The California Legal Update

New and Amended Statutes Edition

Remember 9/11/2001: Support Our Troops; Support our Cops

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THIS EDITION'S WORDS OF WISDOM:

"*My mind works like lightning; one brilliant flash, and it is gone.*" (Unknown)

IN THIS ISSUE:

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 2018, nor the multiple Initiatives approved at the voters' booth. 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 the substance of a new or amended offense. Statutes that affect post-conviction (i.e., appellate) proceedings are also not included with the limited exception of an attorney's right to post-conviction discovery. Rewritten statutes constituting cosmetic changes only, without any substantive changes to the elements of a crime, are not included. Also, new and amended statutes relating to "*Bail*" (e.g., see **P.C. §§ 1320.6** (new), **1320.7-1320-34** (New)) have *not* been included in that the whole bail issue is currently in a state of limbo pending future judicial, referendum, and legislative action. Some of the statutes that *are* included have been severely paraphrased, the degree of detail being dependent upon the newness, importance, and/or complexity of the statute. Other statutes, due to their importance and complexity, have been included, word-for-word (with some abbreviations and simplifications) in their entirety. 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, 2019, unless otherwise indicated.

NEW AND AMENDED STATUTES:

***Arrests*:**

Pen. Code § 817 (Amended); *Telephonic Arrest Warrants*:

The requirement of a telephone conversation between a magistrate and an officer/declarant during the obtaining of an arrest warrant, including an oral oath over the telephone from an officer (declarant), has been eliminated (See **Subd. (b), (c) & (d)**.) Now, an arrest warrant *may* be issued completely electronically by facsimile, email, or computer server.

The procedure requires the officer/declarant to sign under penalty of perjury his or her declaration in support of the arrest warrant, with the signature being a digital or electronic signature if email or computer server are used to obtain the warrant.

The statute continues to permit the magistrate to accept an oral statement (typically by phone) made under penalty of perjury that is recorded and transcribed, and continues to provide a magistrate with the discretion to examine under oath the person seeking the warrant and any witness that may be produced. A warrant signed by a magistrate and received by the declarant is deemed to be the original warrant.

See **P.C. § 1526** (Amended) for similar provisions for Telephonic Search Warrants.

Pen. Code § 853.6 (Amended); *Booking Misdemeanor Arrestees*:

The list of circumstances (see **subd. (i)**) that permit a peace officer who arrests a person for a misdemeanor to *not* cite and release the person, but to book him or her instead, has been expanded to include:

1. The person has one or more failures to appear in court on previous misdemeanor citations that have not been resolved.

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

3. There is probable cause to believe that the person is guilty of committing organized retail theft, in violation of new **P.C. § 490.4**.

Also adds to the existing circumstance of there being reason to believe that the person would not appear in court: "An arrest warrant or failure to appear that is pending at the time of the current offense shall constitute reason to believe that the person would not appear as specified in the notice." (**Subd. (i)(9)**)

Pen. Code § 978.5 (Amended); *Bench Warrants*; *When Available*:

The list of situations permitting a bench warrant of arrest to issue was expanded with the addition of **subd. (a)(7)**; i.e., when a defendant fails to appear in court after having been cited or arrested and released on a misdemeanor or felony charge of theft from a store or vehicle.

***Cannabis*:**

Bus. & Prof. Code § 22580 (Amended); *Marketing Cannabis Products to Minors*:

The list of products and services for which online and mobile application marketing and advertising directed to minors is prohibited, is expanded by adding cannabis, cannabis products, cannabis businesses, and instruments or paraphernalia designed for smoking or ingesting cannabis or cannabis products.

Note: See **B&P Code § 26151(b)**, a component of **Proposition 64** (Effective June 27, 2017), which already prohibits online and mobile application marketing/advertising directed to minors for dangerous or harmful products such as alcohol, firearms, ammunition, tobacco, cigarettes, electronic cigarettes, BB devices, fireworks, body branding, permanent tattoos, obscene matter, etc.

Bus. & Prof. Code § 25621.5 (New); *Selling Cannabis Products on Alcohol Licensee's Premises*:

An alcohol licensee (licensed by the Department of Alcohol Beverage Control), at its licensed premises, is prohibited from selling, offering, or providing cannabis or cannabis products, including an alcoholic beverage that contains cannabis, and prohibits the manufacture, sale, or offering for sale of an alcoholic beverage that contains tetrahydrocannabinol or cannabinoids, regardless of source.

Bus. & Prof. Code § 26002 (New); *Exception for Products Containing Cannabidiol*:

The Medicinal and Adult-Use Cannabis Regulation & Safety Act (**MAUCRSA: B&P §§ 26000–26231.2**; **Prop. 64**) does not apply to any product containing cannabidiol (CBD) that has been approved by the federal Food and Drug Administration (FDA) and that has either been placed in a federal schedule other than **Schedule I** or has been exempted from one or more provisions of the federal **Controlled Substances Act**, and that is intended for prescribed use to treat a medical condition.

Note: See also **H&S § 11150.2** (New), below, that permits the prescribing, dispensing, and possessing of a product containing cannabidiol when the above conditions are met.

Bus. & Prof. Code § 26051.5 (New; Effective 3/13/18; Amended: 6/27/18); *License Applications; Prerequisites*:

> The Bureau of Cannabis Control, the Department of Food and Agriculture, and the State Department of Public Health, is newly authorized to obtain criminal history information from the state DOJ and the FBI for an applicant for a state license relating to cannabis. DOJ is required to transmit to the FBI fingerprint images and related information, and to compile and disseminate the FBI's response to the licensing authority.

Bus. & Prof. Code § 26070.2 (New); *Selling Cannabis Products that is an Alcoholic Beverage*:

> Prohibits a cannabis licensee from selling, offering, or providing a cannabis product that is an alcoholic beverage, including an infusion of cannabis or cannabinoids derived from industrial hemp into an alcoholic beverage.

Bus. & Prof. Code § 26104 (Amended); *Testing of Recreational Cannabis by Laboratories for Private Use*:

> A licensed cannabis testing laboratory is now permitted to receive and test recreational cannabis from a person age 21 or older that has been grown by that person and will be used solely for his or her personal use. Testing laboratories are prohibited from certifying such cannabis samples for resale or transfer to others. The section continues to permit cannabis testing labs to receive and test medical cannabis from a qualified patient or primary caregiver.

Health & Safety Code § 11107.2 (New); *Non-Odorized Butane*:

> **Subd. (a)**: Manufacturers, wholesalers, resellers, retailers or other persons or entities are prohibited from selling to any customer any quantity of non-odorized butane.
>
> **Subd. (b)**: Exceptions:
>
> **(1)** Butane sold to manufacturers, wholesalers, resellers, or retailers solely for the purpose of resale;
>
> **(2)** Butane sold to a person for use in a lawful commercial enterprise, including a volatile solvent extraction activity or a medical cannabis collective or cooperative;
>
> **(3)** The sale of pocket lighters, utility lighters, grill lighters, torch lighters, butane gas appliances, refill canisters, gas cartridges or other products that

contain or use non-odorized butane and contain fewer than 150 milliliters of butane; *and*

(4) The sale of any product in which butane is used as an aerosol propellant. Defines "sell" or "sale" as "to furnish, give away, exchange, transfer, deliver, surrender, distribute, or supply, in exchange for money or any other consideration."

Subd. (c): Provides that a violation is subject to a civil penalty of $2,500 and that a district attorney, city attorney, county counsel, or Attorney General may bring a civil enforcement action.

Subd. (d):

(1) "*Customer*" means any person or entity other than those described in **subd. (b)(1)** and **(2)** that purchases or acquires nonodorized butane from a seller during a transaction.

(2) "*Non-odorized butane*" means iso-butane, n-butane, butane, or a mixture of butane and propane of any power that may also use the words "refined," "pure," "purified," "premium," or "filtered," to describe the butane or butane mixture, which does not contain ethyl mercaptan or a similar odorant.

(3) "*Sell*" or "*sale*" means to furnish, give away, exchange, transfer, deliver, surrender, distribute, or supply, in exchange for money or any other consideration.

(4) "*Seller*" means any person, business entity, or employee thereof that sells nonodorized butane to any customer within this state.

Note: Per the Legislative History of this bill, butane is being used by home labs to separate and extract hash oil from cannabis, resulting in a highly concentrated "hash oil," creating a danger of explosions, injury, and death.

Health & Safety Code § H&S 11150.2 (New; Effective 7/9/2018); *Prescribing or Possessing Cannabidiol*:

Upon the date of a specified change in federal law (i.e., September 27, 2018), a product containing cannabidiol may be prescribed, furnished, dispensed, or possessed. The section specifies that the federal law change must be either the moving of cannabidiol from Schedule I of the federal **Controlled Substances Act** to a different Schedule, *or* the U.S. Food and Drug Administration (FDA) approving a product containing cannabidiol and either cannabidiol being moved from Schedule I or being exempted from one or more provisions of the federal

Controlled Substances Act so as to permit a physician or pharmacist to prescribe or dispense it.

Note: See also **Bus. & Prof. Code § 26002** (New); *Exception for Products Containing Cannabidiol*, above

Health & Safety Code § 11361.9 (New); *Marijuana* (Cannabis) *Cases Entitled to **H&S § 11361.8** Relief*:

The Department of Justice (DOJ) is required by *July 1, 2019*, to review the records in its state criminal history information database and identify prior marijuana convictions that are potentially eligible for recall or dismissal of sentence, dismissal and sealing, or re-designation pursuant to **H&S § 11361.8**.

Note: **H&S § 11361.8** provides for the recall or dismissal of sentence in accordance with the "**Control, Regulate and Tax Adult Use of Marijuana Act**" (**Proposition 64**), of November, 2016.

DOJ is required to notify local prosecutors of all cases in their jurisdictions that are eligible for **H&S § 11361.8** relief.

Local prosecutors are then required, by July 1, 2020, to review all cases, to determine whether or not to challenge relief under **H&S § 11361.8**, and to inform the court and the public defender's office about which cases are being challenged and which ones are not. Defendants are automatically entitled to **H&S § 11361.8** relief if the prosecution does not challenge such relief.

The public defender's office must then make a reasonable effort to notify defendants whose cases are being challenged.

The court is then to notify DOJ about any recall or dismissal of sentence, dismissal and sealing, or re-designation, and requires DOJ to modify its state criminal history database accordingly.

DOJ is to post general information on its Internet Web site about **H&S § 11361.8** relief.

A defendant who is "currently serving a sentence" or who "proactively" petitions for **H&S § 11361.8** relief is to be prioritized for review.

Pen. Code § 830.11 (Amended); *Department of Food and Agriculture Investigators*:

Persons employed by the Department of Food and Agriculture and designated as "investigators" whose primary duty is the enforcement of, and investigations relating to, **Division 10** of the **Business and Professions Code** (i.e., cannabis: **B&P §§ 26000–26231.2**) are added to the list of persons who, although *not* peace

officers, may exercise the power of arrest and the power to serve search warrants within the scope of their employment if they take a course in the exercise of those powers.

Note: Pursuant to existing **B&P § 26012(a)(2)**, the Dep't. of Food and Agriculture is tasked with administering cannabis provisions related to cultivation and has the authority to create, issue, deny, suspend, or revoke cultivation licenses.

***Controlled Substances*:**

Health & Safety Code § 11364 (Amended; Effective 6/27/2018); *Clean Needle and Syringe Exchange Projects*:

The phrase "*materials deemed by a local or state health department to be necessary to prevent the spread of communicable diseases, or to prevent drug overdose, injury, or disability*" is added to those items (hypodermic needles and syringes) that a public entity and its agents and employees are permitted to distribute as part of a clean needle and syringe exchange project (per **H&S § 121349–121349.3**; also amended to reflect this same addition) and thus not be subject to prosecution under this section for the crime of delivering, transferring, possessing, furnishing, etc., drug paraphernalia.

Note: "*Necessary materials*" is not defined.

***Cyberterrorism*:**

Gov't. Code § 8558 (Amended); *Disasters Which Constitute a State of Emergency*:

"*Cyberterrorism*" is added to the list of disasters (e.g., fire, flood, earthquake, storm, epidemic, riot, drought, sudden energy shortage, plant or animal infestation or disease) that constitute a state of emergency or a local emergency.

Note: Per **Gov't. Code § 8625**, the Governor has the power to declare a state of emergency if circumstances described in **Gov't. Code § 8558** exist. **Gov't. Code § 8630** authorizes a local emergency to be proclaimed by the governing body of a city or county.

***Discovery*:**

Pen. Code § 1054.9 (Amended); *Post-Conviction Discovery*:

Post-conviction discovery provisions have been expanded to include cases involving the conviction of a serious (per **P.C. § 1192.7(c)**) or violent (per **P.C. § 667.5(c)**) felony resulting in a sentence of 15 years or more. (Previously, **P.C. § 1054.9** applied only to cases involving a sentence of death or life without the

possibility of parole (LWOP).) Thus, any defendant convicted of a serious or violent felony and sentenced to at least 15 years (determinate term or life term), may seek post-conviction discovery materials in the possession of the prosecution or law enforcement after showing that good faith efforts were made to obtain discovery materials from trial counsel and that those efforts were not successful.

In a case involving other than death or LWOP, if a court has already granted discovery pursuant to this section, a subsequent discovery order "may be made in the court's discretion." A request for discovery in any non-death/non-LWOP case shall include a statement by the defendant as to whether discovery has previously been granted pursuant to this section.

Trial (i.e., defense) counsel in a criminal case involving a conviction of a serious or violent felony resulting in a sentence of 15 years or more is required to retain a copy of a former client's files for the term of the client's imprisonment. An electronic copy is sufficient only if every item in the file is digitally copied and preserved.

These amendments are intended to apply prospectively only.

Pen. Code § 11105 (Amended); *Defense Counsel and Right to Discovery of Criminal History Information of Defendants and Witnesses*:

Subd. (b)(9) is amended to expand access by public defenders and criminal defense attorneys to state summary criminal history information furnished by the Attorney General. The section appears to permit defense attorneys to obtain the actual rap sheet of witnesses as long as "the information is requested in the course of representation." Juvenile delinquency proceedings, appeals, and post-conviction motions are added to the types of cases (criminal cases) for which public defenders and criminal defense attorneys are entitled to receive state rap sheet information from the Attorney General.

Subd. (b)(9): The limitation "*and if authorized access by statutory or decisional law*," is eliminated, and adds in its place: "*if the information is requested in the course of representation*." Specifically, such discovery is to be provided to a public defender or attorney of record when representing a person in a criminal case or a juvenile delinquency proceeding, including all appeals and post-conviction motions, or a parole, mandatory supervision pursuant to **P.C. § 1170(h)(5)**, or post-release community supervision revocation or revocation extension proceeding, if the information is requested in the course of the attorney's representation.

Subd. (b), which requires the Attorney General to provide state summary criminal history information to a variety of persons and entities (courts, prosecutors, probation officers, parole officers, public defenders, defense

attorneys), is expanded to include defense attorneys if needed in the course of their duties.

The same is similarly to be provided to defense attorneys during appeal and/or post-conviction proceedings "if the information is requested in the course of representation."

***Disorderly Conduct*:**

Pen. Code § 647(j)(2) & (3) (Amended); *Peeping Through Holes and/or Secretly Recording Identifiable Persons*:

Subparas. (2) and **(3)** of **P.C. § 647(j)** are amended to define the element "*identifiable*" for these crimes that prohibit the secret peeping through a hole and/or recording or filming of an "*identifiable person*" for the purpose of viewing his or her body or undergarments.

"*Identifiable*" is defined as "capable of identification, or capable of being recognized, meaning that someone could identify or recognize the victim, including the victim herself or himself. It does not require the victim's identity to actually be established."

***Diversion*:**

Pen. Code §§ 1001.35 (New; Effective 6/27/18) & **1001.36** (New; Effective 6/27/18; and Amended; 1/1/2019); *Diversion of Individuals with Mental Disorders*:

Summary: New **Chapter 2.8A** in **Title 6** of **Part 2** of the **Penal Code**, entitled "*Diversion of Individuals with Mental Disorders*," was enacted (**AB 1810**, **SB 215**), and subsequently amended, to grant pre-trial diversion in either a misdemeanor or felony case if:

1. The trial court is satisfied that the defendant suffers from a specified mental disorder (requires this evidence to be provided by the defense and requires that it include a recent diagnosis by a qualified mental health expert);

2. The trial court is satisfied that the mental disorder was a significant factor in the commission of the charged offense.

The court is permitted to review any relevant and credible evidence, including police reports, preliminary hearing transcripts, witness statements, statements by the defendant's mental health treatment provider, and medical records);

3. A qualified mental health expert opines that the defendant's symptoms of the mental disorder motivating the criminal behavior would respond to treatment;

4. The defendant consents to diversion and waives his or her right to a speedy trial;

5. The defendant agrees to comply with treatment; *and*

6. The court is satisfied that the defendant will not pose an unreasonable risk of danger to public safety, as defined in existing **P.C. § 1170.78**, if treated in the community.

The court is permitted to consider the opinions of the district attorney, the defense, or a qualified mental health expert; the defendant's violence and criminal history; the current charged offense; and any other factors the court deems appropriate.

Pen. Code §§ 1001.35 (New); *Purpose*: The purpose of this chapter is to promote all of the following:

(a) Increased diversion of individuals with mental disorders to mitigate the individuals' entry and reentry into the criminal justice system while protecting public safety.

(b) Allowing local discretion and flexibility for counties in the development and implementation of diversion for individuals with mental disorders across a continuum of care settings.

(c) Providing diversion that meets the unique mental health treatment and support needs of individuals with mental disorders.

Pen. Code § 1001.36 (New and Amended); *Pretrial Diversion*:

(a) On an accusatory pleading alleging the commission of a misdemeanor or felony offense, the court may, after considering the positions of the defense and prosecution, grant *pretrial diversion* to a defendant pursuant to this section if the defendant meets all of the requirements specified in **subd. (b)(1)**.

(b)

(1) Pretrial diversion may be granted pursuant to this section if *all* of the following criteria are met:

(A) The court is satisfied that the defendant suffers from a mental disorder as identified in the most recent edition of the *Diagnostic and Statistical Manual of Mental Disorders*, including, but not limited to, bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder, *but excluding* antisocial personality disorder, borderline personality disorder, and pedophilia. Evidence of the defendant's mental disorder shall be provided by the defense and shall include a recent diagnosis by a qualified mental health expert. In opining that a defendant suffers from a qualifying disorder, the qualified mental health expert may rely on an examination of the defendant, the defendant's medical records, arrest reports, or any other relevant evidence.

(B) The court is satisfied that the defendant's mental disorder was a *significant factor* in the commission of the charged offense. A court may conclude that a defendant's mental disorder was a significant factor in the commission of the charged offense if, after reviewing any relevant and credible evidence, including, but not limited to, police reports, preliminary hearing transcripts, witness statements, statements by the defendant's mental health treatment provider, medical records, records or reports by qualified medical experts, or evidence that the defendant displayed symptoms consistent with the relevant mental disorder at or near the time of the offense, the court concludes that the defendant's mental disorder substantially contributed to the defendant's involvement in the commission of the offense.

(C) In the opinion of a qualified mental health expert, the defendant's symptoms of the mental disorder motivating the criminal behavior would respond to mental health treatment.

(D) The defendant consents to diversion and waives his or her right to a speedy trial, unless a defendant has been found to be an appropriate candidate for diversion in lieu of commitment pursuant to **P.C. § 1370(a)(1)(B)(iv)** and, as a result of his or her mental incompetence, cannot consent to diversion or give a knowing and intelligent waiver of his or her right to a speedy trial.

Note: **P.C. § 1370(a)(1)(B)(iv)** provides: "If, at any time after the court finds that the defendant is mentally

incompetent and before the defendant is transported to a facility pursuant to this section, the court is provided with any information that the defendant may benefit from diversion pursuant to . . . **Title 6** (**Chapter 2.8A**) (**P.C. §§ 1001.35 et seq.**), the court may make a finding that the defendant is an appropriate candidate for diversion."

(E) The defendant agrees to comply with treatment as a condition of diversion.

(F) The court is satisfied that the defendant will not pose an unreasonable risk of danger to public safety, as defined in **P.C. § 1170.18**, if treated in the community. The court may consider the opinions of the district attorney, the defense, or a qualified mental health expert, and may consider the defendant's violence and criminal history, the current charged offense, and any other factors that the court deems appropriate.

Note: **P.C. § 1170.18** defines "*unreasonable risk of danger to public safety*" as meaning an unreasonable risk that the defendant will commit a new felony specified in **P.C. § 667(e)(2)(C)(iv)** (commonly referred to as "*superstrikes*").

(2) A defendant may *not* be placed into a diversion program, pursuant to this section, for the following current charged offenses:

(A) Murder or voluntary manslaughter.

(B) An offense for which a person, if convicted, would be required to register pursuant to **P.C. § 290**, except for a violation of **P.C. § 314**.

(C) Rape.

(D) Lewd or lascivious act on a child under 14 years of age.

(E) Assault with intent to commit rape, sodomy, or oral copulation, in violation of **P.C. § 220**.

(F) Commission of rape or sexual penetration in concert with another person, in violation of **P.C. § 264.1**.

(G) Continuous sexual abuse of a child, in violation of **P.C. § 288.5**.

(H) A violation of **P.C. § 11418(b)** or **(c)**. (Possession or Use of a Weapon of Mass Destruction.)

(3) At any stage of the proceedings, the court may require the defendant to make a prima facie showing that the defendant will meet the minimum requirements of eligibility for diversion and that the defendant and the offense are suitable for diversion. The hearing on the prima facie showing shall be informal and may proceed on offers of proof, reliable hearsay, and argument of counsel. If a prima facie showing is not made, the court may summarily deny the request for diversion or grant any other relief as may be deemed appropriate.

(c) As used in this chapter, "*pretrial diversion*" means the postponement of prosecution, either temporarily or permanently, at any point in the judicial process from the point at which the accused is charged until adjudication, to allow the defendant to undergo mental health treatment, subject to all of the following:

(1)

(A) The court is satisfied that the recommended inpatient or outpatient program of mental health treatment will meet the specialized mental health treatment needs of the defendant.

(B) The defendant may be referred to a program of mental health treatment utilizing existing inpatient or outpatient mental health resources. Before approving a proposed treatment program, the court shall consider the request of the defense, the request of the prosecution, the needs of the defendant, and the interests of the community. The treatment may be procured using private or public funds, and a referral may be made to a county mental health agency, existing collaborative courts, or assisted outpatient treatment only if that entity has agreed to accept responsibility for the treatment of the defendant, and mental health services are provided only to the extent that resources are available and the defendant is eligible for those services.

(2) The provider of the mental health treatment program in which the defendant has been placed shall provide regular reports to the court, the defense, and the prosecutor on the defendant's progress in treatment.

(3) The period during which criminal proceedings against the defendant may be diverted shall be no longer than *two years*.

(4) Upon request, the court shall conduct a hearing to determine whether *restitution*, as defined in **P.C. § 1202.4(f)**, is owed to any victim as a result of the diverted offense and, if owed, order its payment during the period of diversion. However, a defendant's inability to pay restitution due to indigence or mental disorder shall not be grounds for denial of diversion or a finding that the defendant has failed to comply with the terms of diversion.

(d) If *any* of the following circumstances exists, the court shall, after notice to the defendant, defense counsel, and the prosecution, hold a hearing to determine whether the criminal proceedings should be reinstated, whether the treatment should be modified, or whether the defendant should be conserved and referred to the conservatorship investigator of the county of commitment to initiate conservatorship proceedings for the defendant pursuant to **W&I §§ 5350 et seq**. (**Div. 5**, **Part 1**, **Chapter 3**):

(1) The defendant is charged with an additional misdemeanor allegedly committed during the pretrial diversion and that reflects the defendant's propensity for violence.

(2) The defendant is charged with an additional felony allegedly committed during the pretrial diversion.

(3) The defendant is engaged in criminal conduct rendering him or her unsuitable for diversion.

(4) Based on the opinion of a qualified mental health expert whom the court may deem appropriate, *either* of the following circumstances exists:

(A) The defendant is performing unsatisfactorily in the assigned program.

(B) The defendant is gravely disabled, as defined in **W&I § 5008(h)(1)(B)**. A defendant shall only be conserved and referred to the conservatorship investigator pursuant to this finding.

(e) If the defendant has performed satisfactorily in diversion, at the end of the period of diversion, the court shall dismiss the defendant's criminal charges that

were the subject of the criminal proceedings at the time of the initial diversion. A court may conclude that the defendant has performed satisfactorily if the defendant has *substantially complied* with the requirements of diversion, has avoided significant new violations of law unrelated to the defendant's mental health condition, and has a plan in place for long-term mental health care. If the court dismisses the charges, the clerk of the court shall file a record with the Department of Justice indicating the disposition of the case diverted pursuant to this section. Upon successful completion of diversion, if the court dismisses the charges, the arrest upon which the diversion was based shall be deemed never to have occurred, and the court shall order access to the record of the arrest restricted in accordance with **P.C. § 1001.9**, except as specified in **subds. (g)** and **(h)** (below). The defendant who successfully completes diversion may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or diverted for the offense, except as specified in **subd. (g)** (below).

(f) A record pertaining to an arrest resulting in successful completion of diversion, or any record generated as a result of the defendant's application for or participation in diversion, shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

(g) The defendant shall be advised that, regardless of his or her completion of diversion, both of the following apply:

> **(1)** The arrest upon which the diversion was based may be disclosed by the Department of Justice to any peace officer application request and that, notwithstanding **subd. (f)**, this section does not relieve the defendant of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in **P.C. § 830**.
>
> **(2)** An order to seal records pertaining to an arrest made pursuant to this section has no effect on a criminal justice agency's ability to access and use those sealed records and information regarding sealed arrests, as described in **P.C. § 851.92**. (Procedures Pursuant to Court Order to Seal Arrest Record.)

(h) A finding that the defendant suffers from a mental disorder, any progress reports concerning the defendant's treatment, or any other records related to a mental disorder that were created as a result of participation in, or completion of, diversion pursuant to this section or for use at a hearing on the defendant's

eligibility for diversion under this section may not be used in any other proceeding without the defendant's consent, unless that information is relevant evidence that is admissible under the standards described in **Section 28** of **Article I**, **subd. (f)(2)**, of the **California Constitution**. However, when determining whether to exercise its discretion to grant diversion under this section, a court may consider previous records of participation in diversion under this section.

(i) The county agency administering the diversion, the defendant's mental health treatment providers, the public guardian or conservator, and the court shall, to the extent not prohibited by federal law, have access to the defendant's medical and psychological records, including progress reports, during the defendant's time in diversion, as needed, for the purpose of providing care and treatment and monitoring treatment for diversion or conservatorship.

Note: See also **P.C. §§ 1370** (Amended) and **1370.01** (Amended), permitting a court to grant pre-trial mental disorder diversion pursuant to **P.C. § 1001.36** to defendants who are found incompetent to stand trial.

Pen. Code §§ 1001.81, **1001.82 (New)**; *Repeat Theft Crimes Diversion or Deferred Entry of Judgment Program*:

A county prosecuting attorney, a city prosecuting attorney, or a county probation department are authorized to create a diversion or deferred entry of judgment program for persons who commit *repeat theft offenses*, to be conducted by either a prosecuting attorney's office or a county probation department.

A prosecuting attorney is permitted to enter into a written agreement with an offender to refrain from, or defer, prosecution on the following conditions:

1. Completion of program requirements such as community service or courses reasonably required by the prosecuting attorney*; and*

2. Making "adequate restitution or an appropriate substitution for restitution" to the establishment or person from which the property was stolen "at face value of the stolen property," if required by the program.

"*Repeat theft offenses*" is defined as being cited or convicted for misdemeanor or felony theft from a store or from a vehicle, two or more times in the previous 12 months, and failing to appear in court or continuing to commit these crimes after release or after conviction.

***Domestic Violence*:**

Fam. Code §§ 6300, **6326**, **6340** (Amended); *Notice in Domestic Violence Restraining Order Proceedings*:

An ex parte domestic violence restraining order is *not* to be denied solely because the other party was not provided with notice.

If at the time of the hearing for a domestic violence restraining order, the court determines that, after diligent efforts, the petitioner has not been able to accomplish personal service and there is reason to believe the restrained party is evading service, the court may permit an alternative method of service.

Alternative methods of service include, but are not limited to:

1. Service by publication pursuant to **C.C.P. § 415.50** (e.g., notice published in a newspaper); *or*

2. Service by first-class mail sent to the respondent at the respondent's most current address available to the court; *or*

3. Service by delivering a copy of the pleadings and orders at the respondent's home or workplace, pursuant to **C.C.P. §§ 415.20–415.40** (e.g., leaving a copy with a member of the respondent's household or with a person in charge at the respondent's workplace). The court, if it permits an alternative method of service, is required to grant a continuance to allow for that alternative service.

Fam. Code § 6930 (New); *Medical Care and Collection of Evidence from Minors Who are Victims of* "*Intimate Partner*" *Violence*:

A minor age 12 or older who states he or she is injured as a result of "*intimate partner violence*" may consent to medical care and the collection of medical evidence.

"*Inmate partner violence*" is defined as an intentional or reckless infliction of bodily harm that is perpetrated by a person with whom the minor has or has had a sexual, dating, or spousal relationship.

This section does not apply where the minor is a victim of rape or sexual assault. (See **Fam. Code §§ 6927** (rape) and **6928** (sexual assault), which already permit a minor who is a victim of rape or sexual assault to consent to medical care and the collection of medical evidence.)

A health practitioner who believes the injuries require a report pursuant to **P.C. § 11160** (requiring healthcare workers to report to law enforcement wounds inflicted by firearm or by assaultive or abusive conduct) must inform the minor and attempt to contact the minor's parent or guardian. The parent or guardian is not required to be notified if the minor's parent or guardian is reasonably believed to have committed intimate partner violence on the minor.

Fam. Code § 7823 (Amended); *Severe Sexual Abuse and Termination of Parental Rights*:

> A finding that a parent committed severe sexual abuse as described in **W&I § 361.5(b)(6)** is prima facie evidence that the parent has neglected or cruelly treated the child.
>
> *Note*: **W&I § 361.5(b)(6)** provides that reunification services need not be provided in a juvenile dependency case if the court finds clear and convincing evidence of severe sexual abuse. Pursuant to this amendment, a finding of severe sexual abuse in a juvenile dependency case may be used in Family Court to terminate parental rights. The neglectful or cruel treatment of a child by a parent is grounds for terminating parental rights, pursuant to **Fam. Code § 7823**.

Gov't. Code §§ 6205, **6205.5**, **6206**, **6208.5**, **6209.5**, & **6209.7 (**Amended); *Elder and Dependent Adult Abuse Victims; Address Confidentiality Program*:

> Victims of elder or dependent adult abuse (as defined in either **P.C. § 368** (Amended) or **W&I § 15610.07**) are added to the list of victims (domestic violence, sexual assault, stalking, or human trafficking) who may apply to participate in the Secretary of State's "*Safe at Home address confidentiality program*," in which mail is delivered to a post office box and then forwarded by the Secretary of State to the participant.
>
> *Note*: **P.C. §§ 288** (Amended), **368** (Amended), **1336** (Amended; dealing with conditional examinations of persons including "dependent adults"), and **W&I § 15610.23** (Amended; part of the **Elder Abuse and Dependent Adult Civil Protection Act**), are all revised, defining "*dependent person*" to clarify that a person qualifies as a dependent person regardless of whether he or she lives independently.

Pen. Code § 29805 (Amended); *Possession of a Firearm by a Person convicted of **P.C. § 273.5***:

> **Subd**. **(b)**: Anyone *convicted* on or after *January 1, 2019* (regardless of when the offense occurred) of a misdemeanor violation of **P.C. § 273.5** (i.e., domestic violence) is subject to a lifetime firearm prohibition instead of a 10-year prohibition, and makes a violation of the prohibition a felony wobbler (i.e., punishable by imprisonment in a county jail not exceeding one year or in the state prison (16 months, 2 or 3 years), by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine).

Note: **Subd. (a)**, the 10-year ban on firearms, continues to apply to any misdemeanor conviction of **P.C. § 273.5** suffered before 2019 and to the numerous misdemeanors already specified in **subdivision (a)**.

***Drones*:**

Pen. Code § 4577 (New); *Drone Use* Over *the Grounds of a State Prison, a Jail, or a Juvenile Hall, Camp, or Ranch*:

Subd. (a): A person who knowingly and intentionally operates an unmanned aircraft system (i.e., a "*drone*") on or above the grounds of a state prison, a jail, or a juvenile hall, camp, or ranch is guilty of an infraction, punishable by a fine of five hundred dollars ($500).

Exceptions:

Subd. (b): This section does not apply to a person employed by the prison who operates the unmanned aircraft system within the scope of his or her employment, or a person who receives prior permission from the Department of Corrections and Rehabilitation to operate the unmanned aircraft system over the prison.

Subd. (c): This section does not apply to a person employed by the jail who operates the unmanned aircraft system within the scope of his or her employment, or a person who receives prior permission from the county sheriff to operate the unmanned aircraft system over the jail.

Subd. (d): This section does not apply to a person employed by the county department that operates the juvenile hall, camp, or ranch who operates the unmanned aircraft system within the scope of his or her employment, or a person who receives prior permission from the county department that operates the juvenile hall, camp, or ranch to operate the unmanned aircraft system over the juvenile hall, camp, or ranch.

Subd. (e): *Definitions*:

(1) "*Unmanned aircraft*" means an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft.

(2) "*Unmanned aircraft system*" means an unmanned aircraft and associated elements, including, but not limited to, communication links and the components that control the unmanned aircraft that are required

for the pilot in command to operate safely and efficiently in the national airspace system.

***Evidence*:**

Evid. Code §§ 351.3 & **351.4** (New); *Immigration Status Evidence*:

The disclosure of a person's immigration status in open court in both criminal (new **Evid. Code § 351.4**) and civil (new **Evid. Code § 351.3**) cases is *inadmissible* absent an exception.

Both sections prohibit the disclosure, in open court, of a person's immigration status by a party or his or her attorney unless a judge first decides in an in camera hearing that immigration status is admissible.

Exceptions: This prohibition does not apply to cases in which a person's immigration status is necessary to prove an element of an offense or an affirmative defense, does not limit discovery in a criminal action, and does not prohibit a person or his or her attorney from voluntarily revealing immigration status to the court.

***False Impersonation*:**

Pen. Code § 538h (New); *False Impersonation of a Member of a Government-Managed Search & Rescue Team*:

(a) Any person, other than an officer or member of a government agency managed or affiliated search and rescue unit or team, who willfully wears, exhibits, or uses the authorized uniform, insignia, emblem, device, label, certificate, card, or writing of an officer or member of a government agency managed or affiliated search and rescue unit or team, with the intent of fraudulently impersonating an officer or member of a government agency managed or affiliated search and rescue unit or team, or of fraudulently inducing the belief that he or she is an officer or member of a government agency managed or affiliated search and rescue unit or team, or uses the same to obtain aid, money, or assistance within this state, is guilty of a misdemeanor.

(b)

(1) Any person, other than the one who by law is given the authority of an officer or member of a government agency managed or affiliated search and rescue unit or team, who willfully wears, exhibits, or uses the badge of a government agency managed or affiliated search and rescue unit or team with the intent of fraudulently impersonating an officer or member of a

government agency managed or affiliated search and rescue unit or team, or fraudulently inducing the belief that he or she is an officer or member of a government agency managed or affiliated search and rescue unit or team, is guilty of a misdemeanor punishable by imprisonment in a county jail not to exceed one year, by a fine not to exceed two thousand dollars ($2,000), or by both that imprisonment and fine.

(2) Any person who willfully wears or uses any badge that falsely purports to be authorized for the use of one who by law is given the authority of an officer or member of a government agency managed or affiliated search and rescue unit or team, or that resembles the authorized badge of an officer or member of a government agency managed or affiliated search and rescue unit or team as would deceive any ordinary reasonable person into believing that it is authorized for the use of one who by law is given the authority of an officer or member of a government agency managed or affiliated search and rescue unit or team, for the purpose of fraudulently impersonating an officer or member of a government agency managed or affiliated search and rescue unit or team, or of fraudulently inducing the belief that he or she is an officer or member of a government agency managed or affiliated search and rescue unit or team, is guilty of a misdemeanor punishable by imprisonment in a county jail not to exceed one year, by a fine not to exceed two thousand dollars ($2,000), or by both that fine and imprisonment.

(c) As used in this section, the following terms have the following meanings:

(1) "*Member*" means any natural person who is registered with an accredited disaster council for the purpose of engaging in disaster service without pay or other consideration. Food and lodging provided, or expenses reimbursed for these items, during a member's activation do not constitute other consideration.

(2) "*Search and rescue unit or team*" means an entity engaged in the acts of searching for, rescuing, or recovering by means of ground, marine, or air activity, any person that becomes lost, injured, or is killed while outdoors or as a result of a natural or manmade disaster, including instances involving searches for downed or missing aircraft.

***Firearms*:**

Pen. Code § 29805 (Amended); *Subsequent Possession of a Firearm by a Person Convicted of Spousal Abuse*:

New **Subd. (b)** provides as follows: "Any person who is convicted, on or after *January 1, 2019*, of a misdemeanor violation of (**P.C. §**) **273.5** (Spousal. Cohabitant, or Parental Abuse, formerly in **subd. (a)**) and who subsequently

owns, purchases, receives, or has in possession or under custody or control, any firearm is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine."

Pen. Code § 16690 (Amended); *Honorably Retired Reserve Officers and Large-Capacity Magazines*:

This section, which permits an honorably retired peace officer to carry a concealed and loaded firearm in public, is expanded to permit a retired peace officer to possess a large-capacity magazine (i.e., magazines that hold more than 10 rounds; see **P.C. § 32310**), making it consistent with existing **P.C. § 32406**—both the Legislature's version and **Proposition 63's** version—which already permit honorably retired peace officers to possess large-capacity magazines.

Retired Level I reserve officers who meet the requirements of **P.C. § 26300(c)(2)** (carrying a firearm while on duty and serving as a reserve officer for the time period specified in the particular agency's policy) are added to this section so that a retired Level I reserve officer is also permitted to possess a large-capacity magazine. (Existing **P.C. § 26300(c)(2)** already permits a retired Level I reserve officer to carry a concealed and loaded firearm in public.)

The section continues to provide that "*honorably retired*" does *not* include an officer who has agreed to a service retirement in lieu of termination.

Note: The constitutionality of **P.C. § 32310**, making it illegal to possess a large-capacity magazine, is currently being tested in the federal courts after a district court judge ruled in ***Duncan v. Becerra*** (June 29, 2017) 2017 U.S. Dist. LEXIS 101549, that the section is unenforceable.

Pen. Code § 16930 (Amended); *Multiburst Trigger Activator*:

The definition of "*multiburst trigger activator*" is amended by adding:

1. That it is a device designed or redesigned to be built into or used in conjunction with a semiautomatic firearm that allows the semiautomatic firearm to discharge two or more shots in a burst.

2. That it is a manual or power-driven trigger activating device constructed and designed so that when built into or used in conjunction with a semiautomatic firearm it increases the rate of fire of that firearm.

3. That a multiburst trigger activator includes, but is not limited, any of the following devices:

(a) A device that uses a spring, piston, or similar mechanism to push back against the recoil of a firearm, thereby moving the firearm in a back-and-forth motion and facilitating the rapid reset and activation of the trigger by a stationary finger. These devices are commonly known as bump stocks, bump fire stocks, or bump fire stock attachments.

(b) A device placed within the trigger guard of a firearm that uses a spring to push back against the recoil of the firearm causing the finger in the trigger guard to move back and forth and rapidly activate the trigger. These devices are commonly known as burst triggers.

(c) A mechanical device that activates the trigger of the firearm in rapid succession by turning a crank. These devices are commonly known as trigger cranks, gat cranks, gat triggers, or trigger actuators.

(d) Any after-market trigger or trigger system that, if installed, allows more than one round to be fired with a single depression of the trigger.

Per **P.C. § 32900** it is a felony wobbler to possess, give, lend, manufacture, import, or offer for sale, a multiburst trigger activator.

Pen. Code §§ 18100 et seq. (Amended and New); *Gun Violence Restraining Orders*:

See "*Gun Violence Restraining Order*," etc., under "*Restraining Orders*," below.

Pen. Code § 20155 (Amended); *Look-Alike or Imitation Firearms*:

Any manufacturer, importer, or distributor of toy, look-alike, or imitation firearms that fails to comply with any applicable federal law or regulation governing the marking of a toy, look-alike, or imitation firearm, is guilty of a misdemeanor. The definition of "imitation firearm" specified in **P.C. § 16700** does *not* apply to this section.

Pen. Code § 25140 (Amended); *Storage of Firearms in an Unattended Vehicle*:

Per amended **subd. (a)**, a handgun may legally be left in an unattended vehicle in limited places; e.g., in the vehicle's trunk, in a locked container that is placed out of plain view, or in a locked container that is permanently affixed to the vehicle's interior and not in plain view. This amendment adds the alternative of "*a locked toolbox or utility box*."

"*Locked toolbox or utility box*" means a fully enclosed container that is permanently affixed to the bed of a pickup truck or vehicle that does not contain a trunk, and is locked by a padlock, keylock, combination lock, or other similar lock device. (**Subd. (d)(1)(B)**)

Violation is an infraction punishable by a fine of up to $1,000.

Pen. Code § 26165 (Amended); *CCW Permit Training*:

The section is amended by making changes to the required course of training in order for a person to be issued a license by a sheriff (**P.C. § 26150**) or a police chief (**P.C. § 26155**) to carry a concealed firearm. Added is the requirement that the course of training must be a minimum of eight hours and (as already required) is not required to exceed 16 hours.

Both firearm handling and shooting technique is added to the types of required instruction (firearm safety and firearm laws.)

Applicants for a concealed carry permit must demonstrate safe handling of, and shooting proficiency with, each firearm for which the applicant is applying to be licensed to carry.

A licensing authority is required to make available to the public the standards it uses for the live-fire shooting exercises, including the minimum number of rounds to be fired and the minimum passing scores from specified firing distances.

The above new requirements apply to license renewal applicants as well, but keeps the minimum number of hours for license renewal training at four hours.

Pen. Code § 27510 (Amended); *Sales of Long Guns to Minors*:

The minimum age for a purchaser that a licensed firearms dealer may sell, supply, deliver, or give possession or control of a long gun (rifle or shotgun) to has been raised from 18 to 21 years of age. (This is already the law for handguns.)

Exceptions: The minor (age 18, 19, or 20 years of age):

1. Has a valid hunting license issued by the Dep't. of Fish and Wildlife; *or*

2. Is an active peace officer, federal agent, law enforcement agent, or reserve peace officer, who is authorized to carry a firearm in the course of his or her employment; *or*

3. Is a person who provides proper identification of active membership in, or honorable discharge from, the U.S. Armed Forces, the National Guard, the Air National Guard, or reserve components.

Note: See also **P.C. § 29182** (Amended), which permits DOJ to grant an application to an 18-, 19-, or 20-year old for a serial number for a non-handgun that the person wishes to manufacture or assemble, if the application is made before February 1, 2019.

Pen. Code § 29180 (Amended); *Law Enforcement Authority to Destroy Firearms Without Serial Numbers; New California Residents and Firearms Without a Unique Serial Number*:

Law enforcement is authorized to destroy a confiscated firearm that does not bear an engraved serial number or mark of identification obtained from DOJ.

A new California resident must apply to DOJ for a unique serial number or other identification mark within 60 days of arriving in California, for any firearm the new resident wishes to possess in California that does not already have a serial number or identification mark, whether or not the new resident manufactured or assembled the firearm himself or herself.

Note: The section already requires a person who wishes to manufacture or assemble a firearm to apply to DOJ for a unique serial number or identification mark.

Pen. Code § 29805 (Amended); *Possession of a Firearm by a Person convicted of **P.C. § 273.5***.

Subd. (b): Anyone *convicted* on or after *January 1, 2019* (regardless of when the offense occurred) of a misdemeanor violation of **P.C. § 273.5** (i.e., domestic violence) is subject to a lifetime firearm prohibition instead of a 10-year prohibition, and makes a violation of the prohibition a felony wobbler (i.e., punishable by imprisonment in a county jail not exceeding one year or in the state prison (16 months, 2 or 3 years), by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine).

Note: **Subd. (a)**, the 10-year ban on firearms, continues to apply to any misdemeanor conviction of **P.C. § 273.5** suffered before 2019 and to the numerous misdemeanors already specified in **subdivision (a)**.

Pen. Code § 29830 (Amended); *Transfer of Ammunition to a Licensed Ammunition Vendor*:

A person who is prohibited from owning or possessing ammunition pursuant to any law, may transfer his or her ammunition to a "*licensed ammunition vendor*" instead of only to a "*licensed firearms dealer*," for storage during the duration of the prohibition.

Note: Beginning *July 1, 2020*, this section will also apply to ammunition "*feeding devices*" and will permit a person who is prohibited from owning or possessing an ammunition feeding device to transfer the device to a licensed firearms dealer or to an ammunition vendor for storage during the duration of the prohibition.

***Homicide*:**

Pen. Code §§ 188, **189** (Amended); *Felony Murder Rule*:

The traditional "*felony murder rule*" is watered down by providing that a participant in the perpetration or attempted perpetration of a felony specified in **P.C. § 189** in which a death occurs, is liable for murder *only if one of the following is proven*:

1. The person was the actual killer; *or*

2. The person was not the actual killer, but with the intent to kill, he/she aided, abetted, counseled, commanded, induced solicited, requested, or assisted the actual killer in the commission of murder in the first degree; *or*

3. The person was a major participant in the underlying felony and acted with reckless indifference to human life.

Note: Traditionally, a perpetrator needed only to be proved to have been involved in the commission of any of the so-called "*dangerous felonies*" enumerated in **P.C. § 189** where a death results, even if accidental, to be automatically liable for first degree murder.

The above limitations *do not* apply to a defendant when the victim is a peace officer who was killed while in the course of his or her duties, where the defendant knew or reasonably should have known that the victim was a peace officer engaged in the performance of his or her duties.

Note: See **P.C. § 1170.95** (New) which sets forth procedures for any person previously convicted of murder on a "*felony murder theory*" or on a "*natural and probable consequences theory*," to file a petition to have the murder conviction vacated and to be re-sentenced, no matter how old the murder conviction is and even if the defendant finished the sentence long ago.

Pen. Code § 401 (Amended); *Aiding a Suicide*:

An *exception* for actions that are compliant with the **End of Life Option Act** (**H&S §§ 443-443.22**; which permits an adult with a terminal disease to request a prescription for an aid-in-dying drug and to ingest that drug) is now provided for

the felony crime of aiding, advising, or encouraging another person to commit suicide.

Note: The **End of Life Option Act** provides immunity from civil and criminal liability for persons present when a terminally ill person ingests the drug or who help prepare the drug, as long as they do not assist with the actual ingestion of the drug. The **Act** also provides that health care providers shall not be subject to civil, criminal, administrative, disciplinary, or employment penalty or sanction, for participating in good faith compliance with the **Act**.

***Hate Crimes*:**

Pen. Code § 422.56 (Amended); *Hate Crimes and Mental and Physical Disabilities*:

As amended, the section clarifies the definition of "*mental disability*" and "*physical disability*" for purposes of hate crimes to include disabilities that are temporary, permanent, congenital, or acquired by heredity, accident, injury, advanced age, or illness.

Pen. Code § 422.87 (New); *Law Enforcement Hate Crimes Policy*:

A law enforcement agency that adopts a new hate crimes policy, or updates an existing hate crimes policy, is to include *all* of the following:

1. The definitions in **P.C. §§ 422.55** and **422.56** (e.g., hate crime, disability, gender, nationality, race, religion, and "association with a person or group with these actual or perceived characteristics").

2. The content of the model policy framework that the Commission on Peace Officer Standards and Training (POST) developed pursuant to existing **P.C. § 13519.6** and any future revisions or additions that POST makes to the policy.

3. Information regarding bias motivation. "*Bias motivation*" is defined as a preexisting negative attitude toward actual or perceived characteristics referenced in **P.C. § 422.55**. Provides that bias motivation may include hatred, animosity, resentment, revulsion, contempt, unreasonable fear, paranoia, callousness, thrill-seeking, desire for social dominance, desire for social bonding with those of one's "own kind," or a perception of the vulnerability of the victim due to the victim being perceived as weak, worthless, or fair game because of a protected characteristic such as disability or gender. Requires the policy to advise officers to consider whether there is any indication that the perpetrator was motivated by hostility or other bias, occasioned by factors such as dislike of persons who arouse fear or guilt, a perception that persons with disabilities are inferior and therefore "deserving victims," a fear of persons whose visible traits are

perceived as being disturbing to others, or resentment of those who need, demand, or receive alternative educational, physical, or social accommodations. Requires the policy to advise officers to consider whether there is any indication that the perpetrator perceived the victim to be vulnerable and if so, if this perception is grounded, in whole or in part, in anti-disability bias. Provides that this includes situations where a perpetrator targets a person with a particular perceived disability while avoiding other vulnerable-appearing persons such as inebriated persons or persons with perceived disabilities different than those of the victim, which might indicate that the crime is a hate crime rather than a crime of opportunity.

4. Information regarding the general underreporting of hate crimes and a plan for the agency to remedy underreporting.

5. A protocol for reporting suspected hate crimes to DOJ pursuant to existing **P.C. § 13023**.

6. A checklist of first responder responsibilities, including being sensitive to the effects of the crime on the victim, determining whether any additional resources are needed on the scene to assist the victim or whether to refer the victim to appropriate community and legal services, and giving victims and interested persons the agency's hate crimes brochure, as required by existing **P.C. § 422.92.**

7. A specific procedure for transmitting and periodically re-transmitting the hate crimes policy and any related orders to all officers, including a simple and immediate way for officers to access the policy in the field when needed.

8. The title(s) of the officer(s) responsible for assuring that the agency has a hate crimes brochure as required by existing **P.C. § 422.92** and ensuring that all officers are trained to distribute the brochure to all suspected hate crimes victims and interested persons.

9. A requirement that all officers be familiar with the hate crimes policy and carry it out unless directed otherwise. This bill also amends **P.C. § 422.56**, pertaining to the definition of "disability" for purposes of hate crimes.

***Hotels, Motels, Etc*:**

Civ. Code § 53.5 (New); *Releasing Guest Information to Non-California Peace Officers*:

Hotels, motels, lodging establishments, bus companies, or any employee of these entities, are prohibited from disclosing or releasing, except to a California peace

officer, guest information to a third party without a court-issued subpoena, warrant, or order.

This section "shall not be construed to prevent a private business from disclosing records in a criminal investigation if a law enforcement officer in good faith believes that an emergency involving imminent danger of death or serious bodily injury to a person requires a warrantless search, to the extent permitted by law."

Note: This new section has the effect of preventing the release of the listed guest information to U.S. Immigration and Customs Enforcement (ICE) agents, as a part of California's "s*anctuary state*" policy.

***Law Enforcement Officers*:**

Gov't. Code § 6254 (Amended Effective 7/1/2019); *Public Access to Law Enforcement Body-Worn Camera Recordings*:

Effective July 1, 2019, the **California Public Records Act** is expanded to include public access to (i.e., upon request) a video or audio recording (e.g., a law enforcement body-worn camera recording) that relates to a "*critical incident*."

A "*critical incident*" is one which involves the discharge of a firearm at a person by a peace officer or custodial officer, or an incident in which the use of force by a peace officer or custodial officer against a person results in death or great bodily injury. Peace officers employed by CDCR are specifically excluded. Individual agencies are authorized to provide greater access than above.

Forty Five Day Delay: The video or audio recordings related to a critical incident may be withheld by an agency for *45 days* during an active criminal or administrative investigation if disclosure would substantially interfere with the investigation, such as by endangering the safety of a witness or a confidential source. An agency that withholds disclosure during this 45-day period must provide in writing to a requester the specific basis for the agency's determination that disclosure would substantially interfere with the investigation, and the estimated date for disclosure.

One Year Delay: The video or audio recordings related to a critical incident may also be withheld by an agency for *one year* if the agency demonstrates that disclosure would substantially interfere with the investigation, as described above, if the agency demonstrates by "*clear and convincing evidence*" that disclosure would substantially interfere with the investigation. An agency that withholds disclosure during this 45-day period must provide in writing to a requester the specific basis for the agency's determination that the interest in preventing interference with an active investigation outweighs the public interest in disclosure, and to provide the estimated date for disclosure. The agency seeking

to delay disclosure for a year must reassess the reasons for withholding the requested information and notify the requester every 30 days.

Privacy and Redaction: If an agency demonstrates, on the facts of a particular case, that the public interest in withholding a recording clearly outweighs the public interest in disclosure because release would violate the reasonable expectation of privacy of a person depicted in the recording, the agency shall provide in writing to a requester the specific basis for the expectation of privacy and the public interest served by withholding the recording. The agency may use redaction technology (such as blurring or distorting images or audio) to obscure the portions of the recording that protect a privacy interest. But an agency may withhold the recording altogether if the agency demonstrates that the reasonable expectation of privacy of a person depicted in the recording cannot adequately be protected through redaction.

Disclosure to the Subject of the Recording and/or His/Her Representative: Aside from the above, an agency must provide prompt disclosure, regardless of privacy issues, to the subject of the recording or his or her authorized representative; e.g., to the parent or legal guardian of a minor subject, or to the heir, beneficiary, designated immediate family member, or authorized legal representative of a deceased subject. However, if disclosure would substantially interfere with an active criminal or administrative investigation, the agency must provide in writing to the requester the specific basis for the agency's determination that disclosure would substantially interfere with the investigation.

Pen. Code §§ 832.7, **832.8** (Amended); *Public Inspection of Law Enforcement Personnel Records*:

Local and state agencies are now required to make specified personnel records of peace officers and custodial officers, and specified records maintained by the agency, available for public inspection pursuant to the **California Public Records Act**, notwithstanding **Gov't. Code § 6254(f)** or any other law.

> **Gov't. Code § 6254(f)** provides that the **California Public Records Act** *does not* require disclosure of, among other things, records of complaints to, or investigations conducted by, state or local police agencies.

The following peace officer or custodial officer personnel records and records maintained by a local or state agency are *not* confidential and "*shall be made available for public inspection*" pursuant to the **California Public Records Act**:

1. A record relating to the report, investigation, or findings of;

   (a) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer, *or*

(b) An incident in which the use of force by a peace officer or custodial officer against a person resulted in death or great bodily injury.

2. A record relating to an incident in which a sustained finding was made that an officer engaged in "*sexual assault*" involving a member of the public.

"*Sexual assault*" is defined as the commission or attempted initiation of a sexual act with a member of the public by force, threat, coercion, extortion, offer of leniency or other official favor, or under the color of authority. Includes in the definition of sexual assault, "the propositioning for or commission of any sexual act while on duty."

"*Member of the public*" is defined as any person not employed by the officer's agency and any participant in a cadet, explorer, or other youth program affiliated with the agency.

3. A record relating to an incident in which a sustained finding was made of *dishonesty* by an officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another officer, including any sustained finding of perjury, false statements, filing false reports, or the destruction, falsifying, or concealing of evidence.

The records that must be released relating to the above include all investigative reports; photographs; audio and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented to a district attorney for the determination of whether to file charges against an officer or presented to any person for the determination of whether the officer violated agency policy for the purposes of discipline or administrative action; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident.

Redaction of the above records before disclosure is required. Redaction is required of an officer's personal data (such as home address, telephone number, identities of family members), information necessary to preserve the anonymity of complainants and witnesses, information necessary to protect confidential medical or financial information, and where there is "a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the officer or another person." Redaction is also permitted where the public interest is served by not disclosing the information clearly outweighs the public interest served by disclosure.

An agency may delay disclosure during an active criminal investigation of the records of an incident involving an officer discharging a firearm at a person or using force that results in death or great bodily injury. A delay for up to 60 days is permitted from the date the use of force occurred *or* until the district attorney determines whether to file charges, whichever occurs sooner. The agency is required to state in writing the specific basis for the agency's determination that the interest in delaying disclosure clearly outweighs the public interest in disclosure. After 60 days, the agency is permitted to continue to delay disclosure if disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against an officer who used the force or against someone other than the officer who used force. If disclosure is delayed during this period, the agency is required, at 180-day intervals, to provide in writing the specific basis why disclosure would interfere with the criminal enforcement proceeding. Disclosure by the 18-month mark at the outside is required, but if criminal charges are filed, disclosure may be delayed until there is a verdict at trial, or if there is a plea of guilty or no contest, until the time to withdraw the plea has passed pursuant to **P.C. § 1018** (i.e., before judgment or within six months after probation is granted).

If there is an administrative investigation into a use of force incident, disclosure may be delayed until the agency determines whether the use of force violated a law or agency policy, but not longer than 180 days after the agency's discovery of the use of force, or 30 days after the close of any criminal investigation related to the use of force, whichever is later.

The release of a civilian complaint, or the investigations, findings, or dispositions of that complaint, is prohibited if the complaint is frivolous as defined in **C.C.P. § 128.5** (i.e., totally and completely without merit or for the sole purpose of harassing an opposing party) or if the complaint is unfounded as defined in amended **P.C. § 832.8** (see below).

Note: The above is likely to be held to be retroactive; i.e., applying to incidents that occurred prior to 1/1/2019.

New **subd. (h)** in **P.C. § 832.7** provides that nothing supersedes or affects the criminal discovery process in **P.C. §§ 1054–1054.10** or the admissibility of personnel records pursuant to existing **P.C. § 832.7(a)**, which codifies the court decision in ***Pitchess v. Superior Court*** (1974) 11 Cal.3rd 531. (

> **Subd. (a)** in **P.C. § 832.7** provides that except as provided in the amendments made by this bill, peace officer and custodial officer records are confidential and shall not be disclosed except by discovery pursuant to **Evid. Code §§ 1043** and **1046**.)

P.C. § 832.8 is amended to add the following definitions:

> "*Sustained*" means a final determination by an investigating agency, commission, board, hearing officer, or arbitrator, following an investigation and opportunity for administrative appeal, that the actions of the peace officer or custodial officer were found to violate law or department policy.
>
> "*Unfounded*" means that an investigation clearly establishes that the allegation is not true.

Pen. Code § 830.11 (Amended); *Department of Food and Agriculture Investigators*:

> Persons employed by the Department of Food and Agriculture and designated as investigators whose primary duty is the enforcement of, and investigations relating to, **Division 10** of the **Business and Professions Code** (i.e., cannabis: **B&P §§ 26000–26231.2**) are added to the list of persons who, although *not* peace officers, may exercise the power of arrest and the power to serve search warrants within the scope of their employment if they take a course in the exercise of those powers.
>
> > *Note*: Pursuant to existing **B&P § 26012(a)(2)**, the Dep't. of Food and Agriculture is tasked with administering cannabis provisions related to cultivation and has the authority to create, issue, deny, suspend, or revoke cultivation licenses.

Pen. Code § 832.12 (New); *Records re*: *Investigations of Misconduct Involving a Peace Officer*:

> Every department or agency in California that employs peace officers is required to "make a record of any investigations of misconduct involving a peace officer" in the peace officer's personnel file or in a separate file designated by the department or agency.
>
> Also, a peace officer seeking employment with a department or agency that employs peace officers (e.g., a lateral hiring) is required to give written permission for the hiring department or agency to view the officer's personnel file and any separate designated file.

Pen. Code § 2644 (New); *Male Correctional Officers and Female Inmates*:

> **(a)** A male correctional officer shall not conduct a pat down search of a female inmate unless the prisoner presents a risk of immediate harm to herself or others or risk of escape and there is not a female correctional officer available to conduct the search.

(b) A male correctional officer shall not enter into an area of the institution where female inmates may be in a state of undress, or be in an area where they can view female inmates in a state of undress, including, but not limited to, restrooms, shower areas, or medical treatment areas, unless an inmate in the area presents a risk of immediate harm to herself or others or if there is a medical emergency in the area. A male correctional officer shall not enter into an area prohibited under this subdivision if there is a female correctional officer who can resolve the situation in a safe and timely manner without his assistance. To prevent incidental viewing, staff of the opposite sex shall announce their presence when entering a housing unit.

(c) If a male correctional officer conducts a pat down search under an exception provided in **subd. (a)** or enters a prohibited area under an exception provided in **subd. (b)**, the circumstances for and details of the exception shall be documented within three days of the incident. The documentation shall be reviewed by the warden and retained by the institution for reporting purposes.

(d) The department may promulgate regulations to implement this section.

Pen. Code § 16690 (Amended); *Honorably Retired Reserve Officers and Large-Capacity Magazines*:

This section, which permits an honorably retired peace officer to carry a concealed and loaded firearm in public, is expanded to permit a retired peace officer to possess a large-capacity magazine (i.e., magazines that hold more than 10 rounds; see **P.C. § 32310**), making it consistent with existing **P.C. § 32406**—both the Legislature's version and **Proposition 63's** version—which already permit honorably retired peace officers to possess large-capacity magazines.

Retired Level I reserve officers who meet the requirements of **P.C. § 26300(c)(2)** (carrying a firearm while on duty and serving as a reserve officer for the time period specified in the particular agency's policy) are added to this section so that a retired Level I reserve officer is also permitted to possess a large-capacity magazine. (Existing **P.C. § 26300(c)(2)** already permits a retired Level I reserve officer to carry a concealed and loaded firearm in public.)

The section continues to provide that "*honorably retired*" does *not* include an officer who has agreed to a service retirement in lieu of termination.

Note: The constitutionality of **P.C. § 32310**, making it illegal to possess a large-capacity magazine, is currently being tested in the federal courts after a district court judge ruled in ***Duncan v. Becerra*** (June 29, 2017) 2017 U.S. Dist. LEXIS 101549, that the section is unenforceable.

Pen. Code § 22295 (Amended); *Humane Officers and Wooden Clubs or Batons*:

Humane officers are added to those officers (animal control officers and illegal dumping enforcement officers) who are not prohibited from carrying a wooden club or baton if they complete a course of instruction certified by the Commission on Peace Officer Standards and Training (POST) in the carrying and use of the club or baton.

"*Humane Officer*" is defined in terms of existing **Corp. Code § 14502(h)**, which provides that Level 1 and Level 2 humane officers are not peace officers, but may exercise the powers of a peace officer in order to prevent cruelty to an animal, and may summon aid from any bystander, use reasonable force to prevent cruelty to an animal, and make arrests for any law violations relating to animals.

Note: See also **Corp. Code § 14502** (Amended) which is also amended to provide that a humane officer may carry a wooden club or baton if he or she completes the POST course described above and if his or her employer authorizes the carrying.

***Minors*:**

Health & Safety Code § 1531.6 (New); *Protocols for Law Enforcement Intervention in Child Group Home Issues*:

Subd. (a): Group homes, transitional shelter care facilities, short-term residential therapeutic programs, and temporary shelter care facilities are required to develop protocols that dictate the circumstances *under which law enforcement may be contacted* in response to the conduct of a child residing at the facility.

Subd. (b): The protocols are required to include trauma-informed and evidence-based de-escalation and intervention techniques, and to permit the *contacting of law enforcement only as a last resort* and only upon approval of a staff supervisor. Contacting law enforcement is permitted in an emergency situation if there is an immediate risk of serious harm to a child or others.

Subd. (c): Contacting law enforcement in a situation where the facility or a facility employee is required by law to report an incident, such as the mandated reporting of child abuse, or if a child is missing or has run away, is *not* prohibited.

Health & Safety Code § 11158.1 (New); *Prescribing Opioids to Minors*:

Subd. (a): A prescriber, before issuing for a minor a first prescription in a single course of treatment for a controlled substance containing an opioid, is required to discuss with the minor, or the minor's parent or guardian, or another adult authorized to consent to the minor's medical treatment, the risks of addiction and overdose, the increased risk of addiction for a person who suffers from a mental

health disorder and substance abuse, and the danger of taking an opioid with alcohol and other drugs.

Subd (b): Several exceptions are provided, such as in emergency situations, or if it "would be detrimental to the minor's health or safety, or in violation of the minor's legal rights regarding confidentiality."

Subd. (c): Failure to comply with this new section is not a criminal offense.

Pen. Code § 22815 (Amended); *Civil Liability and a Minor's Non-Self-Defense Use of Tear Gas*:

Civil liability for a minor's non-self-defense use of tear gas is expanded to include the person, parent, or guardian who accompanied the minor to purchase the tear gas.

Note: Previously, only the person, parent, or guardian who signed the statement of consent was civilly liable for the minor's misuse of tear gas.

Note: **P.C. § 22815(b)** permits the sale of tear gas to a minor age 16 or older who is accompanied by a parent or guardian or who presents a statement of consent signed by the minor's parent or guardian.

Pen. Code § 27510 (Amended); *Sales of Long Guns to Minors*:

The minimum age for a purchaser that a licensed firearms dealer may sell, supply, deliver, or give possession or control of a long gun (rifle or shotgun) to has been raised from 18 to 21 years of age. (This is already the law for handguns.)

Exceptions: The minor (age 18, 19, or 20 years of age):

1. Has a valid hunting license issued by the Dep't. of Fish and Wildlife; *or*

2. Is an active peace officer, federal agent, law enforcement agent, or reserve peace officer, who is authorized to carry a firearm in the course of his or her employment; *or*

3. Is a person who provides proper identification of active membership in, or honorable discharge from, the U.S. Armed Forces, the National Guard, the Air National Guard, or reserve components.

Note: See also **P.C. § 29182** (Amended), which permits DOJ to grant an application to an 18-, 19-, or 20-year old for a serial number for a non-handgun that the person wishes to manufacture or assemble, if the application is made before February 1, 2019.

Wel. & Inst. Code § 625.4 (New); *Obtaining Voluntary DNA Samples from Minors*:

(a) A law enforcement officer, employee of a law enforcement agency, or any agent thereof, shall *not* request that a voluntary DNA reference sample be collected directly from the person of a minor unless *all* of the following conditions are met:

(1) The minor consents in writing, after being verbally informed of the purpose and manner of the collection, the right to refuse consent, the right to sample expungement, and the right to consult with an attorney, parent, or legal guardian prior to providing consent.

(2) A specific parent or legal guardian identified by the minor, or an attorney representing the minor, is contacted, is provided the information specified in **para. (1)**, is allowed to privately consult by telephone or in person with the minor, and, after that consultation, concurs with the minor's decision to consent.

(3) Local law enforcement provides the minor with a form for requesting expungement of the voluntary DNA buccal swab sample, if a sample is consented to and collected pursuant to this section.

(b) Nothing in **subd. (a)** is intended to create a right to the appointment of counsel.

(c) The detention of a minor that occurs for the purpose of requesting a voluntary DNA reference sample directly from the person of that minor pursuant to this section shall not be unreasonably extended solely for the purpose of contacting a parent, legal guardian, or attorney pursuant to **subd. (a)(2)**, if a parent, legal guardian, or attorney cannot be reached after reasonable attempts have been made.

(d) The court shall, in adjudicating the admissibility of a voluntary DNA reference sample taken directly from a minor pursuant to this section, consider the effect of any failure to comply with this section.

(e) The law enforcement agency obtaining a voluntary DNA reference sample directly from the person of a minor pursuant to this section shall determine within two years whether the person remains a suspect in a criminal investigation. If, within two years, the voluntary DNA reference sample that is collected pursuant to this section is not found to implicate the minor as a suspect in a criminal offense, the local law enforcement agency shall promptly expunge the sample and the DNA profile information from that voluntary DNA reference sample from the databases or data banks into which they have been entered.

(f) If the minor requests expungement of a voluntary DNA reference sample collected directly from the person of a minor pursuant to this section, the local law enforcement agency shall make reasonable efforts to promptly expunge the sample and the DNA profile information from that voluntary DNA reference sample from all DNA databases or data banks unless the voluntary DNA reference sample has implicated the minor as a suspect in a criminal investigation. If expungement occurs, law enforcement shall make reasonable efforts to notify the minor when the minor's DNA sample and DNA profile information have been expunged.

(g) A voluntary DNA reference sample taken directly from the person of a minor pursuant to this section and the DNA profile information from that voluntary DNA reference sample shall not be searched, analyzed, or compared to DNA samples or profiles in the investigation of crimes other than the investigation or investigations for which it was taken, unless that additional use is permitted by a court order.

(h) Any local law enforcement agency that is found by clear and convincing evidence to maintain a pattern and practice of collecting voluntary DNA reference samples directly from the person of a minor in violation of this section after January 1, 2019, shall be liable to each minor whose sample was inappropriately collected in the amount of five thousand dollars ($5,000) for each violation, plus attorney's fees and costs.

(i) The scope of this section is limited to the collection of voluntary DNA reference samples directly from the person of minors, and, as such, **subds. (a)** to **(h)**, inclusive have no application to the collection and use of DNA under other circumstances, including, but not limited to, any of the following:

> **(1)** The sample collection or use is expressly authorized pursuant to the state's DNA Act as set forth in the **DNA and Forensic Identification Database and Data Bank Act of 1998**, as amended, **P.C. §§ 295 et seq.** (**Part 1**, **Title 9**, **Chapter 6**).
>
> **(2)** A DNA reference sample collection and analysis that occurs pursuant to a valid search warrant or court order or exigent circumstances.
>
> **(3)** A DNA reference sample collection that occurs in the investigation or identification of a missing or abducted minor.
>
> **(4)** Any DNA reference sample collected from a juvenile victim or suspected perpetrator of a sexual assault or other crime as authorized by law.

(5) Any DNA sample that is collected as evidence in a criminal investigation, such as evidence from a crime scene or an abandoned sample.

Wel. & Inst. Code § W&I 707 (Amended); *Prosecution of Minors age 14 and 15*:

The prosecution of a minor as an adult who was 14 or 15 years old when he or she committed one or more of the offenses listed in **W&I § 707(b)**, except where he or she is "not apprehended prior to the end of juvenile court jurisdiction," is now *prohibited*.

Note: Previously, a 16- or 17-year old could be prosecuted in adult court *for any felony crime*, and a 14- or 15-year-old could be prosecuted in adult court for any offense specifically listed in **W&I § 707(b)**. Now **W&I § 707** permits only 16- and 17-year olds to be prosecuted in adult court for any felony, unless a 14- or 15-year-old who commits a **W&I § 707(b)** offense is not apprehended before the end of juvenile court jurisdiction.

Wel. & Inst. Code § W&I 709 (Repealed and Added); *Juvenile Mental Competency to Stand Trial*:

The existing version of **W&I § 709**, relating to juvenile competency to stand trial, and replaces it with a new version much more favorable to juveniles that results in the immediate dismissal of a petition containing only misdemeanor charges if a juvenile is found incompetent to stand trial, regardless of the seriousness of the crimes, and results in the dismissal of felony charges as early as six months after a finding of incompetence.

Veh. Code § 21212 (Amended); *Bike Helmet Violations and Minors*:

A person under age 18 who is cited for not wearing a bicycle helmet while riding a bicycle, non-motorized scooter, skateboard, or roller skates is permitted to correct the violation if the minor's parent or legal guardian delivers proof to the issuing agency within 120 days that the minor has a qualifying helmet and has completed a bicycle safety course, if one is available, as prescribed by authorities in the local jurisdiction.

Note: The section continues to provide that the first helmet charge against a person must be dismissed when the person alleges under oath that it is his or her first helmet charge (unless it is established in court that it is not the first charge), and continues to provide that a helmet violation is an infraction punishable by a $25 fine.

Note: See also **Veh. Code § 40303.5** (Amended), adding **V.C. § 21212** to the list of violations for which an arresting officer must permit a violator to sign a notice

containing a promise to correct the violation (i.e., issue a "fix-it" ticket), absent a disqualifying condition.

***Opioids; Control of*:**

Bus. & Prof. Code § 688 (New; Effective 1/1/2022); *Electronic Data Prescriptions*:

Provides for the mandatory (with limited exceptions) use of electronic transmissions of prescriptions between health care practitioners who are authorized to issue prescriptions and a patient's pharmacy, with administrative sanctions for failure to meet the listed requirements. The purpose includes to better track prescriptions, in particular opioid prescriptions.

Bus. & Prof. Code §§ 740, 741 & 742 (New); *Opioid Overdose Reversal Drugs*:

New **Article 10.7** in **Chapter 1** of **Division 2** entitled "*Opioid Medication*," requires the offering of a prescription for an opioid overdose reversal drug, such as (but not limited to) naloxone hydrochloride, when an opioid is prescribed in specified situations as listed in the statutes, and with limited exceptions. The person offering the prescription is also required to provide education to the patient and to one or more persons designated by the patient, about overdose prevention and the use of naloxone hydrochloride to reverse an opioid overdose, with administrative sanctions for failure to do so.

Bus. & Prof. Code § 4076.7 (New); *Opioid Warning Labels*:

Opioid Prescriptions to be marked by the health care practitioner issuing such a prescription: "*Caution: Opioid. Risk of overdose and addiction*."

Bus. & Prof. Code § 4119.9 (New): *Furnishing Opioid Antagonists to Law Enforcement*:

A pharmacy, wholesaler, or manufacturer is authorized to furnish naloxone hydrochloride or other "*opioid antagonists*" (i.e., substances that reverse an opioid overdose) to a law enforcement agency if furnished exclusively for use by employees of a law enforcement agency who have completed training in administering it and the agency retains records for three years concerning its acquisition and disposition.

Health & Safety Code § 11158.1 (New); *Prescribing Opioids to Minors*:

Subd. (a): A prescriber, before issuing for a minor a first prescription in a single course of treatment for a controlled substance containing an opioid, is required to discuss with the minor, or the minor's parent or guardian, or another adult authorized to consent to the minor's medical treatment, the risks of addiction and overdose, the increased risk of addiction for a person who suffers from a mental

health disorder and substance abuse, and the danger of taking an opioid with alcohol and other drugs.

Subd (b): Several exceptions are provided, such as in emergency situations, or if it "would be detrimental to the minor's health or safety, or in violation of the minor's legal rights regarding confidentiality."

Subd. (c): Failure to comply with this new section *is not* a criminal offense.

***Pawnbrokers*:**

Bus. & Prof. Code §§ 21636, 21636.1 (Amended; New); *Non-Firearm Tangible Personal Property*:

The holding requirements for "*non-firearm tangible personal property*" in the possession of a secondhand dealer or coin dealer (e.g., a pawnbroker) is moved from existing **B&P § 21636** to new **B&P § 21636.1**, which has the effect of reducing from 30 days to 7 days that such property must be held by the pawnbroker before resale.

New **B&P § 21636.1** applies to non-firearm tangible personal property, as defined in existing **B&P § 21627**, as property with a serial number or personalized initials, including motor vehicles, received in pledge as security for a loan by a pawnbroker, and all personal property that the Attorney General statistically determines through crime data constitutes a significant class of stolen goods.

New **B&P § 21636.1** also provides that a secondhand dealer or coin dealer may sell property after only 5 days if the sale is recorded in the dealer's book of records, and if the record of sale includes the buyer's name, address, and telephone number or email address or electronic address for receiving text messages. In documenting the sale, the dealer does not have any duty to verify the accuracy of the information provided by the buyer. The pawnbroker is required to retain this information for 21 days, making it available for inspection by a local law enforcement agency during the 21 days. If law enforcement notifies the dealer within the 21-day period that the property has been reported stolen, the record of sale and all information contained in it shall be provided to law enforcement upon written request by the agency.

***Restraining Orders*:**

Pen. Code § 136.2 (Amended); *Ten Year Restraining Orders for Listed Sex Offenders*:

Forced labor human trafficking (**P.C. § 236.1(a)**), pimping where the victim is an adult (**P.C. § 266h(a)**), and pandering where the victim is an adult (**P.C. § 266i(a)**) are added (**in subd. (i)(1)**) to the list of offenses for which a court must

consider issuing a restraining order for up to 10 years for a victim, regardless of the sentence imposed.

Note: Offenses already specified in **P.C. 136.2(i)** are domestic violence offenses, offenses requiring registration as a sex offender (**P.C. § 290 offenses**), and gang crimes.

Pen. Code § 18100 (Amended); *Gun Violence Restraining Order;* "*Ammunition*" *Defined*:

That the term "*ammunition*," as it pertains to a gun violence restraining order, includes a magazine as defined in **P.C. § 16890** (which defines "*magazine*" as an ammunition feeding device), is added to the section defining "*gun violence restraining order*."

Pen. Code § 18120 (Amended); *Gun Violence Restraining Order Procedures*:

New **subd. (e)** of this section (which describes in detail the procedures for issuing a gun violence restraining order and the surrender of such weapons) requires the court, within *one* business day of receiving the prohibited person's receipt showing that all firearms and ammunition have been surrendered to a local law enforcement agency or sold or transferred to a licensed firearms dealer, to transmit a copy of the receipt to DOJ.

Pen. Code § 18120 (Amended); *Ex Part Gun Violence Restraining Orders*:

(a) A temporary emergency gun violence restraining order may be issued on an ex parte basis only if a law enforcement officer asserts, and a judicial officer finds, that there is reasonable cause to believe both of the following:

(1) The subject of the petition poses an immediate and present danger of causing personal injury to himself, herself, or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition.

(2) A temporary emergency gun violence restraining order is necessary to prevent personal injury to the subject of the petition or another because less restrictive alternatives either have been tried and found to be ineffective, or have been determined to be inadequate or inappropriate for the circumstances of the subject of the petition.

(b) A temporary emergency gun violence restraining order issued pursuant to this chapter shall prohibit the subject of the petition from having in his or her custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition, and shall expire 21 days from the date the order is issued.

Pen. Code § 18130 (Amended); *Validity of a Gun Violence Restraining Order*:

A temporary emergency gun violence restraining order is valid only if it is issued by a judicial officer after making the findings required by **P.C. § 18125** and pursuant to a specific request by a law enforcement officer.

Pen. Code §§ 18140, **18145** (Amended); *Oral Gun Violence Restraining Order*:

Amendments to these sections clarify that a law enforcement officer may orally request a temporary emergency gun violence restraining order and then sign a declaration under penalty of perjury, reciting the oral statements provided to the judicial officer (which is later filed with the court).

A judicial officer is then permitted to orally issue such an order.

Note: Per CDAA, obtaining and issuing an emergency gun violence restraining order orally (usually over the phone) is now the default method, with the written method permitted if time and circumstances allow.

Pen. Code § 18148 (New); *Gun Violence Restraining Order Hearing*:

Within 21 days after the date on the temporary gun violence restraining order, the court that issued the order, or another court in the same jurisdiction, shall hold a hearing pursuant to **P.C. § 18175** to determine if a gun violence restraining order should be issued pursuant to **P.C. §§ 18170 et seq.** (**Chapter 4**) after notice and hearing.

Note: Already existing **P.C. § 18125** authorizes a court to issue an ex parte temporary gun violence restraining order at the request of a law enforcement officer and provides that a temporary order is valid for 21 days. Also, there is already a requirement for a hearing within 21 days (in existing **P.C. § 18165**) after an ex parte gun violence restraining order that is issued at the request of an immediate family member.

Pen. Code § 18160 (Amended); *Ex Parte Gun Violence Restraining Orders*; *Content and Service Requirements*:

(a) An ex parte gun violence restraining order issued under this chapter shall include all of the following:

(1) A statement of the grounds supporting the issuance of the order.

(2) The date and time the order expires.

(3) The address of the superior court in which any responsive pleading should be filed.

(4) The date and time of the scheduled hearing.

(5) The following statement:

> To the restrained person: This order is valid until the expiration date and time noted above. You are required to surrender all firearms, ammunition, and magazines that you own or possess in accordance with **Section 18120** of the **Penal Code** and you may not have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive any firearm, ammunition, or magazine while this order is in effect. A hearing will be held on the date and at the time noted above to determine if a more permanent gun violence restraining order should be issued. Failure to appear at that hearing may result in a court making an order against you that is valid for a year. You may seek the advice of an attorney as to any matter connected with the order. The attorney should be consulted promptly so that the attorney may assist you in any matter connected with the order.

(b)

(1) An ex parte gun violence restraining order shall be personally served on the restrained person by a law enforcement officer, or any person who is at least 18 years of age and not a party to the action, as provided in **CCP § 414.10**, if the restrained person can reasonably be located.

(2) When serving a gun violence restraining order, a law enforcement officer shall inform the restrained person of the hearing scheduled pursuant to **P.C. § 18165**.

(3) When serving a gun violence restraining order, a law enforcement officer shall verbally ask the restrained person if he or she has any firearm, ammunition, or magazine in his or her possession or under his or her custody or control.

Pen. Code § 18180 (Amended); *Gun Violence Restraining Orders*; *Content and Court Advisal*:

(a) A gun violence restraining order issued pursuant to this chapter shall include all of the following:

(1) A statement of the grounds supporting the issuance of the order.

(2) The date and time the order expires.

(3) The address of the superior court for the county in which the restrained party resides.

(4) The following statement:

> To the restrained person: This order will last until the date and time noted above. If you have not done so already, you must surrender all firearms, ammunition, and magazines that you own or possess in accordance with **Section 18120** of the **Penal Code**. You may not have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive a firearm, ammunition, or magazine, while this order is in effect. Pursuant to Section 18185, you have the right to request one hearing to terminate this order at any time during its effective period. You may seek the advice of an attorney as to any matter connected with the order.

(b) When the court issues a gun violence restraining order under this chapter, the court shall inform the restrained person that he or she is entitled to one hearing to request a termination of the order, pursuant to **P.C. § 18185**, and shall provide the restrained person with a form to request a hearing.

***Search Warrants*:**

Pen. Code § 1526 (Amended); *Telephonic Search Warrants*:

The requirement of a telephone conversation between a magistrate and an officer/affiant for the taking of the affiant's oral oath during the obtaining of a search warrant has been eliminated. A search warrant may now be issued completely electronically by facsimile, email, or computer server.

Subd. (c)(1): The officer/affiant is required to sign under penalty of perjury his or her affidavit in support of the search warrant, with the signature being a digital or electronic signature if email or computer server are used to obtain the warrant.

Subd. (c)(3) If the magistrate decides to issue the search warrant, he or she shall do both of the following:

(A) Sign the warrant. The magistrate's signature may be in the form of a digital signature or electronic signature if email or computer server is used for transmission by the magistrate.

(B) Note on the warrant the date and time of the issuance of the warrant.

Subd. (c)(4): The magistrate shall transmit via facsimile transmission equipment, email, or computer server the signed search warrant to the affiant. The search warrant signed by the magistrate and received by the affiant shall be deemed to be the original warrant. The original warrant and any affidavits or attachments in support thereof shall be returned as provided in **P.C. § 1534**.

Subd. **(a)**, **(b)**: The magistrate continues to be allowed to accept an oral statement made under penalty of perjury that is recorded and transcribed.

See **P.C. § 817** (Amended) for similar provisions for Telephonic Arrest Warrants.

***Sidewalk Vendors*:**

Gov't. Code § 51036 (New); *Definitions*:

For purposes of this chapter, the following definitions apply:

(a) "*Sidewalk vendor*" means a person who sells food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one's person, upon a public sidewalk or other pedestrian path.

(b) "*Roaming sidewalk vendor*" means a sidewalk vendor who moves from place to place and stops only to complete a transaction.

(c) "*Stationary sidewalk vendor*" means a sidewalk vendor who vends from a fixed location.

(d) "*Local authority*" means a chartered or general law city, county, or city and county.

Gov't. Code § 51037 (New); *Local Authority Regulation*:

(a) A local authority shall not regulate sidewalk vendors except in accordance with **Gov't. Code §§ 51038** and **51039**.

(b) Nothing in this chapter shall be construed to affect the applicability of **H&S Code §§ 11370 et seq.** (**Div. 104**, **Part 7**.) to a sidewalk vendor who sells food.

(c) Nothing in this chapter shall be construed to require a local authority to adopt a new program to regulate sidewalk vendors if the local authority has established an existing program that substantially complies with the requirements in this chapter.

Gov't. Code § 51038 (New); *Local Authority Regulation Program*:

(a) A local authority may adopt a program to regulate sidewalk vendors in compliance with this section.

(b) A local authority's sidewalk vending program shall comply with all of the following standards:

(1) A local authority shall not require a sidewalk vendor to operate within specific parts of the public right-of-way, except when that restriction is directly related to objective health, safety, or welfare concerns.

(2)

(A) A local authority shall not prohibit a sidewalk vendor from selling food or merchandise in a park owned or operated by the local authority, except the local authority may prohibit stationary sidewalk vendors from vending in the park only if the operator of the park has signed an agreement for concessions that exclusively permits the sale of food or merchandise by the concessionaire.

(B) Notwithstanding **subd. (A)**, a local authority may adopt additional requirements regulating the time, place, and manner of sidewalk vending in a park owned or operated by the local authority if the requirements are any of the following:

(i) Directly related to objective health, safety, or welfare concerns.
(ii) Necessary to ensure the public's use and enjoyment of natural resources and recreational opportunities.
(iii) Necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park.

(3) A local authority shall not require a sidewalk vendor to first obtain the consent or approval of any nongovernmental entity or individual before he or she can sell food or merchandise.

(4)

(A) A local authority shall not restrict sidewalk vendors to operate only in a designated neighborhood or area, except when that restriction is directly related to objective health, safety, or welfare concerns.

(B) Notwithstanding **subpara. (A)**, a local authority may prohibit stationary sidewalk vendors in areas that are zoned exclusively residential, but shall not prohibit roaming sidewalk vendors.

(5) A local authority shall not restrict the overall number of sidewalk vendors permitted to operate within the jurisdiction of the local authority, unless the restriction is directly related to objective health, safety, or welfare concerns.

(c) A local authority may, by ordinance or resolution, adopt additional requirements regulating the time, place, and manner of sidewalk vending if the requirements are directly related to objective health, safety, or welfare concerns, including, but not limited to, any of the following:

(1) Limitations on hours of operation that are not unduly restrictive. In nonresidential areas, any limitations on the hours of operation for sidewalk vending shall not be more restrictive than any limitations on hours of operation imposed on other businesses or uses on the same street.

(2) Requirements to maintain sanitary conditions.

(3) Requirements necessary to ensure compliance with the federal **Americans with Disabilities Act of 1990** (**Public Law 101-336**) and other disability access standards.

(4) Requiring the sidewalk vendor to obtain from the local authority a permit for sidewalk vending or a valid business license, provided that the local authority issuing the permit or business license accepts a California driver's license or identification number, an individual taxpayer identification number, or a municipal identification number in lieu of a social security number if the local authority otherwise requires a social security number for the issuance of a permit or business license, and that the number collected shall not be available to the public for inspection, is confidential, and shall not be disclosed except as required to administer the permit or licensure program or comply with a state law or state or federal court order.

(5) Requiring the sidewalk vendor to possess a valid *California Department of Tax and Fee Administration* seller's permit.

(6) Requiring additional licenses from other state or local agencies to the extent required by law.

(7) Requiring compliance with other generally applicable laws.

(8) Requiring a sidewalk vendor to submit information on his or her operations, including, but not limited to, any of the following:

(A) The name and current mailing address of the sidewalk vendor.

(B) A description of the merchandise offered for sale or exchange.

(C) A certification by the vendor that to his or her knowledge and belief, the information contained on the form is true.

(D) The California seller's permit number (California Department of Tax and Fee Administration sales tax number), if any, of the sidewalk vendor.

(E) If the sidewalk vendor is an agent of an individual, company, partnership, or corporation, the name and business address of the principal.

(d) Notwithstanding **subd. (b)**, a local authority may do both of the following:

(1) Prohibit sidewalk vendors in areas located within the immediate vicinity of a permitted certified farmers' market or a permitted swap meet during the limited operating hours of that certified farmers' market or swap meet. A "certified farmers' market" means a location operated in accordance with **Fd. & Agri. Code §§ 4700 et seq.** (**Div. 17, Chapter 10.5**) and any regulations adopted pursuant to that chapter. A "*swap meet*" means a location operated in accordance with **Bus. & Prof. Code §§ 21660 et seq.** (**Div. 8, Chapter 9, Art. 6**), and any regulations adopted pursuant to that article.

(2) Restrict or prohibit sidewalk vendors within the immediate vicinity of an area designated for a temporary special permit issued by the local authority, provided that any notice, business interruption mitigation, or other rights provided to affected businesses or property owners under the local authority's temporary special permit are also provided to any sidewalk vendors specifically permitted to operate in the area, if applicable. For purposes of this paragraph, a temporary special permit is a permit issued by the local authority for the temporary use of, or encroachment on, the sidewalk or other public area, including, but not

limited to, an encroachment permit, special event permit, or temporary event permit, for purposes including, but not limited to, filming, parades, or outdoor concerts. A prohibition of sidewalk vendors pursuant to this paragraph shall only be effective for the limited duration of the temporary special permit.

(e) For purposes of this section, perceived community animus or economic competition does not constitute an objective health, safety, or welfare concern.

Gov't. Code § 51039 (New); *Sidewalk Vending Program Violations*:

(a)

(1) A violation of a local authority's sidewalk vending program that complies with **Gov't. Code § 51038** is punishable only by the following:

(A) An administrative fine not exceeding one hundred dollars ($100) for a first violation.

(B) An administrative fine not exceeding two hundred dollars ($200) for a second violation within one year of the first violation.

(C) An administrative fine not exceeding five hundred dollars ($500) for each additional violation within one year of the first violation.

(2) A local authority may rescind a permit issued to a sidewalk vendor for the term of that permit upon the fourth violation or subsequent violations.

(3)

(A) If a local authority requires a sidewalk vendor to obtain a sidewalk vending permit from the local authority, vending without a sidewalk vending permit may be punishable by the following in lieu of the administrative fines set forth in **para. (1)**:

(i) An administrative fine not exceeding two hundred fifty dollars ($250) for a first violation.
(ii) An administrative fine not exceeding five hundred dollars ($500) for a second violation within one year of the first violation.

(iii) An administrative fine not exceeding one thousand dollars ($1,000) for each additional violation within one year of the first violation.

(B) Upon proof of a valid permit issued by the local authority, the administrative fines set forth in this paragraph shall be reduced to the administrative fines set forth in **para. (1)**, respectively.

(b) The proceeds of an administrative fine assessed pursuant to **subd. (a)** shall be deposited in the treasury of the local authority.

(c) Failure to pay an administrative fine pursuant to **subd. (a)** shall not be punishable as an infraction or misdemeanor. Additional fines, fees, assessments, or any other financial conditions beyond those authorized in **subd. (a)** shall not be assessed.

(d)

(1) A violation of a local authority's sidewalk vending program that complies with **Gov't. Code § 51038**, or a violation of any rules or regulations adopted prior to January 1, 2019, that regulate or prohibit sidewalk vendors in the jurisdiction of a local authority, shall not be punishable as an infraction or misdemeanor, and the person alleged to have violated any of those provisions shall not be subject to arrest except when permitted under law.

(2) Notwithstanding any other law, **para. (1)** shall apply to all pending criminal prosecutions under any local ordinance or resolution regulating or prohibiting sidewalk vendors. Any of those criminal prosecutions that have not reached final judgment shall be dismissed.

(e) A local authority that has not adopted rules or regulations by ordinance or resolution that comply with **Gov't. Code § 51037** shall not cite, fine, or prosecute a sidewalk vendor for a violation of any rule or regulation that is inconsistent with the standards described in **Gov't. Code § 51038(b)**.

(f)

(1) When assessing an administrative fine pursuant to subdivision (a), the adjudicator shall take into consideration the person's ability to pay the fine. The local authority shall provide the person with notice of his or her right to request an ability-to-pay determination and shall make available

instructions or other materials for requesting an ability-to-pay determination. The person may request an ability-to-pay determination at adjudication or while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program.

(2) If the person meets the criteria described in **Gov't. Code § 68632(a)** or **(b)**, the local authority shall accept, in full satisfaction, 20% of the administrative fine imposed pursuant to **subd. (a)**.

(3) The local authority may allow the person to complete community service in lieu of paying the total administrative fine, may waive the administrative fine, or may offer an alternative disposition.

(g)

(1) A person who is currently serving, or who completed, a sentence, or who is subject to a fine, for a conviction of a misdemeanor or infraction for sidewalk vending, whether by trial or by open or negotiated plea, who would not have been guilty of that offense under the act that added this section had that act been in effect at the time of the offense, may petition for dismissal of the sentence, fine, or conviction before the trial court that entered the judgment of conviction in his or her case.

(2) Upon receiving a petition under **para. (1)**, the court shall presume the petitioner satisfies the criteria in **para. (1)** unless the party opposing the petition proves by clear and convincing evidence that the petitioner does not satisfy the criteria. If the petitioner satisfies the criteria in **para. (1)**, the court shall grant the petition to dismiss the sentence or fine, if applicable, and dismiss and seal the conviction, because the sentence, fine, and conviction are legally invalid.

(3) Unless requested by the petitioner, no hearing is necessary to grant or deny a petition filed under **para. (1)**.

(4) If the court that originally sentenced or imposed a fine on the petitioner is not available, the presiding judge shall designate another judge to rule on the petition.

(5) Nothing in this subdivision is intended to diminish or abrogate any rights or remedies otherwise available to the petitioner.

(6) Nothing in this subdivision or related provisions is intended to diminish or abrogate the finality of judgments in any case not falling within the purview of this chapter.

***Straws; Single-Use Plastic*:**

Pub. Res. C. § 42270 (New); *Definitions*:

"*Consumer*" has the same meaning as in **H&S Code § 113757**.

Per **H&S Code § 113757**: "'*Consumer*" means a person who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food facility, and does not offer the food for resale."

"*Enforcement Officer*" has the same meaning as in **H&S Code § 113774**.

Per **H&S Code § 113774**: "'*Enforcement officer*' means the director, agents, or environmental health specialists appointed by the State Public Health Officer, and all local health officers, directors of environmental health, and their duly authorized registered environmental health specialists and environmental health specialist trainees."

"*Single-Use Plastic Straw*" is defined as a single-use, disposable tube made predominantly of plastic derived from either petroleum or a biologically based polymer, such as corn or other plant sources, used to transfer a beverage from a container to the mouth of the person drinking the beverage. "Single-use plastic straw" does not include a straw made from non-plastic materials, including, but not limited to, paper, pasta, sugar cane, wood, or bamboo."

"*Full Service Restaurant*" is defined as "an establishment with the primary business purpose of serving food, where food may be consumed on the premises, and where all of the following actions are taken by an employee of the establishment:

(1) The consumer is escorted or assigned to an assigned eating area. The employee may choose the assigned eating area or may seat the consumer according to the consumer's need for accommodation or other request.

(2) The consumer's food and beverage orders are taken after the consumer has been seated at the assigned seating area.

(3) The food and beverage orders are delivered directly to the consumer.

(4) Any requested items associated with the consumer's food or beverage order are brought to the consumer.

(5) The check is delivered directly to the consumer at the assigned eating area.

Pub. Res. C. 42271 (New); *Prohibited Use of Single-Use Plastic Straws*:

A full-service restaurant is prohibited from providing a single-use plastic straw to a consumer unless the consumer requests it.

A first and second violation will result in a notice of violation (with no penalty provided), and a third or subsequent violation is an infraction punishable by a fine of $25 for each day the restaurant is in violation, up to no more than $300 annually.

An "*enforcement officer*" (see above) is responsible for enforcing this new straw law.

A city or county may adopt and implement an ordinance that would further restrict a full-service restaurant from providing a single-use plastic straw to a consumer.

***Theft*:**

Pen. Code § 396 (Amended); *Price Gouging and Rental Housing*:

The misdemeanor crime of "*price gouging*" is expanded by adding "*rental housing*" to the list of items (consumer goods such as food, water, medicine, and fuel; construction services; hotel and motel rates, etc.) for which it is illegal to increase the price on an existing or prospective tenant by more than 10% during a declared state of emergency and for a specified period of time after a state of emergency is declared.

As amended, the section now prohibits the eviction of a residential tenant during a declared state of emergency and then renting or offering to rent to another person at a rental price greater than the evicted tenant could be charged under this section. But it is also not a violation to continue an eviction process that was lawfully begun prior to a declaration of a state of emergency or to do a rent increase that was contractually agreed to by a tenant before a state of emergency was declared.

An owner is not prohibited from evicting a tenant for a lawful reason, including the reasons in **Code of Civ. Proc. § 1161** (e.g., failing to pay rent, using the premises for an unlawful purpose, expired lease.)

A lengthy definition of "*rental price*" is provided with various scenarios that depend on when housing is rented in relation to when a state of emergency is

declared (e.g., housing rented one year before a state of emergency, housing that becomes vacant during a state of emergency). A specific definition of "rental price" for mobile home spaces is provided.

Punishment: Misdemeanor; one year in county jail and/or by a fine of up to $10,000.

Pen. Code § 463 (Amended); *Looting*:

(a) Every person who violates **P.C. § 459**, punishable as a second-degree burglary pursuant to **P.C. § 461(b)**, during and within an affected county in a "*state of emergency*" or a "*local emergency*," or under an "*evacuation order*," resulting from an earthquake, fire, flood, riot, or other natural or manmade disaster shall be guilty of the crime of looting, punishable by imprisonment in a county jail for one year or pursuant to **P.C. § 1170(h)**. (16 months, 2, or 3 years). Any person convicted under this subdivision who is eligible for probation and who is granted probation shall, as a condition thereof, be confined in a county jail for at least *180 days*, except that the court may, in the case where the interest of justice would best be served, reduce or eliminate that mandatory jail sentence, if the court specifies on the record and enters into the minutes the circumstances indicating that the interest of justice would best be served by that disposition. In addition to whatever custody is ordered, the court, in its discretion, may require any person granted probation following conviction under this subdivision to serve up to *240 hours of community service* in any program deemed appropriate by the court, including any program created to rebuild the community.

> For purposes of this subdivision, the fact that the structure entered has been damaged by the earthquake, fire, flood, or other natural or manmade disaster shall not, in and of itself, preclude conviction.

(b) Every person who commits the crime of *grand theft*, as defined in **P.C. § 487** or P**.C. § 487a(a)**, except grand theft of a firearm, during and within an affected county in a "*state of emergency*" or a "*local emergency*," or under an "*evacuation order*," resulting from an earthquake, fire, flood, riot, or other natural or unnatural disaster shall be guilty of the crime of looting, punishable by imprisonment in a county jail for one year or pursuant to **P.C. § 1170(h)**. (16 months, 2, or 3 years). Every person who commits the crime of grand theft of a firearm, as defined in **P.C. § 487**, during and within an affected county in a "**state of emergency**" or a "*local emergency*" resulting from an earthquake, fire, flood, riot, or other natural or unnatural disaster shall be guilty of the crime of looting, punishable by imprisonment in the state prison, as set forth in **P.C. § 489(a)** (i.e., state prison for 16 months, 2 or 3 years). Any person convicted under this subdivision who is eligible for probation and who is granted probation shall, as a condition thereof, be confined in a county jail for at least *180 days*, except that the court may, in the case where the interest of justice would best be served, reduce or eliminate that mandatory jail sentence, if the court specifies on the record and enters into the

minutes the circumstances indicating that the interest of justice would best be served by that disposition. In addition to whatever custody is ordered, the court, in its discretion, may require any person granted probation following conviction under this subdivision to serve up to *160 hours of community service* in any program deemed appropriate by the court, including any program created to rebuild the community.

(c) Every person who commits the crime of *petty theft*, as defined in **P.C. § 488**, during and within an affected county in a "*state of emergency*" or a "*local emergency*," or under an "*evacuation order*," resulting from an earthquake, fire, flood, riot, or other natural or manmade disaster shall be guilty of a *misdemeanor*, punishable by imprisonment in a county jail for *six months*. Any person convicted under this subdivision who is eligible for probation and who is granted probation shall, as a condition thereof, be confined in a county jail for at least *90 days*, except that the court may, in the case where the interest of justice would best be served, reduce or eliminate that mandatory minimum jail sentence, if the court specifies on the record and enters into the minutes the circumstances indicating that the interest of justice would best be served by that disposition. In addition to whatever custody is ordered, the court, in its discretion, may require any person granted probation following conviction under this subdivision to serve up to 80 hours of community service in any program deemed appropriate by the court, including any program created to rebuild the community.

(d) Definitions, Explanations, and Limitations:

> **(1)** "*State of Emergency*" means conditions that, by reason of their magnitude, are, or are likely to be, beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat.
>
> **(2)** "*Local Emergency*" means conditions that, by reason of their magnitude, are, or are likely to be, beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat.
>
> **(3)** A "*State of Emergency*" shall exist from the time of the proclamation of the condition of the emergency until terminated pursuant to **Gov't. Code § 8629**. For purposes of this section only, a "*local emergency*" shall exist from the time of the proclamation of the condition of the emergency by the local governing body until terminated pursuant to **Gov't. Code § 8630**.
>
> **(4)** "*Evacuation Order*" means an order from the Governor, or a county sheriff, chief of police, or fire marshal, under which persons subject to the

order are required to relocate outside of the geographic area covered by the order due to an imminent danger resulting from an earthquake, fire, flood, riot, or other natural or manmade disaster.

(5) Consensual entry into a commercial structure with the intent to commit a violation of **P.C. §§ 470**, **476**, **476a**, **484f**, or **484g** shall not be charged as a violation under this section.

Pen. Code § 490.4 (New); *Organized Retail Theft*:

(a) A person who commits any of the following acts is guilty of organized retail theft, and shall be punished pursuant to **subd. (b)**:

(1) Acts in concert with *one or more* persons *to steal* merchandise from one or more merchant's premises or online marketplace with the intent to sell, exchange, or return the merchandise for value.

(2) Acts in concert with *two or more* persons *to receive, purchase, or possess* merchandise described in **para. (1)**, knowing or believing it to have been stolen.

(3) Acts as *an agent* of another individual or group of individuals to steal merchandise from one or more merchant's premises or online marketplaces as part of an organized plan to commit theft.

(4) Recruits, coordinates, organizes, supervises, directs, manages, or finances another to undertake any of the acts described in **para. (1)** or **(2)** or any other statute defining theft of merchandise.

(b) Organized retail theft is punishable as follows:

(1) If violations of **subd. (a)(1)**, **(2)**, or **(3)** are committed on two or more separate occasions within a 12-month period, and if the aggregated value of the merchandise stolen, received, purchased, or possessed within that 12-month period exceeds *nine hundred fifty dollars* ($950), the offense is punishable by imprisonment in a county jail not exceeding one year or pursuant to **P.C. § 1170(h)** (i.e., 16 months, 2 or 3 years).

(2) Any other violation **of subd.(a)(1)**, **(2)**, or **(3)** that is not described in **para. (1)** of this subdivision is punishable by imprisonment in a county jail not exceeding one year.

(3) A violation of **subd.(a)(4)** is punishable by imprisonment in a county jail not exceeding one year or pursuant to **P.C. § 1170(h)**.

(c) For the purpose of determining whether the defendant *acted in concert* with another person or persons in any proceeding, the trier of fact may consider any competent evidence, including, but not limited to, all of the following:

(1) The defendant has previously acted in concert with another person or persons in committing acts constituting theft, or any related offense, including any conduct that occurred in counties other than the county of the current offense, if relevant to demonstrate a fact other than the defendant's disposition to commit the act.

(2) That the defendant used or possessed an artifice, instrument, container, device, or other article capable of facilitating the removal of merchandise from a retail establishment without paying the purchase price and use of the artifice, instrument, container, or device or other article is part of an organized plan to commit theft.

(3) The property involved in the offense is of a type or quantity that would not normally be purchased for personal use or consumption and the property is intended for resale.

(d) In a prosecution under this section, the prosecutor shall not be required to charge any other co-participant of the organized retail theft.

(e) Upon conviction of an offense under this section, the court shall consider ordering, as a condition of probation, that the defendant stay away from retail *establishments* with a reasonable nexus to the crime committed.

(f) This section shall remain in effect only until *January 1, 2021*, and as of that date is repealed.

***Tow Company Regulations*:**

Veh. Code § 22524.5 (Amended); *Towing Fees*:

All towing and storage fees related to a stolen vehicle or a vehicle that was in an accident, are required, by this amendment, to be reasonable. A towing and storage charge shall be deemed reasonable if it does not exceed the fees and rates charged for similar services provided in response to requests initiated by a public agency, such as a local police department or the California Highway Patrol, or if it is comparable to rates and fees charged by other facilities in the same locale.

These rates and fees are *presumptively unreasonable*:

1. Administrative or filing fees, except if related to DMV documentation or to the lien sale of a vehicle;
2. Security fees;

3. Dolly fees;
4. Load and unload fees;
5. Pull-out fees; *and*
6. Gate fees, except when the owner or insurer of a vehicle requests that the vehicle be released outside of regular business hours.

Nothing in this list of presumptively unreasonable fees prohibits any fees authorized in an agreement between a law enforcement agency and a towing company, if the tow was initiated by the law enforcement agency.

Veh. Code § 22651.07 (Amended); *Vehicle Owners Rights Before Paying Towing Fees*:

The rights a vehicle owner, his or her agent, or a licensed repossessor has, is expanded to include that before paying any vehicle towing, recovery, or storage fees, the person has:

1. The right to inspect the vehicle without paying a fee;
2. The right to have his or her insurer inspect the vehicle, at no charge, during normal business hours; *and*
3. The right to pay by an insurer's check, by cash or by a valid bank credit card.

Note: The section continues to provide for these rights: The right to receive personal property, at no charge, during normal business hours; the right to retrieve the vehicle during the first 72 hours and not pay a lien fee; and the right to request a copy of a Towing and Storage Fees and Access Notice. Also, a storage facility is required to be open and accessible during normal business hours (Monday through Friday, 8:00 a.m. to 5:00 p.m.), to provide a telephone number that permits the caller to leave a message outside of normal business hours, and to return messages no later than six hours after they are left.

***Transportation Network Companies*:**

Pub. Utilities Code § 5445.1 (New); *Transportation Network Companies*; *Required Information to be Provided to a Passenger*:

A "*transportation network company*" (e.g., *Lyft*, *Uber*) is required to provide all of the following information to a passenger on its online-enabled application or platform at the time the passenger is matched with a company driver:

1. The driver's first name and picture;
2. An image of the make and model of the driver's vehicle; *and*
3. The license plate number of the driver's vehicle.

Pub. Utilities Code § 5445.3 (New); *Transportation Network Companies*; *Driver's License Requirements*; *Driver's Driving History*; *California Vehicle Code's Provisions*:

A driver for a "*transportation network company*" (e.g., *Lyft*, *Uber*) is required to possess either a valid California driver's license, or, in the case of a non-resident active duty military member or a non-resident dependent of an active duty military member, a valid driver's license issued by the state or territory of the U.S. where the member is a resident.

A transportation network company is required to obtain and review the driving history from the other state or territory.

The transportation network company must notify all participating drivers of the **California Vehicle Code's** provisions "including, in particular," provisions relating to hands-free electronic devices, the "**Three Feet for Safety Act**" to provide space between vehicles and bicyclists, and rules relating to school buses.

***Vehicle Code Provisions*:**

Veh. Code § 1656.3 (Amended); *Information re: Motorists' Civil Rights in the California Driver's Handbook*:

The Department of Motor Vehicles (DMV) is required to include in the California Driver's Handbook information about a person's *civil rights during a traffic stop*. Such information must address the extent and limitations of a peace officer's authority during a traffic stop and the legal rights of drivers and passengers, including the right to file complaints against a peace officer. This information is to be developed by the civil rights section of the Department of Justice (DOJ) in consultation with DMV, the California Highway Patrol (CHP), the Commission on Peace Officer Standards and Training (POST), civil rights organizations, and community-based organizations.

Personal Note: As a direct result of this latest legislative insult to the integrity and professionalism of law enforcement, patrol and traffic officers may now expect individuals stopped for traffic violations to engage officers in a legal debate as to *their* (the private citizen's) untrained interpretation of the law, as they glean it from the Driver's Handbook, and what it is the officer may legally do or not do during the stop, increasing the likelihood of a confrontation. *Just brilliant*.

Veh. Code § 12800 (Repealed and Added); *Gender Designation on Drivers' Licenses*:

An applicant for an original or renewed driver's license shall choose one of three gender categories: *female*, *male*, or "*nonbinary*." DMV is prohibited from requiring documentation of any gender category and requires DMV to accept an applicant's self-certification of their chosen gender category.

Note: "*Nonbinary*" (or "*non-binary*") is not defined. So I googled it, and was told as follows: "Genderqueer, also known as non-binary, is a catch-all category for gender identities that are not exclusively masculine or feminine—identities which are outside the gender binary and cisnormativity." "*Cisnormativity*" refers to the assumption that all, or almost all, individuals are "*cisgender*." "*Cisgender*," in turn, is a term for people whose gender identity matches the sex that they were assigned at birth.

Veh. Code §§ 12800.7, **12801.9** (Amended); *Prohibitions on DMV Revealing Information re Illegal Status in the Country*:

Per amendments to **V.C. § 12800.7**, DMV is prohibited from disclosing to law enforcement documents in its possession that were originally provided to DMV by a person who applies for, or renews, a driver's license (such documents provided to DMV for the purpose of proving identity or legal presence in the United States), except in response to a subpoena for individual records in a criminal proceeding or a court order, or in response to a law enforcement request to address an urgent health or safety need if the law enforcement agency certifies in writing the specific circumstances that do not permit authorities time to obtain a court order.

V.C. § 12801.9 (which permits a person who is not legally present in the U.S. to obtain a California driver's license if California residency is proved) is amended to add the same restrictions. New **sub. (k)** provides that documents provided by an applicant to prove identity or California residency cannot be disclosed by DMV except in response to a subpoena for individual records in a criminal proceeding or a court order, or in response to a law enforcement request to address an urgent health or safety need if the law enforcement agency certifies in writing the specific circumstances that do not permit authorities time to obtain a court order.

As amended, **V.C. § 12801.9** also notes that it is a violation of **Gov't. Code § 11135** to notify a law enforcement agency (which, of course, includes ICE) of the identity of a person who holds or presents a **V.C. §12801.9** license, or that he or she carries such a license, if notification is not required by law or would not have been provided if the individual held a **V.C. § 12801** (i.e., regular, lawful) license.

Note: **Gov't. Code § 11135** prohibits any person in California, on the basis of race, color, sex, religion, national origin, ethnicity, etc., from being unlawfully denied full and equal access to the benefits of any program conducted or administered by the state or a state agency.

Veh. Code § 21200 (Amended); *Bicyclist on a Class I Bikeway and Injury Hit and Runs*:

Subd. (a)(2) (New): Any person operating a bicycle on a "*Class I bikeway*" is subject to the provisions in **V.C. § 20001** (hit-and-run causing injury) that are

applicable to drivers of vehicles, "except those provisions which by their very nature can have no application."

Note: **Streets and Highways Code § 890.4** defines "*Class I bikeway*" as a bike path or shared-use path that provides a completely separated right-of-way for the exclusive use of bicycles and pedestrians with crossflows by motorists minimized.

Note: This means that a bicyclist on a bike path or trail who is involved in an accident or collision that results in injury or death to another person must stop at the scene, provide specified information, and render reasonable assistance, as is required of motorists by **V.C. §§ 20003** and **20004**.

Veh. Code § 21212 (Amended); *Bike Helmet Violations*:

A person under age 18 who is cited for not wearing a bicycle helmet while riding a bicycle, non-motorized scooter, skateboard, or roller skates is permitted to correct the violation if the minor's parent or legal guardian delivers proof to the issuing agency within 120 days that the minor has a qualifying helmet and has completed a bicycle safety course, if one is available, as prescribed by authorities in the local jurisdiction.

Note: The section continues to provide that the first helmet charge against a person must be dismissed when the person alleges under oath that it is his or her first helmet charge (unless it is established in court that it is not the first charge), and continues to provide that a helmet violation is an infraction punishable by a $25 fine.

See also **Veh. Code § 40303.5** (Amended), adding **V.C. § 21212** to the list of violations for which an arresting officer must permit a violator to sign a notice containing a promise to correct the violation (i.e., issue a "fix-it" ticket), absent a disqualifying condition.

Veh. Code § 21235 (Amended); *Motorized Scooters and Helmet Requirements*:

The requirement that an adult wear a bicycle helmet when operating a "motorized scooter" is eliminated. Now, only persons under age 18 are required to wear helmets.

A local authority may authorize the operation of a motorized scooter outside of a bicycle lane on a street with a speed limit of up to 35 mph although the maximum speed limit for motorized scooters is 15 mph.

Veh. Code § 22524.5 (Amended); *Towing Fees*:

All towing and storage fees related to a stolen vehicle or a vehicle that was in an accident, are required, by this amendment, to be reasonable. A towing and storage

charge shall be deemed reasonable if it does not exceed the fees and rates charged for similar services provided in response to requests initiated by a public agency, such as a local police department or the California Highway Patrol, or if it is comparable to rates and fees charged by other facilities in the same locale.

These rates and fees are presumptively *unreasonable*:

1. Administrative or filing fees, except if related to DMV documentation or to the lien sale of a vehicle;
2. Security fees;
3. Dolly fees;
4. Load and unload fees;
5. Pull-out fees; *and*
6. Gate fees, except when the owner or insurer of a vehicle requests that the vehicle be released outside of regular business hours.

Nothing in this list of presumptively unreasonable fees prohibits any fees authorized in an agreement between a law enforcement agency and a towing company, if the tow was initiated by the law enforcement agency.

Veh. Code § 22650 (Amended); *Impounding Vehicles and Community Caretaking Rules*:

The section is amended by adding in **subd. (b)** which notes that the removal of a vehicle is a seizure under the **Fourth Amendment** of the **United States Constitution** and **Section 13** of **Article I** of the **California Constitution**. A removal based on community caretaking, including, but not limited to, the circumstances specified in **V.C. § 22651**, is reasonable only "if the removal is necessary to achieve the community caretaking need, such as ensuring the safe flow of traffic or protecting property from theft of vandalism. "

Note: This amendment merely summarizes existing case law on the issue.

Veh. Code § 22651 (Amended); "*Autonomous Vehicles*;" *Grounds for Impounding Vehicles*:

The list of circumstances for which a peace officer has the authority to remove (i.e., impound) a vehicle has been expanded by adding **subd. (o)(1)(D)(i-iv)** and **subd. (o)(3)(B)(i-ii)**; referring to a vehicle that is operating using "*autonomous technology*" without a valid permit to operate autonomously on public roads, either where a permit was not obtained, or where the registered owner or person in control of the vehicle has received notice that the permit has been suspended, terminated, or revoked.

Subd. (o)(3)(D)(iv): A peace officer is prohibited from stopping an "*autonomous vehicle*" solely for the purpose of determining whether the vehicle is operating using autonomous technology without a valid permit.

Subd. (o)(3)(B): The release of a removed "*autonomous vehicle*" is permitted after the registered owner or person in control furnishes the storing law enforcement agency with proof of current registration, a valid driver's license, and either proof of a valid permit to operate the vehicle autonomously or a declaration or sworn statement to DMV that states the vehicle will not be operated using autonomous technology upon public roads without first obtaining a permit.

Subd. (o)(3)(D)(iii): For purposes of this subdivision, the terms "*autonomous technology*" and "*autonomous vehicle*" have the same meanings as in **V.C. § 38750**.

Per **V.C. § 38750(a)(1)** & **(2):**

> "*Autonomous technology*" means technology that has the capability to drive a vehicle without the active physical control or monitoring by a human operator.
>
> "*Autonomous vehicle*" means any vehicle equipped with autonomous technology that has been integrated into that vehicle.
>
> An autonomous vehicle does *not* include a vehicle that is equipped with one or more collision avoidance systems, including, but not limited to, electronic blind spot assistance, automated emergency braking systems, park assist, adaptive cruise control, lane keep assist, lane departure warning, traffic jam and queuing assist, or other similar systems that enhance safety or provide driver assistance, but are not capable, collectively or singularly, of driving the vehicle without the active control or monitoring of a human operator.

Veh. Code § 22651.07 (Amended); *Vehicle Owners Rights Before Paying Towing Fees*:

The rights a vehicle owner, his or her agent, or a licensed repossessor, is expanded to include the proviso that before paying any vehicle towing, recovery, or storage fees, the person has:

> 1. The right to inspect the vehicle without paying a fee;
> 2. The right to have his or her insurer inspect the vehicle, at no charge, during normal business hours; *and*
> 3. The right to pay by an insurer's check, by cash or by a valid bank credit card.
>
> *Note*: The section continues to provide for these rights: The right to receive personal property, at no charge, during normal business hours; the right to retrieve the vehicle during the first 72 hours and not pay a lien fee; and the right to request a copy of a Towing and Storage Fees and Access

Notice. Also, a storage facility is required to be open and accessible during normal business hours (Monday through Friday, 8:00 a.m. to 5:00 p.m.), to provide a telephone number that permits the caller to leave a message outside of normal business hours, and to return messages no later than six hours after they are left.

Veh. Code §§ 23577, **23578 & 23612** (Amended); *Refusal to Submit to a Breath or Urine Test in DUI Cases*; *Applicable Admonitions in DUI Alcohol or DUI Drug Cases*:

The sections pertaining to chemical tests following an arrest for "*Driving While Under the Influence*" (DUI) have been amended in order to delete references to a *criminal* (as opposed to *administrative*) penalty for refusing to submit to a *blood* (as opposed to a *breath* or *urine*) test, and thereby bringing them into conformity with the United States Supreme Court decision ***in Birchfield v. North Dakota*** (2016) 579 U.S. __, 136 S.Ct. 2160.

Note: ***Birchfield*** held that the **Fourth Amendment** permits a warrantless breath test incident to an arrest for drunk driving, but that a search warrant is required for a blood test. ***Birchfield*** also found that the refusal to take a blood test cannot be criminalized by an implied consent law. The ***Birchfield*** court found that a breath test involves a negligible physical intrusion and can be justified as a search incident to arrest. But a blood test involves the piercing of the skin and results in a sample that can be preserved and from which it is possible to extract information beyond a simple blood alcohol content reading, and thus cannot be justified as a search incident to arrest. (See *California Legal Update*, Vol. 21, #8, July 24, 2016.)

V.C. § 23577, which provides for enhanced penalties for a defendant convicted of drunk driving who refuses to take or complete a chemical test pursuant to the implied consent law (**V.C. § 23612**), has been amended to eliminate references to "*chemical tests*," replacing them with "*breath or urine test*." Thus, the penalties listed in **V.C. § 23577** apply to the willful refusal or failure to complete a breath or urine test, but do not apply to refusing to take or failing to complete a blood test. The amendment adds: "The penalties in this section do not apply to a person who refused to submit to or complete a blood test pursuant to **Section 23612**. This section does not prohibit the imposition of administrative actions involving driving privileges."

V.C. § 23578 is amended to change "*chemical test*" to "*breath or urine test*."

V.C. § 23578 requires the court to consider a blood alcohol level of 0.15 percent or more, or the refusal to take a test, as a factor that may justify a higher sentence and/or as a factor in determining whether to grant probation.

V.C. § 23612(a)(1)(D) (the implied consent law, which provides that a person who drives a motor vehicle is deemed to have given consent to a chemical test if lawfully arrested for drunk driving) is amended to change "*chemical testing*" to "*breath or urine testing*," so that a driver is now required to be told that the failure to submit to, or complete, a breath or urine test, while eliminating any reference to a blood test, will result in a fine and mandatory imprisonment if the person is convicted of drunk driving.

V.C. § 23612(a)(1)(D) is also amended to change the warning about driver's license suspensions if any of the three tests (blood, breath, urine) are refused or not completed: refusal or failure will result in the administrative suspension or revocation by the Dep't. of Motor Vehicles of the privilege to drive. The various periods of suspension or revocation (one year, two years, three years) are not changed.

V.C. 23612(a)(2)(C) is amended to change the standard upon which an officer may request an arrestee to submit to a blood test when the arrestee has chosen to submit to a breath test and the officer has reasonable cause to believe the arrestee was driving under the influence *of a drug* or *the combined influence of alcohol and a drug*. The arrestee may also be requested to submit to a blood test if the officer has *reasonable cause to believe* (instead of "*a clear indication*") that a blood test will reveal evidence of the arrestee being under the influence of a drug or the combined influence of alcohol and a drug.

Veh. Code § 27316 (Amended); *School Buses and Passenger Restraint Systems* (*Seat Belts*):

The amended portions of this section now require that *all* school buses in use in California are to be equipped with a passenger restraint system by *July 1, 2035*.

Note: Existing law already requires school buses manufactured after a specified date (July 1, 2004 and July 1, 2005) to be equipped with a combination lap/shoulder seatbelt. This bill will require *all* school buses in use, regardless of the date of manufacture, to have passenger restraint systems by July 1, 2035.

Veh. Code § 40610 (Amended); *Fix-It Tickets and Muffler Violations*:

As amended, this section prohibits an officer from issuing a notice to correct (i.e., a "*fix-it*" ticket) for a violation involving the failure of a vehicle to have an adequate and properly maintained muffler (**V.C. § 27150(a)**), or for a violation involving the modification of an exhaust system to increase the noise emitted (**V.C. § 27151(a)**).

Note: The section continues to prohibit fix-it tickets for violations that present an immediate safety hazard, when there is evidence of fraud or persistent neglect, or when the violator does not agree to, or cannot, promptly correct the violation.

***Vessels*:**

Har. & Nav. Code § 523 (Amended); *Removal of Vessels from Public Waterways*:

(a) A peace officer, as described in **Har. & Nav. Code § 663**, or a lifeguard or marine safety officer employed by a county, city, or district while engaged in the performance of official duties, may remove a vessel from, and, if necessary, store a vessel removed from, a public waterway under any of the following circumstances:

(1) When the vessel is left unattended and is moored, docked, beached, or made fast to land in a position that obstructs the normal movement of traffic or in a condition that creates a hazard to other vessels using the waterway, to public safety, or to the property of another.

(2) When the vessel is found upon a waterway and a report has previously been made that the vessel has been stolen or a complaint has been filed and a warrant thereon issued charging that the vessel has been embezzled.

(3) When the person or persons in charge of the vessel are by reason of physical injuries or illness incapacitated to an extent as to be unable to provide for its custody or removal.

(4) When an officer arrests a person operating or in control of the vessel for an alleged offense, and the officer is, by any provision of this code or other statute, required or permitted to take, and does take, the person arrested before a magistrate without unnecessary delay.

(5) When the vessel interferes with, or otherwise poses a danger to, navigation or to the public health, safety, or welfare.

(6) When the vessel poses a threat to adjacent wetlands, levies, sensitive habitat, any protected wildlife species, or water quality.

(7) When a vessel is found or operated upon a waterway with a registration expiration date in excess of one year before the date on which it is found or operated on the waterway.

(b) Costs incurred by a public entity pursuant to removal of vessels under subdivision (a) may be recovered through appropriate action in the courts of this state.

(c) (New)

(1) A peace officer, as described in **Har. & Nav. Code § 663**, or marine safety officer employed by a city, county, or district, while engaged in the performance of official duties, may remove a vessel from, and, if necessary, store a vessel removed from, public property within the territorial limits in which the officer may act, in either of the following circumstances:

(A) When any vessel is found upon the public property and the officer *has probable cause to believe the vessel was used in the commission of a crime*.

(B) When a vessel is found upon public property and an officer has *probable cause to believe that the vessel itself provides evidence that a crime was committed or the vessel contains evidence of a possible crime that was committed and the evidence cannot be easily removed from the vessel*.

(2) Notwithstanding **Civ. Code § 3068**, or **Veh. Code § 22851**, no lien shall attach to a vessel removed under this subdivision unless it is determined that the vessel was used in the commission of a crime with the express or implied consent of the owner of the vessel.

(3) In any prosecution of a crime for which a vessel was removed and impounded under this subdivision, a court may order a person convicted of a crime involving the use of a vessel to pay the costs of towing and storage of the vessel and any administrative charges imposed in connection with the removal, impoundment, storage, or release of the vessel.

(d) For purposes of this section, "*vessel*" includes both the vessel and any trailer used by the operator to transport the vessel.

Note: **Har. & Nav. Code § 663** defines a "*peace officer*" as "every peace officer of this state or of any city, county, city and county, or other political subdivision of the state . . .", providing such officers authority to "enforce this chapter and any regulations adopted by the department pursuant to this chapter and in the exercise of that duty shall have the authority to stop and board any vessel subject to this chapter, where the peace officer has probable cause to believe that a violation of state law or regulations or local ordinance exists."

***Victims and Witnesses*:**

Evid. Code § 1162 (New); *Evidence of a Victim or Witness's Act of Prostitution*:

Evidence that a victim of, or witness to, extortion (**P.C. § 519**), stalking (**P.C. § 646.9**), or a violent felony defined in **P.C. § 667.5**, has engaged in an act of prostitution "at or around the time" he or she was the victim of or witness to the

specified crime, is *not* admissible in a separate prosecution of that victim or witness to prove his or her criminal liability for the act of prostitution.

Evid. Code § 1294 (Amended); *Admissibility of Audio Recorded and Prior Inconsistent Statements*:

The types of prior inconsistent statements that are admissible when a witness is unavailable for trial and his or her former testimony was admitted pursuant to **Evid. Code § 1291** is expanded:

1. "*Audio recorded statements*" are added to the types of admissible inconsistent statements (video recordings and transcripts); *and*

2. "*Inconsistent statements*" properly admitted at a conditional examination are added to the types of admissible inconsistent statements (inconsistent statements properly admitted at a preliminary hearing or trial).

Pen. Code § 859.7 (New); *Proposed Regulations for Photo and Live Eyewitness Lineups*:

All law enforcement agencies and prosecutorial entities are required to adopt, by *January 1, 2020*, regulations for conducting photo and live lineups (specifically excluding curbstone [or "field show up"] lineups) with eyewitnesses and by specifying the minimum standards for those regulations.

The following minimum statewide requirements for eyewitness identifications are listed as follows:

1. Eyewitnesses must provide a description of the perpetrator as close in time to the incident as possible, and before any identification (ID) procedure is conducted.

2. The investigator conducting the ID procedure must use "*blind administration*" or "*blinded administration*" during the ID procedure (see below).

3. If blind administration is not used, the investigator must state in writing the reason it was not used.

4. Eyewitnesses must be instructed as follows before any ID procedure:

(a) The perpetrator may or may not be among the persons shown;
(b) The eyewitness should not feel compelled to make an ID; *and*
(c) An ID or the failure to make an ID will not end the investigation.

5. The filler people or photos for an ID procedure must generally fit the eyewitness description. In the case of a photo lineup, the photo of the actual suspect should resemble his or her appearance at the time of the offense and "not unduly stand out."

6. In a photo lineup, information about any previous arrest of the suspected person cannot be visible to the eyewitness.

7. Only one suspected perpetrator can be included in any ID procedure.

8. All eyewitnesses must be separated when viewing an ID procedure.

9. Nothing shall be said to an eyewitness that might influence an ID by the witness.

10. If the eyewitness makes an ID, all of the following are required:

(a) The investigator must inquire about the witness' level of confidence in the accuracy of the ID and "record in writing, verbatim, what the eyewitness says";

(b) Information about the identified person cannot be given to the eyewitnesses before obtaining the witness' statement about his or her confidence level; *and*

(c) The officer is prohibited from validating or invalidating any ID made.

11. An electronic recording must be made (both audio and video) of an ID procedure, if feasible. If not feasible an audio-only recording may be made and the investigator must state in writing the reason that video recording was not feasible.

Definitions:

"*Blind Administration*" means that the administrator of an eyewitness ID procedure does not know the identity of the suspect.

"*Blinded Administration*" means that the administrator of the ID procedure may know who the suspect is, but does not know where the suspect in a live lineup or the suspect's photo in a photo lineup, has been placed or positioned in the ID procedure through the use of:

(a) An automated computer program that prevents the administrator from seeing which photos the eyewitness is viewing until after the ID procedure is completed;

(b) The folder shuffle method for conducting a photo lineup, whereby photos are placed in folders, then randomly numbered, then shuffled, then presented sequentially so that the administrator cannot see or track which photo is being presented to the eyewitness until after the procedure is completed; *or*

(c) Any other procedure that achieves neutral administration and prevents the lineup administrator from knowing where the suspect, or his or her photo, has been placed or positioned in a live lineup or in a photo lineup.

"*Eyewitness*" is defined as a person whose identification of another person may be relevant in a criminal investigation.

Nothing in this new section is "intended to preclude the admissibility of any relevant evidence or to affect the standards governing the admissibility of evidence under the **U.S. Constitution**."

Note: This bill (**SB 923**) not having received a 2/3's majority vote of both houses of the Legislature, **Proposition 8** (June, 1982) mandates that absent a U.S. Constitutional violation in the procedures used, violation of these lineup requirements alone do not provide grounds for the suppression of any evidence. The results of a lineup (live or photographic), however, may still be suppressed where proven to be "*prejudicial*." A finding of prejudice in the lineup procedure used may even prevent the prosecution from using a victim or witness's in-court identification in evidence. Compliance with the above procedures is an excellent way to avoid any such finding of prejudice by a trial court.

Pen. Code § 1336 (Amended); *Conditional Examinations*:

The definition of "*dependent adult*" has been revised to clarify that a person may qualify as a dependent adult regardless of whether he or she lives independently.

Note: **P.C. § 1336** permits specified witnesses, including dependent adults, to undergo a conditional examination in order to preserve testimony for trial.

Note: **P.C. §§ 288** (Amended), **368** (Amended), and **W&I § 15610.23** (Amended; part of the **Elder Abuse and Dependent Adult Civil Protection Act**), are all also similarly revised, defining "*dependent person*" to clarify that a person may qualify as a dependent person regardless of whether he or she lives independently.

***Whistleblower Protection Act*:**

Gov't. Code § 9149.30 (New; Effective 2/5/18); *Title of the Act*:

"***Legislative Employee Whistleblower Protection Act***."

Gov't. Code § 9149.31 (New; Effective 2/5/18); *Findings and Declarations*:

The purpose of this **Act** is to "establish a specific process for legislative employees who report legal and ethical violations, so that they may do so without fear of retribution."

Gov't. Code § 9149.32 (New; Effective 2/5/18); *Definitions*:

For the purposes of this article, the following terms have the following meanings:

(a) "*Interfere*" means to intimidate, threaten, coerce, or command, or attempt to intimidate, threaten, coerce, or command a legislative employee who attempts to make a protected disclosure.

(b) "*Legislative employee*" means an individual, other than a Member of either house of the Legislature, who is, or has been, employed by either house of the Legislature. "*Legislative employee*" includes volunteers, interns, fellows, and applicants.

(c) "*Protected disclosure*" means a communication that is both of the following:

(1) Made by a legislative employee in good faith alleging that any of the following engaged in, or will engage in, activity that may constitute a violation of any law, including sexual harassment, or of a legislative code of conduct:

(A) A Member of the Legislature.
(B) A legislative employee.
(C) A person who is neither a Member of the Legislature nor a legislative employee whose behavior affects a Member or legislative employee who is engaged in a work-related activity.

(2) Protected under the **California Fair Employment and Housing Act** (**Gov't. Code §§ 12900 et seq.** (**Title 2**, **Div. 3**, **Part 2.8**), or made to any of the following entities:

(A) The Senate Committee on Rules, or its publicly identified designee.

(B) The Assembly Committee on Rules, or its publicly identified designee.
(C) The Joint Committee on Rules, or its publicly identified designee.
(D) A state or local law enforcement agency.
(E) A state agency authorized to investigate potential violations of state law.
(F) An individual with authority over the legislative employee, or another legislative employee who has authority to investigate, discover, or correct the violation or noncompliance.

(d) "*Retaliate*" means to take any action that would dissuade a reasonable individual from making or supporting a protected disclosure, including issuing a reprisal, threatening, coercing, or taking any similarly improper action against a legislative employee who makes a protected disclosure.

(e) "*Use of official authority or influence*" includes promising to confer, or conferring, any benefit; effecting, or threatening to effect, any reprisal; or taking, or directing others to take, or recommending, processing, or approving, any personnel action, including an appointment, promotion, transfer, assignment, performance evaluation, suspension, or other disciplinary action.

Gov't. Code § 9149.33 (New; Effective 2/5/18); *Interference with Legislative Employee's Right to Make Protected Disclosure*:

(a) A Member of the Legislature or legislative employee shall not directly or indirectly use or attempt to use that individual's official authority or influence for the purpose of interfering with the right of a legislative employee to make a protected disclosure.

(b) An individual who violates this section is subject to a fine not to exceed ten thousand dollars ($10,000) and imprisonment in a county jail for a period not to exceed one year.

(c) In addition to all other penalties, rights, or remedies provided by law, an individual or entity that uses or attempts to use its official authority or influence for the purpose of interfering with the right of a legislative employee to make a protected disclosure is liable in a civil action for damages brought by a legislative employee.

(d) This section shall not be construed to authorize an individual to disclose information the disclosure of which is prohibited by law.

Gov't. Code § 9149.34 (New; Effective 2/5/18); *Retaliation by Individual Against Legislative Employee for Protected Disclosure*:

> An individual who intentionally retaliates against a legislative employee for having made a protected disclosure is subject to a fine not to exceed ten thousand dollars ($10,000) and imprisonment in a county jail for a period not to exceed one year.

Gov't. Code § 9149.35 (New; Effective 2/5/18); *Civil Penalties*:

> Provisions for civil penalties, burden of proof, attorney's fees, court costs, and punitive damages.

Gov't. Code § 9149.36 (New; Effective 2/5/18); *Other Rights and Remedies*:

> **(a)** This article does not limit the application of any other rights or remedies under federal or state law, and any penalties imposed or damages awarded under this article are in addition to those provided under any other federal or state law, including, but not limited to, **Labor Code § 1102.5** and **Gov't. Code §§ 12900 et seq**. (the **California Fair Employment and Housing Act**, **Title 2**, **Div. 3**, **Part 2.8**).
>
> **(b)** This article does not limit the authority conferred upon the Attorney General, any state or federal law enforcement agency, or any other commission, department, or agency authorized to investigate the Legislature.

***Wiretaps*:**

Pen. Code § 629.52 (Amended): *Obtaining Wiretap Orders in Controlled Substances Cases*:

> "*Fentanyl*" (a synthetic opioid) is added to the list of controlled substances (e.g., heroin, cocaine, PCP, methamphetamine) for which law enforcement may obtain a wiretap order.
>
> Fentanyl is added to **subd. (a)(1)** of **P.C. § 629.52**, which permits a wiretap order for the importation, possession for sale, transportation, manufacture, or sale of a specified controlled substance in violation of **H&S §§ 11351**, **11351.5**, **11352**, **11370.6**, **11378**, **11378.5**, **11379**, **11379.5**, or **11379.6**, where the substance exceeds 10 gallons by liquid volume or three pounds of solid substance by weight.