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 goal this weekend is to move only enough so people know I'm not dead.*" (Unknown)

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ADMINISTRATIVE NOTES:

***New and Amended Statutes; Disclaimer*:** The statutes listed here are not intended to cover the entire body of the Legislature's work for 2019, 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 and other technical, non-substantive changes, 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. Most 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, 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, 2020*, unless otherwise indicated.

NEW AND AMENDED STATUTES:

Animals:

Food & Agri. Code §§ 30503.5, **30526** (New; AB 588): *Dog Bite Cases*; *Notification Requirements to New Owner*:

An animal shelter or rescue group that knows that a dog, at the age of four months or older, bit a person and broke the skin, thus requiring a state-mandated bite quarantine, must do two things before selling, giving away, or releasing the dog:

1. Disclose in writing to the person to whom the dog is sold, given, or released, the dog's known bite history and the circumstances related to the bite; *and*

2. Obtain a signed acknowledgment from the buyer/receiver.

Punishment: A civil fine of up to $500, to be imposed by the city or county in which the animal shelter or rescue group is located.

Health & Safety Code §§ 26220-26230, inclusive (New; AB 1125) "*Animal Control Officer Standards Act*;" *Certification of Animal Control Officers*:

New **Chapter 20.5** (**Div. 20**) in the **Health and Safety Code** is established to provide voluntary statewide standards for animal control officers.

The Board of Directors of the California Animal Welfare Association is to develop and maintain standards for "*certified animal control officers*."

The ***Animal Control Officer Standards Act*** sets forth a number of duties for the Board.

The new sections provide the minimum standards and training required for one to become a certified animal control officer and provides that the education and training standards the Board adopts cannot be less rigorous. Continuing education requirements after certification are also provided.

A person may not use the title "*certified animal control officer*" unless he or she holds a valid certificate of registration.

Note: Establishing a certified animal control officer program is voluntary. Local agencies and employers are not required to require their animal control officers to become certified.

Arrests:

Civil Code § 43.54 (New; AB 668): *Civil Arrests in a Courthouse*:

A person "shall not be subject to civil arrest in a courthouse while attending a court proceeding or having legal business in the courthouse." (**Subd. (a)**)

This restriction does not apply to arrests made pursuant to a valid judicial warrant and does not narrow or lessen any existing common law privilege. (**Subd. (b)** & **(c)**)

Note: The Legislative history of this bill provides that its purpose is to prevent arrests in courthouses by federal Immigration & Customs Enforcement (ICE) officers. Taking an undocumented alien into federal custody (apparently) qualifies as a "*civil arrest*."

See also **Code of Civ. Proc. § 177** (Amended), where the section is amended to provide that a judicial officer has the power "to prohibit activities that threaten access to state courthouses and court proceedings, and to prohibit interruption of judicial administration, including protecting the privilege from civil arrest at courthouses and court proceedings."

Pen. Code § 647.3 (New; SB 233) *Reporting Related Misdemeanor Drug or Prostitution Crime*; *Victims and Witnesses*:

(a) A person who reports being a *victim* of, or a *witness* to:

A *serious felony* as defined in **subdivision (c)** of **Section 1192.7**,
An *assault* in violation of **subdivision (a)** of **Section 245**,
Domestic violence in violation of **Section 273.5**,
Extortion in violation of **Section 518**,
Human trafficking in violation of **Section 236.1**,
Sexual battery in violation of **subdivision (a)** of **Section 243.4**, *or*
Stalking in violation of **Section 646.9**,

. . . shall *not* be arrested for any of the following offenses if that offense is related to the crime that the person is reporting or if the person was engaged in that offense at or around the time that the person was the victim of, or witness to, the crime they are reporting:

(1) A *misdemeanor* violation of the **California Uniform Controlled Substances Act** (**Division 10** (commencing with **Section 11000**) of the **Health and Safety Code**.

(2) A violation of **Section 372**, **subdivision (a)** or **(b)** of **Section 647, or Section 653.22**, if the offense is related to an act of prostitution.

(b) *Possession of condoms* in any amount shall not provide a basis for probable cause for arrest for a violation of **Section 372**, **subdivision (a)** or **(b)** of **Section 647,** or **Section 653.22** if the offense is related to an act of prostitution.

Note: **P.C. § 372** is the crime of maintaining a public nuisance. **P.C. § 647(a)** is the crime of committing a lewd act in public. **P.C. § 647(b)** is the crime of prostitution. **P.C. § 653.22** is the crime of loitering with the intent to commit prostitution.

See also **Evid. Code § 782.1** (Repealed and Added): "*Admissibility of Evidence; Possession of Condom; Offense Related to Prostitution*," and **Evid. Code § 1162** (Amended): "*Immunity from Prosecution for Prostitution*," under "**Prostitution**," below.

See also **Pen. Code § 647.3** (New) "*Reporting Related Misdemeanor Drug or Prostitution Crime*; *Victims and Witnesses*" under "**Arrests**," above.

Boats:

Har. & Nav. Code § 651 (Amended; AB 1183): *Operator of a Vessel, Defined*:

The definition of a vessel "*operator*" is expanded from merely a person aboard a vessel who is steering the vessel while underway, to also include a person aboard a vessel who is responsible for the operation of the vessel while underway, and also a person aboard a vessel who is at least 18 years of age and is attentive and supervising the operation of the vessel by a person age 12, 13, 14, or 15, pursuant to **H&N Code § 658.5**.

Note: **Har. & Nav. Code § 658.8** provides that a person age 12 through 15 is prohibited from operating a specified vessel unless accompanied by a person who is at least 18 years old and who is attentive and supervising the operation of the vessel.

Har. & Nav. Code § 668.5 (New; SB 393): *Impoundment of a Vessel Upon the Owner being Convicted of DUI with the Unlawful Killing of a Person*:

A court, upon the conviction of a vessel owner for a violation of **Har. & Nav. Code § 655(b)** (operating a vessel, water skis, aquaplane, or similar device while under the influence of alcohol) that resulted in the unlawful killing of a person, is authorized to impound the vessel for between one and 30 days. The court is permitted to consider factors such as whether impoundment would result in the loss of employment by the vessel owner or a member of the owner's family, whether the vessel might be lost due to an inability to pay impoundment fees, unfair infringement on community property rights, or other factors the court finds to be relevant.

Cannabis (Marijuana):

Bus. & Prof. Code § 26031.5 (New, Effective 7/1/19; AB 97): *Citations for Cannabis Regulation Violations*:

A licensing authority may issue a citation, as described, to a licensee or unlicensed person for any act or omission that violates the **Medicinal and Adult Use Cannabis Regulation and Safety Act** ("**MAUCRSA**," **Proposition 64**, November 2016), or any regulation adopted pursuant to it.

The licensing authority is required to assess an administrative fine of up to $5,000 per violation by a licensee and up to $30,000 per violation by an unlicensed person, which is separate from, and in addition to, all other criminal, civil, and administrative remedies.

Bus. & Prof. Code § 26063 (Amended; SB 185): *Truth in Advertising Marketed Cannabis*:

The truth-in-advertising provisions for which county-marketed marijuana is grown in, is expanded to also apply to the kind of cannabis contained in the product. Cannabis shall not be advertised, marketed, labeled, or sold using an appellation of origin likely to mislead a consumer as to the kind of cannabis he or she is purchasing.

By *January 1, 2021*, the Department of Food and Agriculture is required to establish a process by which licensed cultivators may establish "*appellations of origin*," including standards, practices, and "cultivars" (i.e., "a plant variety that has been produced in cultivation by selective breeding.") applicable to cannabis produced in a certain geographical area in California.

Bus. & Prof. Code § 26071 (New; SB 34): *Free Cannabis for Medical Cannabis Patients*:

A cannabis licensee is given authorization to provide free cannabis or cannabis products to a qualified medicinal cannabis patient or the patient's primary caregiver upon following the procedures described in the section, including recording the action in the retailer's inventory records and the "track and trace system," but only after ensuring that the physician who recommended cannabis for the patient is in good standing.

The cannabis or cannabis products provided to a medicinal cannabis patient or the primary caregiver of the patient in a single day shall not exceed the possession limits prescribed by **H&S Code § 11362.77**.

This section become operative upon completion of the necessary changes to the "track and trace program" in order to implement the act adding this section, as determined by the Department of Food and Agriculture, or on *March 1, 2020*, whichever occurs first.

Bus. & Prof. Code § 26122 (New; AB 1529): *The Universal Cannabis Symbol*:

The universal cannabis symbol shall be displayed on a cannabis cartridge or integrated cannabis vaporizer that contains cannabis or a cannabis product, and may be as small as one-quarter inch by one-quarter inch.

The following definitions are listed in **subd. (b)**:

(1) "*Cannabis cartridge*" means a cartridge containing cannabis oil that is intended to be affixed to an electronic device that heats the oil and creates an aerosol or vapor.

(2) "*Integrated cannabis vaporizer*" means a singular device that contains both cannabis oil and an integrated electronic device that creates an aerosol or vapor.

Note: Existing **B&P § 26130(c)(7)** requires cannabis products to be marked with a universal symbol, as determined by the State Department of Public Health, through regulation.

Note: The universal cannabis symbol can best be described as a triangle in which is a picture of a marijuana leaf and an exclamation point (i.e., "!"). Below the triangle are the upper case letters, "CA."

Veh. Code § 23229 (Amended; AB 1810): *Cannabis and Cannabis Products in Vehicles*:

The portion of this statute that *exempts* a person riding in a bus, taxicab, limousine, housecar or camper, or pedicab as a *passenger* (i.e., other than the driver) from the prohibition for drinking alcohol or consuming any cannabis or cannabis product in a vehicle, has been amended, deleting the reference to cannabis. The exemption, therefore, no longer applies to persons smoking or consuming cannabis or cannabis products.

Note: See **V.C. §§ 23220**, **23221**, and **23222**, making it illegal for drivers *and* passengers to use marijuana in vehicles.

Census Taking:

Pen. Code § 529.6 (New; AB 1563): *The "Freedom to Count Act*:"

Subd. (b)(1): Falsely representing one's self as a census taker with the intent to interfere with the operation of the census or with the intent "to obtain information or consent to an otherwise unlawful search and seizure."

Subd. (b)(2): Falsely assuming some or all of the activities of a census taker with the intent to interfere with the operation of the census or with the intent "to obtain information or consent to an otherwise unlawful search and seizure."

Per **Subd. (a)(2)**, "It is the intent of the Legislature to ensure that all Californians have access to accurate, timely information about the census and that all Californians have the opportunity to participate in the census freely and without fear of fraud, intimidation, or harm.

Note: CDAA indicates that the legislative history of this bill shows that the Legislature's intent in enacting this new statute is to prevent law enforcement (including, but not limited to, ICE) from impersonating census takers as a ruse to obtain incriminating information from persons to use for deportation (or other) purposes.

Punishment: Misdemeanors; up to one year in jail and/or by a fine of up to $1,000, or both. (**Subd. (b)**)

Child Abuse:

Pen. Code § 11165.7 (Amended; AB 189): *Mandated Reporters in Child Abuse Cases*:

The list of mandated reporters under the **Child Abuse and Neglect Reporting Act** (which requires reports about physical abuse and sexual abuse) has been expanded by adding a 47th entry; i.e., a qualified autism service provider, a qualified autism service professional, or a qualified autism service paraprofessional.

Pen. Code § 11172 (Amended; AB 819): *Protection from Civil or Criminal Liability for Good Faith Reports of Child Abuse or Neglect*:

New **subdivision (d)** is added to provide that *any person* (and not just "*mandated reporters*," as already provided for under **subd. (a)**) who in good faith provides information or assistance, including medical evaluations or consultations, in connection with a report, investigation, or legal intervention pursuant to a good faith report of child abuse or neglect, shall *not* incur civil or criminal liability as a result of providing that information or assistance. The section provides that this

new subdivision does *not* grant immunity from liability for a person who is suspected of committing the abuse or neglect.

Computers:

Pen. Code § 502 (Amended; AB 814) *Computer Crimes*:

Subd. (b)(5), where "*computer system*" is defined, is expanded to include the following: "A "*computer system*" includes, without limitation, any such device or system that is located within, connected to, or otherwise integrated with, any motor vehicle as defined in **Section 415** of the **Vehicle Code**."

Controlled Substances:

H&S §§ 11590, **11592**, **11593** & **11595** (Repealed; AB 1261);
H&S §§ 11591 & **11591.5** (Amended; AB 1261); *and*
H&S § 11594 (Repealed & Added; AB 1261): *Drug Conviction Registration Requirements*:

The registration requirements for controlled substance offenses have all been eliminated. Drug offenders no longer have to register for five years for specified drug convictions.

H&S §11594, as rewritten, provides that the statements, photographs, and fingerprints obtained pursuant to this section are *not* open to inspection by the public or by any person other than a regularly employed law enforcement officer.

H&S §§ 11590 11592, **11593** and **11595**, all dealing with the five-year registration requirements, have been eliminated.

H&S §§ 11591 and **11591.5** continue to require law enforcement, when it is known that an arrestee is a school employee, to report the arrest of a public school employee, a private school teacher, or a community college teacher, to school authorities when the person is arrested for a specified controlled substance offense which, by amendment, are all not listed in these section.

Note; *Retroactivity*: Per CDAA, the repeal of the crime of failing to register will apply retroactively to any **H&S § 11594** charge pending on January 1, 2020, and to any conviction of **H&S § 11594** that is not yet final on appeal as of January 1, 2020. Defendants in both of these situations will be able to get their **H&S § 11594** charges dismissed.

H&S § 24135 (New; AB 851): *Drug Masking Products*:

The distribution, delivery, sale, or the possession with intent to distribute, deliver, or sell, a "*drug masking product*," is prohibited.

"*Drug masking product*" is defined as synthetic urine or any other substance designed to be added to human urine or human hair for the purpose of defrauding (or "defeating") an alcohol or drug screening test.

"*Synthetic urine*" is defined as a substance that is designed to simulate the composition, chemical properties, physical appearance, or physical properties of human urine.

Note: The section fails to specify a penalty.

Criminal Profiteering:

Pen. Code § 186.2 (Amended; AB 1294): *Criminal Profiteering and Gambling*:

A number of gambling crimes (i.e., **P.C. §§ 320**, **321**, **322**, **323**, **326**, **330a**, **330b**, **330c**, **330.1**, and **330.4**) have been incorporated into the definition of "*criminal profiteering activity*."

Note: Adding these crimes to the definition of criminal profiteering activity means that the "*asset forfeiture*" provisions of **P.C. § 186.3** are now available for these crimes. **P.C. § 186.3** permits the forfeiture of any property interest, tangible or intangible, acquired through a pattern of criminal profiteering activity, and, all proceeds of a pattern of criminal profiteering activity, including things of value that may have been received in exchange for the proceeds immediately derived from the pattern of criminal profiteering activity. The added gambling crimes include illegal lottery activity and slot machine crimes.

Deepfake Photos and Videos:

Civ. Code § 1708.86 (New; AB 602): *Civil Action for Creating or Disclosing a Sexually Explicit Depiction of an Unconsenting Individual*; *Exceptions*; *Damages*:

A person has a private right of action (i.e., civil) for another producing sexually explicit material.

Note: This is referred to by CDAA as a "*deepfake*," which is in turn defined as "a fabricated photograph or video of someone appearing to say or do something that he or she did not say or do."

Under this section, a "*depicted individual*" has a cause of action against a person who does either of the following:

1. Creates and intentionally discloses sexually explicit material and the person knows or reasonably should have known the depicted individual in that material did not consent to its creation or disclosure; **Subd. (b)(1)**, *or*

2. Intentionally discloses sexually explicit material that the person did not create and the person knows the depicted individual in that material did not consent to the creation of the sexually explicit material. (**Subd. (b)**(**2**))

Defines "*depicted individual*" is defined as an individual who appears, as a result of digitization, to be giving a performance he or she did not actually perform, or to be performing in an altered depiction. (**Subd. (a)**(**4**))

The section also provides that there is *no liability* under this new statute in either of these circumstances:

1. The sexually explicit material is disclosed in the course of reporting unlawful activity, exercising law enforcement duties, or in hearings, trials, or other legal proceedings (**Subd. (c)**(**1**)); *or*

2. The sexually explicit material is a matter of legitimate public concern; or is a work of political or newsworthy value; or is commentary, criticism, or disclosure that is otherwise protected by the California Constitution or the United States Constitution. (**Subd. (c)(1)(b)**)

Specifically provided is that sexually explicit material is not of newsworthy value solely because the depicted individual is a public figure. (**Subd. (c)**(**2**))

A prevailing plaintiff may recover any of the following (**Subd. (e)**:

1. An amount equal to the monetary gain made by the defendant from the creation, development, or disclosure of the sexually explicit material;

2. Economic and non-economic damages, including damages for emotional distress or statutory damages in the sum of between $1,500 and $30,000 for all unauthorized acts with respect to any one work (the maximum is $150,000 if the unlawful act was committed with malice);

3. Punitive damages;

4. Reasonable attorney's fees and costs; *and/or*

5. Any other available relief, including injunctive relief.

An action must be commenced no later than *three years* from the date the unauthorized creation, development, or disclosure was discovered or should have been discovered with the exercise of reasonable diligence. (**Subd. (f)**)

Disorderly Conduct:

Pen. Code § 647 (Amended; AB 1129): *Disorderly Conduct*:

Subd. (j)(1) of **P.C. § 647** is amended to add "*electronic devices*" and "*unmanned aircraft systems*" (i.e., "*drones*") to the list of instrumentalities (camera, camcorders, binoculars, mobile phones, etc.) that *may not* be used to invade the privacy of a person in a bedroom, bathroom, changing room, or any other place where the person has a reasonable expectation of privacy.

DNA:

Bus. & Prof. Code § 22949.50 (New; SB 180): *Sales of Gene Therapy Kits*:

Except as permitted by federal law, a person shall not sell a gene therapy kit in this state unless the seller includes a notice on the seller's Internet website in a conspicuous location that is displayed to the consumer prior to the point of sale, and on a label on the package containing the gene therapy kit, in plain view and readily legible, stating that the kit is not for self-administration.

Note: Per CDAA, this new statute (and **B&P Code § 22949.51**, below) is intended to prevent the sale of do-it-yourself "CRISPR kits" (see below) that may be advertised as intended for self-administration despite the federal Food & Drug Administration's rule that the sale of gene therapy products for self-administration is illegal. Apparently, the whole procedure is done in an attempt to alter one's DNA.

Bus. & Prof. Code § 22949.51 (New; SB 180): *Gene Therapy Kits; Definitions*:

For purposes of this chapter, the following definitions apply:

(a) "*Gene therapy*" refers to the administration of genetic material to modify or manipulate the expression of a gene product, or to alter the biological properties of living cells, for therapeutic use.

(b) "*Gene therapy kit*" refers to a product that is sold as a collection of materials for the purpose of facilitating gene therapy experiments, including, but not limited to, a system for the targeted cutting of DNA molecules, such as type II clustered regularly interspaced short palindromic repeats (CRISPR), associated protein (CRISPR-Cas) systems, including CRISPR-Cas9, as described in ***Regents of University of California v. Broad Institute, Inc.*** (2018) 903 F.3rd 1286.

Note: I have no idea what they're talking about here.

Elder Abuse:

Welf. & Insti. Code §§ 15630.2 (New), **15633**, **15633.5**, **15640**, & **15655.5** (Amended; SB 496): *Elder Abuse and Dependent Adult Civil Protection Act*; *Elder Financial Abuse*; *Mandated Reporters*:

The *Elder Abuse and Dependent Adult Civil Protection Act* has been amended as follows:

The list of "*mandated reporters*" of financial abuse of an elder or dependent adult has been extended to include "*broker-dealers*" and "*investment advisers*."

For purposes of **W&I Code §§ 15630.2**, the following terms have the following definitions:

(1) "*Financial abuse*" has the same meaning as in **Section 15610.30**.

(2) "*Broker-dealer*" has the same meaning as in Section 25004 of the **Corporations Code**.

(3) "*Investment adviser*" has the same meaning as in **Section 25009** of the **Corporations Code**.

(4) "*Mandated reporter of suspected financial abuse of an elder or dependent adult*" means a broker-dealer or an investment adviser.

Broker-dealers and investment advisers are permitted to notify a "*trusted contact person*" designated by the elder or dependent adult to receive notice of known or suspected financial abuse, unless the trusted contact person is suspected of financial abuse.

Note: The authority to notify a trusted contact person or delay transactions does *not* extend to officers and employees of banks and credit unions, who are mandated reporters pursuant to existing **W&I § 15630.1**.

Broker-dealers and investment advisers may temporarily delay disbursements or transactions if financial abuse is suspected and if they take specified steps involving notice to parties who are not suspected of financial abuse and notice to the local county adult protective services agency, local law enforcement agency, and the Department of Business Oversight.

Broker-dealers and investment advisers may refuse to honor a power of attorney if suspected financial abuse is reported.

Punishment: The failure to report financial abuse pursuant to new **W&I § 15630.2** is the same as that in existing **W&I § 15630.1**, with a civil penalty of up to $1,000, or, if the failure to report is willful, a civil penalty of up to $5,000, to be paid by the employer of the mandated reporter, to be recovered in a civil action brought by the Attorney General, district attorney, or county counsel.

Note: Other provisions in new **W&I § 15630.2** are similar to the provisions as contained in existing W**&I § 15630.1**; *Civil Penalties for Failure to Report Financial Abuse*.

Firearms, Ammunition, and Deadly Weapons:

H&S Code §§ 1567.90, **1567.91**, **1567.92**, **1567.93**, & **1567.94** (New; SB 172): *Firearms, Ammunition, and Deadly Weapons in Community Care Facilities*:

"*Community care facilities for adults*," licensed by the State Department of Social Services (except for social rehabilitation facilities and adult day programs), are not required to accept, store, or retain firearms or ammunition, according to regulations to be promulgated and implemented by the Department of Social Services. Provisions about how firearms and ammunition must be stored if a facility permits a resident to have them on the premises are set forth in the statutes.

Such a community care facility for adults is *absolutely prohibited* from accepting, retaining, or storing a destructive device, a deadly weapon specified in existing **P.C. § 16590** (i.e., metal knuckles, nunchaku, large-capacity magazine, cane gun, belt buckle knife, wallet gun, etc.), an assault weapon, a machine gun, a short-barreled rifle, or a short-barreled shotgun.

H&S Code §§ 1568.095, **1568.096**, **1568.097**, **1568.098**, & **1568.099** (New; SB 172): *Firearms, Ammunition and Deadly Weapons in Residential Care Facilities for Persons with Chronic Life-Threatening Illnesses*:

"*Residential care facilities for persons with chronic life-threatening illnesses*," licensed by the State Department of Social Services (except for social rehabilitation facilities and adult day programs), are not required to accept, store, or retain firearms or ammunition, according to regulations to be promulgated and implemented by the Department of Social Services. Provisions about how firearms and ammunition must be stored if a facility permits a resident to have them on the premises are set forth in the statutes.

Such a residential care facility for persons with chronic life-threatening illnesses is *absolutely prohibited* from accepting, retaining, or storing a destructive device, a deadly weapon specified in existing **P.C. § 16590** (i.e., metal knuckles, nunchaku, large-capacity magazine, cane gun, belt buckle knife, wallet gun, etc.), an assault weapon, a machine gun, a short-barreled rifle, or a short-barreled shotgun.

H&S Code §§ 1569.280, **1569.281**, **1569.282**, **1569.283**, & **1569.284** (New; SB 172): *Firearms, Ammunition and Deadly Weapons in Residential Care Facilities for the Elderly* (the "*Keep Our Seniors Safe Act*."):

"*Residential care facilities for the elderly*," licensed by the State Department of Social Services (except for social rehabilitation facilities and adult day programs), are not required to accept, store, or retain firearms or ammunition, according to regulations to be promulgated and implemented by the Department of Social Services. Provisions about how firearms and ammunition must be stored if a facility permits a resident to have them on the premises are set forth in the statutes.

Such a residential care facilities for the elderly is *absolutely prohibited* from accepting, retaining, or storing a destructive device, a deadly weapon specified in existing **P.C. § 16590** (i.e., metal knuckles, nunchaku, large-capacity magazine, cane gun, belt buckle knife, wallet gun, etc.), an assault weapon, a machine gun, a short-barreled rifle, or a short-barreled shotgun.

Pen. Code § 29805 (Amended; SB 172): *Illegal Possession of a Firearm Due to Specified Prior Misdemeanor Conviction*:

New subd. (c) provides: Except as provided in **Section 29855** (see below), any person who is convicted *on or after January 1, 2020*, of a misdemeanor violation of **Section 25100**, **25135**, **or 25200** (related to the failure to properly store a firearm in a residence), and who, within 10 years of the conviction owns, purchases, receives, or has in possession or under custody or control, any firearm is guilty of a public offense.

Punishment: Felony (wobbler): 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 fine and imprisonment.

Note: **P.C. § 29855** relates to a peace officer, "whose employment or livelihood is dependent on the ability to legally possess a firearm," and who is subject to the prohibition as imposed by **section 29805** because of a conviction under **P.C. §§ 273.5**, **273.6**, or **646.9**, and who may petition a court for relief of this prohibition.

Note: New **subd. (c)** adds to the other specified misdemeanors (in **subd. (a)**), a conviction (or outstanding warrant) for which precludes the owning, purchasing,

receiving, or possession of, or custody or control of, a firearm for a period of 10 years (or, as noted in **subd (b)**, in the case of a spousal abuse conviction, forever).

Pen. Code § 16531 (New; AB 879): *Firearm Precursor Parts*:

(a) As used in this part, "*firearm precursor part*" means a component of a firearm that is necessary to build or assemble a firearm and is described in either of the following categories:

(1) An unfinished receiver, including both a single part receiver and a multiple part receiver, such as a receiver in an AR-10- or AR-15-style firearm. An unfinished receiver includes a receiver tube, a molded or shaped polymer frame or receiver, a metallic casting, a metallic forging, and a receiver flat, such as a Kalashnikov-style weapons system, Kalashnikov-style receiver channel, or a Browning-style receiver side plate.

(2) An unfinished handgun frame.

(b) The Department of Justice, consistent with this section, shall provide written guidance and pictorial diagrams demonstrating each category of firearm precursor part specified in **subdivision (a)**.

(c) Firearm parts that can only be used on antique firearms, as defined in **subdivision (c)** of **Section 16170**, are *not* firearm precursor parts.

(d) A firearm precursor part is *not* a firearm or the frame or receiver thereof. A firearm precursor part that is attached or affixed to a firearm is *not* subject to the requirements of **Chapter 1.5** (commencing with **Section 30400**) of **Division 10** of **Title 4** of **Part 6** or **Section 18010**.

Note: Existing **P.C. § 23510** provides that for the purposes of a number of specified firearms crimes, that the reference to a "*firearm*" includes the frame or receiver of a firearm so that each firearm or the frame or receiver of each firearm constitutes a separate and distinct offense under the specified sections.

Pen. Code § 16532 (New; AB 879): *Firearm Precursor Part Vendor*:

(a) As used in this part, "*firearm precursor part vendor*" means a person, firm, corporation, or other business enterprise that holds a valid firearm precursor part vendor license issued pursuant to **Section 30485**.

(b) Commencing *July 1, 2023*, a firearms dealer licensed pursuant to **Sections 26700** to **26915**, inclusive, and a licensed ammunition vendor, shall automatically be deemed a licensed firearm precursor part vendor if the dealer and licensed ammunition vendor comply with the requirements of **Article 2** (commencing with

Section 30300) and **Article 3** (commencing with **Section 30342**) of **Chapter 1** of **Division 10** of **Title 4**.

Note: See also **P.C. § 18010** (Amended; AB 879), which, beginning *July 1, 2024*, authorizes a district attorney, city attorney, or the Attorney General to bring an action to enjoin the importation or sale of a firearm precursor part that is unlawfully imported into California or unlawfully sold in California. Also declares that firearm precursor parts that are unlawfully imported into California or unlawfully sold in California are a nuisance and subject to confiscation and destruction.

Also Note: On *July 1, 2024*, new **Chapter 1.5** in **Division 10** of **Title 4** of **Part 6** of the **Penal Code** entitled "*Firearm Precursor Parts*" (**P.C. §§ 30400** to **30495**, inclusive: New; AB 879) will take effect, requiring the sale of firearm precursor parts to be conducted through a "*licensed firearm precursor part vendor*." These new sections also create a number of new misdemeanor crimes and provisions relating to firearm precursor parts. Per CDAA, the purpose of these new sections is to prevent a person (especially a person prohibited from having a firearm) from purchasing firearm precursor parts (often purchased online) and assembling a firearm at home. As a result, these firearms, referred to as "*ghost guns*," have no serial numbers and thus are not traceable by law enforcement.

Pen. Code § 16730 (Amended; SB 376): *Definition of "Infrequent" for Purposes of Firearms Sales or Loaning*:

As amended, this section reads as follows:

(a) As used in **Section 31815** (i.e., loaning a firearm as a prop) and in **Division 6** (commencing with **Section 26500**) of **Title 4** (licensing of firearms dealers), "*infrequent*" means both of the following are true:

(1) The person conducts less than six transactions per calendar year.

(2) The person sells, leases, or transfers no more than 50 total firearms per calendar year.

(b) As used in this section, "*transaction*" means a single sale, lease, or transfer of any number of firearms.

Pen. Code § 16960 (Amended; AB 1292): *Persons to Whom Firearms Ownership May Pass By Operation of Law*:

The definition of "*operation of law*," for purposes of **P.C. §§ 26500–26590**, is expanded by adding additional circumstances under which a firearm is deemed transferred by "*operation of law*" after the death of the firearm owner so that the

transfer is not required to go through a licensed firearms dealer. The amended section adds these persons to the list of those to whom a firearm is transferred by operation of law:

1. The personal representative of an estate, if the estate includes a firearm;

2. The trustee of a trust that includes a firearm and that was part of a will that created the trust;

3. A person acting pursuant to a power of attorney in accordance with **Probate Code §§ 4000–4545**;

4. A limited or general conservator appointed by the court pursuant to the **Probate Code** or the **Welfare & Institutions Code**;

5. A guardian ad litem appointed by the court pursuant to **C.C.P. § 372**;

6. A trustee of a trust that includes a firearm that is under court supervision;

7. A special administrator appointed by a court pursuant to **Probate Code § 8540**; *and*

8. A guardian appointed by a court pursuant to **Probate Code § 1500**.

Pen. Code §§ 18108 (New; AB 339), **18109**, **18115**, **18120**, **18150**, **18160**, **18170**, **18175**, **18180**, **18185**, **18190**, & **18197** (Amended; AB 12, 61, & 1493; Effective Jan. 1, 2020 & Sept. 1, 2020.): *Gun Violence Restraining Orders and Red Flag Statutes*:

Many alterations were made to California's existing so-called "*Red Flag Statutes*," involving the obtaining and renewing of "*Gun Violence Restraining Orders*" (GVRO).

P.C. § 18108 (New): Written Law Enforcement Policies and Standards: This new section has been added to require each municipal police department and county sheriff's department, the CHP, and the University of California and California State University Police Departments, by *January 1, 2021*, to develop, adopt, and implement written policies and standards for GVROs. The policies and standards must include and requires that they be made available to the public upon request.

P.C. § 18109 (Amended): Law Enforcement Agency: The section is amended to add that a petition for a GVRO brought by a law enforcement officer may be made in the name of the law enforcement agency that employs the officer.

P.C. § 18115 (Amended): Relinquishment Form Procedures: The court is required, when notifying DOJ about a GVRO, to indicate in the notice whether

the person filed a firearm relinquishment form pursuant to **P.C. § 18175(d)**. The clerk of the court is required to enter the relinquishment of firearm rights form directly into the California Restraining and Protective Order System *within one business day* of the court issuing a GVRO based on a relinquishment of firearm rights. If this cannot be done electronically, the court must transmit a copy of the relinquishment form to a local law enforcement agency, which is then required to submit the form directly into the California Restraining and Protective Order System within one business day of receiving the form from the court.

P.C. §§ 18175(d), **18120** (Amended) Relinquishment of Firearm Rights If GVRO Petition is Not Contested: A procedure is added to permit the subject of a petition for a GVRO to file a form with the court voluntarily relinquishing his or her firearm rights for the duration specified in the petition, or, if not stated in the petition, for one year from the date of the proposed hearing, and stating that he or she is not contesting the petition. If the subject files the relinquishment form, the court shall issue, without a hearing, a GVRO at least five court days before the scheduled hearing. If the subject files the relinquishment form within five court days before the scheduled hearing, the court is required to issue the GVRO as soon as possible without a hearing. If the subject files a relinquishment form and has not already surrendered firearms, ammunition, and magazines, the subject must follow the surrender procedures in existing **P.C. § 18120** within 48 hours of filing the relinquishment form. The surrender may be to a local law enforcement agency, or firearms and ammunition may be sold or transferred to a licensed firearms dealer.

P.C. § 18175(e)(1), **P.C. § 18190(f)(1)** (Amended): GVRO's may be obtained for between *one to five years*, depending upon the circumstances.

P.C. § 18175(e)(2) (Amended): In determining how long to impose a GVRO, the court is required to consider the circumstances as specified in **P.C. § 18175(b)**; e.g.:

1. The subject of the petition posing a significant danger of causing personal injury to himself/herself or to another person by having a firearm or ammunition; and

2. A GVRO being necessary to prevent personal injury to the subject of the petition or to another person because less restrictive alternatives are inadequate or inappropriate.

P.C. §§ 18180(b) and **18185(a)** (Amended): A "*GVRO Termination Hearing*" is provided for the purpose of determining whether a GVRO in issue should be terminated.

P.C. § 18180(b) (Amended): Require the court to provide the restrained person with a form for requesting the termination hearing.

P.C. §§ 18150, **18170**, **18190** (Amended): Lists those who may seek an ex parte GVRO, or a GVRO after notice and hearing, or a renewal of a GVRO. The list has been expanded from an immediate family member or law enforcement to add three new categories:

1. An employer of the subject of the petition;

2. A co-worker of the subject of the petition, if he or she had substantial and regular interaction with the subject for at least one year and has obtained approval of the employer; *and*

3. An employee or teacher of a secondary or post-secondary school that the subject has attended in the last six months, so long as the employee or teacher has obtained the approval of a school administrator or a school administration staff member with a supervisorial role.

Pen. Code § 23640 (Amended; AB 645; Effective June 1, 2020): *Written Warnings on Firearms Packaging*:

Effective *June 1, 2020*, a *suicide warning* is to be added to the warnings about safe handling and storage of firearms that are required on the packaging and descriptive materials accompanying a firearm sold or transferred by a licensed dealer or a licensed manufacturer, adding the following: "*If you or someone you know is contemplating suicide, please call the national suicide prevention lifeline at 1-800-273-TALK (8255).*"

See also **P.C. § 31640** (Amended; AB 645; Effective June 1, 2020): The same warning must be given (by this amendment) to a person taking the test for a handgun safety certificate.

Pen Code §§ 25100 & **25105** (Amended; SB 172) *Criminal Storage of a Firearm*:

The crime of criminal storage of a firearm (**P.C. § 25100**) has been expanded by eliminating the requirement that the firearm be loaded.

P.C. § 25105, which sets forth a number of exceptions to **P.C. § 25100**, is also amended to delete the word "*loaded*."

Punishment:

P.C. § 25100(a) (The defendant keeping an unloaded or loaded firearm on his or her premises knowing that a child is likely to gain access to the firearm or that a person prohibited from possessing a firearm is likely to gain access, and the child or prohibited person gains access to the firearm and causes death or great bodily injury to himself/herself or another

person): *Felony* (wobbler), punishable by 16 months, two years, or three years in jail pursuant to **P.C. § 1170(h)**, or by up to one year in jail. (**P.C. § 25110(a)**)

P.C. § 25100(b) (The defendant keeping an unloaded or loaded firearm on his or her premises knowing that a child is likely to gain access to the firearm or that a person prohibited from possessing a firearm is likely to gain access, and the child or prohibited person gains access to the firearm and causes injury *other than* great bodily injury to himself/herself or another person, or carries the firearm either to a public place or in violation of **P.C. § 417** (brandishing)): *Misdemeanor*, punishable by up to one year in jail and/or by a fine of up to $1,000. (**P.C. § 25110(b)**)

P.C. § 25100(c) (The defendant keeping an unloaded or loaded firearm on his or her premises and *negligently stores* or leaves the firearm in a location where the person knows, or reasonably should know, that a child is likely to gain access to the firearm.): *Misdemeanor*, punishable pursuant to **P.C. § 19** by up to six months in jail and/or by a fine of up to $1,000. (**P.C. § 25110(c)**)

Pen Code § 25200 (Amended; SB 172): *Criminal Storage of a Firearm*:

The misdemeanor crime of criminal storage of a firearm is expanded to *all* guns (including long guns) by deleting the reference in the section to a "*pistol, revolver, or other firearm capable of being concealed upon the person*."

Note:

P.C. § 25200(a) applies when a person keeps a firearm on his or her premises knowing that a child is likely to gain access to the firearm or that a person prohibited from possessing a firearm is likely to gain access, and the child or prohibited person gains access to the firearm and carries it off the premises.

Punishment: Misdemeanor; punishable by up to one year in jail and/or by a fine of up to $1,000.

P.C. § 25200(b) applies when a person keeps a firearm on his or her premises knowing that a child is likely to gain access to the firearm or that a person prohibited from possessing a firearm is likely to gain access, and the child or prohibited person gains access to the firearm and carries it off the premises to a school or school-sponsored event.

Punishment: Misdemeanor; punishable by up to one year in jail and/or by a fine of up to $5,000.

Pen Code § 25570 (Amended; AB 1292) *Exception to the Illegal Transportation of a Concealed Firearm*:

> A new exception is added to the crime of illegally carrying a concealed firearm on the person or in a vehicle, per **P.C. § 25400**: I.e., The transportation of a firearm by a person who took the firearm from someone who was committing a crime against the taker, and the firearm is being transported to a law enforcement agency "for disposition according to law," if prior notice is given to the law enforcement agency that the firearm is being transported to it.

Pen Code §§ 26392 & **26406** (New; AB 1292): *Exceptions to the Crimes of Openly Carrying of an Unloaded Handgun and Carrying an Unloaded Non-Handgun Firearm In a Prohibited Place, Respectively*:

> Three new exceptions are added by amendments to the prohibitions to the two crimes of (1) openly carrying an unloaded handgun (per **P.C. § 26350**) *and* (2) carrying of an unloaded non-handgun firearm in a prohibited place (per **P.C. § 26400**), as follows:
>
> > 1. Finding a firearm and carrying it in order to comply with **Civil Code §§ 2080–2080.10**, which sets forth the rights and obligations of a person who takes charge of lost property;
> >
> > 2. Finding a firearm and transporting it to a law enforcement agency for disposition according to law, if prior notice is given to the agency that the firearm is being transported to it; *and*
> >
> > 3. Taking a firearm from a person who was committing a crime against the taker and transporting it to a law enforcement agency for disposition according to law, if prior notice is given to the agency that the firearm is being transported to it.
>
> *Note*: The numerous existing other exceptions to **P.C. § 26350** (openly carrying an unloaded handgun) are in **P.C. §§ 26361–26391**. Existing exceptions to **P.C. § 26400** (carrying an unloaded non-handgun firearm in a prohibited area) are listed in **P.C. § 26405**.

Pen. Code §§ 26556, **26576**, **26577**, **26581**, **26582**, & **26589** (New; SB 376, AB 1292);
Pen. Code §§ 27881, **27882**, & **27883** (New; SB 172);
Pen. Code §§ 27900 (Repealed & Added) **27937**; New; SB 376);
Pen. Code §§ 27920 (Amended); **27922** (New; AB 1292): *Exceptions to the Need for a Licensed Firearms Dealer for the Transfer of Firearms*:

> Each section provides for one or more exceptions to the requirement (E.g., per **P.C. §§ 26500** and **27545**, requiring a person who sells, leases, or transfers a

firearm to have a firearm dealer's license) that the transfer of firearms be through a licensed firearms dealer.

Pen. Code § 26835 (Amended; SB 172, AB 645 [Effective June 1, 2020], SB 61 [Effective July 1, 2021]) *Licensed Gun Dealers; Notices*:

Provides for the notices that a licensed firearms dealer is required to post.

Pen. Code §§ 26955 & **27655** (Repealed; SB 376) *Firearm Transfers at Charitable Auctions; Waiting Period*:

The exemption that allowed a charitable auction to avoid a waiting period before a dealer could deliver a firearm at an auction or similar event has been repealed.

Pen Code §§ 27205, **27210**, **27220**, **27225**, **27235**, **27240**, **27305**, **27310**, **27315**, **27320**, **27340** & **27345** (Amended; AB 1669): *Gun Shows and Ammunition*:

The laws that apply to the sale of firearms at gun shows is expanded by amendment to also apply to the sale of *ammunition* at gun shows. Therefore, the producer of a gun show is now required to provide a list to local law enforcement and to DOJ of the persons and organizations that have rented space at the gun show to sell ammunition, in addition to the existing requirement to provide a list of firearm sellers. Gun show vendors must now certify in writing to the gun show producer that they will process all sales or transfers of ammunition through licensed firearms dealers or ammunition vendors.

P.C. § 27315 now requires that the sale of ammunition at a gun show comply with all applicable laws, including **P.C. §§ 30347**, **30348**, **30350**, **30352**, and **30360**.

Pen. Code § 27510 (Amended; SB 61): *Semiautomatic Centerfire Rifles Sold or Given to Persons Under the Age of 21*:

As an exception to the general rule as noted in the section (i.e., that anyone under the age of 21 may not be given or sold any handgun or long gun unless that person is at least 18 *and* has a valid hunting license or is an active peace officer, active federal officer, reserve peace officer, active military, or has been honorably discharged from the military), it is illegal for anyone to sell or give to a person under the age of 21 a *semiautomatic centerfire rifle* even if that person has a valid hunting license or has been honorably discharged from the military.

Note: Under the same bill (SB 61), beginning *July 1, 2021*, **P.C. §27535** is amended (with conforming amendments to **P.C. §§ 27549** & **27590**), adding *semiautomatic centerfire rifles*, thus prohibiting a person from making an application to purchase more than one semiautomatic centerfire rifle in a 30-day period. Previously, **P.C. § 27535** applied only to handguns. Starting *July 1, 2021*,

however, it will apply to both handguns *and* semiautomatic centerfire rifles. Also, it is specifically prohibited to make an application to purchase both a handgun and a semiautomatic centerfire rifle within the same 30-day period.

Pen. Code § 29010 (Amended; (SB 376) *Number of Manufactured Firearms Annually Requiring a California License*:

The number firearms manufactured during a calendar year that require a person who has a federal license to manufacture firearms to *also* be licensed pursuant to California law (i.e.; **P.C. §§ 29030–29150**) is reduced by amendment from 100 to 50 firearms.

Pen. Code § 29805 (Amended; SB 781, 172): *Possessing a Firearm with a Criminal Storage Prior Conviction*:

New **subdivision (c)** is added, creating a new felony offense of owning, purchasing, receiving, or possessing a firearm within 10 years of a prior conviction for the felony/misdemeanor crime of being convicted of a specified firearm storage crime (**P.C. § 25100, 25135, or 25200**) occurring on or after January 1, 2020.

Punishment: *Felony* (wobbler); 16 months, two years, or three years in state prison, or by up to one year in county jail.

Pen. Code § 29825 (Amended; AB 164): *Possessing a Firearm While Knowing that a Restraining Order, Injunction, or Protective Order Prohibits Such Possession*:

The felony (**subd. (a)**) and misdemeanor (**subd. (b)**) crimes of purchasing, receiving, owning, or possessing a firearm knowing that one is prohibited from doing so by a temporary restraining order, injunction, or protective order have been expanded to include knowing that one is prohibited from doing so by an *out-of-state* order that includes a firearms prohibition.

Pen Code § 30800 (Amended; AB 879) *Assault Weapons and .50 BMG Rifles as a Nuisance*:

The public nuisance provisions of this section that apply to assault weapons and .50 BMG rifles has been expanded by adding the *manufacturing, importing, keeping for sale, offering or exposing for sale, giving, and/or lending* these firearms.

Punishments:

The maximum civil fine possible (except for mere possession) has been increased up to $500 for the first assault weapon or .50 BMG rifle that is a

public nuisance, and up to $200 for each additional assault weapon or .50 BMG rifle that is a public nuisance.

The maximum civil fine for *possessing* an assault weapon or .50 BMG rifle that is a public nuisance is up to $300 for a first assault weapon or .50 BMG rifle, and up to $100 for each additional one.

Any assault weapon or .50 BMG rifle that is deemed a public nuisance pursuant to this section shall be destroyed, unless there is a finding that the preservation of the weapon is in the interest of justice.

Pen Code § 31700 (Amended; AB 1292 & SB 172): *Exemptions From the Firearm Safety Certificate Requirement*:

Additional exemptions have been added to the "*firearm safety certificate*" requirement. The section now provides that the following persons who take title or possession of a firearm by operation of law in a representative capacity, unless and until they transfer title ownership of the firearm to themselves in a personal capacity, are exempted from the **P.C. § 31615(a)** firearm safety certificate requirement:

1. The personal representative of an estate;

2. The trustee of a trust that includes a firearm and that was part of a will that created the trust;

3. A person acting pursuant to a power of attorney in accordance with **Probate Code §§ 4000–4545**;

4. A limited or general conservator appointed by the court pursuant to the **Probate Code or Welfare & Institutions Code**;

5. A guardian ad litem appointed by the court pursuant to **C.C.P. 372**;

6. A trustee of a trust that includes a firearm that is under court supervision;

7. A special administrator appointed by a court pursuant to **Probate Code 8540**;

8. A guardian appointed by a court pursuant to **Probate Code 1500**;

9. A person who takes possession of a firearm and complies with new **P.C. § 27922** by delivering it to a law enforcement agency; *and*

10. A person taking possession of a firearm pursuant to new **P.C. § 27882** or new **P.C. § 27883**.

Fish & Game:

F&G § 4001 (New; AB 273): *The Wildlife Protection Act of 2019*: *Trapping of Fur-Bearing Mammals*:

The trapping of any fur-bearing mammal for purposes of recreation or commerce in fur is prohibited. The raw fur of a fur-bearing mammal otherwise lawfully taken pursuant to the **Fish & Game Code** or regulations adopted pursuant to it, may not be sold.

Punishment: *Misdemeanor*; six months in jail and/or a fine of up to $1,000. (**F&G Code §§ 12000(a)** and **12002(a)**)

Note: Per **F&G Code § 4000**, "*fur-bearing mammals*" are listed as pine marten, fisher, mink, river otter, gray fox, red fox, kit fox, raccoon, beaver, badger, and muskrat. Per **F&G Code § 4005(a)**, "*raw fur*" includes any fur, pelt, or skin that has *not* been tanned or cured, except that salt-cured or sun-cured pelts are raw furs.

Note: See **F&G Code § 2023** (New; AB 44), not effective until *January 1, 2023*, which will make it a misdemeanor to;

1. Sell, offer for sale, display for sale, trade, or distribute for monetary or non-monetary consideration, a "*fur product*," *and/or*

2. To manufacture a fur product for sale.

Exempted are used fur products, fur products used for religious purposes, fur products used for traditional tribal, cultural, or spiritual purposes by a member of a recognized Native American tribe, and any activity expressly authorized by federal law.

"*Fur*" is defined as any animal skin or part with hair (with certain listed exceptions), fleece, or fur fibers attached, either in its raw or processed state.

"*Fur product*" is defined as an article of clothing or covering for any part of the body, or any fashion accessory, including, but not limited to, handbags, shoes, slippers, hats, earmuffs, scarves, shawls, gloves, jewelry, keychains, toys, trinkets, and home accessories and décor, that is made in whole or in part of fur.

F&G § 4150 (Amended; AB 273): *The Wildlife Protection Act of 2019*: *Trapping of Non-Game Mammals*:

> The trapping of a non-game mammal for purposes of recreation or commerce in fur is prohibited. The raw fur of a non-game mammal shall not be sold.
>
> *Punishment*: *Misdemeanor*; six months in jail and/or a fine of up to $1,000. (**F&G Code §§ 12000(a)** and **12002(a)**)
>
> *Note*: **F&G Code § 4150** defines "*nongame mammal*" as a mammal occurring naturally in California that is *not* a game mammal, fully protected mammal, or fur-bearing mammal.
>
> *Note*: See **F&G Code § 2023** (New; AB 44), not effective until *January 1, 2023*, which will make it a misdemeanor to;
>
> > 1. Sell, offer for sale, display for sale, trade, or distribute for monetary or non-monetary consideration, a "fur product," *and/or*
> >
> > 2. To manufacture a fur product for sale.
>
> Exempted are used fur products, fur products used for religious purposes, fur products used for traditional tribal, cultural, or spiritual purposes by a member of a recognized Native American tribe, and any activity expressly authorized by federal law.
>
> "*Fur*" is defined as any animal skin or part with hair, fleece, or fur fibers attached, either in its raw or processed state.
>
> "*Fur product*" is defined (with certain listed exceptions) as an article of clothing or covering for any part of the body, or any fashion accessory, including, but not limited to, handbags, shoes, slippers, hats, earmuffs, scarves, shawls, gloves, jewelry, keychains, toys, trinkets, and home accessories and décor, that is made in whole or in part of fur. Violation is to be a misdemeanor, per **F&G Code §§ 12000(a)** and **12002(a)**, with an alternative civil penalty, per **F&G Code § 2023(e)** (New).

F&G Code § 4156 (New; AB 1254): *Hunting, Trapping, and Taking of Bobcats*:

> **Subd. (a):** The hunting, trapping, or taking of bobcats is prohibited.
>
> **Subd. (b):** Exceptions:
>
> > **(1)** The take of a bobcat by a law enforcement officer or licensed veterinarian acting in the course and scope of official duty.

(2) The take of a bobcat based on a good faith belief that the take was necessary to protect a person from immediate bodily harm from the bobcat if both of the following conditions are met:

(A) The person who committed the take notifies the department within five days after the take.

(B) A bobcat or part of the bobcat taken pursuant to this subdivision is not retained, sold, or removed from the site of the take without the authorization from the department.

(3) through **(6)**: The take of a bobcat was pursuant to various listed statutory provisions, including as a part of a program to protect bobcats as an endangered species.

Punishment: *Misdemeanor*; six months in jail and/or a fine of up to $1,000. (**F&G Code §§ 12000(a)** and **12002(a)**)

Welf. & Insti. Code § 8103 (Amended; AB 1968): *Mental Patients and Firearms*:

See "*Mental Patients*," below.

Human Trafficking:

Evid. Code § 1038 (Amended; AB 1735): *Confidentiality of Communications Between Human Trafficking Victims and His or Her Caseworker*:

Subd. (a): The section is clarified to specify that a privileged "*communication*" includes communications made orally, in writing, or "*otherwise conveyed*."

Subd. (a)(3) is expanded to include those who are obligated to claim a confidentiality privilege to a communication between a human trafficking victim and his or her caseworker to even if the caseworker was not the victim's caseworker at the time the confidential communication was made.

Evid. Code § 1038.1 (Amended; AB 1735): *Compelling Disclosure; Ruling on a Claim of Privilege*:

The sentence that had authorized a court to compel disclosure of a human trafficking caseworker-victim confidential communication if the victim is either dead or not the complaining witness in a criminal action against the perpetrator has been eliminated.

Evid. Code § 1038.2 (Amended; AB 1735): *Definitions*:

The relevant definitions have been expanded and refined to the following:

(a) "*Confidential communication*" means all information, including but not limited to written and oral communication, transmitted between the victim and the human trafficking caseworker in the course of their relationship and in confidence by a means which, so far as the victim is aware, discloses the information to no third persons other than those who are present to further the interests of the victim in the consultation or those to whom disclosures are reasonably necessary for the transmission of the information or an accomplishment of the purposes for which the human trafficking caseworker is consulted and made with the victim's knowledge and consent. "*Confidential communication*" includes all information regarding the facts and circumstances relating to all incidences of human trafficking, as well as all information about the children of the victim and the relationship of the victim to the human trafficker.

(b) "*Holder of the privilege*" means:

(1) The victim if the victim has no guardian or conservator.

(2) A guardian or conservator of the victim if the victim has a guardian or conservator.

(3) The personal representative of the victim if the victim is deceased.

(c) "*Human trafficking caseworker*" means a person working for a human trafficking victim service organization, whether financially compensated or not, for the purpose of rendering advice or assistance to victims of human trafficking, who meets the requirements of **paragraph (1)** or **(2)** and who also meets the requirements of **paragraph (3)**, if applicable:

(1) Has an advanced degree or license, such as a master's degree in counseling, social work, or a related field and at least one year of experience in a caseworker role working directly with victims of human trafficking.

(2) Has at least 40 hours of training as specified in this paragraph and is supervised by an individual who qualifies as a human trafficking caseworker under **paragraph (1)**. The training, supervised by a person qualified under **paragraph (1)**, shall include, but need not be limited to, the following areas:

(A) History of human trafficking.
(B) Civil and criminal law relating to human trafficking.
(C) Systems of oppression.
(D) Peer counseling techniques.

(E) Resources available to victims of human trafficking.
(F) Crisis intervention and counseling techniques.
(G) Role playing.
(H) Intersections of human trafficking and other crimes.
(I) Client and system advocacy.
(J) Referral services.
(K) Connecting to local, regional, and national human trafficking coalitions.
(L) Explaining privileged communications.

(3) If the caseworker has been employed by a human trafficking service organization for a period of less than six months, that caseworker is supervised by another human trafficking caseworker who has at least one year of experience working with human trafficking victims.

(d) "*Human trafficking victim service organization*" means a nongovernmental organization or entity that provides shelter, program, or other support services to victims of human trafficking and their children and that does all of the following:

(1) Employs staff that meet the requirements of a human trafficking caseworker as set forth in this section.

(2) Operates a telephone hotline, advertised to the public, for survivor crisis calls.

(3) Offers psychological support and peer counseling provided in accordance with this section.

(4) Makes staff available during normal business hours to assist victims of human trafficking who need shelter, programs, or other support services.

(e) "*Victim*" means a person who consults a human trafficking caseworker for the purpose of securing advice or assistance concerning a mental, physical, emotional, or other condition related to their experience as a victim of human trafficking.

Evid. Code § 1038.3 (New; AB 1735): *No Limitation on Obligation to Report Child Abuse*:

Nothing in this article shall be construed as limiting any obligation to report instances of child abuse as required by **Section 11166** of the **Penal Code**.

Note: **P.C. § 11166** is the section dealing with a "mandated reporter's duty to report instances of child abuse and/or neglect, and the punishment for failure to do so."

Juveniles:

Gov't. Code §§ 12820 through **12836**, inclusive (New, Effective 6/27/2019; SB 94), and **Gov't. Code § 12838** (Amended, Effective 6/27/2019; SB 94): *Department of Youth and Community Restoration*:

The Division of Juvenile Justice and the Board of Juvenile Hearings has been moved from the Department of Corrections and Rehabilitation (CDCR), reestablishing them as the "*Department of Youth and Community Restoration*" (DYCR) under the California Health and Human Services Agency.

This transfer process was required to start on July 1, 2019 and be completed by July 1, 2020.

The Division of Juvenile Justice is to be referred to as the "*predecessor entity*." Any reference to the Division of Juvenile Facilities, the Division of Juvenile Justice, or the Department of the Youth Authority in any statute or regulation is to be considered a reference to the new Department of Youth and Community Restoration, unless the context clearly requires otherwise.

Welf & Inst. Code § 707.5 (New; AB 1423): *Return of a Juvenile Case from Adult to Juvenile Court*:

In cases where a juvenile case has been transferred to adult criminal court pursuant to **W&I Code § 707**, provisions are now made for returning the case to juvenile court under specified circumstances:

Where the defendant is convicted at trial in adult court of a misdemeanor or misdemeanors, the case *must* be returned to juvenile court if the defendant requests the return.

Where a **W&I § 707(b)** offense was the basis of the case being transferred to adult court and the defendant is convicted at trial of non-**W&I 707(b)** felonies or a combination of non-**W&I 707(b)** felonies and misdemeanors, the court has the *discretion* to return the case to juvenile court for sentencing if the defendant requests the return.

Where non-**W&I 707(b)** offenses were the basis of the case being transferred to adult court and pursuant to a *plea agreement* the defendant pleads guilty only to a misdemeanor or misdemeanors, *or*, if a **W&I 707(b)** offense was a basis for transfer to adult court and pursuant to a plea agreement the defendant pleads guilty only to a misdemeanor or

misdemeanors, or to non-**W&I 707(b)** felonies, or to a combination of non-**W&I 707(b)** felonies and misdemeanors, the court *may* return the case to juvenile court only if *both parties* agree and request the return.

Except where the return is mandatory, before returning a case to the juvenile court, the trial court must make a finding by a preponderance of the evidence that a juvenile disposition is in the interests of justice and the welfare of the defendant, and state in the minute order the specific reasons for making the finding.

Requires the court to consider the transcript and minute order of the transfer hearing, the time the defendant has served in custody, the dispositions and services available to the defendant in juvenile court, and any relevant evidence submitted by either party.

If a case is to be returned to the juvenile court, the adult court must return the entire case to the juvenile court and it must be calendared within two court days. The juvenile court must then order the probation department to prepare a social study about the proper disposition of the case.

A conviction or guilty plea in adult court shall be considered an adjudication or admission before the juvenile court for all purposes.

The clerk of the adult criminal court must report a returned case to the probation department, the law enforcement agency that arrested the minor, and DOJ, and deliver all copies of the minor's criminal court record to the clerk of the juvenile court and to obliterate the minor's name in any index maintained in the criminal court.

Law Enforcement:

Gov't. Code §§ 8669.1 through **8669.7**, inclusive (New; AB 1117): *Law Enforcement Peer Support and Crisis Referral Services Program*:

Local or regional law enforcement agencies are authorized to establish peer support and crisis referral programs that would provide a network of peer representatives who are available to come to the aid of their fellow employees on a broad range of emotional or professional issues, including substance abuse, critical incident stress, family issues, grief support, legal issues, line-of-duty deaths, serious injury or illness, suicide, victims of crime, and workplace issues.

The program would assist both law enforcement officers and employees of a law enforcement agency.

The communications between law enforcement personnel and a peer support team member made while the peer support team member is providing peer support are

to be confidential. Any communication to a crisis hotline or crisis referral service is likewise to be confidential.

Exceptions to the confidentiality requirements are as follows:

1. In a criminal proceeding;

2. When a peer support team member refers law enforcement personnel to crisis referral services;

3. During a consultation between two peer support team members;

4. If the peer support team member reasonably believes that disclosure is necessary to prevent death, substantial bodily harm, or the commission of a crime;

5. If law enforcement personnel expressly agrees in writing that the confidential communication may be disclosed; *or*

6. "If otherwise required by law."

Also, a crisis hotline or crisis referral service is permitted to disclose confidential information communicated by law enforcement personnel, in order to prevent "reasonably certain death, substantial bodily harm, or commission of a crime."

Peer support team members are required to complete a training course on peer support approved by the law enforcement agency in order to be eligible for confidentiality protections.

Pen. Code § 830.5 (Amended; Effective 6/27/2019; SB 94), and **Pen. Code § 830.53** (New; Effective 6/27/2019):

As of *July 1, 2020*, parole officers/agents in the Division of Juvenile Parole Operations and with the Juvenile Parole Board, and correctional officers employed by the Division of Juvenile Justice, are moved from the list of peace officers in **P.C. § 830.5,** putting them instead, with new titles, into new **P.C. § 830.53**, consistent with other provisions of this bill (**Gov't. C. §§ 12820– 12838**; that moved the Division of Juvenile Justice and the Board of Juvenile Hearings from CDCR and re-establishes them as the Department of Youth and Community Restoration under the California Health and Human Services Agency. (See "*Department of Youth and Community Restoration*," under "Juveniles," above.)

The transfer is required to start on July 1, 2019 and to be completed by July 1, 2020.

Beginning *July 1, 2020*, new **P.C. § 830.53** provides that a youth correctional officer employed by the Department of Youth and Community Restoration (DYCR), a youth correctional counselor series employee of DYCR, an employee of DYCR designated by the director, and any superintendent, supervisor, or employee having custodial responsibilities in an institution or camp operated by DYCR, will be a "*peace officer*" whose authority extends to any place in California while engaged in the performance of his or her duties. Specified DYCR employees (i.e., correctional officers and correctional counselors) are permitted to carry firearms while not on duty.

Law Enforcement Technology:

Pen. Code § 832.19 (New; AB 1215): *Biometric Surveillance System Used Via an Officer Body Camera*:

(a) For the purposes of this section, the following terms have the following meanings:

(1) "*Biometric data*" means a physiological, biological, or behavioral characteristic that can be used, singly or in combination with each other or with other information, to establish individual identity.

(2) "*Biometric surveillance system*" means any computer software or application that performs facial recognition or other biometric surveillance.

(3) "*Facial recognition or other biometric surveillance*" means either of the following, alone or in combination:

(A) An automated or semiautomated process that captures or analyzes biometric data of an individual to identify or assist in identifying an individual.

(B) An automated or semiautomated process that generates, or assists in generating, surveillance information about an individual based on biometric data.

(4) "*Facial recognition or other biometric surveillance*" does *not* include the use of an automated or semiautomated process for the purpose of redacting a recording for release or disclosure outside the law enforcement agency to protect the privacy of a subject depicted in the recording, if the process does not generate or result in the retention of any biometric data or surveillance information.

(5) "*Law enforcement agency*" means any police department, sheriff's department, district attorney, county probation department, transit agency

police department, school district police department, highway patrol, the police department of any campus of the University of California, the California State University, or a community college, the Department of the California Highway Patrol, and the Department of Justice.

(6) "*Law enforcement officer*" means an officer, deputy, employee, or agent of a law enforcement agency.

(7) "*Officer camera*" means a body-worn camera or similar device that records or transmits images or sound and is attached to the body or clothing of, or carried by, a law enforcement officer.

(8) "*Surveillance information*" means either of the following, alone or in combination:

(A) Any information about a known or unknown individual, including, but not limited to, a person's name, date of birth, gender, or criminal background.

(B) Any information derived from biometric data, including, but not limited to, assessments about an individual's sentiment, state of mind, or level of dangerousness.

(9) "*Use*" means either of the following, alone or in combination:

(A) The direct use of a biometric surveillance system by a law enforcement officer or law enforcement agency.

(B) A request or agreement by a law enforcement officer or law enforcement agency that another law enforcement agency or other third party use a biometric surveillance system on behalf of the requesting officer or agency.

(b) A law enforcement agency or law enforcement officer shall not install, activate, or use any biometric surveillance system in connection with an officer camera or data collected by an officer camera.

(c) In addition to any other sanctions, penalties, or remedies provided by law, a person may bring an action for equitable or declaratory relief in a court of competent jurisdiction against a law enforcement agency or law enforcement officer that violates this section.

(d) This section does not preclude a law enforcement agency or law enforcement officer from using a *mobile fingerprint scanning device* during a lawful detention to identify a person who does not have proof of identification if this use is lawful

and does not generate or result in the retention of any biometric data or surveillance information.

(e) This section shall remain in effect only until *January 1, 2023*, and as of that date is repealed (unless subsequently extended by the Legislature).

Marijuana:

See "**Cannabis**," above.

Mental Patients:

Welf. & Insti. Code § 8103 (Amended; AB 1968): *Mental Patients and Firearms*:

Subdivision (f) has been amended to extend the five-year ban on firearms for a person who is taken into custody pursuant to **W&I § 5150**, assessed, and admitted to a facility for 72-hour psychiatric treatment because he or she is a danger to self or others, to a *lifetime firearms ban if* the person was previously taken into custody, assessed, and admitted for psychiatric treatment, one or more times during the year preceding the most recent admittance.

> *Note*: The five-year firearm ban still applies to persons with **W&I § 5150** holds who do not have a previous hold within the preceding year.

The facility to which a person is admitted is required to inform the person of the five-year ban or lifetime ban on firearms, whichever applies, before or at the time of discharge from the facility, and requires the person be told that a court hearing may be requested in order to obtain an order permitting the person to have firearms.

DOJ is required to update the "*Patient Notification of Firearm Prohibition and Right to Hearing Form*" consistent with this amendment, and requires a facility to provide the person with a copy of the form. The form is to include information regarding how the person was referred to the facility and to include an authorization for the release of the person's mental health records, upon request, to the appropriate court, solely for use in a hearing for an order permitting the person to have firearms. A request for records may be made by mail to the custodian of records at a facility and shall not require personal service.

The mental health facility is prohibited from submitting the form requesting a hearing to lift the firearms prohibition on behalf of the person, this amendment deleting provisions for the facility to forward the form to the superior court if the person requested a firearms hearing at the time of discharge.

The time for setting a firearms hearing has been extended from 30 days to *60 days* of the court receiving a request for a firearms hearing. The length of time for

which a district attorney may obtain a continuance has been extended from 14 days to *30 days* after the district attorney is notified of the hearing date by the clerk of the court.

The People continue to bear the burden at a hearing of showing by a *preponderance of the evidence* that the person would not be likely to use firearms in a safe and lawful manner. An *exception* to this rule is when a person who is subject to *a lifetime ban* files a subsequent petition. At a hearing on any *subsequent petition* filed by a person subject to a lifetime ban, the burden of proof is on the person/petitioner to establish by *a preponderance of the evidence* that he or she can use firearms in a safe and lawful manner.

A person subject to a lifetime ban or a five-year ban on firearms may *make one request* for a firearms hearing at any time during the five-year period or the period of the lifetime prohibition. For a person subject to a lifetime ban, subsequent hearings may be requested if the court keeps the firearm prohibition in effect.

If the court finds that the people have met their burden at a hearing of showing that the person would not be likely to use firearms in a safe and lawful manner and the person is subject to a lifetime ban, the court must inform the person of his or her right to file a subsequent petition *no sooner than five years* from the date of the hearing. Permits a person subject to a lifetime ban to file subsequent petitions every five years and places the burden on the *person/petitioner* to show, by a *preponderance of the evidence* at any subsequent hearing that he or she can use firearms in a safe and lawful manner.

Punishment: It remains a *felony* pursuant to **W&I § 8103(i)** for a mental patient to own, possess, control, purchase, receive, or attempt to purchase or receive a firearm or deadly weapon in violation of **W&I § 8103**, punishable pursuant to **P.C. § 1170(h)** by 16 months, two years, or three years in jail, or by up to one year in jail.

> *Note*: Persons taken into custody on **W&I § 5150** holds are subject to a *firearms* ban, while other persons (e.g., mentally disordered offenders, offenders found not guilty by reason of insanity, mentally incompetent defendants, and persons conserved pursuant to **W&I § 5350**) are subject to a ban on *firearms and deadly weapons*.

Retroactivity/Ex Post Facto Issues: Per CDAA, the lifetime firearm ban should apply to any person taken into custody pursuant to **W&I § 5150** and admitted for 72-hour treatment on or after January 1, 2020, even if the preceding hold that makes the person subject to the lifetime ban occurred before January 1, 2020. It is the second hold and treatment within one year that subjects a person to the lifetime firearms ban, and if that occurs on or after January 1, 2020, there should not be any ex post facto issue.

Pitchess Motions:

Evid. Code § 1043 (Amended; AB 1600): *Time Limitations on **Pitchess** Motions*:

The notice requirements for the filing of a motion to discover peace officer personnel files in criminal cases (i.e., a "***Pitchess*** *motion*," per ***Pitchess v. Superior Court*** (1974) 11 Cal.3d 531) have been modified as follows:

Filing of the motion; from 16 court days before the hearing to at least *10 days*.

Filing of the opposition; at least *10 court days* before the hearing.

Filing of a reply brief; at least *2 court days* before the hearing.

Upon receipt of a motion for peace officer personnel records, the governmental agency involved must immediately notify the officer whose records are sought.

See also **Code of Civ. Proc. § 1005**, making existing notice requirements for a ***Pitchess*** motion (at least *16 court days* before the hearing), applicable only in civil cases.

Evid. Code § 1047 (Amended; AB 1600): *Peace Officer Records Not Subject to Disclosure*:

The section is amended, splitting the section into two subdivisions, and adding a new **subdivision (b)**, which reads as follows:

(b) Notwithstanding **subdivision (a)** (excluding from disclosure peace officers' records for officers who were *not* present at the scene of the incident in issue), if a supervisorial officer whose records are being sought had direct oversight of a peace officer or a custodial officer, as defined in **Section 831.5 of the Penal Code** and issued command directives or had command influence over the circumstances at issue, the supervisorial officer's records shall be subject to disclosure pursuant to **Section 1045** if the peace officer or custodial officer under supervision was present during the arrest, had contact with the party seeking disclosure from the time of the arrest until the time of booking, or was present at the time the conduct at issue is alleged to have occurred within a jail facility.

Welf. & Inst. Code §§ 781 & **786** (Amended; AB 1537): *Prosecutors Access to Sealed Juvenile Records for **Brady** Purposes*:

Language is added to the provisions that permit a prosecutor to access a sealed juvenile record so that the prosecutor can meet his or her statutory and/or constitutional obligation (per ***Brady v. Maryland*** (1963) 373 U.S. 83.) to disclose

favorable or exculpatory evidence to a criminal defendant. (See **W&I Code §§ 781(a)(1)(D)(iii)** and **786(g)(1)(K)**.)

A prosecutor's request to the juvenile court to access information in a sealed juvenile file must include the prosecutor's rationale for believing that access to the information may be necessary to meet disclosure obligations and the date by which the records are needed.

Also added is the following:

1. A ruling allowing disclosure of information does not affect whether the information is admissible in a criminal or juvenile proceeding;

2. These provisions do not impose any discovery obligations on a prosecuting attorney that do not already exist; *and*

3. These provisions do not pertain to **W&I 300** juvenile dependency cases.

Note: See also amended provisions in both **P.C. § 851.7** (below) and **W&I § 793** (below) permitting access to sealed juvenile records for purposes of prosecutors complying with their ***Brady*** obligations.

Welf. & Inst. § 793 (Amended; AB 1537): *Prosecutor's Access to Sealed Juvenile Records for **Brady** Purposes*:

New **subdivision (d)(1)** and **(2)** is added to permit prosecutors to access records sealed pursuant to this section so that they can comply with statutory and constitutional obligations to disclose favorable or exculpatory evidence to a criminal defendant (pursuant to the U.S. Supreme Court case of ***Brady v. Maryland*** (1963) 373 U.S. 83 and other authorities), upon meeting the following requirements (per new **subd. (d)(1)**):

The prosecutor is to submit to the juvenile court a request to access information.

The request must include the date by which the records are needed and the prosecutor's rationale for believing that access to the information may be necessary to meet the disclosure obligation.

The juvenile court must review the case file and records that are referenced by the prosecutor and review any response by the person who has the sealed record.

The court must approve the prosecutor's request to the extent the court determines that access to a sealed record or portion of a sealed record is

necessary to enable the prosecuting attorney to comply with the disclosure obligation.

If the juvenile court approves the prosecutor's request, the court must state on the record appropriate limits on the access, inspection, and utilization of the sealed record information in order to protect the confidentiality of the person whose sealed record is accessed.

A ruling allowing disclosure does not affect whether the information is admissible in a criminal or juvenile proceeding.

Also provided is a comment that this new subdivision does not impose any discovery obligations on a prosecutor that do not already exist.

Per **subd. (b)(2)**: This new subdivision does *not* apply to **W&I § 300** juvenile dependency case files.

Note: See also **W&I Code §§ 781** & **786** (Amended), above.

Pen. Code § 851.7 (Amended; AB 1537) *Prosecutor's Access to Sealed Juvenile Records for **Brady** Purposes*:

New **subdivision (g)** is added to permit prosecutors to access records sealed pursuant to this section (and the procedures whereby this may be accomplished) so that they can comply with statutory and constitutional obligations to disclose favorable or exculpatory evidence to a criminal defendant. (Pursuant to the U.S. Supreme Court case of ***Brady v. Maryland*** (1963) 373 U.S. 83 and other authorities.)

W&I Code §§ 781 & **786** (Amended), above.

Plea Bargains:

Pen. Code § 1016.8 (New; AB 1618): *Plea Bargains that Purport to Waive Future Benefits from a Change in the Law*:

A plea bargain that requires a defendant to generally waive unknown future benefits of legislative enactments, initiatives, appellate decisions, or other changes in the law that may occur after the date of the plea is deemed *"not knowing or intelligent*," and is considered to be "*void as against public policy*."

A "*plea bargain*" is defined the same as it is in **P.C. § 1192.7(b)**; i.e., "(A)ny bargaining, negotiation, or discussion between a criminal defendant, or his or her counsel, and a prosecuting attorney or judge, whereby the defendant agrees to plead guilty or nolo contendere, in exchange for any promises, commitments,

concessions, assurances, or consideration by the prosecuting attorney or judge relating to any charge against the defendant or to the sentencing of the defendant."

Police Officer Use of Force:

Gov't. Code § 7286 (New; SB 230): *Law Enforcement Use of Force Policies*:"

By *January 2, 2021*, all law enforcement agencies are required to maintain a policy that provides a minimum standard on the use of force and to make the policy accessible to the public.

The policy is required to include *20 items*, including (but not limited to):

The requirement that officers use "*de-escalation techniques*," *crisis intervention tactics*," and other alternatives to force "*when feasible*."

That an officer may use only that level of force that is proportional to the seriousness of the offense or threat.

That officers are required to report excessive force to a superior officer.

Specific guidelines regarding situations in which an officer may or may not draw a firearm or point a firearm.

A requirement that officers consider the potential risks to bystanders before discharging a firearm.

A requirement that an officer intercede when seeing another officer use excessive force.

Specific guidelines under which the discharge of a firearm at or from a moving vehicle may or may not be permitted.

"*Deadly force*" is defined as force reasonably anticipated to create a substantial likelihood of causing death or great bodily injury.

"*Feasible*" is defined as reasonably capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to the officer or another person.

Note: This bill also creates new **P.C. § 13519.10**, which requires the Commission on Peace Officer Standards and Training (POST) to implement a course for the regular and periodic training of law enforcement officers in the use of force, and to develop minimum use of force guidelines for adoption by California law enforcement agencies.

Pen. Code § 196 (Amended; AB 392): *Homicide*: *Use of Justifiable Deadly Force by Police Officers*:

Homicide is *justifiable* when committed by *peace officers* and those acting by their command in their aid and assistance, under either of the following circumstances:

(a) In obedience to any judgment of a competent court.

(b) When the homicide results from a peace officer's use of force that is in compliance with **Section 835a**. (Italics added. See below)

Pen. Code § 835a (Amended; AB 392): *Reasonable Force to Effect Arrest; Resistance*:

(a) The Legislature finds and declares all of the following:

(1) That the authority to use physical force, conferred on peace officers by this section, is a serious responsibility that shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life. The Legislature further finds and declares that every person has a right to be free from excessive use of force by officers acting under color of law.

(2) As set forth below, it is the intent of the Legislature that peace officers use deadly *force only when necessary in defense of human life*. In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case, and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer. (Italics added.)

(3) That the decision by a peace officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by peace officers, in order to ensure that officers use force consistent with law and agency policies.

(4) That the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force.

(5) That individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions, as their disability may

affect their ability to understand or comply with commands from peace officers. It is estimated that individuals with disabilities are involved in between one-third and one-half of all fatal encounters with law enforcement.

(b) Any peace officer who *has reasonable cause* to believe that the person to be arrested has committed a public offense *may use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance*. (Italics added.)

(c)

(1) Notwithstanding **subdivision (b)**, a peace officer is justified in using *deadly force* upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons:

(A) *To defend against an imminent threat of death or serious bodily injury to the officer or to another person*. (Italics added.)

(B) To apprehend *a fleeing person* for *any felony that threatened or resulted in death or serious bodily injury*, if the officer *reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended*. Where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to *identify themselves as a peace officer* and to *warn that deadly force may be used*, unless the officer has objectively reasonable grounds to believe the person is aware of those facts. (Italics added.)

(2) A peace officer shall not use deadly force against a person based on the *danger that person poses to themselves*, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the peace officer or to another person. (Italics added.)

(d) A peace officer who makes or attempts to make an arrest *need not retreat or desist* from their efforts by reason of the resistance or threatened resistance of the person being arrested. A peace officer shall not be deemed an aggressor or lose the right to self-defense by the use of objectively reasonable force in compliance with **subdivisions (b)** and **(c)** to effect the arrest or to prevent escape or to overcome resistance. For the purposes of this subdivision, "retreat" does not mean tactical repositioning or other deescalation tactics. (Italics added.)

(e) For purposes of this section, the following definitions shall apply:

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

(2) A threat of death or serious bodily injury is "*imminent*" when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.

(3) "*Totality of the circumstances*" means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force.

Posse Comitatus:

Pen. Code §§ 150, **1550:** (Repealed; SB 192): *Commanding Able-Bodied Individuals to Assist Law Enforcement*:

Both of the above provisions are repealed and no longer enforceable.

P.C. § 150 provided that a uniformed peace officer, or any peace officer described in **P.C. §§ 830.1**, **830.2(a)**, **(b)**, **(c)**, **(d)**, **(e)**, **or (f)**, or **830.33(a)**, had authority to command any "*able-bodied*" individual over the age of 18 to assist in an arrest.

P.C. § 1550 said that "(e)very peace officer or other person empowered to make the arrest hereunder shall have the same authority, in arresting the accused, to command assistance therefor as the persons designated in **Section 150**. Failure or refusal to render that assistance is a violation of **Section 150**."

Refusing such a command *was* an infraction, punishable by a fine of from $50 to $1,000.

Pretrial Diversion:

Pen. Code § 1001.83 (New; SB 394): *Pretrial Diversion Program for Primary Caregivers*:

(a) The presiding judge of the superior court, or a judge designated by the presiding judge, in consultation with the presiding juvenile court judge and criminal court judges, and together with the prosecuting entity and the public defender or the contracted criminal defense office that provides the services of a public defender, may agree in writing to establish and conduct a pretrial diversion

program for primary caregivers, pursuant to the provisions of this chapter, wherein criminal proceedings are suspended without a plea of guilty for a period of not less than 6 months and not more than 24 months. If the defendant is also participating in juvenile court proceedings, the juvenile and criminal courts shall not duplicate efforts.

(b) The program described in this section may include, but not be limited to, all of the following components:

> **(1)** Parenting classes.
> **(2)** Family and individual counseling.
> **(3)** Mental health screening, education, and treatment.
> **(4)** Family case management services.
> **(5)** Drug and alcohol treatment.
> **(6)** Domestic violence education and prevention.
> **(7)** Physical and sexual abuse counseling.
> **(8)** Anger management.
> **(9)** Vocational and educational services.
> **(10)** Job training and placement.
> **(11)** Affordable and safe housing assistance.
> **(12)** Financial literacy courses.

(c) The defendant may be referred to supportive services and classes in already existing diversion programs and county outpatient services. 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 dependent child or children, and the interests of the community. The programming may be procured using public or private funds. A referral may be made to a county agency, existing collaborative court, or assisted outpatient treatment or services, if the entity agrees to provide the required programming.

(d) 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 following requirements*:

> **(1)** *The defendant is a custodial parent or legal guardian of a minor child under 18 years of age*, presently resides in the same household as that child, presently provides care or financial support for that minor child either alone or with the assistance of other household members, and the defendant's absence in the child's life would be detrimental to the child.
>
> **(2)** The defendant has been advised of and *waived the right to a speedy trial* and a speedy preliminary hearing.

(3) The defendant has been *informed of and agrees* to comply with the requirements of the program.

(4) The court is satisfied that the defendant *will not pose an unreasonable risk of danger to public safety*, as defined in **Section 1170.18**, *or to the minor child in their custody*, if allowed to remain in the community. The court may consider the positions of the prosecuting entity and defense counsel, the defendant's violence and criminal history, the recency of the defendant's criminal history, the defendant's history of behavior towards minors, the risk of the dependent minor's exposure to or involvement in criminal activity, the current charged offense, child welfare history involving the defendant, and any other factors that the court deems appropriate.

(5) The defendant is *not* being placed into a diversion program, pursuant to this section, *for any serious felony as described in Section 1192.7 or 1192.8 or violent felony as described in subdivision (c) of Section 667.5*.

(6) The defendant is *not* being placed into a diversion program pursuant to this section *for a crime alleged to have been committed against a person for whom the defendant is the primary caregiver*.

(e) The provider of the pretrial diversion services 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 the programming.

(f)

(1) If it appears to the prosecuting attorney, the court, pretrial services, or the probation department that the defendant is *performing unsatisfactorily* in the assigned program, *or* if the defendant is, subsequent to entering the program, *convicted of a felony or any offense that reflects a propensity for violence*, the prosecuting attorney or the probation department may make a motion to *reinstate criminal proceedings*. The court may also reinstate criminal proceedings on its own motion.

(2) After notice to the defendant, the court shall hold a hearing to determine whether to reinstate criminal proceedings.

(3) If the court finds that the defendant is *not performing satisfactorily* in the assigned program, or the court finds that the defendant has been *convicted of a crime as indicated in* ***paragraph (1)***, the court may end the diversion program and order the resumption of criminal proceedings.

(g) 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, and has avoided significant new violations of law. 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 **Section 1001.9**, except as specified in **subdivision (i)**. The defendant who successfully completes diversion may indicate in response to any question concerning the defendant's prior criminal record that they were not arrested or diverted for the offense, except as specified in **subdivision (i)**.

(h) 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.

(i) The defendant shall be advised that, regardless of the defendant's 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 **subdivision (h)**, 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 **Section 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 **Section 851.92**.

Prisoners:

Pen. Code § 2962 (Amended; SB 591) *Psychiatrist or Psychologist Prompt Access to MDO Prisoners in County Jail*:

New **subparagraph (d)(1)(B)** is added, requiring that a psychiatrist or psychologist from the State Department of State Hospitals, Department of Corrections and Rehabilitation (CDCR), or the Board of Parole Hearings, must be afforded "*prompt and unimpeded access*" to a state prisoner and the prisoner's records when he or she is temporarily housed at a county correctional facility, a

county medical facility, or a state-assigned mental health provider, for the purpose of conducting a mentally disordered offender (MDO) evaluation.

The amendment also requires that the psychiatrist or psychologist submit current and valid proof of state employment and a department letter or memorandum arranging the appointment.

Note: Various non-substantive language amendments are also made by changing "*mental disorder*" to "*mental health disorder*" and "*mental retardation*" to "*intellectual disability*," for the purpose of making the statute "*more culturally sensitive*."

Pen. Code § 4001.2 (New; AB 2568): *Veteran Detainees*:

(a) Each county jail shall, upon detention of a person, ask if the person has served in the United States military and document the person's response.

(b) The county jail shall make this information available to the person, his or her counsel, and the district attorney.

(c) This section shall become operative on January 1, 2020.

Note: Per CDAA, the purpose of this bill is to help veterans take advantage of resources and programs for veterans within the criminal justice system, such as veteran treatment courts, military diversion (e.g., **P.C. §1001.80**), and **P.C. § 1170.9** (Amended; alternate commitment for veterans).

Prostitution:

Evid. Code § 782.1 (Repealed and Added; SB 233): *Admissibility of Evidence; Possession of Condom; Offense Related to Prostitution*:

The possession of a condom is *not* admissible as evidence in a prosecution for a violation of:

P.C. § 372 (maintaining a public nuisance);
P.C. § 647(a) (committing a lewd act in public);
P.C. § 647(b) (prostitution); *or*
P.C. § 653.22 (loitering with the intent to commit prostitution);

. . . if the offense is related to prostitution.

Evid. Code § 1162 (Amended; SB 233): *Immunity from Prosecution for Prostitution*:

The list of crimes that trigger immunity from prosecution for prostitution when a person who was a victim of, or witness to, any one of the specified crimes (i.e.,

extortion, stalking, or a **P.C. 667.5(c)** violent felony), and who engages in an act of prostitution at or around the time he or she was a victim of or witness to a specified crime, is expanded to include the following specified crimes:

P.C. § 1192.7(c) serious felonies;
P.C. § 245(a) ADW;
P.C. § 273.5 Domestic Violence;
P.C. § 518 Extortion;
P.C. § 236.1 Human Trafficking;
P.C. § 243.4(a) Sexual Battery; *and*
P.C. § 646.9 Stalking

Evidence that a victim of, or witness to, any of these specified crimes has engaged in an act of prostitution at or around the time he or she was the victim of or witness to the crime, is *not admissible* in a separate prosecution of the victim or witness for the act of prostitution.

Search Warrants:

Pen. Code § 1524(a) (Amended; AB 1638): *Grounds for Issuance of a Search Warrant*:

New **Subd. (19)** is added, as follows:

(A) When the property or things to be seized are data, from a recording device installed by the manufacturer of a motor vehicle, that constitutes evidence that tends to show the commission of a felony or misdemeanor offense involving a motor vehicle, resulting in *death* or *serious bodily injury* to any person. The data accessed by a warrant pursuant to this paragraph shall not exceed the scope of the data that is directly related to the offense for which the warrant is issued.

(B) For the purposes of this paragraph, "*recording device*" has the same meaning as defined in **subdivision (b)** of **Section 9951** of the **Vehicle Code**. The scope of the data accessible by a warrant issued pursuant to this paragraph shall be limited to the information described in **subdivision (b)** of **Section 9951** of the **Vehicle Code**.

Note: **V.C. § 9951(b)** provides that "*recording device*" means a device that is installed by the manufacturer of a vehicle and does one or more of the following, for the purpose of retrieving data after an accident:

1. Records how fast and in which direction the motor vehicle is traveling.
2. Records a history of where the motor vehicle travels.
3. Records steering performance.

4. Records brake performance, including whether brakes were applied before an accident.
5. Records the driver's seatbelt status.
6. Has the ability to transmit information concerning an accident in which the motor vehicle has been involved to a central communications system when an accident occurs

(C) For the purposes of this paragraph, "*serious bodily injury*" has the same meaning as defined in **paragraph (4)** of **subdivision (f)** of **Section 243** of the **Penal Code**.

Note: **P.C. § 243(f)(4)** defines "*serious bodily injury*" as a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

Service of Process; Subpoenas:

Code of Civ. Proc. § 415.21 (Amended; AB 622): *Service of Process and/or Subpoenas at Gated Communities and Locked Multifamily Dwellings*:

A "*covered multifamily dwelling*" is added to those places (i.e., gated communities) where the occupant must grant access to a specified person for a reasonable period of time for the purpose of serving a subpoena or performing lawful service of process.

A "*specified person*" includes an investigator employed by a district attorney, public defender, county counsel, city attorney, or the Attorney General must be granted access under this section, as well as a representative of a county sheriff or marshal, or a registered process server.

A "*covered multifamily dwelling*" is defined as either (1) an apartment building, including a timeshare apartment building not considered a place of public accommodation or transient lodging, with three or more dwelling units; or (2) a condominium, including a timeshare condominium not considered a place of public accommodation or transient lodging, with four or more dwelling units.

Sex Offenses:

Pen. Code § 266 (Amended; AB 662): *Procurement for Sexual Purposes*:

The felony crime of procurement for sexual purposes is expanded by making it applicable to male victims and by deleting the requirement that the victim be unmarried and of previous chaste character. It now reads as follow:

"A person who inveigles or entices a person under 18 years of age into a house of ill fame, or of assignation, or elsewhere, for the purpose of prostitution, or to have illicit carnal connection with another person, and a person who aids or assists in that inveiglement or enticement, and a person who, by any false pretenses, false representation, or other fraudulent means, procures a person to have illicit carnal connection with another person, . . ."

Punishment: *Felony*; "punishable by imprisonment in the state prison, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars ($2,000), or by both that fine and imprisonment."

Pen. Code § 286.5 (Amended; AB 611) *Bestiality*:

The misdemeanor crime of sexually assaulting an animal for the purpose of arousing or gratifying the sexual desire of the person has been *greatly* expanded to read as follows:

(a) Every person who has sexual contact with an animal is guilty of a misdemeanor.

(b) This section does not apply to any lawful and accepted practice related to veterinary medicine performed by a licensed veterinarian or a certified veterinary technician under the guidance of a licensed veterinarian, any artificial insemination of animals for reproductive purposes, any accepted animal husbandry practices such as raising, breeding, or assisting with the birthing process of animals or any other practice that provides care for an animal, or to any generally accepted practices related to the judging of breed conformation.

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

(1) "*Animal*" means any nonhuman creature, whether alive or dead.

(2) "*Sexual contact*" means any act, committed for the purpose of sexual arousal or gratification, abuse, or financial gain, between a person and an animal involving contact between the sex organs or anus of one and the mouth, sex organs, or anus of the other, or, without a bona fide veterinary or animal husbandry purpose, the insertion, however slight, of any part of the body of a person or any object into the vaginal or anal opening of an animal, or the insertion of any part of the body of an animal into the vaginal or anal opening of a person.

(d)

(1) Any authorized officer investigating a violation of this section may seize an animal that has been used in the commission of an offense to protect the health or safety of the animal or the health or safety of others, and to obtain evidence of the offense.

(2) Any animal seized pursuant to this subdivision shall be promptly taken to a shelter facility or veterinary clinic to be examined by a veterinarian for evidence of sexual contact.

(3) Upon the conviction of a person charged with a violation of this section, all animals lawfully seized and impounded with respect to the violation shall be adjudged by the court to be forfeited and shall thereupon be transferred to the impounding officer or appropriate public entity for proper adoption or other disposition. A person convicted of a violation of this section shall be personally liable to the seizing agency for all costs of impoundment from the time of seizure to the time of proper disposition. Upon conviction, the court shall order the convicted person to make payment to the appropriate public entity for the costs incurred in the housing, care, feeding, and treatment of the seized or impounded animals. Each person convicted in connection with a particular animal may be held jointly and severally liable for restitution for that particular animal. The payment shall be in addition to any other fine or sentence ordered by the court.

(4) Except as otherwise specified in this section, if an animal is seized pursuant to **paragraph (1)**, the disposition, care, or the responsibility for the financial cost of animals seized shall be in accordance with the provisions of **Section 597.1**.

Note: This bill also amends **P.C. § 597.9(a)** to add this offense to the list of crimes for which a convicted person is prohibited from owning or possessing an animal within five years of the conviction. A violation of **P.C. § 597.9(a)** is an *infraction* ($1,000 fine).

Spoofing:

Public Util. Code § 2893.2 (New; AB 1132): *False Government Information Used in a Caller Identification System*:

A caller (via telephone) is prohibited from entering, or causing to be entered, false government information into a caller identification system with the intent to mislead, cause harm, deceive, or defraud the recipient of the call.

A person or entity is also prohibited from making a call knowing that false government information was entered into the caller identification system, with the intent to mislead, cause harm, deceive, or defraud the recipient of the call.

The above prohibitions do *not* apply to the following:

1. The blocking of caller identification information;
2. Any local, state, or federal law enforcement agency;
3. Any intelligence or security agency of the federal government; *or*
4. A telecommunications, broadband, or interconnected VoIP service provider that is acting solely as an intermediary for the transmission of telecommunications service between the caller and the recipient.

Punishment: A civil penalty of up to $10,000 for each violation in a suit brought by a district attorney, city attorney, or the Attorney General.

If it is determined that a violation of **Public Util. Code §§ 2871–2876** (i.e., automatic dialing-announcing device violations) may have occurred, the Public Utilities Commission is required to notify both the district attorney of the county where the call was received and the Attorney General.

Any person or entity committing a violation of this section may be enjoined in any court of competent jurisdiction.

Note: According to the legislative history, this bill targets callers and entities that "*spoof*" the phone numbers of government entities so that the caller believes he or she is receiving a call from a legitimate government entity. The Uncodified Section One of this bill contains the Legislature's findings and declarations, including the following:

1. "*Spoofing*" refers to the practice of using fake caller identification information to disguise the caller's identity from the recipient of the call.

2. A particularly pernicious form of spoofing is the use of caller identification information that presents the caller as being from the government.

3. Consistent with the federal **Truth in Caller ID Act of 2009**, California may regulate harmful spoofing that misrepresents the caller as being from the government.

Public Util. Code § 2893.5 (New; SB 208): *The Consumer Call Protection Act of 2019*:

On or before *January 1, 2021*, all telecommunications service providers are required to implement "*Secure Telephony Identity Revisited*" (*STIR*) and "*Secure*

Handling of Asserted Information," using "*toKENs*" (*SHAKEN*) protocols or alternative technology that provides comparable or superior capability to verify and authenticate caller identification for calls carried over an Internet protocol network.

The Public Utilities Commission and the Attorney General are to take all appropriate actions to enforce this section and any regulation promulgated under it.

A good faith effort to comply with these requirements shall be a defense to a **B&P § 17200** action (unlawful, unfair, or fraudulent business practice).

Note: According to the legislative history of this bill, the Federal Communications Commission (FCC) has urged the adoption of industry-accepted "*SHAKEN/STIR*" standards to authenticate calls and prevent fraud whereby unscrupulous persons or entities engage in caller ID spoofing and illegal robocalls. With caller ID spoofing, the caller deliberately transmits fake caller ID information to the recipient's caller ID display in order to disguise the caller's identity and/or to make the recipient believe the call is local. According to the author of this bill, robocalls are the top consumer complaint in the United States.

Theft:

Pen. Code § 487k (New; SB 224): *Theft of Agricultural Equipment*:

A person who steals, takes, or carries away tractors, all-terrain vehicles, or other agricultural equipment, or any portion thereof, used in the acquisition or production of food for public consumption, which are of a value exceeding nine hundred fifty dollars ($950), is guilty of grand theft.

Punishment: Felony (wobbler): 16 months, two years, or three years in jail pursuant to **P.C. § 1170(h)**, or by up to one year in jail. (P.C. § 489(c))

Tobacco Products and Smoking:

Bus. & Prof. Code § 22963 (Amended; SB 39): *The Stop Tobacco Access To Kids Enforcement Act* (*the STAKE Act*):

The section is amended to require that tobacco products delivered via the U.S. Postal Service or through any other public or private delivery service be done so *only* in a container that is conspicuously labeled as follow:

> "CONTAINS TOBACCO PRODUCTS: SIGNATURE OF PERSON 21 YEARS OF AGE OR OLDER IS REQUIRED FOR DELIVERY."

As amended, delivery of a tobacco product requires the signature of a person age *21 years of age* or older before delivery is completed.

Penalty: District attorneys, city attorneys, or the California Attorney General may assess civil penalties of between $1,000 and $10,000 for a violation. The amount of the penalty depends on whether the violation is a first, second, third, fourth, or fifth violation.

Note: the "STAKE Act" in its entirety is in **B&P §§ 22950** through **22964**,

Public Resource Code § 5008.10 (New; SB 8): *Smoking at State Beaches or Parks*:

It is an infraction to:

1. Smoke on a state beach or in a unit of the state park system (does not apply to paved roadways or parking facilities).

2. Dispose of a used cigar or cigarette waste on a state beach or in a state park system unless the disposal is made in an appropriate waste receptacle.

Punishment: $25 fine.

Signs prohibiting the above must be posted at strategic locations before the above is enforceable.

"*Smoking*" includes electronic smoking devices that create an aerosol or vapor, or the use of any oral smoking device for the purpose of circumventing a prohibition on smoking.

A "*unit of the state park system*" includes an area specified in **Public Res. Code § 5002**.

> **Public Res. Code § 5002** provides as follows: "All parks, public camp grounds, monument sites, landmark sites, and sites of historical interest established or acquired by the State, or which are under its control, constitute the State Park System *except* the sites and grounds known as the State Fair Grounds in the City of Sacramento, and Balboa Park in the City of San Diego."

Vehicle Code Violations:

Veh. Code § 1680 (New; AB 317): *Selling DMV Appointments*:

It is an infraction to sell, or offer to sell, an appointment with the Department of Motor Vehicles (DMV).

"*Appointment*" is defined as an arrangement to receive a government service at a specified time.

Note: *Per CDAA*, unscrupulous individuals have apparently been making DMV appointments under false names and birthdates and then canceling the appointments, later rebooking the canceled appointment under a customer's name and birthdate, all for a fee. *Per my own opinion*, it appears that the DMV is very jealous of its power to rip off the public and make you wait an exorbitant amount of time in the lines at DMV.

Veh. Code § 10855 (Amended; AB 391): *Embezzled Vehicles*:

The amount of time that must pass after a rented or leased vehicle is not returned to its owner, for the person who rented or leased the vehicle to be presumed to have embezzled the vehicle, is reduced from *five days* to *72 hours*.

An owner (e.g., a rental company) is also authorized to report at any time that a rented or leased vehicle is stolen, even before the rental or lease period has expired, when the owner discovers that the vehicle was procured by fraud.

The lease or rental agreement is required to disclose that the failure to return the vehicle within 72 hours of the expiration of the lease or rental period may result in the vehicle being reported stolen, and to state that the renter/lessee must provide a method for the owner to contact him or her.

This reduction in the required time period is in effect until *January 1, 2024*, at which time (unless renewed) the statute will go back to the five-day time period.

Note also **V.C. § 10500** (Amended; AB 391), which makes a corresponding shortening of time that must pass (i.e., from five days to 72 hours) before a peace officer is required to report a missing rented or leased vehicle to the DOJ Stolen Vehicle System.

Veh. Code § 21761 (New; AB 2115): *Passing Waste Service Vehicles*:

New section adds "*waste service vehicles*" (when the truck's amber lights are flashing) to those vehicles (i.e., a stationary emergency vehicle or tow truck that is flashing amber warning lights, per **V.C. § 21809**) that require the driver of another motor vehicle to change lanes and slow down when passing, requiring said driver to move into an available adjacent lane at a safe distance when passing, or, if a lane change is unsafe or not practical, slow down to a reasonable and prudent speed.

Punishment: Infraction, per **V.C. § 40000.1**.

Veh. Code § 23229 (Amended; AB 1810): *Cannabis and Cannabis Products in Vehicles for Hire*:

> The portion of this statute that *exempts* a person riding in a bus, taxicab, limousine, housecar or camper, or pedicab as a *passenger* (i.e., other than the driver) from the prohibition for drinking alcohol or consuming any cannabis or cannabis product in a vehicle, has been amended, deleting the reference to cannabis. The exemption, therefore, no longer applies to persons smoking or consuming cannabis or cannabis products.
>
> *Note*: See **V.C. §§ 23220**, **23221**, and **23222**, making it illegal for drivers *and* passengers to use marijuana in vehicles.

Veh. Code § 40610 (Amended; SB 112; Effective Sept. 27, 2019): *Fix-It Tickets for Exhaust System Noise Violations*:

> A person who is arrested or cited for a violation of vehicle exhaust system noise standards may fix the noise violation and provide proof of correction, unless the violation involves modifying the exhaust system of a motorcycle.
>
> *Note*: Previously, a "*fix-it ticket*" was prohibited for a noise violation for *any* type of motor vehicle (**V.C. § 27150(a)**). A person was prohibited from modifying the exhaust system of any motor vehicle in order to increase noise (**V.C. § 27151(a)**). Now an exhaust system noise fix-it ticket is prohibited only for **V.C. § 27151(a)** exhaust system modification violations relating to motorcycles.

Veterans:

Pen. Code § 4001.2 (New; AB 2568): *Veteran Detainees*:

> **(a)** Each county jail shall, upon detention of a person, ask if the person has served in the United States military and document the person's response.
>
> **(b)** The county jail shall make this information available to the person, his or her counsel, and the district attorney.
>
> **(c)** This section shall become operative on January 1, 2020.
>
> *Note*: Per CDAA, the purpose of this bill is to help veterans take advantage of resources and programs for veterans within the criminal justice system, such as veteran treatment courts, military diversion (e.g., **P.C. §1001.80**), and **P.C. § 1170.9** (Amended; Alternate Commitment for Veterans. See below).

Pen. Code § 1170.9 (Amended; AB 991) *Alternate Commitment for Veterans with Trauma, PTSD, and/or Mental Health Problems*:

(a) In the case of any person convicted of a criminal offense who could otherwise be sentenced to county jail or state prison and who alleges that the person committed the offense as a result of sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems stemming from service in the United States military, the court shall, prior to sentencing, make a determination as to whether the defendant was, or currently is, a member of the United States military and whether the defendant may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of the person's service. The court may request, through existing resources, an assessment to aid in that determination.

(b)

(1) If the court concludes that a defendant convicted of a criminal offense is a person described in **subdivision (a)**, and if the defendant is otherwise eligible for probation, the court shall consider the circumstances described in **subdivision (a)** as a factor in favor of granting probation.

(2) If the court places the defendant on probation, the court may order the defendant into a local, state, federal, or private nonprofit treatment program for a period not to exceed that period which the defendant would have served in state prison or county jail, provided the defendant agrees to participate in the program and the court determines that an appropriate treatment program exists.

(c) If a referral is made to the county mental health authority, the county shall be obligated to provide mental health treatment services only to the extent that resources are available for that purpose, as described in **paragraph (5)** of **subdivision (b)** of **Section 5600.3** of the **Welfare and Institutions Code**. If mental health treatment services are ordered by the court, the county mental health agency shall coordinate appropriate referral of the defendant to the county veterans service officer, as described in **paragraph (5)** of **subdivision (b)** of **Section 5600.3** of the **Welfare and Institutions Code**. The county mental health agency shall not be responsible for providing services outside its traditional scope of services. An order shall be made referring a defendant to a county mental health agency only if that agency has agreed to accept responsibility for the treatment of the defendant.

(d) When determining the "*needs of the defendant*," for purposes of **Section 1202.7**, the court shall consider the fact that the defendant is a person described in **subdivision (a)** in assessing whether the defendant should be placed on probation and ordered into a federal or community-based treatment service program with a

demonstrated history of specializing in the treatment of mental health problems, including substance abuse, post-traumatic stress disorder, traumatic brain injury, military sexual trauma, and other related mental health problems.

> *Note*: **P.C. § 1202.7** deals with the Legislature's findings and declarations concerning the importance of probation.

(e) A defendant granted probation under this section and committed to a residential treatment program shall earn sentence credits for the actual time the defendant serves in residential treatment.

(f) The court, in making an order under this section to commit a defendant to an established treatment program, shall give preference to a treatment program that has a history of successfully treating veterans who suffer from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of that service, including, but not limited to, programs operated by the United States Department of Defense or the United States Department of Veterans Affairs.

(g) The court and the assigned treatment program may collaborate with the Department of Veterans Affairs and the United States Department of Veterans Affairs to maximize benefits and services provided to the veteran.

(h)

(1) It is in the interests of justice to restore a defendant who acquired a criminal record due to a mental health disorder stemming from service in the United States military to the community of law abiding citizens. The restorative provisions of this subdivision apply to cases in which a trial court or a court monitoring the defendant's performance of probation pursuant to this section finds at a public hearing, held after not less than 15 days' notice to the prosecution, the defense, and any victim of the offense, that all of the following describe the defendant:

(A) The defendant was granted probation and was at the time that probation was granted a person described in subdivision (a).

(B) The defendant is in substantial compliance with the conditions of that probation.

(C) The defendant has successfully participated in court-ordered treatment and services to address the sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems stemming from military service.

(D) The defendant does not represent a danger to the health and safety of others.

(E) The defendant has demonstrated significant benefit from court-ordered education, treatment, or rehabilitation to clearly show that granting restorative relief pursuant to this subdivision would be in the interests of justice.

(2) When determining whether granting restorative relief pursuant to this subdivision is in the interests of justice, the court may consider, among other factors, all of the following:

(A) The defendant's completion and degree of participation in education, treatment, and rehabilitation as ordered by the court.

(B) The defendant's progress in formal education.

(C) The defendant's development of career potential.

(D) The defendant's leadership and personal responsibility efforts.

(E) The defendant's contribution of service in support of the community.

(3) If the court finds that a case satisfies each of the requirements described in **paragraph (1)**, then the court may take any of the following actions by a written order setting forth the reasons for so doing:

(A) Deem all conditions of probation to be satisfied, including fines, fees, assessments, and programs, and terminate probation prior to the expiration of the term of probation. This subparagraph does not apply to any court-ordered victim restitution.

(B) Reduce an eligible felony to a misdemeanor pursuant to **subdivision (b)** of **Section 17**.

(C) Grant relief in accordance with **Section 1203.4**.

(4) Notwithstanding anything to the contrary in **Section 1203.4**, a dismissal of the action pursuant to this subdivision has the following effect:

(A) Except as otherwise provided in this paragraph, a dismissal of the action pursuant to this subdivision releases the defendant from all penalties and disabilities resulting from the offense of which the defendant has been convicted in the dismissed action.

(B) A dismissal pursuant to this subdivision does not apply to any of the following:

(i) A conviction pursuant to **subdivision (c)** of **Section 42002.1** of the **Vehicle Code**.

(ii) A felony conviction pursuant to **subdivision (d)** of **Section 261.5**.

(iii) A conviction pursuant to **subdivision (c)** of **Section 286**.

(iv) A conviction pursuant to **Section 288**.

(v) A conviction pursuant to **subdivision (c)** of **Section 287** or **former Section 288a**.

(vi) A conviction pursuant to **Section 288.5**.

(vii) A conviction pursuant to **subdivision (j)** of **Section 289**.

(viii) The requirement to register pursuant to **Section 290**.

(C) The defendant is not obligated to disclose the arrest on the dismissed action, the dismissed action, or the conviction that was set aside when information concerning prior arrests or convictions is requested to be given under oath, affirmation, or otherwise. The defendant may indicate that the defendant has not been arrested when the defendant's only arrest concerns the dismissed action, except when the defendant is required to disclose the arrest, the conviction that was set aside, and the dismissed action in response to any direct question contained in any questionnaire or application for any law enforcement position.

(D) A dismissal pursuant to this subdivision may, in the discretion of the court, order the sealing of police records of the arrest and court records of the dismissed action, thereafter viewable by the public only in accordance with a court order.

(E) The dismissal of the action pursuant to this subdivision is a bar to any future action based on the conduct charged in the dismissed action.

(F) In any subsequent prosecution for any other offense, a conviction that was set aside in the dismissed action may be

pleaded and proved as a prior conviction and has the same effect as if the dismissal pursuant to this subdivision had not been granted.

(G) A conviction that was set aside in the dismissed action may be considered a conviction for the purpose of administratively revoking or suspending or otherwise limiting the defendant's driving privilege on the ground of two or more convictions.

(H) The defendant's DNA sample and profile in the DNA data bank shall not be removed by a dismissal pursuant to this subdivision.

(I) Dismissal of an accusation, information, or conviction pursuant to this section does not authorize a defendant to own, possess, or have in the defendant's custody or control any firearm or prevent the defendant's conviction pursuant to **Chapter 2** (commencing with **Section 29800)** of **Division 9** of **Title 4** of **Part 6**.

Victims and Witnesses:

Pen. Code § 859.7 (New; SB 923) *Eyewitness Photo and Live Lineup Identification Procedures*:

A statewide standard for eyewitness identification practices requires all law enforcement agencies and prosecutorial entities to adopt by *January 1, 2020*, its own departmental regulations for conducting photo lineups and live lineups with eyewitnesses and by specifying the minimum standards for those regulations. The statute provides that this new section does not affect policies for field show up procedures.

Minimum Requirements: The following are the minimum requirements for eyewitness identifications:

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.

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.

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.

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.

Relevant Evidence: The new section specifically provides that 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 United States Constitution."

Note: Per CDAA, there is no authority in this section for a court to suppress an identification based solely on the failure to follow these minimum regulations. And even if the statute contained a suppression mechanism, it would not be effective, because the bill did not receive a 2/3 vote in either the Assembly or the Senate. The Assembly vote was 50 for, 21 against, and 9 not voting. The Senate vote was 21 for, 8 against, and 11 not voting. A two-thirds vote in the Assembly requires 54 votes and a two-thirds vote in the Senate requires 27. California Constitution **Article I**, **Section 28(f)(2)** ("Right to "Truth-in-Evidence," a part of 1982's **Proposition 8**) provides that relevant evidence shall not be excluded in any criminal proceeding or in any trial or hearing of a juvenile for a criminal offense, except where two-thirds of the members of both houses of the Legislature enact a statute to provide for exclusion. In ***In re Lance W.*** (1985) 37 Cal.3d 873, the California Supreme Court interpreted this part of **Prop. 8** and held that evidence cannot be excluded based on a violation of California law where it is admissible under federal law.