

The California Legal Update

New and Amended Statutes Edition

Remember 9/11/2001; Support Our Troops

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THIS EDITION’S WORDS OF WISDOM:

“A pessimist sees difficulty in every opportunity. An optimist sees opportunity in every difficulty.” (Winston Churchill)

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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 2013. Only those statutes believed to be of interest to most law enforcement officers, with the concerns of prosecutors in mind, are included. Sentencing rules (*of which there are many*), typically covered better in other publications, have been avoided except when important to a new or amended offense. Mere changes in the potential sentence for an offense are also not included unless the offense’s classification is also affected (e.g., misdemeanor to felony). Rewritten statutes, constituting cosmetic changes only without any substantive changes to the elements of a crime have been avoided. 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. 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, 2014, unless otherwise indicated.

Sentencing: While I’ve ignored sentencing changes when that’s the only amendment to a statute, I have tried to include most of the potential sentences, if applicable, for the provisions that are otherwise covered. References to **P.C. § 1170(h)** indicate a felony sentence that can be served in a local county jail pursuant to California’s realignment sentencing scheme.

NEW AND AMENDED STATUTES:

Animals:

Pen. Code §§ 487 & 487a (Amended): *Theft of Animals:*

The theft of specified animals has been moved from **P.C. § 487(d)(1)** to a new **subd. (a)** in **P.C. § 487a**, relettering the remainder of **section 487a**; i.e., **subds. (a)** and **(b)** to **(b)** and **(c)**, respectively.

P.C. § 487a(a):

- (1) Feloniously stealing, taking, carrying, leading, or driving away a horse, mare, gelding, bovine animal, caprine animal, mule, jack, jenny, sheep, lamb, hog, sow, boar, gilt, barrow, or pig, which is the personal property of another (previously in **P.C. 487(d)(1)**);
- (2) Fraudulently appropriating any of the above property that has been entrusted to the perpetrator;
- (3) Knowingly and designedly, by any false or fraudulent representation or pretense, defrauding another person of any of the above property;
- (4) Causing or procuring another person to report falsely of one's wealth or mercantile character and by thus imposing upon any person, obtaining credit and thereby fraudulently getting or obtaining possession of any of the above property.

Punishment: Felony (wobbler); 16 months, 2 or 3 years per **P.C. § 1170(h)**, or one year in county jail and/or a \$5,000 fine (per **P.C. § 489**).

Note: Per **P.C. § 186.2** (Amended), **P.C. § 487a** has been added to the list of offenses that constitute “*criminal profiteering activity*.”

See also “*Hunting*,” below.

Arrest Warrants:

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

A peace officer's oath in support of an arrest warrant may be made by telephone and computer server, in addition to the already-existing

authority to make such an oath in writing, by telephone and facsimile, by telephone and electronic mail, or by recording and transcription.

The signature of a magistrate on an arrest warrant may also be digital or electronic.

Controlled Substances:

H&S Code § 11352 (Amended): *Transporting a Controlled Substance:*

The section is amended to add that “*transports*” means to transport for sale. Also added is the following: “This section does not preclude or limit the prosecution of an individual for aiding and abetting the commission of, or conspiring to commit, any act prohibited by this section.”

H&S Code § 11379 (Amended): *Transporting Methamphetamine for Sale:*

The section dealing with the transportation of a control substance such as methamphetamine is amended to add that “*transports*” means to transport for sale. As amended, the section also provides that, “Nothing in this section is intended to preclude or limit prosecution under an aiding and abetting theory or a conspiracy theory.”

Detentions:

Pen. Code § 145.5 (New): *Indefinite Detentions Pursuant to Federal Law:*

It is the policy of California to refuse to provide material support for, or to participate in any way with, the implementation of any federal law that authorizes the indefinite detention of a person within California without charge or trial.

State agencies, state employees, and the California National Guard are prohibited from knowingly aiding an agency of the United States Armed Forces in an investigation, prosecution, or detention of a person within California pursuant to the indefinite detention provisions of the **National Defense Authorization Act**, the federal law known as the **Authorization for Use of Military Force**, or any other federal law if the state agency, employee, or member of the Guard would violate the U.S. Constitution, the California Constitution, or any California law by providing aid.

A local law enforcement agency, a local government, or an employee of a local agency or government, is prohibited from using state funds allocated by the state to a local entity on or after January 1, 2013, to engage in any activity that aids an agency of the United States Armed Forces in the detention of a person within California for purposes of implementing the

indefinite detention provisions of the **National Defense Authorization Act** or the federal law known as the **Authorization for Use of Military Force**, if the local agency, local government, or employee would violate the U.S. Constitution, the California Constitution, or any California law by providing aid.

Disorderly Conduct:

Pen. Code § 647 (Amended; Effective 10/1/2013): *Photographing Intimate Body Parts*:

Subd. (j)(4) (New): Photographing or recording the image of an intimate body part of another identifiable person under circumstances where the parties agreed or understood that the image would remain private, and the defendant subsequently distributes the image with the intent to cause serious emotional distress, and the depicted person suffers serious emotional distress, is prohibited.

“*Intimate Body Part*” is defined as any portion of the genitals, including any portion of a female’s breasts below the top of the areola, that is either uncovered or visible through less than fully opaque clothing.

Punishment: Misdemeanor; six months in county jail and/or a fine of \$1,000 (first offense). One year in county jail and/or a \$2,000 fine where the victim is a minor, or for a second or subsequent violation (per **P.C. § 647(l)**).

Domestic Violence:

Civ. Code § 1946.7 (Amended): *Lease Termination by Specified Victims*:

“*Human trafficking*” victims are added to those victims (domestic violence, sexual assault, stalking, and elder abuse) who may terminate their residential leases without liability.

The notice to terminate may include documentation from a qualified professional that the tenant is seeking assistance for physical or mental injuries or abuse resulting from domestic violence, sexual assault, stalking, human trafficking, or elder abuse.

Qualified professionals include sexual assault counselors, domestic violence counselors, human trafficking caseworkers, physicians, nurses, psychologists, psychiatrists, and therapists.

A landlord is prohibited from disclosing information provided by a tenant to a third party unless the tenant consents in writing or the disclosure is required by law or court order.

Code of Civ. Proc. § 527.6 (Amended; Effective 7/1/2014): *Harassment Injunctions*:

The maximum duration of an injunction prohibiting harassment will be increased from three to five years, effective 7/1/2014. A renewed injunction, without having to show any further harassment will also be increased from three to five years. If the duration of an injunction is not specified in the order, then it is good for only three years.

Code of Civ. Proc. § 1161.3 (Amended): *Residential Tenancy of Specified Victims*:

“*Human trafficking*” is added to the list of crimes (domestic violence, sexual assault, stalking, elder abuse) for which a landlord is prohibited (with some exceptions) from terminating or failing to renew the tenancy of a victim of any of these crimes.

Fam. Code § 6271 (Amended): *Emergency Protective Orders*:

Among the duties of a law enforcement officer upon requesting an emergency protective order (i.e., to serve the restrained person if possible, give a copy to the protected person, and file a copy with the court), an officer is to have the order entered into the computer database system for protective and restraining orders maintained by the Dept. of Justice (DOJ).

Note: **Fam. C. § 6273**, requiring a law enforcement officer who requests an emergency protective order to carry copies of the order while on duty, is repealed, in that the order will be in DOJ’s computer database.

Note: See also **P.C. § 646.91** (Amended), below.

Fam. Code §6320 (Amended; Effective 7/1/2014): *Enjoined Conduct in an Ex Parte Domestic Violence Order*:

To the list of specified conduct a court is authorized to enjoin in an ex parte domestic violence order is added (1) credibly impersonating another person as described in **P.C. § 528.5**, and (2) falsely personating another person as described in **P.C. § 529**.

P.C. § 528.5 is the misdemeanor crime of credibly impersonating another actual person on the Internet or by other electronic means

for purposes of harming, intimidating, threatening, or defrauding another.

P.C. § 529 is the felony/misdemeanor crime of falsely personating another and doing a specified act in that assumed character.

Fam. Code § 6325.5 (New; Effective 7/1/2014): *Ex Parte Restraining Orders and Insurance Coverage:*

A court may issue an ex parte order restraining any party from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage held for the benefit of both parties or their children, if any, for whom support may be ordered.

Fam. Code § 6383 (Amended; Effective 7/1/2014): *Restraining and Protective Orders, Order of Enforcement:*

Amendment to the section specifies the order of enforcement of the listed protective or restraining orders:

If there is more than one protective or restraining order issued in a domestic violence case and one of the orders is an emergency protective order that has precedence in enforcement pursuant to **P.C. § 136.2(c)(1)**, a peace officer must enforce the emergency protective order.

Note: **P.C. 136.2(c)(1)** provides that an emergency protective order issued pursuant to **P.C. § 646.91** (stalking) or pursuant to **Fam. Code §§. 6250–6257** (ex parte emergency domestic violence protective orders) has precedence in enforcement over any other restraining or protective order if the emergency order: (1) protects one or more persons who are already protected under another restraining or protective order; *and* (2) restrains the same person who is restrained in the other order; *and* (3) has provisions that are more restrictive than the provisions of the other order.

If there is more than one protective or restraining order, and none of the orders is an emergency protective order and one of the orders is a no-contact order as described in **Fam. Code § 6320**, a peace officer must enforce the no-contact order.

Note: **Fam. C. § 6320** authorizes a court to issue an ex parte order enjoining a person from various types of conduct, including contacting, striking, threatening, harassing, and telephoning.

If there is more than one civil order regarding the same parties and none of the orders is an emergency protective order or a no-contact order, a peace officer must enforce the order issued last.

If there are both civil and criminal orders regarding the same parties and none of the orders is an emergency protective order or a no-contact order, a peace officer must enforce the criminal order issued last.

Lab. Code §§ 230 & 230.1 (Amended): *Domestic Violence, Sexual Assault and Stalking in the Work Place:*

“*Stalking*” is added to these two sections that prohibit an employer from discharging, discriminating against, or retaliating against an employee who is the victim of domestic violence or sexual assault (and now, stalking) because the employee had to take time off from work to obtain a restraining order, seek medical attention, obtain services from a shelter or crisis center, obtain psychological counseling, or participate in safety planning.

Section 230, Subd. (e) (New): An employer is prohibited from discharging, or discriminating or retaliating against an employee because of the employee’s status as a victim of domestic violence, sexual assault, or stalking, if the victim provides notice to the employer of the status or the employer has actual knowledge.

Section 230, Subd. (f) (New): An employer is required to provide reasonable accommodations to victims of domestic violence, sexual assault, or stalking who request an accommodation for safety purposes while at work. Provides that reasonable accommodation may include a modified schedule, change of telephone number, changed work station, installation of a lock, or assistance in documenting domestic violence, sexual assault, or stalking that occurs in the workplace.

Note: Other provisions prohibit an employer from discharging, discriminating, or retaliating against an employee for taking time off from work to serve as a juror or to appear in court pursuant to a subpoena.

Punishment: Misdemeanor; 6 months in county jail and/or \$1,000 fine. Mandatory reinstatement and reimbursement of lost wages and work benefits for the victim. Equitable relief for the victim.

Pen. Code § 136.1 (Amended; Effective 7/1/2014): *No Contact Orders:*

Subd. (c)(2) (New) provides that a no-contact order, as described in **Fam. Code § 6320**, has precedence in enforcement over any other restraining or

protective order, except an emergency protective order described in **P.C. § 136.2(c)(1)**.

Note: **Fam. Code § 6320** authorizes a court to issue an ex parte order enjoining a person from various types of conduct, including contacting, striking, threatening, harassing, and telephoning. **P.C. § 136.2(c)(1)** provides that an emergency protective order issued pursuant to **P.C. § 646.91** (stalking) or pursuant to **Fam. Code §§ 6250–6257** (ex parte emergency domestic violence protective orders) has precedence in enforcement over any other restraining or protective order if the emergency order: (1) protects one or more persons who are already protected under another restraining or protective order; (2) restrains the same person who is restrained in the other order; and (3) has provisions that are more restrictive than the provisions of the other order.

Pen. Code § 136.2 (Amended): *No Contact Orders; Sex Offenses:*

P.C. §§ **261**(rape), **261.5** (unlawful sexual intercourse), **262** (spousal rape), and any crime that requires registration pursuant to **P.C. § 290(c)**, are added to the list of crimes (domestic violence) for which the court is authorized at the time of sentencing to issue a no-contact order for up to *10 years*, regardless of the sentence imposed.

Pen. Code § 166 (Amended): *Protective Orders:*

Subd. (c)(1) (Relating to a willful and knowing violation of a protective order or stay-away court order) has been expanded to include:

- (1) An order issued pursuant to **P.C. § 136.2** (see above);
- (2) An order issued pursuant to **P.C. § 1203.097(a)(2)** (a criminal court protective order protecting the victim from further acts of violence, threats, stalking, sexual abuse, and harassment, and including a residence exclusion or stay-away condition if appropriate); *and*
- (3) An order issued pursuant to **P.C. § 1201.3** (an order issued in a criminal or juvenile case involving a minor victim of sexual assault for up to 10 years prohibiting harassing, intimidating, or threatening the victim or victim’s family member).

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

Pen. Code § 273.5 (Amended): *Spousal Abuse:*

The willful infliction of a corporal injury that results in a traumatic condition upon listed individuals (spouse, former spouse, cohabitant,

former cohabitant, mother/father of the offender's child) has been expanded to include as a victim the defendant's fiancé, fiancée, and someone with whom the offender has, or previously had, an engagement or dating relationship.

Pen. Code § 646.91 (Amended): *Emergency Protective Orders:*

Among the duties of a law enforcement officer upon requesting an emergency protective order (i.e., to serve the restrained person if possible, give a copy to the protected person, and file a copy with the court), an officer is to have the order entered into the computer database system for protective and restraining orders maintained by the Dept. of Justice (DOJ).

Note: **Subd. (k)**, requiring a law enforcement officer who requests an emergency protective order to carry copies of the order while on duty, is repealed, in that the order will be in DOJ's computer database.

Note: See also **Fam. Code § 6271**, above.

Pen. Code § 29825 (Amended): *Protective Orders and Firearms Prohibitions:*

A notice relative to firearms possession or ownership must appear on all protective orders to the effect that the person subject to a protective order may transfer his or her firearm(s) to a licensed firearms dealer pursuant to **P.C. § 29830** (New; see below) for storage during the period of the firearms prohibition.

Firearms:

Fish & Game Code § 3004.5 (Amended): *Hunting and Non-Lead Ammunition:*

The use of non-lead ammunition is to be phased in by the Dept. of Fish & Game to where by July 1, 2019, it will be required when taking *all* wildlife, including game mammals, game birds, non-game birds, and non-game mammals, with any firearm.

Note: Currently, non-lead ammunition is required only in the taking of big game and coyotes.

Pen. Code § 1170.9 (Amended): *Convicted Felons in Possession of a Firearm:*

The section is amended to clarify that the dismissal of an accusation, information, or conviction pursuant to this section (i.e., following the successful completion of probation and treatment for a current or former member of the U.S. military who commits an offense as a result of sexual

trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems stemming from military service) does *not* authorize a defendant to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction for firearms offenses in **P.C. §§ 29800– 29875** (e.g., the crimes of a prohibited person, such as a convicted felon purchasing, receiving, or possessing a firearm).

Pen. Code § 16535 (New): *Firearms Safety Certificate*:

A “*firearm safety certificate*” is defined as a certificate issued by the Dept. of Justice pursuant to **P.C. §§ 31610–31700** or pursuant to former **P.C. §§ 12800–12809** (handgun safety certificate sections that were renumbered to **P.C. §§ 31610–31700** as of January 1, 2012).

Pen. Code § 16540 (Amended): *Firearm Safety Device*:

A reference to **P.C. § 25135** (New; *Storage of Firearms in a Residence Where a Prohibited Person also Resides*) is added to this section which defines a “*firearm safety device*” as a device other than a gun safe that locks and is designed to prevent children and unauthorized users from firing a firearm.

Pen. Code § 16850 (Amended): *Locked Container*

A reference to **P.C. § 25135** (New; *Storage of Firearms in a Residence Where a Prohibited Person also Resides*) is added to this section which defines “*locked container*” as a secure container that is fully enclosed and locked by a padlock, keylock, combination lock, or similar locking device. It is also noted that the utility or glove compartment of a motor vehicle is not a locked container.

Pen. Code § 16865 (New): *Long Guns*:

As used in **P.C. § 26860** (New), “*long gun*” means any firearm that is not a handgun or a machinegun.

Note: Beginning January 1, 2015, **P.C. § 26860** (New) will prohibit a firearms dealer from delivering a long gun unless the recipient performs a safe handling demonstration with the long gun

Pen. Code § 16970 (Amended): *Person, Defined, for Purposes of Assault Weapons and/or .50 BMG Rifles*:

As amended, for purposes of **P.C. §§ 30500–31115** generally (assault weapons and .50 BMG rifles), the term “*person*” means “*individual*” so that an entity or organization can no longer obtain an assault weapon or

.50 BMG rifle and share it among their members without each member undergoing a background check.

Note: Otherwise, the section continues to provide that for the crime of manufacturing, distributing, selling, transporting, giving, or lending an assault weapon or .50 BMG rifle, per **P.C. § 30600**, “*person*” means an individual, partnership, corporation, limited liability company, association, or any other group or entity, regardless of how it was created.

Pen. Code § 17060 (New): *Residence:*

A reference to **P.C. § 25135** (New; *Storage of Firearms in a Residence Where a Prohibited Person also Resides*) is added to this section, which defines “*residence*” as any structure intended or used for human habitation, including houses, condominiums, rooms, motels, hotels, time-shares, and recreational and other vehicles where human habitation occurs.

Pen. Code § 23510 (Amended): *Firearms:*

P.C. § 25135 (New; *Storage of Firearms in a Residence Where a Prohibited Person also Resides*) is added to the list of firearm offenses for which, even though the term “*any firearm*” is used, each firearm constitutes a distinct and separate offense.

Pen. Code § 25100 (Amended): *Criminal Storage of a Firearm:*

The first and second degree provisions of the section are expanded to include when the defendant knows that a person who is prohibited from possessing a firearm or deadly weapon is likely to gain access to the firearm, the person does obtain access, and the person causes death or great bodily injury (first degree), or causes any type of injury or carries the firearm to a public place or in violation of **P.C. § 417** (second degree).

Note: **P.C. § 417** is the crime of drawing or exhibiting a firearm or deadly weapon.

Punishment: First Degree: Felony (wobbler); 16 months, two or three years in state prison and/or \$10,000 fine, or one year in county jail and/or \$1,000 fine.

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

Subd. (c) (New): A new misdemeanor crime of Criminal Storage of a Firearm in the Third Degree is violated by keeping a loaded firearm within any premises under one’s control and negligently storing or leaving a

loaded firearm in a location where the defendant knows, or reasonably should know, that a child is likely to gain access to the firearm without the permission of a parent or legal guardian, unless reasonable action is taken by the defendant to secure the firearm against access by the child.

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

Pen. Code § 25135 (New): *Storage of Firearms in a Residence Where a Prohibited Person also Resides:*

It is a misdemeanor for a person age 18 years or older who owns, leases, rents, or legally occupies a residence, and who owns a firearm, to keep it in the residence when he or she knows or has reason to know that another person also residing therein is prohibited from possessing, receiving, owning, or purchasing a firearm, while failing to keep the firearm in the residence in a specified way; i.e., within a locked container, disabled by a firearm safety device, within a locked gun safe, within a locked trunk, locked with a locking device that renders the firearm inoperable, or when the firearm is carried on the person or within close enough proximity that the owner can readily retrieve and use the firearm as if carried on the person.

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

See also:

P.C. § 16520 (Amended): A “*firearm*” for purposes of this section does *not* include an unloaded antique firearm.

P.C. § 16540 (Amended): “*Firearm Safety Device*” defined.

P.C. § 16850 (Amended): “*Locked Container*” defined.

P.C. § 17060 (New): “*Residence*” defined.

P.C. § 23510 (Amended): Each firearm constitutes a distinct and separate offense.

Pen. Code § 25200 (Amended): *Access to a Firearm Within Any Premises:*

Subd. (a), making it a misdemeanor to keep a loaded or unloaded pistol, revolver, or other firearm capable of being concealed upon the person within any premises under one’s control where a child is likely to gain access, does gain access, and carries the firearm off-premises, is expanded to include when a person who is prohibited from possessing a firearm or deadly weapon, is likely to gain access to it, obtains access to the firearm, and carries it off-premises.

Punishment: Misdemeanor; one year in county jail and/or a \$1,000 fine.

Subd. (b), making it a misdemeanor to keep any loaded or unloaded firearm (of any type) within any premises under one's control where a child is likely to gain access, does gain access, and carries the firearm off-premises to a school or school event, is expanded to include to a person who is prohibited from possessing a firearm or deadly weapon, is likely to gain access to it, obtains access to the firearm, and carries it off-premises to a school or school event.

Punishment: Misdemeanor; one year in county jail and/or a \$5,000 fine.

Pen. Code § 26840 (Amended; Effective 1/1/2015): *Firearms Safety Certificate:*

Beginning January 1, 2015, firearms dealers are prohibited from delivering a firearm unless the person receiving the firearm presents to the dealer a valid firearm safety certificate.

Note: Beginning January 1, 2015, a safety certificate will be required for *all* firearms, and safety certificates will be referred to as "*firearm safety certificates*" instead of "*handgun safety certificates*." See also **P.C. §§ 27875** (Amended), **27880** (Amended), **27920** (Amended), & **27925**), all effective 1/1/2015.

Pen. Code § 26860 (New; Effective 1/1/2015): *Safe Handling Demonstration for Long Guns:*

Beginning January 1, 2015, firearms dealers are prohibited from delivering a long gun unless the recipient performs a safe handling demonstration with the long gun. The Dept. of Justice (DOJ) is to adopt regulations establishing a long gun safe handling demonstration that must include loading and unloading a long gun. The demonstration must be performed for a DOJ-certified instructor.

Pen. Code § 27540 (Amended; Effective 1/1/2015): *Firearms Safety Certificates:*

Beginning January 1, 2015, no firearm (thus including long guns) may be delivered unless the *purchaser, transferee, or person being loaned* the firearm presents a firearm safety certificate.

Pen. Code § 27620 (New): *Transfers of Firearms:*

A firearms transaction need *not* be handled through a licensed firearms dealer even if neither party holds a dealer's license, but only if the sale,

delivery, or transfer of a firearm is made by an authorized law enforcement representative and:

- (1) The sale, delivery, or transfer is made to a firearms wholesaler, or a manufacturer or importer of firearms or ammunition; *and*
- (2) The sale, delivery, or transfer is of a firearm not subject to surrender or destruction, not unclaimed, and not abandoned; *and*
- (3) A record of the sale, delivery, or transfer is entered into the Automated Firearms System (AFS) via the California Law Enforcement Telecommunications System (CLETS) within 10 days.

Note: See also **Pen. Code § 31835** (New) dealing with the lack of a need for a “*handgun safety certificate*” during the transfer of firearms under these circumstances.

Pen. Code § 29810 (Amended): *Notification of a Firearms Prohibition:*

If a prohibition against owning, possessing, controlling, purchasing, or receiving a firearm has an expiration date (i.e., is limited to a specific time period), the Dept. of Justice form regarding the firearms prohibition that a court is required to give a defendant at the time of judgment must inform the defendant that he/she may elect to transfer his or her firearms(s) to a firearms dealer for storage during the period of firearms prohibition pursuant to **P.C. § 29830** (New; see below).

Pen. Code § 29825 (Amended): *Protective Orders and Firearms Prohibitions:*

A notice relative to firearms possession or ownership must appear on all protective orders to the effect that the person subject to a protective order may transfer his or her firearm(s) to a licensed firearms dealer pursuant to **P.C. § 29830** (New; see below) for storage during the period of the firearms prohibition.

Pen. Code § 29830 (New): *Temporary Transfer of a Firearm to a Firearms Dealer:*

A person who is prohibited from owning or possessing a firearm for a specific period has the option to transfer his/her firearm(s) to a firearms dealer for storage during the period of prohibition. The firearms dealer must notify DOJ of the date the dealer takes possession of the firearm(s) and permits the dealer to charge a storage fee.

See Pen. Code § 33870 (Amended), below

Pen. Code § 31000 (Amended): *Assault Weapon Ownership by Organizations:*

No partnership, corporation, limited liability company, association, or any other group or entity, regardless of how it was created, may be issued a permit to possess an assault weapon or a .50 BMG rifle.

See **Pen. Code § 31110** (Amended), deleting the phrase “*firm or corporation,*” making it consistent with this amendment.

Pen. Code § 31620 (Amended; Effective 1/1/2015): *Falsified Firearms Safety Certificates:*

Subd. (c) (new) is added beginning January 1, 2015, creating the new misdemeanor crime of altering, counterfeiting, or falsifying a firearm safety certificate, or using or attempting to use an altered, counterfeited, or falsified firearm safety certificate to purchase a firearm.

Note: The existing misdemeanor crime described in **subd. (b)** of **P.C. § 31620** regarding altered, counterfeit, or false “*handgun safety certificates*” is still in effect.

Punishment: Misdemeanor; six months in county jail and/or a \$1,000 fine.

Pen. Code § 32310 (Amended): *Large Capacity Magazines:*

The felony crime of manufacturing, importing, selling, giving, or lending a large-capacity magazine is expanded to include the “*buying or receiving*” of a large-capacity magazine.

“*Manufacturing*” is now defined as including both fabricating a magazine and assembling a magazine from a combination of parts, including, but not limited to, the body, spring, follower, and floor plate or end plate, to be a fully functioning large-capacity magazine.

Punishment: Felony (wobbler); 16 months, two or three years pursuant to **P.C. § 1170(h)**, or one year in county jail and/or \$1,000 fine.

Pen. Code § 32311 (New): *Large Capacity Magazine Conversion Kit:*

Manufacturing, importing, selling, giving, lending, buying, or receiving a “*large capacity magazine conversion kit*” is prohibited.

This crime does not apply to a fully assembled large-capacity magazine, which is governed by **P.C. § 32310** (Amended; see above).

A “*large capacity magazine conversion kit*” is defined as a device or combination of parts of a fully functioning large-capacity magazine including, but not limited to, the body, spring, follower, and floor plate or end plate, capable of converting an ammunition feeding device into a large-capacity magazine.

Punishment: Misdemeanor; six months in jail and/or by a fine of up to \$1,000.

Pen. Code § 32650 (Amended): *Machinegun Permits:*

A permit for a machinegun may only be issued to an individual and not to a partnership, corporation, limited liability company, association, or any other group or entity, regardless of how it was created.

Pen. Code § 33870 (Amended): *Storage of Firearms During Period of Prohibition:*

Whenever a person claims title to a firearm that is in the possession of a law enforcement agency, and such person is prohibited from owning or possessing a firearm, the person is entitled to have the firearm stored by a licensed firearms dealer pursuant to **P.C. § 29830** (new) during the period of prohibition.

See **Pen. Code § 29830** (New), above.

Welf. & Inst. Code § 8100 (Amended): *Prohibition on Owning or Possessing Firearms by a Mental Patient:*

The length of time of the firearm and deadly weapons prohibition period is increased from six months to five years for a person who communicates to a licensed psychotherapist a serious threat of physical violence against a reasonably identifiable victim, commencing from the date that the psychotherapist reports to a local law enforcement agency the identity of the person who made the threat.

The burden of proof when a person subject to this prohibition petitions the superior court for an order that he or she may own, possess, control, receive, or purchase firearms is shifted to the People to show by a preponderance of the evidence that the person would *not* be likely to use firearms in a safe and lawful manner.

If the People fail to meet this burden, or decline or fail to go forward at the hearing, the court is required to lift the firearms prohibition. A copy of the order shall be submitted to the Dept. of Justice (DOJ) which is then required to delete any reference to the firearms prohibition from the person’s state mental health firearms prohibition system information.

“Nothing in this subdivision shall prohibit the use of reports filed pursuant to this section (**W&I § 8100**) to determine the eligibility of a person to own, possess, control, receive, or purchase a firearm if the person is the subject of a criminal investigation, a part of which involves the ownership, possession, control, receipt, or purchase of a firearm.”

Welf. & Inst. Code § 8200 (Amended): *Handling of Confiscated Firearms or Deadly Weapons:*

A peace officer or law enforcement agency who confiscates a firearm or deadly from a person who is held for a mental condition examination or who is subject to a **W&I §§ 8100 or 8103** weapons prohibition must issue a receipt that includes a description of the weapon and the serial or identification number.

A law enforcement agency may retain or transfer a firearm pursuant to **P.C. § 34005** (Alternatives to Destruction of Firearms) in lieu of destroying a firearm that is a nuisance, unclaimed, abandoned or otherwise subject to destruction.

The period of forfeiture is 180 days, such that a law enforcement agency may destroy a firearm 180 days after an order denying the return of the firearm to the person or 180 days after an order of default (where the person does not request a hearing), unless the person contacts the law enforcement agency to facilitate the sale or transfer of the firearm to a licensed dealer.

Welf. & Inst. Code § 8103 (Amended): *Prohibitions on Owning Firearms:*

A court is required to notify DOJ as soon as possible, but no later than within two days of a court order (instead of “*immediately*”), that a person is a danger to others because of a mental disorder or mental illness, or is a mentally disordered sex offender, or has been found not guilty by reason of insanity, or has been found mentally incompetent to stand trial, or has been placed under conservatorship, and thus is prohibited from purchasing, receiving, possessing, or controlling a firearm or deadly weapon. All such notices are required to be submitted to DOJ in electronic format.

If the court orders that a person is *not* subject to a five-year prohibition on firearms, the person must comply with existing provisions in **P.C. §§ 33850–33895**, detailing how firearms may be returned.

Welf. & Inst. Code § 804 (Amended): *Records of Persons Subject to a Weapons Prohibition:*

The State Dept. of State Hospitals must provide to DOJ records of persons subject to a weapons prohibition in **W&I §§ 8100 or 8103** in electronic format within 24 hours of receiving a request.

First Amendment Rights:

Pub. Util. Code § 7980 (New): *Interruption of Communications Services:*

Neither a governmental entity nor any provider of communications service at the request of a governmental entity may interrupt communications service in order to protect public safety, nor prevent the use of communications service for an illegal purpose, absent a court order or in the case of an emergency situation.

In order to obtain a court order, a judge must find that:

- (1) Probable cause exists that the communications service sought to be interrupted is being or will be used for an unlawful purpose or to assist in a violation of law; *and*
- (2) Absent immediate action to interrupt communications service, serious, direct, and immediate danger to public safety, health, or welfare will result; *and*
- (3) The interruption of communications service is narrowly tailored to prevent unlawful infringement of First Amendment speech.

The order, when obtained, must clearly describe the specific communications service to be interrupted, be narrowly tailored to specific circumstances, and not interfere with more communication that is necessary to achieve the purposes of the order.

The order may authorize an interruption of communications service only for so long as is reasonably necessary and requires that the interruption cease once the danger has abated.

An interruption of communications service for six to 24 hours without a court order is lawful if there is an “*extreme emergency situation*” that involves immediate danger of death or great bodily injury and there is not sufficient time, with due diligence, to first obtain a court order.

If communications service is interrupted without a court order, an order must be sought within six hours of the commencement of the interruption unless it is not possible to apply for an order within six hours, in which case the order must be sought within 24 hours. It must also include a declaration under penalty of perjury stating why the order could not be sought within six hours.

An order authorizing a communications service interruption must be served on the communications service provider. A communications

provider that relies in good faith on an interruption order has a complete defense against any action brought as a result of service interruption.

The Legislature's declared intent is to ensure Californians uninterrupted 911 access and the ability to engage in constitutionally protected expression.

Gangs:

Pen. Code § 186.34 (Amended): *Shared Gang Database:*

Before designating a minor as a suspected gang member in a shared gang database, a local law enforcement agency must provide written notice to the minor and the minor's parent or guardian of the designation as a suspected gang member and the basis for that designation, unless providing notification would compromise an active criminal investigation or compromise the health or safety of the minor.

A person to be designated as a suspected gang member, or the person's parent or guardian, may submit written documentation to the local law enforcement agency contesting the designation. The agency must provide a written response within 60 days.

A "*shared gang database*" is defined as a database that allows access for any local law enforcement agency, contains personal, identifying information in which a person may be designated as a suspected gang member, associate, or affiliate, or for which entry of a person in the database reflects a designation of that person as a suspected gang member, associate, or affiliate; and is subject to **Code of Federal Regulations, Title 28, Part 23** ("Criminal Intelligence Systems Operating Policies"), if federal money funds the database.

Note: The "*CalGang*" database is a shared gang database and is accessible to law enforcement in all 58 California counties.

Human Trafficking:

Civ. Code § 1946.7 (Amended): *Lease Termination by Specified Victims:*

Human trafficking victims are added to those victims (domestic violence, sexual assault, stalking, and elder abuse) who may terminate their residential leases without liability.

The notice to terminate may include documentation from a qualified professional that the tenant is seeking assistance for physical or mental

injuries or abuse resulting from domestic violence, sexual assault, stalking, human trafficking, or elder abuse.

Qualified professionals include sexual assault counselors, domestic violence counselors, human trafficking caseworkers, physicians, nurses, psychologists, psychiatrists, and therapists.

A landlord is prohibited from disclosing information provided by a tenant to a third party unless the tenant consents in writing or the disclosure is required by law or court order.

Code of Civ. Proc. § 1161.3 (Amended): *Residential Tenancy of Specified Victims:*

“*Human trafficking*” is added to the list of crimes (domestic violence, sexual assault, stalking, elder abuse) for which a landlord is prohibited (with some exceptions) from terminating or failing to renew the tenancy of a victim of any of these crimes.

Evid. Code § 1161 (Amended): *Commercial Sexual Acts:*

Evidence that is *not* admissible against a victim of human trafficking is narrowed from “*any conduct*” related to a commercial sexual act to “*any commercial sexual act*” as a result of being a victim of human trafficking

Hunting:

Fish & Game Code § 3004.5 (Amended): *Hunting and Non-lead Ammunition:*

The use of non-lead ammunition is to be phased in by the Dept. of Fish & Game to where by July 1, 2019, it will be required when taking *all* wildlife, including game mammals, game birds, non-game birds, and non-game mammals, with any firearm.

Note: Currently, non-lead ammunition is required only in the taking of big game and coyotes.

Fish & Game Code § 4004 (Amended): *Trapping of Mammals:*

This section is expanded to include:

The use of a body-gripping trap, as defined in **F&G § 3003.1**, for the purpose of recreation or commerce in fur, is prohibited.

F&G 3003.1(a) provides that a body-gripping trap includes steel-jawed leghold traps, padded-jaw leghold traps, conibear traps, and snares.

The use of a conibear trap that is larger than six inches by six inches, unless partially or wholly submerged in water, is prohibited. If a conibear trap is set on publicly owned land or land open to public use, warning signs must be posted.

Note: A conibear trap is designed to kill an animal instantly by snapping the spinal column at the base of the neck.

The killing of any trapped mammal by intentional drowning, by injection with a chemical not sold for the purpose of euthanizing animals, or by thoracic compression (also known as chest crushing), is prohibited.

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

Fish & Game Code § 4801.5 (New): *Mountain Lions:*

Non-lethal procedures must be used when removing or taking a mountain lion that has not been designated as an imminent threat to public health or safety.

“*Non-lethal procedures*” include capturing, pursuing, anesthetizing, temporarily injuring, marking, implanting a monitoring device, transporting, hazing, rehabilitating, releasing, or taking no action.

“*Imminent threat to public health or safety*” is defined as a “situation where a mountain lion exhibits one or more aggressive behaviors directed toward a person that is not reasonably believed to be due to the presence of responders.”

Interrogations:

Pen. Code § 859.5 (New): *Recording Interrogations of Minors:*

A custodial interrogation of a minor who is in a “*fixed place of detention*” and suspected of committing murder must be electronically recorded in its entirety. The existence of such a recording creates a rebuttable presumption that the suspect gave the statement and that it was recorded accurately.

An “*electronic recording*” is defined as a “*video recording*” that accurately records a custodial interrogation.

A “*fixed place of detention*” is defined as a fixed location under the control of a law enforcement agency where an individual is held in detention in connection with a criminal offense that has been, or may be, filed against that person, including a jail, police or sheriff’s station, holding cell, correctional or detention facility, juvenile hall, or a facility of the Division of Juvenile Facilities.

Exceptions: The prosecution has the burden by “*clear and convincing evidence*” to show that an exception applies. Exceptions to the recording requirement are as follows:

- (1) Recording is not feasible because of exigent circumstances, an explanation of such circumstances being included in the police report; *or*
- (2) The suspect states that he or she will speak to law enforcement only if the interrogation is *not* recorded or that he or she will not speak further unless recording ceases; *or*
- (3) The interrogation took place in another jurisdiction and was conducted in compliance with the law of that jurisdiction, unless the interrogation was conducted with intent to avoid the requirements of this section; *or*
- (4) The interrogation occurs when no law enforcement officer reasonably believes the suspect may have committed murder. If during such an interrogation, facts and circumstances give a law enforcement officer reason to believe that murder has been committed, continued custodial interrogation must be electronically recorded; *or*
- (5) A law enforcement officer conducting the interrogation reasonably believes that recording would disclose the identity of a confidential informant or jeopardize the safety of an officer, the suspect, or another individual. An explanation of such circumstances must be included in the police report; *or*
- (6) The recording device malfunctions despite reasonable maintenance of the equipment and timely repair or replacement was not feasible; *or*
- (7) The questions and answers are part of a routine processing or booking of the suspect or are spontaneous statements made during routine processing or booking.

A suspect's statement may be admitted into evidence even if not recorded if:

- (1) The statement is admissible under applicable rules of evidence; *and*
- (2) The prosecution proves by clear and convincing evidence that the statements were voluntary; *and*
- (3) If feasible, law enforcement makes a contemporaneous audio and/or visual recording of the reason for not making an electronic recording; *and*
- (4) The prosecution proves by clear and convincing evidence that one or more of the recording exceptions apply.

If the court does *not* find that an electronic recording exception applies, *all* of the following remedies shall be granted as relief for noncompliance:

- (1) Failure to comply shall be considered by the court in adjudicating a motion to suppress the defendant's statement made during or after custodial interrogation; *and*
- (2) Failure to comply shall be admissible in support of claims that a defendant's statement was involuntary or is unreliable; *and*
- (3) The court shall give a jury instruction, to be developed by the Judicial Council, that advises the jury to view with caution the statements made during the custodial interrogation.

The interrogating entity shall maintain the original or an exact copy of an electronic recording until a conviction is final and all direct and habeas corpus appeals are exhausted or prosecution for the offense is barred by law.

Welf. & Inst. Code § 626.8 (New): *Recording Interrogations of Minors:*

Makes the new electronic recording requirements in **P.C. § 859.5** (see above) applicable to juvenile murder suspects who may be adjudged wards of the juvenile court pursuant to **W&I § 602**.

The interrogating entity must maintain an original or exact copy of an electronic recording made of a custodial interrogation until the person is no longer subject to the jurisdiction of the juvenile court, unless the person is transferred to a court of criminal jurisdiction (adult court), in which case the entity must maintain the original or exact copy until a conviction is final and all direct and habeas corpus appeals are exhausted or the prosecution for the offense is barred by law.

Landlord-Tenants:

Civ. Code § 1946.7 (Amended): *Lease Termination by Specified Victims:*

“*Human trafficking*” victims are added to those victims (domestic violence, sexual assault, stalking, and elder abuse) who may terminate their residential leases without liability.

The notice to terminate may include documentation from a qualified professional that the tenant is seeking assistance for physical or mental injuries or abuse resulting from domestic violence, sexual assault, stalking, human trafficking, or elder abuse.

Qualified professionals include sexual assault counselors, domestic violence counselors, human trafficking caseworkers, physicians, nurses, psychologists, psychiatrists, and therapists.

A landlord is prohibited from disclosing information provided by a tenant to a third party unless the tenant consents in writing or the disclosure is required by law or court order.

Code of Civ. Proc. § 1161.3 (Amended): *Residential Tenancy of Specified Victims:*

“*Human trafficking*” is added to the list of crimes (domestic violence, sexual assault, stalking, elder abuse) for which a landlord is prohibited (with some exceptions) from terminating or failing to renew the tenancy of a victim of any of these crimes.

Lawyers:

Bus. & Prof. Code § 6064 (Amended): *Qualifications to Practice Law:*

The California Supreme Court is authorized to admit to the practice of law an applicant who is not lawfully present in the United States.

Bus. & Prof. Code § 6103.7 (New): *Reporting the Immigration Status of a Witness or Party to a Civil or Administration Action:*

Any member of the state bar who reports, or threatens to report, the immigration status of a witness or party to a civil or administrative action, or the status of his or her family member, to any federal, state, or local agency because the witness or party exercises or has exercised a right related to his or her employment, is subject to discipline by the State Bar.

Note: The stated purpose of this new statute is to prevent unscrupulous attorneys from discouraging undocumented aliens from testifying against their employers.

Punishment: Suspension, disbarment, or other discipline.

Mental Health Patients:

Welf. & Inst. Code § 5150 (Amended): 72-Hour Mental Health Commitment:

In this section that authorizes a person with a mental health disorder (i.e., a danger to him- or herself, to others, or who is gravely disabled) to be taken into custody for up to 72 hours, the phrase “*mental disorder*” is changed to “*mental health disorder*.”

The purpose of the hold in a mental facility is changed from “*treatment and evaluation*” to “*assessment, evaluation, crisis intervention, or placement for evaluation and treatment in a facility*.”

The person taken into custody is to be assessed to determine whether he or she can be properly served without being detained, and if so, requires that evaluation, crisis intervention, or other inpatient or outpatient services be provided on a voluntary basis.

These new provisions shall not be interpreted to prevent a peace officer from delivering individuals to a facility for assessment.

Reasonable precautions must be taken to preserve and safeguard the personal property of individuals taken into custody and a report furnished to the court describing the property. If the personal property is in the possession of a responsible relative, guardian, or conservator, the report to the court need only include the name of that person and the location of the property.

Each person taken into custody on a **W&I § 5150** hold must be provided with an oral or written notice by the person taking him or her into custody, in a language the person understands, and worded in substantially the following form:

“My name is _____. I am a _____
_____ (peace
officer/mental health professional) with _____.
(name of agency). You are not under criminal arrest, but I am
taking you for an examination by mental health professionals at
_____. (name of
facility) You will be told your rights by the mental health staff.”

If a person is taken into custody at home, he or she must be provided with this additional notice:

“You may bring a few personal items with you, which I will have to approve. Please inform me if you need assistance turning off any appliance or water. You may make a phone call and leave a note to tell your friends or family where you have been taken.”

The mental health facility staff shall provide the following notice, both orally and in writing to each person admitted to a facility and in a language the person understands:

“My name is _____. (name) My position here is _____. (position) You are being placed into this psychiatric facility because it is our professional opinion that, as a result of a mental health disorder, you are likely to (check the applicable box):

- Harm yourself.
- Harm someone else.
- Be unable to take care of your own food, clothing, and housing needs.

We believe this is true because _____

(list the facts upon which the allegation of dangerous or gravely disabled due to mental health disorder is based, including pertinent facts arising from the admission interview)

You will be held for a period up to 72 hours. During the 72 hours you may also be transferred to another facility. You may request to be evaluated or treated at a facility of your choice. You may request to be evaluated or treated by a mental health professional of your choice. We cannot guarantee the facility or mental health professional you choose will be available, but we will honor the choice if we can. During these 72 hours you will be evaluated by the facility staff, and you may be given treatment, including medications. It is possible for you to be released before the end of the 72 hours. But if the staff decides that you need continued treatment you can be held for a longer period of time. If you are held longer than 72 hours, you have the right to a lawyer and a qualified interpreter and a hearing before a judge. If you are unable to pay for the lawyer, then one will be provided to you free of charge. If you have questions about your legal rights, you may contact the county Patients’ Rights Advocate at _____.

(phone number) Your 72-hour period began _____.”
(date/time)

The facility shall keep a record of all advisements given, including the name of the person performing the advisement, the name and position of the peace officer or mental health professional taking the person into custody, the date the advisement was given, whether the advisement was completed, the language used to give the advisement, and, if the advisement was not completed, a statement of good cause for not completing it.

Welf. & Inst. Code § 8100 (Amended): *Prohibition on Owning or Possessing Firearms by a Mental Patient:*

The length of time of the firearm and deadly weapons prohibition period is increased from six months to five years for a person who communicates to a licensed psychotherapist a serious threat of physical violence against a reasonably identifiable victim, commencing from the date that the psychotherapist reports to a local law enforcement agency the identity of the person who made the threat.

The burden of proof when a person subject to this prohibition petitions the superior court for an order that he or she may own, possess, control, receive, or purchase firearms is shifted to the People to show by a preponderance of the evidence that the person would *not* be likely to use firearms in a safe and lawful manner.

If the People fail to meet this burden or decline or fail to go forward at the hearing, the court is required to lift the firearms prohibition, and a copy of the order shall be submitted to the Dept. of Justice (DOJ) which is then required to delete any reference to the firearms prohibition from the person’s state mental health firearms prohibition system information.

“Nothing in this subdivision shall prohibit the use of reports filed pursuant to this section (**W&I § 8100**) to determine the eligibility of a person to own, possess, control, receive, or purchase a firearm if the person is the subject of a criminal investigation, a part of which involves the ownership, possession, control, receipt, or purchase of a firearm.”

Welf. & Inst. Code § 8200 (Amended): *Handling of Confiscated Firearms:*

A peace officer or law enforcement agency who confiscates a firearm or deadly from a person who is held for a mental condition examination or who is subject to a **W&I §§ 8100** or **8103** weapons prohibition must issue a receipt that includes a description of the weapon and the serial or identification number.

A law enforcement agency may retain or transfer a firearm pursuant to **P.C. § 34005** (Alternatives to Destruction of Firearms) in lieu of destroying a firearm that is a nuisance, unclaimed, abandoned or otherwise subject to destruction.

The period of forfeiture is 180 days, such that a law enforcement agency may destroy a firearm 180 days after an order denying the return of the firearm to the person or 180 days after an order of default (where the person does not request a hearing), unless the person contacts the law enforcement agency to facilitate the sale or transfer of the firearm to a licensed dealer.

Welf. & Inst. Code § 8103 (Amended): *Prohibitions on Owning Firearms:*

A court is required to notify DOJ as soon as possible, but no later than within two days of a court order (instead of “immediately”), that a person is a danger to others because of a mental disorder or mental illness, or is a mentally disordered sex offender, or has been found not guilty by reason of insanity, or has been found mentally incompetent to stand trial, or has been placed under conservatorship, and thus is prohibited from purchasing, receiving, possessing, or controlling a firearm or deadly weapon. All such notices are required to be submitted to DOJ in electronic format.

If the court orders that a person is *not* subject to a five-year prohibition on firearms, the person must comply with existing provisions in **P.C. §§ 33850–33895** detailing how firearms may be returned.

Welf. & Inst. Code § 804 (Amended): *Records of Persons Subject to a Weapons Prohibition:*

The State Dept. of State Hospitals must provide to DOJ records of persons subject to a weapons prohibition under **W&I §§ 8100 or 8103** in electronic format within 24 hours of receiving a request.

Welf. & Inst. Code § 805 (Amended): *Required Reports of Threats:*

The required report to a local law enforcement agency by a licensed psychotherapist that a person comes within the provisions of **W&I § 8100(b)** (because he or she made a serious threat of physical violence against a reasonably identifiable victim) must be made “*within 24 hours*” (instead of “immediately”).

The required report from a local law enforcement agency to the Dept. of Justice (DOJ) must be made “*within 24 hours*” (instead of “*immediately*”) of receiving the report from the psychotherapist, and requires that this report to DOJ be made electronically.

Minors:

Gov't. Code § 8594 (Amended): *Amber Alerts*:

The “*Amber Alert*” provisions are expanded to provide for the activation of emergency alerts when a child, age 17 or younger, is abducted, to include children who are “*taken*.” As rewritten, law enforcement must now activate the “*Emergency Alert System*” if a child is abducted or taken by anyone, including, but not limited to, a custodial parent or guardian, so long as the victim is in imminent danger of serious bodily injury or death.

Pen. Code § 288.2 (Amended): *Harmful Matter Used to Seduce a Minor*:

The use of harmful matter to seduce a minor is redefined to include when the defendant “*believes another person is a minor*.”

The severity of the punishment has also been broken down into two situations, as follows:

Punishment: (1) Felony; two, three or five years in state prison if the harmful matter depicts a minor or minors engaging in sexual conduct.

(2) Felony; 16 months, two or three years in state prison if the harmful matter does *not* depict a minor or minors engaging in sexual conduct.

Pen. Code § 311.5 (Amended): *Child Pornography*:

For purposes of the unlawful possession of child pornography;

Each photograph, picture, computer-generated image, or any similar visual depiction shall be considered to be one image, *and*

Each video, video-clip, movie, or similar visual depiction shall be considered to have 50 images.

“*Sexual sadism*” is now defined as the intentional infliction of pain for purposes of sexual gratification or stimulation.

“*Sexual masochism*” is defined as intentionally experiencing pain for purposes of sexual gratification or stimulation.

Punishment: Felony:

(1) 16 months, two years, or three years in state prison.

- (2) 16 months, two or five years in state prison if (a) the matter contains more than 600 images *and* 10 or more images involve a prepubescent minor or minor under age 12; *or* (b) the matter portrays sexual sadism or sexual masochism involving a minor under age 18.
- (3) Two years, four years or six years in state prison for possession of child pornography where the defendant has a prior conviction for **P.C. § 311.11**, or any offense requiring sex registration, or an attempt to commit **P.C. § 311.11**.]

Pen. Code § 859.5 (New): *Recording Interrogations of Minors:*

A custodial interrogation of a minor who is in a “*fixed place of detention*” and suspected of committing murder must be electronically recorded in its entirety. The existence of such a recording creates a rebuttable presumption that the suspect gave the statement and that it was recorded accurately.

An “*electronic recording*” is defined as a “*video recording*” that accurately records a custodial interrogation.

A “*fixed place of detention*” is defined as a fixed location under the control of a law enforcement agency where an individual is held in detention in connection with a criminal offense that has been, or may be, filed against that person, including a jail, police or sheriff’s station, holding cell, correctional or detention facility, juvenile hall, or a facility of the Division of Juvenile Facilities.

The prosecution has the burden by clear and convincing evidence to show that an exception applies. Exceptions to the recording requirement are as follows:

- (1) Recording is not feasible because of exigent circumstances, an explanation of such circumstances being included in the police report; *or*
- (2) The suspect states that he or she will speak to law enforcement only if the interrogation is *not* recorded or that he or she will not speak further unless recording ceases; *or*
- (3) The interrogation took place in another jurisdiction and was conducted in compliance with the law of that jurisdiction, unless the interrogation was conducted with intent to avoid the requirements of this section; *or*
- (4) The interrogation occurs when no law enforcement officer reasonably believes the suspect may have committed murder. If during such an interrogation, facts and circumstances give a law enforcement officer reason to believe that murder has been

committed, continued custodial interrogation must be electronically recorded; *or*

(5) A law enforcement officer conducting the interrogation reasonably believes that recording would disclose the identity of a confidential informant or jeopardize the safety of an officer, the suspect, or another individual. An explanation of such circumstances must be included in the police report; *or*

(6) The recording device malfunctions despite reasonable maintenance of the equipment and timely repair or replacement was not feasible; *or*

(7) The questions and answers are part of a routine processing or booking of the suspect or are spontaneous statements made during routine processing or booking.

A suspect's statement may be admitted into evidence even if not recorded if:

(1) The statement is admissible under applicable rules of evidence; *and*

(2) The prosecution proves by clear and convincing evidence that the statements were voluntary; *and*

(3) If feasible, law enforcement makes a contemporaneous audio and/or visual recording of the reason for not making an electronic recording; *and*

(4) The prosecution proves by clear and convincing evidence that one or more of the recording exceptions apply.

If the court does *not* find that an electronic recording exception applies, *all* of the following remedies shall be granted as relief for noncompliance:

(1) Failure to comply shall be considered by the court in adjudicating a motion to suppress the defendant's statement made during or after custodial interrogation; *and*

(2) Failure to comply shall be admissible in support of claims that a defendant's statement was involuntary or is unreliable; *and*

(3) The court shall give a jury instruction, to be developed by the Judicial Council, that advises the jury to view with caution the statements made during the custodial interrogation.

The interrogating entity shall maintain the original or an exact copy of an electronic recording until a conviction is final and all direct and habeas corpus appeals are exhausted or prosecution for the offense is barred by law.

Pen. Code § 11414 (Amended): *Harassment of a child or Ward of a Person Because of that Person's Employment:*

The misdemeanor crime of intentionally harassing the child or ward of any other person because of that person's employment is expanded by adding a definition of "*harassment*" (previously limited to "knowing and willful conduct directed at a specific child that seriously alarms, annoys, torments, or terrorizes the child, and that serves no legitimate purpose, . . . such as would cause a reasonable child to suffer substantial emotional distress, and actually cause the victim to suffer substantial emotional distress.") to include "conduct occurring during the course of any actual or attempted recording of the child's or ward's image or voice, or both, without the express consent of the parent or legal guardian of the child or ward, by following the child's or ward's activities or by lying in wait."

"*Child*" and "*ward*" are defined as a child under the age of 16 years.

The act of transmitting, publishing, or broadcasting a recording of the image or voice of a child does *not* constitute a violation of this section.

Punishment: Misdemeanor; one year and/or a fine of \$10,000. Upon a second conviction, one year in county jail with a minimum of five days, and/or a fine of \$20,000. For a third or subsequent conviction, one year in county jail with a minimum of 30 days, and/or a fine of \$30,000.

Civil Liability: The parent or legal guardian of an aggrieved child or ward may bring a civil action against the violator on behalf of the child or ward with available remedies of actual damages, punitive damages, reasonable attorney's fees, costs, disgorgement of any compensation from the sale, license, or dissemination of the child or ward's image or voice, and injunctive relief.

Welf. & Inst. Code § 626.8 (New): *Recording Interrogations of Minors:*

Makes the new electronic recording requirements in **P.C. § 859.5** (see above) applicable to juvenile murder suspects who may be adjudged wards of the juvenile court pursuant to **W&I § 602**.

The interrogating entity must maintain an original or exact copy of an electronic recording made of a custodial interrogation until the person is no longer subject to the jurisdiction of the juvenile court, unless the person is transferred to a court of criminal jurisdiction (adult court), in which case the entity must maintain the original or exact copy until a conviction is final and all direct and habeas corpus appeals are exhausted or the prosecution for the offense is barred by law.

Pawned Property:

Bus. & Prof. Code § 21647 (Amended): *Stolen Property in Possession of Pawnbroker or Secondhand Dealer:*

Amendments to this section now provide the following:

The provisions of this section are now limited to “*licensed*” pawnbrokers and secondhand dealers.

The 90-day hold provisions do not apply to an *unlicensed* pawnbroker or secondhand dealer who has not correctly reported the acquisition of the property pursuant to **B&P § 21628**, authorizing the officer to seize such property the officer has probable cause to believe is lost, stolen, or embezzled, “consistent with the authority granted the peace officer under the Penal Code or any other law.”

A peace officer is now authorized to place a hold on property held by a licensed pawnbroker or secondhand dealer that is lost or embezzled, in addition to stolen.

A 90-day hold is created upon the receipt by a licensed pawnbroker or secondhand dealer of a written notice by a peace officer. The written notice must include an accurate description of the property being placed on hold, whether the property will remain in the physical possession of the licensed pawnbroker or secondhand dealer or will be taken by law enforcement, the law enforcement agency’s police report number for which the property is needed as evidence, and the date of the 90-day hold written notice.

A 90-day hold may be renewed as often as is required for a criminal investigation or criminal proceeding by any peace officer who is a member of the same law enforcement agency as the peace officer who placed the hold.

If property placed on hold is later surrendered or delivered to a law enforcement agency during the hold period, the hold and the pawnbroker’s lien against the property remain in effect.

A law enforcement agency having knowledge that a licensed pawnbroker or secondhand dealer has possession of lost, stolen, or embezzled property is required to notify the victim within two business days of placing a hold on the property.

If a licensed pawnbroker or secondhand dealer refuses a request to place property on hold when a peace officer has probable cause to believe the property is lost, stolen, or embezzled, the property may be seized with or without a warrant.

If a search warrant is issued for the business of a licensed pawnbroker or secondhand dealer to secure property placed on hold, the hold shall continue for the period of time that the property remains subject to the court's jurisdiction.

If a civil or criminal court is called upon to adjudicate the competing claim of a licensed pawnbroker or secondhand dealer, and another party claiming ownership of property that is or was subject to a hold, the court shall award possession of the property only after due consideration is given to the effect of **Commercial Code § 2403**.

Note: **Com. Code § 2403** provides that a purchaser of goods acquires all title that the transferor had power to transfer.

A licensed pawnbroker or secondhand dealer is not subject to civil liability for compliance with this section.

Fin. Code § 21206.8 (Amended): *Lost Property*:

Amendments to this section now provide the following:

This section, that applies to stolen and embezzled property taken from a pawnbroker by a peace officer, prohibiting the peace officer from returning the property to the original owner (i.e., the crime victim) unless the provisions of this section are complied with, is expanded to include lost property as well.

A person claiming ownership of pawned property must file a written statement with the person having custody of the property (i.e., the police agency that seized stolen property from a pawnbroker). The statement must be signed under penalty of perjury and state the factual basis for the claim of ownership. The person with custody of the property is to provide a copy of the claim to the pawnbroker.

The court, in adjudicating competing claims of a pawnbroker and a person claiming ownership, must give due consideration to the effect of **Commercial C. § 2403**.

Note: **Com. Code § 2403** provides that a purchaser of goods acquires all title that the transferor had power to transfer.

At least 30 days before a hearing to adjudicate competing property claims, the person with custody of the property (typically a police agency) must deliver to the pawnbroker a copy of the police report, with appropriate redactions, substantiating the basis of the seizure of property from the pawnbroker.

Note: Other statutes relating to pawn brokers have been similarly amended: **B&P § 21647**, **P.C. § 1411**, and **P.C. § 11108.5**.

Pen. Code § 1411 (Amended): *Disposition of Stolen and Pawned Property:*

The section (which says that where efforts to locate the owner of lost, stolen, or embezzled property are not successful the property must be returned to the pawnbroker or secondhand dealer from whom it was taken when it is no longer needed for a criminal proceeding) is amended to provide that the section does *not* govern the disposition of property held by a pawnbroker and placed on hold by a peace officer pursuant to **B&P § 21647** unless the licensed pawnbroker or secondhand dealer refuses to consent to a **B&P § 21647** hold on the property, or a search warrant for the business of the licensed pawnbroker or secondhand dealer has resulted in the seizure of the property.

Peace Officers' Rights:

Gov't. Code § 3305.5 (New): *The Public Safety Officers Procedural Bill of Rights Act, Brady Lists:*

The Public Safety Officers Procedural Bill of Rights Act is amended to address those officers whose names are on a “*Brady*” list or are subject to disclosure pursuant to the United States Supreme Court case of ***Brady v. Maryland*** (1963) 373 U.S. 83.

Note: ***Brady*** requires the prosecution to disclose evidence to a criminal defendant that is relevant to guilt or punishment, including conduct committed by a peace officer that may be used to impeach the officer’s credibility at trial.

A “*Brady list*” is defined as any system, index, list, or other record containing the names of peace officers whose personnel files are likely to contain evidence of dishonesty or bias, which is maintained by a

prosecutorial agency or office in accordance with the holding in ***Brady v. Maryland***.

A public agency is prohibited from taking any punitive action or denying a promotion on grounds other than merit, solely because an officer's name has been placed on a *Brady* list or the officer's name is subject to disclosure pursuant to ***Brady v. Maryland***.

A public agency is authorized to take punitive action or deny promotion on grounds other than merit or take any other personnel action, based on the underlying *conduct* for which the officer's name was placed on a *Brady* list or is subject to disclosure pursuant to ***Brady***.

Evidence that an officer's name has been placed on a *Brady* list or may be subject to *Brady* disclosure may not be introduced for any purpose in an administrative appeal, except where the *Brady* conduct is proved in the administrative proceeding. If the *Brady* conduct is proved, then evidence that the officer's name is on a *Brady* list or subject to *Brady* disclosure shall be introduced for the sole purpose of determining the type or level of punitive action to be imposed.

Public Contract Code § 10334 (Amended): *Spouse's Purchase of Deceased Officer's State-Owned Handgun*:

Subd. (d) (New) authorizes the spouse or domestic partner of a state-employed peace officer who died in the line of duty to purchase the deceased officer's state-issued handgun.

Note: Per **P.C. § 26613** (New), this type of firearm sale is exempted from the misdemeanor crime of selling, leasing, or transferring a firearm without a license, per **P.C. § 26500**.

Preliminary Examinations:

Pen. Code § 872 (Amended): *Hearsay Preliminary Examinations*:

The statutory definition of "*law enforcement officer*," for purposes of permitting hearsay testimony at a preliminary examination, has been expanded by adding part (2), below.

A "*Law Enforcement Officer*" is defined as any officer or agent employed by a federal, state, or local government agency to whom all of the following apply:

- (1) The officer has either five years of law enforcement experience or has completed a training course certified by the Commission

- on Peace Officer Standards and Training (POST) that includes training in the investigation and reporting of cases and testifying at preliminary hearings; *and*
- (2) The officer's primary responsibility is the enforcement of any law, the detection and apprehension of persons who have violated any law, or the investigation and preparation for prosecution of cases involving violation of laws.

Prisoners:

Pen. Code § 2590 (Amended; Effective from 8/27/13 to 1/1/2015): *Three-Day Removal of State Prisoners:*

Amendment adds assisting with the gathering of evidence relating to crimes to the list of reasons (college classes or medical treatment) that the Dept. of Corrections & Rehabilitation may permit a state prison inmate to be removed from state prison for no more than three days.

Pen. Code § 2690.5 (Amended): *Thirty-Day Removal of State Prisoners:*

A court may order the temporary removal of a prisoner from a state prison for up to 30 days, with a maximum of an additional 30 days upon a renewed application, and the transportation of the prisoner to a county or city jail upon the request of a district attorney or peace officer if a "legitimate law enforcement purpose" exists.

It is the court of the county where the requesting district attorney or peace officer has jurisdiction that has the authority to make such an order, and *not* the county where the prison is located.

An order for temporary removal must include the following:

- (1) A recitation of the purposes for which the prisoner is to be brought to the county or city jail;
- (2) The affidavit of the requesting district attorney or peace officer stating that the law enforcement purpose is legitimate and necessary, supported by facts establishing good cause;
- (3) The signature of the judge making the order; and
- (4) The seal of the court, if any.

The court, for good cause, may seal a removal order unless the court determines that failure to disclose the order would deny a fair trial to a charged defendant in a criminal proceeding.

The sheriff of the county in which the order is made shall transport the inmate to and from prison unless the requesting peace officer or district

attorney provides the name of each peace officer who will conduct the transportation.

The county in which the removal order is made shall bear the costs of the transportation.

The district attorney is responsible for forwarding a copy of the order to the warden of the state prison where the inmate is housed.

The state is *not* liable for any damages, or for the injury or death of any person including a prisoner, during the time the prisoner is in the exclusive control of a local law enforcement agency.

Note: See **P.C. § 2690**, above, for authority for a 3-day removal to assist with the gathering of evidence, college classes, or medical treatment. Also, existing **P.C. § 2620** authorizes the transfer of a state prison inmate who is to be tried for a felony, or for testimony before a grand jury or at a preliminary hearing, or to vacate a judgment, or “for the purpose of hearing a motion or other proceeding.” Existing **P.C. § 2621** authorizes transfer if a state prisoner is a material witness whose testimony is required in a criminal action. This new amended section is necessary, per case law, to allow removal for any other purpose. (*Swarthout v. Superior Court of Los Angeles County* (2012) 208 Cal.App.4th 701.)

Privileges:

Evid. Code §§ 965, 966, 967, & 968 (New): *Lawyer Service-Client Privilege:*

A “*lawyer referral service-client privilege*” is created. The client of a lawyer referral service has a privilege to refuse to disclose and to prevent another from disclosing, a confidential communication between the client and the lawyer referral service.

The lawyer referral service also has the privilege not to disclose such confidential communications.

The lawyer referral service must operate in compliance with **B&P § 6155**, which requires registration with the State Bar of California and that it operate in conformity with certain minimum standards.

Per **E.C. § 912 (Amended)**, this new privilege is added to the list of privileges that are waived if the holder of the privilege (the client) discloses a significant part of the communication or has consented to disclosure.

Evid. Code § 1941 (Amended): *Identity of an Informant*:

The privilege for law enforcement to not disclose the identity of an informant under listed circumstances is expanded to include information furnished to a volunteer or employee of a “*crime stopper organization*.”

A “*crime stopper organization*” is defined as a private, nonprofit organization that accepts and expends donations used to reward persons who report to the organization information concerning alleged criminal activity, and forwards the information to the appropriate law enforcement agency.

Search Warrants:

Pen. Code § 1524 (Amended; Effective 9/20/2013): *Grounds for Issuing a Search Warrant*:

New **subd. (a)(13)** is added, authorizing the issuance of a search warrant to obtain a blood sample in **V.C. §§ 23140** (person under age 21 driving with BA of 0.05% or higher), **23152** (DUI), and **23153** (DUI with injury) cases when the person has refused to submit to or has failed to complete a blood test, and the sample will be drawn in a “*reasonable, medically approved manner*.”

The amendment also provides that this new paragraph is not intended to abrogate a court’s mandate to determine the propriety of the issuance of a search warrant on a case-by-case basis.

Sex Offenses:

Pen. Code § 136.2 (Amended): *No Contact Orders; Sex Offenses*:

P.C. §§ 261(rape), **261.5** (unlawful sexual intercourse), **262** (spousal rape), and any crime that requires registration pursuant to **P.C. § 290(c)**, is added to the list of crimes (domestic violence) for which the court is authorized at the time of sentencing to issue a no-contact order for up to 10 years, regardless of the sentence imposed.

Pen. Code § 261 (Amended; Effective 9/9/2013): *Rape*:

Subd. (a)(5) (rape by impersonation, where the victim submits under the belief that the perpetrator is the victim’s spouse and the belief is induced by artifice, pretense, or concealment) has been expanded to also apply where the victim submits under the belief that the perpetrator is “*someone known to the victim other than the accused*.”

Pen. Code § 286 (Amended; Effective 9/9/2013): *Sodomy*:

Subd. (j) (sodomy by impersonation: where the victim submits under the belief that the perpetrator is the victim's spouse and the belief is induced by artifice, pretense, or concealment) has been expanded to apply where the victim submits under the belief that the perpetrator is "*someone known to the victim other than the accused.*"

Pen. Code § 288.2 (Amended): *Harmful Matter Used to Seduce a Minor*:

The use of harmful matter to seduce a minor is redefined to include when the defendant "*believes another person is a minor.*" The severity of the punishment has also been broken down into two situations, as follows:

Punishment:

- (1) Felony; two, three or five years in state prison if the harmful matter depicts a minor or minors engaging in sexual conduct.
- (2) Felony; 16 months, two or three years in state prison if the harmful matter does *not* depict a minor or minors engaging in sexual conduct.

Pen. Code § 288a (Amended; Effective 9/9/2013): *Oral Copulation*:

Subd. (j) (oral copulation by impersonation: where the victim submits under the belief that the perpetrator is the victim's spouse and the belief is induced by artifice, pretense, or concealment) has been expanded to apply where the victim submits under the belief that the perpetrator is "*someone known to the victim other than the accused.*"

Pen. Code § 288 (Amended; Effective 9/9/2013): *Rape by Foreign Object*:

Subd. (f) (sexual penetration by impersonation: where the victim submits under the belief that the perpetrator is the victim's spouse and the belief is induced by artifice, pretense, or concealment) has been expanded to apply where the victim submits under the belief that the perpetrator is "*someone known to the victim other than the accused.*"

Pen. Code § 311.5 (Amended): *Child Pornography*:

For purposes of the unlawful possession of child pornography;

Each photograph, picture, computer-generated image, or any similar visual depiction shall be considered to be one image, *and*

Each video, video-clip, movie, or similar visual depiction shall be considered to have 50 images.

“*Sexual sadism*” is now defined as the intentional infliction of pain for purposes of sexual gratification or stimulation.

“*Sexual masochism*” is defined as intentionally experiencing pain for purposes of sexual gratification or stimulation.

Punishment: Felony:

- (1) 16 months, two years, or three years in state prison.
- (2) 16 months, two or five years in state prison if (a) the matter contains more than 600 images *and* 10 or more images involve a prepubescent minor or minor under age 12; *or* (b) the matter portrays sexual sadism or sexual masochism involving a minor under age 18.
- (3) Two years, four years or six years in state prison for possession of child pornography where the defendant has a prior conviction for **P.C. § 311.11**, or any offense requiring sex registration, or an attempt to commit **P.C. § 311.11**.]

Pen. Code § 626.81 (Amended): *Sex Registrants on School Campuses:*

The written permission a **P.C. § 290** sex offender is required to have in order to come onto the grounds of a school must indicate the date(s) and time(s) for which permission has been granted.

The chief administrative official of a school who intends to permit a **P.C. § 290** sex offender who is *not* a family member of a pupil attending the school to come onto school grounds must, at least 14 days before, notify the parent or guardian of each child attending that school about his or her right to obtain information about the sex offender from a law enforcement entity pursuant to **P.C. § 290.45**.

Note: **P.C. § 290.45** permits law enforcement entities to provide information to the public about sex offenders.

A chief administrative official or school employee who in good faith provides the notice and information specified above is immune from civil liability.

Pen. Code § 647 (Amended; Effective 10/1/2013): *Photographing Intimate Body Parts*:

Subd. (j)(4) (New): Photographing or recording the image of an intimate body part of another identifiable person under circumstances where the parties agreed or understood that the image would remain private, and the defendant subsequently distributes the image with the intent to cause serious emotional distress, and the depicted person suffers serious emotional distress.

“*Intimate Body Part*” is defined as any portion of the genitals, including any portion of a female’s breasts below the top of the areola, that is either uncovered or visible through less than fully opaque clothing.

Punishment: Misdemeanor; six months in county jail and/or a fine of \$1,000 (first offense). One year in county jail and/or a \$2,000 where the victim is a minor, or for a second or subsequent violation (per **P.C. § 647(I)**).

Pen. Code § 3003.6 (New): *Sex Registrants*:

It is a misdemeanor for a person who is required to register as a sex offender pursuant to **P.C. § 290** to reside, work, or volunteer in a child day care facility, a children’s residential facility licensed by the State Department of Social Services, a home certified by a foster family agency, a home approved by a county child welfare services agency, or a home or facility that receives placement of a child who has been, or may be, declared a dependent child of the court (**W&I § 300**) or a ward of the court (**W&I §§ 601 or 602**).

An exception is when the sex registrant is a client of one of these facilities.

Punishment: Misdemeanor; six months in county jail and/or a \$1,000.

Pen. Code § 3010.10 (New): *Parole and Monitoring Devices*:

A person who is required to register as a sex offender pursuant to **P.C. § 290** is prohibited from removing, disabling, or permitting another to remove or disable, an electronic, global positioning system (GPS), or other monitoring device affixed to his or her person as a condition of parole.

Exceptions are the removal of a monitoring device when necessary during medical treatment or if authorized by a court, law enforcement, or the entity responsible for monitoring the device.

Punishment: Revocation of parole and incarceration for 180 days in county jail:

Students:

Educ. Code § 221.5 (Amended): *Gender Identity:*

Subd. (f) (New) provides that “A pupil shall be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with his or her gender identity, irrespective of the gender listed on the pupil’s records.”

Educ. Code § 48900 (Amended): *Bullying:*

The term “*electronic act*,” when it occurs for purposes of bullying by means of an electronic act, has been redefined. An “*electronic act*” now requires both the creation *and* the transmission of a message, text, sound, image, or posting on a social network site, whether the message originated on or off the school campus.

Subpoenas:

Code of Civ. Proc. § 1986.1 (Amended): *News Media Subpoenas:*

In issuing subpoenas for a journalist in any criminal or civil proceeding, as an exception to the requirement that the journalist who is being subpoenaed be given at least five days notice by the party issuing the subpoena, the phrase “*exigent circumstances*” is replaced by the following: “. . . *circumstances that pose a clear and substantial threat to the integrity of the criminal investigation or present an imminent risk of death or serious bodily harm.*”

A new paragraph is added to **subd. (b)** requiring that a party issuing a subpoena in a criminal or civil case to a third party that seeks the records of a journalist, provide notice of the subpoena to the journalist and the publisher of the newspaper, magazine, publication, or broadcast station, at least five days prior to issuing the subpoena, in order to protect against inadvertent disclosure by a third party, “*unless there are circumstances that pose a clear and substantial threat to the integrity of the criminal investigation or present an imminent risk of death or serious bodily harm.*”

The notice to the journalist and the publisher must include an explanation of why the requested records will be of material assistance to the party seeking them and why alternate sources of information are not sufficient to avoid the need for the subpoena.

Theft:

Pen. Code § 463 (Amended): *Looting:*

Subd. (b) is expanded to include **P.C. § 487a(a)**, providing that committing grand theft during a state of emergency is “*looting.*”

Punishment: Felony (wobbler): 16 months, or two or three years, or one years, per **P.C. § 1170(h)**.

Pen. Code §§ 487 & 487a (Amended): *Theft of Animals:*

The theft of specified animals has been moved from **P.C. § 487(d)(1)** to a new **subd. (a)** in **P.C. § 487a**, relettering the remainder of **section 487a**; i.e., **subds. (a)** and **(b)** to **(b)** and **(c)**, respectively.

P.C. § 487a(a):

- (1)** Feloniously stealing, taking, carrying, leading, or driving away a horse, mare, gelding, bovine animal, caprine animal, mule, jack, jenny, sheep, lamb, hog, sow, boar, gilt, barrow, or pig, which is the personal property of another (previously in **P.C. 487(d)(1)**);
- (2)** Fraudulently appropriating any of the above property that has been entrusted to the perpetrator;
- (3)** Knowingly and designedly, by any false or fraudulent representation or pretense, defrauding another person of any of the above property;
- (4)** Causing or procuring another person to report falsely of one’s wealth or mercantile character and by thus imposing upon any person, obtaining credit and thereby fraudulently getting or obtaining possession of any of the above property.

Punishment: Felony (wobbler); 16 months, 2 or 3 years in state prison, or one year in county jail and/or a \$5,000 fine (per **P.C. § 489**).

Note: Per **P.C. § 186.2 (Amended)**, this section has been added to the list of offenses that constitute “*criminal profiteering activity.*”

Pen. Code § 519 (Amended); *Extortion*:

The types of threats that constitute “*fear*” for purposes of proving the crime of extortion is expanded to include a threat to report immigration status or suspected immigration status.

Pen. Code § 666 (Amended): *Petty Theft with a Prior*:

P.C. § 368(d) & (e) (theft, embezzlement, fraud, or forgery against an elder or dependent adult) are added to the list of prior theft convictions (e.g., burglary, robbery, auto theft, petty theft, grand theft, carjacking) that elevate a petty theft to a felony theft in both **P.C. § 666(a)** (requiring three or more theft priors) & **(b)** (requiring only one theft prior when the defendant is required to register as a sex offender or has a serious or violent prior felony conviction.)

Rev. & Tax. Code § 7153.6 (New): *Sales Tax Evasion*:

It is a felony (wobbler) to sell, purchase, install, transfer, or possess “*for commercial gain*” an “*automated sales suppression device*” or “*zapper*” or “*phantom-ware*,” knowing that the sole purpose of the device is to defeat or evade the determination of sales tax to be collected.

Punishment: Felony (wobbler); 16 months, two or three years per **P.C. § 1170(h)**, and/or a fine of \$5,000 (for 3 or fewer devices) or \$10,000 (for over three devices), or one year in county jail.

It is a misdemeanor to purchase, install, or use an “*automated sales suppression device*,” or “*zapper*,” or “*phantom-ware*” with the intent to defeat or evade the determination of the amount of sales tax owed to the government.

Punishment: Misdemeanor; one year in county jail and/or a fine of \$1,000 to \$5,000 (per **R&T § 7153**).

Any person who uses an automated sales suppression device or zapper or phantom-ware is liable for all taxes, interest, and penalties due as a result of the use of the device.

An “*automated sales suppression device*” or “*zapper*” is defined as a software program that falsifies the electronic records of electronic cash registers and other point-of-sale systems, including transaction data and transaction reports.

“*Phantom-ware*” is defined as a programming option embedded in the operating system of an electronic cash register or hardwired into the

electronic cash register that can be used to create a virtual second till or eliminate or manipulate transaction records.

Rev. & Tax. Code § 55363.5 (New) provides similar provisions for the use of the same instruments and/or phantom-ware to avoid fees owed to the State Board of Equalization (Pursuant to existing **R&T § 55364**), with the offense being a felony (wobbler) or a misdemeanor depending upon, as above, whether it was done for a “*commercial purpose*.”

Any person who uses an automated sales suppression device or zapper or phantom-ware is liable for all taxes, interest, and penalties due as a result of the use of the device.

Felony Punishment: Felony (wobber); 16 months, two years, or three years in state prison per **P.C. § 1170(h)**, and/or a fine of \$5,000 (for 3 or fewer devices) or \$10,000 (for over three devices) one year in county jail

Misdemeanor Punishment: Misdemeanor; six months in jail and/or by a fine of up to \$500 (per **R&T § 55364**).

Undocumented Aliens:

Gov’t. Code §§ 7282 & 7282.5 (New): *Immigration Jail Holds on Undocumented Aliens:*

A new chapter (Title 1, Div. 7, Chap. 17.1) is created and entitled “*Standards for Responding to United States Immigration and Customs Enforcement Holds*.” These new sections mandate the following:

A law enforcement official has the discretion to cooperate with federal immigration officials by detaining an individual on the basis of an immigration hold for up to 48 hours after the individual becomes eligible for release from custody *only* if the continued detention of the individual on the basis of the immigration hold would not violate any federal, state, or local law, or local policy, *and only* if one of the following circumstances exist:

- (1) The individual has been convicted of a serious (**P.C. § 1192.7(c)**) or violent (**P.C. § 667.5(c)**) felony; *or*
- (2) The individual has been convicted of a felony punishable by imprisonment in state prison; *or*
- (3) The individual has been convicted within the past five years of a misdemeanor for a crime that is punishable as

either a misdemeanor or a felony (i.e., a wobbler) for, or has been convicted at any time of a felony for, any of the following:

- Assault;
- Battery;
- Use of threats;
- Sexual abuse, sexual exploitation, or crimes endangering children;
- Child abuse or endangerment;
- Burglary, robbery, theft, fraud, forgery, or embezzlement;
- Driving under the influence of alcohol or drugs but only if the conviction is for a felony;
- Obstruction of justice;
- Bribery;
- Escape;
- Unlawful possession or use of a weapon, firearm, explosive device, or weapon of mass destruction;
- Possession of an unlawful deadly weapon;
- An offense involving the felony possession, sale, distribution, manufacture, or trafficking of controlled substances;
- Vandalism with prior convictions;
- Gang-related offenses;
- An attempt or conspiracy to commit an offense specified in this list;
- A crime resulting in death, or involving the personal infliction of great bodily injury;
- Possession or use of a firearm in the commission of an offense;
- An offense that would require the person to register as a sex offender;
- False imprisonment, slavery, and human trafficking;
- Criminal profiteering and money laundering; torture and mayhem;
- A crime threatening the public safety;
- Elder and dependent adult abuse;
- A hate crime;
- Stalking;
- Soliciting the commission of a crime;
- An offense committed while on bail or released on one's own recognizance;
- Rape, sodomy, oral copulation, or sexual penetration;

Kidnapping;

A violation of **V.C. § 20001(c)** (hit and run with injury); *or*

(4) The individual is a current registrant in the California Sex and Arson Registry; *or*

(5) The individual is arrested and taken before a magistrate on a charge involving a serious (**P.C. § 1192.7(c)**) or violent (**P.C. § 667.5(c)**) felony, a felony punishable by imprisonment in the state prison, or any felony listed in (2) or (3) above other than domestic violence, and the magistrate makes a finding of probable cause pursuant to **P.C. § 872** (i.e., the defendant is held to answer at a preliminary hearing for any of these crimes but has not been convicted); *or*

(6) The individual has been convicted of a federal crime that meets the definition of an aggravated felony as set forth in **8 U.S.C. § 1101(a)(43)(A)–(P)** or is identified by the U.S. Dept. of Homeland Security’s Immigration and Customs Enforcement as the subject of an outstanding federal felony arrest warrant.

A detention based on an immigration hold if none of the above conditions exist is prohibited.

“*Conviction*” is defined in terms of **P.C. § 667(d)**.

Note: It thus apparently includes a juvenile adjudication for a serious or violent felony. Also, a felony conviction reduced to a misdemeanor at any point after initial sentencing would qualify as a felony conviction for purposes of an immigration hold.

Vehicle Code:

Veh. Code § 12801.9 (New; Effective 1/1/2015 or earlier): *Driver’s Licenses:*

Effective on 1/1/2015, or on the date the DMV Director executes a declaration that DMV is prepared to issue driver’s licenses in accordance with the following, neither a social security number nor proof of legal presence in the United States will be required in order to obtain a non-commercial driver’s license so long as the person meets all other qualifications for licensure and provides satisfactory proof of identity and California residency.

The Dept. of Motor Vehicles (DMV) is required to adopt procedures for identifying documents acceptable for proving identity and California residency, verifying the authenticity of the documents, issuing temporary licenses pending verification of authenticity, and holding hearings to appeal the denial of a license or temporary license. DMV must, however, accept various types of documentation for identity purposes, including an unexpired consular identification document, an unexpired passport, an original birth certificate, a home utility bill, or a rental agreement.

Specified documents not in the English language (e.g., a marriage license, divorce certificate, foreign federal electoral photo card issued on or after January 1, 1991, foreign driver's license, school or college transcript, deed or title to real property, property tax bill, or income tax return.) are to be accompanied by a certified English translation or affidavit of translation.

A "V.C. § 12801.9 license" must bear the following notice: "This card is not acceptable for official federal purposes. This license is issued only as a license to drive a motor vehicle. It does not establish eligibility for employment, voter registration, or public benefits."

A peace officer shall not detain or arrest a person solely on the belief that he or she is an unlicensed driver, unless the officer has reasonable cause to believe the person driving is under age 16.

It is a violation of law, including the **Unruh Civil Rights Act**, to discriminate against a person because he or she holds a V.C. § 12801.9 license. A V.C. § 12801.9 license shall not be used to consider a person's citizenship or immigration status as a basis for criminal investigation, arrest, or detention.

V.C. § 12801 (Amended) also permits a person to obtain a noncommercial driver's license without a social security number and without proof of legal presence in the United States.

V.C. § 12801.10 (New) provides that a social security number continues to be required in order to obtain a commercial driver's license.

Veh. Code § 13001 (New): *California Identification Cards:*

A federal document demonstrating the acceptance of a person into the federal "*Deferred Action for Childhood Arrivals*" program (DACA) satisfies the requirement that an applicant for a California Identification Card submit proof of lawful presence in the United States.

The Dept. of Motor Vehicles may issue an identification card to a person who submits this federal document, and submits either a social security number or proof of ineligibility for a social security number.

Note: On June 25, 2012, President Obama announced that the Dept. of Homeland Security would not deport certain youth who came to the U.S. as children. This program is referred to as DACA: “*Deferred Action for Childhood Arrivals.*”

Veh. Code § 15309.5 (New): *Commercial Driver’s License Testing:*

It is a misdemeanor/infraction to commit the following:

Sell, offer for sale, distribute or use a crib sheet or cribbing device that contains answers to any examination administered by the Dept. of Motor Vehicles (DMV) for a commercial driver’s license or permit.

Impersonate or allow the impersonation of an applicant for a commercial driver’s license or permit for the purpose of fraudulently qualifying for the license or permit.

Provide or use any unauthorized assistance during an examination administered by DMV for a commercial driver’s license or permit.

Punishment: Misdemeanor/Infraction; Suspension of the commercial license for a first conviction. Second conviction; 6 months in county jail and/or a \$1,000 fine, and a one year suspension of the commercial license.

Veh. Code § 21760 (New; Effective 9/16/2014): *Bicycles; The Three Feet for Safety Act:*

The driver of a vehicle overtaking and passing a bicycle that is proceeding in the same direction must do so at a safe distance of at least three feet. If the driver is not able to comply with the three-foot rule due to traffic or road conditions, the driver must slow to a reasonable and prudent speed, and may pass only when doing so would not endanger the safety of the bicyclist.

Punishment: Infraction; fine of \$35. If a collision occurs and the bicyclist is injured, a fine of \$220.

Note: The reference to bicycles is deleted from **Veh. Code § 21750** (Amended; Effective 9/16/2014)

Veh. Code § 23124 (Amended): *Minors and Cellphones While Driving:*

Amendment adds the prohibitions on texting while driving, as contained in **V.C. § 23123.5**, to this section, making it illegal for minors to text and drive even if the device used is hands-free. Also added are “*electronic wireless communication devices*” to those devices (wireless telephones) that a minor is prohibited from using while driving, even if the device is hands-free.

Punishment: Infraction; Fine of \$20 for a first offense, and \$50 for each subsequent offense.

Veh. Code §§ 23152 & 23153 (Amended): *Driving While Under the Influence:*

Driving while under the influence of alcohol (**subd. (a)** (Amended)) is separated from driving while under the influence of a drug (**subd. (e)** (New)). Driving while under the combined influence of alcohol and a drug is now contained in **subd. (f)** (New). **Subd. (b)** continues to prohibit the driving with a .08% blood-alcohol level or higher.

Victims:

Civ. Code § 1946.7 (Amended): *Lease Termination by Specified Victims:*

“*Human trafficking*” victims are added to those victims (domestic violence, sexual assault, stalking, and elder abuse) who may terminate their residential leases without liability.

The notice to terminate may include documentation from a qualified professional that the tenant is seeking assistance for physical or mental injuries or abuse resulting from domestic violence, sexual assault, stalking, human trafficking, or elder abuse.

Qualified professionals include sexual assault counselors, domestic violence counselors, human trafficking caseworkers, physicians, nurses, psychologists, psychiatrists, and therapists.

A landlord is prohibited from disclosing information provided by a tenant to a third party unless the tenant consents in writing or the disclosure is required by law or court order.

Code of Civ. Proc. § 129 (Amended): *Photos, etc., of a deceased:*

The prohibition on making a copy or reproduction of a photograph or video recording of the body of a dead person, taken by a coroner at the scene of death or during a post-mortem examination, is expanded to also prohibit dissemination of the same.

A coroner is not personally liable for monetary damages in a civil action for any act or omission in compliance with this section.

Note: The various exceptions to this prohibition, including the exception permitting use of such photos and recordings in criminal proceedings and the exception permitting use by law enforcement agencies, are retained

Code of Civ. Proc. § 527.6 (Amended; Effective 7/1/2014): *Harassment Injunctions:*

The maximum duration of an injunction prohibiting harassment will be increased from three to five years, effective 7/1/2014. A renewed injunction, without having to show any further harassment, will also be increased from three to five years. If the duration of an injunction is not specified in the order, then it is good for only three years.

Code of Civ. Proc. § 1161.3 (Amended): *Residential Tenancy of Specified Victims:*

“*Human trafficking*” is added to the list of crimes (domestic violence, sexual assault, stalking, elder abuse) for which a landlord is prohibited (with some exceptions) from terminating or failing to renew the tenancy of a victim of any of these crimes.

Evid. Code § 1161 (Amended): *Victims of Human Trafficking:*

Evidence that is *not* admissible against a victim of human trafficking is narrowed from “*any conduct*” related to a commercial sexual act to “*any commercial sexual act*” as a result of being a victim of human trafficking

Gov’t. Code § 6254.30 (New): *Victims’ Access to Crime Reports:*

Victims of crime may have access to their crime reports under the California Public Records Act (**Gov’t. C. § 6254(f)**) without having to show proof of legal residency in the United States.

A state or local law enforcement agency is prohibited from requiring a crime victim to show proof of legal residency in order to obtain this information, but *does* permit the agency to require a document for identification purposes, such as a current driver’s license or identification card issued by any U.S. state, a current passport issued by the United States or a foreign government with which the U.S. has a diplomatic relationship, or a current Matricula Consular card.

Gov't. Code § 8594 (Amended): *Amber Alerts:*

The “*Amber Alert*” provisions are expanded to provide for the activation of emergency alerts when a child, age 17 or younger, is abducted, to include children who are “*taken*.” As rewritten, law enforcement must now activate the “*Emergency Alert System*” if a child is abducted or taken by anyone, including, but not limited to, a custodial parent or guardian, so long as the victim is in imminent danger of serious bodily injury or death.

Lab. Code §§ 230 & 230.1 (Amended): *Domestic Violence, Sexual Assault and Stalking in the Work Place:*

“*Stalking*” is added to these two sections that prohibit an employer from discharging, discriminating against, or retaliating against an employee who is the victim of domestic violence or sexual assault (and now, stalking) because the employee had to take time off from work to obtain a restraining order, seek medical attention, obtain services from a shelter or crisis center, obtain psychological counseling, or participate in safety planning.

Section 230, Subd. (e) (New): An employer is prohibited from discharging, or discriminating or retaliating against an employee because of the employee’s status as a victim of domestic violence, sexual assault, or stalking, if the victim provides notice to the employer of the status or the employer has actual knowledge.

Section 230, Subd. (f) (New): An employer is required to provide reasonable accommodations to victims of domestic violence, sexual assault, or stalking who request an accommodation for safety purposes while at work. Provides that reasonable accommodation may include a modified schedule, change of telephone number, changed work station, installation of a lock, or assistance in documenting domestic violence, sexual assault, or stalking that occurs in the workplace.

Note: Other provisions prohibit an employer from discharging, discriminating, or retaliating against an employee for taking time off from work to serve as a juror or to appear in court pursuant to a subpoena.

Punishment: Misdemeanor; 6 months in county jail and/or \$1,000 fine. Mandatory reinstatement and reimbursement of lost wages and work benefits for the victim. Equitable relief for the victim.

Lab. Code § 230.5 (New): *Victims and Mandatory Time Off for Court:*

An employer is prohibited from discharging, or discriminating or retaliating against, an employee who is the victim of a specified offense (below) and takes time off from work to appear in court to be heard at any proceeding, including a juvenile delinquency proceeding, involving a post-arrest decision, plea, sentencing, post-conviction release decision, or any proceeding where the rights of a victim are at issue.

The specified offenses include vehicular manslaughter while intoxicated, felony child abuse, felony domestic violence, felony physical abuse of an elder or dependent adult, felony stalking, solicitation to commit murder, any serious felony, hit and run causing injury, driving under the influence causing injury, and specified sexual assault crimes.

The employee must give reasonable advance notice to the employer, if feasible.

Punishment: Misdemeanor; 6 months in county jail and/or \$1,000 fine, for wilfully refusing to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure or hearing authorized by law. Reinstatement and reimbursement for lost wages and work benefits.

Pen. Code § 868.5 (Amended): *Moral Support for Prosecuting Witnesses:*

P.C. §§ 209(b) (kidnapping to commit robbery or a specified sex crime), **288.7** (sexual assault of a child age 10 or younger), **422** (criminal threats), **646.9** (stalking), and attempted violations of all the offenses listed in the section, are added to the list of offenses for which a prosecuting witness is entitled to the attendance of up to two persons of his or her choosing for support at a preliminary hearing, trial, or juvenile court proceeding.

Pen. Code § 868.8 (Amended): *Special Precautions for Victims with Disabilities and Children Under Age 11:*

P.C. §§ 209(b) (kidnapping to commit robbery or a specified sex crime), **220** (assault with intent to commit mayhem or a specified sex crime), **236.1** (human trafficking), **269** (aggravated sexual assault of a child), **288.7** (sexual assault of a child age 10 or younger), **422** (criminal threats), **646.9** (stalking), and attempted violations of all of the offenses listed in the section, are added to the list of offenses for which a court must take special precautions when the crime is committed against a person with a disability or against a minor under age 11, in order to protect him or her from coercion, intimidation, or undue influence.

Note: “*Special precautions*” include permitting reasonable breaks for a witness, the judge removing his or her robe, and relocating parties and witnesses within the courtroom to make the environment more comfortable and personal.

Witnesses:

Bus. & Prof. Code § 6103.7 (New): *Reporting the Immigration Status of a Witness or Party to a Civil or Administration Employment Action:*

Any member of the state bar who reports, or threatens to report, the immigration status of a witness or party to a civil or administrative action, or the status of his or her family member, to any federal, state, or local agency because the witness or party exercises or has exercised a right related to his or her employment, is subject to discipline by the State Bar.

Note: The stated purpose of this new statute is to prevent unscrupulous attorneys from discouraging undocumented aliens from testifying against their employers.

Punishment: Suspension, disbarment, or other discipline.

Pen. Code § 868.5 (Amended): *Moral Support for Prosecuting Witnesses:*

P.C. §§ 209(b) (kidnapping to commit robbery or a specified sex crime), **288.7** (sexual assault of a child age 10 or younger), **422** (criminal threats), **646.9** (stalking), and attempted violations of all the offenses listed in the section, are added to the list of offenses for which a prosecuting witness is entitled to the attendance of up to two persons of his or her choosing for support at a preliminary hearing, trial, or juvenile court proceeding.