**and for not less than 15 years where there was a sustained**  
**finding of misconduct.**

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## More Peace Officer Personnel Records Available through the CPRA

SB 2 (Stats. 2021, Ch. 409, § 5.5) Amends PC 832.7

**Note: California Public Records (CPRA: GC 6250 et**  
**seq.; is recodified effective 1/1/23 to GC 7929.100 et**  
**seq.**

Peace officer personnel records are generally  
confidential, and subject to disclosure only through  
*Pitchess* motions.

In 2018, SB 1421 made four categories of peace officer  
personnel records disclosable through CPRA requests.  
SB 2 adds four more categories.

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## **Better than Batson/Wheeler**

**AB 3070 (Sats. 2020, Ch. 318 § 2    Rewrites CCP 231.7**

**“[A]pplies in all jury trials in which jury selection begins on or after January 1, 2022.” (CCP 231.7(i))**

**(a) A party shall not use a peremptory challenge to remove a prospective juror on the basis of ... [1] race, [2] ethnicity, [3] gender, [4] gender identity, [4] sexual orientation, [5] national origin, or [6] religious affiliation, or [1A to 6A] the perceived membership of the prospective juror in any of those groups.**

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## **Better than Batson/Wheeler**

**(b) A party, or the trial court on its own motion, may object to the improper use of a peremptory challenge....**

**...**

**(c) [U]pon objection to ... a peremptory ..., the party exercising the peremptory ... shall state the reasons [for it]....**

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## **Better than Batson/Wheeler**

**(d) (1) .... The court shall consider only the reasons actually given and shall not speculate on, or assume the existence of, other possible justifications....**

**If the court determines there is a substantial likelihood that an objectively reasonable person would view [race, etc.] ..., as a factor in the ... peremptory ..., the objection shall be sustained. *[continued]***

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## **Better than Batson/Wheeler**

**(d) (1) [continued] The court need not find purposeful discrimination to sustain the objection.... The court shall explain the reasons for its ruling on the record.**

**[The] motion ... shall also be deemed a sufficient presentation of claims [of] discriminatory exclusion of jurors in violation of the [U.S.] and [CA] Constitutions.**

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## Better than Batson/Wheeler

(2) (A) [A]n objectively reasonable person is aware that unconscious bias, ..., ha[s] resulted in the unfair exclusion of potential jurors....

(B) “[S]ubstantial likelihood” means more than a mere possibility but less than ... more likely than not.

(C) “[U]nconscious bias” includes implicit and institutional biases....

(d)(3). In [deciding whether there is a violation], the circumstances the court may consider include, but are not limited to ...: [listing reasons (A) to (G)].

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## Better than Batson/Wheeler

(e) A peremptory ... for any of the following ... is presumed ... invalid unless the party exercising [it] ... show[s] by clear and convincing evidence that an objectively reasonable person would view the rationale as unrelated to a prospective juror’s race, [etc.] and that the reasons ... bear on the prospective juror’s ability to be fair and impartial...:

(1) Expressing a distrust of or having a negative experience with law enforcement or the criminal legal system.

(2) Expressing a belief that ... officers engage in racial profiling or that criminal laws have been enforced in a discriminatory manner.

(3) Having a close relationship with people who have been stopped, arrested, or convicted of a crime.

[Plus another bunch, (4) to (13)].

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## **Better than Batson/Wheeler**

(g) (1) The following reasons for peremptor[ies] have historically been associated with improper discrimination in jury selection:

(A) The prospective juror was inattentive, or staring or failing to make eye contact.

(B) The prospective juror exhibited either a lack of rapport or problematic attitude, body language, or demeanor.

(C) The prospective juror provided unintelligent or confused answers.

(2) The reasons ... [above] are *presumptively invalid unless* the ... court ... confirm[s] that the ... behavior occurred, based on [its] own observations or [those] of counsel for the objecting party. [Then], counsel offering the reason shall explain why [that] demeanor, behavior, or manner ... matters to the case ....

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## **Better than Batson/Wheeler**

(j) .... The appellate court shall not impute to the trial court any findings, ... that the trial court did not expressly state....

The reviewing court shall consider only reasons actually given [by the party] and shall not speculate as to or consider reasons that were not given to explain ... the peremptory ... or [the] failure to challenge similarly situated jurors who are [members of a different] group....

[If] the objection was erroneously denied, that error shall be deemed prejudicial, the judgment shall be reversed, and the case remanded for a new trial.

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## **JUVENILE JUSTICE REALIGNMENT**

**SB 823 (Stats. 2020 Ch. 337)** Adds, repeals, and rewrites many sections in many codes.

**As of July 1, 2021, prohibits further commitments to DJJ, with exceptions. Establishes the Office of Youth and Community Restoration in HHS to administer and support the realignment.**

**The age of commitment of wards is reduced from 25 to 23 unless the adult sentence would be 7 yrs. or more.**

**Recasts provisions on where a minor can be detained, generally requiring juvenile facilities rather than adult jails, except as specified.**

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## **Juvenile Justice Realignment, Jr.**

**SB 92 (Stats. 2021, Ch. 18), eff. May 14, 2021.**

**Adds, amends, and rewrites several WI and PC §§.**

**DJJ must close by June 30, 2023. Until then, courts must consider, alternatively, placement in local programs.**

**Counties can establish secure youth treatment facilities for wards 14 or older who committed an offense that would have resulted in DJJ.**

**The court must, within 30 days of commitment, approve an individual rehabilitation plan created by the probation department and any other designated entity. The court must hold a progress review at least every 6 months. The court can order transfer to a less restrictive program.**

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## **Juvenile Justice Realignment, Jr.**

The court cannot commit a juvenile to any juvenile facility for more than the middle term (as defined) that could be imposed upon an adult for the same offenses.

The probation department must request P to petition for an order directing that the person remain subject to probation's control if the person confined is physically dangerous ... because of a mental or physical condition, disorder, or other problem causing serious difficulty controlling the dangerous behavior. There are provisions for a probable cause hearing, trial, continued detention, and appeal.

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## **Misdemeanor "1368" Treatment Replaced**

[SB 317 \(Stats. 2021, Ch. 599\)](#)

Rewrites PC 1370.01

[From the Legislative Counsel's Digest](#)

This bill ... repeal[s] provisions [for] restoration of competency of a person charged with a misdemeanor, or a violation of misdemeanor probation....

The bill ... instead authorize[s] the court ..., upon finding the defendant incompetent to stand trial, to suspend the proceedings and take certain actions, including granting diversion [up to] one year or dismissing the charges.... [Also authorized if D isn't eligible for Diversion, is Assisted Outpatient [Mental Health] Treatment (a.k.a. Laura's Law)].

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## **Misdemeanor “1368” Treatment Replaced**

### **1370.01. as rewritten**

(a) .... (b) If [Def] is found ... incompetent, the trial, judgment, or hearing ... shall be suspended and the court may ...:

(1) (A) Conduct a ... Mental Health Diversion [hearing, PC 1001.35 et seq.] ..., and, if ... [Def. is] eligible, grant diversion ... for [up to] one year ... or the maximum ... for the most serious ... charge[ ] ..., whichever is shorter....

(D) If ... [Def is] ineligible ... [for diversion] ..., the court may ... hold a hearing to ... do any of the following:

(i) Order modification of the treatment plan....

(ii) Refer [Def] to assisted outpatient treatment pursuant to [WI] 5346 .... [if] ... services are available ..., and the agency agrees to accept ... the [Def]. [WI 5346 is part of the “Assisted outpatient treatment” program, a.k.a. “Laura’s Law.”] .... If [Def] is accepted into assisted outpatient treatment, the charges shall be dismissed .... (continued)

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## **Misdemeanor “1368” Treatment Replaced**

(iii) Refer [Def] to the ... conservatorship investigator .... if ... a ... mental health expert, [says Def. is] gravely disabled, as defined ....

(2) Dismiss the charges....

(c) If [Def] is ... incompetent and is on ... probation ..., the court shall dismiss the ... revocation ... and may return [Def] to supervision.... [T]he court may modify the ...supervision to include ... mental health treatment.

... [F]our days [is] deemed to have been served for every two days spent in actual custody against the maximum term of diversion.

A [Def,] not in ... custody shall ... receive day for day credit against the term of diversion from the date [Def] is accepted into diversion....

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## PC 4019 Sentence Reduction Credits for time in “1368” treatment.

[SB 317 \(Stats. 2021, Ch. 599\)](#)

Amends PC 4019.

PC 4019, subdivision (a)(8), as amended:

[(a) Sentence reduction credits are allowed:] ....

**(8) When a prisoner is confined in or committed to a state hospital or other mental health treatment facility, or to a county jail treatment facility, as defined in ... in [incompetent to stand trial, “1368”] proceedings....**

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## Release on probation-violation charges is made more likely.

[AB 1228 \(Stats. 2021, Ch. 533\)](#) Amends PC 1203.2, Adds PC 1203.25

New PC 1203.2, subd. (a): [W]hen a [Def is in custody pending a formal hearing on violation of probation] ... [and not serving flash incarceration] ..., the court shall consider ... release ... from custody [per PC] 1203.25.

New PC 1203.25:

(a) All ..... release[s] by a court at or after the initial hearing and prior to a formal ... violation hearing ... shall be [own recognizance] release[s] ... unless the court finds, by clear and convincing evidence, that the particular circumstances ... require ... an order to ... protect[ ] ... the public and ... assur[e] [Def’s] future appearance in court.

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## Release on probation-violation charges is made more likely.

New PC 1203.25, subd. (a), continued)

- (1) The court shall make an individualized determination of the factors that do or do not indicate [by clear and convincing evidence ] that [Def] would be a danger ... if released pending a ... revocation hearing....
  - (2) The court shall not require ... any algorithm-based risk assessment tool in setting conditions of release.
  - (3) The court shall impose the least restrictive conditions ... necessary to provide ... [public] protection ... and ... assur[e] [Deft.'s] ... appearance ....
- (continued)

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## Release on probation-violation charges is made more likely.

New PC 1203.25, continued

- b) Reasonable conditions ... may include, but are not limited to, [several standard conditions]. [Def't] shall not be required to bear the expense of any [release] conditions ....
- (c)(1) Bail shall not be imposed unless the court finds by clear and convincing evidence that other ... conditions ... [do not] provide ... protection of the public and ... assurance of [Def's] ... appearance....
- (2) "Bail" [here, means] cash bail [not a] bail bond or property bond .... In [setting] the amount..., the court shall make an individualized determination .... Bail shall be set at a level the person can reasonably afford. (continued)

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## **Release on probation-violation charges is made more likely.**

### **New PC 1203.25, continued**

(d) The court shall not deny release for a [Def't] on [misdemeanor] probation ... before ... a formal ... revocation hearing, unless [Def't] fails to comply with [a court] order ..., including an order to appear ...in the underlying case.....

(e) The court shall not deny release for a [D] on [felony] probation ... before ... a formal ... revocation hearing unless the court finds by clear and convincing evidence that there are no means ... available to [protect] the public and ... assur[e] [D's] ... [court] appearance.

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## **Recodification of "Spousal Rape."**

[AB 1171 \(Stats. 2021, Ch. 626.\)](#) Repeals PC 262, amends PC 261, and conforms 73 other statutes to this new codification.

PC 261, subd. (a), as amended:

(a) Rape is an act of sexual intercourse accomplished ~~with a person not the spouse of the perpetrator,~~ under any of the following circumstances:

(1) ~~Where~~ If a person ~~is~~ who is not the spouse of the person committing the act is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act.... This ... does not preclude the prosecution of a spouse committing the act from being prosecuted under any other paragraph of this subdivision or any other law.

(2) ~~Where~~ If it is accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another.

[continued]

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## **Recodification of “Spousal Rape.”**

[PC 261, subd. (a), retains paragraphs (3) to (7), which are ways of committing rape, such as where the person is prevented from resisting by alcohol, each with changes like those of paragraph. (2).]

### **How this amended statute works:**

Subd. (a)(1) first says that sexual intercourse with a person unable to give legal consent because of disability is rape unless the two people are married.

It then says that the spouse can be prosecuted for sexual intercourse under any of the other circumstances listed, such that the act was accomplished by force.

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## **The “Rape Shield Law,” EC 782, Expanded**

**AB 134 (Stats 2021, Ch 24)**

**Amends EC 782**

**From the Sen. Comm. on Pub. Safety’s report of Jun. 8, 2021:**

“The Rape Shield Law [in a prosecution of any of several specified sex crimes] ... prohibits ... evidence against an alleged [V] about [V’s] prior sexual conduct ... to impeach [V, e.g., to] show that [V] consented to the sexual act in question.... [Such] evidence ... may be introduced by ... filing a written motion .....where the judge will make a ruling on admissibility [i.e., mainly, the relevancy] of that evidence. (Evid. Code, § 782.).

This bill defines “sexual conduct” to include ... social media account[s] about the [V], including any text, image, video, or picture, which depict sexual content, sexual history, nudity or partial nudity, intimate sexual activity, communications about sex, sexual fantasies, and other information that appeals to a prurient interest....

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## Felony Murder Resentencing Expanded

[SB 775 \(Stats 2021 Ch. 551\)](#)

Amends PC 1170.95

### Uncodified section 1 of amended PC 1170.95:

The Legislature finds ... that this legislation does ...the following:

- (a) [States that Def's.] who were convicted of attempted murder or manslaughter under a theory of felony murder and the natural probable consequences doctrine [get] the same relief as those ... convicted of murder ....
- (b) Codifies ... *People v. Lewis* (2021) 11 Cal.5th 952, 961-970, regarding petitioners' right to counsel and the standard for ... a prima facie case.
- (c) Reaffirms that the proper burden of proof at a resentencing hearing under this section is proof beyond a reasonable doubt.
- (d) Addresses what evidence a court may consider at a resentencing hearing (clarifying ... *People v. Lewis*, supra, at pp. 970-972).

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## **Relief from former 3 yr. drug priors and 1 yr. prison priors**

[SB 483 \(Stats 2021, Ch. 728\)](#)

Adds PC 1171 and 1171.1

On Jan. 1, 2018, the 3-year enhancement for certain drug convicts who had specified drug priors was mostly repealed. On Jan. 1, 2020, the 1-year enhancement for prison priors (except for sexually violent priors) was repealed. But this was not retroactive to those serving sentences for those enhancements whose case was final on appeal.

Now, CDCR, and County Jails must identify persons in custody with sentences including one of these enhancements, and notify the court, on a specified schedule. Courts are required to grant relief to such persons on a specified schedule. The court must appoint counsel.

The legislative history shows that this may effect up to 7,000 prisoners.

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## **Electronic Filing and Serving**

**New Contra Costa County Superior Court Local Rule  
does not apply to Criminal cases:  
Mandatory Electronic Filing and Service Rule 2.87.**

Adoption of Mandatory Electronic Filing and Service;  
Exceptions. (a) Mandatory Electronic Filing and Service.  
Pursuant to [CCP] 1010.6(d) and [CA. Rules of Court,] Rules  
2.252 and 2.253 ..., the Court adopts mandatory electronic  
filing and service in Designated Cases. Designated Cases will  
be announced on the Court's website at [www.cc-courts.org](http://www.cc-courts.org).  
The Court anticipates initially listing Designated Cases in  
approximately March, 2022, to include the majority of case  
types **excluding Criminal and Juvenile matters.**

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## **Electronic Filing and Serving in Criminal Cases Regulated**

**Background:** California Rules of Court, Title Two (i.e., all Rules beginning "2.")  
are "Trial Court Rule," that apply to superior court. (Rules 2.1 and 2.2).

Chapter 2. of Title Two is "Filing and Service by Electronic  
Means."

PC 690.5 is the statutory authority for electronic filing the superior  
court in criminal cases. It reads:

**[CCP 1010.6, subds. (a) and (b)], pertaining to the permissive  
filing and service of documents, are applicable to criminal  
actions, except as otherwise....**

**(b) The Judicial Council shall adopt ... rules for the electronic  
filing and service ... in criminal cases in [superior court].**

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## CDCR Sentence Reduction Credits

### **CDCR's Updated (May 1, 2021) Credit-Earning Opportunities**

From CDCR's "Credit-Earning Opportunities",

<https://www.cdcr.ca.gov/proposition57/>

"... CDCR ... [has] increase[ed] the credit rate for eligible ... people ... pursuant to [emergency regulations](#).... CDCR [has] streaml[ined] how these credits are calculated."

California Code of Regulations [CCR], Title 15, sections 3043 to 3043.7. Each one says "... [A] *Certificate of Compliance must be transmitted to OAL [Office of Administrative Law] by 2-7-2022 or emergency language will be repealed ... on the following day.*"

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## CDCR Sentence Reduction Credits

### Good Conduct Credit

- GCCs are awarded to eligible individuals who comply with all the rules ... and perform their duties as assigned.... GCC may be forfeited due to disciplinary action.
- *Update eff. Dec. 28, 2021: Chart of WORKGROUPS (both violent and nonviolent) that give different credits, some less, some more: <https://www.cdcr.ca.gov/proposition57/> : Discipline, generally 0%; Violent, generally 33.3% ;Nonviolent, generally 50%. Conservation camp and trainees: violent 50%, nonviolent 66.6%.*

### Minimum Security Credit

- ... [MSC is] awarded to all eligible ... people who work in conservation (fire) camps, are trained as firefighters, or ... are assigned to minimum custody status.... 30 days of credit [are awarded] for every 30 continuous days served.

### Milestone Completion Credits

- MCC is awarded for successful completion of rehabilitative or educational programs ... to prepare participants to find employment ....
- MCC is awarded in increments of not less than one week, but no more than 12 weeks, in a 12-month period.

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## CDCR Sentence Reduction Credits

### Rehabilitative Achievement Credits

- RAC is awarded to those who complete specified hours of approved self-help and volunteer public service activities.
- 10 days of credit may be awarded to someone who completes 52 hours of approved programming in a 12-month period.

### Educational Merit Credits

- EMC is awarded for completion of high school diploma or equivalency programs, higher education degrees, or the Offender Mentor Certification Program (OMCP).
- 90 ... days may be awarded for complet[ing] a high school diploma or ... equival[ant] ...[,] 180 days may be awarded [for] ... completion of associate, bachelor's [or] post-graduate degrees, and the OMCP.

### Extraordinary Conduct Credits

- [U]p to 12 months of credit may be awarded [for] perform[ance] [of] a heroic act in a life-threatening situation or [for] provid[ing] exceptional assistance in maintaining the safety and security of a prison.

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## CDCR Sentence Reduction Credits

**Question: Can You Calculate, With Precision, How Much Time an Inmate or Prospective Inmate Will Actually Serve?**

**[Answer: Even CDCR has trouble doing that.** Here is from their FAQs (Update January 11, 2022: FAQs have been taken down.)

**“[CDCR] recently.... became aware of a programming modification that differed from the way credit calculations had been done since 2017.... Dates are being recalculated ..., and any impacted people will receive their individual updated information as soon as possible....”**

**Moral: use the statutory credits, of six months credit for six months served, in PC 2933. CDCR gives this credit (called 50%, halftime, or day for day) in smaller intervals as well. Tell clients they may earn extra credits as above; they should work for that, but that can't be guaranteed ahead of time.**

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## **Answer to the Trivia Question**

**How many** CA Supreme Court Justices may be on the Nov. 6, 2022, ballot?

**Hint:** The last time this many were on a single ballot was 1930.

**Answer:** Five. If all present Justices with expiring terms, plus the person filling the currently open seat, all run. See <http://www.atthelectern.com/one-year-to-election-day-for-five-supreme-court-justices/>

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# **Thank you!**

**Garrick Byers, Statute Decoder**

**[gbyerslaw@comcast.net](mailto:gbyerslaw@comcast.net)**

**(559) 960-1676**

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# **New Laws for 2022**

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

**Selected and edited by**

**Garrick Byers  
Statute Decoder**

**[gbyerslaw@comcast.net](mailto:gbyerslaw@comcast.net)**

January 10, 2021



## 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 different categories but are included them under only one. There are many cross references.

This treatise does not include all new laws, rules, and forms on California criminal law, only those most important for practitioners.

A complete list of new statutes is at CA Leg. Info., Publications, “Bills Enacted Report – 2021.” Nearly 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, “Forms and Rules.”

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

HN = Harbors and Navigation Code

HS = Health and Safety Code

LC = Labor Code PC = Penal Code

VC = Vehicle Code

WI = Welfare and Inst. Code

D, or Def. = Defendant, or Defense

P = People, or Prosecution V = the Victim. M = Minor W = Witness

DOJ = Calif. Dep’t. of Justice CDCR = Calif. Dep’t of Corrections and Rehab.

Garrick Byers, a former President of CPDA, is certified by the Calif. State Bar as a Criminal Law Specialist. He is a frequent speaker and writer on criminal law for CEB, CPDA., CACJ, and others. He is currently with the Sonoma County Independent Office of Law Enforcement Review and Outreach (IOLERO).

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## **HIGHLIGHTS AND LOWLIGHTS**

- Aggravators (except priors), must be proven or stip'd. See **Sentences**.
- Recall of sentences, mainly for lifers, expanded. See **Sentences**.
- Major reforms of gang law. (PC 186.22). **Crimes, and others**.
- New statutes on peace officers. See **"Peace Officers**.
- EC 1045's (*Pitchess*) 5 year back-reach limit deleted. See **Evidence**.
- Courts get increased discretion to strike many **Enhancements**.
- Two misdemeanors are repealed. See **Discovery and Crimes**.
- Felony murder resentencing (1170.95) expands. **Post-Conviction Relief**
- 1 event, 2 crimes: PC 654: courts no long must choose longest. **Sentence**
- Columbus Day out, Native Americans Day in. See **Briefly Noted**
- Another 17 fees eliminated. See **Fines, Fees, and Penalties**
- **Background Checks** eased slightly for working with children.
- Release pending probation-violation charge now easier. See **Supervision**.
- Infractions: Education allowed in lieu of community service. **Sentences**
- Recall of sentences recodified and expanded. See **Postconviction Relief**.
- PC 4019 credits allowed for "1368" treatment in state hospitals.
- Electronic filing and service in criminal cases regulated. **Rules of Court**

### **Reminders: Laws from Prior Years that Become Operative on Jan. 1, 2022.**

- Batson-Wheeler motions for discriminatory jury selection. Reasons for challenges expanded; procedures for challenging reformed. See **"Jury."**
- Megan's Law Web Site, Revised. **"Registration for Sex Offender."**

### **Early Warnings: New Laws This Year With Delayed Operative Dates**

- The California Public Records Act recodified and made more "user friendly," operative January 1,2023. See **"California Public Records Act."**

### **Trivia Question.**

- How many Supreme Court Justices may be up for re-election on the Nov. 6 ballot? (Hint: the most at one time since 1930.) See **"Trivia Question."**

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## APPEALS

See “Juvenile Justice” for “*Order transferring minors to adult court is immediately appealable and cannot be heard after conviction.*”

See “Rules of Court” for amendments to Rules 8.70, 8.75 and 8.304.

See “Jury,” “Batson/Wheeler” for standard on appeal.

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## ARRESTS AND DETENTIONS

See “Search and Seizure” for “*Ramey* warrants”

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## ATTORNEYS

*State Public Defender, in consultation with the California Public Defenders Association and others, to study appropriate workloads.*

AB 625 (Stats. 2021, Ch. 583)

Adds GC 15403

**Here is the relevant text of new GC 15403**

**(a) Subject to an appropriation of funds ... or other measure ..., the State Public Defender, in consultation with the California Public Defenders Association and other subject matter experts, shall ... assess appropriate workloads for public defenders and indigent defense attorneys ... [by] January 1, 2024.**

[illegible]

No misdemeanors must be reported for working with children

AB 1171 (Stats. Ch. 626) Amends PC 11105.3 and Pub. Resources 5164

[GB: Before this bill, the law had required the employer of people getting licenses, jobs, or volunteer positions with supervisory or disciplinary power over minors, to notify parents or guardians if a background check showed that the person had a conviction for a misdemeanor PC 290 offense. This bill appears to remove that requirement, although the employer can still ask about them.

[It also conforms to the repeal of the spousal rape section, PC 262 and its inclusion into PC 261, the general rape section.]

**Amended PC 11105.3, subdivision (c).**

(c) (1) When a request [made to DOJ by a human resources agency or an employer] reveals that a prospective employee or volunteer has been convicted of a violation or attempted violation of [PC] 220, 261.5, ~~262~~, 273a, 273d, or 273.5, **former Section 262**, or any sex offense listed in Section 290, except for [PC 243.4, subd. (d)] ..., and where the agency or employer hires [that person], [they] shall notify the parents or guardians of any minor who will be supervised or disciplined by the [person]....

(2) The notification requirement ... shall not apply to a misdemeanor conviction for violating Section 261.5 or to a conviction for violating Section 262 or 273.5. Nothing in this paragraph shall *conviction. This ... does*

**Similar changes are made to Public Resources Code section 5164**

## BAIL AND PRETRIAL RISK ASSESSMENT

# CALIFORNIA PUBLIC RECORDS ACT

## *California Public Records Act recodified and made “user friendly”*

*Delayed effective date, to January 1, 2023.*

The CPRA is an increasingly important investigative tool for criminal law practitioners. See, e.g., “Peace Officers” for amended PC 832.7. Much info needed for the Racial Justice Act, PC 745, can be had through the CPRA.

This bill moves (recodifies) the California Public Records Act (CPRA, aka PRA) from GC 6250 et seq. to 7920.000.

It amends or rewrites many §§ to make the CPRA more “user friendly.”

It makes conforming changes to some 460 other statutes; see below.

[In other words, effective January 1, 2023, the California Public Records Act (CPRA) is recodified from GC 6276.50 et seq. to GC 7920.00 et seq.]

[See below for discussion of the 460 other Code Sections affected.]

Govt. Code § 7920.100:

**“Nothing in the CPRA Recodification Act of 2021 is intended to substantively change the law relating to inspection of public records. The act is intended to be entirely nonsubstantive in effect....”**

Uncodified section 8 of A.B. no. 473 says,

**“This act [recodifies] the [CPRA] ... in a more user-friendly manner without changing its substance..**

**Of particular importance to the criminal law bench and bar are the recodifications of the following:**

Part 5, Chapter 1, sections 7923.600 et seq.

Article 1: Law Enforcement Records Generally 7923.600 to 7923.630

Article 2: ... Access to Law Enforcement Records. 7923.650 to 7923.655.

Article 3: Records of [Certain] Emergency Communications ... 7923.700

Article 4: Records ... Relating to Crime Victims 7923.750 to 7923.755

Article 5: Firearm Licenses and Related Records 7923.800 to 7923.805.

**Note:** Until Jan. 1, 2023, the “CPRA Recodification Act of 2021” will be a useful guide in interpreting the existing CPRA.

**See “Peace Officers,” below, and PC 832.7 for access to certain bad acts records of cops under the CPRA.**

460 other sections of this bill make non-substantive amendments to the California Codes conforming to the recodification.

**Most changes look like this one from Evidence Code section 1157.7:**

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See “Rules of Court” for Amendments to the Comment to Rule 8.1115(e) that apply to how the Superior Court can handle review-granted cases.

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AB 716 (Stats 2021, Ch. 526)

Heading of CCP, Pt. 1, Title 1, Ch. 6 as rewritten:

CCP § 124, as amended

**(b)(1) The court shall not exclude the public from physical access because remote access is available, unless it is necessary to restrict or limit physical access to protect the health or safety of the public or court personnel.**

**(3) ... “[R]emote access” shall include, but is not limited to, an audio stream that is available on an internet website or telephonic means ....**

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**See also: Sentencing for changes in (1) initial sentencing, and (2) resentencing.**

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AB 333 (Stats. 2021, Ch. 669)

Adds PC 1109

Here is the text of new PC 1109: (paragraph breaks added for clarity GB)

**(a) If requested by [Def.] a ... gang enhancement ... under [PC 186.22, subds. (b) or (d)] shall be tried in separate phases as follows:**



*(b) A "youth" ... includes any person under 26 ... on the date [of incident].*

*In-custody Defendant Who Refuses to Come to Court*

Amends PC 977, 1043, and 1043.5

**PC 1043, is amended by deleting a phrase, and adding new subd. (f):**

**(f)(1) A trial [is] deemed to have commenced in [Def's] presence ..., if the court finds, by clear and convincing evidence, all of the following ...**

**(B) [Def] [is informed] of their right and obligation to be ... present ....**

**(C) [Def. is] informed that the trial will proceed without [Def].**





(a)... [I]t is a defense ... that [Def] was coerced to commit the offense as a direct result of being a human trafficking [V] at the time ... and had a reasonable fear of harm. This ... does not apply to a ~~serious felony, as defined in subdivision (c) of Section 1192.7, or a~~ violent felony, as defined in [PC 667.5, subd. (c)] subdivision (c) ...

[Amended PC 235.23 also adds more methods, beyond those listed in PC 236.2, of proving that a Def. was a V of human trafficking. GB]

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*Defense by a V of intimate partner violence, or sexual violence,*

AB 124 (Stats, Ch. 695)

Adds PC 235.24

For other aspects of AB 124, see immediately above, and see “Enhancements.”

New PC 236.24.

**(a) ...[It] is a defense to a ... crime that [Def] was coerced to commit [it] as a direct result of being a [V] of intimate partner violence or sexual violence at the time ... and had a reasonable fear of harm. This ... does not apply to a violent felony, as defined in [PC 667.5, subd. (c)].**

**(b) [Def] has the burden of [proving this]... by a preponderance ...**

**(c) Certified records of a ... court or governmental agency documenting [Def's.] status as a [V] of [the above], including identification of [this] by a peace officer and certified records of [specified] immigration proceedings, may be presented to establish [this] defense...[,], even if [Def] was not [then]... identified as a [V].**

**(d) [This] defense may be asserted at any time before [pleading] guilty or nolo contendere or [admitting to] the charges and before the conclusion of any trial for the offense. If asserted before the preliminary hearing ..., [this] defense shall, upon request by [Def], be determined [then].**

**(e) If [this defense] prevails ..., [Def] is entitled to ... the following...:**

**(1)(A) The court shall order that all records ... be sealed ....**

**(B) Records that have been [so] sealed ... may ... utilized by law enforcement for ... investigatory purposes involving [other] persons....**

**(2) [Def] ... shall be released from all penalties and disabilities resulting from the charge, and all actions and proceedings by law enforcement ..., courts, or ... government employees that led to the charge shall be deemed not to have occurred.**

**(3)(A) The person may in all circumstances state that they have never been arrested for, or charged with, [that] crime ...,**

**(B) [Def] may not be denied rights or benefits ... based on the arrest or charge or their failure ... to disclose [anything about] those events.**

**(C) [Def] may not be ... charged or convicted of perjury or ... of giving a false statement by reason of having failed to disclose [anything about the arrest, charge, or etc.].**

[Note by GB: this para. (e)(3) may not apply in federal proceedings.]

**(f) If, in a [WI 602 proceeding] the juvenile court finds that ... [this] defense ... is established by a preponderance ..., the court shall dismiss the proceeding and order the relief prescribed [WI 786].**

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**See also Criminal Procedure for defenses to crimes.**

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Amends PC 186.22

This aspect does four things: (1) shortens the list of predicate offenses; (2) the current charge cannot be a predicate offense; (3) the benefit to the gang must be more than reputational; (4) modifies how criminal street gang is defined.

A “pattern of criminal gang activity” is conviction of two or more of a **list of specified offenses** within a specified period, on separate occasions or by 2 or more persons.

That list is at PC 186.22, subdivision (e). Before this bill, that list included 33 offenses or types of offenses, formally listed at PC 186.22, subds. (e)(1) to (e)(33).

Now, PC 186.22, subd. (e), is divided into two subdivisions, (e)(1), and (e)(2) [discussed below]; and the list of predicate offenses includes only 26 offenses or types of offenses, listed at PC 186.22, subds. (e)(1)(A) to (e)(1)(Z).

As part of this amendment, PC 186.22, former subd. (j) has also been repealed. Former subd. (j) concerned those now-eliminated five personal identity fraud violations.

Note that **what looks like a change of the listed drug offenses, is actually not a change.** PC 186.22, former subd. (e)(4) used to cover the drugs listed in HS 11054, 11055, 11056, 11057, and 11058. [Those are the 5 “schedules” of controlled substances.] Now, PC 186.22, new subd. (e)(1)(D) covers the drugs listed in HS 11007, which defines “controlled substance” as a drug listed in those 5 schedules.

**2.** Added is **new subdivision (e)(2): The currently charged offense shall not be used to establish the pattern of criminal gang activity.**

**3.** The predicate offenses must have commonly benefited a criminal street gang in a way that is more than “reputational,” (see PC 186.22, subd. (e)(1) as amended), as specified in PC 186.22, added subd (g).

Here is PC 186.22, subd. (e)(1).

(e)**(1)**... “[P]attern of criminal gang activity” means the commission of, attempted commission ..., conspiracy to commit, or solicitation of, sustained juvenile petition for, or conviction of two or more of the following ..., provided ... [that] the last of those ... [was] within [3] years ~~after a~~ **of the** prior ~~offense, and the~~ **offense and within [3] years of the ... current of-** **fense .... [they]** were committed on separate occasions or by two or more ~~persons~~ **members. the offenses commonly benefited a criminal street** **gang, and the common benefit ... is more than reputational:**

[Note that the amendment changes the word “persons” to “members.”  
See amendment discussed below ... that defines a gang as “organized.”]

Here is PC 186.22, new subdivision (g):

**(g) .... [T]o benefit, promote, further, or assist means to provide a common benefit to [gang] members ... [that] is more than reputational.**

**Examples of a common benefit that are more than reputational may include, but are not limited to, financial gain or motivation, retaliation, targeting a perceived or actual gang rival, or intimidation or silencing of a potential current or previous witness or informant.**

[Note: former subdivision (g) is re-lettered as subdivision (h), and so forth].

**4.** The definition of “criminal street gang” is changed: now the gang must be more than an “organization”: now it must be an “organized organization.”

Here is amended PC 186.22, amended subdivision (f):

(f) ... “[C]riminal street gang” means ~~any ongoing organization, association,~~ **an ongoing, organized association** or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in ~~paragraphs (1) to (25), inclusive, or (31) to (33), inclusive,~~ of subdivision (e), having a common name or common identifying sign or symbol, and whose members ~~individually or collectively~~ engage in, or have engaged in, a pattern of criminal gang activity.

What is the difference between an “ongoing organization” and an “ongoing organized association;” and how is it proven that this gang is “organized”?

Guidance is found in the Senate Public Safety Committee report for July 6, 2021, quoting from a supporting argument by the San Francisco Public Defender’s Office, a co-sponsor of this bill (brackets in original):

In San Francisco, ... any knowledgeable community member will tell you “there are no organized Black criminal street gangs,” our Black clients who live in housing project areas have been prosecuted as gang members — for crimes like burglary or gun possession — even though the police testify that there is no formal leadership [no shot-callers], no hierarchy, no economic organization, no initiation process, no specific colors or articles of clothing, no code of conduct, etc. Thus, entire neighborhoods are criminalized on the basis of “he was in this picture on Instagram, or he was in this rap video throwing hand signs.”

So, perhaps “organized” can be proven by such things as “shot-callers,” “hierarchy,” “economic organization” “initiation process,” “specific colors,” “articles of clothing” “or a “code of conduct.” Note that “colors” and “clothing” alone probably will not suffice, since they were part of the definition before this amendment.

See also this bill’s uncodified Section 2, subdivision (g): ***“The STEP Act was originally enacted to target crimes committed by violent, organized criminal street gangs ([PC] 186.21 ...).”*** [ Note the word: “organized”]

PC 186.21 is the “Legislative findings and declarations” of the original STEP Act. Here is an excerpt:

***It is the intent of the Legislature in enacting this chapter to seek the eradication of criminal activity by street gangs by focusing upon patterns of criminal gang activity and upon the organized nature of street gangs, which together, are the chief source of terror created by street gangs.***





(2) ~~Where~~ **If** it is accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another.

[PC 261, subd. (a), retains paragraphs (3) to (7), which are ways of committing rape, such as where the person is prevented from resisting by alcohol or drugs, each with changes like those of para. (2).]

[Note how this amended statute works: Subd. (a)(1) first says that sexual intercourse with a person unable to give legal consent because of disability is rape unless the two people are married. It then says that the spouse can be prosecuted for sexual intercourse under any of the other circumstances listed, such that the act was accomplished by force.]

[Note: This bill also makes conforming changes to some 73 other sections, including among others, **EC 1036.2**, 1103, and 1107; and some 47 sections of the PC. Many ~~strike out 262~~, and add: “***former section 262.***”]

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*Fix-it tickets for boating.*

AB 591 (Stats. 2021, Ch. 57)

Amends VC 40303.5

From the Legislative Counsel's Digest:

... [W]henever any person is arrested for ... an infraction involving vehicle equipment, the arresting officer [must] permit the ... person to [sign] [a notice ... containing] a promise to correct the violation and to deliver proof of correction to the issuing agency, unless ... a disqualifying condition exists.

... [E]very undocumented vessel, as defined, [using Calif. waters] [must] be currently numbered. The owner of each vessel requiring numbering [must], among other things, paint on or attach to each side of the forward half of the vessel the identification number, as specified.

This bill ... require[s] an arresting officer to permit a person arrested for various [boating] offenses, including ... the failure to paint on or attach ... the identification number ... to [sign] a notice, prepared by the officer ... containing a promise to correct the violation and to deliver proof of correction to the issuing agency, unless ... a disqualifying condition exists.

Here is amended VC 40303.5:

**An arresting officer shall permit a person arrested for any of the following ... to execute a ... a promise to correct the violation [as specified] unless [a] disqualifying conditions specified in [VC 40610, subd. (b)] exist[s]:**

**(a) A registration infraction [as specified]**

**(b) A driver's license infraction [as specified].**

**(c) [VC] section 21201, relating to bicycle equipment.**

**(d) [VC] 21212, subd. (a), relating to helmets when riding bicycles, etc.**

**(e) An infraction involving equipment set forth in [several Divisions of VC.**

**(f) [VC] 2482, [re:] to regis[.] decals for ... transporting ... kitchen grease.**

**(g) [VC] 9850, relating to expired vessel registration.**

**(h) [VC] 9853.2, relating to the display of vessel identification numbers.**

**(i) Harbors and Navigation Code [HN] 678.11, relating to possessing a vessel operator card.**



“... [N]unchaku” means an instrument consisting of two or more sticks, clubs, bars, or rods to be used as handles, connected by a rope, cord, wire, or chain, in the design of a weapon used in connection with the practice of a system of self-defense such as karate.

[There is no “savings clause” preserving existing prosecutions. So, this bill is retroactive to cases not final on appeal. (*In re Estrada* (1965) 63 Cal.2d 740)]

See also [Postconviction Relief](#).

See also Sex Offender Registration, Megan's Law.

*The automatic partial relief from arrest records and conviction records program extended.*

AB 145 (Stats. 2021, Ch. 80)

Amends PC 851.93 and 1203.425

Background and comments by GB.

This procedure, which has not yet taken effect, was first enacted in 2019 by AB 1076 (Stats 2019, Ch. 578). Its original effective dates for arrests (PC 851.93) and convictions (PC 1203.425), were delayed and, now, are to start on July 1, 2022, subject to funding.

Originally this program only applied to arrests and conviction occurring after its effective dates.

This new law, which was effective July 16, 2021, applies this procedure to arrests and convictions occurring on or after January 1, 1973.

The requirements are: Def. successfully completed probation, or, on an infraction or misdemeanor with no probation, completed sentence over a year ago; Def. is not PC 290 registered; and not on supervision, not serving a sentence, and not charged with a crime; and the sentence did not include prison.

When this automatic relief is applied to particular arrest and conviction records, the court is prohibited from disclosing them.

This will probably provide considerable relief from these records. The reach back, from the present to 1973, should increase this a lot.

But there are major limitations to this procedure. (1) The records are not otherwise sealed: DOJ can disclose them as provided by law, although DOJ's records are updated to show that relief was granted. There are other exceptions also; see, e.g., PC 1203.425, subd. (a)(4.)

(2) There is no requirement that Def. be notified, although judges are supposed to tell them of this relief-possibility when they are first sentenced.

(3) This is a complex, multi-step, and yet-untried, procedure.

These limitations are likely to cause some mistakes and uncertainty about whether relief was granted, and what that relief really means.

**From the original Legislative Counsel's Digest for AB 1076:**

This bill ... [as of] Jan[.] 1, 2021, ... subject to an appropriation ..., require[s] [DOJ], ... monthly ..., to review the records in ... statewide criminal justice databases and to identify persons ... eligible for relief by having their arrest ..., or ... conviction records, withheld from disclosure, as specified.

The bill ... require[s] the department to grant relief to an eligible person, without requiring a petition or motion....

The bill ... require[s] an update to the state summary criminal history information to document the relief granted.

The bill ... require[s] [DOJ], on a monthly basis, to electronically submit a notice to the superior court having jurisdiction over the criminal case, informing [it] of all cases for which relief was granted.

The bill ... prohibit[s] the court from disclosing information concerning an arrest or conviction granted relief, with exceptions.

The bill ... authorize[s] [P] or probation department, [up to] 90 ... days before ... [Def's.] eligibility ..., to file a petition to prohibit [DOJ] from granting automatic relief for ... conviction records.... If the court grants that ..., the bill ... prohibit[s] [DOJ] from granting relief, but [Def] ... [is] ... eligible for relief through other existing procedures, including petitions to the court.

.... The bill ... require[s] a court, at the time of sentencing, to advise each [Def] of their right to conviction relief pursuant to ... this bill, ....

From the Legislative Counsel's Digest for this year's AB 145

“Existing law, commencing July 1, 2022, subject to an appropriation ... requires [DOJ], on a monthly basis, to review the records in the statewide criminal justice databases and to identify persons ... eligible for arrest record relief or automatic conviction record relief by having their arrest records, or their criminal conviction records, withheld from disclosure or modified....

Under existing law, an arrest or conviction record is eligible for this relief if, [inter alia], the arrest or conviction occurred on or after Jan[.] 1, 2021.

This bill ... instead allow[s] an arrest or conviction that occurred on or after January 1, 1973, to be considered for relief.

*When probation or mandatory supervision is transferred, and the new court grants criminal record relief, the original court must be told.*

AB 1281 (Stats 2012, Ch. 209)

Amends PC 1203.425

PC 1203.9 permits the sentencing (or transferring) court, under specified circumstances, to transfer probation or mandatory supervision to another county's receiving court.

[Why was this amendment not made in the transfer-statute, PC 1203.9? GB]

Amended PC 1203.425, subd. 3(C)

**(C) If a receiving court reduces a felony to a misdemeanor pursuant to [PC 17, subd. (b)], or dismisses a conviction pursuant to law, including, but not limited to, [PC]1203.4, 1203.4a, 1203.41, 1203.42, 1203.43, or 1203.49, it shall furnish a disposition report to [DOJ].... [DOJ] shall electronically [no-  
tify] the ... court that sentenced [Def]....**

**(D) If a court receives notification from [DOJ] [that relief was granted under PC 1203.425], the court shall update its records to reflect [that].**

**If a court receives notification that a case was dismissed pursuant to [PC 1203.425] or [PC] 1203.4, 1203.4a, 1203.41, or 1203.42, the court shall update its records to reflect [that] and shall not disclose information concerning a conviction granted relief to any person or entity, in any format, except to the [Def] or a criminal justice agency, as defined ....**

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*Limits on the court disclosure of certain dismissed conviction records, with numerous exceptions, start August 1, 2022,*

AB 1281 (Stats 2012, Ch. 209)

Amends PC 1203.425

See also the bill originally enacting PC 1203.425, Stats 2019, Ch. 578 (AB 1076) and Stats 2020, Ch. 29 (SB 118), both at PC 1203.425, subd. (a)(3).

Amended PC 1203.425, subd. (a)(3)(A), second sentence:

Commencing on August 1, 2022, for any record retained by the court pursuant to [GC 68152 (retention requirements)], except as provided in [PC 1203.425, subd. (a)(4), which lists ten such exceptions)], the court shall not disclose information concerning a conviction granted relief pursuant to this section or [PC] 1203.4, 1203.4a, 1203.41, or 1203.42, to any person or entity, in any format, except to the [Def] whose conviction was granted relief or a criminal justice agency, as defined in Section 851.92.

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## DISCOVERY

*PC 1054.2 expanded, but the misdemeanor for violation is eliminated.*

AB 419 (Stats. 2021, Ch. 91)

Amends PC 1054.2

**Here is amended PC 1054.2:**

(a)(1) Except as provided in para[.] (2), no attorney ~~may~~ shall disclose or permit to be disclosed to [Def], members of [Def's] family, or anyone else, the ~~address or telephone number~~ personal identifying information of a [V] or [W] whose name is disclosed to the attorney pursuant to [PC 1054.1



subd. (a)], **other than the name of the victim or witness**, unless ... permitted to do so by the court after a hearing ... showing ... good cause.

(2) ... [A]n attorney may disclose ... the ~~address or telephone number~~ personal identifying information of a [V or W] to persons employed by the attorney or ... appointed by the court to assist in ... [Def's] case if that disclosure is required for that .... Persons provided this info[.] ... shall be informed by the attorney that further dissemination ... is prohibited.

~~(3) Willful violation of this subdivision by an attorney, persons employed by the attorney, or persons appointed by the court is a misdemeanor.~~

(b) If [Def] is acting as his or her their own attorney, the court shall endeavor to protect the ~~address and telephone number~~ personal identifying information of a [V or W] by providing for contact only through a [licensed] private investigator ... appointed by the court or by ... other ... restrictions, absent a showing of good cause as determined by the court.

*(c) ...[P]ersonal identifying information has the same definition as in [PC] 530.55, except that it does not include name, place of employment, or an equivalent form of identification.*

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## DIVERSION

See “Fees, Fines, Penalties, and Administrative Costs,” for elimination of the administrative fee portion of the PC 1001.90.

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See Postconviction Relief, below.

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Amends PC 1385

***(c)(1) [T]he court shall dismiss an enhancement if it is in the furtherance of justice to do so, except if dismissal ... is prohibited by any initiative ....***

**Proof of ... [any] of these ... weighs greatly in favor of dismissing the enhancement, unless the court finds that dismissal ... would endanger public safety. “Endanger public safety” means there is a likelihood that the dismissal ... would result in physical injury or other serious danger to others.**

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(A) ... [T]he enhancement would result in a discriminatory racial impact as described in [the Racial Justice Act, PC 745, subd. (a)(4)].

(B) Multiple enhancements are alleged in a single case. [If so], all enhancements beyond a single enhancement shall be dismissed.

(C) The application of an enhancement could result in a sentence of over 20 years. [If so], the enhancement shall be dismissed.

(D) The ... offense is connected to mental illness.

(E) The ... offense is connected to prior victimization or childhood trauma.

(F) The ... offense is not a violent felony [in PC 667.5, subd. (c)].

(G) [Def] was a juvenile when they committed the ... offense or any prior juvenile adjudication [triggering] the enhancement ... .

(H) The enhancement is based on a prior ... over five years old.

(I) Though a firearm was used ..., it was inoperable or unloaded.

(4) The circumstances ... in paragraph (2) [Sic: probably should be (3)] are not exclusive and the court [can] dismiss or strike an enhancement in accordance with subd[.] (a).

(5) For ... subparagraph (2)(D) [Sic, probably should be (3)(D)] .... a mental illness is a mental disorder as identified [in the DSM-5, or future editions or revision of the DSM], [listing several examples] but excluding antisocial personality disorder, borderline personality disorder, and pedophilia.

**(6) [Definitions]: (A) “Childhood trauma” [defined at length]. (B) “Prior victimization” [defined at length].**

[Note that circumstances (c)3(B) and (c)3(C) say that if they apply, the court “shall” dismiss the enhancement, but the others in (c)(3) do not. Perhaps this means that the “great weight” given to those two circumstances is 100%, but they still can’t be dismissed if that would endanger public safety.]

### *Gang Enhancements: The Step Forward Act of 2021*

Amends PC 186.22

**This bill extends the sunset date of the sentence provision in PC 186.22, subd. (b)(3).**

Here, from section 3 of this bill, is PC 186.22, subd. (b)(3) as it will read until January 1, 2023, unless that date is deleted or extended. (This is unchanged from the subd. (b)(3) as it read before this bill.)

**(3) The court shall select the sentence enhancement that, in the court's discretion, best serves the interests of justice and shall state the reasons for its choice on the record at the time of the sentencing in accordance with the provisions of subdivision (d) of Section 1170.1.**

Here, from section 4 of this bill, is PC 186.22, subd. (b)(3) as it will read after Jan. 1, 2023, unless the sunset proviso in Section 3 is deleted or extended.

*(3) The court shall [impose] the middle term of the ... enhancement, unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice ... on the record ....*

Note: sections 3 and 4 have the same text for all of PC 186.22, except for subdivision (b)(3), and for the sunset clause. In other words, even if Subd. (b)(3) does sunset on Jan. 1, 2023, the entire rest of PC 186.22 will be unchanged.

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## EVIDENCE

See also “Crimes” for major reforms to what evidence defines a “gang” for PC 186.22, and for a shortening of the list of predicate offenses for gang purposes.

See also the last paragraphs of “California Public Records Act” for a non-substantive change to EC 1157.7

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## Pitchess discovery now reaches back more than five years.

SB 16 (Stats. 2021, Ch. 402)

Amends EC 1045 and PC 832.5

See also “Law Enforcement.” for amendments to PC 832.7, 832. and others.

Amended PC 1045, subdivision (b):

(b) In determining relevance [of records to be disclosed], the court shall examine the information in chambers ..., and shall exclude from ~~disclosure~~ ***disclosure both of the following:***

~~(1) Information consisting of complaints concerning conduct occurring more than five years before the event or transaction that is the subject of the litigation in aid of which discovery or disclosure is sought.~~

~~(2)~~ (1) In any criminal proceeding the conclusions of any officer investigating a complaint filed pursuant to Section 832.5 of the Penal Code.

~~(3)~~ (2) Facts sought to be disclosed that are so remote as to make disclosure of little or no practical benefit.

Amended PC 832.5, subd. (b).

(b) Complaints and any reports or findings relating to these ... complaints, including all complaints and any reports currently in the possession of the department or agency, shall be retained for a period of at least five years, no less than 5 years for records where there was not a sustained finding of misconduct and for not less than 15 years where there was a sustained finding of misconduct.

**A record shall not be destroyed while a request related to [it] is being processed or ... litigat[ed] to determine whether [it] is subject to release ....**

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**In sexual assault trials, evidence of V’s “manner of dress” excluded on the issue of consent.**

[AB 1171 \(Stats. 2021, Ch. 626\)](#)

Amends EC 1103

See “Background Checks” and “Crimes for other aspects of AB 1171.

Note: EC 1103 concerns consent. EC 782 concerns credibility.

This amendment makes “evidence of the manner in which the victim was dressed” inadmissible “on the issue of consent,” with no exceptions.

From the Legislative Counsel’s Digest for AB 939 [making the same change].

[Before this bill, the law] prohibit[ed], [in trials] ... of specified sex crimes, [admitting] evidence of the manner in which [V] was dressed, when offered ...] on the issue of consent, unless the court [found it] relevant and admissible in ... interests of justice.

This bill ... prohibit[s] the court from admitting evidence, ... of the manner in which [V] was dressed, upon [i.e., “despite” GB] a finding that the evidence is relevant and admissible....

... The California Constitution provides that relevant evidence shall not be excluded in any criminal proceeding except as provided by statute enacted by a  $\frac{2}{3}$  vote of the membership of [Legislative] house ....

[This bill passed both houses by greater than  $\frac{2}{3}$  vote in each.]

The Substantive Change to EC 1103, subds. (c)(2) and (c)(3):

**[c](2) ...[E]vidence of the manner in which [V] was dressed at the time of the ... offense ~~shall~~ is not be admissible ... on the issue of consent in any**





Paragraph added to EC 782, re-numbered and re-lettered Subdivision (b)

**(b)(2) As used in [EC 782], “evidence of sexual conduct” includes those portions of a social media account about the complaining witness, including any text, image, video, or picture, which depict sexual content, sexual history, nudity or partial nudity, intimate sexual activity, communications about sex, sexual fantasies, and other information that appeals to a prurient interest, unless it is related to the alleged offense.**

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## **FEES, FINES, PENALTIES, AND ADMINISTRATIVE COSTS**

**17 administrative fees repealed.**

**CAUTION:** other costs in the effected statutes, including restitution fines, restitution, and “diversion restitution” are not repealed.

AB 177 (Stats. 2021, Ch. 257) [Effective on September 23, 2021]

Background: In 2021, AB 1869 (Stats. 2020, Ch. 92) repealed 23 similar fees.

From the Assembly Floor Analysis of September 8, 2021:

[This bill] Eliminates 17 ... administrative fees as of Jan[.] 1, 2022, and ... makes the remaining balance of these ...[,] as of Dec. 31, 2021, *unenforceable, uncollectible, and vacates any portion of a judgment imposing [them]....*

**The fees repealed are [re-arranged in numerical order]:**

## Penal Code

**1001.15, and 1001.16,** (repealed entirely; had permitted the court to impose an administrative fee for certain costs in diversion programs.)

**1001.90** (Repeals the 10% fee for costs of collecting the diversion restitution fee [that fee remains].)

**1202.4 subd. (l)** (Repeals the 10% fee that covered the administrative cost of collecting the restitution fine. All other aspects of this section remain the same, including the restitution fine and actual restitution.)

**1203.1, subd. (l),** (Repeals the 15% fee that covers the administrative cost of collecting victim restitution. (All other aspects of this § remain the same.)

**1203.1ab,** (Repeals the requirement that D pay for selected drug testing.)

**1203.(1)(c), 1203.1(m).** (Repeals these §§ that had authorized the court to order D to pay costs of incarceration.)

**1203.4(a).** (Repeals the \$60 fee that D could be ordered to pay.)

**1203.9.** (Repeals the authorization of the receiving court and probation department to assess additional costs.)

**1205, subd. (e).** (Repeals the fee that D could be assessed to make payments. (Other aspects of this remain the same.)

**1214.5.** (Repealed entirely. Had permitted 10% interest on restitution.)

**2085.5** (Repealed several 10% fees that could be assessed from prisoners, parolees, and county jail inmates to collect restitution. Other fees remain.)

**2085.6, and 2085.7** (Repeals the 10% fee for D's on postrelease community supervision or mandatory supervision, for collecting V-restitution.)

### **Vehicle Code**

**40508.5** (repealed entirely. Had permitted \$15 fee for violating a written promise to appear (or a continuance of that.)

**40510.5** (Repealed a \$35 fee to pay infraction forfeited bail in installments.)

(a) The balance of any court-imposed costs pursuant to [PC] 987.4, [987.5, subd. (a)], ... 987.8, 1203, 1203.1e, 1203.016, 1203.018, 1203.1b, 1208.2, 1210.15, 1463.07, 3010.8, 4024.2, and 6266, as [they] read on June 30, 2021, [are] unenforceable and uncollectible and any [order] imposing [them] shall be vacated.

**(b) On and after Jan[.] 1, 2022 the balance of any court-imposed costs pursuant to [PC] 1001.15, 1001.16, 1001.90, 1202.4, 1203.1, 1203.1ab, 1203.1c, 1203.1m, 1203.4a, 1203.9, 1205, 1214.5, 2085.5, 2085.6, or 2085.7, as [they] read on Dec[.] 31, 2021, [are] unenforceable and uncollectible and any [order] imposing [them] shall be vacated.**

**On and after Jan[.] 1, 2022, the unpaid balance of any court-imposed costs pursuant to [VC] 40508.5 and [VC 40-510.5, subd. (g)] as [they] read on Dec[.] 31, 2021, [are] unenforceable and uncollectible and any [order] imposing [them] shall be vacated.**

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See “Briefly Noted”

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Only California Forms, promulgated by the Judicial Council, are included.  
Local Forms are not included.

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## **5 New Forms for Juveniles re: Short-Term Residential Programs**

See also: Rules, for new Rule 5.618, on Short-Term Residential Programs.

These forms were effective Oct. 1, 2021. Some are for mandatory use.

The number of each Form here is a link to the actual form.

<a href="#"><u>JV-235*</u></a> 	Placing Agency's Request for Review of Placement in Short-Term Residential Therapeutic Program. This is a mandatory form
<a href="#"><u>JV-236*</u></a> 	Input on Placement in Short-Term Residential Therapeutic Program. This is a mandatory form.
<a href="#"><u>JV-237*</u></a> 	Proof of Service—Short-Term Residential Therapeutic Program Placement. This form is for mandatory use.
<a href="#"><u>JV-238*</u></a> 	Notice of Hearing on Placement in Short-Term Residential Therapeutic Program. This is an optional form.
<a href="#"><u>JV-239*</u></a> 	Order on Placement in Short-Term Residential Therapeutic Program. This is an optional form.

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## IMMIGRATION AND CRIMINAL LAW

*PC 1437.7 now permits the motion after conviction by trial.*

AB 1259 (Stats. 2021, Ch. 420)

Amends PC 1437.7

From the Legislative Counsel's Digest.

[PC 1473.7] allows a [Def] who is no longer in ... custody to [move] to vacate a conviction or sentence based on a prejudicial error damaging [Def's] ability to ... understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or [no contest].

This bill [in addition] authorize[s] a [Def] to make that motion based on a prejudicial error damaging to the moving party's ability to ... understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a conviction or sentence [after trial].

[GB: This allows Defs who went to trial and were convicted of a deportable crime when, e.g., they did not know they could have pled to a non-deportable one, to move to vacate the conviction.]

PC 1473.7, subdivisions (a)(1) and (e)(4), as amended.

(a) A person who is no longer in criminal custody may file a motion to vacate a conviction or sentence for any of the following reasons:

(1) The conviction or sentence is legally invalid due to prejudicial error damaging the moving party's ability to ... understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere. ***conviction or sentence...***

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JAIL

**See “Prisons and Jails**



**If the court [finds] there is a ... likelihood that an objectively reasonable person would view race [etc.] or perceived membership ... in the groups, as a factor in ... the peremptory ..., the objection shall be sustained.**

**The court need not find purposeful discrimination to sustain the objection. The court shall explain the reason for its ruling on the record.**

**[The] A motion ... [is] deemed a ... presentation of claims asserting ... discriminatory exclusion ... in violation of the [U.S. and CA] Constitutions.**

**(2)(A) ... [A]n objectively reasonable person is aware that unconscious bias, ... [can] result[ ] in the unfair exclusion of potential jurors ....**

**(B) “[S]ubstantial likelihood” means more than a mere possibility but less than a standard of more likely than not.**

**(C) “[U]nconscious bias” includes implicit and institutional biases....**

**(e) A peremptory ... for any of the following reasons is presumed ... invalid unless the party exercising [it] ... show[s] by clear and convincing evidence that an objectively reasonable person would view the rationale as unrelated to a prospective juror’s race, [etc.] and that the reasons ... bear on the prospective juror’s ability to be fair and impartial....:**

**(1) Expressing a distrust of or having a negative experience with law enforcement or the criminal legal system.**

**(2) Expressing a belief that ... officers engage in racial profiling or that criminal laws have been enforced in a discriminatory manner.**

(3) Having a close relationship with people who have been stopped, arrested, or convicted of a crime.

(4) A prospective juror's neighborhood.

(5) Having a child outside of marriage.

(6) Receiving state benefits.

(7) Not being a native English speaker.

(8) The ability to speak another language.

(9) Dress, attire, or personal appearance. (10)[to] (13)....

(f) [T]he term "clear and convincing" refers to the degree of certainty the factfinder must have in determining whether the reasons given for the ... peremptory challenge are unrelated to the prospective juror's ... group membership, bearing in mind conscious and unconscious bias.

... [A] presumption of invalidity [is] overcome. [if the] factfinder ... determine[s] ... it is highly probable that the reasons given for the ... peremptory ... are unrelated to conscious or unconscious bias and are ... specific to the juror and ... that juror's ability to be fair and impartial....

(g)(1) The following reasons for peremptor[ies] have historically been associated with improper discrimination in jury selection:

(A) The prospective juror was inattentive, or staring or failing to make eye contact.



**(B) The prospective juror exhibited either a lack of rapport or problematic attitude, body language, or demeanor.**

**(C) The prospective juror provided unintelligent or confused answers.**

**(2) Th[os]e reasons ... are presumptively invalid unless the ... court ... confirm[s] that the ... behavior occurred, based on the court's ... observations or [those] of counsel for the objecting party. Even [then], the counsel offering the reason shall explain why [that] demeanor, [etc.] ... matters ....**

**(h) Upon a court granting an objection to the improper exercise of a peremptory challenge, the court shall do one or more of the following:**

**(1) Quash the jury venire and start jury selection anew. This remedy shall be provided if requested by the objecting party.**

**(2) If the motion is granted after the jury has been impaneled, declare a mistrial and select a new jury if requested by the defendant.**

**(3) Seat the challenged juror.**

**(4) Provide the objecting party additional challenges.**

**(5) Provide another remedy as the court deems appropriate.**

**(i) This section applies [when] jury selection begins ... after Jan[.] 1, 2022.**

**(j) The denial of an objection ... shall be reviewed ... de novo, with the trial court's express factual findings reviewed for substantial evidence.**

**The appellate court shall not impute to the trial court any findings ... that the trial court did not expressly state....**



**DJJ not taking new commitments (almost) and to close by July 1, 2023. Secure Youth Treatment Facilities.**

[SB 92 \(Stats. 2021, Ch. 18\)](#). Effective May 14, 2021

Amends PC 3056, WI 208, 208.5, 607, 726, 733.1, 736.5 [closes DJJ on June 30, 2023], 1731.5, 1731.6, 1752.1, 1752.15, 1767.35, 1991, and 2250. Amends and repeals WI 704, 707.2, and 1731.7

Adds WI 731 [who can still be committed to DJJ until it finally closes]

Adds WI 779.5 [Juvenile Court provisions about Secure Youth Treatment Facilities.]

Adds Article 23.5 to WI part 1, division 2, consisting of WI 875. 875.5 and 876, allowing counties to establish *Secure Youth Treatment Facilities* [SYTF].

From the LEGISLATIVE COUNSEL'S DIGEST [Edited, with Editorial features added]

Existing law ... prohibits ... commitment ... to the Division of Juvenile Justice [DJJ] unless ... a motion was filed to transfer the ward from the juvenile court to [adult] court ....

[This bill requires:]

- DJJ to close on June 30, 2023....
- counties to establish **[SYTF]** for wards [based on offenses that would have resulted in DJJ] [who are age] 14 ... or older ....
- the court, when committing a ward to [an SYTF] facility, to set a ... term of confinement ... based on the most serious recent offense .... and require the court, within 30 days of [that] ..., to receive, review, and approve an individual rehabilitation plan ... from the probation department and any other entity ... designated by the court for development of the plan.
- the court to hold a progress ... hearing ... [at least] every 6 months .... The ... court [can], at the conclusion of a ... hearing, or at a separately scheduled hearing, ... order a ward ... transferred from [an SYTF] to a less restrictive program.

The bill ..., by July 1, 2023, require[s] the Judicial Council to develop and adopt a matrix of offense-based classifications to be applied by the juvenile courts in all counties....

The bill ... prohibit[s] a court from committing a juvenile to any juvenile facility for [more than the] middle term of imprisonment that could be imposed upon an adult ....

This bill ... require[s] the probation [dep't] to request [P] to petition the committing court for an order directing that the person remain subject to the control of the [probation] [dep't] [after] discharge if the person confined is ... dangerous ... because of the person's mental or physical condition, disorder, or other problem that causes the person to have serious difficulty controlling their dangerous behavior. The bill ... establish[es] the process for the petition, probable cause hearing, trial, continued detention, and appeal ....

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**Orders transferring minors to adult court are immediately appealable and cannot be heard after conviction.**

[AB 624 \(Stats. 2021, Ch. 195\)](#)

Adds WI 801

Added WI 801 (Paragraph breaks added for clarity.):

**(a) An order transferring a minor from the juvenile court to [adult] court [can be immediately appealed] if a notice of appeal is filed within 30 days of the [transfer] order....**

**An order transferring the minor from the juvenile court to a court of criminal jurisdiction may not be heard on appeal from the judgment of conviction.**

**(b) Upon request of the minor, the superior court shall issue a stay of the criminal court proceedings until a final determination of the appeal.**

**The superior court shall retain jurisdiction to modify or lift the stay upon request of the minor.**

**(c) The appeal shall have precedence in the court to which the appeal is taken and shall be determined as soon as practicable ....**

**(d) The Judicial Council shall adopt rules of court to ensure ....:**



**(b) If [Def] is found ... incompetent, the trial, judgment, or hearing ... shall be suspended and the court may do either of the following:**

**(1) (A) Conduct a ... Mental Health Diversion [hearing, PC 1001.35 et seq.] ..., and, if ... [Def. is] eligible, grant diversion ... for [up to] one year ... or the maximum ... for the most serious ... charge[ ] ..., whichever is shorter.**

**(B) ...[A Mental Health Diversion] hearing ... shall be held no later than 30 days after the finding of incompetence. If ... delayed beyond 30 days, ... [Def. must be] released on their own recognizance ....**

**(C) If [Def] performs satisfactorily on [Diversion], the court shall dismiss the criminal charges....**

**(D) If ... [Def is] ineligible ... [under PC 1001.36, subd. (b) or (d)] ..., the court may ... hold a hearing to ... do any of the following:**

**(i) Order modification of the treatment plan....**

**(ii) Refer [Def] to assisted outpatient treatment pursuant to [WI] 5346 .... [if] ... services are available ..., and the agency agrees to accept ... the [Def]. A hearing ... for [this] shall be held within 45 days ....**

[WI 5346 is part of the “Assisted outpatient treatment” program, a.k.a. “Laura’s Law.” This is being adopted by many counties. GB]

**If the hearing is delayed beyond 45 days, the court shall order [an in-custody D] released on their own recognizance pending that hearing.**

**If [Def] is accepted into assisted outpatient treatment, the charges shall be dismissed pursuant to [PC] 1385.**

**.... If a [conservatorship] petition is not filed within 60 days .... [an in-custody Def. must be] released ... pending conservatorship proceedings. If [one is established], the charges shall be dismissed ....**

*(c) If [Def] is ... incompetent and is on ... [misdemeanor] probation ..., the court shall dismiss the ... revocation matter and may return [Def] to supervision.... [T]he court may modify the terms and conditions of supervision to include ... mental health treatment.*

***A [Def.] not in ... custody shall ... receive day for day credit against the term of diversion from the date [Def] is accepted into diversion....***

**PC 4019 Sentence Reduction Credits for time in “1368” treatment.**

Amends PC 4019.

[Background], by GB. Restoration to competency treatment has, in the past, been only in State Hospitals. Neither Jail or Prison sentence reduction credits have not been allowed for such time spent in treatment.

[In recent years, this treatment has been allowed in a slowly growing number of specially equipped and qualified county jails.

[In 2018, PC 4019, subd. (a)(8) was amended to allow for normal county jail sentence reduction credits (4 days deemed served for every 2 actual (PC 4019, subd. (f)), for people being treated for restoration in those county jails.

From the Legislative Counsel's Digest:

“This bill ... extend[s] ... conduct credits to persons confined in a state hospital or other mental health treatment facility pending their return of mental competency.

PC 4019, subdivision (a)(8), as amended:

**[(a) Sentence reduction credits are allowed:] ....**

**(8) When a prisoner is confined in or committed to a state hospital or other mental health treatment facility, or to a county jail treatment facility, as defined in ... in [incompetent to stand trial, “1368”] proceedings....**

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## PEACE OFFICERS

See also: "Briefly Noted" for (1) increase of minimum age from 18 to 21; (2) development of a "modern policing degree program, and (3) regulation of military equipment.

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**More records of major misconduct available through the CPRA.**

SB 2 (Stats. 2021, Ch. 409, § 5.5)

Amends PC 832.7.



[Note, [SB 16 \(Stats 2021, Ch. 402\)](#), has an identical amendment to PC 832.7, and technically, is superseded SB 2; that makes no difference here. I include the text from SB 16 because this bill has the relevant legislative history.]

See “Evidence” for SB 16’s amendment of EC 1045, deleting the 5-year reach back limit, and conforming changes to PC 832.5.

From SB 16’s Senate Floor Analysis for Sept. 1, 2021:

“This bill expands the categories of police personnel records ... subject to disclosure under the California Public Records Act (CPRA) [under 2018’s [SB 1421](#)]; and modifies existing provisions regarding the release of records subject to disclosure....

“[E]xcept as specified, peace officer or custodial officer personnel records and records maintained by any state or local agency pursuant to citizens' complaints ... are confidential and shall not be disclosed in any criminal or civil proceeding except by [*Pitchess*] discovery.

“[\[PC 832.5, subd. \(b\)\(1\)\(A\)\]](#) [p]rovides that the following records ... shall not be confidential and shall be made available for public inspection pursuant to the CPRA:

“A record relating to the report, investigation, or findings of ...:

“(i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer; or

“(ii) An incident in which the use of force by a peace officer or custodial ... resulted in death, or in great bodily injury.

[PC 832.5, subd. (b)(1)(B):] Any record relating to an incident in which a sustained finding was made by any law enforcement agency *or oversight agency* that a peace officer or custodial officer engaged in sexual assault involving a member of the public.

“[PC 832.5, subd. (b)(1)(C):] Any record relating to an incident in which a sustained finding was made by any law enforcement agency *or oversight agency* of dishonesty by a peace officer or custodial officer, .... directly relating to the reporting, investigation [or prosecution of a

crime], or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence....”

This bill adds to the above categories of records obtainable under the CPRA., that is, those listed in PC 832.5, subd. (b)(1)(A)(i) and (ii) and PC 832.5, subd. (b)(1)(C), the following four:

Two of the added four are in PC 832.5, subd. (b)(1)(A), at (iii) and (iv)

**(iii) A sustained finding involving a complaint that alleges unreasonable or excessive force.**

**(iv) A sustained finding that an officer failed to intervene against another officer using force that is clearly unreasonable or excessive.**

And two of the added four are PC 832.5, subd. (b)(1)(D) and subd. (b)(1)(E)

**(D) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a [peace or custodial] officer engaged in conduct including, but not limited to, verbal statements, writings, online posts, [etc.], involving prejudice ... against a person on the basis of race, religious creed, color, national origin, ancestry, physical [or] mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.**

**(E) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that the peace officer made an unlawful arrest or conducted an unlawful search.**

*So, effective January 1, 2022, eight categories of records obtainable through the CPRA; these are listed in PC 832.5, subds. (b)(1)(A)(i) to (iv), and subd (b)(1)(B) to(E).*

Note the different wording in these eight categories: an “incident” (“[PC 832.5, subds. (b)(1)(A)(i) and (ii)]; “Any record relating to an incident in which a sustained finding was made. (PC 832.5, subds. (b)(1)(B) to (E)); and a “sustained finding” (PC 832.5, subds. (b)(1)(A)(iii) and (iv)).

**Exceptions, restrictions, and explanations.** on the availability of the above 8 categories of records under the CPRA are found in PC 832.5, subds. (b)(2) to (9), and (b)(11).

PC 832.5, subd (b)(2)(10) says the agency can charge the cost of copying the records, but not for the costs of searching for, editing, or redacting them.

PC 832.5, subd (b)(12) restricts application of the attorney-client privilege. The purpose of these restriction, according to the Senate Floor Analysis for September 1, 2021, are “ to prevent the redaction of factual information that is uncovered in an investigation that is conducted by a public entity simply because they hire an attorney to conduct the investigation;” and to respond to agencies flouting of the law by allowing a court to impose civil penalties ... for delaying disclosure of [these] records, and increasing attorney’s fees for litigation ... to discourage violations ... and increase compliance.”

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**Techniques that risk causing “positional asphyxia” are banned.**

AB 490 (Stats. 407, Ch. 490)

Amends GC 7286.5

[GC 7286.5 banned law enforcement agencies from authorizing the use of a carotid restraint or choke hold. This bill expands that prohibition.]

Here are the amended provisions of GC 7286.5 (paragraph break added)

**[(a)](2) A law enforcement agency shall not authorize techniques or transport methods that involve a substantial risk of positional asphyxia.**

...

**[(b)](4) "Positional asphyxia" means situating a person in a manner [compressing] their airway [reducing] the ability to [adequately breathe].**

**This includes ... any action in which pressure or body weight is unreasonably applied against a restrained person's neck, torso, or back, or positioning a ... person without ... monitoring for signs of asphyxia.**

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*Use of Force: Restrictions on use; duties when used, both expanded.*

AB 26 (Stats. 2021, Ch. 403)

Amends GC 7286

**GC 7286, as amended.**

**(a).... (1)“Deadly force” means any use of force that creates a substantial risk of causing death or serious bodily injury. Deadly force includes, but is not limited to, the discharge of a firearm.**

*(2) “Excessive force” means a level of force that is found to have violated [PC] 835a ..., the requirements on the use of force [in] this section, or any other law or statute.*

~~(2)~~ (3) “Feasible” [defined].

*(4) “Intercede” includes, but is not limited to, physically stopping the excessive use of force, recording [it] ... documenting it [and others].*

*documenting efforts to intervene, efforts to deescalate [it] ..., and confronting the offending officer about the excessive force during the use of force and, if the officer continues, reporting to dispatch or the watch commander on duty....*

*...(6) “Retaliation” [defined]*

(b) Each law enforcement agency shall ... maintain a policy that provides a minimum standard on the use of force[,] [that] include[s] ...:

[(1) — (3)]

*(4) A prohibition on retaliation against an officer that reports a suspected violation of a law or regulation of another officer to a supervisor or other person ... who has the authority to investigate the violation.*

[(5) – (17)]

*~~---~~(18) ... prohibit[ing] an officer from training other[s] ... for ... at least [3] yrs. after] an abuse of force complaint against the officer is substantiated.*

**[(17) -23]**



Amended PC 422.87 [Note the word “may” in (a).]

(a) Each local law enforcement agency may adopt a hate crimes policy. Any ... agency that updates ... or adopts a new hate crimes policy shall include, but not be limited to, ... the following:

(1).... (2).... (3)(A) Information regarding bias motivation.

(B)...., “bias motivation” is a preexisting negative attitude toward actual or perceived characteristics referenced in [PC] 422.55. ...., bias motivation may include, but is not limited to, [a wide variety of factors, including] ..., *discriminatory selection of victims*,....

(C) [Factors in “recognizing suspected disability-bias hate crimes.”]

*(D) In recognizing suspected religion-bias hate crimes, the policy shall instruct officers to consider whether there were targeted attacks on, or biased references to, symbols of importance [to,] or articles ... of ... significance in, a particular religion. [Here are examples ]:*

*(i) In Buddhism, statues of the Buddha.*

*(ii) In Christianity, crosses.*

*(iii) In Hinduism, forehead markings, known as bindis and tilaks, Aum/Om symbols, and images of deities known as murtis.*

*(iv) In Islam, hijabs.*

*(v) In Judaism, Stars of David, menorahs, and yarmulke.*

*(vi) In Sikhism, turbans, head coverings, and unshorn hair, [and] beards.*

(4)... [to] ... (9).... (b) ....

Amended PC 13159.6

(a) The ~~commission~~ *[commission [on Peace Officer Standards and Training (POST)], in consultation with subject-matter experts [in various fields],*



**[(b) to (d): a wide variety of requirements for those guidelines and course.]**

(2)...

**(4) The commission shall develop and periodically update an interactive course ... and training for in-service peace officers on ... hate crimes and make [that] available via the learning portal.... [A course must be] taken by in-service peace officers every six years....**

*The new “Peace Officer Standards Accountability Advisory Board”*

Adds PC 13509.5 and 13509.6

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

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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: ...**

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

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SB 2 (Stats 2021, Ch. 409)

For other aspects of SB 2, see other parts of “Peace Officers,” above.

The bill ... disqualif[ies] any person who [was] certified as a peace officer ... and has surrendered [it] or had [it] revoked by the commission....

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*(b) Codifies ... People v. Lewis (2021) 11 Cal.5th 952, 961-970, regarding petitioners' right to counsel and the standard for ... a prima facie case.*

*(c) Reaffirms that the proper burden of proof at a resentencing hearing under this section is proof beyond a reasonable doubt.*

*(d) Addresses what evidence a court may consider at a resentencing hearing (clarifying ... People v. Lewis, supra, at pp. 970-972).*

**Sec. 2. [PC] 1170.95 ... is amended to read:**

(a) A person convicted of felony murder or murder under ~~a~~ *the natural and probable consequences doctrine or other theory under which malice is imputed to a person based solely on that person's participation in a crime, attempted murder under the* natural and probable consequences ~~theory~~ *doctrine, or manslaughter* may file a petition ... to have the ... ~~murder, attempted murder, or manslaughter~~ conviction vacated and to be re-sentenced ...when ... the following conditions apply:

(1) A [charging document] was filed ... that allowed [P] to proceed under a theory of felony ~~murder or~~ *murder, murder under the natural and probable consequences doctrine or other theory under which malice is imputed to a person based solely on that person's participation in a crime, or attempted* murder under the natural and probable consequences doctrine.

(2) The petitioner was convicted of ~~first degree or second degree murder, attempted murder, or manslaughter~~ following a trial or accepted a plea offer in lieu of a trial at which the petitioner could ~~be convicted for first degree or second degree~~ *have been convicted of murder or attempted* murder.

(3) The petitioner could not presently be convicted of first murder or ~~second degree~~ attempted murder because of changes to [PC] 188 or 189 made effective Jan[.]1, 2019.

(b)(1) The petition shall be filed with the court that sentenced ... petitioner and served ... on [P], and on the attorney who represented the petitioner ... or on the public defender.... The petition shall include ...:

(A)A declaration by ... petitioner that ~~he or she~~ ... petitioner is eligible for relief under this section, based on all the requirements of subd[.] (a).

(B) The superior court case number and year of the ... conviction.

(C) Whether the petitioner requests the appointment of counsel.

(2) If any [info.] ... is missing from the petition and cannot be readily ascertained ..., the court may deny the petition without prejudice ... and advise the petitioner that the matter cannot be considered without [the] info[.].

**(3) Upon receiving a petition in which the information required ... is set forth or ... where any missing information can readily be ascertained ..., if the petitioner has requested counsel, the court shall appoint counsel ....**

(c) ~~The court shall ... determine if the petitioner has made a prima facie showing .... If the petitioner has requested counsel, the court shall appoint counsel .... The~~ **Within 60 days after service of a petition that meets the requirements ... in subd[.] (b), [P] shall file and serve a response within 60 days of service of the petition and the response. The petitioner may file and serve a reply within 30 days after [that] .... After the parties have had an opportunity to submit briefings, the court shall hold a hearing to determine whether the petitioner has made a prima facie case for relief.** If the

petitioner makes a prima facie showing that ~~he or she~~ the petitioner is entitled to relief, the court shall issue an order to show cause. *If the court declines to make an order to show cause, it shall provide a statement fully setting forth its reasons for doing so.*

(d) (1) Within 60 days after the order to show cause has issued, the court shall hold a hearing [on] whether to vacate the ~~murder,~~ *attempted murder, or manslaughter* conviction and to ... resentence the petitioner on any remaining counts ....

(2) The parties may ... stipulate that the petitioner is eligible to have ~~his or her murder~~ *the murder, attempted murder, or manslaughter* conviction vacated and ~~for resentencing.~~ *to be resentenced.* If there was a prior finding ... that the petitioner did not act with reckless indifference to ... life or was not a major participant ..., the court shall vacate the ... conviction and resentence ... petitioner.

(3) At the [show cause] hearing ... the burden of proof shall be on [P] to prove, beyond a reasonable doubt, that the petitioner is *guilty of murder or attempted murder under California law as amended by the changes to [PC] 188 or 189 made effective Jan[.] 1, 2019. The [Evidence Code applies], except that the court may consider evidence previously admitted at any prior hearing or trial that is admissible under current law..... The court may also consider the procedural history ...recited in any prior appellate opinion. However, hearsay evidence that was admitted in a preliminary hearing pursuant to [PC 872, subd. (b)] shall be excluded ... as hearsay, unless the evidence is admissible pursuant to another exception to the hearsay rule. The prosecutor and the petitioner may also offer new or additional evidence .... A finding that there is substantial evidence to*

(e) If *The petitioner's conviction shall be redesignated as the target of offense or underlying felony for resentencing purposes if the* petitioner is entitled to relief ..., murder *or attempted murder* was charged generically, and the target offense was not charged, the ... ~~conviction shall be redesignated as the target offense or underlying felony ....~~ *charged*. Any ... statute of limitations shall not be a bar to the court's redesignation....

**(g) A person convicted of murder, attempted murder, or manslaughter whose conviction is not final may challenge on direct appeal the validity of that conviction based on the changes made to Sections 188 and 189 by Senate Bill 1437 ([Stats 2018, Ch 1015]).**

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Adds PC 236.15

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New Laws 2022



From the Legislative Counsel's Digest:

Existing law allows a person who was arrested or convicted of a nonviolent offense while they were a victim of human trafficking to petition the court, under penalty of perjury, for vacatur relief....

This bill ... create[s] similar relief for a person who was arrested or convicted of an offense that was the direct result of being a victim of intimate partner violence or sexual violence. ....

PC added section 236.15

**(a) If a person was arrested for or convicted of any nonviolent offense committed while the person was a [V] of intimate partner violence or sexual violence, the person may petition the court for vacatur relief of their convictions and arrests .... [P]etitioner shall establish, by clear and convincing evidence, that [the incident directly resulted from ] being [a V].**

**(b) The petition ... shall be ... under penalty of perjury and shall [contain specified information.]**

**(c) [Procedural matters].**

**(d) If opposition ... is not filed ... the court ... may grant the petition.**

**(e) [Provides for consolidation of petitions from multiple places.]**

**(f) If the petition is opposed or if the court ... deems it necessary the court shall schedule a hearing .... which] may consist off[:]**

**(1) Testimony by the petitioner, which may be required .... (2) Evidence and supporting documentation.... (3) Opposition evidence ....**

**(g) [Required findings for granting the petition]:**

(1) That the petitioner was a [V, as specified];

(2) The ... crime was a direct result of [that].

(3) [V] is engaged in a good faith effort to distance themselves from the perpetrator of the harm.

(4) It is in the best interest of the petitioner and ...of justice.

(h) ... [Contents and notice required of a vacatur order].

(i) ... [A] petitioner shall not be relieved of any financial restitution order that directly benefits the victim of a nonviolent offense....

(j) [Similar petition and vacatur provisions for Juveniles.]

(k) [The court must order various entities] ... to seal their records of the arrest [and then to destroy those records], and the court orders [for both sealing and destroying] within [specified times].

The court [must give] petitioner a copy of any court order concerning the destruction of the arrest records.

(l) [Timelines and other measure to protect V and others.]

(m) [What official documentation can be submitted as proof].

(n) [What “compelling” reasons permit the court to let petitioner, or their attorney, appear by telephone or video ...].

(o) ... [A vacatur] order [permits petitioner to] lawfully deny or refuse to acknowledge [that] arrest, conviction, or adjudication ....

(p) .... [T]he records of the arrest, conviction, or adjudication shall not be distributed to any state licensing board.

**(q) The record of a proceeding ... pursuant to this section that is accessible by the public shall not disclose the petitioner's full name.**

**(r) A court [granting relief] may take additional [curative] action....**

**(s) [Denials of petitions because of insufficient evidence may be without prejudice and may allow ... a reasonable time for cure....**

**(t) [Definitions of] (1) "Nonviolent offense" [and] (2) "Vacate."]**

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**Relief from former 3-yr drug and 1-yr prison priors for prisoners**

[SB 483 \(Stats 2021, Ch. 728\)](#)

Adds PC 1171 and 1171.1

**Background:** Effective. Jan. 1, 2018, the 3-year enhancement for drug convicts who had specified drug priors (except for HS 11380, adult involving minors) was repealed. And effective Jan. 1, 2020, the 1-year enhancement for prison priors (except for sexually violent priors) was also repealed. But this was not retroactive to those serving sentences for those whose case was final on appeal. This bill fixes that.

**From uncodified Section 1:**

**... [The] Legislature [intends] that ... this section ... not be a basis for [P] or [the] court to rescind a plea agreement....**

**New PC 1171.**

**(a) Any ... enhancement ... imposed prior to January 1, 2018, pursuant to [HS 11370.2] .... except for [those for priors of HS 11380] is legally invalid.**

*(b) [CDCR] and [County jails] shall identify [Defs'] ... serving a term for [that] ... and ... provide [their names and other relevant information], to the ... court [that imposed the enhancement] .... as follows:*

*(1) By March 1, 2022, for [Defs] who have served their base term and any other enhancements and are [now] serving [the enhancement] term .... [O]ther enhancements [are deemed] to have been served first.*

*(2) By July 1, 2022, for all other individuals.*

*(c) Upon receiving [that] information ...., the court shall review the [matter]. If the court determines that the ... judgment includes [a described] enhancement ... the court shall recall the sentence and resentence [Def]. The review and resentencing shall be completed .... (1) By October 1, 2022, for individuals who ... are currently serving [the enhancement].... (2) By December 31, 2023, for all other individuals.*

*(d)(1) Resentencing ... shall result in a lesser sentence ... unless the court finds by clear and convincing evidence that imposing a lesser sentence would endanger public safety. ....*

*(2) The court shall ... apply any other changes in law that reduce sentences or provide for ... discretion [to do so]....*

*(3) The court may consider postconviction factors, including, but not limited to, [Def's] disciplinary record and record of rehabilitation ...., evidence that reflects whether age, time served, and diminished physical*

**(4) Unless the court originally imposed the upper term, the court may not impose a sentence exceeding the middle term unless there are circumstances in aggravation [to justify that].... and those facts have been stipulated to ...., or have been found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial.**

**(e) The parties may waive a resentencing hearing. If the hearing is not waived, [it] may be conducted remotely ..., if [Def] agrees.**

**[New PC 1171.1, for 1-year prison priors, is almost the same as new PC 1170, with the same schedule for providing relief.]**

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Adds PC 1170.03

This bill moves PC 1170, former Subd. (d)(1) [sentence recall], to new PC 1170.03.

Note: This bill's uncodified Section 1 makes it plain that this bill is aimed mainly at the 35,000 (38%) of prisoners, many over age 50, who are serving life sentences, saving \$83K per year per inmate.

From the Legislative Counsel's Digest

Existing law authorizes a court, within 120 days after sentencing, ...or at any time upon a recommendation from [CDCR], the Board of Parole Hearings, the district attorney, to recall an inmate's sentence and resentence that inmate to a lesser sentence....

This bill ... require[s] the court to state its reasons for a resentencing decision on the record.... [T]he court [must] provide notice to [Def], set a status conference ... and appoint counsel.... The ... court [can] grant a resentencing without a hearing, if the parties ... agree[ ].

The bill ... create[s] a presumption favoring recall and resentencing ....

Here is new PC 1170.03

**(a)(1) When [Def]. .... has been [sent to prison] or [county jail on a felony], the court may, within 120 days of the ... commitment on its own motion, at any time upon the recommendation of [CDCR] or the Board of Parole Hearings [for a prisoner], the county [jail]. [P] .... or the Attorney General if [DOJ] prosecuted the case, recall the sentence and commitment ... and resentence [Def] .... whether or not [Def] is still in custody...**

**(2) The court, ... shall apply any changes in law that reduce sentences or provide ... discretion so as to eliminate [sentence] disparity ... and ... promote [sentencing] uniformity.**

**3) The ...court may, ... and regardless of whether the original sentence was imposed after a trial or plea agreement, do the following:**

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

**(B) Vacate [Def's] conviction and impose judgment on any necessarily included lesser offense or lesser related offense, whether or not that offense was charged [originally], and ... resentence [Def] to a reduced term ..., with the concurrence of ... [Def] and [P].**

[Note that reducing the term does not require anyone's agreement, but vacating the judgment, and sentencing on, lesser included or related offenses does.

**(4) ... [The] court may consider postconviction factors, including, but not limited to, [Def's] disciplinary [and rehabilitation] record ..., evidence that reflects whether age, time served, and diminished physical condition ... have reduced [Def's] risk for ... violence, and evidence [showing] that circumstances have changed ... so that continued incarceration is no longer in the interest of justice.**

**The court shall consider if [Def] [has or had] psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence, if [Def] was a [V] of intimate partner violence or human trafficking prior to or at the time of the ... offense, or if [Def] is ...or was a youth as defined ... at the time of the ... offense, and whether those ... were a contributing factor ... [of] the offense.**

**(5) Credit shall be given for time served.**

**(6) The court shall state on the record the reasons for its decision to grant or deny recall and resentencing.**

**(7) Resentencing may be granted without a hearing upon [stip.] ....**





**(b) Each participating [D.A. '] office shall ....:**

**(1) Develop ... a written policy [for this] ...[:] [which] may [consider] input ... by the ... public defender's office or a qualified contracted community-based organization ...**

**(2) Identify, ... and recommend the recall and resentencing of [inmates].**

**(3) ... [F]unding ... for the pilot [must] be used for ... resentencing [Def's], including ... ensuring adequate staffing of deputy district attorneys, paralegals, and data analysts ....**

**(c) [The D.A.'s] office may contract with a qualifying community-based organization .... [which]shall have specified experience and expertise].**

**(e) All funding provided to a participating public defender's office shall be used for ... ensuring adequate staffing of deputy public defenders and other support staff [to carry out the pilot]....**

**(f) Each participating district attorney's office shall utilize the ... template developed by the evaluator to identify and track specific measures .... [that] shall include ... the following [ten lengthy factors. ]**

**....**

**(g) ....**

**(h) ... Each pilot participant shall provide any information necessary to the evaluator's completion of its analysis.**

**(i) ... [CDCR], the State [Dep't of Soc. Serv., and Dep't of Child Support Serv.], shall provide any information needed [by] the ... evaluator[ ]....**



[See also CDCR’s web page “Good Conduct Credit Changes: Frequently Asked Questions.” <https://www.cdcr.ca.gov/credit-earning-opportunities-frequently-asked-questions/> . ]

More from CDCR’s web pages for “Credit Earning Opportunities”:  
**TYPES OF CREDIT.**

**Good Conduct Credit**

- **GCCs are awarded to eligible individuals who comply with all the rules ... and perform their duties as assigned.... GCC may be forfeited due to disciplinary action.**

Effective May 1, 2021, CDCR increased the credit-earning rate of GCCs for people convicted of violent crimes under Penal Code 667.5(c), as well as non-violent second and thirds strikers. See chart below:

Conviction Type	Previous Rate	New Rate (as of May 1, 2021)
Violent (PC 667.5(c))	20% (1 day of credit for every 4 days served)	33.3% (1 day of credit for every 2 days served)
Non-violent Second Striker	33.3% (1 day of credit for every 2 days served)	50% (1 day of credit for every 1 day served)
Non-violent Third Striker	33.3% (1 day of credit for every 2 days served)	50% (1 day of credit for every 1 day served)

**Minimum Security Credit**

- **... [MSC is] awarded to all eligible ... people who work in conservation (fire) camps, are trained as firefighters, or ... are assigned to minimum custody status.... 30 days of credit [are awarded] for every 30 continuous days served.**

### **Milestone Completion Credits**

- MCC is awarded for successful completion of rehabilitative or educational programs ... to prepare participants to find employment ....
- MCC is awarded in increments of not less than one week, but no more than 12 weeks, in a 12-month period.

### **Rehabilitative Achievement Credits**

- RAC is awarded to those who complete specified hours of approved self-help and volunteer public service activities.
- 10 days of credit may be awarded to someone who completes 52 hours of approved programming in a 12-month period.

### **Educational Merit Credits**

- EMC is awarded for completion of high school diploma or equivalency programs, higher education degrees, or the Offender Mentor Certification Program (OMCP).
- 90 ... days may be awarded for complet[ing] a high school diploma or ... equival[ant] ...[,] 180 days may be awarded [for] ... completion of associate, bachelor's [or] post-graduate degrees, and the OMCP.

### **Extraordinary Conduct Credits**

- [U]p to 12 months of credit may be awarded [for] perform[ance] [of] a heroic act in a life-threatening situation or [for] provid[ing] exceptional assistance in maintaining the safety and security of a prison.

**[Question by GB: Can You Calculate, With Precision, How Much Time an Inmate or Prospective Inmate Will Actually Serve?**

**[Answer: Even CDCR has trouble doing that.]** Here is from their FAQs:

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See “Supervision, Probation, Parole, Mandatory Supervision, and PRCS.”

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**The 2017 changes to Megan's Law Web Site finally become operative.**

Rewrites PC 290.46

Rewritten (technically, amended, repealed and added) PC 290.46

(a) [Unchanged, except that (a)(2)(A)(ii) has a minor change.]

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put on the web site] about [Def's.] SARATSO ... is unchanged]l. Any registrant whose info[.] is listed on the public Internet Web site on Jan[.] 1, 2022, by [DOJ] ..., may continue to be [listed] while the registrant is placed in the tier-to-be-determined category of PC 290, subd. (d)(5)].

(2) This [subd. (b)] appl[ies] to the following offenses and offenders: [This list is unchanged, except as follows]:

[(A) to (H) unchanged.]

(I) Subdivision (c) or (d) of Section 288a. [This reflects a non-substantive renumbering former sections 287 and 288a.]

(J) to (U) unchanged.

(V) A tier three offender, as described in [WI 290, subd. (d)(3)].

(c)(1) With respect to a [Def] who has been convicted of [committing or attempting] any of the offenses listed in, or who is ... described in, [PC 290 subd. (d)(2)] and who is a tier two offender, and with respect to a [Def] who has been convicted of [committing or attempting] [PC] 647.6, [DOJ] shall put on the] Web site [specified info[.] about (Def.); that list remains the same] [except that info[.] about [Defs] required to register [by] the juvenile court pursuant to [PC] 290.008 [i.e., Juveniles sent to DJJ, "or equivalent," for [PC 290 crimes]] shall not be [put] on the ... Web site.

Any [Def] whose info[.] is listed on the ... Web site on Jan[.] 1, 2022, ... may continue to be included [there] while [Def] is ... in the tier-to-be-determined category [of PC 290, subd. (d)(5)].

[The list in former (c)(2) is repealed, and replaced with:]

(2) Any [Def] whose info[.] was not included on the ... Web site on Jan[.] 1, 2022, and who is placed in the tier-to-be-determined category [of PC 290, subd. (d)(5)] may have the info[.] described [here] [put on the] Web site.

[Former (d) to (f) are repealed and replaced with new subd. (d). This new subd. repeats much of the info in the former subds.]

(d)(1)(A) [Def] ... may apply for exclusion from the ... Web site if ... [Def]'s only registerable offense is either of the following:

(i) and (ii) An offense for which [Def] [(i)] successfully completed probation, [or (ii) for which Def. is on probation] [and if, in either (i) or (ii), Def.] submits to [DOJ] a certified copy of [a specified] court document [proving] that [Def] was [V's] parent, stepparent, sibling, or grandparent and ... the crime did not involve ... oral copulation or [specified] penetration ... of either [V or Def.] by the penis ... or [a] foreign object....

(B) If, [after applying], [Def] commits a violation of probation resulting in ... incarceration ..., [the] exclusion, or application ... shall be terminated.

(C) ... "[S]uccessfully completed probation" means that during ... probation [Def] neither received [more]... jail or ... prison time for a violation ... nor was convicted [a crime] resulting in a sentence to ... jail or ... prison.

(2) If [DOJ] determines that a [Def] who [got] an exclusion under a former version of this subd[.] would not qualify ... under the current version ..., [DOJ] shall rescind the exclusion, [try] to provide notification to [Def] that the exclusion has been rescinded, and, no sooner than 30 days after notification is attempted, [put] info[.] about [Def] ...on the ... Web site ....

**(3) Effective Jan[.] 1, 2012, no [Def] shall be excluded [under] this subd[.] unless [Def] has submitted to [DOJ] documentation [proving] that [Def] has a SARATSO risk level of average, below average, or very low [under] the Coding Rules for the SARATSO static risk assessment instrument.**

*[Subdivision (e) is former subdivision (g), with some changes.]*

*(e)(1) A designated law enforcement entity, as defined in [PC 290.45. subd. (f)], may [put] info.] concerning [PC 290 registrants] to the public via an Internet Web site as specified in paragraph (2), [if] the info.] ... is also ... on [DOJ]'s Megan's Law Internet Web site.*

*(2) The law enforcement entity may [put on its own] Web site the info[.] ... in subd[.] (c) if it determines that [doing this] ... about a specific offender ... is necessary [for] public safety [based on specified criteria].*

**(3) The info[.] [permitted] ... may include the info[.] ... in [PC 290.45, subd. (b)]. [But Def's] address may not be disclosed unless [Def.'s] address is on [DOJ]'s ... Web site.**

**(f) [Unchanged from former subdivision (h); defines “offense.”]**

(g) ... [D]isclosure of info[.] [here] is not a waiver of exemptions under [other statutory restrictions, including the Public Records Act].

**[Subds. (h) to (m) are unchanged from former subds. (j) to (o).]**

[Note: California Megan's Law Website, <https://www.meganslaw.ca.gov/Default.aspx> , in addition to the website itself, has much useful information, including FAQs].

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## RULES OF COURT

See also: “Forms,” above.

Only California Rules, promulgated by the Judicial Council, are included. Local Rules and Forms are not included.

This treatise covers Rules issued through Nov. 30, 2021, eff. Jan. 1, 2022.

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**Electronic filing and service in criminal cases in superior court regulated.**

**Background:** California Rules of Court, Title Two (i.e., all Rules beginning “2.”) are “Trial Court Rule,” that apply to superior court. (Rules 2.1 and 2.2).

Chapter 2. of Title Two is “Filing and Service by Electronic Means.”

PC 690.5 is the statutory authority for electronic filing the superior court in criminal cases. It reads:

**[CCP 1010.6, subds. (a) and (b)], pertaining to the permissive filing and service of documents, are applicable to criminal actions, except as otherwise [provided] ....**

**(b) The Judicial Council shall adopt ... rules for the electronic filing and service ... in criminal cases in [superior court].**

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Application of PC 690.5 is now in Rules 2.251, 2.252, 2.253, 2.259, and 2.555.

Rule 2.251, as amended, effective Jan. 1, 2022:

**(a) Authorization for electronic service**

When a document may be served by mail, [or other specified means], the document may be served electronically under [CCP] 1010.6, [PC] 690.5, and the[se] rules .... **For purposes of electronic service made pursuant to [PC] 690.5, 8 express consent to electronic service is required....**

¶...¶

(k) Electronic service by or on court

(1) The court may electronically serve documents as provided in [CCP] 1010.6, **Penal Code section 690.5**, and the rules in this chapter.

¶...¶

**Advisory Committee Comment**

....The rule does not prescribe specific language for ... consent[ing] to electronic service.... [An example is] *Consent to Electronic Service and Notice of Electronic Service Address* (form EFS-005-24 CV)....

Rule 2.252, as amended effective January 1, 2022.:

**Rule 2.252 “General rules on electronic filing of documents.”**

(a) In general. A court may provide for electronic filing ... as provided under [CCP] 1010.6, [PC] 690.5, and the rules in this chapter.

Rule 2.253, “as amended, effective January 1, 2022:

**Rule 2.253. “Permissive electronic filing, mandatory electronic filing, and electronic filing by court order”**

**(a) Permissive electronic filing by local rule**

**A court may permit parties by local rule to file documents electronically in any types of cases, subject to the conditions in [CCP] 1010.6, 17 *[PC]* 690.5, and the rules in this chapter.**

Rule 2.255 as amended effective Jan. 1, 2022

**(h) Fees for electronic filing services not chargeable in some criminal actions**

*(1) Electronic filing service providers ... may not charge a service fee [for filing] ... in a criminal action [and] ... the ... filer is [P], [or] an indigent [Def], or court appointed counsel for an indigent [Def].*

*(2) .... “indigent [Def.]” means a [Def.]who the court has determined is not financially able to employ counsel.... Pending the court’s determination, “indigent [Def.]” also means a [Def.] the public defender is representing ...*

Rule 2.259 “Actions by court on receipt of electronic filing” also has provisions, effective January. 1, 2022, for criminal cases.

[Comment by GB: Many counties already have Local Rules on this subject in criminal cases, and in many other counties, electronic service and even filing is permitted informally. These amendments may be the beginning of formalizing and regularizing the rules, statewide.]

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**Placement [of a Juvenile] in short-term residential therapeutic program:**

[Note: 5 new forms for this have been adopted. See “Forms,” above.]

**New Rule 5.618**, effective on October 1, 2021.

Applicability: “**This rule applies to the court’s review under section 361.22 or 727.12 following the placement of a child or nonminor dependent in a short-term residential therapeutic program.**”

Here is the outline of this five-page new Rule:

**(a) Applicability.** **(b) Service of request for hearing**

**(c) Setting the hearing** **(d) Report for the hearing**

**(e) Input on placement** **(f) Approval without a hearing**

**(g) Conduct of the hearing**

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### Sealing of records ... in diversion cases ([WI] 786.5)

This rule, which “states the procedures to seal the records of persons who are subject to [WI] 786.5” is rewritten.

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**“Electronic signature” and “secure electronic signature” in appellate cases.**

Rule 8.70 Application, construction, and definitions is amended to add to  
subd. (c), definitions, the following:

**(10) An “electronic signature” is an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person [intending] to sign a document or record created, generated, sent, communicated, received, or stored by electronic means.**

**(11) A “secure electronic signature” is [an] electronic signature that is unique to the person using it [and under that person’s sole control], capable of verification, ..., and linked to data [so] that if the data are changed, the electronic signature is invalidated.**

The Advisory Committee Comment says

**Subdivision (c)(10).** The definition of electronic signature is based on the definition in the Uniform Electronic Transactions Act, [CC] 1633.2.

**Subdivision (c)(11).** The definition of secure electronic signature is based on the first four requirements of a “digital signature” set forth in [GC] 16.5(a)....

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**Requirements for signatures on appellate documents**

Rule 8.75. “Requirements for signatures on documents,” is, in part, substantially rewritten, particularly at subd. (b). The Advisory Committee Comment at subd. (b) is completely rewritten.

[Although that Comment repeatedly used words or phrases stating that this clarifies long standing caselaw, counsel at both the trial and appellate level are advised to read this rule and the comment carefully. GB]

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**Requirement for a Certificate of Probable Cause clarified.**

Rule 8.304. “Filing the appeal; certificate of probable cause” is clarified. [Comment by GB: however, this may not simplify the process.]

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**Rule 8.1115(e). Superior Court can cite a “review-granted” opinion to show a conflict in Court of Appeal opinions.**

[The text of the Rule is not changed.]

Three additional paragraphs are added to the Comment to clarify Rule 8.1115(e)(1) and 8.1115(e)(3). These became effective on April 1, 2021.

Here is the heart of added paragraph 3 to the Comment on Subd. (e)(1):

***[B]y ... administrative order of the Supreme Court, superior courts may choose to be bound by parts of a published Court of Appeal decision under review when [they] conflict with another ... appellate ... decision.***

Here is the heart of added paragraph 2 to the Comment on Subd. (e)(3):

... [W]hen the Supreme Court grants review of a published ... opinion, [it] may be cited, ... for its persuasive value, [and] for ... establishing the existence of a conflict in authority that ...allow[s] superior courts to exercise discretion under Auto Equity [Sales, Inc. v. Superior Court (1962)] 57 Cal.2d [450, 456, to choose between sides of [the] conflict.

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## SEARCH AND SEIZURE

### **Authority to Apply for a “Ramey arrest warrant” expanded.**

**AB 127, Stats. 2021, Ch. 20)**

**Amends PC 817**

### What is a “Ramey Warrant”?

There are many types of arrest warrants. E.g.:

- When a criminal complaint is filed. (PC 813.)
- Upon an indictment if Def. is FTA arraignment. (PC 945, 979.)
- When Def. is FTA, a BW can issue. (PC 1195)
- When Def. may be violating supervision. (PC 1203.2)
- Without filing of criminal charges, the court may authorize a residential arrest by issuing a so-called Ramey warrant (People v. Ramey (1976) 16 Cal.3d 263, 127), now codified as PC § 817.

[When a search warrant is issued under PC 1524, existing law does not say who can apply for one. But a *Ramey* warrant currently requires a peace officer to apply.

### From Senate Report for the June 8, 2021, hearing:

“Existing law allows for a non-peace officer to supply probable cause for a search warrant. Courts have interpreted this to allow unsworn [i.e., not peace officers] investigators or prosecutors, among others, to supply the necessary probable cause for a search warrant....

Under existing law, when prosecutors seek an arrest warrant for a member of law enforcement, they ... need the cooperation of a peace officer ... to supply the judge with sufficient information to establish probable cause to arrest. Should a peace officer refuse to cooperate, the prosecutor remains unable to proceed with an arrest warrant.” [*This bill changes that.*]

PC 817, subd. (a), as amended by AB 127:

(a)(1) ~~¶~~ **Before issuing an arrest warrant, the magistrate shall examine a declaration of probable cause is made by a peace officer or, when the defendant is a peace officer, an employee of a public prosecutor’s office of this state, in accordance with [the requirements of this section] as applicable, the applicable. The** magistrate shall issue a warrant ... if... satisfied ... that there exists probable cause that the offense ... has been committed and that [Def] ... committed [it].

**See also, for sentence reduction credits (time credits), see “Prisons and Jails” and see Mental Health (for time credits for “1368’s”)**

**See also Fees, Fines, and Penalty Assessments.**

**See also** “Enhancements” for part of “The STEP Forward Act of 2021.”

**See also Supervised Persons: Probation, [Etc].**

**See also, for Recall of Sentences, Postconviction Relief.**

**Felonies: trials on aggravating factors; other changes to PC 1170.**

SB 567 (Stats 2021, Ch. 731)

## Amends PC 1170

See below for SB 567's amendment to PC 1170.1

### **SB makes four main changes to PC 1170.**

First: trials on aggravating facts. (PC 1170, subd. (b))

PC 1170 applies to felonies with three possible prison terms, lower (mitigated), middle, or upper (higher, or aggravated).

Before 2007, the middle term was the presumptive term, but the court could find aggravating factors outweighed and impose the upper term. In that year, *Cunningham v. California* (2007) 549 U.S. 270, held that Def. cannot be sentenced to the upper term unless (except for prior convictions), Def. admits them or a jury (or judge in a court trial) finds aggravating facts beyond a reasonable doubt.



In the “*Cunningham* fix,” PC 1170 was amended to delete the provision that the middle term is the presumptive term, and, instead, permit the court to impose any of the three terms in its discretion. This bill changes the *Cunningham* fix.

Now, the court (with the exception of aggravation for prior convictions) cannot impose the aggravated term unless Def admitted the aggravating circumstances or they are found true beyond a reasonable doubt by a jury (or by the judge in a court trial).

The court, except when the aggravating circumstance is admissible to prove or defend against the charge or enhancement, (or is “otherwise authorized by law” [an undefined term]) must, on Def.’s request bifurcate the trial on the aggravating circumstances the trial of charges and enhancements.

**Second: Certain “contributing” factors can mean the lower term . New Subd. (b)(6).**

**Third: Resentencing expanded and taken out of 1170, subd. (d), and moved to new 1170.03.**

**Fourth, For resentencing of juveniles who had received life without parole terms, two new mitigating factor for the court to consider. (new subd. (d)(8) and (d)(9)**

(Technical note: this is § 1.3 of SB 567, which incorporates here and in new PC 1170.03, changes made to PC 1170 by the earlier-passed bills of AB 124 and AB 1540.)

PC 1170 as amended (in relevant part)

(a) [Only minor technical changes from prior law.]

**(b)(1) When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall, in its sound discretion, order imposition of a sentence not to exceed the middle term, except as otherwise provided in paragraph(2).**

**(2) The court may impose a sentence exceeding the middle term only when there are circumstances in aggravation of the crime that justify [that].**

and the facts underlying those circumstances have been stipulated to by [Def], or ... been found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial. Except where evidence supporting an aggravating circumstance is admissible to prove or defend against the charged offense or enhancement at trial, or it is otherwise authorized by law, upon request of [Def.], trial on the ... aggravate[ors] alleged in the indictment or information shall be bifurcated from [that] of charges and enhancements. The jury shall not be informed of the bifurcated allegations until there has been a conviction of a felony offense.

(3) ... [T]he court may consider the defendant's prior convictions in determining sentencing based on a certified record of conviction without submitting the prior convictions to a jury. This paragraph does not apply to enhancements imposed on prior convictions.

~~(b) When a~~ (4) [This concerns letters in mitigation and aggravation and is largely unchanged; some is now in new subd. (b)(5), below.]

(5) The court shall [state] on the record the facts and reasons for choosing the sentence .... The court may not impose an upper term by using the fact of any enhancement upon which sentence is imposed .... A [prison term] shall not be specified if imposition of sentence is suspended.

(6) ... [U]nless the court finds that the aggravating circumstances outweigh [such] that imposition of the lower term would be contrary to the interests of justice, the court shall order ... the lower term if any of the following was a contributing factor in the commission of the offense:

**(A) The person has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence.**

**(B) The person is a youth, or was a youth as defined ... at the time of the commission of the offense.**

**(C) Prior to [or at the time of] the instant offense, .... the person is or was a victim of intimate partner violence or human trafficking.**

**(7) Paragraph (6) does not preclude the court from imposing the lower term even if there is no evidence of those circumstances ....**

(c) [Unchanged. Court must state sentencing reasons; others.].

[Former subd. (d)(1), concerning recall of sentences, is moved to new PC 1170.03, and expanded. GB. Former subd. (d)(2) is now (d)(1), see “Postconviction Relief.”.]

~~(d)(1)....~~

[From former subd. (d)(2) – now (d)(1) –, to former (d)(8) – which is now (d)(7) –, except for renumbering and relettering, the text is unchanged.]

[The following added text, new subd (d)(8) and (d)(9), like the rest of former subd. (d)(2)(A) to (d)(2)(K) (now (d)(1) to (d)(13)) has to do with resentencing juveniles (upon their petition) who had been sentenced as adults to life without possible parole and incarcerated for at least 15 years. GB]

**(8)... [T]he court may also resentence the defendant to a term that is less than the initial sentence if any of the following were a contributing factor in the commission of the alleged offense:**



See “Felonies: Trials on aggravating factors: other changes to PC 1170.” above, at Subd. (b), new paragraphs (6) and (b)(7), and related discussion.

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**Enhancements w/ 3 terms: Aggravators must be proven or admitted.**

SB 567, Stats 2021, Ch. 731)

Amends PC 1170.1

See above for SB 567's amendment to PC 1170.

Similar to the amendment to PC 1170, above, this amendment that requires that for aggravating factors to apply, there must be a trial, or an admission.

PC 1170.1, subd. (d), as amended.

(d) ~~(1)~~ When the court imposes a [felony] sentence ... pursuant to [PC] 1170 or [PC 1168, subd.] (b) ..., the court shall also impose, in addition and consecutive to the offense ..., additional terms ... for any ... enhancements. If an enhancement is punishable by one of three terms, the court ~~shall impose the middle term unless there are circumstances in aggravation or mitigation, ...~~ ***shall ... order imposition of a sentence not to exceed*** the middle term.... ~~The court shall also impose any other additional term that the court determines [should] or as required by law shall run consecutive ....~~ ***except as otherwise provided in para[.] (2).***

**(2) The court may impose a sentence exceeding the middle term only when there are circumstances in aggravation that justify [this], and ... those circumstances have been stipulated to ...or ... been found true beyond a reasonable doubt ... by the jury or by the judge in a court trial.**

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SB 73 (Stats. 2021, Ch. 537)

**[Caution:** Some sentences in the legislative history say this bill ends mandatory denial of probation for all drug offenses. But there may be exceptions.]

HS 11370, subdivisions (a), (b), and (c) had made the many drug crimes in those subdivisions flatly ineligible for probation.

For the remaining two (HS §§ 11353 and 11361, and crimes “referred to in those sections”), new Subd. (e), permits probation in unusual cases.

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PC 1203.07 as rewritten (technically, it was repealed, and added).

This section had listed many drug crimes for which probation could only be granted in unusual circumstances that now are generally.

Rewritten PC 1203.07, subdivisions (a) and (c), say that Def's. convicted of violating HS 11380 by using a minor to commit specified drug crimes cannot get probation except in unusual cases where the interests of justice would best be served, and "the court shall specify on the record and shall enter into the minutes the circumstances supporting the finding."

PC 29820: Wards for certain offenses: can't have a gun until age 30.

The amendment conforms to the repealer of PC 1203.07, and changes the mix of offenses, adjudication of wardship for which, the prohibition on gun ownership until age 30 applies.

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## STATUTES OF LIMITATION

## Hacking Into Computers.

AB 1247 (Stats. 2021, Ch. 206.)

Adds PC 801.7

From the Legislative Counsel's Digest:

[Before this, the statute of limitations for PC 502 was] 3 years....

**New PC 801.7:**

**(a) [P]rosecution for a felony ... described in [PC] 502 shall be commenced within three years after discovery of the ... offense, or within three years after the offense could have ... been discovered. [but] a complaint shall not be filed more than six years after the ... offense.**





**Release on probation-violation charges is made more likely.**

AB 1228 (Stats. 2021, Ch. 533)

Amends PC 1203.2, Adds PC 1203.25

New PC 1203.2, subd. (a):

**[W]hen[ ] a [Def is in custody pending a formal hearing on violation of probation] ... [and not serving flash incarceration] ..., the court shall consider ... release ... from custody [per PC] 1203.25.**

New PC 1203.25

*(a) All ..... release[s] by a court at or after the initial hearing and prior to a formal ... violation hearing ... shall be [own recognizance] release[s] ... unless the court finds, by clear and convincing evidence, that the particular circumstances ... require ... an order to ... protect[ ] ... the public and ... assure[ ] [Def's] future appearance in court.*

**(1) The court shall make an individualized determination of the factors that do or do not indicate [by clear and convincing evidence ] that [Def] would be a danger ... if released pending a ... revocation hearing....**

**(2) The court shall not require ... any algorithm-based risk assessment tool in setting conditions of release.**

**(3) The court shall impose the least restrictive conditions ... necessary to provide ... [public] protection ... and ... assure [Def.'s] ... appearance ....**

**(b) Reasonable conditions ... may include, but are not limited to, reporting ... telephonically ..., protective orders, ... [GPS] ... electronic monitoring.**



### **Briefly Noted**

- Columbus Day out (2nd. Mon. in Oct.) Native American Day in (4th Fri. in Sept.) as a Judicial Holiday. ([AB 855](#), amending CCP 135.)
- Sideshow speed exhibition can get 90 to 180 days suspended, or restricted, CDL beginning July 2025. ([AB 3](#), amending VC 23019, 13352.)
- Obsolete relics of when Juveniles could be direct filed to adult court, PC 1170.17 and 1170.19, repealed. by [SB 827](#).
- PC 597f (re animals) repealed: it duplicates much in PC 597.1 ([SB 827](#))
- Min. age to be a Cop (most types), increased to 21. [AB 89](#), adding GC 1031.4.
- The California Community Colleges, along with the POST Commission and others are directed to develop a “modern policing degree program. ([AB 89](#))
- Military equipment funding, acquisition, and use by law enforcement (including P) is now heavily regulated. ([AB 481](#))
- PC 1203.9 (transfer of probation or mandatory supervision from one county to another), is amended: the receiving court must confirm receipt to the transferring court, which then must notify DOJ. ([AB 898](#))
- PC 1203.4, 1203.4a, 1203.4b, and 1203425, each amended: dismissal does not release D from a still—active criminal protective order. ([AB 1281](#))
- PC 25400, prohibiting carrying a concealed gun does not apply to transporting it to comply with a gun relinquishment order under FC 6389. [SB 320](#), amending PC 25555, and making many related changes to the FC

- “Theft of wages,” including “intentional deprivation of wages” or “gratuities,” over \$950 from one, or \$2,350 from two, over 12 months “may be punished as grand theft.” [AB 1003](#), adding PC 487m.
- Knowingly coming within a specified distance of a person on foot or in a car who is entering or exiting a vaccine site, intending to obstruct, harass, etc., them is a misdemeanor. [SB 742](#), adding PC 594.39.
- Infractions: Education programs (GED classes, college courses, adult literacy, English as a second language, and vocational education, in cases of inability to pay, can now be ordered instead of Community Service. ([SB 71](#).)
- Two new election crimes in SB 35: [1] Amends Elections Code § 18541, expands the range of activities that cannot be conducted within 100 feet of specified elections locations; those locations are also expanded. [2] Amends § 18568 of that Code by criminalizing display of an unofficial ballot box with intent to deceive a voter into believing it is an official ballot box.

### Trivia Question: Answer

Hint: The last time this many were on a single ballot was 1930.

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