

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:

*“When I die, I want to die like my grandfather who died peacefully in his sleep.
Not screaming like all the passengers in his car.” (Will Rogers)*

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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 2011. Only those statutes believed to be of interest to most law enforcement officers, with the concerns of prosecutors in mind, are included. Sentencing rules (*of which there are many*), 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). I have also not attempted to list the myriad of non-substantive statutory section number changes to the weapons laws (**P.C. §§ 12000 et seq.**) in that to do so would have more than quadrupled the length of this publication and been of limited value. You’ll have to find the new weapons sections yourself in your Penal Code. 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, 2012, unless otherwise indicated.

NEW AND AMENDED STATUTES:

Alcoholic Beverages:

B&P § 25622 (New); Caffeinated Beer:

It is illegal to sell, manufacture, import, or distribute beer to which caffeine has been added as a separate ingredient; i.e., “caffeinated beer.”

Misdemeanor: 6 months in county jail and/or a \$500 fine.

Animals:

Civil Code § 3482.8 (New); *Dogfighting and Cockfighting:*

Any building or property used for dogfighting (per **P.C. § 597.5**) or cockfighting (per **P.C. § 597b(b)**) is a nuisance.

See also **C.C.P. § 1161** (Amended): A tenant who commits or maintains this type of nuisance is subject to eviction under the unlawful detainer law.

P.C. § 597.4 (New); *Street Sales of Animals:*

A person who commits either of the following is guilty of a misdemeanor or infraction:

1. Sells or gives away as part of a commercial transaction, a live animal on a street, highway, public right-of-way, parking lot, carnival, or boardwalk; *or*
2. Displays or offers for sale, or displays or offers to give away as part of a commercial transaction, a live animal, if the act of selling or giving away is to occur on a street, highway, public right-of-way, parking lot, carnival, or boardwalk.

First Offense: Infraction; Fine of \$250.

Second Offense, or First Offense that causes or permits an animal to suffer or be injured or place the animal in danger: Misdemeanor: Fine of \$1,000.

A peace officer, animal control officer, or humane officer may issue a notice of violation for this section.

Exceptions include events held by 4-H clubs, county fairs, live animal markets regulated under **P.C. § 597.3**, animal shelters, fish sales at piers, wharfs and farmer's markets, pet stores, and cat and dog shows.

P.C. § 597.9 (New); *Livestock Ownership After a Prior Conviction:*

Any person who:

1. Owns, possesses, maintains, resides with, or cares for any animal within *five years* of being convicted of a specified animal abuse or cruelty misdemeanor (per **P.C. §§ 597(a), 597(b), 597a, 597b, 597h, 597j, 597s, or 597.1**); *or*

2. Owns, possesses, maintains, resides with, or cares for any animal within *10 years* of being convicted of a felony violation of a specified animal abuse or fighting crime (**P.C. §§ 597(a), 597(b), 597b, or 597.5**).

... is guilty of an infraction.

Infraction: A fine of \$50.

An owner of livestock may be exempted from this prohibition by filing a petition to establish that the prohibition would result in substantial or undue economic hardship to the defendant's livelihood and that the defendant has the ability to properly care for all livestock in his or her possession.

A defendant may petition the court to reduce the duration of the mandatory ownership prohibition if the defendant can establish probable cause to believe all of the following; (1) he or she does not present a danger to animals; (2) he or she has the ability to properly care for all animals in his or her possession; and (3) he or she has successfully completed all classes or counseling ordered by the court.

P.C. § 598.1 (Amended); *Dogfighting and Cockfighting*:

Cockfighting (**P.C. § 597b(b)**) is added to the forfeiture provisions that already apply to dogfighting.

Assaults and Batteries:

P.C. § 241 (Amended); *Assault on a Search & Rescue Member*:

Search and rescue members are added to the list of persons (e.g., peace officers, firefighters, paramedics, animal control officers) whose assault is punishable pursuant to **P.C. § 241(c)**.

Misdemeanor: One year in county jail and/or by a fine of \$2,000.

"*Search and rescue member*" is defined as any person who is part of an organized search and rescue team managed by a governmental agency.

P.C. § 243(b) (Amended); *Battery of Specified Persons*:

Subd. (b) is amended to add security officers, custody assistants, and search and rescue members to the list of possible victims of battery.

Misdemeanor: One year in jail and/or by a fine of \$2,000.

“*Custody assistant*” is defined as a person who has the responsibilities and duties described in existing P.C. § 831.7 and is employed by a law enforcement agency.

“*Search and rescue member*” is defined as any person who is part of an organized search and rescue team managed by a government agency.

“*Security officer*” is defined as a person who has the responsibilities and duties described in existing P.C. § 831.4 and is employed by a law enforcement agency.

P.C. § 245(a) (Amended); *Assault by Means of Force Likely to Produce Great Bodily Injury*:

“Assault by any means of force likely to produce great bodily injury” is moved from **subd. (a)(1)** to its own new **subd. (a)(4)**. **Subd. (a)(1)** now involves only “assault with a deadly weapon or instrument.”

Child Abuse:

P.C. § 11165.7 (Amended); *Mandated Child Abuse Reporters*:

Professional clinical counselors, clinical counselor trainees, and clinical counselor interns are added to the list of mandated child abuse and neglect reporters.

P.C. § 11165.12 (Amended); *Substantiated Report of Child Abuse*:

The following is added to the already-existing definition of “*substantiated report*” for purposes of the *Child Abuse and Neglect Reporting Act*:

A substantiated report shall *not* include a report where the investigator who conducted the investigation found the report to be false, inherently improbable, to involve an accidental injury, or to not constitute child abuse or neglect.

Note: The original definition of “*substantiated report*” as a report that is determined by the investigator to constitute child abuse or neglect based upon evidence that makes it more likely than not that child abuse or neglect occurred, remains in the statute.

Controlled Substances:

B&P §§ 4140 (Repealed), **4144** (Amended), **4144.5** (New), **4145** (Amended), **4145.5** (New), **4148** (Amended), **4148.5** (New), **4149.5** (New), *and* **H&S §§ 11364** (Repealed), **11364.1** (New); *Hypodermic Needles and Syringes:*

Effective *until* January 1, 2015 (at which time the original provisions are reinstated unless extended):

Pharmacists and physicians may, without a prescription, furnish 30 (instead of 10) or fewer hypodermic needles and syringes to persons 18 years of age and older; *and*

Persons 18 years of age and older are permitted to obtain from a pharmacist or physician, without a prescription, for personal use, 30 (instead of 10) or less hypodermic needles and syringes, for personal use.

The misdemeanor crime of unlawfully possessing or controlling a hypodermic needle or syringe, per **B&P §§ 4140**, is repealed.

Also, with the repeal of **H&S § 11364** (Repealed) and enactment of **H&S § 11364.1** (New), the crime of unlawfully possessing a device or instrument used for unlawfully injecting or smoking a specified controlled substance does *not* apply to the possession solely for personal use of 30 or fewer hypodermic needles or syringes without a prescription if acquired from a physician, pharmacists, or other authorized source.

H&S §§ 11110 (New); *Dextromethorphan, Supplying to a Minor:*

A person who willfully and knowingly supplies, delivers, or gives possession of a drug, material, or substance containing any quantity of “*dextromethorphan*” to a person under age 18 in an over-the counter sale without a prescription is guilty of an infraction.

Infraction: \$250 fine.

Note: “Dextromethorphan” is a cough suppressant and is used in cough and cold medicine that, in high doses, can cause intoxication, hallucinations, and effects similar to those caused by PCP or ketamine.

It is prima facie evidence of a violation of this section if the person, corporation, or retail distributor making the sale does not require and obtain bona fide evidence of age and identity from the purchaser, unless

from the purchaser's outward appearance the person making the sale would reasonably presume the purchaser is age 25 or older.

Proof that the seller demanded, was shown, and acted in reasonable reliance upon bona fide evidence of majority and identity is a defense to criminal prosecution under this section.

“Bona fide evidence of majority and identity” is defined as a document issued by a federal, state, county, or municipal government, including but not limited to, a driver's license, California state identification card, Armed Forces identification card, or other form of identification that contains the name, date of birth, description, and picture of the person.

A retail clerk who fails to require and obtain proof of age from the purchaser is *not* guilty of this new infraction and shall *not* be subject to any civil penalties unless the clerk is a willful participant in an ongoing criminal conspiracy to violate this section.

H&S § 11111 (New) requires “if feasible” a person, corporation, or retail distributor that sells dextromethorphan over the counter without a prescription to use a cash register that is equipped with an age-verification feature that directs the retail clerk making the sale to ask for identification.

H&S § 11357.5 (New); *Furnishing Synthetic Cannabinoid or Derivative:*

A person who sells, distributes, furnishes, or gives, or offers to sell, distribute, furnish, or give, or possesses for sale, any synthetic cannabinoid compound or any synthetic cannabinoid derivative, to any person, is guilty of a misdemeanor.

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

“Synthetic cannabinoid compound” refers to five specified substances:

1. 1-pentyl-3-(1-naphthoyl) indole (JWH-018)
2. 1-butyl-3-(1-naphthoyl) indole (JWH-073)
3. 1-[2-(4-morpholinyl) ethyl]-3-(1-naphthoyl) indole (JWH-200)
4. 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (CP-47,497)
5. 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol; CP-47,497 C8 homologue)

Note: Also known as “fake pot,” “spice,” or “K2.”

H&S § 11362.83 (Amended); *Medical Marijuana Cooperatives and Collectives:*

A city or local governing body may (1) adopt and enforce local ordinances that regulate the location, operation, and establishment of a medical marijuana cooperative or collective; (2) enforce civil and criminal local ordinances related to marijuana cooperatives and collectives; and (3) enact other laws consistent with **H&S §§ 11362.7–11362.83** (The Medical Marijuana Program).

Note: This amendment attempts to clarify that local communities have the authority to regulate medical marijuana. Previously, the section provided only that “[n]othing in this article shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article.”

H&S §§ 11364 (Repealed), **11364.1** (New); *Hypodermic Needles and Syringes:*

See **B&P §§ 4140** (Repealed), et seq, above.

H&S § 11375.5 (New); *Furnishing Synthetic Stimulant Compounds or Derivatives:*

Any person who sells, dispenses, distributes, furnishes, administers, gives, or offers to sell, dispense, distribute, furnish, administer, or give to any person, or who possesses for sale, any of the specified synthetic stimulant compounds or a synthetic stimulant derivatives as specified below, is guilty of a misdemeanor.

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

Applies to a material, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including salts, isomers, esters, or ethers:

- (1) Naphthylpyrovalerone whether or not further substituted in the naphthyl ring to any extent with alkyl, alkoxy, alkylendioxy, haloalkyl, or halide substituents, whether or not further substituted in the naphthyl ring by one or more other univalent substituents, or whether or not further substituted in the carbon chain at the 3-, 4-, or 5-position with an alkyl substituent.
- (2) 2-amino- 1-phenyl-1-propanone (cathinone) or variationin any of the following ways:

- (A) By substitution in the phenyl ring to any extent with alkyl, alkoxy, alkylendioxy, haloalkyl, or halide substituents, whether or not further substituted in the phenyl ring by one or more other univalent substituents.
- (B) By substitution at the 3-position with an alkyl substituent.
- (C) By substitution at the nitrogen atom with alkyl, dialkyl, or benzyl groups, or by inclusion of the nitrogen atom in a cyclic structure.

Note: Also known as “*Ivory Wave*,” “*Purple Wave*,” “*Vanilla Sky*,” and “*Bliss*.”

Courts:

C.C.P. § 116.221 (Amended); *Jurisdiction, Small Claims Courts:*

The monetary jurisdiction of Small Claims Courts is increased from \$7,500 to \$10,000, for suits brought by a natural person.

See also **C.C.P. § 116.224** (New); provides for an exception in an action brought by a natural person for bodily injury resulting from an automobile accident where the defendant is covered by an auto insurance policy that includes a duty to defend, leaving the limit at \$7,500 until January 1, 2015.

Domestic Violence:

Gov’t. Code § 6208.2 (New); *Domestic Violence, Sexual Assault, or Stalking Victims and the Secretary of State’s Confidentiality Program:*

A person who posts on the Internet the home address, telephone number, or personal identifying information of a participant in the Secretary of State’s Address Confidentiality Program for victims of domestic violence, sexual assault, or stalking, with the intent that another person “*imminently use that information to commit a crime involving violence or a threat of violence,*” is guilty of a misdemeanor.

Misdemeanor: Six months in county jail and/or \$2,500 fine.
If bodily injury occurs; one year in county jail and/or \$5,000 fine.

P.C. § 136.2 (Amended); *Restraining Orders:*

Upon a conviction for any crime of domestic violence (as defined in **P.C. § 13700**), the court may consider issuing an order restraining the defendant from any contact with the victim for up to *10 years*, regardless

of the sentence, whether the defendant is placed on probation or whether probation is denied, and regardless of where the sentence is served (state prison or county jail).

The duration of the restraining order is to be based on the seriousness of the facts before the court, the possibility of future violations, and the safety of the victim and his or her immediate family. This restraining order is available in all types of domestic violence cases (e.g., spouse, former spouse, cohabitant, former cohabitant, person with whom the suspect has a child or is having or has had a dating or engagement relationship).

P.C. § 273.5 (Amended); *Spousal Abuse*:

The definition of “*traumatic condition*” is amended by adding; “*including, but not limited to, injury as a result of strangulation or suffocation.*”

“*Strangulation*” and “*suffocation*” include impeding the normal breathing or circulation of the blood of a person by applying pressure on the throat or neck.

Note: The act of strangulation or suffocation alone does not constitute a traumatic condition. There must be “*injury as a result of strangulation or suffocation.*”

Eavesdropping:

P.C. § 633.05 (New); *Exception for City Attorneys*:

A city attorney who is already authorized to prosecute misdemeanor crimes and any person acting under the direction of such a city attorney, is added to those who may lawfully overhear and record confidential communications for criminal investigations.

Elder Abuse:

Elec. Code 18573.5 (New); *Coercing or Deceiving an Elder into Voting*:

Any person who is providing care or direct supervision to an elder (i.e., 65 years of age or older, residing in California) in a state licensed or state-subsidized facility or program who coerces or deceives the elder into voting for or against a candidate or measure contrary to the elder’s intent or in the absence of any intent of the elder or cast a particular vote is guilty of a misdemeanor.

Misdemeanor; Six months in county jail and/or \$10,000 fine per vote cast by the elder as a result of the coercion or deception.

Elections:

Elec. Code 18573.5 (New); *Coercing or Deceiving an Elder into Voting:*

Any person who is providing care or direct supervision to an elder (i.e., 65 years of age or older, residing in California) in a state licensed or state-subsidized facility or program who coerces or deceives the elder into voting for or against a candidate or measure contrary to the elder's intent or in the absence of any intent of the elder or cast a particular vote is guilty of a misdemeanor.

Misdemeanor; Six months in county jail and/or \$10,000 fine per vote cast by the elder as a result of the coercion or deception.

Informants:

P.C. § 1111.5 (New); *Uncorroborated In-Custody Informants:*

Neither a jury nor a judge may convict a defendant, find a special circumstance true, or use a fact in aggravation, based on the uncorroborated testimony of an "*in-custody informant*."

Corroboration must consist of "*other evidence*" that connects the defendant to the commission of the offense, special circumstance, or aggravating factor. Corroborating evidence is not sufficient if it merely shows the commission of the offense, the special circumstance, or the aggravating factor.

The corroboration may not be provided by the testimony of another in-custody informant unless the party calling the in-custody informant as a witness establishes by a preponderance of the evidence that the in-custody informant has not communicated with another in-custody informant on the subject of the testimony.

"*In-custody informant*" is defined as a person other than a codefendant, percipient witness, accomplice, or coconspirator whose testimony is *based on statements allegedly made by the defendant* while both the defendant and the informant were held in a city or county jail, a state penal institution, or a correctional institution.

Nothing in this new section limits or changes the requirements for corroboration of "accomplice testimony" pursuant to existing **P.C. § 1111**.

Invasion of Privacy:

P.C. § 647(j) (Amended); *Recording Under or Through a Person's Clothing:*

“*Mobile phones*” are added to the devices used to illegally secretly record under or through a person’s clothing.

First Offense: Misdemeanor: Six months in county jail and/or a fine of \$,1000.

Second offense, or when victim is a minor: Misdemeanor: One year in county jail and/or a fine of \$2,000.

Juries:

C.C.P. § 1209 (Amended); *Juror Misconduct; Civil Contempt:*

The list of conduct that constitutes *civil* contempt is expanded by adding a juror’s willful disobedience of a court admonishment related to the prohibition on any form of communication or research about a case, including all forms of electronic or wireless communication or research.

P.C. § 166 (Amended); *Juror Misconduct; Criminal Contempt:*

The list of conduct that constitutes *criminal* contempt is expanded by adding a juror’s willful disobedience of a court admonishment related to the prohibition on any form of communication or research about a case, including all forms of electronic or wireless communication or research.

Landlord-Tenant:

C.C.P. § 1161 (Amended); *Dogfighting and Cockfighting:*

A tenant who uses any building or property for dogfighting (per **P.C. § 597.5**) or cockfighting (per **P.C. § 597b(b)**) is subject to eviction under the unlawful detainer law.

See also **C.C. § 3482.8** (New): Any building or property used for these purposes is a nuisance.

Minors:

Ed. Code § 48900(r) (Amended; Effective 7/1/12); *Bullying:*

Subd. (r) is revised to include “*a social network Internet web site*” in its definition of bullying by means of an electronic act. This revision clarifies

that cyber bullying committed by means of an electronic act includes the posting of messages on a social network Internet Web site.

Pursuant to **Subd. (r)**, “*electronic act*” means the transmission of a communication, including but not limited to, a message, text, sound, or image, or a post on a social network Internet Web site, by means of an electronic device, including but not limited to, a telephone, wireless telephone, or other wireless communication device, computer, or pager.

Note: The section lists the misconduct that may subject a student to suspension or expulsion.

Wel. & Inst. Code 739 (Amended); *Non-Emergency Medical Treatment:*

Subd. (a): A probation officer may authorize *non-emergency medical or dental treatment* based on the written recommendation of the examining physician and considered necessary for the health of the minor, without the advance consent of the minor’s parent or guardian. The probation officer is required to make a reasonable effort to notify and obtain the consent of the parent or guardian, and to document these efforts. If the parent or guardian objects, the treatment or care shall be given only upon court order.

Note: These non-emergency treatment procedures are now similar to the provisions for emergency treatment contained in **subd. (d)** where the probation officer was already permitted to authorize *emergency* medical care without the consent of a parent or guardian.

Subd. (h): Nothing in this section interferes with a minor’s right to authorize or refuse medical, surgical, dental, or other care.

Peace Officers’ Rights:

P.C. § 830.95 (New); *Peace Officers and Picketing:*

A person who wears the uniform of a peace officer while engaged in picketing or other informational activities in a public place relating to a concerted refusal to work is guilty of a misdemeanor, whether or not the person is a peace officer.

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

Picketing:

P.C. § 830.95 (New); *Peace Officers and Picketing:*

A person who wears the uniform of a peace officer while engaged in picketing or other informational activities in a public place relating to a concerted refusal to work is guilty of a misdemeanor, whether or not the person is a peace officer.

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

Prisoners:

P.C. § 3067 (Amended; Effective 10/1/2011): *Fourth Wavier Conditions for Inmates Released on Postrelease Community Supervision:*

Inmates released from prison on “*Postrelease Community Supervision*” are added to those inmates (i.e., those released on parole) who must agree in writing to be subject to search and seizure by a parole officer or other peace officer at any time of the day or night, with or without a search warrant, and with or without cause.

Note: See “*Postrelease Community Supervision Act of 2011*,” below.

P.C. §§ 3450, 3451, 3452, 3453, 3454, 3455, 3456, 3457, 3458, 3460, 3465 (New; Effective 10/1/2011); *Postrelease Community Supervision Act of 2011:*

Most felons released from state prison on and after October 1, 2011 are subject to “postrelease community supervision” (PRCS) instead of state parole. They will be supervised by a county agency designated by the board of supervisors. In most, if not all, counties, this will be the county’s probation department.

See **P.C. § 3067** (Amended): Inmates released from prison on “postrelease community supervision” are added to those inmates (i.e., those released on parole) who must agree in writing to be subject to search and seizure by a parole officer or other peace officer at any time of the day or night, with or without a search warrant, and with or without cause.

Four categories of prison inmates are specified as exceptions to those to be released under PRCS and thus to be placed on parole instead: Inmates who are released from prison after having served a term (1) for a serious or violent felony, or (2) for a Third Strike Offense; *or* (3) any person

classified by the Department of Corrections and Rehabilitation as a High Risk Sex Offender; *or* (4) any mentally disordered offender.

The maximum period of PRCS is three years.

A person eligible for PRCS is to enter into an agreement prior to, and as a condition of release from, prison, that includes conditions such as obeying all laws, reporting to the supervising county agency, being subject to search and seizure without a warrant, being subject to arrest without a warrant by the supervising county agency or a peace officer when there is probable cause to believe the person has violated a condition of PRCS, waiving extradition if found outside California, not possessing weapons, and agreeing to up to 10 consecutive days of “flash incarceration” without a court hearing.

If intermediate sanctions are not effective for a PRCS violator, the supervising agency may petition the court or a revocation hearing officer to revoke PRCS.

A PRCS violation penalty is limited to a maximum of 180 days in jail.

The following PRCS violation penalties are provided for:

1. Return the defendant to postrelease community supervision with modified conditions, if appropriate, including up to 180 days in jail; *or*
2. Revoke postrelease community supervision and order the defendant confined in jail for up to 180 days; *or*
3. Refer the offender to a **P.C. § 3015** reentry court or other evidence-based program.

See also **Gov’t C. § 71622.5** (New): The superior court of any county is authorized to appoint as many revocation hearing officers as needed to conduct PRCS revocation hearings.

The supervising agency is authorized to transfer supervision of an offender to another county if the offender has a change of residence that was approved by the supervising agency or that did not violate the terms and conditions of PRCS.

P.C. § 4576 (New; Effective 10/6/2011); *Cellphones and CDCR Visitors*:

Any person who possesses with the intent to deliver, or who does deliver, to an inmate or ward in the custody of the California Department of Corrections and Rehabilitation (CDCR) any cell phone or other wireless communication device or component thereof, including a subscriber

identity module (SIM card) or memory storage device, is guilty of a misdemeanor.

Misdemeanor: Six months in county jail and/or a fine of \$5,000 per device.

If a visitor to a CDCR inmate or ward is found to be in possession of a cell phone or other prohibited device upon being searched or subjected to a metal detector, the device shall be confiscated but returned later the same day unless the visitor is cited for this new misdemeanor crime in which case the device may be held as evidence.

An inmate who is found to be in possession of a wireless communication device is subject to a loss of up to 90 days of custody credits.

A person who brings a wireless communication device within the secure perimeter of a CDCR facility is deemed to have given consent to CDCR to use available technology to prevent the device from sending or receiving telephone calls.

CDCR shall *not* access data or communications that have been captured using available technology from the *unauthorized* use of a wireless communication device except after obtaining a search warrant.

CDCR shall *not capture* data or communications from an *authorized* wireless communication device, except as already authorized under existing law.

CDCR shall *not access* data or communications from an *authorized* wireless communication device, except as already authorized under existing law.

Any contractor or employee of a contractor or CDCR who knowingly and willfully, and without authorization, obtains, discloses, or uses confidential information obtained in violation of these provisions is subject to an administrative fine or civil penalty of up to \$5,000 for a first violation, up to \$10,000 for a second violation, or up to \$25,000 for a third or subsequent violation.

Wel. & Inst. Code § 4139 (New); *Cellphones, Tobacco, and Money, and State Hospital Visitors:*

Any person who delivers, or possesses with the intent to deliver, to a patient in a state hospital listed in **W&I § 4100** (Atascadero, Coalinga Metropolitan, Napa, and Patton State Hospitals), a cell phone or wireless communication device or any component thereof, tobacco products if the

state hospital has a ban on tobacco products, or money in excess of the limitations and restrictions adopted by the state hospital, is guilty of a misdemeanor:

Misdemeanor: A fine of \$1,000 for each prohibited item.

If a visitor to a state hospital is found to be in possession of a prohibited item, the item shall be subject to confiscation, but must be returned to the visitor the same day, unless the item is held as evidence because the person is cited for a violation of this section. If after investigation it is determined that there will be no prosecution, the item must be returned to the owner at the owner's expense.

Privileges:

Evid. Code §§ 1010, 1014 (Amended); *Psychotherapist-Patient Privilege:*

Licensed professional clinical counselors, clinical counselor interns, and clinical counselor trainees are added to the list of professionals that qualify as a "psychotherapist" under the Evidence Code for purposes of the Psychotherapist-Patient privilege.

Reproduction Health Services:

Gov't. Code § 6218.01 (New); *Posting Reproductive Health Services Facility's Provider's, Employee's, or Patient's Personal Identifying Information:*

A person who posts on the Internet the home address, telephone number, or personal identifying information of a provider, employee volunteer, or patient of a reproductive health services facility, with the intent that another person "imminently use that information to commit a crime involving violence or a threat of violence" is guilty of a misdemeanor.

Misdemeanor: Six months in county jail and/or a \$2,500 fine.
If bodily injury occurs; one year in county jail and/or a \$5,000 fine.

Restraining Orders:

C.C.P. §§ 527.6 (Amended); **527.8** (Amended); **527.85** (Amended); **527.9** (Amended); **527.10** (Amended); *Civil Harassment, Workplace Violence, and Educational Institution Restraining Orders:*

Replaces the terms of "*plaintiff*" and "*defendant*" with "*petitioner*" and "*respondent*."

Defines “*petitioner*” as “*the person seeking protection,*” and “*respondent*” as “*the person against whom the order is sought.*”

Defines “*temporary restraining order*” and “*injunction*” as “an order enjoining a party from harassing, intimidating, molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, abusing, telephoning, destroying personal property, contacting, coming within a specified distance of, or disturbing the peace of the petitioner, or an order enjoining a party from specified behavior that the court determines is necessary to effectuate these orders.”

Requires that a request for a *temporary restraining order* without notice be granted or denied on the same day the petition is submitted to the court unless the petition is filed too late in the day to permit effective review, in which case the order shall be granted or denied on the next day of judicial business in sufficient time for the order to be filed that day with the court clerk.

The number of days a *temporary restraining order* may remain in effect before a hearing must be held is increased from 15 to 21 days. The number of days before a hearing must be held, if there is good cause to go past 21 days, is increased from 22 to 25 days.

Service of a restraining order on the respondent by mail is permitted if the respondent was personally served with the notice of hearing, fails to appear at the hearing, and the terms and conditions of the restraining order are identical to the temporary restraining order.

The failure to state the expiration date on the face of the form automatically creates an order with a duration of *three years* from the date of issuance.

The court’s order may be renewed for an additional *three years* without a showing of any further harassment, subject to termination or modification by the court either on written stipulation filed with the court or on the motion of a party.

Instead of the petitioner having to deliver a copy of the order to a law enforcement agency, the court itself may transmit the order or proof of service within one business day to a local law enforcement agency authorized to enter orders into the California Law Enforcement Telecommunications System (CLETS); or, with the approval of the Department of Justice, the court may enter the order or proof of service into CLETS directly.

“*Ammunition*” is added to the items (e.g., firearms) that a person subject to a protective order is prohibited from owning, possessing, or purchasing.

See also:

C.C.P. § 527.6 (Amended) now provides that a minor under 12 years of age and accompanied by a guardian ad litem shall be permitted to appear in court without counsel for the limited purpose of requesting or opposing a request for a temporary restraining order or injunction, as provided in **C.C.P. § 374**.

C.C.P. § 527.9 (Amended) adds a cross-reference to **C.C.P. § 527.85** permitting a private, postsecondary educational institution to seek a restraining order when a student has been threatened.

C.C.P. § 527.10 (Amended) adds a cross-reference to **C.C.P. § 527.85** and prohibits an enjoined party from taking any action to obtain the location or address of “any protected person” instead of “a protected party or a protected party’s family members, caretakers, or guardian”

C.C.P. §§ 527.6, (Amended), **527.8** (Amended), and **527.85** (Amended) now require the protected party to be given notice when a person other than the protected party files a motion to terminate or modify a protective order issued pursuant to this section. If the protected person cannot be notified prior to the hearing, the court must deny the motion or continue the hearing until the protected party can be properly noticed.

Fam. Code § 6389 (Amended); *Ammunition and Restraining Orders*:

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

See also **Fam. Code § 6304** (Amended): Ammunition is also added to the list of prohibited items a person subject to a domestic violence restraining order must be told about by the court when the respondent is present in court.

P.C. § 136.2 (Amended); *Domestic Violence Restraining Orders*:

Upon a conviction for any crime of domestic violence (as defined in **P.C. § 13700**), the court may consider issuing an order restraining the defendant from any contact with the victim for up to *10 years*, regardless of the sentence, whether the defendant is placed on probation or whether

probation is denied, and regardless of where the sentence is served (state prison or county jail). The duration of the restraining order is to be based on the seriousness of the facts before the court, the possibility of future violations, and the safety of the victim and his or her immediate family. This restraining order is available in all types of domestic violence cases (e.g., spouse, former spouse, cohabitant, former cohabitant, person with whom the suspect has a child or is having or has had a dating or engagement relationship).

Wel. & Inst. Code § 213.5 (Amended); *Juvenile Delinquency Cases*:

Striking, telephoning, destroying personal property, contacting, or disturbing the peace is added to the list of actions (attacking, molesting, threatening, sexually assaulting, stalking, or battering) that a juvenile court may enjoin a person from doing to a minor.

A court may also issue an ex parte order against any person in order to protect a parent, legal guardian, or caretaker of a minor, whether or not the parent, guardian, or caretaker lives with the minor. Further authorizes the court to issue an ex parte order against any person in order to protect the minor's current or former probation officer, or court appointed special advocate.

The number of days the court has to hold a hearing is increased from 15 to 21, after a temporary restraining order has been granted, without notice. The number days the court has to hold a hearing is increased from 22 to 25 if there is good cause to go past 21 days.

The court is required to transmit to law enforcement personnel a protective order, extension, modification, or termination, within one business day, by either (1) transmitting a physical copy of the order to a local law enforcement agency authorized to enter orders into the California Law Enforcement Telecommunications System (CLETS); or (2) entering the order into CLETS directly, with the approval of the Department of Justice.

The protected party is required to be given notice when a person other than the protected party files a motion to terminate or modify a protective order issued pursuant to this section. If the protected person cannot be notified prior to the hearing, the court must deny the motion or continue the hearing until the protected party can be properly noticed.

Sexual Assaults:

Gov't. Code § 6208.2 (New); *Domestic Violence, Sexual Assault, or Stalking Victims and the Secretary of State's Confidentiality Program:*

A person who posts on the Internet the home address, telephone number, or personal identifying information of a participant in the Secretary of State's Address Confidentiality Program for victims of domestic violence, sexual assault, or stalking, with the intent that another person "imminently use that information to commit a crime involving violence or a threat of violence," is guilty of a misdemeanor.

Misdemeanor: Six months in county jail and/or a \$2,500 fine.
If bodily injury occurs; one year in county jail and/or a \$5,000 fine.

Stalking:

Gov't. Code § 6208.2 (New); *Domestic Violence, Sexual Assault, or Stalking Victims and the Secretary of State's Confidentiality Program:*

A person who posts on the Internet the home address, telephone number, or personal identifying information of a participant in the Secretary of State's Address Confidentiality Program for victims of domestic violence, sexual assault, or stalking, with the intent that another person "imminently use that information to commit a crime involving violence or a threat of violence," is guilty of a misdemeanor.

Misdemeanor: Six months in county jail and/or a \$2,500 fine.
If bodily injury occurs; one year in county jail and/or a \$5,000 fine.

Students:

P.C. § 626.8 (Amended); *Disrupting School Activities:*

The crime of interfering with the peaceful conduct of school activities or disrupting students is expanded by adding "*willfully or knowingly creating a disruption with the intent to threaten the immediate physical safety of any pupil in preschool, kindergarten, or any of grades 1 to 8, inclusive, arriving at, attending, or leaving from school.*"

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

P.C. § 626.91 (New); *Ammunition on School Grounds:*

This section notes that possession of ammunition on school grounds is governed by **P.C. § 30310** (New).

See **P.C. § 30310(a)** (New), below, under “*Weapons:*” No person shall carry ammunition or reloaded ammunition onto school grounds, subject to listed exceptions.

Theft:

P.C. § 487j (New); *Grand Theft of Copper Materials:*

The theft of copper materials of a value exceeding \$950 is a felony grand theft.

Felony (wobbler): 16 months, 2 or 3 years in prison, or one year in county jail, and/or a fine of \$10,000.

Tobacco:

Wel. & Inst. Code § 4139 (New); *Cellphones, Tobacco, and Money, and State Hospital Visitors:*

Any person who delivers, or possesses with the intent to deliver, to a patient in a state hospital listed in **W&I § 4100** (Atascadero, Coalinga Metropolitan, Napa, and Patton State Hospitals), a cell phone or wireless communication device or any component thereof, *tobacco products if the state hospital has a ban on tobacco products*, or money in excess of the limitations and restrictions adopted by the state hospital, is guilty of a misdemeanor:

Misdemeanor: A fine of \$1,000 for each prohibited item.

If a visitor to a state hospital is found to be in possession of a prohibited item, the item shall be subject to confiscation, but must be returned to the visitor the same day, unless the item is held as evidence because the person is cited for a violation of this section. If after investigation it is determined that there will be no prosecution, the item must be returned to the owner at the owner’s expense.

Vehicle Code Violations:

V.C. § 2814.1 (Amended); *Vehicle Inspection Checkpoints:*

References to “*sobriety checkpoints*” in the section, authorizing a County Board of Supervisors to establish checkpoints, are removed so that the section now applies only to vehicle inspection checkpoints per **V.C. §§ 27153 & 27153.5** (excessive smoke, flame, gas, oil, or fuel residue).

V.C. § 2814.2 (New); *Sobriety Checkpoints*:

Subd. (a): A driver of a motor vehicle who fails to stop and submit to a sobriety checkpoint inspection conducted by a law enforcement agency when signs and displays are posted requiring that stop is guilty of an infraction.

Infraction: \$50 fine.

Subd. (b): Impoundment of a vehicle at a sobriety checkpoint is prohibited if the driver's only offense is a violation of **V.C. § 12500** (driving without a valid license).

Subd. (c): Requires a law enforcement officer, in the case of a driver who is in violation of **V.C. § 12500**, to make a reasonable attempt to identify the registered owner of the vehicle and release the vehicle to him or her if licensed, or to a licensed driver authorized by the registered owner. If a notice to appear is issued to the unlicensed driver, the name and driver's license number of the licensed driver to whom the car is released shall be listed on the officer's copy of the notice. When a vehicle cannot be released, it shall be *removed* pursuant to **V.C. § 22651(p)**, whether or not a notice to appear is issued.

V.C. § 14602 (New): A vehicle removed pursuant to this section shall be released to the registered owner or his or her agent at any time the facility to which the vehicle has been removed is open, upon presentation of the registered owner's or his or her agent's valid driver's license and proof of current vehicle registration.

V.C. § 22651 (Amended); *Impoundment of Vehicles*:

The circumstances under which a peace officer or specified public employee may remove a vehicle are expanded in new **subd. w** to include when a vehicle is parked or left standing in violation of new **V.C. § 21100(p)** [Amended; mobile billboards] and the registered owner of the vehicle was previously issued a warning citation.

V.C. § 21100(p) (Amended) permits under **subd. (p)** (New) local authorities to regulate advertising signs on motor vehicles that are parked or left standing on a public street (e.g., mobile billboards).

Subd. (o) (Amended) authorizes the removal of a vehicle that displays an expired, false, or counterfeit registration sticker or card, and provides an additional way the vehicle can be released; i.e., to the legal owner without payment of any fees or fines and without proof of current registration, if the vehicle is only being transported to the reposessor and the legal owner

pays towing and storage costs, and completes an affidavit stating that the legal owner was not in possession of the vehicle at the time of the offense relating to standing or parking.

V.C. § 27315 (Amended), **27360** (Repealed), **27360.5** (Repealed), **27360.6** (New), **27361** (Amended), **27363** (Amended), **27363.5** (Amended), **27365** (Amended); *Child Booster Seats*:

The age, weight, and height requirements for children and booster seats are altered (from under the age of 6 or under 60 pounds) by providing that a child under age eight must be properly secured in a child passenger restraint system (i.e., a booster seat) unless the child is four feet nine inches in height or taller, in which case the child must be restrained by a safety belt rather than a child passenger restraint system.

First Offense; Infraction: First offense; a fine of \$10.
Second and Subsequent Offense; a fine of \$250. (**V.C. § 27360.6** (New))

V.C. § 27363 (Amended): The provisions for when it is permissible to have a child under age eight ride in the front seat of a vehicle is changed to now allow for an otherwise restricted child to ride in the front seat if there is no rear seat, if the rear seats are side-facing jump seats, if the rear seats are rear-facing seats, if a child passenger restraint system cannot be installed properly in the rear seat, if medical reasons necessitate the child not ride in the rear seat, or if all the rear seats are occupied by children under age seven (instead of under age 12 as previously required).

“Properly restrained by a safety belt” means that the lower (lap) portion of the belt crosses the hips or upper thighs of the occupant and the upper (shoulder) portion of the belt, if present, crosses the chest in front of the occupant.

Weapons:

P.C. § 245(a) (Amended); *Assault by Means of Force Likely to Produce Great Bodily Injury*:

“Assault by any means of force likely to produce great bodily injury” is moved from **subd. (a)(1)** to its own new **subd. (a)(4)**. **Subd. (a)(1)** now involves only assault with a deadly weapon or instrument.

P.C. § 626.91 (New); *Ammunition on School Grounds*:

The section notes that possession of ammunition on school grounds is governed by **P.C. § 30310** (New). See below.

P.C. § 626.92 (New); *Firearms on School Grounds; Exceptions:*

P.C. § 626.9 (prohibiting firearms on school grounds) does not apply to a security guard authorized to openly carry an unloaded handgun pursuant to new **P.C. §§ 26350-26389**, or an honorably retired peace officer authorized to openly carry an unloaded handgun pursuant to **P.C. § 26361** (New).

P.C. §§ 12000-12809 (Repealed), **P.C. §§ 16000-34370** (New); *Weapons Offenses*

SB 1080 effected a nonsubstantive reorganization of most deadly weapon and firearm statutes, renumbering and reorganizing the sections. The sheer volume of these changes makes listing them individually here impractical. Consult your Penal Code for the current applicable sections.

P.C. § 17512 (New); *Open Carry of Firearms in Vehicles:*

A driver of a motor vehicle or the owner of a motor vehicle, whether or not the owner is occupying the vehicle, who knowingly permits another person to carry into or bring into the vehicle a firearm in violation of **P.C. § 26350** (New; *Openly Carrying an Unloaded Handgun*; see below), is guilty of a misdemeanor.

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

P.C. § 25590 (New); *Carrying Concealed Firearms:*

P.C. § 25400 (New) (formerly **P.C. § 12025**; concealed firearms) does not apply to, or affect, the transportation of a firearm if done directly between places where a person may carry a firearm pursuant to an exemption from the prohibition in **P.C. § 25400** (New) (formerly **P.C. § 12025**), or **P.C. § 25850** (New) (formerly **P.C. § 12031**; loaded firearms), or **P.C. § 26350** (New) (Open Carry Law), or a place where the prohibition in these sections does not apply.

P.C. § 26350 (New); *Open Carry of Unloaded Firearms:*

Any person who carries upon his or her person an exposed and unloaded handgun outside a vehicle, or while inside or on a vehicle whether or not on the person, either situation occurring while in or on any of the following:

- (1) A public place or public street in an incorporated city or city and county; *or*
- (2) A public street in a prohibited area of an unincorporated area of a county or city and county; *or*
- (3) A public place in a prohibited area of a county or city and county,

. . . is guilty of a misdemeanor.

Misdemeanor: Six months in county jail and/or a fine of \$1,000. If the openly carrying on the person is outside a vehicle, in a public place or on a public street in an incorporated city or city and county, where the handgun and unexpended ammunition capable of being discharged from the handgun are in the immediate possession of the person and the person is not in lawful possession of the handgun: One year in jail and/or by a fine of \$1,000.

Each handgun constitutes a distinct and separate offense.

See **P.C. §§ 26361-26389** (New): Lists 29 exceptions to the open carry prohibition. These exceptions include, but are not limited to open carrying by:

- Peace officers;
- Honorably retired peace officers authorized to carry concealed firearms;
- Persons licensed to manufacture, import, or deal in firearms;
- Members of military or civil organizations while marching in parades or practicing parading; members of a target shooting club;
- Persons using guns at a target range;
- Licensed hunters while engaged in hunting or going to or from hunting;
- Persons at a gun show;
- Persons in a school zone with permission from the school to openly carry;
- Persons while making or attempting to make a lawful arrest;
- Persons on the premises of a business that sells, repairs, or pawns firearms, or that does firearms training;
- Persons filming a movie, television show, or video; persons who are summoned by a peace officer to assist in making an arrest or preserving the peace;
- Persons in training to become a sworn peace officer;

Persons carrying at the request of a sheriff or chief of police; *or*
Persons carrying an unloaded handgun in the locked trunk of a motor vehicle or in a locked container.

See also **P.C. § 25605** (New; formerly **P.C. § 12026**), that cross-references to **P.C. §§ 26350-26389** (New), which provides that the prohibition against openly carrying does not apply to any United States citizen or legal resident who is age 18 or over and resides in California, and who does not come within the provisions of **P.C. §§ 29800-29875** (New; formerly **P.C. § 12021**), **P.C. §§ 29900-29905** (New; formerly **P.C. § 12021.1**), **W&I § 8100** (mental disorder), or **W&I § 8103** (mental disorder), if the carrying, whether open or concealed, takes place *in the person's place of residence or business, or on private property owned or possessed by the person.*

P.C. § 16950 (New): For purposes of open carry, a handgun shall be deemed to be carried openly or exposed if the handgun is “*not carried concealed within the meaning of P.C. § 25400 (New)*” (formerly **P.C. § 12025**).

Per **P.C. § 25400** (New), among other things, a firearm carried openly in a belt holster is not concealed.

P.C. § 17040 (New): For purposes of open carry, “*public place*” has the same meaning as in **P.C. § 25850** (formerly **P.C. § 12031**).

P.C. § 17295 (New): For purposes of open carry, a handgun shall be deemed “*unloaded*” if it is not “*loaded*” within the meaning of **P.C. § 16840(b)** (formerly **P.C. § 12031(g)**).

Per **P.C. § 16840(b)**, “*loaded*” means that an unexpended cartridge or shell is in or attached to the firearm, including, but not limited to, in the firing chamber, magazine, or clip attached to the firearm.

P.C. § 30310 (New); *Ammunition on School Grounds*:

Subd. (a): No person shall carry ammunition or reloaded ammunition onto school grounds.

Misdemeanor: Six months in county jail and/or a \$1,000 fine.
(subd. (c))

Exceptions:

With the written permission of the school district superintendent, the superintendent's designee, or equivalent school authority. **(Subd. (a))**

A sworn law enforcement officer acting within the scope of his or her duties. **(Subd. (a))**

Persons exempted under **P.C. § 25450**. **(Subd. (a))**

A duly appointed peace officer as defined in **P.C. §§ 830 et. seq.** **(Subd. (b)(1))**

A full-time paid peace officer of another state or the federal government who is carrying out official duties while in California. **(Subd. (b)(2))**

Any person summoned by any of these officers to assist in making an arrest or preserving the peace while that person is actually engaged in assisting the officer. **(Subd. (b)(3))**

A member of the military forces of this state or of the United States who is engaged in the performance of that person's duties. **(Subd. (b)(4))**

A person holding a valid license to carry the firearm pursuant to **P.C. §§ 26150 et seq.** **(Subd. (b)(5))**

An armored vehicle guard, who is engaged in the performance of that person's duties, as defined in **B&P § 7582.1(d)**. **(Subd. (b)(6))**