

# *San Diego District Attorney*

## *D.A. LIAISON LEGAL UPDATE New and Amended Statutes Edition*

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### *Remember 9/11/01—Support our Troops*

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#### **THIS EDITION’S WORDS OF WISDOM:**

*“I know that you believe you understand what you think I said, but I’m not sure you realize that what you heard is not what I meant.” (Robert McCloskey)*

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##### *New and Amended Statutes:*

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**ADMINISTRATIVE NOTES:**

*New and Amended Statutes; Disclaimer:* The statutes listed here are not intended to cover the entire body of the Legislature’s work for 2010. Only those statutes believed to be of interest to most law enforcement officers, with the concerns of prosecutors in mind, are included. Sentencing rules, typically covered better in other publications, have been avoided except when important to a new or amended offense. Mere changes in the potential sentence for an offense are also not included unless the offense’s classification is also affected (e.g., misdemeanor to felony). The statutes that are covered have been severely paraphrased, the degree of detail being dependent upon the newness, importance, and/or complexity of the statute. Although I have made a sincere effort to avoid taking any part of a statute out of context, it is *strongly* recommended that the unedited statute be consulted before attempting to use it either in the field or the courtroom. The effective date of each new or amended statute is January 1, 2011, unless otherwise indicated.

**NEW AND AMENDED STATUTES:**

*Alcoholic Beverages:*

**B&P Code § 25660 (Amended): *Bona Fide Evidence of Age:***

What constitutes bona fide evidence of age in purchasing alcoholic beverages has been clarified to be:

- (1) A valid vehicle operator’s license containing the person’s name, date of birth, physical description and picture.
- (2) A valid passport issued by the United States or a foreign government.
- (3) A valid military identification card that includes a date of birth and picture of the person.

**B&P Code § 25667 (New): *Possession of Alcoholic Beverages by Minors:***

Any person under the age of 21 is immune from prosecution for **B&P § 25658(b)** [person under the age of 21 purchasing or consuming alcohol] and **B&P § 25662(a)** [person under the age of 21 possessing alcohol in public] where the person;

- (1) Called 911 and reported that himself, herself, or another person was in need of medical assistance because of alcohol consumption; *and*
- (2) Was the first person to make the 911 report; *and*
- (3) Remained on the scene until medical help arrived and cooperated with medical personnel and law enforcement at the scene.

*Note:* **B&P §§ 25662(a)** and **25658(b)** have been amended to reflect this defense.

**Civ. Code § 1714 (Amended): *Providing Alcohol to Minors:***

A parent, guardian, or other adult who knowingly furnishes alcoholic beverages at his or her residence to a person under the age 21 may be held civilly liable for any resulting injury or death. The furnishing of alcohol under these circumstances may be found to be the proximate cause of resulting injury or death.

***Animals:***

**Corp. Code §§ 10400, 10404, 10405, 10406, 14500, 14501, 14502** (Amended);  
**Corp. Code §§ 10401, 14402** (Repealed);  
**Corp. Code §§ 10504, 14505** (New): Humane Societies and Societies for the Prevention of Cruelty to Animals:

New procedures for the appointment and confirmation of humane officers are established, requiring all humane officers to complete a criminal background check and requiring ongoing weapons training and range qualifications at least every six months for humane officers who are authorized to carry firearms.

All Humane Societies and Societies for the Prevention of Cruelty to Animals and humane officers are required to be in full compliance with amended **Corp. Code § 14502** (listed legal requirements to be an officer) by January 1, 2012.

Law enforcement agencies are permitted to charge a reasonable fee for providing criminal history information pursuant to **P.C. § 13300** to a Humane Society or a Society for the Prevention of Cruelty to Animals.

*Note:* **P.C. §§ 11105** and **13300** (Amended) require the State Department of Justice to furnish state summary criminal history information (**P.C. § 11105**) and a local agency to furnish local summary criminal history

information (**P.C. § 13300**) to a humane officer for the purposes of performing his or her duties.

***Child Abuse or Neglect:***

**Civ. Code §§ 56.10 & 56.104** (Amended): *Child Abuse or Neglect:*

The **Confidentiality of Medical Information Act** is amended to specifically authorize health care providers and psychotherapists to provide information to an agency investigating the abuse or neglect of a child, or the abuse or neglect of an elder or dependent adult.

**P.C. § 273ab(b)** (Amended): *Assault of a Child Under Eight by the Child's Caretaker:*

A person, having the care or custody of a child under age eight, who assaults the child by means of force likely to produce great bodily injury, resulting in the child becoming comatose due to brain injury, or suffering paralysis of a permanent nature, is guilty of a felony.

Felony: Life in prison with the possibility of parole.

*Note:* The previously existing crime of assaulting a child under the age eight, by a caretaker, that results in the death of the child is now contained in **subd. (a)**, and continues to be punishable by 25 years to life in prison.

**P.C. § 11166** (Amended): *Mandated Reporters:*

Added to the definition of “*reasonable suspicion*,” as it relates to the mandated reporting of child abuse or neglect, is the following: The reasonable suspicion of child abuse or neglect that triggers a report by a mandated reporter does not require certainty that child abuse or neglect has occurred. Nor does it require a specific medical indication of child abuse or neglect. Any reasonable suspicion is sufficient.

*Note:* The section continues to provide that reasonable suspicion means it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse or neglect.

**P.C. § 11166** (Amended): *Child Abuse or Neglect Reporting:*

Information relevant to a child abuse report made pursuant to **P.C. § 11166.05** about a child suffering serious emotional damage or being at substantial risk of suffering such damage, to be shared with an investigator from an agency that is

investigating known or suspected child abuse or neglect, or with a licensing agency that is investigating such abuse or neglect.

**Cigarettes:**

**H&S § 119405** (New; effective 9/27/10): *Electronic Cigarettes:*

Selling or furnishing an electronic cigarette to a person under age 18 is prohibited.

Infraction: \$200 (first violation), \$500 (second violation) or \$1,000 (third or subsequent violation).

An “*electronic cigarette*” is defined as a device that can provide an inhalable dose of nicotine by delivering a vaporized solution.

I.e.; a rechargeable, battery-operated devices that look similar to cigarettes and allow the user to inhale a smokeless vapor containing nicotine. Some have a flavor, such as chocolate or mint.

Cities and counties are specifically permitted to regulate electronic cigarettes in a more restrictive way than does this section.

**P.C. § 308.1** (Amended): *Sales of Bidis or Beedies:*

The selling, distributing, or importing of a tobacco product marketed and sold as “*bidis*” or “*beedies*” is prohibited unless it is sold or intended to be sold in a business establishment that prohibits the presence of minors.

Misdemeanor: Six months and/or a \$1,000 fine, *plus* a civil action brought by the Attorney General, a city attorney, county counsel, or district attorney for an injunction and a civil penalty of up to \$2,000.

*Note:* The section retains the prohibition on selling products containing tobacco that are wrapped in “*temburni leaf*” or “*tendu leaf*” in establishments that permit the presence of minors. But a product that is sold as “*bidis*” or “*beedies*” is now prohibited regardless of how it is wrapped.

*Note:* “*Bidis*” are tobacco products that are hand-rolled, unfiltered, and wrapped in plant leaves called temburni or tendu leaf. Bidis are much higher in tar and nicotine than regularly manufactured cigarettes. They are cheaper than ordinary cigarettes and come in flavors that appeal to youth, such as strawberry, chocolate, and grape. Retailers were able to sell some bidis that are outside of the definition in current law because they were wrapped in other types of plant leaves.

***Contempt of Court:***

**P.C. § 166(a)(9)** (New): *Contempt of Court:*

A “*Contempt of Court*” now includes the willful disobedience of the terms of any injunction that restrains the activities of a criminal street gang or any of its members, lawfully issued by any court including an order pending trial.

Misdemeanor: Six months and/or a \$1,000 fine.

*Note:* The violation of a gang injunction was previously prosecutable under **P.C. § 166(a)(4)**. The purpose of this section is to segregate gang injunctions from other types of court orders.

***Controlled Substances:***

**H&S § 11055** (Amended): *Apomorphine:*

Apomorphine (a substance used in the treatment of Parkinson’s disease) is removed from the list of Schedule II controlled substances, thereby making it an unscheduled substance.

As a result, conduct involving possession, possession for sale, or sale of apomorphine is no longer a crime pursuant to **H&S §§ 11350, 11351, or 11352**.

**H&S § 11357(b)** (Amended): *Possession Of Up To An Ounce of Marijuana:*

Possession of up to an ounce of marijuana is designated as an infraction (as opposed to a misdemeanor).

Infraction: \$100 fine.

References to drug diversion have been eliminated.

*Note:* See amended **Veh. Code § 23222(b)**, below, for a similar provision while driving.

**H&S § 11362.768** (New): *Medical Marijuana Dispensaries:*

Medical marijuana cooperatives, collectives, dispensaries, operators, establishments, or providers who possess, cultivate, or distribute medical marijuana are prohibited from being located within a 600-foot radius of a school.

A “*school*” is defined as any public or private school providing instruction in kindergarten through grade 12.

This restriction does *not* apply to a medical marijuana provider that is also a licensed residential medical or elder care facility.

A city, county, or city and county is *not* prohibited from adopting ordinances or policies that further restrict the location of medical marijuana providers.

The section shall not preempt local ordinances adopted before January 1, 2011.

**Veh. Code § 23222(b)** (Amended): *Possession Of Up To An Ounce Of Marijuana While Driving:*

Possession of up to one ounce of marijuana while driving is reclassified as an infraction (as opposed to a misdemeanor).

Infraction: A \$100 fine.

References to drug diversion have been eliminated.

*Note:* See amended **H&S § 11357(b)**, above, for a similar provision for simple possession of up to an ounce of marijuana.

***Domestic Violence:***

**Civ. Code § 1941.5** (New): *Changing Locks on Victim's Residence:*

A landlord must change the locks of a domestic violence, sexual assault, or stalking victim's dwelling unit upon the written request of the victim and within 24 hours of the victim giving the landlord a copy of a restraining order or a police report where the restrained person is *not* also a tenant of the same dwelling unit as the victim. The landlord is also required to give the victim a key to the new locks. The court order or police report must be issued or written within the last 180 days.

A "*court order*" is defined as an order issued pursuant to **CCP § 527.6, Fam. Code §§ 6240–6275, Fam. Code §§ 6300–6389, Fam. Code §§ 6400–6409, P.C. § 136.2, or W&I § 213.5.**

The victim is allowed to change the locks if the landlord fails to do so regardless of any provision in the lease to the contrary.

See **Civ. Code § 1941.6**, below, for the section that applies when the restrained person is a tenant of the same dwelling as the victim.

**Civ. Code § 1941.6** (New): *Changing Locks on Victim’s Residence:*

A landlord must change the locks of a domestic violence, sexual assault, or stalking victim’s dwelling unit upon the written request of the victim and within 24 hours of the victim giving the landlord a copy of a restraining order or a police report where the restrained person is also a tenant of the same dwelling unit as the victim. The landlord is also required to give the victim a key to the new locks. The court order or police report must be issued or written within the last 180 days.

A “*court order*” is defined as an order issued pursuant to **CCP § 527.6**, **Fam. Code §§ 6240–6275**, **Fam. Code §§ 6300–6389**, **Fam. Code §§ 6400–6409**, **P.C. § 136.2**, or **W&I § 213.5**.

The victim is allowed to change the locks if the landlord fails to do so regardless of any provision in the lease to the contrary.

See **Civ. Code § 1941.5**, above, for the section that applies when the restrained person is *not* a tenant of the same dwelling as the victim.

**Code of Civ. Proc. § 1161.3** (New): *Termination of Tenancy:*

A landlord is prohibited from terminating a tenancy or failing to renew a tenancy based upon an act of domestic violence, sexual assault, or stalking committed against a tenant or a tenant’s household member *if*:

- (1) The domestic violence, sexual assault, or stalking is documented by a temporary restraining order or an emergency protective order issued within the last 180 days, or is documented by a police report written within the last 180 days; *and*
- (2) The perpetrator is not a tenant of the same dwelling unit as the tenant or household member.

However, a landlord is permitted to terminate or decline to renew a tenancy *if*:

- (1) The tenant allows the perpetrator to visit the property or the landlord reasonably believes that the presence of the perpetrator poses a physical threat to other tenants, guests, or invitees; *and*
- (2) The landlord gives at least three days’ notice to the tenant to correct the visitation/presence of the perpetrator.

**Fam. Code § 782.5** (Amended): *Soliciting the Murder of a Spouse:*

A conviction for soliciting the murder of a spouse pursuant to **P.C. § 653f(b)** is added to the convictions (e.g., attempting to murder a spouse) that eliminate any entitlement the convicted spouse has to any portion of the retirement or pension benefits of the victim-spouse.



**Fam. Code § 4324** (Amended): *Soliciting the Murder of a Spouse:*

A conviction for soliciting the murder of a spouse pursuant to **P.C. § 653f(b)** is added to the convictions (e.g., attempting to murder a spouse) that eliminate any entitlement the convicted spouse has to spousal support, or medical, life, or other insurance benefits or payments from the victim-spouse.

**Fam. Code § 6228** (Amended): *Domestic Violence Incident Reports:*

One copy of a domestic violence incident report must be provided by state and local law enforcement agencies, free of charge, to the victim's representative as well as to the victim, even if the victim is *not* deceased.

The following persons qualify as a representative of a living victim: (1) A parent, guardian, adult child, or adult sibling who presents to law enforcement identification and a signed authorization (if the victim is age 12 or older) by the victim allowing the family member to act on the victim's behalf; (2) an attorney for the victim who presents to law enforcement identification and written proof that he or she is the attorney for the victim; and (3) a conservator of the victim who presents identification and a copy of the letters of conservatorship demonstrating that he or she is the appointed conservator of the victim.

**Fam. Code §§ 6304, 6389** (Amended): *Domestic Violence Restraining Orders:*

Ammunition is added to the items (i.e., firearms) that a person subject to a domestic violence restraining order is prohibited from owning, possessing, purchasing, or receiving.

***Eavesdropping:***

**P.C. § 633.8** (New): *Eavesdropping in Hostage or Barricading Situations:*

A peace officer may use an electronic amplifying or recording device to eavesdrop on and/or record, any oral communication within a particular location in response to the taking of a hostage or the barricading of a location if:

- (1) The officer reasonably determines that an emergency situation exists involving the immediate danger of death or serious physical injury to any person;
- (2) The officer reasonably determines that the emergency situation requires that eavesdropping occur immediately; *and*
- (3) There are grounds upon which an order could be obtained pursuant to **18 U.S.C. § 2516(2)** for the offenses specified in it.

*Note:* **18 U.S.C. § 2516(2)** permits the interception of wire, oral, or electronic communications when the interception may provide evidence of the commission of murder, kidnapping, gambling, robbery, bribery, extortion, or dealing in narcotic drugs, marijuana or other dangerous drugs, or other crimes dangerous to life, limb, or property, and is punishable by imprisonment for more than one year.

Only a peace officer who has been designated by either a district attorney or by the Attorney General may make the three determinations listed above.

A peace officer is not required to knock or announce his or her presence before entering or before installing or using any electronic amplifying or recording devices.

An application for an order approving eavesdropping must be made within 48 hours *after* the eavesdropping has begun.

Compliance with **P.C. § 629.50** (setting forth the requirements of a wiretap application) is required.

A judge is prohibited from granting an eavesdropping application in anticipation of an emergency situation.

A judge is required to grant the application in a barricade or hostage situation where there is probable cause to believe that an individual is committing, has committed, or is about to commit an offense listed in **18 U.S.C. § 2516(2)** (see *Note* above) and only if the peace officer has fully complied with the requirements of this section.

Any oral communications overheard must be recorded, and in such a manner as to protect the recording from alterations.

A “*barricading*” occurs when a person refuses to come out from a covered or enclosed position, or when a person is held against his or her will and the captor has not made a demand.

A “*hostage situation*” occurs when a person is held against his or her will and the captor has made a demand.

A peace officer who makes the decision to use an eavesdropping device is *not* required to undergo wiretap training pursuant to **P.C. § 629.94**.

A peace officer is required to stop using an eavesdropping device when the barricade or hostage situation ends, or upon the denial by a judge for an order approving eavesdropping, whichever occurs first.

Nothing in this new section is intended to affect the admissibility of evidence.

See *Wiretaps* below.

***Elder or Dependent Adult Abuse:***

**Civ. Code §§ 56.10 & 56.104** (Amended): *Elder or Dependent Adult Abuse or Neglect:*

The **Confidentiality of Medical Information Act** is amended to specifically authorize health care providers and psychotherapists to provide information to an agency investigating the abuse or neglect of a child, or the abuse or neglect of an elder or dependent adult.

***Gangs:***

**P.C. § 166(a)(9)** (New): *Contempt of Court:*

A “*Contempt of Court*” now includes the willful disobedience of the terms of any injunction that restrains the activities of a criminal street gang or any of its members, lawfully issued by any court including an order pending trial.

Misdemeanor: Six months and/or a \$1,000 fine.

*Note:* The violation of a gang injunction was previously prosecutable under **P.C. § 166(a)(4)**. The purpose of this section is to segregate gang injunctions from other types of court orders.

***Internet Crimes:***

**P.C. § 528.5** (New): *Impersonating Another via the Internet:*

Knowingly and without consent, credibly impersonating another actual person through or on an Internet Web site or by other electronic means, for purposes of harming, intimidating, threatening, or defrauding another person.

Misdemeanor: One year in jail and/or a \$1,000 fine.

The section provides that an impersonation is credible if another person would reasonably believe, or did reasonably believe, that the defendant was or is the person who was impersonated.

Also, “*electronic means*” includes opening an e-mail account or an account or profile on a social networking Internet Web site in another person’s name.

Anyone who suffers damage or loss because of a violation of this section may bring a civil action for compensatory damages, injunctive relief, or other equitable relief.

Prosecution under any other law is not precluded.

***Landlord-Tenant:***

**Civ. Code § 1941.5 (New): *Changing Locks on Victim's Residence:***

A landlord must change the locks of a domestic violence, sexual assault, or stalking victim's dwelling unit upon the written request of the victim and within 24 hours of the victim giving the landlord a copy of a restraining order or a police report where the restrained person is *not* also a tenant of the same dwelling unit as the victim. The landlord is also required to give the victim a key to the new locks. The court order or police report must be issued or written within the last 180 days.

A "*court order*" is defined as an order issued pursuant to **CCP § 527.6, Fam. Code §§ 6240–6275, Fam. Code §§ 6300–6389, Fam. Code §§ 6400–6409, P.C. § 136.2, or W&I § 213.5.**

The victim is allowed to change the locks if the landlord fails to do so regardless of any provision in the lease to the contrary.

See **Civ. Code § 1941.6**, below, for the section that applies when the restrained person is a tenant of the same dwelling as the victim.

**Civ. Code § 1941.6 (New): *Changing Locks on Victim's Residence:***

A landlord must change the locks of a domestic violence, sexual assault, or stalking victim's dwelling unit upon the written request of the victim and within 24 hours of the victim giving the landlord a copy of a restraining order or a police report where the restrained person is also a tenant of the same dwelling unit as the victim. The landlord is also required to give the victim a key to the new locks. The court order or police report must be issued or written within the last 180 days.

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The victim is allowed to change the locks if the landlord fails to do so regardless of any provision in the lease to the contrary.

See **Civ. Code § 1941.5**, above, for the section that applies when the restrained person is *not* a tenant of the same dwelling as the victim.

**Code of Civ. Proc. § 1161.3 (New): *Termination of Tenancy:***

A landlord is prohibited from terminating a tenancy or failing to renew a tenancy based upon an act of domestic violence, sexual assault, or stalking committed against a tenant or a tenant's household member *if*:

- (1) The domestic violence, sexual assault, or stalking is documented by a temporary restraining order or an emergency protective order issued within the last 180 days, or is documented by a police report written within the last 180 days; *and*
- (2) The perpetrator is not a tenant of the same dwelling unit as the tenant or household member.

However, a landlord is permitted to terminate or decline to renew a tenancy *if*:

- (1) The tenant allows the perpetrator to visit the property or the landlord reasonably believes that the presence of the perpetrator poses a physical threat to other tenants, guests, or invitees; *and*
- (2) The landlord gives at least three days' notice to the tenant to correct the visitation/presence of the perpetrator.

***Military:***

**P.C. § 532b(c) (Amended): *Falsely Representing Oneself to Be a Military Veteran or Having been Awarded a Military Decoration:***

Falsely representing one's self to have been awarded a military decoration, with the intent to defraud. The misrepresentation may be oral, in writing, or by wearing a military decoration.

Misdemeanor or infraction if the person committing it is a veteran of the United States Armed Forces: Six months and/or a \$1,000 fine. (See **P.C. § 19.8**)

Misdemeanor if the person committing it is *not* a veteran.

A "*military decoration*" is defined as any decoration or medal from the Armed Forces of the United States, the California National Guard, State Military Reserve, or Naval Militia, or any service medals or badges awarded to the members of those forces, or the ribbon, button, or rosette of that badge, decoration, or medal, or any colorable imitation of that item.

*Note:* **Subd. (a)** remains the misdemeanor crime of falsely representing one's self as a veteran or ex-serviceman in connection with the solicitation of aid or the sale of property.

*Note: Subd. (b)* remains the misdemeanor crime of falsely claiming or presenting one's self to be a veteran or member of the Armed Forces, with the intent to defraud.

*Note: Mil. & Vet. Code § 648.1*, an infraction, has been repealed with its provisions moved to this **Penal Code** section.

*Note: Mil. & Vet. Code § 1821 (New)*: A person who falsely represents himself or herself in a manner specified in **P.C. § 532b** is guilty of a misdemeanor or infraction "as prescribed by **Section 532b** of the **Penal Code**."

### **Minors:**

#### **B&P Code § 25660** (Amended): *Bona Fide Evidence of Age:*

What constitutes bona fide evidence of age in purchasing alcoholic beverages has been clarified to be:

- (1) A valid vehicle operator's license containing the person's name, date of birth, physical description and picture.
- (2) A valid passport issued by the United States or a foreign government.
- (3) A valid military identification card that includes a date of birth and picture of the person.

#### **B&P Code § 25667** (New): *Possession of Alcoholic Beverages by Minors:*

Any person under age 21 is immune from prosecution for **B&P 25658(b)** [person under age 21 purchasing or consuming alcohol] and **B&P 25662(a)** [person under age 21 possessing alcohol in public] where the person;

- (1) Called 911 and reported that himself, herself, or another person was in need of medical assistance because of alcohol consumption; *and*
- (2) Was the first person to make the 911 report; *and*
- (3) Remained on the scene until medical help arrived and cooperated with medical personnel and law enforcement at the scene.

*Note: B&P §§ 25662(a) and 25658(b)* have been amended to reflect this defense.

#### **Civ. Code § 1714** (Amended): *Providing Alcohol to Minors:*

A parent, guardian, or other adult who knowingly furnishes alcoholic beverages at his or her residence to a person under the age 21 may be held civilly liable for any resulting injury or death. The section specifically provides that the furnishing of

alcohol under these circumstances may be found to be the proximate cause of resulting injury or death.

**Ed. Code § 48263.6** (New): *Truancy*:

A “*chronic truant*” is defined as a pupil subject to compulsory full-time education or to compulsory continuation education who is absent from school without a valid excuse for 10 percent or more of the school days in one school year, from the date of enrollment to the current date, if a school district officer or employee has complied with **Ed. Code §§ 48260, 48260.5, 48261, 48262, 48263, and 48291** (procedures for handling truants and habitual truants).

See new **P.C. § 270.1**, below for criminal responsibility of a parent or guardian for a chronic truant.

**P.C. § 270.1** (New): *Parent or Guardian of a Chronic Truant*:

A parent or guardian of a student in kindergarten through 8th grade who is a chronic truant, who fails to reasonably supervise and encourage the pupil’s attendance at school where the parent or guardian has been offered language accessible support services to address the pupil’s truancy, is guilty of a crime.

See **Ed. Code § 48263.6** (New), above, for definition of “*chronic truant*.”

Misdemeanor: One year in jail and/or \$2,000 fine

A Superior Court may establish a deferred entry of judgment program for parents and guardians guilty of this section. **P.C. § 270.1(b)–(e)** sets forth the requirements for the deferred entry of judgment program, including the requirement that the parent or guardian plead guilty and waive time for the pronouncement of judgment, and the requirement that the prosecutor file a written declaration with the court or state on the record the grounds upon which the prosecutor determines that the parent or guardian is eligible or not eligible for deferred entry of judgment.

The section provides that a parent or guardian of an elementary school student cannot be punished for both new **P.C. §§ 270.1 and 272** (Contributing to the Delinquency of a Minor).

**Wel. & Inst. Code § 207** (Amended): *Detention of Out-Of-State Runaways*:

An out-of-state runaway being held pursuant to the **Interstate Compact for Juveniles (ICJ)** may be detained for more than 24 hours.

The provision that had permitted the detention of a **W&I 601** minor for up to 72 hours in order to locate a parent or guardian if the parent or guardian resided in a

different state is deleted. Now, the maximum time for holding a **W&I 601** minor is 24 hours, even if a parent or guardian lives out of state, unless the minor is being held pursuant to the **ICJ** as indicated above.

*Note: W&I § 601* applies to a minor who is an habitual truant, or who habitually refuses to obey the reasonable and proper orders or directions of his or her parents, or who is beyond the control of his or her parents, or who violates a city or county's curfew ordinance.

**Wel. & Inst. Code § 709 (New):** *Mental Competence of Minors:*

Procedure for the handling of potentially incompetent minors in juvenile court:

Either a minor's attorney or the court may raise the issue of a minor's competency.

A minor is incompetent to proceed "if he or she lacks sufficient present ability to consult with counsel and assist in preparing his or her defense with a reasonable degree of rational understanding, or lacks a rational as well as factual understanding, of the nature of the charges or proceedings against him or her."

The court must suspend proceedings if there is substantial evidence that raises a doubt about incompetency. If proceedings are suspended, the court must appoint an expert to evaluate whether the minor suffers from a mental disorder, developmental disability, developmental immaturity, or other condition and, if so, whether the condition impairs the minor's competency.

If the minor is found incompetent by a preponderance of the evidence, all proceedings will remain suspended for a period of time that is no longer than reasonably necessary to determine whether there is a substantial probability that the minor will attain competency in the foreseeable future, or the court no longer retains jurisdiction. The court may make orders to assist the minor in attaining competency.

The types of motions the court may rule on during the period of incompetence that do not require the participation of the minor: Motions to dismiss, change-of placement motions by the defense, detention hearings, and demurrers.

***Paparazzies:***

**V.C. § 40008 (New):** *Driving While Taking Pictures for a Commercial Purpose:*

Committing a violation of **V.C. §§ 21701, 21703, or 23103** with the intent to capture any type of visual image, sound recording, or other physical impression of another person for a commercial purpose.



Misdemeanor: Six months in jail and/or a \$2,500 fine.

Committing a violation of V.C. §§ 21701, 21703, or 23103 with the intent to capture any type of visual image, sound recording, or other physical impression of another person for a commercial purpose *and* causing a minor child's health or person to be endangered.

Misdemeanor: One year in jail and/or a \$5,000 fine.

*Note:* V.C. § 21701 is the infraction of willfully interfering with the driver of a vehicle. V.C. § 21703 is the infraction of following another vehicle more closely than is reasonable and prudent, and V.C. § 23103 is the misdemeanor of reckless driving.

***Peace Officers:***

**Gov't Code § 8594.5 (New): *Blue Alert:***

The California Highway Patrol, upon the request of an authorized person at a law enforcement agency, must activate the Emergency Alert System and issue a blue alert if all of the conditions below are met:

- (1) A law enforcement officer has been killed, seriously injured, or assaulted with a deadly weapon, and the suspect has fled the scene;
- (2) A law enforcement agency has determined that the suspect poses an imminent threat to the public or other law enforcement personnel;
- (3) A detailed description of the suspect's vehicle or license plate is available for broadcast;
- (4) Public dissemination of available information may help avert further harm or accelerate the apprehension of the suspect; *and*
- (5) The CHP has been designated to use the federally authorized Emergency Alert System for the issuance of blue alerts.

“*Blue alert*” means a quick response system designed to issue and coordinate alerts following an attack on a law enforcement officer. A blue alert would incorporate a variety of notification resources and developing technologies, such as the state controlled Emergency Digital Information System, local digital signs, focused text, and the federal Emergency Alert System, if authorized by the federal government.

The CHP is required by December 31, 2011, to include a blue alert link on its Internet Web site to explain the blue alert process.

***Prisoners:***

**P.C. § 4532** (Amended): *Escape:*

Escape or attempt to escape from an alternative custody program pursuant to new **P.C. § 1170.05**.

Misdemeanor: Six months in jail and/or \$1,000 fine.

*Note:* New **P.C. § 1170.05** (New) creates a home detention program for specified prison inmates so that they may serve their prison sentences at home or in a non-secure facility instead of in prison.

***Public Officials:***

**Gov't. Code § 6254.21** (Amended): *Privacy Rights:*

Information provided on cellular telephone applications is added to the types of information (e.g., home address and telephone number) that an elected or appointed official may demand be removed from the Internet.

*Note:* The section continues to provide that “*elected or appointed official*” includes district attorneys, judges, public defenders, city attorneys, and public safety officials as defined in **Gov't C. § 6254.24** (see below).

**Gov't. Code § 6254.24** (Amended): *Privacy Rights:*

The definition of “*public safety official*” includes active or retired persons to include peace officers defined in P.C. §§ 830–830.65, and to include persons specified in P.C. § 830.7 who are not peace officers but who may exercise the power of arrest.

*Note:* The section continues to provide that employees of a district attorney, a public defender, or the Attorney General qualify as “*public safety officials*.”

**Gov't. Code § 50084.5** (New): *Use of Public Vehicle or Credit Card:*

A local official, whether elected or appointed, is prohibited from making available to an immediate family member a public vehicle owned or operated by, or a credit card issued by, the local agency that the official represents, except in the case of a medical emergency.

“*Immediate family member*” means a spouse, child, in-law, parent, or sibling of the local official.

**Gov't. Code § 8547.2** (New): *California Whistleblower Protection Act:*

The existing protections of the **California Whistleblower Protection Act (Gov't. Code §§ 8547–8547.12)** are expanded to employees of the judicial branch of government, specifically to employees of the Supreme Court, the courts of appeal, the superior courts, and the Administrative Office of the Courts.

**Gov't. Code § 8547.13** (Amended): *California Whistleblower Protection Act:*

Intentionally engaging in acts of reprisal, retaliation, threats, coercion, or similar acts against an employee of the California Supreme Court, a court of appeal, a superior court, or the Administrative Office of the Courts, or an applicant for employment, for having made a protected whistleblower disclosure.

Misdemeanor: One year in jail and/or a \$10,000 fine.

**H&S 121060** (Amended): *Exposure to Arrestee's Blood or Bodily Fluid:*

A non-sworn employee of a law enforcement agency whose job description entails the collection of fingerprints is added to the lists of persons (e.g., peace officers, firefighters, custodial officers, emergency medical personnel) who may request that an arrestee be required to undergo HIV, hepatitis B, and hepatitis C tests when there has been an exposure to the arrestee's blood or bodily fluids.

**P.C. § 829.5** (New; effective 7/19/2010): *Code Enforcement Officer:*

A Code Enforcement Officer" is defined as a person *not* described in **P.C. §§ 830–832.25** and who is employed by any governmental subdivision, public or quasi-public corporation, public agency, public service corporation, any town, city, county, or municipal corporation, who has enforcement authority for health, safety, and welfare requirements, and whose duties include enforcement of any statute, rule, regulation, or standard, and who is authorized to issue citations or file formal complaints. A "Code Enforcement Officer" includes any person employed by the Department of Housing and Community Development who has enforcement authority for health, safety, and welfare requirements pursuant to the **Employee Housing Act**, the **State Housing Law**, the **Mobilehomes-Manufactured Housing Act**, the **Mobilehome Parks Act**, and the **Special Occupancy Parks Act**.

**Public Transportation:**

**P.C. § 640** (Amended): *Crimes at Public Transportation Facilities and Vehicles:*

The following crimes committed on or in a facility or vehicle of a public transportation system have been elevated from infractions to misdemeanors:

- (1) Willfully disturbing others by engaging in boisterous or unruly behavior;
- (2) Carrying an explosive, acid, or flammable liquid;
- (3) Urinating or defecating, except in a lavatory; *and*
- (4) Willfully blocking the free movement of another person.

The following is added to the section:

- (5) Willfully tampering with, removing, displacing, injuring, or destroying any part of a facility or vehicle.

Misdemeanor: Ninety days in jail and/or a \$400 fine.

*Note:* The carrying of a toxic or hazardous material has been deleted from the section.

The third or subsequent violation of the following existing offenses is a misdemeanor:

- (1) Fare evasion;
- (2) Misuse of a transfer pass; *and*
- (3) The unauthorized use of a discount ticket.

Misdemeanor: Ninety days in jail and/or a \$400 fine.

The following already existing crimes remain infractions:

- (1) Eating or drinking where prohibited;
- (2) Disturbing another person by loud or unreasonable noise;
- (3) Smoking;
- (4) expectorating; *and*
- (5) skateboarding, roller skating, bicycle riding, roller blading, . . .

The following is added to (5) above:

. . . or operating a motorized scooter or similar device.

Infraction: A \$250 fine and by community service of up to 48 hours.

### ***Search Warrants:***

**P.C. § 1526(b)** (Amended): *Issuance of Electronic Search Warrants:*

In addition to the standard search warrant application procedure (see **subd. (a)**), amended **subd. (b)** makes a number of changes to the obtaining and processing of electronic search warrants, expediting the process.

The affiant's oath may be made by telephone and computer server.

*Note:* Existing law permitting the oath to be made by telephone and facsimile transmission or by telephone and electronic mail has been retained.

The affiant's signature may be an electronic signature.

*Note:* Existing law permitting the signature to be digital has been retained.

The proposed search warrant and supporting affidavits and attachments may be transmitted to the magistrate by computer server.

*Note:* Existing law permitting transmission by facsimile or electronic mail has been retained.

The magistrate's signature may be a digital or an electronic signature.

The requirement that the magistrate print out the warrant and supporting affidavits and attachments is no longer required, thus eliminating the need for the magistrate to print the warrant, hand sign it, and either fax it back to the affiant or scan it and email it back. Instead, the magistrate may sign the warrant digitally or electronically and email it back to the affiant.

The magistrate may transmit the warrant by computer server to the affiant.

*Note:* Existing law permitting transmission by facsimile or electronic mail has been retained.

The requirement that the original warrant and affidavits and attachments be returned to the court is eliminated, requiring only the *duplicate* original warrant and affidavits and attachments to be returned to the court.

### ***Sex Offenses:***

#### **Civ. Code § 1941.5 (New): *Changing Locks on Victim's Residence:***

A landlord must change the locks of a domestic violence, sexual assault, or stalking victim's dwelling unit upon the written request of the victim and within 24 hours of the victim giving the landlord a copy of a restraining order or a police report where the restrained person is *not* also a tenant of the same dwelling unit as the victim. The landlord is also required to give the victim a key to the new locks. The court order or police report must be issued or written within the last 180 days.

A “*court order*” is defined as an order issued pursuant to **CCP § 527.6, Fam. Code §§ 6240–6275, Fam. Code §§ 6300–6389, Fam. Code §§ 6400–6409, P.C. § 136.2, or W&I § 213.5.**

The victim is allowed to change the locks if the landlord fails to do so regardless of any provision in the lease to the contrary.

See **Civ. Code § 1941.6**, below, for the section that applies when the restrained person is a tenant of the same dwelling as the victim.

**Civ. Code § 1941.6 (New):** *Changing Locks on Victim’s Residence:*

A landlord must change the locks of a domestic violence, sexual assault, or stalking victim’s dwelling unit upon the written request of the victim and within 24 hours of the victim giving the landlord a copy of a restraining order or a police report where the restrained person is also a tenant of the same dwelling unit as the victim. The landlord is also required to give the victim a key to the new locks. The court order or police report must be issued or written within the last 180 days.

A “*court order*” is defined as an order issued pursuant to **CCP § 527.6, Fam. Code §§ 6240–6275, Fam. Code §§ 6300–6389, Fam. Code §§ 6400–6409, P.C. § 136.2, or W&I § 213.5.**

The victim is allowed to change the locks if the landlord fails to do so regardless of any provision in the lease to the contrary.

See **Civ. Code § 1941.5**, above, for the section that applies when the restrained person is *not* a tenant of the same dwelling as the victim.

**Code of Civ. Proc. § 1161.3 (New):** *Termination of Tenancy:*

A landlord is prohibited from terminating a tenancy or failing to renew a tenancy based upon an act of domestic violence, sexual assault, or stalking committed against a tenant or a tenant’s household member *if*:

1. The domestic violence, sexual assault, or stalking is documented by a temporary restraining order or an emergency protective order issued within the last 180 days, or is documented by a police report written within the last 180 days; *and*
2. The perpetrator is not a tenant of the same dwelling unit as the tenant or household member.

However, a landlord is permitted to terminate or decline to renew a tenancy *if*:

1. The tenant allows the perpetrator to visit the property or the landlord reasonably believes that the presence of the perpetrator poses a physical threat to other tenants, guests, or invitees; *and*
2. The landlord gives at least three days' notice to the tenant to correct the visitation/presence of the perpetrator.

**P.C. § 667.61** (Amended; effective 9/9/2010): *One-Strike Sex Offender law*:

**Subd. (d)**: A new circumstance is added; i.e., the personal infliction of bodily harm on a victim under age 14.

**Subd. (e)**: The personal infliction of great bodily injury circumstance is moved from **subd. (e)** to **subd. (d)**, resulting in the circumstance of great bodily injury alone sufficient to trigger a sentence of 25 years to life instead of 15 years to life.

*Note*: The existing **subd. (e)** circumstances, from **paragraphs (4)** through **(8)**, are moved to **paragraphs (3)** through **(7)**. Two **subd. (e)** circumstances are needed to trigger a sentence of 25 years to life. If only one **subd. (e)** circumstance is present, the sentence is 15 years to life.

**Subd. (j)(1)**: New subdivision and paragraph provides for a sentence of life without the possibility of parole for the conviction of a sex crime specified in **P.C. § 667.61(c)**, with the exception of **P.C. § 288(a)**, where the victim is under age 14 and at least one **subd. (d)** circumstance is present, or where the victim is under age 14 and at least two **subd. (e)** circumstances are present. If the defendant is under the age of 18 at the time of the offense, the punishment is 25 years to life.

**Subd. (j)(2)**: New subdivision and paragraph provides for a sentence of 25 years to life for the conviction of any sex crime specified in **P.C. § 667.61(c)** where the victim is under the age of 14 and one **subd. (e)** circumstance is present.

**Subd. (k)**: “*Bodily harm*” is defined as “any substantial physical injury resulting from the use of force that is more than the force necessary to commit an offense specified in **subdivision (c)** [of **P.C. § 667.61**].”

**Subd. (l)**: New subdivision provides for a sentence of life without the possibility of parole for the conviction of an offense specified in new **subd. (n)** where the victim is a minor, age 14 to 17, and at least one **subd. (d)** circumstance is present, or where the victim is a minor, age 14 to 17, and at least two **subd. (e)** circumstances are present. If the defendant is under age 18 at the time of the crime, the punishment is 25 years to life.

**Subd. (m):** New subdivision provides for a sentence of 25 years to life for the conviction of an offense specified in new **subd. (n)** where the victim is a minor, age 14 to 17, and one **subd. (e)** circumstance is present.

**Subd. (n):** A new list of sex crimes is added with new punishments listed in **subds (l)** and **(m)**: **P.C. § 261(a)(2)** [forcible rape], **P.C. § 262(a)(1)** [forcible spousal rape], **P.C. § 264.1** [rape or sexual penetration in concert], **P.C. § 289(a)(1)** [forcible sexual penetration], **P.C. § 286(c)(2)** [forcible sodomy], **P.C. § 286(d)** [sodomy in concert], **P.C. § 288a(c)(2)** [forcible oral copulation], and **P.C. § 288a(d)** [oral copulation in concert].

**P.C. § 1201.3 (New):** *Harassing or Threatening A Minor Sex Offense Victim or Family:*

A court may issue an order that would prohibit an adult or juvenile offender from harassing, intimidating, or threatening a victim or victim's family for up to 10 years upon the conviction or a sustained petition for a sex offense involving a minor victim.

Violation of a court order issued pursuant to this section is a crime, per **P.C. § 166** (contempt of court).

Misdemeanor; 6 months in jail and/or \$1,000 fine.

Notice of the intent to request an order pursuant to this section must be given to counsel for the defendant or to the juvenile by the prosecutor or the court at the time of conviction in adult court or at the time of disposition in juvenile court.

### ***Stalking:***

**Civ. Code § 1941.5 (New):** *Changing Locks on Victim's Residence:*

A landlord must change the locks of a domestic violence, sexual assault, or stalking victim's dwelling unit upon the written request of the victim and within 24 hours of the victim giving the landlord a copy of a restraining order or a police report where the restrained person is *not* also a tenant of the same dwelling unit as the victim. The landlord is also required to give the victim a key to the new locks. The court order or police report must be issued or written within the last 180 days.

A "court order" is defined as an order issued pursuant to **CCP § 527.6**, **Fam. Code §§ 6240–6275**, **Fam. Code §§ 6300–6389**, **Fam. Code §§ 6400–6409**, **P.C. § 136.2**, or **W&I § 213.5**.

The victim is allowed to change the locks if the landlord fails to do so regardless of any provision in the lease to the contrary.



See **Civ. Code § 1941.6**, below, for the section that applies when the restrained person is a tenant of the same dwelling as the victim.

**Civ. Code § 1941.6** (New): *Changing Locks on Victim’s Residence*:

A landlord must change the locks of a domestic violence, sexual assault, or stalking victim’s dwelling unit upon the written request of the victim and within 24 hours of the victim giving the landlord a copy of a restraining order or a police report where the restrained person is also a tenant of the same dwelling unit as the victim. The landlord is also required to give the victim a key to the new locks. The court order or police report must be issued or written within the last 180 days.

A “*court order*” is defined as an order issued pursuant to **CCP § 527.6**, **Fam. Code §§ 6240–6275**, **Fam. Code §§ 6300–6389**, **Fam. Code §§ 6400–6409**, **P.C. § 136.2**, or **W&I § 213.5**.

The victim is allowed to change the locks if the landlord fails to do so regardless of any provision in the lease to the contrary.

See **Civ. Code § 1941.5**, above, for the section that applies when the restrained person is *not* a tenant of the same dwelling as the victim.

**Code of Civ. Proc. § 1161.3** (New): *Termination of Tenancy*:

A landlord is prohibited from terminating a tenancy or failing to renew a tenancy based upon an act of domestic violence, sexual assault, or stalking committed against a tenant or a tenant’s household member *if*:

1. The domestic violence, sexual assault, or stalking is documented by a temporary restraining order or an emergency protective order issued within the last 180 days, or is documented by a police report written within the last 180 days; *and*
2. The perpetrator is not a tenant of the same dwelling unit as the tenant or household member.

However, a landlord is permitted to terminate or decline to renew a tenancy *if*:

1. The tenant allows the perpetrator to visit the property or the landlord reasonably believes that the presence of the perpetrator poses a physical threat to other tenants, guests, or invitees; *and*
2. The landlord gives at least three days’ notice to the tenant to correct the visitation/presence of the perpetrator.

**Theft:**

**P.C. § 666** (Amended; effective 9/9/2010): *Petty Theft with a Prior:*

Increases from one to three the number of prior convictions, with the service of a term in a penal institution, for petty theft, grand theft, auto theft, burglary, carjacking, robbery, or felony **P.C. § 496**, that are required in order to elevate a misdemeanor petty theft to a felony (wobbler) violation of **P.C. § 666**, *unless* the defendant is required to register as a sex offender or has a prior serious felony conviction (**P.C. § 1192.7(c)**) or a prior violent felony conviction (**P.C. § 667.5(c)**).

*Note:* In other words, if a defendant *is* required to register as a sex offender as a result of the present conviction, or has at least one prior serious or violent felony conviction, only one prior conviction is required to trigger the elevated punishments of **P.C. § 666**.

*Note:* It is not clear whether the serving of a term in a penal institution is required for only one of the prior convictions, or all there. Pending clarification, most prosecutorial agencies are assuming the later.

**P.C. § 487** (Amended): *Grand Theft:*

Increases from \$400 to \$950 the threshold value that must be exceeded in order for the theft of money, labor, or real or personal property to constitute grand theft, and thus a felony violation.

Domestic fowls, olives, deciduous fruits, other fruits, vegetables, nuts, artichokes, or other farm crops is added to those items (avocados and citrus fruits) whose value may be shown by the presentation of credible evidence that establishes that on the day of the theft, an item of the same variety and weight exceeded \$250 in wholesale value

*Note:* Legislation effective January 25, 2010, already increased, from \$100 to \$250 the threshold value that must be exceeded in order for the theft of specified crops and fish to constitute grand theft, and thus a felony violation in violation of **subds. (b)(1) & (b)(2)**. That same legislation already increased from \$400 to \$950 the threshold value in order for the theft of money, labor, or real or personal property by an employee or agent in a 12-month consecutive period to constitute grand theft, and thus a felony violation in violation of **subd. (b)(3)**.

***Trespass:***

**P.C. § 602(t)** (Amended): *Trespass on Private Property with a Prior Conviction:*

Amendment expands the crime of trespass on private property by a person who has already been convicted of a crime committed on the property to include a prior conviction for *any* crime.

*Note:* Previously, the prior conviction had to be for violent felony, per P.C. § 667.5(c). Now a prior conviction for any crime applies.

A prior conviction for a violent felony (**P.C. § 667.5(c)**) committed on the property never washes out. A conviction for any other felony applies for five years from the date of conviction. A conviction for a misdemeanor applies for two years from the date of conviction. A conviction for an infraction pursuant to **P.C. § 490.1** (petty theft not exceeding a \$50 value) applies for one year from the date of conviction. No other infraction convictions apply.

Misdemeanor: Six months in jail and/or a \$1,000 fine.

**P.C. § 602(u)** (Amended): *Trespass in Restricted Access Areas:*

Amendment adds “public transit facilities” to those locations (airports and passenger vessel terminals) where a trespass is committed by knowingly entering an area posted with notices restricting access.

A “*public transit facility*” has the same meaning as that in new **P.C. § 171.7** (see below; *Weapons in Public Transit Facilities*); i.e., land, buildings, public transportation routes, and vehicles such as streetcars, trolleys, buses, light rail systems, rapid transit systems, subways, trains, and motor vehicles.

Misdemeanor: Six months in jail and/or a \$1,000 fine.

**P.C. § 602(v)** (Amended): *Avoiding Screening and Inspection:*

Amendment adds “*public transit facilities*” to the crime of intentionally avoiding submission to screening and inspection at an airport or passenger vessel terminal.

Misdemeanor: First offense; a \$500 fine. Second or subsequent offense; one year in jail and/or a \$1,000 fine. Any violation that causes an evacuation; one year in jail.

**P.C. § 602.13** (New): *Trespassing Into an Animal Enclosure:*

Entering an animal enclosure at a zoo, circus, or traveling animal exhibit without permission, if signs prohibiting entrance are posted.

Misdemeanor/Infraction: Six months and/or a \$1,000 fine. (See **P.C. § 19.8**)

A public officer acting within the course and scope of his or her employment is excluded from this section's provisions.

Does not preclude prosecution under any other law.

***Vehicles:***

**P.C. § 466.65** (New): *Motorcycle Ignition Bypass Devices:*

Possessing, giving, or lending any device designed to bypass the factory-installed ignition of a motorcycle in order to start the engine without a manufacturer's key.

Possessing, giving, or lending any motorcycle ignition, or part thereof, with the intent to unlawfully take or drive a motorcycle without the consent of the owner.

Possessing, giving, or lending any item of hardware including, but not limited to, bolt cutters, electrical tape, wire cutters, wire strippers, or Allen wrenches, with the intent to unlawfully take or drive a motorcycle without the consent of the owner.

Misdemeanor: Six months in jail and/or \$1,000 fine.

**Veh. Code § 467.5** (New): *Pedicabs:*

A "pedicab" is defined as either (1) a bicycle that has three or more wheels that transports passengers for hire on seats attached to the bicycle; or (2) a bicycle that pulls a trailer or sidecar that transports passengers for hire on seats attached to the trailer or sidecar.

*Note:* See also amended **Veh. Code § 21200**, below, for the requirement that pedicab operators obey the same rules of the road as a driver of a motor vehicle.

**Veh. Code § 5201** (Amended): *License Plate Display:*

In addition to being securely fastened and maintained in a condition so as to be clearly legible, license plates must now also be mounted so that the characters are upright and display from left to right.

Infraction: \$50 fine.

**V.C. § 13004.1** (Amended): *DMV Identification Cards:*

Manufacturing or selling an identification card that purports to confer the same privileges as an identification card issued by the Department of Motor Vehicles (DMV) is prohibited.

*Note:* It was already illegal under this section to manufacture or sell an identification document of a size and form substantially similar to an identification card issued by DMV.

Misdemeanor: One year in jail and/or a \$250 to \$1,000 fine, plus a mandatory 24 hours of community service.

Prosecution under this section shall not preclude prosecution under any other applicable provision of law.

**V.C. § 14610.1** (Amended): *Driver's Licenses:*

Manufacturing or selling an identification card that purports to confer the same privileges as a driver's license issued by the Department of Motor Vehicles (DMV) is prohibited.

*Note:* It was already illegal under this section to manufacture or sell an identification document of a size and form substantially similar to a driver's license issued by DMV.

Misdemeanor: One year in jail and/or a \$250 to \$1,000 fine, plus a mandatory 24 hours of community service.

Prosecution under this section shall not preclude prosecution under any other applicable provision of law.

**Veh. Code § 21200** (Amended): *Pedicab Operators:*

A person operating a pedicab is added to those (i.e., a person riding a bicycle) who are subject to the same rules of the road as a driver of a motor vehicle.

*Note:* See new **Veh. Code § 467.5**, above, for the definition of a "pedicab."

**Veh. Code § 23222(b)** (Amended): *Possession Of Up To An Ounce Of Marijuana While Driving:*

Possession of up to one ounce of marijuana while driving is reclassified as an infraction (as opposed to a misdemeanor).

Infraction: A \$100 fine.

References to drug diversion have been eliminated.

*Note:* See amended **H&S § 11357(b)**, above, for a similar provision for simple possession of up to an ounce of marijuana.

**V.C. § 27202.1** (New): *Motorcycle Exhaust Systems:*

Parking, using, or operating a motorcycle registered in California that does not have the proper federal Environmental Protection Agency exhaust system label is prohibited.

Applies to motorcycles manufactured on or after January 1, 2013, and motorcycles with aftermarket exhaust system equipment that is manufactured on or after January 1, 2013.

A violation is a mechanical violation. A court may dismiss a first violation if proof of correction is shown to the court.

Infraction: First offense; a fine of \$50 to \$100. Second or subsequent offense; a fine of \$100 to \$ 250.

**V.C. § 36005** (Amended): *All-Terrain Vehicles Used In Agricultural Operations:*

All-terrain vehicles are added to the list of vehicles used in agricultural operations to that may be driven incidentally on public roads (e.g., to get from one agricultural tract of land to another, where the tracts are separated by a public road).

**Weapons:**

**P.C. § 171c** (Amended): *Weapons in Government Buildings:*

**Subd. (a)(2):** Bringing or possessing a specified weapon into a legislative office, a hearing room on the grounds of the State Capitol, the Legislative Office Building, or upon the grounds of the State Capitol, if a sign is posted providing reasonable notice that prosecution may result.

Misdemeanor: One year in jail and/or a \$1,000 fine.

The subdivision applies to the following weapons: A firearm; a switchblade knife; a deadly weapon as described in **P.C. § 12020**; a knife with a blade length in excess of four inches, the blade of which is fixed or is capable of being fixed in an unguarded position by the use of one or two hands; an unauthorized tear gas

weapon; a stun gun; a BB, pellet, spot marker, or paint gun; any ammunition; or any explosive.

Exempts specified persons, including peace officers and persons who have permission from the Chief Sergeant at Arms of the State Assembly and the State Senate to possess a weapon.

The section provides that nothing in this section precludes prosecution under **P.C. §§ 12021, 12021.1, W&I §§ 8100, 8103**.

*Note:* The previously existing felony (wobbler) of bringing a *loaded* firearm into, or possessing a loaded firearm within, the State Capitol, a legislative office, the office of the Governor, or any hearing room on the grounds of the State Capitol in Sacramento has been designated as **subd. (a)(1)**.

**P.C. § 171.7** (New): *Weapons in Public Transit Facilities:*

Knowingly possessing a specified weapon within a sterile area of a public transit facility, if the sterile area has a posted sign that provides reasonable notice.

Misdemeanor: Six months in jail and/or a \$1,000 fine.

The section applies to the following weapons: Firearms; imitation firearms; BB, pellet, or air pressure guns; military practice hand grenades; replica hand grenades; unauthorized tear gas weapons; and undetectable knives. Exempts peace officers, retired peace officers, specified law enforcement officers, and persons responsible for public transit security.

Public transit includes buses, streetcars, light rail systems, rapid transit systems, subways, trains, and motor vehicles.

This new section does not prevent prosecution under any other provision of law.

**P.C. § 12370** (Amended; effective 6/2/2010): *Body Armor:*

As amended, “*Body Armor*” is defined as “any bullet-resistant material intended to provide ballistic and trauma protection for the person wearing the body armor.”

*Note:* **P.C. § 12370(a)** 12370 is the felony crime of a violent felon possessing, owning, or purchasing body armor.

*Note:* This amendment is in response to the case of *People v. Saleem* (2009) 180 Cal.App.4th 254 (review granted Mar. 10, 2010, then review dismissed Sept. 1, 2010, in light of this amendment) in which the appellate court reversed a conviction for **P.C. § 12370**, finding the statute as then

written unconstitutionally vague because it failed to provide fair notice that the defendant's body vest was illegal.

***Wiretaps:***

**P.C. §§ 629.50 et seq. (Amended): *Wiretaps:***

California's wiretap statutes have been expanded by eliminating the limiting references to "*electronic pager communications*" and "*electronic cellular telephone communications*," and instead references electronic communications in general.

The sections now use the phrase "*wire or electronic communication*" in order to permit the interception of modern types of contemporaneous two-way electronic communication such as e-mail, Blackberries, and instant messaging.

"*Electronic communication*" is defined as any transfer of signs, signals, writings, images, sounds, data, or intelligence of any nature in whole or in part by a wire, radio, electromagnetic, photoelectric, or photo-optical system, but does not include a communication made through a tone-only paging device, a communication from a tracking device, or electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.

The wiretap statutes apply to interceptions of wire and electronic communications, and not stored communications or stored content.

**P.C. § 629.56 (Amended): *Oral Wiretap Applications:***

The time for filing a written wiretap application after a judge has orally approved an emergency wiretap has been expanded by requiring that the written application must be filed by midnight of the second full *court* day after the oral approval.

*Note:* Previously, the written application was required to be filed within 48 hours of the oral approval.

**P.C. § 629.58 (Amended): *Thirty Day Limit for a Wiretap:***

The 30-day limit on a wiretap begins on the day of the initial interception, or 10 days after the issuance of the wiretap order, whichever comes first.

**P.C. § 629.60 (Amended): *Required Reports to the Court:***

The reports that are required to be provided to the judge who issued the wiretap order must be filed with the court at least every ten (10) days, or more frequently if ordered by the court.



*Note:* The section previously provided for reports no less than every six (6) days.

**P.C. § 629.66** (Amended): *Sealed Application and Order:*

The disclosure of the previously sealed wiretap application and order may be made to the defendant and at trial.

**P.C. § 629.74** (Amended): *Disclosure of Contents of a Wiretap:*

A prosecutor or peace officer may disclose the contents of a wiretap to any judge or magistrate if it is appropriate to the proper performance of the official duties of the person making or receiving the disclosure.

***Witnesses:***

**Evid. Code § 240** (Amended): *Unavailability:*

The definition of “*unavailable as a witness*” is expanded to include “persistent in refusing to testify concerning the subject matter of the declarant’s statement despite having been found in contempt for refusal to testify.”

**Evid. Code § 1390** (New): *Hearsay Exception; Forfeiture by Wrongdoing:*

The statement of an unavailable witness will be admitted in evidence as an exception to the Hearsay Rule when the witness’ unavailability is due to wrongdoing by the defendant. This new hearsay exception applies to any criminal, juvenile, or civil case “initiated or pending as of January 1, 2011.

The section specifically provides that evidence “of a statement is not made inadmissible by the hearsay rule if the statement is offered against a party that has engaged or aided and abetted in the wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.”

The party seeking to introduce a statement must establish by a “*preponderance of the evidence*” at a foundational hearing outside the presence of the jury that the above requirements have been met.

The section further provides that a finding that all of the elements for admissibility have been met “shall not be based solely on the uncontroverted hearsay statement of the unavailable declarant, and shall be supported by independent corroborative evidence.”

The court may take into account whether the statement is trustworthy and reliable. If the issue arises mid-trial, the court may consider evidence

already presented at the trial in deciding whether the requirements for admissibility have been met.

*Note:* See also **Evid. Code § 1390**, “*Forfeiture by Wrongdoing*,” which applies only in the case of a “serious felony” (**P.C. § 1192.7(c)**) or a specified drug (**H&S §§ 11351, 11352, 11378, or 11379**) case, requires “clear and convincing” evidence of the declarant’s unavailability being caused by the defendant, requires that the unavailability of the declarant be the result of killing or kidnapping, and requires that the statement be tape recorded, or written by a law enforcement official, and signed by the declarant.