

# **New Laws for 2019**

**The most important  
new statutes, rules, and forms  
for  
California Criminal Law**

**Selected and edited by**

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A link is provided to the internet page for each bill, rule, and most forms.

Some new statutes fit under two or more different categories, but I have included them under only one. I have included many cross references.

This treatise does not include all new laws, rules and forms that affect California criminal law, only the ones most important for practitioners.

The most complete list of new statutes on the internet is at <http://leginfo.legislature.ca.gov/faces/newLawTemplate.xhtml> . (“Bills Enacted Report – 2018,” at California Legislative Information, Publications.) The most complete sets of new Rules and Forms by the Judicial Council are at the California Courts web site, under menu item “Forms and Rules.” <http://www.courts.ca.gov/formsrules.htm>

This treatise is for information purposes only, and is not legal advice.

**Abbreviations:**

AB = Assembly Bill

SB = Senate Bill

BP = Business and Professions Code EC = Evidence Code

GC = Government Code

HS = Health and Safety Code

PC = Penal Code

VC = Vehicle Code

WI = Welfare and Inst. Code

D, or Def. = Defendant, Petitioner, or Person

P = People, or Prosecution

V = Victim

W = Witness

DOJ = Department of Justice

Stats. = Statutes and Amendments to the Codes (Published annually)

Quotes from statutes and rules are in this typeface. **Boldface**, is text amended into an existing statute. ~~Strikethrough~~ text is deleted text.

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## Highlights and Lowlights

- Only two new felonies, and few new misdemeanors.  
See “Crimes,” and “Domestic Violence.”
- Felony murder and natural and probable consequences rules limited.  
See “Crimes”
- Only one major new crime: Organized Retail Theft  
See “Crimes”
- Misdemeanor PC 273.5 gun prohibition now for life.  
See “Domestic Violence”
- Photo- and Live- Lineup Procedures Required by January 1, 2020  
See “Eyewitness Identification.”
- Remote Electronic Access to Court Records like Pleadings and Motions Encouraged  
See “Rules of Court”
- Relief from Consequences of Criminal Records Broadened  
See “Background Checks,” “Probation,” and “Professional Licenses”
- Minors Age 14 and 15 Normally Cannot Be Transferred to Adult Court  
See “Juvenile Court”
- Most Crimes by Minors Under Age 12 Are Not in Juvenile Court’s Jurisdiction  
See “Juvenile Court”
- Criminal Law Defense Attorney Access to Rap Sheets  
See “Discovery and Investigation”
- Two new diversion programs: Mental Health, and Repeat Thefts  
See “Diversion”
- Incompetency maximum term of commitment lowered to two years  
See “Incompetency to Stand Trial”
- Ammunition Sales Heavily Regulated  
See “Ammunition”
- Selected new Rules of Professional Conduct, and Official Comments  
See “Rules of Professional Conduct”

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## **Ammunition**

See also: Firearms for laws relating to both guns and ammunition.

### ***Ammunition sales more heavily regulated, beginning July 1, 2019***

Amends, inter alia, PC 20252, and enacts, inter alia, PC 30370 and 30358.

Link: [Full text SB-1235 \(Stats 2016 Ch. 55\)](#)

(Note: this bill amended 2016's Prop. 63's §§ 8.13-8.15)

#### **Edited text of PC 30352**

(a) Commencing July 1, 2019, an ammunition vendor shall not sell or ... transfer ownership of any ammunition without... recording the following ... on a [Department of Justice (DOJ)] form...:

- (1) The date of the sale or ... transfer.
- (2) The purchaser's or transferee's driver's license or other identification number ...
- (3) The brand, type, and amount of ammunition sold or ... transferred.
- (4) The purchaser's or transferee's full name and signature.
- (5) The name of the salesperson ....
- (6) The purchaser's or transferee's full residential address and telephone number.
- (7) The purchaser's or transferee's date of birth.

(b) Commencing July 1, 2019, an ammunition vendor *shall* electronically submit to [DOJ] the information [above] for all sales and transfers of ownership.... [DOJ] shall retain this ... [in] the Ammunition Purchase Records File. This information [is] confidential and may be used [only by specified entities] [and], only for law enforcement purposes. The ... vendor shall not use, sell, disclose, or share [except for law enforcement purposes] [this information] without the express written consent of the purchaser or transferee.

(c) Commencing on July 1, 2019, only those persons ... in this subdivision, or those persons or entities ... in subd[.] (e), shall be authorized to purchase ammunition.

Prior to delivering any ammunition, an ammunition vendor shall require ... evidence of identity to verify that the person ... receiving delivery ... is a person or entity listed in subd[.] (e) or [is]:

(1) A person authorized to purchase ammunition pursuant to [PC} 30370 [set out below].

(2) A person ... approved by [DOJ] to receive a firearm from the ammunition vendor..., if that vendor is a licensed firearms dealer, and the ammunition is delivered ... in the same transaction as the firearm.

(d) Commencing July 1, 2019, the ammunition vendor shall verify with [DOJ], in a manner prescribed by [DOJ], that the person is authorized to purchase ammunition. If the person is not listed as an authorized ammunition purchaser, the vendor shall deny the sale or transfer.

(e) Subd[s.] (a) and (d) shall not apply to sales or ... transfers of ownership of ammunition by ammunition vendors to ... the following...:

(1) An ammunition vendor.

(2) A person ...on the centralized list of exempted federal firearms licensees maintained by [DOJ].

(3) A person who purchases or receives ammunition at a target facility holding a business or other regulatory license, provided that the ammunition is ... kept within the facility's premises.

(4) A gunsmith.

(5) A wholesaler.

(6) A manufacturer or importer of [guns] or ammunition licensed [by 18 U.S. Code Ch. 44 [secs 921 et seq.] and [its] regulations ....

(7) An authorized law enforcement representative of a city, county, ... or state or federal government, if the sale or ... transfer ... is for exclusive use by that ... agency, and, prior to the sale, ...or transfer ..., written authorization [as defined] ... from the [agency] head ... is presented ....

(8) A properly identified sworn peace officer, as defined ... or properly identified sworn federal law enforcement officer, who is authorized to carry a firearm in the course and scope of the officer's duties....

### **Edited text of PC 30370**

(a) Commencing July 1, 2019, [DOJ] shall electronically approve the purchase or transfer of ammunition through a vendor, ... except as

otherwise specified. This ... shall occur at the time of purchase or transfer, prior to the purchaser or transferee taking possession of the ammunition. Pursuant to the authorization specified in paragraph (1) of subdivision (c) of Section 30352 [set out above], the following persons are authorized to purchase ammunition:

(1) A purchaser or transferee whose information matches an entry in the Automated Firearms System (AFS) and who is eligible to possess ammunition as specified in subd[.] (b).

(2) A purchaser or transferee who has a current certificate of eligibility issued by the department pursuant ....

(3) A purchaser or transferee who is not prohibited from purchasing or possessing ammunition in a single ... transaction or purchase made pursuant to the procedure developed pursuant to subdivision (c).

(b) To determine if the purchaser or transferee is eligible ..., [DOJ] shall cross-reference the ... purchaser's or transferee's name, date of birth, ... address, and driver's license or other ... identification ..., as [specified], with the info[.] maintained in the AFS. If [they do] not match an AFS entry, the transaction shall be denied. If [they do match] an AFS entry, [DOJ] shall determine if the purchaser or transferee falls within a class of persons who are prohibited from owning or possessing ammunition by cross-referencing with the Prohibited Armed Persons File. If the purchaser or transferee is prohibited from owning or possessing a firearm, the transaction shall be denied.

(c) [DOJ] shall develop a procedure in which a person who is not prohibited from purchasing or possessing ammunition may be approved for a single ammunition transaction or purchase.

(d) A vendor is prohibited from providing a purchaser or transferee ammunition without [DOJ] approval. If a vendor cannot electronically verify a person's eligibility ... via an Internet connection [for specified reasons], the department shall provide ...a telephone line to verify eligibility....

**Punishment for violation is provided by the already-existing PC 30385:**

(a) Any person, ... or ... enterprise who supplies, ... or gives ..., any ammunition to any person who he or she knows or ... should know is prohibited from owning, ... or having under custody ..., any ammunition or reloaded ammunition pursuant to [PC 30305, subds. (a) or (b)], is guilty of a misdemeanor, punishable by [a year in county jail, or a fine up to \$1,000, or both].

(b) Any person ... or ... enterprise who supplies, ... or gives possession ... of, any ammunition to any person whom the person, ... or ... enterprise knows or has cause to believe is not the actual purchaser or transferee of the ammunition, with knowledge or cause to believe [this] is to be subsequently sold or transferred to a [prohibited] person..., is guilty of a misdemeanor, punishable by [up to a year in jail, or a fine up to \$1,000, or both]....

## Appeals

See “Rules of Court” for sealing records, and for superior court appellate division requirement for prompt notification

See “Discovery and Inspection” for increased chance for post-trial discovery.

See “Enhancements” for discretion to dismiss 5-year priors.

## Arrest and Release

### *Release on Citation for Misdemeanor; New Exceptions*

Amends PC 853.6                      [Link](#)

See also Crimes, Diversion, and Warrants, for related provisions of this Bill.

PC 853.6 provides a general rule and general procedure for releasing most people arrested on misdemeanors, before or after booking. Subd. (i) states many exceptions to this general rule. This bill adds to those exceptions.

### **PC 853.6, subd. (i), with amendments in boldface:**

(i) ... [A]ny person is arrested ... for a misdemeanor, ... shall be released according to the procedures [stated] unless one **or more** of the following is a reason for nonrelease, in which case the arresting officer may release the person, except as provided in subdivision (a), or the arresting

officer shall indicate, on a form ... established by [the] employing law enforcement agency, which of the following was a reason for the nonrelease:

(1) [D] was so intoxicated that he or she could have been a danger to himself or herself or to others.

(2) [D] required medical examination or medical care or was otherwise unable to care for his or her own safety.

(3) [D] was arrested under one or more of the circumstances listed in [VC] 40302 and 40303 ....

(4) There were one or more outstanding arrest warrants **or failures to appear in court on previous misdemeanor citations that have not been resolved** for the person.

(5) [D] could not provide satisfactory ... identification.

(6) The prosecution of the offense or offenses for which the person was arrested, or ... of any other offense or offenses, would be jeopardized by immediate release of [D].

(7) There was a ... likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be imminently endangered by release of [D].

(8) [D] demanded to be taken before a magistrate or refused to sign the notice to appear.

(9) There is reason to believe that [D] would not appear at the time and place.... The basis for this ... shall be specifically stated. **An arrest warrant or failure to appear that is pending at the time of the current offense shall constitute reason to believe that the person would not appear as specified in the notice.**

(10) The person was subject to [PC] 1270.1.

(11) **The person has been cited, arrested, or convicted for misdemeanor or felony theft from a store or from a vehicle in the previous 6 months.**

(12) **There is probable cause to believe that [D] is guilty of committing organized retail theft, as defined in [the new "organized retail theft statute, PC 490.4, subd. (a)]....**

## Attorneys

State Bar applicants can't be required to disclose immigration status, and Bar membership can't be denied solely based on that status.

Amends, inter alia, BP 30.

Link: [Full text SB-695 \(Stats 2018, Ch. 838\)](#)

### **Edited Text of BP 30:**

(a)(1)....

(2) (A)....

(B) [The State Bar] shall not require an individual to disclose either citizenship status or immigration status for purposes of licensure.

(C) A licensing board shall not deny licensure to [a] qualified and eligible individual based solely on ... citizenship ... or immigration status.<sup>[1]</sup>

(D) The Legislature finds and declares that the requirements of this subdivision are consistent with subsection (d) of Section 1621 of Title 8 of the United States Code....

### **Fingerprinting: Rule of Court 9.95, effective June 1, 2018**

#### **California Rule of Court 9.9.5 Attorney Fingerprinting**

(a) Subsequent arrest notification

(1) The State Bar must ... contract with [DOJ] for subsequent arrest notification ... for [active licensed attorneys] and attorneys [practicing] in ... California pursuant to [Calif. Rules of Ct. 9.44 - 9.46 ("special admissions attorneys")]....

(2) [Exempts certain attorneys already fingerprinted ....]

(b) Active licensed attorneys

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<sup>1</sup> This broad language seems to apply to BP-governed licensing boards generally. GB

Each active licensed attorney [unless exempt under subd. (a)(2)] must ... be fingerprinted for ... obtaining criminal ... record info[.] [on] state and federal ... convictions and arrests from [DOJ] and the [FBI]...

(c) Inactive ... attorneys [must be fingerprinted for reactivation]

(d) Active licensed attorneys in foreign countries [generally must be fingerprinted; or be fingerprinted within 60 days of repatriating.]

(e) Special admissions attorneys [defined above]

[Unless exempt under subd. (a)(2), must also be fingerprinted.]

(f) .... (1) The State Bar must develop a schedule ... [requiring] all [subject] attorneys ... be fingerprinted by Dec[.] 1, 2019...

(2) [and (3)] ... Failure to be fingerprinted ... may result in involuntary inactive enrollment.... [Special admissions attorney may have to stop practicing in Calif.]

(g) Information obtained ...; disclosure limitations

Any info[.] obtained ... as a result of [this] ... must be kept confidential and used solely for State Bar licensing and regulatory purposes.

(h) Fingerprint submission and processing costs

(1) Except as described in [(h)(2)], all costs [for fingerprint] processing ... must be borne by the ... attorney....

(2) The State Bar must ... grant[ ] waivers of the ... costs of running [the] ... checks for... attorneys with ... financial hardship.

(i) Attorneys who are physically unable to be fingerprinted

(1) [and (2)] If [DOJ or the State Bar] [determines] ... that any attorney ... is ... unable to provide ... fingerprints, the attorney [is] deemed to have complied ....

(3) ... [D]eemed compliance ... appl[ies] only to those ... unable to supply ... fingerprints due to disability, illness, accident, or ... circumstances beyond their control[,] not ... to attorneys who [have] avoid[ed] submitting their fingerprints.

### **Background Checks**

See Discovery and Investigation for criminal law defense attorney access to rap sheets.  
See Business and Professional Licenses and Discipline.

### **Limits convictions that employers can consider when doing a criminal back ground check on job applicants, to those relevant to the job applied for.**

Amends Labor Code section 432.7 Link: [Full Text of S.B. 1412 \(Stats. 2018, Ch. 987\).](#)

#### **From the Senate Floor Analysis of Aug. 30, 2018:**

This bill:

1) Clarifies the circumstances when an employer is prohibited from asking an applicant about ... convictions that have been ... dismissed or ordered sealed[,] by limiting ... inquiries to “particular convictions” where conviction ... would legally prohibit someone from holding that job.

2) Defines particular conviction as “a conviction for specific ... conduct or a category of ... offenses prescribed by any federal law [or] regulation or state law [stating] requirements [or] exclusions, ... based on that specific criminal conduct or category of ... offenses.”

[Lab. Code § 432.7 is a main statute limiting the prior criminal record of job applicants that most employers can consider. The other main statute is GC 12952. GB]

### **Bail**

#### **Cash Bail Replaced by Risk Assessment. Unless a Referendum Delays and Defeats It.**

This bill amends GC 27771; adds PC 1320.6, and thereby repeals the entire Bail chapter of the PC (Part 2, Title 10, Ch. 1), and adds, to PC Part 2, Title 10, a new Chapter 1.5, titled “Pretrial Custody Status.”

Link: [Full text S.B. 10 \(Stats. 2018 Ch. 244\)](#)



This bill says it goes into effect on October 1, 2019.

But, at this writing, a referendum petition is awaiting signature verification. The Secretary of State's web page says, "If this petition is signed by the required number of registered voters ..., a referendum will be placed on the next statewide ballot requiring a majority of voters to approve [this] law before it can take effect." For further information about this referendum, see [Initiatives and Referenda Pending Signature Verification | California Secretary of State](#) .

If SB 10 does not become operative, so, too, SB 1054 (Stats. 2018, Ch. 980) will not become operative. That bill would restrict release of people convicted of a PC 290 offense.

**Note**, however, that implementation of this bill requires action by the Judicial Counsel and by County Courts, and is actively underway. *Citizen involvement (that means YOU) is encouraged. Contact your local court or the Judicial Counsel to find out more. This implementation process may continue even if a referendum is on the ballot.*

Because of this uncertainty, this paper does not have in-depth treatment of SB 10.

**Summary of SB 10 by GB.** ("Article" references are to the "Pretrial Custody Status" chapter.

SB 10 (Stats. 2018 Ch. 244) repeals cash bail, and replaces it with "pretrial risk assessment."

The "Bail" chapter of the Penal Code is repealed, operative October 1, 2019, and replaced with a new chapter, titled "Pretrial Custody Status"

Many, perhaps most, persons arrested for misdemeanor who are taken in for booking will be quickly released on a standard O.R. (Article 2.)

All others, felony and misdemeanor, will be investigated by pretrial assessment service, using, inter alia, a "validated risk assessment tool." They will be rated as low, medium, or high risk. (Article 3.)

Some low and medium risk people will soon be released by pretrial assessment services. (Part II, below, Article 4.)

Courts can have a prearrestment review for early release consideration. (Article 5.)

Courts can let subordinate judicial officers to make release decisions. (Article 1.)

Arrestment remains a common time for release decisions. (Article 6.)

Preventive detention is allowed only after a hearing, and requires "clear and convincing evidence that no nonmonetary conditions of pretrial supervision will reasonably assure public

safety or the appearance of [D] in court ....” The court can consider “reliable hearsay.” Preventive detention is permitted only if that is permitted under the United States’ and California’s Constitutions. (Article 7.)

By February 1, 2019, SB 10 says, the presiding judge and chief probation officer of each county must submit to the Judicial Council a letter confirming their intent to contract for pretrial assessment services. (Article 8.)

Judicial Council duties include promulgating new Rules of Court. (Article 8.)

Certain Local Rules are also authorized, including the option to expand the list of offenses and factors for prearrest release of some low risk persons. (Article 8.)

## **Business and Professional Licenses and Discipline**

### **Reducing barriers to licensure for people with prior criminal records.**

Early warning. This bill does not become fully operative until July 1, 2020.

Amends, repeals, then adds back new versions of, BP 7.5, 480, 481, 482, 488, 493, and 11345.2; and adds new 480.2.

Link: [Full text of A.B. 2138 \(Stats. 2018, Ch. 995\)](#)

### **From the Assembly Floor Report of August 28, 2018:**

[This bill] Reduces barriers to licensure for individuals with prior ... convictions by limiting a regulatory board’s discretion to deny a new license ... to cases where the applicant was formally convicted of a substantially related crime or subjected to formal discipline by a licensing board, with offenses older than seven years no longer eligible for license denial, with several enumerated exemptions.

## **Certificate of Rehabilitation and Pardon**

See Reentry and Rehabilitation

## **Child Abuse and Neglect**

See: Statutes of Limitations re: Mandatory Reporters.

## Conduct Credits

See “Incompetent to Stand Trial”

## Controlled Substances, including Cannabis

### *Expedited review of specified marijuana convictions for recall or dismissal, dismissal and sealing, or redesignation.*

Adds new HS 11361.9

Link: [Full text A.B. 1793 \(Stats. 2018, Ch. 993\)](#)

#### From the Senate Floor Summary of August 18, 2018:

This bill expedites the identification, review, and notification of individuals who may be eligible for recall or dismissal, dismissal and sealing, or redesignation of specified cannabis-related convictions.

The floor summary also says that there are about 500,000 people arrested for marijuana offenses in the last decade, but as of September 2017, only 4,885 people had petitioned to have their records modified.

[Comment by GB: Depending on how this bill is implemented, it seems to provide for near automatic recall, dismissal, sealing, or redesignation, as appropriate, even if D is not notified; see subds. (c)(3), (c)(4), and (d).]

#### Edited text of added HS 11361.9

(a) [By] July 1, 2019, [DOJ] shall ... identify past convictions that are potentially eligible for recall or dismissal of sentence, dismissal and sealing, or redesignation pursuant to [PC] 11361.8. [DOJ] shall notify [P] of all [eligible] cases in their jurisdiction....

(b) [P] [has] until July 1, 2020, to review all cases and determine whether to challenge the recall or dismissal of sentence, dismissal and sealing, or redesignation.

(c)(1) [and (2)]: [P] may challenge the resentencing ... when the person does not meet the criteria ... in [PC] 11361.8 or [for Ds serving a sentence, who] present[ ] an unreasonable risk to public safety.....

(3) [By] July 1, 2020, [P] shall inform the court and the public defender's office ...when they are challenging a particular recall or dismissal

..., dismissal and sealing, or redesignation. [P] shall inform the court when they are not challenging a particular recall or dismissal of sentence, dismissal and sealing, or redesignation.

(4) [P]ublic defender[ ]..., upon [getting] notice from [P] ..., shall [try] to notify [Ds] whose resentencing or dismissal is being challenged.

(d) If [P] does not challenge the recall or dismissal of sentence, dismissal and sealing, or redesignation by July 1, 2020, the court shall reduce or dismiss the conviction....

(e) The court shall notify [DOJ] of the recall or dismissal of sentence, dismissal and sealing, or redesignation and [DOJ] shall modify [its records] accordingly.

(f) [DOJ] shall post general information on its ... Web site about the recall or dismissal of sentences, dismissal and sealing, or redesignation authorized in this section.

(g) [[T]he Legislature [intends] that persons who are currently serving a sentence or who proactively petition for a recall or dismissal of sentence, dismissal and sealing, or redesignation pursuant to [PC] 11361.8 be prioritized for review.

## **County Jail**

See Prisons and Jails.

## **Crimes**

See also “Domestic Violence” for gun possession after conviction.

## ***Accomplice Liability for Felony Murder, and Natural and Probable Consequences, Limited***

Amends PC 188 and 189, and adds PC 170.95

Link: [Full Text SB 1437 \(Stats 2018 Ch. 1015\)](#)

### **From the Legislative Counsel’s Digest**

.... This bill [requires] a principal in a crime to act with malice aforethought to be convicted of murder except when the person was a participant in the perpetration or attempted perpetration of a specified felony in which a death occurred and the person was [1] the actual killer, [or 2] was not the actual killer but, with the intent to kill, aided, abetted, counseled, commanded, induced, solicited,

requested, or assisted the actual killer in the commission of murder in the first degree, or [3] the person was a major participant in the underlying felony and acted with reckless indifference to human life.

The law before this ... define[d] first degree murder, in part, as all murder ... [done] in the perpetration [or attempt] of ..., specified felonies, including arson, rape, carjacking, robbery, burglary, mayhem, and kidnapping....

This bill ... prohibit[s] a participant in the perpetration or attempt[ ] ... of one of the specified first degree murder felonies [where a] death occurs from being liable for murder, unless [1] [D] was the actual killer or [2] [D] was not the actual killer but, with the intent to kill, aided, abetted, counseled, commanded, induced, solicited, requested, or assisted the actual killer, or [3] [D] was a major participant in the ... felony and acted with reckless indifference to ...life, [but those restrictions don't apply if] [V] was a peace officer who was killed in the course of performing his or her duties where [D] knew or should reasonably have known [V] was a peace officer engaged in the performance of his or her duties.

This bill ... provide[s] a means of vacating the conviction and resentencing [D] when a complaint, information, or indictment was filed ... that allowed [P] to proceed under a theory of first degree felony murder or murder under the natural and probable consequences doctrine, [D] was sentenced for ... murder or accepted a plea offer in lieu of a trial at which [D] could be convicted for ... murder, and [D] could not be charged with murder after the enactment of this bill....

**Edited text of SB 1437**

**Uncodified section 1**

¶...¶

(f) It is necessary to amend the felony murder rule and the natural and probable consequences doctrine, ... to ensure that murder liability is not imposed on a person who is not the actual killer, did not act with the intent to kill, or was not a major participant in the underlying felony who acted with reckless indifference to human life.

(g) Except as stated in [amended PC 189, subd. (e)], a conviction for murder requires that a person act with malice aforethought. A person's culpability for murder must be premised upon that person's own actions and subjective mens rea.

**Sec. 2: [PC] 188 is amended [and significantly rewritten] to read:**

(a) For purposes of Section 187 [murder], malice may be express or implied.

(1) Malice is express when there is manifested a deliberate intention to unlawfully take away the life of a fellow creature.

(2) Malice is implied when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart.

(3) Except as stated in subd[.] (e) of Section 189, ... to be convicted of murder, a principal in a crime shall act with malice aforethought. Malice shall not be imputed to a person based solely on his or her participation in a crime. [Note: This is the main new language in PC 188. GB]

(b) If it is shown that the killing resulted from an intentional act with express or implied malice, as defined in subdivision (a), no other mental state need be shown to establish the mental state of malice aforethought. Neither an awareness of the obligation to act within the general body of laws regulating society nor acting despite that awareness is included within the definition of malice.

**Sec. 3 [PC] 189 ... is amended [and substantially rewritten] to read:**

(a) All murder that is perpetrated by means of a destructive device or explosive, a weapon of mass destruction, knowing use of ammunition designed primarily to penetrate metal or armor, poison, lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing, or that is committed in the perpetration of, or attempt to perpetrate, arson, rape, carjacking, robbery, burglary, mayhem, kidnapping, train wrecking, or any act punishable under Section 206, 286, 288, 288a, or 289, or murder ... perpetrated by means of discharging a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict death, is murder of the first degree.

(b) All other kinds of murders are of the second degree.

(c) As used in this section, the following definitions apply:

(1) "Destructive device" has the same meaning as in [PC] 16460.

(2) “Explosive” has the same meaning as in [HS] 12000....

(3) “Weapon of mass destruction” [is] defined in [PC] 11417.

(d) To prove the killing was “deliberate and premeditated,” it is not necessary to prove the defendant maturely and meaningfully reflected upon the gravity of [the] act.

**(e) A participant in the perpetration or attempted perpetration of a felony listed in subdivision (a) in which a death occurs is liable for murder only if one of the following is proven:** *[Note by GB: This Subd. (e) is the main new language in amended PC 189.]*

**(1) The person was the actual killer.**

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

**(3) The person was a major participant in the underlying felony and acted with reckless indifference to human life, as described in [PC 190.2, subd. (d)]<sup>2</sup>.**

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<sup>2</sup> The description in PC 190.2, subd. (d) is “... every person, not the actual killer, who, with reckless indifference to human life and as a major participant, aids, abets, counsels, commands, induces, solicits, requests, or assists in the commission of [a listed felony] which results in the death of some person or persons....”

The listed felonies are: (A) Robbery [PC 211 or 212.5], (B) Kidnapping [PC 207, 209, or 209.5], (C) Rape [PC 261], (D) Sodomy [PC 286], (E) a lewd or lascivious act upon the person of a child under the age of 14 years [PC 288], (F) Oral copulation [PC 287, or former 288a], (G) Burglary in the first or second degree [PC 460]. (H) Arson [specified in PC 451, subd. (b)], (I) Train wrecking [PC 219], (J) Mayhem [PC 203], (K) Rape by instrument [PC 289], [or] (L) Carjacking [PC 215].

**(f) Subdivision (e) does not apply to a defendant when the victim is a peace officer who was killed while in the course of his or her duties, where [D] knew or reasonably should have known that [V] was a peace officer engaged in the performance of his or her duties.**

**Section 4: [PC] 1170.95 is added ..., to read:**

(a) A [D] convicted of felony murder or murder under a natural and probable consequences theory may file a petition with the [sentencing] court ... to have the ... murder conviction vacated and to be resentenced on any remaining counts[,] when all of the following conditions apply:

(1) [The] complaint, information, or indictment ... allowed [P] to proceed under a theory of felony murder or murder under the natural and probable consequences doctrine.

(2) [D] was convicted of first degree or second-degree murder following a trial or accepted a plea offer in lieu of a trial at which [D] could be convicted for first degree or second degree murder.

(3) [D] could not be convicted of first- or second-degree murder because of changes to [PC] 188 or 189 made [by this bill].

(b)(1) The petition shall ... served by [D] on the [P], ... and on [D's trial attorney] or on the public defender of the county [of conviction]. If the judge that originally sentenced [D] is not available ..., the presiding judge shall designate another judge to rule on the petition. The petition shall include all of the following:

(A) A declaration by [D] that he or she is eligible for relief under this section, based on all the requirements of subdivision (a).

(B) The ... case number and year of the ... conviction.

(C) Whether [D] requests the appointment of counsel.

(2) If any of the information required ... is missing from the petition and cannot be readily ascertained by the court, the court may deny the petition without prejudice ... and advise [D] that the matter cannot be considered without the missing information.

(c) The court shall ... determine if [D] has made a prima facie showing [of coming within] this section. If [D] has requested counsel, the court shall appoint counsel.... [P] shall file and serve a response within 60 days of service of the petition and [D] may file and serve a reply within 30 days after [that]. These deadlines shall be extended for good cause. If [D]



makes a prima facie showing [of entitlement] to relief, the court shall issue an order to show cause.

(d)(1) Within 60 days after the order to show cause ..., the court shall hold a hearing to determine whether to vacate the murder conviction and to ... resentence [D] on any remaining counts ..., provided that the new sentence ... is not greater than the initial sentence. This deadline may be extended for good cause.

(2) The parties may waive a resentencing hearing and stipulate that [D] is eligible to have [the] murder conviction vacated and for resentencing. If there was a prior finding by a ... court or jury that [D] did not act with reckless indifference to human life or was not a major participant in the felony, the court shall vacate [D's] conviction and resentence [D].

(3) At the hearing ... the burden of proof [is] on [P] to prove, beyond a reasonable doubt, that [D] is ineligible for resentencing. If [P] fails to sustain [that] burden ..., the prior conviction, and any allegations and enhancements attached to [it], shall be vacated and [D] shall be resentenced on the remaining charges. The [parties] may rely on the record ... or offer new or additional evidence....

(e) If [D] is entitled to relief..., [but] murder was charged [only] generically, and the target offense was not charged, [D's] conviction shall be redesignated as the target offense or underlying felony for resentencing purposes. Any applicable statute of limitations shall not be a bar to the court's redesignation....

(f) This section does not diminish or abrogate any rights or remedies otherwise available to [D].

(g) A [D] who is resentenced ... shall be given credit for time served. The judge may order ... parole supervision for up to three years following ... the sentence.

### **Organized Retail Theft**

Adds PC 490.4      Link [Full Text AB 1065 \(Stats. 2018 Ch. 803\)](#)

#### **New PC 490.4:**

(a) [Anyone doing any of the following is guilty of "organized retail theft":]

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

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

(3) Acts as an agent of another individual or group ... to steal merchandise from one or more merchant[s] or online marketplaces as part of an organized [theft] plan ....

(4) Recruits, coordinates, organizes, supervises, directs, manages, or finances another to undertake any of the acts ... in [subds. (a)(1) or (a)(2), above] or any other statute defining theft of merchandise.

(b) Organized retail theft is punishable as follows:

(1) If violations of [subd. (a)(1), (2), or (3)] are committed on two or more separate occasions within a 12-month period, and if the aggregated value of the merchandise stolen, received, purchased, or possessed within that 12-month period exceeds [\$950], the offense is punishable by imprisonment in a county jail not exceeding one year or pursuant to subdivision (h) of [PC] 1170.

(2) Any other violation [subd. (a)(1), (2), or (3)] ... not described in [subd. (b)(1), above] is punishable by imprisonment in a county jail not exceeding one year.

(3) A violation [subd. (a)(4)] is punishable by imprisonment in a county jail not exceeding one year or pursuant to subdivision (h) of Section 1170.

(c) [To determine if D] acted in concert with another person or persons ..., the trier of fact may consider any competent evidence, including, but not limited to ...:

(1) [D] has previously acted in concert with another person or persons in committing acts constituting theft, or any related offense, including any conduct ... in [other] counties other ..., if relevant to demonstrate a fact other than [D's] disposition ....

(2) That [D] used or possessed an artifice, instrument, container, ... or other article capable of facilitating the removal of merchandise from a

retail establishment without paying the purchase price and [that] use ... is part of an organized plan to commit theft.

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

(d) [P is not] required to charge [anyone other than D with] the organized retail theft.

(e) Upon conviction ..., the court shall consider ordering, as a condition of probation, that [D] stay away from retail establishments with a ... nexus to the crime ....

(f) This section [is] [repealed [on] January 1, 2021....

### **False Information About Voting Information and Procedures.**

Amends Elections Code 18302      Link: [Full Text AB 1678 \(Stats. 2018 Ch. 96\)](#)

#### **Added Subdivision (b) to Elections Code section 18302:**

(b) A person is guilty of a misdemeanor who, with actual knowledge and intent to deceive, causes to be distributed or distributes, including distribution by mail, radio or television broadcast, telephone call, text message, email, or any other electronic means, including over the Internet, literature or any other form of communication to a voter that includes any of the following:

(1) The incorrect location of a vote center, office of an elections official, satellite office of an elections official where voting is permitted, vote by mail ballot drop box, or vote by mail ballot drop-off location.

(2) False or misleading information regarding the qualifications to vote or to register to vote.

(3) False or misleading information regarding the date of an election or the days, dates, or times voting may occur ....

### **Impersonating a Member of a Government Search and Rescue Team**

Adds PC 538h

Link: [Full Text AB 1920 \(Stats. 2018 Ch. 252\)](#)

**From the Legislative Counsel’s Digest:**

This bill ... make[s] it a misdemeanor for a person who is not an officer or member of a government agency managed or affiliated search and rescue unit or team, with the intent of fraudulently impersonating an officer or member, as defined, of a government agency managed or affiliated search and rescue unit or team, as defined, to willfully wear, exhibit, or use the badge, authorized uniform, insignia, emblem, device, label, certificate, card, or writing of a government agency managed or affiliated search and rescue unit or team, as specified.

**Dependent Persons**

**Definition expanded: Now can include persons living independently.**

Amends EC 177, PC 288, 368, and 1336, WI 15610.23.

Link: [Full text A.B. 1934 \(Stats. 2018 Ch. 70\)](#)

Added to the definition of “dependent persons” in each these sections is the phrase “**regardless of whether the person lives independently**”.

Added to PC 368 is: “**adults admitted as inpatients to a 24-hour health facility deserve special consideration and protection.**”

**Discovery and Investigation**

**Getting Witness Rap Sheets from D.O.J. Made Easier**

Amends PC 11105, subdivision (b)(9).

Link: [Full text of A.B. 2133 \(Stats. 2018 Ch. 965\)](#)

**From the Legislative Counsel’s Digest:**

Penal Code section 11105, subdivision (b)(9), is amended to require the “Attorney General [to] furnish state summary criminal history information [to criminal law defense attorneys,] if needed in the course of their duties.”

**Full text of amended Subd. (b)(9):**

(9) A public defender or attorney of record when representing a person in a criminal case or a juvenile delinquency proceeding, including all appeals and postconviction motions, or a parole, mandatory supervision

..., or postrelease community supervision revocation or revocation extension proceeding, if [this] is requested in the course of representation.

**From the Senate Comm. on Public Safety report for June 19, 2018:**

The purpose of this bill is to clarify in what situations a criminal defense attorney may be provided with information from the Department of Justice’s (DOJ) summary criminal history database and eliminates the requirement that a criminal defense attorney have some separate legal authorization to obtain information that information.

¶...¶

1. Need for This Bill

According to the author:

[Prior law required that before providing access, this must be] “authorized by statutory or decisional law.”

As a result [the author said], criminal defense attorneys, who are under a legal and ethical obligation to provide zealous advocacy of their clients, are not able to access the database, which could provide key information. For example, oftentimes critical prosecutorial witnesses have a long history of criminal offenses which may be relevant for a number of reasons. However, a criminal defense attorney cannot timely determine the criminal history without statutory access to the database. Instead, criminal defense attorneys must rely on the prosecutors to provide the information.

[Comments by GB: Added to the list of attorneys who can get this information are appellate and other post-conviction attorneys, e.g., concerning probation and other supervision. This bill does not provide procedures for how DOJ will implement this.]

***Right to Post-Conviction Discovery Expanded; Trial Counsel’s Duties to Retain Files.***

Amends PC 1054.9

Link: [Full Text A.B. 1987 \(Stats 1987 Ch. 482\)](#)

**Note: Previously**, PC 1054.9 only applied in cases of death or life without possible parole (LWOP)

**Edited text of PC 1054.9 as amended, and substantially rewritten**

(a) In a case [of] conviction of a serious ... or a violent felony [with] a sentence of 15 years or more, upon the prosecution of a postconviction

writ of habeas corpus or a motion to vacate a judgment, or in preparation to file that writ or motion, and on a showing that good faith efforts to obtain discovery ... from trial counsel were ... unsuccessful, the court shall, except as provided in subdivision (b) or (d), order that [D] be provided reasonable access to any of the materials described in subdivision (c).

(b) ... [I]n a case [with] other than death or [LWOP] ... imposed, if a court has entered a previous order granting discovery pursuant to this section, a subsequent order granting discovery ... may be made in the court's discretion....

(c)... “[D]iscovery materials” means materials in the possession of [P] and law enforcement ... to which [D] would have been entitled at ...trial.

(d) In response to [such] a writ or motion ..., the court may order that [D] be [allowed to examine] physical evidence ... only [with] good cause to believe that access ... is ... necessary.... [PC 1045 must be used to obtain access for DNA testing.]....

(e) The actual costs ... shall be borne or reimbursed by [D].

(f) This section does not require the retention of any discovery materials not otherwise required by law or court order.

(g) In ... conviction[s] for a serious or a violent felony[with] a sentence of 15 years or more, trial counsel shall retain a copy of a former client's files for the term of ... imprisonment. An electronic copy is sufficient only if every item in the file is digitally copied and preserved.

....

... (j) [These amendments] ... apply [only] prospectively.

[Comments by GB. (1) Query if subd. (b), by stating when ordering subsequent discovery is discretionary, means that in cases of death or LWOP, subsequent discovery motions satisfying the criteria of subd. (a) must be granted. (2) Query if subd. (f) encourages P and law enforcement to destroy evidence not ordered kept beyond the time currently required by any other laws; and query if D should, at sentencing, seek an order the evidence be preserved.]

## **Diversion**

### **Mental Health Diversion**

Adds WI 1001.35 and 1001.36. This diversion program was added effective June 27, 2018, and then amended effective January 1, 2019, PC 1001.36.

Links: 1st bill [A.B. 1810 \(Stats. 2018 Ch 34\)](#)

2nd bill: [S.B. 215 \(Stats. 2018, Ch. 1005\)](#)

### **Edited Text of PC 1001.36 as amended, eff. Jan. 1, 2019:**

**(a)** [T]he court may ... grant ... diversion to ... [D] [as per subd. (b)].

**(b)(1)** ... [D]iversion may be granted ... if all of the following ... are met:

(A) ... [D] [has] a mental disorder [listed in] the Diagnostic and Statistical Manual of Mental Disorders, including, but not limited to, bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder, but excluding antisocial personality disorder, borderline personality disorder, and pedophilia. Evidence ... include[s] a recent diagnosis by a ... mental health expert. [T]he ... expert may rely on an examination of [D], [D's] medical records, arrest reports, or any other relevant evidence.

(B) ... [D's] mental disorder was a significant factor in [committing] the charged offense. A court may conclude [such] ... if [the] evidence, including, but not limited to, police reports, preliminary hearing transcripts, witness statements, statements by [D's] mental health treatment provider, medical records, records or reports by qualified medical experts, or evidence that [D] displayed symptoms ... [of that] mental disorder at or near the time ..., [can show] that [D]'s mental disorder substantially contributed to [D]'s involvement in the ... offense.

(C) In the opinion of [an] ... expert, [D]'s ... mental disorder motivating the criminal behavior would respond to mental health treatment.

(D) [Def.] consents to diversion and waives [the speedy trial] right..., unless [D] [is appropriate] for diversion in lieu of commitment pursuant to [PC 1370(a)(1)(B)(iv), (possible incompetent diversion, see below GB)] and, as a result of ... mental incompetence, cannot consent to diversion or [waive] [the] right to a speedy trial.

(E) [Def.] agrees to comply with treatment as a condition ....

(F)... [Def.] will not pose an unreasonable risk of danger to public safety, as [per] [PC] 1170.18, if treated in the community. The court may consider the opinions of [P], the defense, or [an] ... expert, and ... [D's] violence and criminal history, the current ... offense, and ... other factors ....

[(b)] ... (2) [D] may not be [diverted] ...for the following ...

(A) Murder or voluntary manslaughter.

(B) [A PC 290] offense ..., except for ... [PC] 314.

(C) Rape.

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

(E) [Violation of PC 220] with intent to commit [a sex crime].

(F) ... [R]ape or sexual penetration in concert ... [PC] 264.1.

(G) Continuous sexual abuse of a child, [PC] 288.5.

(H) A violation of subdivision (b) or (c) of [PC] 11418.

(3) At any stage ..., the court may require [D] to make a prima facie showing that [D] [will be diversion-eligible.] and that [D] and the offense are suitable.... The hearing ... shall be informal and [can be] on offers of proof, reliable hearsay, and argument[s].... If [that] showing is not made, the court may summarily deny ... diversion....

(c)... “[P]retrial diversion” means the postponement of prosecution... temporarily or permanently, at any point ... from ... charge[ ] until adjudication, to [let D] undergo mental health treatment, subject to...:

(1)(A)The court is satisfied that the recommended ... program ... will meet the specialized mental health treatment needs of [D].

(B) [D] may be referred to a program ... [using] existing ... resources. Before approving a ... program, the court shall consider the request of [D and P], [D's] needs..., and [community] interests.... The treatment may ... us[e] private or public funds, and a referral may be made to [1] a county mental health agency, [2] existing collaborative courts, or [3] assisted outpatient treatment only if that entity has agreed to accept responsibility for [D's] treatment..., and mental health services are provided only [if] resources are available and [D] is eligible....

(2) The ... program ... shall provide regular reports [about D].

(3) [Diversion] shall be [for] no longer than two years.



(4) Upon request, the court shall conduct a [restitution] hearing ... and ... order its payment during the ... diversion. However, [D's] inability to pay ... due to indigence or mental disorder shall not [cause] denial of diversion or a finding that [D] failed to comply....

(d) If any of the following ... exists, the court shall, after notice to [D], [D's atty], and [P], hold a hearing [on] whether the criminal proceedings should be reinstated, whether the treatment should be modified, or whether [D] should be ... referred to the conservatorship investigator ... to initiate [LPS] conservatorship proceedings...:

(1) [D] is charged with an additional misdemeanor ... during ... diversion ... that reflects [D's] propensity for violence.

(2) [D] is charged with an additional felony ... during ... diversion.

(3) [D] is engaged in criminal conduct rendering [D] unsuitable ....

(4) Based on the opinion of a qualified mental health expert ..., either of the following ... exists:

(A) [D] is performing unsatisfactorily in the assigned program.

(B) [Def.] is gravely disabled, as defined in [WI 5008, subd.

(h)(1)(B)]. A [D] shall only be conserved and referred to the conservatorship investigator pursuant to this finding.

(e) If [D] has performed satisfactorily ... the court shall dismiss [D's] ... charges.... A court may conclude ... [D] ... performed satisfactorily if [D] has substantially complied with the requirements[,] ... avoided significant new violations of law unrelated to [D]'s mental ... condition, and has a plan in place for long-term mental health care....

[T]he clerk ... shall file ... with [DOJ] [a record of dismissal] .... [After dismissal] the charges, [and] the arrest ... [are] deemed never to have occurred, and the court shall order access to the [arrest] record ... restricted [as per PC §] 1001.9, except as specified in subd[s.] (g) and (h). ... [D] ...may [then] indicate in response to any question ...that [D] was not arrested or diverted for the offense, except as specified in subdivision (g).

(f) [The arrest and] record [of] [D]'s [diversion] application ... or participation ... shall not, without [D's] consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

(g) [D must be told] that [after] ... completion..., the following apply:

(1) The arrest ... may be disclosed by [DOJ] to any peace officer application request and ... [D] [must] disclose the arrest [on] any direct question ... in any ... application [to be] a peace officer....

(2) An order to seal [arrest] records ... has no effect on a criminal justice agency's ... access and use [of them]....

**(h)** A finding that [D] [has] a mental disorder, any progress reports ..., or any other [mental health] records ... created [by] ... diversion ... or for use at a hearing on [D's] eligibility ... may not be used in any other proceeding without [D's] consent, unless that info[.] is ... admissible [as per] [Cal. Const. Art. I, § 28, subd. (f)(2)].... [W]hen determining whether to... grant diversion..., a court may consider previous [diversion] records....

**(i)** [This subd. states who can get D's mental health records ....]

**Note:** The first bill, AB 1810, also added PC 1001.35, a “purpose” clause. That clause remains unchanged by the second bill, and, so, is still effective.

### **Repeat Theft Diversion, or Deferred Entry of Judgment, programs authorized**

Adds PC 1001.81 and 1001.82.      Link: [Full Text AB 1065 \(Stats. 2018 Ch. 803\)](#)

For other aspects of AB , see Arrest; Crimes; Jurisdiction, and Warrants

#### **New PC 1001.81.**

(a) The city or county prosecuting attorney or county probation department may create a diversion or deferred entry of judgment [DEJ] program ... for persons who commit repeat theft offenses....

(b) Except as provided in subd[.] (e), this ... does not limit the power of the prosecuting attorney to prosecute repeat theft.

(c) If a county creates a diversion or [DEJ] program for ... repeat theft ... on receipt of a case or at arraignment, [P] shall either refer the case to the ... probation department to conduct a prefiling investigation report to assess the appropriateness of program placement or, if [P's] office operates the program, determine if the case is one that is appropriate [for] the program. In determining [this], the probation department or [P] shall consider, but is not limited to, all of the following factors:

(1) Any prefiling investigation report ... by the ... probation department or nonprofit contract agency operating the program that evaluates [D's] risk and needs and the appropriateness of program placement.

(2) If [D] demonstrates a willingness to engage in community service, restitution, or other mechanisms to repair the harm caused by the criminal activity and address the underlying drivers of the criminal activity.

(3) If a risk and needs assessment identifies underlying substance abuse or mental health needs or other drivers of criminal activity that can be addressed through the ... program.

(4) If the person has a violent or serious prior criminal record or has previously been referred to a diversion program and failed that program.

(5) Any relevant information concerning the efficacy of the program in reducing the likelihood of participants committing future offenses.

(d) On referral of a case to the program, a notice shall be provided to or forwarded by mail to the person alleged to have committed the offense with all of the following information:

(1) The date by which the person must contact the ... program in the manner designated by the supervising agency.

(2) A statement of the penalty for the offense or offenses with which that person has been charged.

(e) [P] may enter into a written agreement with the person to refrain from, or defer, prosecution on the offense ... on the following conditions:

(1) Completion of the program requirements such as community service or courses ... required by [P].

(2) Making adequate restitution or an appropriate substitute ... to the [V] at the face value of the stolen property, if required by the program.

(f) ... "[R]epeat theft offenses" means being cited or convicted for misdemeanor or felony theft from a store or ... a vehicle two or more times in the previous 12 months and failing to appear in court when cited for these ... or continuing to engage in these ... after release or ... conviction.

### **1001.82.**

New PC 1001.82 says that PC 1001.81 sunsets on January 1, 2021.

## Domestic Violence

### Lifetime ban on gun possession for PC 273.5 misdemeanor.

Amends PC 29805.

Link: [Full text AB-3129 \(Stats 2018 Ch. 883\)](#)

**Caution:** PC 29805 is generally known as the statute that says conviction of many misdemeanors prohibits a person from having a gun for 10 years. This added subdivision adds a lifetime ban for the most common type of misdemeanor domestic violence.

#### **Edited text of PC 29805**

(a) Except as provided in [PC 29855, or 29800, subd. (a)], or subdivision (b), any person who has been convicted of ... a misdemeanor violation of [listing about 40 misdemeanors, including PC 273.5], and who, within 10 years of the conviction, owns, purchases, ... possess[es] or [has] custody or control [of], any firearm is ..., punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both ....

**(b) Any [D] who is convicted, on or after January 1, 2019, of a misdemeanor violation of [PC] 273.5, and who subsequently owns, purchases, ... or ... possess[es] or [has] custody or control [of], any firearm is ... punishable by imprisonment in a ... jail not exceeding one year or in ... prison, by a fine [up to \$1,000], or ... both....**

Note: This may be ex post factor law for offenses committed before Jan. 1, 2019.

## Enhancements

### Court given discretion to dismiss 5-year priors under PC 667, subd. (a)

Amends PC 667, subd. (a), and 1385 Link: [Full Text SB 1393 \(Stats. 2018 Ch. 1013\)](#)

Eliminated from PC 667, subd. (a), is the opening phrase, ~~“In compliance with subdivision (b) of Section 1385 ....”~~

PC 1385 is re-lettered, and eliminated is the former language of PC 1385, subd. (b) ~~This section does not authorize a judge to strike any prior conviction of a serious felony for purposes of enhancement of a sentence under Section 667.~~

## Ethics

See “Rules of Professional Responsibility

## Evidence and Exhibits

See “Dependent Persons” for an amendment to EC 177.

See “Immigration and Criminal Law for enactment of EC 351.4.

See “Sex Offenses” for amend to EC 352.1, 782, 1036.2, 1103, 1108, and 1228.

See “Juveniles” for new WI 625.4 on voluntary collection of DNA from juveniles.

### ***Holder of the Lawyer-Client privilege: restriction on guardians and conservators.***

Amends EC 953.

Link: [Full text A.B. 1290 \(Stats. 2018 Ch. 475\)](#)

EC 953, subd. (b), had read, without qualification, that of the client has a guardian or conservator, that person is the holder of the privilege.

This bill qualifies that by a new, (b)(2), that the guardian or conservator does not hold the privilege if that person “**has an actual or apparent conflict of interest with the client.**”

### ***“Licensed Professional Clinical Counselors” added to the list of “psychotherapists” in the Psychotherapist-Patient privilege.***

Amends EC 1010.

Link: [Full text A.B. 2296 \(Stats. 2018 Ch. 389\)](#)

The report of the Senate Committee on Business, Professions and Economic Development of June 18, 2018, explains (in summary) that Professional Clinical Counselors became a professional category licensed by the Board of Behavioral Sciences in 2009. Subsequent bills have amended the Codes to recognize this.

## Eyewitness Identification

### ***Law Enforcement and Prosecutors Must Promulgate Extensive Live Lineup and Photo***

#### ***Lineup Regulation***

Adds: PC 859.7

Link: [Full text S.B. 923 \(Stats. 2018 Ch. 977\)](#)

**Early warning:** This new statute is operative January 1, 2020.

**Edited text of new PC 859.7:**

(a) All law enforcement agencies and prosecutorial entities shall adopt regulations for ... photo lineups and live lineups.... [These] shall be developed to ensure reliable and accurate ... identifications.... [T]o ensure reliability and accuracy, the regulations shall [provide that:]

(1) Prior to conducting the ... procedure, and as close in time to the incident as possible, the eyewitness shall [describe] the perpetrator....

(2) The investigator conducting the ... procedure shall use blind [or blinded] administration ... during the ... procedure.

(3) The investigator shall state in writing the reason that the ... lineup was not conducted using blind administration, if applicable.

(4) An eyewitness shall be instructed of the following, prior to any... procedure:

(A) The perpetrator may or may not be among the persons in the ... procedure.

(B) The eyewitness should not feel compelled to make an identification.

(C) An identification or failure to make an identification will not end the investigation.

(5) A ... procedure shall be composed so that the fillers generally fit the eyewitness' description of the perpetrator. In ... a photo lineup, the [suspect's] photograph ... should, if practicable, resemble his or her appearance at the time of the offense and not unduly stand out.

(6) In a photo lineup, writings or information concerning any previous arrest of the [suspect] shall not be visible to the eyewitness.

(7) Only one suspect[ ] ... shall be ... in any ... procedure.

(8) All eyewitnesses [are] separated when viewing [a] ... procedure.

(9) Nothing shall be said ... that might influence ... identification....

(10) If the eyewitness identifies a person he or she believes to be the perpetrator, all of the following shall apply:

(A) The investigator shall immediately inquire as to the eyewitness' confidence level in the accuracy of the identification and record in writing, verbatim, what the eyewitness says.

(B) Information [about] the identified person shall not be given to the eyewitness prior to obtaining the eyewitness' statement of confidence level and documenting the [eyewitness's exact words ....

(C) The officer shall not validate or invalidate the ... identification.

(11) An electronic recording shall be made [of] both audio and visual representations of the ... procedures. Whether it is feasible to [have] both ... shall be determined on a case-by-case basis. When it is not feasible to make a recording with both ..., audio ... may be used. When audio recording [only] is used, the investigator shall state in writing the reason that video recording was not feasible.

(b) Nothing in this section is intended to affect policies for field show up procedures.

(c) [Definitions:]

(1) "Blind administration" means the administrator of an eyewitness ... procedure does not know the identity of the suspect.

(2) "Blinded administration" means the administrator of an eyewitness identification procedure may know who the suspect is, but does not know where the suspect, or his or her photo[,] ... has been placed... in the ... procedure through the use of any of the following:

(A) [A] ... computer program that prevents the administrator from seeing which photos the eyewitness is viewing until after the ... procedure is completed.

(B) The folder shuffle method, [i.e.] a system for conducting a photo lineup by placing photographs in folders, randomly numbering the folders, shuffling [them], and then presenting [them] sequentially so that the administrator cannot see or track which photograph is being presented to the eyewitness until after the procedure is completed.

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

(3) "Eyewitness" [is a person whose identification may be relevant.]

(4) "Field show up" [defined: usually has just one suspect].

(5) "Filler" [defined: means a non-suspect is included].

(6) "Identification procedure" [or "... procedure"] means either a photo lineup or a live lineup.

(7) "Investigator" means the person conducting the ... procedure.

(8) "Live lineup" [defined].

(9) "Photo lineup" [defined; requires an "array" of photos including non-suspects].

(d) ... [T]his ... [does not] preclude ... admissibility of ... relevant evidence or... affect ... admissibility of evidence under the [U.S. Const.]....

### **Fines, Fees, Penalties, and Costs**

#### **Restrictions on cities and counties charging for the cost of investigation and prosecution.**

Adds PC 688.5

Link: [Full Text A.B.-2495 \(Stats. 2018 Ch. 264](#)

[This bill prevents municipalities billing D's these costs without court orders. See, also, for its definition of "cost," followed by a list of what Municipalities can still collected. GB]

#### **Edited text of new PC 688.5:**

(a) A city, county, or city and county,... shall not charge [D] for the costs of investigation, prosecution, or appeal in a criminal case, including, but not limited to, a criminal violation of a local ordinance....

(b) This section shall not apply to any of the following:

(1) A violation of Section 186.8, 186.11, or 670.

(2) Costs ordered by a court pursuant to [HS 17602, subd. (d)(1)].

(3) A violation of Section 1871.4 of the Insurance Code.

(4) A violation of Section 3700.5 of the Labor Code.

(5) A violation of [14 sections of] the Revenue and Taxation Code.

(6) A violation of [Unemployment Code] Section 2126 ....

(7) A violation of any other provision of state law where recovery of the costs of investigation, prosecution, or appeal in a criminal case is specifically authorized by statute or ordered by a court. This paragraph does not apply to a local ordinance.



(c) [This does not] affect the authority of a probation department to assess and collect fees or other charges authorized by statute.

(d) ... “[C]osts” means the salary, fees, and hourly rate paid to attorneys, law enforcement, and inspectors for hours spent ... investigating or enforcing the charged crime. Costs shall not include the cost ... to remediate, abate, restore, or ... clean-up harms caused by criminal conduct.

### **Firearms**

See also “Ammunition”

See also “Domestic Violence”

#### **People with warrants for felonies, and some misdemeanors, cannot possess guns. (PC 29810.) This bill provides a procedure for such people to surrender their guns.**

Amends (or, in final effect, amends) PC 16150, 29180, 29182, 29183, 29830, 33850, 33855, 33860, 33865, 33870, 33875, 33880, 33885, and 33895

Link: [Full Text SB 746 \(Stats 2018 Ch. 780\)](#).

#### **From the Legislative Counsel’s Digest**

[The law before this bill] provided a means for persons prohibited from possessing guns because of a conviction to surrender those guns to law enforcement or transfer them to a licensed firearm dealer, or otherwise lawfully relinquish possession. The law before this bill also provides a procedure for a court or law enforcement agency to return a seized firearm when the prohibition ends.]

This bill ... additionally authorizes a person who has an [applicable] outstanding warrant... to transfer ... firearms or ammunition to a licensed firearms dealer [during] the prohibition.... The bill would make the procedure for a court or law enforcement agency to return a seized firearm applicable to ammunition.

The bill [also], commencing on July 1, 2020, make these provisions applicable to ammunition feeding devices... and, in some cases, ammunition.....

**Gun violence restraining orders: no fees required to file or have law enforcement serve, definition of ammunition expanded.**

Amend GC 6103.2 and PC 11106, 18100, 18105, 18120, 18125, 18135, 18160, and 18180, and adds PC 18121 and 18148      Link: [Full Text SB 1200 \(Stats. 2018 Ch. 898\)](#)

**From the Legislative Counsel’s Digest**

(1) ... This bill ... expand[s] the definition of ammunition [for purposes of these orders] to include a magazine....

This bill ... prohibit[s] a filing fee for an application, responsive pleading, or an order to show cause ... to obtain, modify, or enforce a gun violence restraining order. The bill would also prohibit a fee for a subpoena ... in connection with an application, [response] or order to show cause....

(2) “[The law before this required the subject of a gun violence restraining order to surrender guns and give the court] a receipt [for them]”....

This bill [requires] the court to transmit a copy of the receipt to [DOJ] and [requires] [DOJ] to keep a record of this....

The bill [requires] a law enforcement officer, when serving a gun violence restraining order, to ... ask the restrained person if he or she has any firearms, ammunition, or magazines in his or her possession or under ... custody or control.

(3) [The law before this] permitte[d] a law enforcement officer to make a request for a temporary emergency gun violence restraining order on an ex parte basis if certain requirements are met. [That] order is valid 21 days....

This bill [requires] the court to hold a hearing in [those] 21 days ... to [see] if [it should issue a gun violence restraining order valid for [1 yr.].

(4) [The law before this] permit[ed] the sheriff or marshal, in connection with the service of ... notices, to require that all fees ... be prepaid.... [Exempted were fees for] the service of process of a protective order, restraining order, or injunction involving stalking, credible threats of violence resulting from a threat of sexual assault, domestic violence, marital dissolution, or a child custody matter.

This bill ... further exempt[s] from this prepayment requirement a fee for the service of process of a gun violence restraining order.

**Forms**

Only Judicial Council forms are covered; not local court forms.

**Petition to Seal Arrest Record Pursuant to PC 851.91.**

[CR-409](#) Petition to Seal Arrest and Related Record [Pen Code § 851.91]

[CR-409-INFO](#) Information on How to File a Petition to Seal Arrest and Related Records Under Penal Code section 851.91

[CR-410](#) Order to Seal Arrest and Related Records ([PCode 851.91, 851.92]).

PC 851.91 and 851.92, enacted last year, provide for partial sealing of arrest records when no conviction occurred but without proving factual innocence. (Pen. Code § 851.8 provides for a more complete sealing when factual innocence is shown.)

CR-409 and CR-409-INFO are designed for former defendants to petition for this relief without an attorney. Attorneys will also find these two forms useful.

Form CR-410 is for the court to enter orders on the petition.

**Gun Violence Restraining Orders**

See Forms

See Firearms.

**Incompetency to Stand Trial**

See also Mental Health

**Maximum term of incompetency commitment for felony lowered from 3 years to 2.**

Amends WI 370.

[Link: Full Text SB 1187 \(Stats 2018 Ch 1008\).](#)

*For two interconnected aspects of SB 1187, see the next, and last, entries, below.*

[Note: the maximum commitment for misdemeanors remains at the shorter of one year, or the maximum term for the offense. (PC 1370.01, subd. (c)(1). GB]

**From the Legislative Counsel's Digest:**

[Before this bill became law,] a mentally incompetent [D] could be committed to the State Department of State Hospitals or other ... treatment facility for [up to] **3** years when a felony was committed [in most cases; less in rare cases], and require[d] [D] to be returned to the committing court after [that] maximum period of commitment.

This bill ... reduce[s] the term for commitment to a treatment facility when a felony was committed to the shorter of 2 years or the [maximum term of imprisonment [possible] for the most serious offense charged.

¶...¶

[Before this bill became law a first report from the treatment facility was required] within 90 days of commitment ... and every 6 months thereafter.... [and] also required that a [D] who has been committed ... for 18 months and remains hospitalized or on outpatient status ... be returned to the committing court where [another] hearing is ... held to determine mental competency.

This bill ... delete[s] the requirement to hold that [18-month] hearing.

**Relevant text of PC 1370, as amended.**

(a)(3) When the court orders that [D] be committed [as incompetent], the court shall provide copies of the following documents prior to the admission of [D] to the State Department of State Hospitals or other treatment facility ...:

(A) The commitment order, including a specification of the charges.

(B) A computation or statement setting forth the maximum term of commitment in accordance with subdivision (c).

(C) A computation [of] the amount of credit for time served, if any, to be deducted from the maximum term of commitment.

¶...¶

~~(b)(4) Any defendant who has been committed or has been on outpatient status for 18 months and is still hospitalized or on outpatient status shall be returned to the committing court where a hearing shall be held pursuant to the procedures set forth in Section 1369. The court shall transmit a copy of its order to the community program director or a designee.~~

¶...¶

(c)(1) At the end of ~~three~~ **two** years from the date of commitment or a period of commitment equal to the maximum term ... for the most serious offense charged ..., or the maximum term ... for a violation of probation or mandatory supervision, whichever is shorter... a [D] who has not recovered ... competence shall be returned to the committing court....

**Time spent in a county jail incompetency treatment facility gets PC 4019 credits.**

Amends PC 1375.5 and 4019.

Link: [Full Text SB 1187 \(Stats 2018 Ch 1008\)](#).

*For two interconnected aspects of SB 1187, see the first and fourth entries.*

**From the Legislative Counsel's Digest:**

[Before this bill, the law] provide[d] that [most jail inmates] ... shall, for each 4-day period of custody, have 2 days deducted from the prisoner's period of confinement, except as specified.

This bill ... appl[ies] those provisions to a person who is committed to a facility pending the return of mental competence, as specified.

[Note by GB: this applies to county jail facilities that are designated by DSH as incompetency treatment facilities.]

**WI 1375.5, as it reads after these amendments:**

(a) Time spent **by a person in a treatment facility or county jail as a result of [incompetency] proceedings ... shall be credited against [any] sentence ... imposed in the underlying criminal case or revocation matter giving rise to the competency proceedings.**

(b) As used [here], "time spent in a **treatment facility**" includes days **a person** is treated as an outpatient pursuant [§] 1600 [et seq.].

(c) A person subject to this chapter [the Competence chapter, PC 1367to 1376] **shall receive credits pursuant to Section 4019 for all time during which he or she is confined in a county jail and for which he or she is otherwise eligible.**

**Added to PC 4019 is subd. (a)(8):**

(a) The provisions of this section shall apply in all of the following cases:

¶...¶

**(8) When a prisoner is confined in or committed to a county jail treatment facility, as defined in Section 1369.1, [pursuant to the Competence chapter, PC 1367 to 1376].**

**Is a diversion program coming for some Ds who may otherwise be found incompetent?**

Adds WI 4361

Link: [Full text AB 1810 \(Stats 2018 Ch 34\) see § 29](#) .

**Text of added WI 4361 [edited]**

(b) The purpose of WI 4361] is to ... [1] promote the diversion of individuals with serious mental disorders as [defined in the new Mental Health Diversion program in PC 1001.35], and [2] to assist counties in providing diversion for individuals with serious mental illnesses who may otherwise be found incompetent to stand trial ....

(c) (1) [The Department of State Hospitals (DSH)] may ... contract with, a county to help fund the development or expansion of pretrial diversion described in [PC] 1001.35) ... for the population described [above] ... and that meets all of the following criteria:

(A) Participants are individuals ... with schizophrenia, schizoaffective disorder, or bipolar disorder, who [may] be found incompetent to stand trial for felony charges, pursuant to [PC] 1368 ..., or who have been found incompetent to stand trial pursuant to [PC 1370, subd. a)(1)(B) ....

(B) There is a significant relationship between the individual's serious mental disorder and the charged offense, or between the individual's conditions of *homelessness* and the charged offense.

(C) The individual [is not] an unreasonable risk ... to public safety, as defined in [PC] 1170.18 ..., if treated in the community.

(2) ...

(d) When evaluating [county] proposals ..., [DSH], in consultation with the Council on Criminal Justice and Behavioral Health within [CDCR], shall prioritize proposals [with] the potential to reduce referrals to [DSH] of felony [Ds] who are likely to be found incompetent to stand trial...:

[Program services may include]

(1) ... in addition to the mental health treatment ... but are not limited to, ... crisis residential services, ..., peer support, supportive housing, substance use disorder treatment, and vocational support.

(2)....

(3) Connection of individuals to services in the community after they have completed diversion ....

¶...¶ (f) [DSH] may ... provide funding ... [for] the cost of in-jail treatment prior to [community] placement ... for up to an average of 15 days for [Ds] who have been approved ... for diversion ....

### **Procedures for Developmental Disability Clarified.**

Amends WI 1369 and 1370.1 Link: [Full Text SB 1187 \(Stats 2018 Ch 1008\)](#).

*For two other aspects of SB 1187, see the first and third entries above.*

### **From the Legislative Counsel's Digest:**

[Before this bill, the law] provided for the commitment or placement on outpatient status of a [D] who is suspected of having, or who is determined to have, a developmental disability and who is found to be mentally incompetent to stand trial....

This bill ... requires the court, if [D] is suspected of having a developmental disability, to appoint the ... applicable regional center ... to examine [D] to determine whether he or she has a developmental disability and is therefore eligible for regional center services and supports....”

[Comment by GB: Before this bill, when the court doubted D’s competence, and D might have a developmental disability, the court was required to refer D to the Regional Center for examination. (Regional Centers contract with the Department of Developmental Services to provide or coordinate services and supports for individuals with developmental disabilities.) But it had not been expressly required that the Regional Center must determine if D is developmentally disabled, nor had it been required that if D is developmentally disabled, that the Regional Center accept D, and provide services. This bill clarified that such an examination, and if appropriate, admission and services, are required.]

WI 1369, sets out the procedures for an incompetency trial [or submitting on the doctors' reports]. Subd. (a) is now divided into (a)(1), (a)(2), and (a)(3). Subds. (a)(1) and (a)(2) largely duplicate previous text. **Subd. (a)(3) is largely new; its most important new text is in bold.:**

**WI 1369, subd. (a), as amended:**

[(1) and (2), re-lettered, but otherwise largely unchanged ].

(3) If it is suspected [D] has a developmental disability, the court shall appoint the director of the regional center established under [WI 4500 et seq.] ..., to examine the defendant to determine whether he or she has a developmental disability. **The regional center ... shall determine whether [D] has a developmental disability, as defined in [WI 4512 ...], and is therefore eligible for regional center services and supports. The regional center ... shall provide the court with a written report informing the court of this determination.**

WI 1370.1, which sets out the procedures if D is found both incompetent and developmentally disabled. As amended, it now requires that if D is placed on outpatient status, the 90-day and every-six-month court reports be made by the Regional Center.

## Infractions

### *Community service in lieu of fine required in hardship cases, and double the minimum wage.*

Amends PC 1209.5

Link: [Full Text- AB-2532 \(Stats 2018 Ch. 280\)](#)

#### **From the Legislative Counsel's Digest:**

The law before this bill authorized a court to sentence a person convicted of an infraction to perform community service in lieu of the total fine, as defined..., upon a showing that payment of the total fine would pose a hardship on the defendant or his or her family.

The law before this bill required [infractant D] to perform community service at the hourly rate applicable to community service work performed by [misdemeanor and felony Ds].



This bill ... instead require[s] the court to permit the person to elect to perform community service in lieu of the total fine upon making the above-described showing of hardship to the court....

The bill ... also value[s] the hourly rate ... at double the minimum wage set for the applicable calendar year, based on the schedule for an employer who employs 25 or fewer employees, as specified. The bill would authorize a court by local rule to increase the amount that is credited for each hour of community service performed, to exceed that hourly rate....

## **Immigration and Criminal Law**

### ***In-camera hearing usually required before disclosing imm. status in open court.***

Adds EC 351.3 and 351.4

Link: [Full text S.B. 785 \(Stats. 2018 Ch. 12\)](#)

Urgency, effective May 17, 2018.

Sunsets January 1, 2022.

#### **Full text of new EC 351.4:**

(a) In a criminal action, evidence of a person's immigration status shall not be disclosed in open court by a party or his or her attorney unless the judge presiding over the matter first determines that the evidence is admissible in an in camera hearing requested by the party seeking disclosure of the person's immigration status.

(b) This section does not do any of the following:

(1) Apply to cases in which a person's immigration status is necessary to prove an element of an offense or an affirmative defense.

(2) Limit discovery in a criminal action.

(3) Prohibit a person or his or her attorney from voluntarily revealing his or her immigration status to the court.

(c) This section shall remain in effect only until January 1, 2022, and as of that date is repealed.

Note: a similar statute for civil cases, EC 351.3, was also enacted. GB

**Uncodified section 4 of this bill:**            “This act does not alter a prosecutor's existing obligation to disclose exculpatory evidence.”

**Relief from a plea made without knowledge of immigration consequences made easier.**

Amends PC 1473.7

Link: [Full text A.B. 2867 \(Stats. 2018 Ch. 825\)](#).

**Note:** Uncodified section 1 of this bill is legislative findings and declarations.

**Note:** A finding of ineffective assistance of counsel is no longer required, but if ineffectiveness is alleged, notice is required to prior counsel.

**Edited text of PC 1473.7, with new amendments emphasized:**

(a) A person ... no longer in criminal custody may file a motion to vacate a conviction or sentence for either of the following reasons:

(1) The conviction or sentence is legally invalid due to prejudicial error damaging the moving party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere. **A finding of legal invalidity may, but need not, include a finding of ineffective assistance of counsel.**

(2) Newly discovered evidence of actual innocence ... requires vacation of the conviction or sentence as a matter of law or in the interests of justice.

(b) **(1) Except as provided in [¶] (2), a** motion pursuant to [subd. (a)(1)] [is] **deemed timely** filed **at any time in which the individual filing the motion is no longer in criminal custody.**

**(2) A motion pursuant to [subd. (a)(1)] may be deemed untimely filed if it was not filed with reasonable diligence after the later of the following:**

(A) The moving party receives a notice to appear in immigration court or other notice from immigration authorities that asserts the conviction or sentence as a basis for removal or the denial of an application for an immigration benefit, lawful status, or naturalization.

(B) Notice that a final removal order has been issued ..., based on the ... conviction or sentence that the moving party seeks to vacate.

(C) A motion pursuant to [subd. (a)(2)] shall be filed without undue delay from the date the moving party discovered, or could have discovered ..., the [new] evidence ....

(d) All motions shall be entitled to a hearing. Upon the request of the moving party, the court may hold the hearing without the personal presence of the moving party [if] it finds good cause as to why the moving

party cannot be present. If [P] has no objection to the motion, the court may grant[ it] without a hearing.

(e) When ruling on the motion:

(1) The court shall grant the motion ... if the moving party establishes, by a preponderance of the evidence, ... any of the grounds for relief ... in subd[.] (a). **For a motion ... [under subd. (a)(1)], the moving party shall ... establish that the conviction or sentence ... is currently causing or has the potential to cause removal or the denial of an application for an immigration benefit, lawful status, or naturalization.**

**(2) ... [L]egal invalidity [is presumed for subd. (a)(1)] if the moving party pleaded guilty or nolo contendere pursuant to a statute that provided that, upon completion of specific requirements, the arrest and conviction shall be deemed never to have occurred, where the moving party complied with these requirements, and where the disposition ... has been, or potentially could be, used as a basis for adverse immigration consequences.**

(3) If the court grants the motion to vacate a conviction or sentence obtained through a plea of guilty or nolo contendere, the court shall allow the moving party to withdraw the plea.

**(4) When ruling on a motion under [subd. (a)(1)], the only finding that the court is required to make is whether the conviction is legally invalid due to prejudicial error damaging the moving party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere. When ruling on a motion under [subd. (a)(2)], the court shall specify the basis for its conclusion.**

(f) An order granting or denying the motion is appealable under [PC 1237, subd. (b)] as an order after judgment affecting the substantial rights of a party.

**(g) A court may only issue a specific finding of ineffective assistance of counsel as a result of a motion brought under p[subd. (a)(1)] if the attorney found to be ineffective was given timely advance notice of the motion hearing by the moving party or the prosecutor, pursuant to [CCP 416.90].**

## Jurisdiction and Venue

### *Jurisdiction of certain sex offenses with the same D and V in more than one county*

Amends PC 784.7

Link [Full text A.B. 1746 \(Stats. 2018 Ch. 962](#)

#### From the Legislative Counsel’s Digest”

[The law before this bill] provide[s] that if more than one violation of certain specified [offenses occurs in more than one jurisdictional territory, and [D] and [V] are the same for all of [them], jurisdiction for any of [them] and any other properly joinable offenses may be in any jurisdiction where at least one of [them] occurred.

This bill ... **add[s]** the offenses of **sexual battery and unlawful sexual intercourse to the list** of specified offenses....

### *Jurisdiction of Repeat Theft, or Repeat Receiving Stolen Property Offenses*

Adds PC 786.5

Link: [Full Text AB 1065 \(Stats. 2018 Ch. 803\)](#)

For other aspects of AB 1065, see Arrest, Crimes, Diversion, and Warrants.

#### Edited Text of New PC 786.5:

(a) The jurisdiction of a criminal action for theft, [in PC 484, subd. (a), PC 490.4 or PC 496], shall also include the county where an offense [of] theft or receipt of the stolen merchandise occurred, the county in which [it] was recovered, or the county where any act was done by [D] in instigating, procuring, promoting, or aiding in the commission of a theft offense or ... of [PC] 490.4 or [PC] 496 or in abetting the parties concerned therein. If multiple offenses of theft or violations of [PC] 490.4 or [PC] 496, either all involving the same [D or Ds] and the same merchandise, or all involving the same [D or Ds] and the same scheme or substantially similar activity, occur in multiple jurisdictions, then any of those ... are a proper jurisdiction for all of the offenses. Jurisdiction also extends to all associated offenses connected ... in their commission to the underlying theft offenses or violations of [PC] 490.4 or [PC] 496.

(b) This section [is repealed on] January 1, 2021....

## Juveniles, and Juvenile Court

### *Minors under age 12, for more crimes, can no longer go to juvenile court.*

Amends WI 601 and 602 and adds WI 602.

Link: [Full Text SB 439 Stats. 2018 Ch. 1006](#)

**From the Legislative Counsel's Digest:**

The law before this bill placed a person who is under 18 ... within the jurisdiction of the juvenile court for certain offenses, including ... habitually re-fus[ing] to obey ... [their] parents or is habitually truant....

The law before this bill also placed a person who is under 18 ... [who] violate[d] any law of this state or of the United States or specified [local] ordinances ... to be within the jurisdiction of the juvenile court. The law before this bill authorizes a juvenile court to adjudge [such] a person ... to be a ward of the court.

This bill [modifies] the ages ... to between 12 ... and 17 ..., except that any minor who is under 12 ... when ... alleged to have committed murder or rape, sodomy, oral copulation, or sexual penetration by force, violence, or threat of great bodily harm would still be within the jurisdiction of the juvenile court and may be adjudged a ward of the court.

On and after January 1, 2020, the bill [provides], if a minor under 12 ... comes to the attention of law enforcement because his or her behavior or actions are as described under existing law, require the county to release the minor to his or her parent, guardian, or caregiver, except as provided.... [C]ounties [must] develop a process [to decide] the least restrictive responses that may be used instead of, or in addition to, the release ... to [the] parent, guardian, or caregiver....

**WI 601, as amended, now reads [edited]:**

601. (a) Any minor between 12 ... and 17 years ..., who persistently or habitually refuses to obey ... his or her parents, guardian, or custodian, or who is beyond the control of that person, or who ... violate[s] any ordinance of any city or county ... establishing a curfew based solely on age is within the jurisdiction of the juvenile court which may adjudge the minor to be a ward of the court.

(b) If a minor between 12 ... and 17 ... has four or more trancies within one school year as defined ... or[if] a school attendance review board or probation officer determines that the available public and private services are insufficient or inappropriate to correct the habitual truancy ..., or to correct the minor's persistent or habitual refusal to obey the ... school authorities, or if the minor fails to respond to ... a school attendance review board or probation officer or to services provided, the minor is then

within the jurisdiction of the juvenile court which may adjudge the minor to be a ward of the court.

... [I]t is the [Legislature's] intent ... that a minor ... adjudged a ward of the court pursuant solely to this subdivision, or found in contempt of court for failure to comply with a court order pursuant to this subdivision, shall not be held in a secure facility and shall not be removed from the custody of the parent or guardian except for ... school....

(c) To the extent ... feasible, a minor ... adjudged a ward ... shall not be permitted ... contact with any minor ordered to [be] in a truancy program, or the equivalent ..., pursuant to Section 602.

(d) Any peace officer or school administrator may issue a notice to appear to a minor who is within ... this section.

**WI 602, as amended, now reads [edited]:**

(a) Except as provided in [WI] 707, any minor who is between 12 ... and 17 years of age, when he or she violates any law of this state or of the United States or any [local] ordinance ... defining crime other than [a curfew] ordinance establishing a curfew based ... on age, is within the jurisdiction of the juvenile court....

(b) Any minor who is under 12 years of age when he or she is alleged to have committed any of the following... is within the jurisdiction of the juvenile court...:

(1) Murder.

(2) [to (5)] Rape [sodomy, oral copulation, or sexual penetration] by force, violence, duress, menace, or fear of immediate and unlawful bodily injury.

**New WI § 602.1 [edited]:**

602.1. (a) ... [T]o ensure the safety and well-being of minors who are under 12 ... whose behavior would otherwise bring them within ... [WI] 601 or 602, it is the [Legislature's] intent ... that counties pursue ... measures to serve and protect a child only as needed, avoiding any intervention when[ ] possible, and using the least restrictive alternatives through available school-, health-, and community-based services. It is the ... intent ... that counties use existing fund[s] for behavioral health, mental health, or other available ... fund[s] [for] the[se] alternative services ....

(b) Except as provided in [WI 602, subd. (b)], when a minor under 12 ... comes to the attention of law enforcement because his or her behavior [is] as described in [WI] 601 or 602, *the [county] response ... shall be to release the minor to his or her parent, guardian, or caregiver.* Counties shall develop a process for determining the least restrictive responses that may be used instead of, or in addition to, the release of the minor to his or her parent, guardian, or caregiver.

(c) This section ... become[s] operative on Jan[.] 1, 2020.

### **Minors 14 or 15 usually cannot be transferred to adult court**

Amends WI 707      Link: [Full Text SB 1391 \(Stats. 2018 Ch. 1012\)](#)

#### **From the Legislative Counsel's Digest:**

The law before this bill, ... Proposition 57..., allowed [P] to make a motion to transfer a minor from juvenile court to a court of criminal jurisdiction [adult court] [when] a minor [allegedly] committed a felony when he or she was 16 years ... or older[,] or [when] a specified serious offense [was alleged committed] by a minor when [at] 14 or 15 years of age....

This bill ... repeal[s] [P's] authority ... to make a motion to transfer a minor from juvenile court to [adult court] [when] a minor [allegedly] committed a specified serious offense [at] 14 or 15 years of age, unless the individual was not apprehended prior to the end of juvenile court jurisdiction....

This bill ... declare[s] that its provisions are consistent with and further ... Proposition 57. [Note by GB: this bill passed by the P57-required majority.]

#### **WI 707, subd. (a)(1) and (a)(2), as amended [Edited]:**

707. (a)(1) In any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of any offense listed in subdivision (b) or any other felony criminal statute, the district attorney or other appropriate prosecuting officer may make a motion [prior to the attachment of jeopardy] to transfer the minor from juvenile court to a court of criminal jurisdiction....

(2) In any case in which an individual is alleged to be a person described in Section 602 by reason of the violation, when he or she was 14 or 15 years of age, of any offense listed in subdivision (b), but was not apprehended prior to the end of juvenile court jurisdiction, the district attorney or other appropriate prosecuting officer may make a motion [prior to

the attachment of jeopardy] to transfer the individual from juvenile court to a court of criminal jurisdiction....

**Restrictions on Voluntary Collection of DNA Samples Directly from a Minor.**

Adds WI 625.4

Link: [Full Text A.B. 1584 \(Stats 2018 Ch. 745\)](#)

**Edited Text of Added WI 625.4**

(a) A law enforcement officer, [or agency] employee ... or... agent ..., shall not request that a voluntary DNA ... sample be collected directly from ... a minor unless all of the following...:

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

(2) A specific parent or ... guardian identified by the minor, or [minor's] attorney ..., is provided the information ... in paragraph (1), is allowed to privately consult by telephone or in person with the minor, and, after that ..., concurs with the minor's ... consent.

(3) Local law enforcement provides the minor with a form for requesting expungement of the voluntary DNA ... sample....

(b) [This does not] create a right to [appointed] counsel.

(c) The [minor's] detention ... for ... requesting a voluntary DNA ... sample ... shall not be unreasonably extended solely for ... contacting a parent, legal guardian, or attorney....

(d) The court shall, in [deciding] admissibility of a voluntary DNA ... sample..., consider the effect of any failure to comply with this section.

(e) The law enforcement agency obtaining a voluntary DNA ... sample... shall determine within two years whether the person remains a suspect in a criminal investigation. If [not], the ... agency shall promptly expunge the sample and the DNA profile ... from the databases or data banks into which they have been entered.



(f) If the minor requests expungement of a voluntary DNA ... sample ..., the ... law enforcement agency shall make reasonable efforts to promptly expunge [it] and the DNA profile ... from all DNA databases ... unless [that] sample has implicated the minor as a suspect in a criminal investigation.... [L]aw enforcement shall [try] to notify the minor when the ... sample and ... profile ... [are] expunged.

(g) A voluntary DNA ... sample ... from ... a minor ... and the DNA profile ... from that ... shall not be searched, analyzed, or compared to DNA samples or profiles in the investigation of [other] crimes ... unless that ... is permitted by a court order.

(h) Any ... law enforcement agency... found by clear and convincing evidence to maintain a pattern and practice of collecting voluntary DNA ... samples ... from ... minor[s] in violation of this [§] ..., [is] liable to ... [them for] ... \$5,000 [per] violation, plus attorney's fees and costs.

(i) ... [T]his section is limited to the collection of voluntary DNA ... samples directly from ... minors, and [has] no application to [other] collection and use of DNA..., including ... the following:

(1) The sample collection or use is expressly authorized [by] the ... DNA and Forensic Identification Database and Data Bank Act of 1998, as amended [PC 295 et seq.].

(2) A DNA ... sample collection and analysis ... pursuant to a valid search warrant or court order or exigent circumstances.

(3) [C]ollection... [while investigating] a missing or abducted minor.

(4) Any DNA ... sample collected from a juvenile victim or suspected perpetrator of a sexual assault or other crime as authorized by law.

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

### **Juvenile Incompetency Statutes Revamped**

Amends WI 709 and 712. Link: [Full Text AB 1214 \(Stats. 2018 Ch. 991\)](#)

**From the Legislative Counsel’s Digest. Among the many revamped provisions are:**

.... The bill ... require[s] the Judicial Council to adopt a rule of court relating to the qualifications of those experts.... The bill ...[s] require the minor’s competency to be determined at an evidentiary hearing, except as specified, and establish[es] a presumption of competency, unless it is proven by a preponderance of the evidence that he or she is incompetent

If the minor is found incompetent and the petition contains only misdemeanor offenses, the bill would require the petition to be dismissed.

The bill ... require[s] the court, upon a finding of incompetency, to refer the minor to services designed to help the minor attain competency unless the court finds that competency cannot be achieved [in] the foreseeable future...The bill ... require[s] the presiding judge of a juvenile court, the probation department, the county mental health department, and other specified entities to develop a written protocol describing the competency process and a program to ensure that minors who are found incompetent receive appropriate remediation services

**Law Enforcement and Custodial Officers**

**Law Enforcement Manuals Must be Online in 2020.**

Adds PC 13650      Link [Full Text SB 978 \(Stats 2018 Ch 978\)](#)

**Text of new PC 13650:**

Commencing Jan[.] 1, 2020, ... each local law enforcement agency shall conspicuously post on their ... Web sites all ... standards, policies, practices, operating procedures, and education and training materials that would ...be available ... pursuant to the California Public Records Act ([GC 6250 et seq.]).

**Certain Serious Misconduct by Law Enforcement or Jail Guards.: Public Records**

Amends PC 832.7 and 8328      Link: [Full Text SB 1421 \(Stats 2018 Ch 988\)](#)

**From the Legislative Counsel’s Digest**

This bill ...require[s] ... certain peace officer or custodial officer personnel records and records relating to specified incidents, complaints, and investigations involving peace officers and custodial officers to be made available for public inspection pursuant to the California Public Records Act. ... [R]ecords disclosed [can be] redacted ... to remove [certain] personal data or information, ... other than the names and work-related information of peace officers and custodial officers, to preserve the anonymity of complainants and witnesses, or to protect confidential

... information in which disclosure would cause an unwarranted invasion of personal privacy ..., or where ... disclosure would pose a significant danger to the physical safety of the peace officer, custodial officer, or others. ...r [R]edaction [is also authorized] where ... the public interest served by nondisclosure clearly outweighs the public interest served by disclosure.... [D]elay of disclosure [is allowed] ... for records relating to an open investigation or court proceeding....

**The records to which this pertains, according to amended PC 832.7, subd. (b), are:**

(A) A record relating to the report, investigation, or findings of any of the following:

- (i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.
- (ii) An incident in which the use of force by a peace officer or custodial officer against a person resulted in death, or in great bodily injury.

(B)(i) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in sexual assault involving a member of the public.

(ii) ... “[S]exual assault” means the commission or attempted initiation of a sexual act with a member of the public by means of force, threat, coercion, extortion, offer of leniency or other official favor, or under the color of authority.... [T]he propositioning for or commission of any sexual act while on duty is considered a sexual assault.

(iii) ... “[M]ember of the public” means any person not employed by the officer's employing agency and includes any participant in a cadet, explorer, or other youth program affiliated with the agency.

(C) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency of dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence.

[Comment by GB: Because of the many permitted redactions, delay, and exceptions, as well as limitations on type of records, this is not a substitution for a *Pitchess* motion.]

### **Mental Health**

See “Incompetency to Stand Trial (‘1368’)” for several new laws  
See “Diversion” for Mental Health Diversion.

### **Prison**

See State Prisons and County Jails

### **Probation**

#### **Misdemeanor reduction under PC 17, after probation, expanded.**

Amends PC 17      Link [Full Text AB 1941 \(Stats. 2018 Ch. 18\)](#)

#### **From the Legislative Counsel’s Digest:**

[Before this bill became law] a crime ... punishable, in the [court’s] discretion ..., as a felony or as a misdemeanor is a misdemeanor [inter alia] when the court grants [D] probation without imposing a sentence and, at the time of granting probation or on application of [D] or probation officer thereafter, the court declares the offense to be a misdemeanor.

This bill ... make[s] that condition authorizing the court to declare the offense to be a misdemeanor applicable regardless of whether the court imposes a sentence

#### **Relevant Text of PC 17, subd. (b)(3), showing the amendment.**

[PC 17, subd.] (b) When a crime is punishable, in the [court’s] discretion ... by imprisonment in the state prison or ... in a county jail under [PC 1170, subd. (h)], or by fine or imprisonment in the county jail, it is a misdemeanor for all purposes under the following circumstances:

¶...¶

(3) When the court grants probation to a defendant ~~without imposition of sentence~~ and at the time of granting probation, or on application of

the defendant or probation officer thereafter, the court declares the offense to be a misdemeanor.

## **Professional and Business Licenses and Discipline**

### **Reducing barriers to licensure for people with prior criminal records.**

Early warning. This bill does not become fully operative until July 1, 2020.

This bill amends, repeals, then adds back new versions of, BP 7.5, 480, 481, 482, 488, 493, and 11345.2; and adds new 480.2. All new versions of sections, and the new section, become operative on July 1, 2020.

Link: [Full text of A.B. 2138 \(Stats. 2018, Ch. 995\)](#)

### **From the Assembly Floor Report of August 28, 2018:**

SUMMARY: Reduces barriers to licensure for individuals with prior criminal convictions by limiting a regulatory board’s discretion to deny a new license application to cases where the applicant was formally convicted of a substantially related crime or subjected to formal discipline by a licensing board, with offenses older than seven years no longer eligible for license denial, with several enumerated exemptions.

## **Reentry and Rehabilitation**

See also “Immigration and Criminal Law” for an amendment to PC 1473.7

See also “State Prisons and County Jails.

See also “Professional and Business Licenses and Discipline”

See “Probation” for an amendment to PC 17, subd. (b) re: reduction to misdemeanor.

### **Certificate of Rehabilitation cannot be considered by most employers of 5 or more, in most background checks for employment**

Amends GC 12952.

Link: [Full text A.B. 2845 \(Stats 2018 Ch. 824\)](#)

### **Edited text of GC 12952, subd. (a): the amendment is in boldface.**

(a) Except as provided in subd[.] (d), it is an unlawful employment practice for an employer with five or more employees ...:

(1) To include on any application for employment, before the employer makes a conditional offer of employment..., any question that seeks the disclosure of an applicant's conviction history.

(2) To inquire into or consider the [applicant's] conviction history, ... until after [making] a conditional offer of employment....

(3) To consider, distribute, or disseminate information about ... the following while conducting a conviction history background check in connection with any application for employment:

(A) Arrest not followed by conviction, except ... as permitted [by Lab. Code § 432.7, subds. (a)(1) and (f)].

(B) Referral to or participation in a ... diversion program.

(C) Convictions that have been sealed, dismissed, expunged, or statutorily eradicated pursuant to law, **or any conviction for which the convicted person has received a full pardon or has been issued a certificate of rehabilitation.**

[Comment by GB: This is the first concrete benefit of a Certificate of Rehabilitation that applies to all recipients. (The Certificate has always operated as a judicial recommendation for a pardon, but in recent years those are often not granted.)]

Note: Subd. (d) of PC 12952, referred to above, does contain several exceptions.

Note: For two more aspects of A.B. 2845, see this section, below.

**Anyone whose conviction was dismissed pursuant to PC 1203.4 can apply for a certificate of rehabilitation; filing can be in the county of residence or of conviction.**

Amends PC 4852.6

Link: [Full text A.B. 2845 \(Stats 2018 Ch. 824\)](#)

**Edited text of PC 4852.06; newly amended text is emphasized:**

After the expiration of the ... period of rehabilitation a person who has complied with the requirements of Section 4852.05 may file in the superior court of the county in which he or she then resides **or in which he or she was convicted of a felony or of a crime the accusatory pleading of which was dismissed pursuant to Section 1203.4**, a petition for ... a certificate of rehabilitation....

**Note:** for two other aspects of A.B. 2845, see this section, above and below.

**Streamlining the procedures for applying for a pardon.**

Adds PC 4802.5, and amends PC 4812, 4852.16, and 4852.18.

Link: [Full text A.B. 2845 \(Stats 2018 Ch. 824\)](#)

**Edited text of added PC 4802.5:**

The Governor shall make the application for a pardon and the application for a commutation available on the Governor's Office Internet Web site and all applications for a direct pardon ... shall be promptly forwarded to the Board of Parole Hearings for an investigation and recommendation.... Applications supported by a certificate of rehabilitation may be granted ... without investigation and recommendation by the Board of Parole Hearings ....

**Edited text of amended PC 4812; added text is in boldface.**

**(a)** Upon request of the Governor, the Board of Parole Hearings shall investigate and report on all applications for reprieves, pardons, and **commutations** ... and shall make ... recommendations ....

**(b)** **The board may make recommendations to the Governor at any time regarding applications for pardon or commutation, and the Governor may request investigation into candidates for pardon or commutation at any time.**

**(c)** **If a petitioner indicates in the application an urgent need for the pardon or commutation, including, but not limited to, a pending deportation order or deportation proceeding, then the board shall consider expedited review ....**

**(d)** **The board shall provide electronic or written notification to an applicant after the board receives the application, and when the board has issued a recommendation.... [T]he reasons for the board's recommendation ... shall remain confidential.**

**(e)** **An applicant is eligible for a pardon, commutation, or certificate of rehabilitation [regardless of] immigration status.**

**Edited text of PC 4852.16.**

(a) The ... certificate of rehabilitation transmitted to the Governor shall constitute an application for a full pardon [which] ... the Governor may, without any further investigation, [grant], except that, ...the Governor shall not grant a pardon to any person twice convicted of felony, except upon the written recommendation of a majority of the ...Supreme Court.

**(b) Subject to criteria established by the Governor, a certificate of rehabilitation issued by a court shall be reviewed by the Board of Parole Hearings within one year of receipt of the certificate, which shall issue a recommendation as to whether the Governor should pardon that individual. Any criteria established by the Governor shall be made publicly available, but shall be otherwise exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.**

Note: For two other aspects of A.B. 2845, see this section, above.

### **Rules of Court**

(Local County Court Rules are not covered.)

See also “Attorneys” for Rule 9.95 on fingerprinting.

#### **Remote Electronic Access to Trial Court Records by Parties and Attorneys.**

New Rules 2.515 to 2.528.

These new Rules permit, but do not require, expansion of this remote access to all courts. [Note: Some counties, e.g. Alameda and San Mateo already provide expanded access.]

Chapter 2 of Division 4 [“Court Records”] of Title 2 [Trial Court Rules] is Retitled **“Access to Electronic Court Records.”**

It is now divided into four “articles,”

Article 1 “General Provisions,” [Existing and, eff. 1/1/19, amended Rules 2.500 to 2.502]

Article 2 “Public Access,” [Existing and, eff. 1/1/19, amended Rules 2.503 – 2.507/

*Article 3 Remote Access by a Party, Party’s Designee, Party’s Attorney, 17 Court-Appointed Person, or Authorized Person Working in a Legal Organization or Qualified Legal Services Project.* [New Rules 2.515 to 2.528]



Article 4. Remote Access by Government Entities (discussed below).

**Here is the Table of Contents to new Article 3.**

*Article 3. Remote Access by a Party, Party's Designee, Party's Attorney, Court-Appointed Person, or Authorized Person Working in a Legal Organization or Qualified Legal Services Project*

Rule 2.515. Application and scope

Rule 2.516. Remote access to extent feasible

Rule 2.517. Remote access by a party

Rule 2.518. Remote access by a party's designee

Rule 2.519. Remote access by a party's attorney

Rule 2.520. Remote access by persons working in the same legal organization as a party's attorney

Rule 2.521. Remote access by a court-appointed person

Rule 2.522. Remote access by persons working in a qualified legal services project providing brief legal services

Rule 2.523. Identity verification, identity management, and user access

Rule 2.524. Security of confidential information

Rule 2.525. Searches; unauthorized access

Rule 2.526. Audit trails

Rule 2.527. Additional conditions of access

Rule 2.528. Termination of remote access.

**Edited text and Advisory Committee Comments of Selected Rules.**

*From Article 3, Remote Access to a Party's Attorney, ... or Qualified Legal Services Project.*

**Rule 2.515.**

(a) ....

(b) *Who may access.* The rules in this article apply to remote access to electronic records by:

(1) A person who is a party;

(2) A designee of a person who is a party;

- (3) A party's attorney;
- (4) An authorized person working in the same legal organization as a party's attorney;
- (5) An authorized person working in a qualified legal services project providing brief legal services; and
- (6) A court-appointed person.

#### **Advisory Committee Comment**

... [T]he article 3 rules allow broad[ ] remote access—by [those listed in Rule 2.515(b), above] —to those electronic records where remote access by the public is not allowed.

Under the rules in article 3, [those listed] basically [have] the same level of access to electronic records remotely that [they] would have if [they] were to ... inspect the records in person at the courthouse. Thus, if [they are] legally entitled to inspect certain records at the courthouse, [they] could view the same records remotely; [but], if [they are] restricted from inspecting certain court records at the courthouse (e.g., because the records are confidential or sealed), [they] would not be permitted to view the records remotely....

#### **Rule 2.516. Remote access to extent feasible**

To the extent feasible, a court that maintains records in electronic form must provide remote access to those records to the users described in rule 2.515, subject to the conditions and limitations stated in this article and otherwise provided by law.

#### **Advisory Committee Comment**

This rule takes into account the limited resources currently available in some trial courts. Many courts may not have the financial means, security resources, or technical capabilities necessary to provide the full range of remote access to electronic records authorized by this article. When it is more feasible and courts have had more experience with remote access, these rules may be amended to further expand remote access.

**Remote Electronic Access by Government Entities, Including Public Defenders, to  
More Court Documents Permitted but Not Required.**

**New Rules 2.540 to 2.545.**

**Here is the Table of Contents to this new article:**

**Article 4. Remote Access by Government Entities**

Rule 2.540. Application and scope

Rule 2.541. Identity [and] management, and user access

Rule 2.542. Security of confidential information

Rule 2.543. Audit trails

Rule 2.544. Additional conditions of access

Rule 2.545. Termination of remote access

**Here is the text of this Article’s main rule, “Rule 2.540. Application and scope”:**

(1) A court may provide authorized persons from government entities with remote access to electronic records as follows:

(A) Office of the Attorney General: criminal electronic records and juvenile justice electronic records.

(B) ... Department of Child Support Services: family electronic records, child welfare electronic records, and parentage electronic records.

(C) Office of a district attorney: criminal electronic records and juvenile justice electronic records.

(D) Office of a public defender: criminal electronic records and juvenile justice electronic records.

(E) Office of a county counsel: criminal electronic records, mental health electronic records, child welfare electronic records, and probate electronic records.

(F) Office of a city attorney: criminal electronic records, juvenile justice electronic records, and child welfare electronic records.

(G) ... [Probation Dep’t.]: criminal electronic records, juvenile justice electronic records, and child welfare electronic records.

(H) County sheriff’s department: criminal electronic records and juvenile justice electronic records.

(I) Local police department: criminal electronic records and juvenile justice electronic records.

(J) Local child support agency: family electronic records, child welfare electronic records, and parentage electronic records.

(K) ... [C]hild welfare agency: child welfare electronic records.

(L) County public guardian: criminal electronic records, mental health electronic records, and probate electronic records.

(M) County agency designated by the board of supervisors to provide conservatorship investigation under chapter 3 of the [LPS] Act ([WI] 5350–5372): criminal electronic records, mental health electronic records, and probate electronic records.

(N) Federally recognized Indian tribe (including any reservation, department, subdivision, or court ... with concurrent jurisdiction: child welfare electronic records, family electronic records, juvenile justice electronic records, and probate electronic records.

(O) For good cause [as defined], a court may grant remote access to electronic records in particular case types to government entities beyond those listed in (b)(1)(A)–(N). ...

....

(2) ... [T]he court may provide a [listed] government entity with the same level of remote access to electronic records as [that] entity would be legally entitled to if a person working for the government entity were to appear at the courthouse to inspect court records in that case type....

**Filing in Trial Court, and Serving Electronically: Changes to Signatures; other Rules**

Calif. Rules of Court, 2.250 to 2.261 govern “Filing and Service by Electronic Means [in Trial Courts].” Rules 2.250, 2.251, 2.255, and 2.257 have numerous small changes, and should be reviewed before filing anything electronically after Jan. 1, 2019.

Rule 2.257 “Requirements for Signatures on Documents” has been re-lettered, and a new subdivision (a) has been added:

**(a) Electronic signature**

**An electronic signature is an electronic sound, symbol, or process attached to or logically associated with an electronic record**

and executed or adopted by a person with the intent to sign a document or record created, generated, sent, communicated, received, or stored by electronic means.

**Finality of Superior Court Appellate Division Cases: On Mailing of Opinion.**

[Comment by GB: These amendments are intended to solve the problem of some Superior Court Appellate Division clerks of mailing decisions late.]

**Rule 8.887. Decisions [edited to show relevant amendments].**

(a) \* \* \*

**(b) Filing the decision**

The appellate division clerk must promptly file all opinions and orders of the court and promptly **on the same day** send copies **(by e-mail where permissible under rule 2.251)** showing the filing date to the parties and, when relevant, to the trial court.

**Rule 8.888. Finality and modification of decision, [edited for amendments]**

**(a) Finality of decision**

(1) Except as otherwise provided in this rule, an appellate division decision, including an order dismissing an appeal involuntarily, is final 30 days after the decision is filed **sent by the court clerk to the parties.**

(2) If the appellate division certifies a written opinion for publication or partial publication after its decision is filed and before it[ ] ... becomes final in that court, the finality period runs from the date the [publication] order ... **is sent ... to the parties.**

Similar changes are made to:

Rule 888(b)(2), Modification of judgment,

Rule 889(b), Rehearing

Rule 8.935, [Writ Proceedings] Filing, finality and modifications of decision, rehearing, remittitur; and

Rule 81002 Certification for Transfer by the Appellate Division.

## *Denial of Applications to File Records Under Seal, or Confidentially*

Rules 8.45, 8.46, and 8.47 govern sealed and confidential records in the court of appeal and the supreme court. They have been amended in three ways.

The first way is that all three rules have been amended to clarify a basic filing requirement; typical is the requirement added to Rule 8.45, “General Provisions.” Subdivision (d) of that rule, titled “Transmission of and access to sealed and confidential records” has been re-lettered to add (d)(1): “A sealed or confidential record must be transmitted in a secure manner that preserves the confidentiality of the record.”

The second way is that when an application or motion to seal a record is denied, Rules 8.46 and 8.47 have been to clarify what actions the clerk, and the moving party must take about the filing in that court.

Typical is the amendment to Rule 8.46 “Sealed Records.” Rule 8.46(d)(7) now reads:

**(7) If the court denies the motion or application to seal the record, the clerk must not place the lodged record in the case file but must return it to the submitting party unless that party notifies the clerk in writing that the record is to be filed. Unless otherwise ordered by the court, the submitting party must notify the clerk within 10 days after the order denying the motion or application. the lodging party may notify the court that the lodged record is to be filed unsealed. This notification must be received within 10 days of the order denying the motion or application to seal, unless otherwise ordered by the court. On receipt of this notification, the clerk must unseal and file the record. If the lodging party does not notify the court within 10 days ..., the clerk must (1) return the lodged record to the lodging party if it is in paper form, or (2) permanently delete the lodged record if it is in electronic form.**

Similar changes are made to Rule 8.46(f)(3)(D), which, in addition, that is now re-lettered as 8.46(g)(3)(D).

Similar changes are made to Rule 8.47(b)(3)(D), and 8.47(c)(3)(D).

The third way is that Rule 8.46 has been re-lettered, and a new subdivision (e) has been added:

**(e) Challenge to an order denying a motion or application to seal a record**

Notwithstanding the provisions in (d)(1)—(2), when an appeal or original proceeding challenges an order denying a motion or application to seal a record, the appellant or petitioner must lodge the subject record labeled as conditionally under seal in the reviewing court as provided in (d)(3)—(5), and the reviewing court must maintain the record conditionally under seal during the pendency of the appeal or original proceeding. Once the reviewing court's decision on the appeal or original proceeding becomes final, the clerk must (1) return the lodged record to the lodging party if it is in paper form, or (2) permanently delete the lodged record if it is in electronic form.

### **Gun Violence Restraining Order Application now requires a “CLETS Info[.] Form**

Amends **Rule 1.51(a)**

“A person requesting protective orders under ... Penal Code sections 8 18100–18205 [Gun Violence Restraining Orders] ... must submit to the court with the request a completed *Confidential CLETS Information* form.”

[That in Judicial Council form CLETS-001. Its purpose is to provide law enforcement with information about the person restrained and the person to be protected.]

*See also: Gun Violence Restraining Orders*

## **Rules of Professional Responsibility**

On November 1, 2018, a complete new set of Rules of Professional Responsibility (RPC) became effective. The State Bar has several portals to these rules. Here's one:

<http://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Rules/Rules-of-Professional-Conduct/Current-Rules> . (last accessed December 22, 2018.)

The numbering system of the new Rules tracks closely the numbering system of the ABA Model Rules of Professional Responsibility, bringing California in line with all other states. The substance of the new rules is generally similar to the ABA Model Rules, but often differ.

A “Rules Cross Reference Chart,” from old rules to current rules, and vice versa, and new rules to ABA Model Rules is at <http://www.calbar.ca.gov/Portals/0/documents/rules/Cross-Reference-Chart-Rules-of-Professional-Conduct.pdf> (last accessed December 22, 2018).

### **Selected New Rules**

(Asterisks (\*) are in the official text; they mark words that are defined in RPC 1.01.)

**Rule 3.3 Candor Toward the Tribunal\* [Edited]**

(a) A lawyer shall not:

... (2) fail to disclose to the tribunal\* legal authority in the controlling jurisdiction known\* to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel, or knowingly\* misquote to a tribunal\* the language of a book, statute, decision or other authority;  
or

[Official] Comment

¶...¶ Legal Argument

[3] Legal authority in the controlling jurisdiction may include legal authority outside the jurisdiction in which the tribunal\* sits, such as a federal statute or case that is determinative of an issue in a state court proceeding or a Supreme Court decision that is binding on a lower court.

[4] The duties stated in paragraph[ ] (a) ... apply to all lawyers, including defense counsel in criminal cases....The obligations of a lawyer *under these rules and the State Bar Act* are subordinate to applicable constitutional provisions.

**Rule 3.8 Special Responsibilities of a Prosecutor [Edited]**

The prosecutor in a criminal case shall:

(a) not institute or continue to prosecute a charge that the prosecutor knows\* is not supported by probable cause;

¶...¶

(d) make timely disclosure to the defense of all evidence or information known\* to the prosecutor that the prosecutor knows\* or reasonably should know\* tends to negate the guilt of the accused, mitigate the offense, or mitigate the sentence, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;\*

¶...¶

(f) When a prosecutor knows\* of new, credible and material evidence creating a reasonable\* likelihood that a convicted defendant did not commit [that] offense ..., the prosecutor shall:

(1) promptly disclose that evidence to an appropriate court or authority, and

(2) if the conviction was obtained in the prosecutor's jurisdiction,



- (i) promptly disclose that evidence to the defendant unless a court authorizes delay, and
- (ii) undertake further investigation, or make reasonable\* efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.

[Official] Comment

....

[[3] The disclosure obligations in paragraph (d) are not limited to evidence or information that is material as defined by *Brady v. Maryland* (1963) 373 U.S. 83 [83 S.Ct. 1194] and its progeny....

#### **Rule 4.2 Communication with a Represented Person\* [Edited]**

(a) In representing a client, a lawyer shall not communicate directly or indirectly about the subject of the representation with a person\* the lawyer knows\* to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer.

[Official] Comment

....

[8] .... This rule also is not intended to preclude communications with represented persons\* in the course of legitimate investigative activities engaged in, directly or indirectly, by lawyers representing persons\* whom the government has accused of or is investigating for crimes, to the extent those investigative activities are authorized by law.

[Note by GB: This was one of the most controversial changes from the prior rules; those only prohibited communication with a represented “party.” The new rule prohibits communication with a represented “person.”]

#### **Sentence**

See “Enhancements”

See “Probation” for a change to PC 17, misdemeanor reduction

### **Recall of Felony Sentence I. Factors the Court can Consider Expanded**

Amends PC 1170, subd. (d)(1)1 Link: [Full Text AB 1812 \(Stats. 2018 Ch. 36\)](#)

#### **Language added by this bill to PC 1170, subd. (d)(1), starting at its third sentence:**

The court resentencing [upon recall] may reduce [Ds] term ... and modify the judgment, including a judgment entered after a plea agreement, ... in the interest of justice. The court may consider postconviction factors, including, but not limited to, the inmate's disciplinary record and record of rehabilitation while incarcerated, evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the inmate's risk for future violence, and evidence that reflects that circumstances have changed since the inmate's original sentencing so that the inmate's continued incarceration is no longer in the interest of justice.

[Comment by GB: This was an urgency statute, effective June 27, 2018. CDCR has been aggressively pursuing this new provision.]

### **Recall of Felony Sentence II. P can recommend recall at any time.**

Amends PC 1170, subd. (d)(1). Link: [Full Text AB 2942 \(Stats. 2018 Ch. 1001\)](#)

This bill builds on the bill above, which adding, beginning with PC 1170, subd. (d)(1)'s third sentence, to the factors the court can consider.

#### **Here is the first sentence of PC 1170, subd. (d)(1), showing the amendment:**

When a [D] subject to this section or subdivision (b) of Section 1168 has been sentenced to ... state prison or a county jail pursuant to subd[.] (h) ..., the court may, within 120 days of the date of commitment on its own motion, or at any time upon the recommendation of the secretary or the Board of Parole Hearings in the case of state prison inmates, or the county correctional administrator in the case of county jail inmates, **or the district attorney of the county in which the defendant was sentenced**, recall the sentence and commitment previously ordered and resentence [D] ... as if [D] had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence.

### **Veteran's Service Connected Mental Health Mitigation Made Retroactive**

Amends PC 1170.91 Link: [Full Text AB 865 \(Stats. 2018 Ch.523\)](#)

#### **From the Legislative Counsel's Digest**

... [E]ffective January 1, 2015, [PC 1170.91] required the court, if it concludes that a [D] convicted of a felony ... is, or was, a member of the [U.S.] military who may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of [the] military service, to consider that ... a factor in mitigation [of sentence]....

This bill ... authorize[s] [any person who was sentenced for a felony ... prior to Jan[.] 1, 2015, and who is, or was, a ... military [member] and who may be suffering from any of the above-described conditions as a result of [the] military service to petition for a recall of sentence under specified conditions.

## **Sex Offenses**

### **PC 288a (oral copulation) amended and renumbered as PC 287**

This change is made in Section 49 of this bill

Link: [Full text S.B. 1494 \(Stats. 2018, Ch. 423\)](#)

This omnibus bill also made conforming changes throughout the Codes, including EC 352.1, 782, 1036.2, 1103, 1108, and 1228, some seventy-six other PC sections, sections of the WI Code, and many sections of other Codes. (It also made a handful of changes to other Code sections for unrelated reasons.) GB.

Typical conforming language is "... **section 287 or former section 288a of the Penal Code...**" Caution: In many sections, slightly different conforming language is used. GB.

## **State Prisons and County Jails**

*Note: There is no such thing as "County Prison," or "State Jail."*)

### **Indigent prison inmates: basic hygiene supplies and access to courts.**

Adds PC 5007.7

Link: [Full text A.B. 2533 \(Stats 2018 Ch. 764\)](#)

#### **Edited text of added PC 5007.7:**

An inmate [whose] inmate trust account [had] ... \$25... or less for 30 consecutive days [is] deemed indigent. An indigent inmate shall receive basic supplies [for] personal hygiene ... [and] be provided with sufficient resources to communicate with and access the courts, including, but not limited to, stamps, writing materials, envelopes, paper, and the services of a notary for ... notarizing a signature on a document, as required.

**Restrictions on Male Correctional Officers vis a vis Female Prison Inmates.**

Adds PC 2644.

Link: [Full text A.B. 2550 \(Stats. 2018 Ch. 174\)](#)

**Edited text of added PC 2644:**

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

(b) A male correctional officer shall not enter into an area ... where female inmates may be in a state of undress, or be in an area where they can view female inmates in a state of undress, including, but not limited to, restrooms, shower areas, or medical treatment areas, unless an inmate in the area presents a risk of immediate harm to herself or others or if there is a medical emergency.... A male correctional officer shall not enter into an area prohibited ... if there is a female correctional officer who can resolve the situation in a safe and timely manner.... To prevent incidental viewing, staff of the opposite sex shall announce their presence when entering a housing unit.

(c) If a male correctional officer conducts a pat down search ... or enters a prohibited area [under an exception in subds. (a) or (b)], the circumstances ... of the exception shall be documented within three days...[,] be reviewed by the warden[,] and retained by the institution....

**The “Pre-Release Construction Trades Certificate Program,” and the “Prison-to-Employment Program” Created.**

Adds PC 2716.5 and adds to the Unemployment Insurance Code §§ 14040 to 14042.

Link: [Full Text S.B. 866 \(Stats. 2018 Ch. 53\)](#)

**From the Legislative Counsel’s Digest.**

.... This bill... establish[es] [at added PC 2716.5] the Pre-Release Construction Trades Certificate Program within[CDCR] to increase employment opportunities in the construction trades for inmates upon release....

This bill ... require[s] the California Workforce Development Board ... to administer a prison-to-employment program and award grants ... [for, inter alia,] the development of regional partnerships and regional plans to provide and coordinate ... workforce, education, supportive, and related services ... that formerly incarcerated and [people on supervised release] need to secure and retain employment and reduce ... recidivism.

## Statutes of Limitations

### *Mandatory Reporters of Child Abuse and Neglect: One-Year Limitations Period for Prosecution for Failure to Report, Extended to Five Years.*

Amends PC 801.6

Link: [Full text A.B. 2302 \(Stats. 2018 Ch. 943\)](#)

[Comment by GB: Violation is generally a misdemeanor (PC 1116.01), and misdemeanors generally have a one-year limitations period. (PC 802; possibly extended until discovery under PC 803, subd. (c).) This bill extends that period, as follows:

#### **PC 801.6 with amendment shown in boldface:**

801.6. Notwithstanding any other limitation of time described in this chapter, prosecution for any offense proscribed by Section 368, except for a violation of any provision of law proscribing theft or embezzlement, **or for the failure of a mandated reporter to report an incident under Section 11166 known or reasonably suspected by the mandated reporter to be sexual assault as defined in Section 11165.1,** may be filed at any time within five years from the date of occurrence of such offense.

## Vehicles

### *Storage of guns in pickup-truck bed: requirements*

Amends PC 25410

Link: [Full Text SB 1382 \(Stats 2018 Ch. 94\)](#)

#### **From the Legislative Counsel's Digest**

[The law before this bill] require[d] a person, when leaving a handgun in an unattended vehicle, to lock the handgun in the vehicle's trunk, lock the handgun in a locked container and place the container out of plain view, or lock the handgun in a locked container that is permanently affixed to the vehicle's interior and not in plain view.

This bill ... additionally authorize[s] locking the handgun in a toolbox or utility box.... [defined] as a fully enclosed container that is permanently affixed to the bed of a pickup truck or vehicle that does not contain a trunk, and is locked by a padlock, keylock, combination lock, or other similar locking device.

**Info. on Civil Rights During a Traffic Stop to Be Included in the Driver's Handbook**

Amends VC 1656.3

Link: [Full Text AB 2918 \(Stats. Ch. 723\)](#)

**Amended VC 1653.4: the main addition is subd. (a)(4)**

1656.3. (a) [DMV] shall include within the California Driver's Handbook, [see VC 1656, subd. (b)] information [on] ...:

(1) Rail transit safety.

(2) Abandonment or dumping of any animal on a highway.

(3) The importance of respecting the right-of-way of others, particularly pedestrians, bicycle riders, and motorcycle riders.

**(4) Information regarding a person's civil rights during a traffic stop. The information shall address the extent and limitations of a peace officer's authority during a traffic stop and the legal rights of drivers and passengers, including, but not limited to, the right to file complaints against a peace officer. The information to be included ... shall be developed by the civil rights section of [DOJ] in consultation with [DMV], the ... Highway Patrol, the Commission on Peace Officer Standards and Training, and civil rights organizations, including community-based organizations.**

(b) ... [To] minimize costs, the info[.] ... in [subd. (a)(4)] shall be initially included ... when the handbook is ... revised or reprinted.

**Criminal Penalties Repealed for Refusal to Take a Warrantless Blood-DUI Test.**

Amends VC 23577, 23578, and 23612

Link: [Full Text AB 2717 \(Stats. 2018 Ch. 177\)](#)

**From the Legislative Counsel's Digest:**

This bill ...[s] amend statutory law to comport with [*Birchfield v. North Dakota* (2016) 136 S.Ct. 2160, which held that warrantless breath tests incident to arrests for DUI are O.K., but did not permit warrantless blood tests.]. The bill ... repeal[s] the imposition of criminal penalties for the refusal by a person to submit to or complete a blood test....

[Comment by GB: this bill provides that administrative penalties, such as license suspension are still allowed.]

## **Warrants: Ramey Arrest and Search; Bench**

See also “Firearms” for surrendering guns because of an outstanding warrant.

### **Application Process Streamlined for the Digital Age, but Magistrate Can No Longer Take an Oath by Phone, and Must Insure that All Pages are Received.**

Amends PC 817 (*Ramey* arrest warrants) and 1526 (search warrants).

Link: [Full text: A.B. 2701 \(Stats. 2018 Ch. 176\)](#)

#### **From the Legislative Counsel’s Digest:**

This bill would [for PC 817 arrest warrants] delete the authority of a magistrate to take an oral statement under oath made during a telephone conversation in lieu of a declaration in support of a warrant of probable cause for arrest and would eliminate specified related procedural duties of the magistrate. The bill would deem the warrant that is signed by the magistrate and received by the declarant to be the original warrant.

¶...¶

This bill would [for PC 1526 search warrants] delete the authority of a magistrate to take an oral statement under oath made during a telephone conversation and would eliminate related procedural duties of the magistrate, as specified. The bill would make related and conforming changes.

#### **From the Assembly Floor Analysis of August 3, 2018**

[This bill] require[s] that [for PC 1526 search warrants] the judge verify that all the pages sent by an officer have been received, that all the pages of the application are legible, and that the declarant's or affiant's signature, digital signature, or electronic signature is genuine.

[Note by GB: PC 817 authorizes a probable-cause-arrest-warrant for which no accusatory pleading is filed, and which does not begin an accusatory pleading process. (For a general discussion, and for why these are called “*Ramey*” warrants, see *Goodwin v. Superior Court* (2001) 90 Cal.App.4th 215 at 218, 224-226; for a limitation on their use, see *Swarthout v. Superior Court* (2012) 208 Cal.App.4th 701, 709 fn. 11 [“[this] warrant require[es] that [D] be brought before a magistrate, not ... be brought to county jail for investigative purposes”].)]

## **Bench Warrant for Repeat Theft Offenses**

Amends PC 978.5

Link [Full Text AB 1065 \(Stats. 2018 Ch. 803\)](#)

PC 978.5 is the main Bench Warrant statute. It is amended to cover the new Organized retail theft (see “Crimes”). (Other BW statutes include PC 980, 981, 983, and 984.)

### **PC 978.5, with the amendment in boldface type:**

(a) A bench warrant ... may be issued whenever a [D] fails to appear in court as required ... including, but not limited to,...[:]

(1) If [D] is ordered ... to ... appear in court at a specific time and place.

(2) If [D] is released from custody on bail and is ordered by a judge or magistrate, or other person authorized to accept bail, to personally appear in court at a specific time and place.

(3) If [D] is released from custody on his own recognizance and promises to personally appear in court at a specific time and place.

(4) If [D] is released from custody or arrest upon citation ... and [D] has signed a promise to ... appear in court at a specific time and place.

(5) If [D] is authorized to appear by counsel and the court or magistrate orders that [D] personally appear ... at a specific time and place.

(6) If an information or indictment has been filed ... and the court has fixed the date and place for [D] personally to appear for arraignment.

**(7) If [D] has been cited or arrested for misdemeanor or felony theft from a store or vehicle and has failed to appear in court in connection with that charge or ... charges in the previous six months.**

**(b).... (c) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.** [After that, prior law is reinstated. GB]

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