

# Prosecutors' Analysis of the 2011 Criminal Justice Realignment

(AB 109, AB 116, AB 117, AB 118, ABX1 16, ABX1 17)

September 2011

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*by Kathryn B. Storton*

*Santa Clara County District Attorney's Office*

*and*

*Lisa R. Rodriguez*

*San Diego County District Attorney's Office*

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Gregory D. Totten  
*President*



W. Scott Thorpe  
*Chief Executive Officer*

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California District Attorneys Association  
921 11th Street, Suite 300  
Sacramento, CA 95814-2882  
(916) 443-2017 • (916) 443-0540 Fax  
*www.cdaa.org*

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# Acknowledgments

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This most recently concluded legislative session has unleashed significant changes to the laws in California governing the sentencing of felony convictions and the treatment of felons released post-conviction. These changes, which have collectively become known as Realignment, take effect beginning on October 1, 2011. But Realignment will have repercussions for years to come. Of necessity, California's prosecutors will be involved in many aspects of this fundamental shift in our criminal justice system.

To prepare our members for the changes and challenges that Realignment will introduce into their work as prosecutors, CDAA convened an ad hoc committee, co-chaired by the Honorable Gerald T. Shea of San Luis Obispo County, the Honorable Mark Peterson of Contra Costa County, and the Honorable Nancy O'Malley of Alameda County, to develop resources for understanding and responding to these new circumstances. This guide, the *Prosecutors' Analysis of the 2011 Criminal Justice Realignment*, is an initial effort to provide California prosecutors, as well as our allied partners in public safety, with a comprehensive and practical tool for dealing effectively with the impact of Realignment in managing felony cases going forward. Other resources may be found at [www.cdaa.org](http://www.cdaa.org). These resources will continue to be updated.

This publication is the product of several meetings and much dedicated work by the ad hoc committee, but I want to particularly thank the authors, Santa Clara County Deputy District Attorney Kathy Storton and San Diego County Deputy District Attorney Lisa Rodriguez. Theirs was a herculean task completed in a matter of days and weeks with the unrelenting approach of October 1 driving them. You have this excellent resource because of their exceptional dedication and professionalism. CDAA is most grateful for Kathy and Lisa's contributions.

Special thanks to Cory Salzillo, CDAA's Director of Legislation. Over the last nine months he has developed an in-depth knowledge of the Realignment legislation, which has been invaluable to the committee and the authors during the course of this project.

I would also like to recognize and thank the swift and skillful work of our Publications Department in editing and formatting this guide. Publications Director Tom Toller, Publications Production Coordinator Laura Bell, Senior Editor Kathy Sheehan, and Editor Lauren King, all worked diligently to bring the work that you are reading to fruition as a CDAA publication. **Because of its electronic format, periodic updates to this guide will be available as Realignment evolves.**

W. Scott Thorpe  
Chief Executive Officer  
California District Attorneys Association

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Tom Toller, Publications Director  
Jean Jordan, VAWA Project Director  
Carly Barulich, Legislation Assistant

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*by Kathryn B. Storton & Lisa R. Rodriguez*

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## Preamble

California stands at the precipice of the biggest challenge to public safety in generations. Criminal justice realignment, as embodied in AB 109 and related legislation, will dramatically change California's current judicial and correctional systems. The new felony sentencing structure will be radically different. Specified felons will now serve their custody in county jails or in alternative programs instead of prison. Many inmates released from state prison will be supervised by local probation officers instead of state parole agents. Available custody sanctions for many offenses and parole violations will be markedly reduced under this comprehensive reform. And local law enforcement will be tasked with developing and implementing new programs to reduce recidivism rates and protect public safety.

While the focus on rehabilitation instead of incarceration has enjoyed mixed results in the past, it has never been used on the scale envisioned in current Realignment. This experiment in criminal justice policy poses a huge challenge for prosecutors and a significant risk of increased crime rates throughout California. As implementation moves forward, funding remains an area of significant concern for prosecutors and all law enforcement. The state's long-term plan for funding has not been formalized, and the current funding formulae only apply to fiscal year 2011–12. However, it is clear that this funding will not be adequate to incarcerate inmates for the same length of time they previously served under California's determinate sentencing scheme. Inevitably, this means more criminal offenders out of actual custody and subject to local supervision in our communities, and increased workload demands upon already strained local law enforcement.

CDAA did not support this legislation, and this document is not intended to fully address the larger policy issues related to the reform. The Association will reserve this policy discussion for a later date when prosecutors can better assess the strengths and weaknesses of Realignment. To ensure accurate measurement of the impact of the laws in the future, CDAA will be developing data-collection recommendations.

In releasing this document, our purpose is to provide prosecutors with a comprehensive legal overview of the laws' provisions. CDAA and the authors of this document hope that it will assist prosecutors in implementing this very challenging criminal justice reform.

Gregory D. Totten  
Ventura County District Attorney  
CDAA President

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## I. Bills and Chapter Numbers

AB 109 (Stats. 2011, Chapter 15); AB 117 (Stats. 2011, Chapter 39); AB 118 (Stats. 2011, Chapter 40); AB 116 (Stats. 2011, Chapter 136); ABX1 16 (Stats. 2011, Chapter 13); and ABX1 17 (Stats. Chapter 12). [AB 117, AB 116, and ABX1 17 are correction and clean-up bills. AB 118 and ABX1 16 are funding bills.]

## II. Title and Operative Date

**Title:** The 2011 Realignment Legislation Addressing Public Safety

**Operative Date:** October 1, 2011, and only if: (1) a community corrections grant program is created to assist in implementing AB 109; and (2) there is an appropriation to fund the grant program.

## III. Overview

### A. Realignment

On April 4, 2011, Governor Brown signed AB 109, which redefined felonies and shifted responsibility for both supervising and housing certain convicted felons and parolees from the state to the county. Three pieces of clean-up legislation were subsequently passed: AB 117, AB 116, and ABX1 17. The intention of the law was to address both state budget shortfalls and overcrowding in the California Department of Corrections and Rehabilitation (CDCR). However, the ramifications on the criminal justice system are farther reaching than just the amendments to criminal statutes. Implementation is scheduled to begin on October 1, 2011.

The Legislature codified its intent regarding Realignment in Penal Code sections 17.5 and 3450. In these sections, the Legislature noted that the recidivism rate in California for felons who have served time in prison is higher than the national average (for persons who have served time in prison). The Legislature also declared that realigning “low-level offenders” to locally run community-based corrections programs, which are strengthened through community-based punishment, evidence-based practices, improved supervision strategies, and enhanced secured capacity, will improve public safety outcomes. And finally, the Legislature maintained that the provisions of Realignment are not intended to alleviate state prison overcrowding.

According to the Legislature, “evidence-based practices” refers to supervision policies, procedures, programs, and practices demonstrated by scientific research to reduce recidivism. Because evidence-based practices may be used in the courtroom in sentencing and supervising offenders, prosecutors should consider becoming more educated about these terms and their application in order to continue to best protect public safety.

AB 109 and its companion bills, AB 117, AB 118, AB 116, ABX1 16, and ABX1 17 mandate that felons convicted of approximately 500 different crimes will serve their prison sentence in county jail instead of state prison. Such felons must be non-violent, non-serious, and non-sex offenders. Offenders sentenced to serve determinate terms, whether in state prison or local custody as the new law requires, must serve a term chosen by the court. However, the new laws also permit a judge to split a determinate sentence between custody and “mandatory supervision.”

Additionally, the law requires that a county agency (the Probation Department in most counties) supervise any felon released from state prison after October 1, 2011, whose committing offense was non-violent, non-serious, or who is a low- to mid-risk sex offender as determined by CDCR. This is called “Postrelease Community Supervision” (PRCS). The responsibility for litigating PRCS violations that require court intervention will most likely fall to the district attorney’s office and the public defender’s office. Sanctions for violations will be served in county jail for offenders under PRCS, as well as for most formal parolees, and will be limited to 180 days.

AB 118 (Chapter 40) was signed into law on June 30, 2011, and creates the Community Corrections Grant Program in new Government Code section 30026. New Government Code section 30025 creates the Local Revenue Fund 2011 in the State Treasury, which will receive Realignment money. AB 118 specifies how Realignment money is to be used. For example, Government Code section 30025(f)(5) requires that the District Attorney and Public Defender Accounts in the Local Revenue Fund be used exclusively to fund costs associated with parole and postrelease community supervision revocation proceedings. According to the legislative history of AB 118, \$5.6 billion is expected to be provided by the state to local governments over the next several years. However, funding for Realignment is not guaranteed, as it would be with a constitutional amendment that would protect the funding. There are concerns throughout the law enforcement community about the stability and continuation of Realignment funding. [ABX1 16 amends several sections of AB 118 and adds some new ones.]

## **B. Marsy’s Law and Victims’ Rights**

Marsy’s Law was passed by the voters of California and became effective on November 5, 2008. The law, which amended our state constitution (art. I, § 28) as well as the Penal Code, created a substantial expansion of existing victims’ rights and imposed certain obligations on the part of district attorneys, peace officers, probation departments, CDCR, parole, the courts, and the Governor. (See Appendix D.)

The purpose and intent in enacting this initiative was to provide victims with rights to justice and due process. These rights include the expectation that felons be appropriately detained in custody, sentenced, and sufficiently punished so that “the public safety is protected and encouraged as a goal of highest importance.” (Cal. Const., art. I, § 28(a)(4).) The California Constitution now provides that “Victims of crimes have a collectively shared right to expect that persons convicted of committing crimes are sufficiently punished in both the manner and the length of the sentences imposed by the courts.” (Art. I, § 28(a)(5).)

The California Constitution enumerates several rights to which victims are entitled, including the right to:

1. have the safety of the victim and the victim’s family be the primary consideration in fixing the amount of bail and setting release conditions for the defendant;
2. reasonable notice, upon request, of all public proceedings at which the defendant and the prosecutor are entitled to be present, and to be present at all parole or other post-conviction release proceedings;
3. be informed, upon request, of the scheduled release date of the defendant;
4. seek and secure restitution;

5. be informed of all parole procedures, to participate in the parole process, to provide information to the parole authority to be considered before the parole of the offender, and to be notified, upon request, of the parole or other release of the offender; and
6. have the safety of the victim, the victim's family, and the general public considered before any parole or other post-judgment release decision is made.

Marsy's Law added a truth-in-sentencing provision to the California Constitution. (Art. I, § 28(f)(5).) This provision states that sentences imposed upon criminal wrongdoers "shall be carried out in compliance with the courts' sentencing orders, and shall not be substantially diminished by early release policies intended to alleviate overcrowding in custodial facilities. The legislative branch shall ensure sufficient funding to adequately house inmates for the full terms of their sentences, except for statutorily authorized credits which reduce those sentences." Marsy's Law also added the public safety bail provision (art. I, § 28(f)(3)), which requires that in setting bail or own recognizance release, the protection of the public and the safety of the victim shall be the primary considerations.

The Realignment legislation, which did not pass with sufficient votes to amend the constitutional mandates of Marsy's Law, made sea changes to existing law. Notwithstanding that this legislation states that its purpose is not to address overcrowding in California's prisons, the converse seems to be true. Such sweeping changes regarding pre-conviction release of prisoners, conduct credits, sentencing, punishment, and parole may indeed conflict with existing law, as discussed below in the respective sections. Thus, even with additional remedial legislation, such legal conflicts are likely to result in significant litigation challenging various applications of Realignment.

#### **IV. New Penal Code Section 1170(h)(1) and (2) Provide For a Term of Imprisonment in County Jail Instead of State Prison**

[Added by AB 109, and amended in AB 117, AB 116, and ABX1 17.]

The most far-reaching substantive change to the Penal Code was to amend section 1170, the determinate sentencing law. Through AB 109 and its companion bills, the Legislature added Penal Code section 1170(h) to provide that for certain felonies, terms of imprisonment would be served in county jail rather than state prison. The Legislature then amended almost 500 criminal statutes to require sentencing pursuant to section 1170(h), absent particular disqualifiers. (See Subsection A below, and Appendix B). These are referred to as "Penal Code section 1170(h) crimes." The term for section 1170(h) crimes remains the same, but the sentence is served in county jail instead of state prison, and still operates as a prison prior. Penal Code section 1170(h)(6) also provides that these sentencing changes will apply prospectively to any person **sentenced** on or after October 1, 2011.

As stated above, hundreds of felony code sections now contain a cross-reference to Penal Code section 1170(h), which provides for a triad term of 16 months, two years, or three years imprisonment in county jail if the felony code section does not already specify its own triad. Felony code sections that contain a cross-reference to section 1170(h) **and** their own sentencing triad, retain those triads, but now they refer to a term of imprisonment in county jail rather than prison.

On the other hand, if there is no triad specified in the felony code section and no cross-reference to Penal Code section 1170(h), that felony is punishable by 16 months, two years, or three years

imprisonment in *state prison pursuant to Penal Code section 18*. The term of imprisonment that may be served in local jail is unlimited: Penal Code section 1170(h) crimes include triads of various ranges, as well as some enhancements that could result in long terms to be served in local jail. Penal Code section 19.2 has been amended to provide that punishment pursuant to Penal Code section 1170(h) is an exception to the general rule that no person may be sentenced to jail for more than one year on a single count.

Also keep in mind, Penal Code section 2057 permits a local correctional agency, typically the county sheriff, to pay CDCR to house a prisoner sentenced pursuant to section 1170(h) in the state prison. However, it is unclear how this process will work, how much it will cost, and whether it would meet any due process or equal protection challenges from a defendant.

## **A. Penal Code Section 1170(h) Disqualifiers**

Pursuant to new Penal Code section 1170(h)(3), a felon must serve the term of imprisonment in state prison if he or she has a current or prior felony conviction for a serious felony (as defined in Penal Code section 1192.7(c)); or a current or prior violent felony conviction (as defined in Penal Code section 667.5(c)); or a prior from another jurisdiction if it meets all the elements of a serious or violent prior; or if the defendant is required to register as a sex offender pursuant to Penal Code section 290; or if a Penal Code section 186.11 aggravated white collar crime enhancement is imposed. (See Appendix A for disqualifying offenses.)

### **1. Current or Prior Serious Felony Conviction (Penal Code § 1192.7(c)) or Current or Prior Violent Felony Conviction (Penal Code § 667.5(c))**

Any offender with any current or prior serious or violent felony conviction is disqualified from serving an executed term of imprisonment in county jail pursuant to section 1170(h)(3). In addition to a California serious or violent prior operating as a section 1170(h) disqualifier, a prior felony conviction from another jurisdiction that meets all the elements of a serious felony prior pursuant to Penal Code section 1192.7(c) or a violent felony pursuant to Penal Code section 667.5(c) will also disqualify a defendant from serving an executed term of imprisonment in county jail and require imprisonment in the state prison.

As Penal Code section 1170(h)(3) is currently worded, juvenile strike priors would **not** prohibit the application of the new sentencing rules under section 1170(h) because a juvenile strike is an “adjudication” and not a “conviction.” (See Welfare & Institutions Code § 203, providing that an order adjudging a minor a ward of the juvenile court shall not be deemed a conviction of a crime for any purpose.) Of course, if the strike prior occurred in adult court because the juvenile was prosecuted as an adult, the prior would qualify as an exception to Penal Code section 1170(h).

### **2. Defendant is Required to Register as a Sex Offender**

Pursuant to the plain language of Penal Code section 1170(h)(3), a current **or** a prior felony or misdemeanor offense requiring sex registration would bring a defendant within the Penal Code section 290 exception and requires a defendant’s term of imprisonment to be served in state prison.



### **3. Penal Code Section 186.11 White Collar Crime Enhancement is Imposed**

The Penal Code section 1170(h) crimes are sometimes referred to as “non-non-non” felonies (non-violent, non-serious, non-sex), but this shorthand term omits the fourth exception listed in Penal Code section 1170(h)(3): the imposition of a Penal Code section 186.11 white collar crime enhancement.

#### **B. Excluded Offenses**

The Legislature also deliberately excluded a number of felonies, which would otherwise seem to fall within the non-non-non categories, from imprisonment in county jail and required that imprisonment for those crimes be served in state prison. (See Appendix B.)

#### **C. Penal Code Section 1170(h)(5) Sentencing Options**

[Added by AB 117 and amended in ABX1 17. The split sentence option was not in the original Penal Code section 1170(h) added by AB 109.]

Penal Code section 1170(h)(5) provides that when imposing sentence pursuant to section 1170(h)(1) or (2), a judge may commit the defendant to county jail “for a full term in custody in accordance with the applicable law” or “for a term as determined in accordance with the applicable sentencing law, but suspend the execution of a concluding portion of the term selected in the court’s discretion, during which time the defendant shall be supervised by the county probation officer in accordance with the terms, conditions, and procedures generally applicable to persons placed on probation, for the remaining unserved portion of the sentence imposed by the court.”

Thus, under this subsection, the sentencing court has two possible options:

##### **1. Full Term of Imprisonment (Penal Code § 1170(h)(5)(A))**

Order a full term of imprisonment in the county jail of up to the maximum possible term (e.g., 16 months, two years, or three years in a Penal Code section 459–460(b) second-degree burglary case). If a defendant is sentenced to serve the full term of imprisonment in county jail, upon release, the defendant will not be supervised or have any conditions or other type of parole supervision; or

##### **2. Split Sentence (Penal Code § 1170(h)(5)(B))**

Impose a sentence that is a combination of a term of imprisonment in county jail and “mandatory supervision,” but the two periods together cannot exceed the maximum possible sentence (three years in the case of Penal Code section 459–460(b) burglary). In addition, upon release to mandatory supervision, a defendant will be supervised by the probation department under the same terms, conditions, and procedures of formal probation for the unserved portion of the sentence. The period of supervision is mandatory and can only be terminated by court order. While on supervision, the defendant is entitled only to actual time credit against the term of imprisonment imposed.

The two periods of time, jail and mandatory supervision, added together, could not total more than the maximum possible sentence. For example, in a second-degree burglary case where the range of sentence is 16 months, two years, or three years, the court could impose a two-year term in jail and split the two years between jail and “mandatory supervision” with the court selecting the length for each. Thus, the court could order that the two-year term be composed of an eight-month term in jail with 16 months of “mandatory supervision” after, or one year of jail with one year of supervision, or six months of jail with 18 months of supervision.

The phrase “mandatory supervision” is a new concept. However, the Legislature intends that this period be handled like traditional probation. The standard terms, conditions, and procedures of probation contained in existing statutes, case law (e.g., for violations of probation), and probation department policies will apply here. Thus, existing probation and probation-revocation procedures and rules should apply to Penal Code section 1170(h) sentences that include a period of “mandatory supervision.”

The types of terms, conditions, and procedures that may apply to mandatory supervision include, but are not limited to, search and seizure conditions, section 1203.2(a) peace officer arrest powers, the authority of the district attorney or probation officer to file a revocation petition pursuant to Penal Code section 1203.2(b), the authority of the court to modify or revoke pursuant to Penal Code section 1203.2(b) or 1203.3, and the tolling of the supervision period when supervision is revoked or the supervisee absconds.

Through this new version of Penal Code section 1170(h), the Legislature ensured that the court has the authority to order a period of post-jail supervision. The word “mandatory” means that if the court chooses to impose a split sentence or hybrid sentence (term of imprisonment in county jail plus mandatory supervision), the defendant may not refuse supervision. By the clear language of ABX17, it also means that the length of the supervision period cannot be terminated except by order of the court. Most likely, this will result in offenders on mandatory supervision calendaring motions to terminate mandatory supervision before the full period of supervision is completed, particularly on cases with longer terms of mandatory supervision. Prosecutors should consider advocating for an appropriate term of supervision and conditions as part of the plea or sentence.

Remember, if the court chooses to sentence a defendant to the full term of imprisonment in county jail pursuant to Penal Code section 1170(h)(5)(A), Realignment legislation does not provide for any post-jail supervision. Postrelease supervision provisions, discussed later in this outline, apply only to defendants released from prison on or after October 1, 2011. These provisions do not apply to any defendant who serves a term of imprisonment in county jail pursuant to Penal Code section 1170(h).

Abolition of the period of parole following a full term of imprisonment may implicate a victim’s right to expect the defendant be sufficiently punished (Cal. Const., art. I, § 28(a)(5)), and may violate at least the spirit of the victim’s right to be informed and participate in the parole process (art. I, § 28(b)(15)).

#### **D. Prospective Application Only (Penal Code § 1170(h)(6))**

Penal Code section 1170(h)(6) provides that the sentencing changes made by section 1170(h) apply prospectively to any person **sentenced** on or after October 1, 2011. Therefore, these new provisions will **not** apply to any defendant sentenced before October 1, 2011. However, they will obviously apply to crimes committed before October 1, 2011.

[*Note:* This effective date is different from the new conduct credit rules under Penal Code section 4019, which apply only to crimes **committed** on or after October 1, 2011. Therefore, there will be cases where a defendant is sentenced on or after October 1, 2011, pursuant to Penal Code section 1170(h), but the calculation of section 4019 conduct credits is governed by the less generous credit rules in effect before October 1, 2011.]

#### **E. Other Dispositions Permitted: Diversion, DEJ, Probation (Penal Code § 1170(h)(4))**

Penal Code section 1170(h)(4) provides that other dispositions authorized by law are not prevented, including pretrial diversion, deferred entry of judgment, or an order granting probation pursuant to Penal Code section 1203.1. Section 1203.1(a) provides that the court may suspend the imposition or execution of sentence for a period of time not exceeding the maximum term of the sentence, and impose terms and conditions of probation. One of those conditions could be serving time in jail. Thus, unless probation is prohibited, a defendant who qualifies for sentencing pursuant to section 1170(h), may instead be placed on traditional probation and ordered to serve a jail sentence (of typically no more than one year) as a condition of that probation. Ultimately, a defendant sentenced to probation who violates the terms and conditions of probation could be sentenced to a term of imprisonment to be served pursuant to Penal Code section 1170(h).

#### **F. Language of Penal Code Section 1170(h)**

[Added by AB 109, and then amended by AB 117, AB 116, and ABX1 17.]

The following is the language of new Penal Code section 1170(h) in its entirety:

(h)(1) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision where the term is not specified in the underlying offense shall be punishable by a term of imprisonment in a county jail for 16 months, or two or three years.

(2) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision shall be punishable by imprisonment in a county jail for the term described in the underlying offense.

(3) Notwithstanding paragraphs (1) and (2), where the defendant (A) has a prior or current felony conviction for a serious felony described in subdivision (c) of Section 1192.7 or a prior or current conviction for a violent felony described in subdivision (c) of Section 667.5, or (B) has a prior felony conviction in another jurisdiction for an offense that has all of the elements of a serious felony described in subdivision (c) of Section 1192.7 or a violent felony described in subdivision (c) of Section 667.5, (C) is required to register as a sex offender pursuant to Chapter

5.5 (commencing with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime and as part of the sentence an enhancement pursuant to Section 186.11 is imposed, an executed sentence for a felony punishable pursuant to this subdivision shall be served in state prison.

(4) Nothing in this subdivision shall be construed to prevent other dispositions authorized by law, including pretrial diversion, deferred entry of judgment, or an order granting probation pursuant to Section 1203.1.

(5) The court, when imposing a sentence pursuant to paragraph (1) or (2) of this subdivision, may commit the defendant to county jail as follows:

(A) For a full term in custody as determined in accordance with the applicable sentencing law.

(B) For a term as determined in accordance with the applicable sentencing law, but suspend execution of a concluding portion of the term selected in the court's discretion, during which time the defendant shall be supervised by the county probation officer in accordance with the terms, conditions, and procedures generally applicable to persons placed on probation, for the remaining unserved portion of the sentence imposed by the court. The period of supervision shall be mandatory, and may not be earlier terminated except by court order. During the period when the defendant is under such supervision, unless in actual custody related to the sentence imposed by the court, the defendant shall be entitled to only actual time credit against the term of imprisonment imposed by the court.

(6) The sentencing changes made by the act that added this subdivision shall be applied prospectively to any person sentenced on or after October 1, 2011.

## V. List of Felonies Punishable Pursuant to Penal Code Section 1170(h), Excluded Felonies, and Disqualifiers

See the appendices at the end of this analysis for a listing of:

1. Crimes and prior convictions that disqualify a defendant pursuant to section 1170(h)(3) [Appendix A];
2. crimes that are excluded from punishment pursuant to Penal Code section 1170(h), i.e., felony code sections that the Legislature determined are eligible for state prison although they did not fall within a disqualifier in section 1170(h)(3) [Appendix B]; and
3. crimes that are now punishable pursuant to Penal Code section 1170(h) [Appendix C].

Keep in mind that the list of crimes exempted from sentencing pursuant to Penal Code section 1170(h) is not exhaustive, because it would be very difficult to create a list of all California crimes in all code sections that were not amended to cross-reference section 1170(h). If a sentencing statute does not specifically require punishment pursuant to Penal Code section 1170(h), then an executed term will be served in state prison per Penal Code section 18. **It is up to the individual prosecutor to determine whether or not the crime and defendant are eligible to serve a term of imprisonment in county jail pursuant to Penal Code section 1170(h).**

## VI. Definition of a Felony (Penal Code § 17)

[AB 109/ABX1 17]

### A. Definition of a Felony

Prior to AB 109, a felony was defined as “a crime punishable by death or imprisonment in the state prison.” If a crime was punishable by imprisonment in state prison or imprisonment in the county jail, and probation was imposed, the crime retained its nature as a felony. AB 109 amended Penal Code section 17 to redefine a felony as a crime punishable with death, or imprisonment in the state prison, *or imprisonment in a county jail for more than one year*.

However, this definition was amended in ABX1 17: A felony is now a crime punishable with death, or imprisonment in the state prison, *or imprisonment in a county jail under the provisions of subdivision (h) of Section 1170*. This amendment avoids the unintended effect of reducing certain crimes punishable pursuant to Penal Code section 1170(h) for less than one year in imprisonment to a misdemeanor, including attempted crimes per Penal Code section 664.

### B. No Penal Code Section 17 Authority to Reduce a Crime Sentenced Pursuant to Penal Code Section 1170(h) to a Misdemeanor

Penal Code section 17(b)(1) now reads:

When a crime is punishable, in the discretion of the court, either by imprisonment in the state prison or imprisonment in the county jail under the provisions of subdivision (h) of Section 1170, or by fine or imprisonment in the county jail, it is a misdemeanor for all purposes under the following circumstances: (1) After a judgment imposing a punishment other than imprisonment in the state prison or imprisonment in the county jail under the provisions of subdivision (h) of Section 1170.

Therefore, just as a state prison sentence on a felony-misdemeanor (wobbler) crime prohibits that crime from being reduced to a misdemeanor, a judgment of imprisonment in the county jail pursuant to Penal Code section 1170(h) also prohibits a wobbler crime from being reduced to a misdemeanor.

## VII. Punishment for a Felony (Penal Code § 18)

[AB 109/ABX1 17]

Penal Code section 18 was amended to provide that except where a different punishment is prescribed, every offense declared to be a felony is punishable by imprisonment for 16 months, two years, or three years in state prison unless the offense is punishable pursuant to subdivision (h) of section 1170.

Vehicle Code section 42000 was amended in AB 109 to provide that unless a different penalty is expressly provided, a felony for a violation of the Vehicle Code is punishable by imprisonment

pursuant to Penal Code section 1170(h). This section was not amended to correspond with the final language of Penal Code section 18 propounded in ABX1 17.

While these two provisions may seem inconsistent, Penal Code section 18 provides the default punishment for “any law of this state” when a punishment is not prescribed, and thus, should supersede any issues that may arise under the Vehicle Code. However, a number of Vehicle Code sections, such as 23153, 23550.5, and 23110, expressly provide for the term of imprisonment to be served in state prison, so these felonies are not subject to Penal Code section 1170(h), and the punishment for the majority of felony violations of the Vehicle Code were addressed within the provisions of the Realignment legislation. Moreover, Penal Code section 18 was also amended subsequently to Vehicle Code section 42000, and thus, is the clarifying expression of legislative intent.

## **VIII. Felony Sentencing**

### **A. Existing Prison Sentence Calculation Rules Apply**

A term of imprisonment pursuant to Penal Code section 1170(h) is calculated according to the same rules as a felony commitment to state prison. Penal Code section 1168 was amended to provide that a defendant who commits an offense punishable pursuant to section 1170(h) shall be sentenced pursuant to Chapter 4.5 of Title 7 of Part 2 of the Penal Code (Penal Code §§ 1170–1170.9) unless probation or a new trial is granted.

Sentencing rules in Penal Code section 1170.1(a) and (b), such as calculating one-third the midterm for a consecutive subordinate term and full-term consecutive sentences, apply. Sentencing rules regarding the imposition of conduct enhancements pursuant to Penal Code section 1170.1(d) also apply. ABX1 17 amended Penal Code section 1170.1(d) to eliminate the word “prison” in order to clarify that the court shall impose applicable enhancements for any felony sentence, whether the term is served in state prison or pursuant to Penal Code section 1170(h) in local custody. For example, a Penal Code section 12022.6 excessive-taking enhancement, prison priors pursuant to Penal Code section 667.5(b), and three-year drug priors pursuant to Health and Safety Code section 11370.2, could all be added to the term of commitment in county jail for the underlying felony sentence.

Pursuant to Penal Code section 1170(a)(3), the Judicial Council sentencing rules apply to the calculation of section 1170(h) jail sentences.

### **B. If a State Prison Term is Imposed for Any Count, All Terms are Served in State Prison (Penal Code § 1170.1)**

[AB 117 and ABX1 17]

Penal Code section 1170.1(a) was amended to provide:

Whenever a court imposes a term of imprisonment in the state prison, whether the term is a principal or subordinate term, the aggregate term shall be served in the state prison, regardless as to whether or not one of the terms specifies imprisonment in the county jail pursuant to subdivision (h) of Section 1170.

Thus, if a defendant is sentenced to prison on at least one count, the entire sentence must be served in state prison, even if the other count or counts require sentencing to a term of imprisonment in county jail pursuant to Penal Code section 1170(h).

However, the analysis is different when a defendant who is serving a term in state prison commits a new crime while in prison that qualifies for sentencing pursuant to section 1170(h), as the term for the new crime will not be part of the aggregate term for the original prison sentence. Pursuant to Penal Code section 1170.1(c), when a defendant commits a new crime while in prison or while a prison escapee, it is mandatory that the new crime be sentenced consecutively to the prison term the defendant is currently serving. However, it does not become part of the original aggregate term. Rather, the original aggregate term must be completed, and then the in-prison crime starts a new aggregate term. If there is more than one in-prison crime, then those offenses together will combine into a new aggregate term, but it will be a separate aggregate term from the original aggregate term the offender was serving. (See *People v. Cardenas* (1987) 192 Cal.App.3d 51; *People v. Walkkein* (1993) 14 Cal.App.4th 1401; *People v. White* (1988) 202 Cal.App.3d 862; *People v. Venegas* (1994) 25 Cal.App.4th 1731; *People v. Langston* (2004) 33 Cal.4th 1237.)

Prosecutors should carefully check the statutes when charging any in-prison crime. Many of the in-prison and escape crimes are not eligible to be sentenced to a Penal Code section 1170(h) term in county jail. For instance, gassing (Penal Code § 4501.1) and escape (Penal Code § 4530(a) & (b)) are state-prison eligible. However, possession of a weapon (Penal Code § 4502) is punishable in the county jail.

### **C. Prison Priors (Penal Code § 667.5(b))**

[ABX1 17 amends AB 117, which amends AB 109's version.]

Penal Code section 667.5(b) was amended to provide that any felony for which a prison sentence or a sentence of imprisonment in a county jail under Penal Code section 1170(h) is imposed, qualifies as a prison prior for purposes of this one-year enhancement. The usual prison prior rules, such as the five-year washout rule, apply. The amendments to Penal Code section 667.5(b) specifically provide that any term of imprisonment imposed pursuant to section 1170(h)(5), even if a split sentence is ordered (local custody plus mandatory supervision), qualifies as a prison prior. Pursuant to amended Penal Code section 667.5(f), a term of imprisonment in a foreign jurisdiction qualifies as a prison prior if the offense would have been punishable in state prison or pursuant to section 1170(h), if it had occurred in California and the defendant served one year or more in prison in the other jurisdiction.

Penal Code section 667.5(g) was not amended to specifically include time served in jail for postrelease community supervision violations, so it may be that this type of custody may not prevent a five-year washout. [Penal Code section 667.5(g) continues to provide that reimprisonment for revocation of parole can prevent the washout of a prison prior.]

The three-year prison enhancement for violent prison priors pursuant to section 667.5(a) has not changed. Section 667.5(a) provides for a three-year enhancement if the defendant is currently convicted of a violent felony and has served a prison term for a violent felony.

Courts and sheriff's departments need to produce something similar to a California Department of Correction and Rehabilitation (CDCR) prison packet so that the prosecutor alleging a section 1170(h) term of imprisonment in county jail as a prison prior pursuant to Penal Code section 667.5(b) can prove all of the elements (e.g., the length of the term, when it was completed, the identity of the defendant). Such a packet would be admissible pursuant to existing Penal Code section 969b, which makes admissible the records of a prison or jail to prove a person has served a term in a penal institution.

#### D. Foreign Convictions (Penal Code § 668)

[AB 109]

Penal Code section 668 was amended to cross-reference a term imposed pursuant to Penal Code section 1170(h), thereby providing that an offense committed in another jurisdiction (e.g., a federal offense or an offense committed in another state) can qualify as a prior conviction for enhancement purposes in a current section 1170(h) case.

#### E. Traditional Probation is Still Available (Penal Code § 1170(h)(4))

Penal Code section 1170(h)(4) provides for a traditional probation disposition where the imposition of sentence is suspended, the defendant is placed on probation, and a period of time in jail is served as a condition of probation. In fact, at the sentencing hearing in every case, the judge must determine whether a defendant who is eligible for probation should be granted or denied probation, unless the defendant expressly waives such consideration **before** the court considers a prison sentence or a term of imprisonment pursuant to section 1170(h). (Rule 4.433(a)(2).)

Even if the defendant is **eligible** for probation, the court must still determine if probation is **appropriate**. (*People v. Jeffers* (1987) 43 Cal.3d 984, 1000.) In any case, including those cases where the presumption against probation has been overcome, deciding whether to impose probation or prison requires consideration of facts relating to the crime and to the defendant. (Rule 4.414.)

If the court determines a defendant is suitable for probation, the court may place a defendant on traditional probation (imposition of sentence suspended) and order him or her to serve a jail sentence of one year or less as a condition of probation. Penal Code section 19.2, in general, limits a felony jail sentence to one year imposed as condition of probation. Of course, if the defendant is convicted of more than one count, the jail sentence served as a condition of probation could be more than one year if the court chooses to impose consecutive jail sentences in a multiple-count case.

However, if the court determines a defendant is not suitable for probation, the court must impose either a term of imprisonment in state prison or pursuant to section 1170(h) [a term of imprisonment in jail with no post-jail supervision or a term of imprisonment in jail plus mandatory supervision], AB 109 amended Penal Code section 19.2 to provide that punishment pursuant to new Penal Code section 1170(h) is an exception to the general rule that no person may be sentenced to jail for more than one year on a single count.



## **F. Probation Ineligibility**

Rules for probation ineligibility have not changed. If a defendant is eligible for state prison (and therefore not subject to Penal Code section 1170(h)), prison may even be mandatory. Absolute probation-ineligibility provisions such as Penal Code sections 1203.06 (gun use), 1203.066 (sex offenses), 1203.07 (drug crimes), and 1203.075 (great bodily injury) have not been amended. In the majority of cases, a defendant who is absolutely ineligible for probation will be convicted of a crime or enhancement that is not subject to Penal Code section 1170(h) (e.g., Penal Code section 211 robbery with section 12022.53 gun use).

In other cases, crimes such as Health and Safety Code sections 11351, 11351.1, and 11352 (possession for sale, transportation, and drug sale crimes) have been amended to cross-reference Penal Code section 1170(h) and will be subject to the absolute probation ineligibility provisions of Penal Code section 1203.07 if they are committed in a particular way or if the defendant has a specified drug prior. Since the statute prohibits probation, these defendants are not eligible for traditional probation, and must be sentenced pursuant to Penal Code section 1170(h), unless they have a section 1170(h) disqualifier.

The issue will then be whether these defendants must be sentenced to a full term in jail (e.g., three, four, or five years) without mandatory supervision, or whether the court has the authority to impose a split sentence pursuant to Penal Code section 1170(h)(5)(B) that includes mandatory supervision. If the law is interpreted to permit reduced sentences with mandatory supervision, such interpretation may violate the state constitution. Crime victims, as well as all Californians, have a right to have crime treated seriously and to have criminals be sufficiently punished in order to protect public safety. (Cal. Const., art. I, § 28(a)(2), (a)(5), (a)(6).) An interpretation permitting reduced sentences may also violate the constitutional mandate for truth in sentencing. (Art. I, § 28(f)(5).)

## **G. Violations of Probation**

If a defendant is placed on traditional probation instead of sentenced to a term of imprisonment pursuant to Penal Code section 1170(h) or is already on traditional probation prior to October 1, 2011, existing statutes and case law governing violations of probation will apply.

However, if a probation violation is resolved after October 1, 2011, the ultimate sentence the court may impose is dependent upon the crime(s) the defendant is convicted of and his or her criminal history. If all of the crimes a defendant is convicted of are subject to Penal Code section 1170(h) and the defendant's criminal history does not include a section 1170(h) disqualifier, a state prison sentence for violation of probation would be prohibited, and the court would have open to it the non-prison disposition options discussed earlier in the outline:

- Continued traditional probation with a jail sentence served as a condition of probation;
- a term of imprisonment in jail pursuant to section 1170(h)(5)(A) without post-jail supervision; or
- a term of imprisonment in jail with mandatory supervision, pursuant to section 1170(h)(5)(B).

However, if a probation violation is resolved after October 1, 2011, and any one of the current convictions is state-prison eligible or if the defendant's criminal history falls within a Penal Code section 1170(h)(3) disqualifier, the defendant can either be retained on probation or sentenced to a term of imprisonment in state prison. Keep in mind, that if a state prison term is imposed for any single crime, then the whole term must be served in state prison. (Penal Code § 1170.1(a).)

## H. Other Custodial Alternatives

### 1. Penal Code Section 1174.4 (Prison Program for Pregnant or Parenting Women with a History of Substance Abuse)

[AB 109]

Penal Code section 1174.4 is a prison program for parenting or pregnant women with a history of substance abuse. It was amended to cross-reference Penal Code section 1170(h). However, it is unclear how a defendant sentenced to a term of imprisonment in county jail would be able to participate in this state Department of Corrections and Rehabilitation program. Penal Code section 1174.4 still requires that the "Director of Corrections" make the final decision about whether a female defendant is accepted into the program. And the required program criteria still includes a sentence to state prison not exceeding 36 months.

### 2. Home Detention/Electronic Monitoring

#### a. Penal Code Section 1203.016

[AB 109]

Prior to AB 109, home detention pursuant to Penal Code section 1203.016 was limited to minimum-security and low-risk offenders. However, AB 109 amended this section to eliminate the "minimum security inmates and low-risk offenders" limitation, thereby making all sentenced jail inmates eligible for home detention. This section also now permits inmates to be **involuntarily** placed on home detention. Thus, both sentenced felony and sentenced misdemeanor inmates may be forced out of the jail onto electronic monitoring. [Penal Code section 1203.017 is still in effect and continues to provide for involuntary home detention for sentenced misdemeanor inmates.]

This particular section raises significant victim's rights issues under Marsy's Law, as the California Constitution requires victims be given notice of a defendant's change in custody status post-conviction. (Art. I, § 28(b)(12).) The constitution also requires that the safety of the victim and the public be considered before any release decision is made. (Art. 1, § 28(b)(16).)

#### b. New Penal Code Section 1203.018 (Pre-Conviction Home Detention)

[AB 117 amends AB 109's version.]

This new section was added to permit a county board of supervisors to authorize a home detention program whereby *inmates being held in lieu of bail* may participate in an

electronic monitoring program. In order to qualify, an inmate cannot have any other holds or outstanding warrants. An inmate with pending misdemeanor charges only must be in custody for at least 30 days before being released on electronic monitoring. All other inmates (felony charges or a combination of felony and misdemeanor charges) must be in custody for at least 60 days before release. Penal Code section 1203.018 requires the board of supervisors to consult with the sheriff and district attorney before prescribing reasonable rules and regulations for the program.

Subdivision (i) of Penal Code section 1203.018 is the crime of willfully failing to return to the place of home detention after being authorized to be away or departing from the home without authorization. This new crime is punishable as a felony and in state prison, pursuant to Penal Code section 4532. Section 1208.2 (home detention and work furlough program fees) is amended to add a cross-reference to new section 1203.018.

This particular section also raises significant victims' rights issues. The California Constitution requires victims be given notice of a defendant's change in bail status and an opportunity to be heard. (Art. I, § 28(b)(8), (f)(3).) The constitution also dictates that the primary considerations in setting bail must be public safety and the safety of the victim. (Art. I, § 28(b)(3), (f)(3).)

### **3. California Rehabilitation Center (CRC)**

A judge may still suspend the imposition of a term of imprisonment and civilly commit an eligible offender to the California Rehabilitation Center for treatment pursuant to Welfare and Institutions Code sections 3051 and 3052, whether the defendant is sentenced to state prison or to local custody per Penal Code section 1170(h). The court must find that the defendant is either addicted to narcotics or in imminent danger of becoming addicted to narcotics. If the defendant is not suitable for CRC or is subsequently revoked after release, the committing court shall terminate the commitment and set the case for further proceedings in criminal court. The term of imprisonment will then be imposed according to the applicable sentencing statutes.

#### **I. Penal Code Section 1170(d) Sentence Recalls and Penal Code Section 1170(e) Compassionate Release: Not Affected by Penal Code Section 1170(h)**

The provisions of Penal Code section 1170(d) (sentence recalls within 120 days) and 1170(e) (compassionate release) are **not** amended, and their procedures continue to involve the Secretary of the Department of Corrections and Rehabilitation and the Board of Parole Hearings, neither of which will be involved in a Penal Code section 1170(h) jail sentence. Therefore, both Penal Code sections 1170(d) and 1170(e) continue to apply only to prison sentences and not to section 1170(h) terms of imprisonment in local custody.

The compassionate release provisions of existing Government Code section 26605.5 apply to jail inmates, which should include Penal Code section 1170(h) inmates. This section authorizes the sheriff, after conferring with a physician, to transfer a jail inmate to a medical facility or residential care facility if, in the opinion of the physician, the inmate is incapable of causing harm to others upon or after release from custody. Government Code section 26605.5 requires the

sheriff to first determine that all of the following exist: (1) the prisoner is so severely physically incapacitated that he or she poses no threat to the safety of others; and (2) the physician has no reasonable expectation the prisoner's physical condition will improve to the extent that he or she could pose a threat to the safety of others; and (3) the prisoner's medical needs would be better served in a medical facility or residence other than a county correctional facility.

Any early release, compassionate or otherwise, has Marsy's Law and constitutional implications: "Victims of crimes have a collectively shared right to expect that persons convicted of committing crimes are sufficiently punished in both the manner and the length of the sentences imposed by the courts." (Cal. Const., art. I, § 28(a)(5).)

## **J. Victim Restitution and Fines**

Whether sentencing a defendant to prison, or pursuant to Penal Code section 1170(h), or imposing a grant of traditional probation, the court must order victim restitution and fines. Realignment does not change how, or if, restitution and fines are ordered. For example:

1. Penal Code section 1202.4(f) continues to provide that "in every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order ..."
2. Penal Code section 1202.4(b) continues to provide that "[i]n every case where a person is convicted of a crime, the court shall impose a separate and additional restitution fine ..."
3. Penal Code section 1202.4(a) continues to provide that "[u]pon a person being convicted of a crime in the State of California, the court shall order the defendant to pay a fine in the form of a penalty assessment in accordance with Section 1464."
4. Penal Code section 672 continues to provide that "[u]pon a conviction for any crime punishable by imprisonment in any jail or prison, in relation to which no fine is herein prescribed, the court may impose a fine on the offender not exceeding one thousand dollars (\$1,000) in cases of misdemeanors or ten thousand dollars (\$10,000) in cases of felonies, in addition to the imprisonment prescribed."

In a restitution case where a defendant is being sentenced to jail pursuant to section 1170(h), rather than being placed on traditional probation, a prosecutor will want to consider requesting that the sentence be composed of a term in jail and mandatory supervision, so that the restitution order can be enforced by the criminal court during the supervision portion of the sentence. Currently, the statutory authority for CDCR to deduct restitution from an inmate's wages and trust account deposits to pay victim restitution (Penal Code § 2085.5) does not extend to local jails. So if a defendant who owes restitution is sentenced to jail pursuant to Penal Code section 1170(h) with no supervision, the defendant will not be held accountable by the criminal justice system for paying restitution. Victims may be forced to rely solely upon a Penal Code section 1214 civil judgment to secure restitution. The California Constitution asserts the People's "unequivocal intention" that victims have the right to "secure restitution." (Art. I, § 28(b)(13).) For this reason, prosecutors should insist upon a sentence that provides the best opportunity for a victim to collect restitution.

## **K. Misdemeanors**

Since Penal Code section 1170(h) applies only to felonies, misdemeanor sentencing is not affected directly by Realignment. Misdemeanor sentences may continue to run concurrently or consecutively to felony sentences, at the court's discretion, as they did before Realignment. There will be defendants who are on traditional probation in a misdemeanor case who also are on "mandatory supervision" or no supervision for their section 1170(h) felony case. A single case involving both a misdemeanor count and a section 1170(h) felony could result in the defendant being on traditional probation for the misdemeanor and mandatory supervision or no supervision for the section 1170(h) felony.

## **L. Penal Code Section 654**

In a case where one act is charged under two different statutes, Penal Code section 654(a) requires the court to punish "under the provision that provides for the longest potential term of imprisonment." Typically, crimes that are eligible for state prison will have potentially longer terms of imprisonment than Penal Code section 1170(h) crimes. There may be a few cases where the section 1170(h) crime carries a potentially longer term of imprisonment than a prison-eligible crime. Charging under those circumstances should be approached with caution. Doing so may avoid the few cases, if any, where the court might have the authority to stay the sentence on a prison-eligible crime and impose a Penal Code section 1170(h) term of imprisonment in county jail on an alternative count for which state prison is prohibited.

For instance, consider a felony DUI case with priors, where the priors can be charged in the alternative. A defendant who is sentenced to a term of imprisonment after having been convicted of a violation of Vehicle Code section 23152 with an admission of three priors pursuant to Vehicle Code section 23550, will be sentenced pursuant to Penal Code section 1170(h)(1) to a term in local jail; however, a defendant convicted of the same code section but with the admission of one felony prior pursuant to Vehicle Code section 23550.5, will serve the term in state prison.

## **M. Guilty Plea Voir Dire**

Extra vigilance needs to be exercised when taking a guilty or no contest plea, because all of the possibilities will need to be explained to the defendant. A defendant will need to be informed correctly about state prison, Penal Code section 1170(h) imprisonment, and/or traditional probation and jail possibilities, especially in a case where the settlement has no sentencing conditions. Also, a plea to certain felonies and misdemeanors could result in state prison sentences in future cases. For instance, a plea to a misdemeanor section 314.1 would require section 290 registration and thus would disqualify a defendant from being sentenced pursuant to section 1170(h) in future cases. While the future use of a conviction is a collateral rather than a direct consequence of a plea, and, therefore, the defendant need not be advised of it, it is probably the better practice to guard against misadvice by the defendant's attorney and advise the defendant about Penal Code section 1170(h) ineligibility whenever possible.

A defendant should be informed about the type of supervision he or she will be subject to upon release (state parole, postrelease community supervision, section 1170(h) mandatory supervision, or traditional probation), and the potential incarceration consequences that could result from

a violation of parole, postrelease community supervision, mandatory supervision, or traditional probation. Of course, the standard voir dire about constitutional rights, restitution and fines, etc. should be given as well.

In order to avoid attacks on guilty or no contest pleas, consider asking the defendant to respond affirmatively to a question of this type at the end of voir dire, particularly where there may be some disagreement between the defense and the prosecution about post-incarceration consequences and/or the meaning of Penal Code section 1170(h)(5) “mandatory supervision”: “Do you wish to resolve this case and enter this plea regardless of the type of supervision and consequences you will be subject to after your release from custody?”

Some jurisdictions are working with the court to amend their change-of-plea forms to incorporate new potential consequences.

#### **N. Penal Code Section 1203.4 Relief is Not Available to Defendants Sentenced Pursuant to Penal Code Section 1170(h)**

A defendant who serves a term of imprisonment in county jail pursuant to section 1170(h) will not be eligible to withdraw a plea of guilty or nolo contendere and have the case dismissed pursuant to section 1203.4. Section 1203.4 relief is available only to defendants who are placed on traditional probation. The cases of *People v. Mendez* (1991) 234 Cal.App.3d 1773 and *People v. Borja* (1980) 110 Cal.App.3d 378 hold that Penal Code section 1203.4 relief applies only to defendants who have been admitted to probation. The trial courts in *Mendez* and *Borja* properly denied section 1203.4 relief for a robbery conviction for which the defendant was sentenced to the California Youth Authority (*Mendez*) and for convictions for murder and assault on a peace officer for which the defendant was sentenced to prison (*Borja*). The defendants based their arguments on the following language in Penal Code section 1203.4: “... in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted the relief available under this section.”

Whether a defendant is sentenced to a Penal Code section 1170(h) jail term without a period of post-jail supervision or with supervision, relief under section 1203.4 is not available because a defendant sentenced pursuant to Penal Code section 1170(h) is not placed on probation. He or she is either sentenced to a full term in jail or to a term in jail with mandatory supervision. The wording of section 1203.4 clearly pertains to traditional probation. For example, the phrase “as if probation had not been granted” is used in the section about release from penalties and disabilities, and “discharged prior to the termination of the period of probation” is used in the first sentence of section 1203.4. Under Penal Code section 1170(h), probation is not granted. Instead, a period of supervision is imposed with probation-like terms, conditions, and procedures that start and continue on after the defendant serves a section 1170(h) term of imprisonment in local custody. Penal Code section 1203.4 is not a probation-like term or procedure or condition. It is relief that is available to a specified category of probationer.

#### **IX. Pleading and Proving Penal Code Section 1170(h) Ineligibility**

AB 109, AB 117, AB 116, and ABX1 17 contain no express provision requiring the prosecution to plead and prove the fact that makes a defendant eligible for prison (e.g., a prior or current serious or violent felony, the duty to register as a sex offender, or a Penal Code section 186.11 white collar

crime enhancement is being imposed). But AB 117 created a new Penal Code section 1170(f), which provides:

(f) Notwithstanding any other provision of this section, for purposes of paragraph (3) of subdivision (h), any allegation that a defendant is eligible for state prison due to a prior or current conviction, sentence enhancement, or because he or she is required to register as a sex offender shall not be subject to dismissal pursuant to Section 1385.

Pursuant to section 1170(f), a court cannot use Penal Code section 1385 to eliminate a defendant's state prison eligibility. While Penal Code section 1170(f) does not explicitly require the pleading or proving of prison ineligibility, doing so is the safest course of action.

Since January 2010, there has been a lot of litigation about whether the ineligibility for increased Penal Code section 4019 conduct credits must be pled and proved. Despite there being no mention in the legislation of any pleading-and-proof requirement, there are conflicting decisions from the appellate courts on whether the prosecution is required to plead and prove the fact that excludes a defendant from increased section 4019 conduct credits. The California Supreme Court has not yet spoken on the issue. Regardless of the case law on various similar pleading-and-proof issues, because we now have Penal Code section 1170(f) and it includes the phrase "any allegation that a defendant is eligible for state prison," prosecutors should be safe and plead and prove the fact that makes a defendant eligible for prison, or conversely, the fact that makes the defendant ineligible for section 1170(h) sentencing. In addition, since the language of Penal Code section 1170(f) prohibits the court from striking an allegation, defendants might argue that in the absence of a prison-eligible allegation, the court has the power to ignore the defendant's disqualifying factor and impose a section 1170(h) jail sentence.

In a case where a current or prior violent or serious felony is charged, the fact making the defendant prison-eligible will already be alleged. However, consider adding a separate prison-eligible or Penal Code section 1170(h) ineligible allegation anyway. In a case where a defendant has a strike prior alleged and the court strikes it pursuant to Penal Code section 1385 in order to avoid a mandatory prison sentence, a separate prison-eligible allegation will make it clear that the defendant is still eligible for prison. If the prosecutor relies on a single strike-prior allegation to do double duty (mandatory prison pursuant to the strike law and prison eligibility in general), there could be confusion because the parties and the court will have to remember that the lone strike-prior allegation was stricken for strike law purposes only, but still operates to make the defendant eligible for prison.

The following are examples of allegations that should suffice:

"It is further alleged, pursuant to Penal Code section 1170(h)(3) and Penal Code section 1170(f), that the defendant is eligible to be sentenced to state prison because \_\_\_\_\_,"

or

"It is further alleged, pursuant to Penal Code section 1170(h)(3) and Penal Code section 1170(f) that the defendant is not eligible to be sentenced pursuant to a term of imprisonment in county jail because \_\_\_\_\_,"

or

“It is further alleged pursuant to Penal Code section 1170(h)(3) that an executed sentence for a felony shall be served in state prison because Defendant X has suffered the following prior conviction(s) of a serious or violent felony, \_\_\_\_\_ or is required to register as a sex offender under Penal Code section 290 by reason of the following prior convictions(s). Pursuant to Penal Code section 1170(f), this allegation is not subject to dismissal.”

[The blanks could be filled in with details such as “he/she is currently charged in Count One with a serious felony as specified in Penal Code section 1192.7(c);” or “he/she is required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part I based on a conviction for Penal Code section 288(a) in Santa Clara County Superior Court Docket # 123456;” or “he/she is currently charged in Count Two with an offense requiring sex registration pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part I;” or “before the commission of the offense(s) alleged above, he/she was convicted of a violation of Penal Code section 211, a violent felony specified in Penal Code section 667.5(c), in Santa Clara County Superior Court Docket #123456.”]

Some jurisdictions are considering adding specific allegations on their complaints and information for charges exempted from sentencing to local custody by nature of the crime, as well as for separate allegations (Penal Code § 186.11) or enhancements (e.g., Penal Code § 12022.5) that require sentencing to state prison.

Every case filed before October 1, 2011, and sentenced on or after October 1, 2011, should be carefully examined for state prison eligibility factors that may not yet be alleged. And prosecutors can begin alleging state prison eligibility factors now, even before October 1, 2011.

## **X. Credit for Time Served**

### **A. Penal Code Section 2900.5 Actual Credits**

[AB 109]

#### **1. Penal Code Section 1170(h) Sentences**

Defendants sentenced pursuant to section 1170(h) are entitled to actual credits for time spent in a specified facility, such as a jail or work furlough facility. The types of custodial situations that entitle a defendant to actual credit have not been changed by Realignment legislation, with the exception of home detention pursuant to new Penal Code section 1203.018, discussed below. Penal Code section 1170(h) defendants will earn pre- and post-sentence actual credits pursuant to section 2900.5(a), just like defendants serving jail time, as a condition of probation, do.

[Penal Code section 2900.5(a) continues to provide that all days of custody in specified facilities “be credited upon his or her term of imprisonment.” And “term of imprisonment” is defined, in part, as any period of imprisonment otherwise ordered by a court in imposing sentence. Penal Code section 2933 credits continue to apply only to prison inmates.]



## 2. Home Detention

Penal Code section 2900.5(a) was amended to permit a defendant to earn actual credits for time spent in a home detention program pursuant to new Penal Code section 1203.018. Pursuant to section 1203.018, *inmates being held in lieu of bail* may participate in an electronic monitoring program. Only home detention pursuant to new section 1203.018 is added to Penal Code section 2900.5(a). Home detention pursuant to section 1203.016 (home detention for sentenced prisoners) and pursuant to section 1203.017 (involuntary home detention for sentenced misdemeanor inmates) were not added to section 2900.5(a).

However, Penal Code section 2900.5(f) was added to cross-reference the three sections regarding home detention programs in order to clarify that time spent in any one of the three programs for a crime that carries a mandatory jail sentence qualifies as mandatory time in jail. Previously, subdivision (f) referred to “home detention program,” but not a specific statute. Now it includes specific cross-references to Penal Code sections 1203.016 (home detention for sentenced prisoners), 1203.017 (involuntary home detention for sentenced misdemeanor inmates), and new section 1203.018 (home detention for inmates being held in lieu of bail).

Home detention was removed from section 2900.5(a) approximately 20 years ago, thereby evidencing the Legislature’s intent that actual credits not be earned for time spent on home detention. Sentences can be served on home detention in lieu of jail, but time spent on home detention does not create custody credits that are available for application to a later probation violation or postrelease violation sentence because being on home detention does not constitute the type of restrictive setting that earns custody credits. Case law holds that neither actual nor conduct credits can be earned while on home detention. (See *People v. Anaya* (2007) 158 Cal.App.4th 608; *People v. Cook* (1993) 14 Cal.App.4th 1467; *People v. Silva* (2003) 114 Cal.App.4th 122.) Thus, a defendant who serves his or her sentence on home detention and then later violates probation or mandatory supervision or postrelease supervision and is sentenced to jail or prison would have zero actual and zero conduct credits towards that violation sentence.

One last note, since Penal Code section 1203.018 is now specified in section 2900.5(a), offenders serving this type of pre-conviction home detention may be able to successfully argue that they are entitled to actual credits against a later-imposed sentence. But they would not be entitled to Penal Code section 4019 conduct credits.

### B. Conduct Credits

[ABX1 17 amended AB 117, which amended AB 109’s provisions.]

#### 1. Amended Penal Code Section 4019 Conduct Credits

Pursuant to the amendments to Penal Code section 4019, conduct credits for all jail inmates were increased from one-third off to “half time.” A term of four days will be deemed to have been served for every two days spent in actual custody (in shorthand, two days for every two days served).

With the exceptions noted below, this formula applies to all inmates, felons and misdemeanants, and without regard to criminal history or current charges, while serving any time in custody in jail, or serving a term of imprisonment pursuant to section 1170(h).

In theory, to calculate good time credits under the new formula, an even number of actual credits should be divided by two, and then multiplied by two. With an odd number of actual credits, subtract one, divide by two, and then multiply by two.

In reality, calculation is much easier. For even numbers of actual credits, the number of good time credits must equal the number of actual credits. For example, a defendant with 100 actual credits will receive 100 good time credits for a total of 200 credits.

Example 1:        100 actual days  
                  +    100 conduct credits  
                          200 total credits

For an odd number of actual credits, subtract one day, and the result is the number of good time credits. For example, if a defendant serves 17 actual days, subtract one day to get 16 good time credits, for a total of 33 days of credits. Remember, conduct credits pursuant to Penal Code section 4019, always come in pairs of two, so a defendant can never earn an odd number of conduct credits, and conduct credits can be earned only after the defendant is sentenced to at least four days of custody. A defendant must be ordered to serve at least four days in local custody before any credits are earned as amended section 4019(f) provides that, "It is the intent of the Legislature that if all days are earned under this section, a term of four days will be deemed to have been served for every two days spent in actual custody."

Example 2:        17 actual days  
                  +    16 conduct credits (17 - 1)  
                          33 total credits

The new formula will only apply to a defendant who commits a crime on or after October 1, 2011.

Prosecutors are advised to pay careful attention to the date the crime was committed to determine which conduct calculations apply, as Penal Code section 4019 has been amended multiple times since January 2010.

For example, if a crime was committed between September 28, 2010, and September 30, 2011, but the defendant is sentenced pursuant to Penal Code section 1170(h) after October 1, 2011, the defendant will be entitled to two days of credit for every four days served (or 33% good conduct credits). If the same defendant was sentenced on September 30, 2011, to the same term of imprisonment, it would be served in state prison, but two days of good conduct credits would be earned for every two days served (50% good conduct credits). Thus a defendant eligible for imprisonment in local custody who is sentenced after October 1, 2011, may earn fewer good conduct credits when sentenced to a local term of imprisonment than an offender who is serving a term in state prison. This may raise an equal protection argument.

## 2. Penal Code Section 2933: Conduct Credits for Prison-Bound Defendants

[ABX1 17]

Penal Code section 2933 provides the formula for calculating prison conduct credits. Former section 2933(e) was the formula for calculating conduct credits for prison-bound defendants. Under the old version of section 2933(e), when a defendant was sentenced to state prison, conduct credits were calculated day for day (one day deduction for every day served). This method of calculating 50% conduct credits is slightly different from the method used under the new version of Penal Code section 4019. Thus an offender sentenced to state prison could receive the extra day of credit that section 4019 omits when the actual credits are an odd number, unless the conviction was for a serious felony, or the defendant had a prior conviction for a serious or violent felony, or the defendant was required to register as a section 290 sex offender. Pursuant to Penal Code section 2933(e), 50 percent conduct credits equal the actual number of credits, and may be even or odd. For example, the defendant above with 17 days of actual custody will receive 17 days of conduct credits pursuant to section 2933(e) for a total of 34 days of credit upon a sentence to state prison.

However, ABX1 17 amended Penal Code section 2933 by eliminating subdivision (e) and deleting all references to Penal Code section 4019. Thus for any felon who commits an offense on or after October 1, 2011, and is sentenced to state prison, the court will calculate section 4019 conduct credits under the new formula in section 4019 instead of the section 2933(e) formula. Prison credits will be calculated separately by CDCR pursuant to Penal Code section 2933. Thus, offenders will not receive the section 2933(e) bonus day of credit upon a sentence to state prison.

For offenders who committed crimes prior to October 1, 2011, section 2933(e) will still apply, as will the old section 4019 credit calculation. Thus, offenders who are required to register as sex offenders, committed for a serious (Penal Code § 1192.7(c)) felony, or who have a prior conviction for a serious or violent felony and are prison bound, will receive only one-third pre-sentence conduct credits pursuant to the old Penal Code section 4019.

Remember, for offenders who commit their crimes prior to October 1, 2011, pursuant to Penal Code section 2933(e), day-for-day conduct credits are only ordered for state prison-bound inmates who are (1) not sentenced for a serious felony, (2) are not section 290 registrants, and (3) do not have a serious or violent prior.

## 3. Exceptions

When a violent felon is sentenced to state prison, Penal Code section 2933.1 applies and the defendant's conduct credits are calculated at 15 percent. (Per Penal Code section 2933.1, "[n]otwithstanding any other law ....")

Penal Code section 2933.2 continues to provide for zero conduct credits for murderers ("[n]otwithstanding Section 2933.1 or any other law ....").

Defendants sentenced to prison with a strike prior, while retaining their section 4019 conduct credits, will earn only 20 percent credits in state prison.

#### **4. Prospective Application**

This change is to be applied **prospectively** to prisoners confined in jail for a crime committed on or after October 1, 2011. Any days earned by a prisoner prior to October 1, 2011, shall be calculated at the rate required by the prior law (e.g., using the one-third formula in Penal Code section 4019 for crimes committed September 28, 2010 through September 30, 2011).

[*Note:* The prospective application of Penal Code section 1170(h) is a bit different. Section 1170(h) sentencing provisions apply to any defendant **sentenced** on or after October 1, 2011, which means that section 1170(h) can apply to pre-October 1, 2011 crimes.]

#### **5. Penal Code Section 4019 Conduct Credits Apply to Penal Code Section 1170(h) Terms of Imprisonment, and Postrelease Community Supervision or Parole Revocations**

Pursuant to new Penal Code section 4019(a)(5), confinement in a jail, industrial farm, or road camp as part of a custodial sanction imposed for a violation of postrelease community supervision or a violation of parole earns Penal Code section 4019 conduct credits at the rate of two days for every two days served.

Pursuant to new Penal Code section 4019(a)(6), conduct credits also apply to section 1170(h) jail sentences at the rate of two days for every two days served.

#### **6. Penal Code Section 4019 Conduct Credits Do NOT Apply to Flash Incarceration**

Pursuant to new Penal Code section 4019(i), no conduct credits may be earned for periods of flash incarceration imposed pursuant to section 3000.08 (specified inmates released from state prison on parole on or after October 1, 2011) or section 3454 (specified inmates released from state prison on postrelease supervision on or after October 1, 2011).

#### **7. Conservation Camp Credits (Penal Code § 4019.2)**

[Added by ABX1 17]

Penal Code section 4019.2 provides that a jail inmate assigned to a conservation camp by a sheriff will earn two days of credit for every one day of incarceration. This increased conduct credit formula also applies to an inmate who has completed training for assignment to a conservation camp or who is assigned to a state or county correctional institution as an inmate firefighter. In addition, inmates who successfully complete training for firefighter assignments shall receive a credit reduction from the term of confinement.

The last section regarding completing training for firefighter assignments is particularly unclear since it does not indicate how much credit reduction an inmate could receive for completing training.

The provisions of new Penal Code section 4019.2 are almost identical to those in existing section 2933.3, which provides for two days of credit for every one day of incarceration for state prison inmates assigned to conservation camps or state prison inmates who have completed training for assignment to a conservation camp or who are assigned to a correctional institution as an inmate firefighter.

## **8. Victims' Rights Implications**

These provisions may implicate victims' rights to truth in sentencing. The California Constitution forbids early release policies that substantially diminish criminal penalties for the sake of alleviating custodial overcrowding. (Art. I, § 28(f)(5).)

## **XI. Statutes of Limitation (Penal Code §§ 800, 801, 803)**

### **A. Penal Code Section 800**

[ABX1 17 amends AB 117, which amended AB 109's version.]

Penal Code section 800 is a six-year statute of limitations for commencing an action. It is amended to add Penal Code section 1170(h) offenses that are punishable by eight years or more in jail to those crimes (offenses punishable for eight years or more in state prison) whose prosecution may be commenced within six years of the commission of the offense.

### **B. Penal Code Section 801**

[AB 109]

Penal Code section 801 is a three-year statute of limitations for commencing an action and is amended to add offenses punishable pursuant to Penal Code section 1170(h) to those offenses (offenses punishable by imprisonment in the state prison) that must be commenced within three years after the commission of the offense.

### **C. Penal Code Section 803**

[AB 109]

Penal Code section 803 provides that for specified offenses involving an element of fraud, the statute of limitations does not begin to run until the discovery of the offense. It is amended to cross-reference Penal Code section 1170(h) so that the statute of limitations for offenses punishable by imprisonment in the state prison and offenses punishable pursuant to section 1170(h) does not begin to run until the discovery of the offense when a material element of the offense is fraud.

## **XII. Postrelease Community Supervision Act of 2011 (New Penal Code §§ 3450–3458)**

[AB 109, AB 117, and ABX1 17]

### **A. Felons Released From Prison On or After October 1, 2011 (New Penal Code § 3451)**

[AB 117 amends AB 109’s version.]

Most felons released from prison on or after October 1, 2011, are subject to postrelease community supervision by counties instead of state parole, including felons serving a term after admitting one strike prior, and low- to mid-risk sex offenders. This includes felons released after serving a term for a parole violation, as well as offenders who were sentenced to a “paper prison commitment” because the offender’s credits were greater than the prison term, and offenders sentenced to prison for a crime that was exempted from sentencing pursuant to Penal Code section 1170(h) by the Legislature (e.g., Penal Code § 245(a)(1) or 273.5). Offenders will be returned to their county of last legal residence, not necessarily the county where the crime was committed. Offenders on postrelease community supervision will be supervised by a county agency designated by a county’s board of supervisors. In most, if not all, counties, this will be the county’s probation department.

### **B. Exceptions to Postrelease Community Supervision (New Penal Code § 3451(b))**

[AB 117 amends 109’s version.]

Exceptions are inmates who are released from prison after having served a term (1) for a serious or violent felony; or (2) for a Third Strike offense; or (3) any person classified by CDCR as a High Risk Sex Offender; or (4) any mentally disordered offender. These four categories of felons will be on state parole when released, not postrelease community supervision.

### **C. Length of Postrelease Community Supervision (New Penal Code § 3451(a))**

Pursuant to Penal Code section 3451(a), the period of postrelease community supervision may not exceed three years. (See section F below for exceptions.)

### **D. Information from the California Department of Corrections and Rehabilitation (CDCR) (New Penal Code § 3451(c))**

Penal Code section 3451 requires CDCR to provide counties with the inmate information, specified in Penal Code section 3003(e) (e.g., name, birthdate, sex, race, county of commitment, registration status [drugs, arson, sex], social security number, driver’s license number, FBI number, photograph, and at least a single digit fingerprint) for any offender that will be placed on postrelease community supervision. This information must be provided 30 days prior to release.

Additionally, pursuant to Penal Code section 3000(l), CDCR must submit the data to the Department of Justice (DOJ) to be included in the supervised release file of the California Law Enforcement Telecommunications System (CLETS) so that law enforcement can be advised through CLETS of all offenders in the county on postrelease community supervision and which county agency is supervising them.

## **E. Postrelease Community Supervision Agreement and Conditions: Restitution and Sanctions (New Penal Code §§ 3452, 3453, 3454)**

New Penal Code section 3452 (see AB 109) requires a person eligible for postrelease community supervision to enter into an agreement prior to, and as a condition of release from, prison. The agreement must specify the person's release date and the maximum period the person may be subject to postrelease supervision; the name, address, and telephone number of the county agency responsible for postrelease supervision; and an advisement that if the person breaks the law or violates the conditions of release, he or she can be incarcerated in a county jail regardless of whether or not new charges are filed.

New Penal Code section 3453 (see ABX1 17) requires a person who is subject to postrelease community supervision to sign an agreement that includes the following conditions:

- agree to the conditions of release;
- obey all laws;
- report to the supervising county agency within two days of release from custody and report thereafter as directed;
- follow the directives and instructions of the supervising county agency;
- be subject to the search of one's person, residence, and possessions at any time of the day or night, with or without a warrant, by a peace officer or by an agent of the supervising county agency;
- waive extradition if found outside California;
- inform the supervising county agency of one's residence, employment, education, training, or any pending or anticipated changes in these situations;
- inform the supervising county agency within three days of a change in employment;
- immediately inform the supervising county agency if arrested or cited;
- obtain permission from the supervising county agency when travelling more than 50 miles from one's residence;
- obtain a travel pass from the supervising county agency before leaving the county or state for more than two days;
- not be in the presence of a firearm or ammunition or any item that appears to be a firearm or ammunition;
- not possess, use, or have access to a specified weapon;
- not possess a knife with a blade longer than two inches, except a kitchen knife used and kept only in the kitchen of the person's residence or a knife used in the person's employment that has been approved by the supervising county agency;
- waive any right to a court hearing prior to the imposition of "flash incarceration" in jail for up to 10 consecutive days for any violation of postrelease supervision conditions;
- agree to participate in rehabilitation programming recommended by the supervising county agency; and
- agree that he or she may be subject to arrest with or without a warrant by a peace officer employed by the supervising county agency, or, at the direction of the supervising county agency, by any peace officer when there is probable cause to believe the person has violated the terms and conditions of his or her release.

Despite the omission from the list of a requirement that the offender make restitution payments, paying restitution must be a condition of postrelease community supervision. The California Constitution provides that victims have a right to restitution and that it is the “unequivocal intention of the People” that victims have the right to secure restitution. (Art. I, § 28(b)(13).) In addition, the provisions of Penal Code section 3454(a) specifically provide for additional postrelease supervision conditions if they are reasonably related to the underlying offense or to the offender’s risk of recidivism.

New Penal Code section 3454 (see ABX1 17) requires the county agency designated by a board of supervisors to handle postrelease supervision to establish a review process for “assessing and refining” a person’s program of postrelease supervision. It requires that any additional postrelease supervision conditions be reasonably related to the underlying offense for which the offender spent time in prison or to the offender’s risk of recidivism, and the offender’s criminal history, and be consistent with law. It also authorizes the county agency to determine additional appropriate conditions of supervision consistent with public safety, order the provision of appropriate rehabilitation and treatment services, determine appropriate incentives, and determine and order appropriate responses to violations. Continuous electronic monitoring as defined in Penal Code section 1210.7 may be ordered as a condition of supervision.

Appropriate responses to violations include, but are not limited to, immediate and structured sanctions up to and including referral to a Penal Code section 3015 reentry court or flash incarceration of up to 10 consecutive jail days. Pursuant to Penal Code section 4019(i), conduct credits are not earned for periods of flash incarceration. [Penal Code section 4000 and Government Code section 26605 were both amended to provide that county jails may be used to confine postrelease supervision violators.]

Penal Code section 3454 contemplates that pre-postrelease revocation sanctions be carried out by the supervising agency (in many counties, this will be the probation department), without action by a court or judicial officer, and, in fact the offender must waive the right to a court hearing when the offender initially signs the postrelease agreement. Therefore, the supervising officer could arrest the defendant and book him or her into jail on a section 3454 hold for up to 10 consecutive days, and then release the hold at the point (up to 10 days) where the officer felt the supervisee had served enough time. Indeed, section 3454(c) provides that “[f]lash incarceration is a tool that may be used by each county agency responsible for postrelease supervision.”

“Flash incarceration” is defined in Penal Code section 3454(c):

a period of detention in county jail due to a violation of an offender’s conditions of postrelease supervision. The length of the detention period can range between one and 10 consecutive days. Flash incarceration is a tool that may be used by each county agency responsible for postrelease supervision. Shorter, but if necessary more frequent, periods of detention for violations of an offender’s postrelease supervision conditions shall appropriately punish an offender while preventing the disruption in a work or home establishment that typically arises from longer term revocations.



## F. Postrelease Community Supervision Arrest and Revocations (New Penal Code § 3455 and New Government Code § 71622.5)

[AB 117 and ABX1 17]

New Penal Code section 3455 provides that at any time during postrelease supervision, a peace officer, with probable cause to believe an offender is violating the terms of supervision, may arrest the offender without a warrant and bring the offender before the supervising agency. It also authorizes an officer employed by the supervising agency to seek an arrest warrant from the court or designated revocation hearing officer.

A number of violations by postrelease supervisees will probably be handled informally by the supervising agency without the involvement of a court or judicial officer. If intermediate sanctions are not helping the supervised person to comply and to participate in rehabilitation, or are no longer appropriate, the supervising agency can petition the court or revocation hearing officer, appointed pursuant to new Government Code section 71622.5, to revoke and terminate postrelease supervision or impose a custodial sanction up to 180 days. As section 3455 is currently written, it appears that only the supervising county agency can file a petition to revoke postrelease community supervision, unlike traditional violations of probation, which can be filed by the district attorney or on the court's own motion, pursuant to Penal Code section 1203.2(a).

New Government Code section 71622.5 authorizes the superior court of any county to appoint as many revocation hearing officers as needed to conduct parole revocation hearings pursuant to new Penal Code sections 3000.08 and 3000.09, and establishes eligibility criteria for these officers. Pursuant to new Penal Code section 3455, these officers will also handle postrelease supervision revocation hearings.

The offender may waive, in writing, the right to counsel and to a court hearing, admit the "violation of his or her postrelease supervision," and accept the proposed modification of his or her postrelease supervision. The supervising county agency must prepare a written report and the Judicial Council must adopt forms and rules for uniform statewide implementation.

Penal Code section 3455 provides that a revocation hearing officer, upon a finding that an offender has violated postrelease supervision, has the authority to do all of the following:

- Return the person to postrelease supervision with modifications of conditions, if appropriate, including a period of incarceration in county jail up to 180 days;
- revoke postrelease supervision and order the offender to confinement in jail up to 180 days;
- refer the offender to a Penal Code section 3015 reentry court or other evidence-based program.

While the burden of proof for proving a formal postrelease supervision violation is not expressly addressed, it should be by a preponderance of the evidence and not a higher standard, as this standard is consistent with that used in California and other jurisdictions for probation violations and parole revocations. The California Supreme Court held in *People v. Rodriguez* (1990) 51 Cal.3d 437 that the burden of proof for a finding of probation violation is by a preponderance of the evidence. In addition, the Rule of Court under consideration by the Judicial Council

(proposed Rule 4.540) for postrelease violation formal hearings contains a preponderance-of-the-evidence standard.

Revocation hearings must be held “within a reasonable time” after the filing of a revocation petition. The supervising county agency has the authority to determine if the person should remain in custody pending a revocation hearing. For most counties, this means that the probation department (and apparently not the court) decides whether an offender stays in custody pending a revocation hearing. Pursuant to Penal Code section 3455(b), the standard for determining whether a supervisee stays in custody is very low: A preponderance of the evidence that the person poses an unreasonable risk to public safety, or the person may not appear if released from custody, or for any reason in the interest of justice.

If an offender fails to appear for a hearing on a revocation petition, Penal Code section 3455 authorizes the court or revocation hearing officer to issue a warrant for the offender’s arrest. Additionally, the court or hearing officer is also authorized to remand an offender who does appear at the hearing, in the interests of justice.

Although Penal Code section 3455(c) requires postrelease community supervision and custody to end on or after three years from the date of the offender’s initial entry onto postrelease supervision, if a bench warrant or arrest warrant has been issued by a court or revocation hearing officer and the person has failed to appear, the supervision period shall be tolled. When the offender appears, the court may extend the supervision period for an amount of time equivalent to the time that was tolled.

Postrelease supervision revocation provisions may implicate the victim’s right to be notified, upon request, of any public proceeding (Cal. Const., art. I, § 28(b)(7)), and also the victim’s right to be heard, upon request, at any proceeding in which a right of the victim is at issue (art. I, § 28(b)(8)).

Additionally, it should be noted there is question as to whether or not district attorneys are required to participate in the revocation process. Because district attorneys are not specifically mentioned within the new postrelease community supervision authorizing statutes, immunity issues may arise. However, ABX1 16 amended Government Code section 30025(f)(5) to provide funding to each county’s district attorney and public defenders office to be used exclusively for costs associated with revocation proceedings for both postrelease community supervision and state parole. Whether or not to participate in the revocation proceedings will have to be a county-by-county decision.

## **G. Limitations on the Length of Postrelease Community Supervision (New Penal Code § 3456)**

[ABX1 17]

New Penal Code section 3456 requires the county agency responsible for postrelease supervision to maintain postrelease supervision over an offender until one of the following events occurs:

1. The offender has been subject to postrelease community supervision for three years.
2. The supervising county agency exercises its discretion to discharge an offender from postrelease supervision after six consecutive months with no violations of postrelease supervision conditions that resulted in a custodial sanction.

3. The offender has been on postrelease supervision continuously for one year with no violations of his or her conditions that resulted in a custodial sanction.
4. Jurisdiction over the person has been terminated by operation of law.
5. Jurisdiction is transferred to another supervising county agency (pursuant to new Penal Code section 3460).
6. Jurisdiction is terminated by the revocation hearing officer upon a petition to revoke and terminate supervision by the supervising county agency.

The time during which an offender has absconded from postrelease community supervision is not credited toward the period of supervision.

#### **H. Search and Seizure (Penal Code §§ 3465 and 3067)**

[Added by ABX1 17.]

Pursuant to Penal Code section 3465, every person placed on postrelease community supervision is subject to search and seizure, with or without a warrant, at any time of day or night, by a supervising agent or a peace officer. This applies to the person, residence, and possessions of the supervisee.

Pursuant to Penal Code section 3067, an inmate who is eligible for release from prison to postrelease community supervision shall agree in writing to be subject to search and seizure by a parole officer or other peace officer at any time of the day or night, with or without a search warrant, and with or without cause. An inmate who refuses to sign loses worktime credits on a day-for-day basis and shall not be released until he or she complies or has no remaining worktime credit, whichever occurs earlier. [The provisions in Penal Code section 3067 for postrelease supervisees are now identical to those for parolees.]

#### **I. Transfer of Postrelease Supervisees to Other Counties (New Penal Code § 3460)**

[ABX1 17]

New Penal Code section 3460 creates a procedure whereby the supervising agency may transfer a case to another jurisdiction if the person subject to postrelease supervision permanently resides in the other jurisdiction. Section 3460(b) provides that upon verifying permanent residency, the receiving supervising agency must accept the case.

Penal Code section 3460(c) defines “residence” as the place where the person customarily lives exclusive of employment, school, or other special or temporary purpose. Section 3460(c) also provides that a person may have only one residence. Section 3460(d) provides that a supervising agency is not required to transfer jurisdiction to another county unless the supervisee demonstrates an ability to establish permanent residency without violating the terms and conditions of postrelease supervision. [Note: It appears that the transfer of jurisdiction may take place without the approval of the court and without an opportunity for the district attorney to object.]

**J. CDCR Has No Jurisdiction Over an Offender on Postrelease Community Supervision (New Penal Code § 3457)**

[AB 109]

New Penal Code section 3457 provides that CDCR has no jurisdiction over any offender who is under postrelease community supervision.

**K. Violator Cannot Be Returned to Prison for Violation of Postrelease Supervision Conditions (New Penal Code § 3458)**

[AB 109]

New Penal Code section 3458 prohibits the return to prison of an offender for a violation of postrelease supervision conditions.

**L. Notification of High-Risk Offenders to Report Within Two Days (Penal Code § 3060.7)**

[ABX1 17]

Penal Code section 3060.7 is amended to add high-risk offenders released on postrelease community supervision to those offenders (high-risk parolees) who must be notified by CDCR to report to their assigned parole officer or the supervising county agency within two days of release from prison. The supervising agency may require the offender to report earlier than two days. Section 3060.7 also prohibits the release of a high-risk offender from prison to postrelease community supervision on a holiday or weekend.

**M. Legislative Findings and Declarations (New Penal Code §§ 17.5 and 3450)**

New Penal Code sections 17.5(a) [AB 117] and 3450 [ABX1 17] list the following findings and declarations:

- Recidivism rates in California for persons who have served time in prison is greater than the national average.
- Building and operating more prisons will not improve public safety.
- California must invest its criminal justice resources to support community-based corrections programs and evidence-based practices that will achieve improved public safety.
- Realigning low-level offenders who do not have prior convictions for serious, violent, or sex offenses to locally run community-based corrections programs, which are strengthened through community-based punishment, evidence-based practices, improved supervision strategies, and enhanced secured capacity, will improve public safety outcomes among adult felons and facilitate their reintegration back into society.
- Fiscal policy and correctional practices should align to promote a “justice reinvestment strategy” that fits each county. “Justice reinvestment” is a data-driven approach to reduce corrections and related criminal justice spending, and reinvest savings in strategies designed to increase public safety.

- “Community-based punishment” means correctional sanctions and programming encompassing a range of custodial and noncustodial responses to criminal or noncompliant offender activity. Community-based punishment may be provided by local public safety entities directly or through community-based public or private correctional service providers and include, but are not limited to, the following:
  - short-term flash incarceration in jail for not more than 10 days;
  - intensive community supervision;
  - home detention with electronic monitoring or GPS monitoring;
  - mandatory community service;
  - restorative justice programs such as mandatory victim restitution and victim-offender reconciliation;
  - work, training, or education in a furlough program pursuant to Penal Code section 1208;
  - work, in lieu of confinement, in a work release program pursuant to Penal Code section 4024.2;
  - day reporting;
  - mandatory residential or nonresidential substance-abuse treatment programs;
  - mandatory random drug testing;
  - mother-infant care programs; and
  - community-based residential programs offering structure, supervision, drug treatment, alcohol treatment, literacy programming, employment counseling, psychological counseling, mental health treatment, or any combination of these and other interventions.
- “Evidence-based practices” refers to supervision policies, procedures, programs, and practices demonstrated by scientific research to reduce recidivism among individuals under probation, parole, or postrelease supervision.

Penal Code section 17.5(b) provides that “[t]he provisions of this act are not intended to alleviate state prison overcrowding.”

### **XIII. Community Corrections (New Penal Code § 1230.1)**

[AB 117]

New Penal Code section 1230.1 provides that the Community Corrections Partnership established pursuant to existing section 1230(b) shall recommend a local plan to the county board of supervisors for the implementation of 2011 Public Safety Realignment. Section 1230.1 requires that an executive committee of each county’s Community Corrections Partnership vote on the plan. This Executive Committee will consist of the chief probation officer of the county as chairperson, a chief of police, the sheriff, the district attorney, the public defender, the presiding judge of the superior court or his/her designee, and one of the following department representatives: the head of the county department of social services, the head of the county department of mental health, or the head of the county alcohol and substance-abuse programs.

The plan will be deemed accepted by a county board of supervisors unless the board rejects it by a four-fifths vote.

[*Note:* It appears that with the exception of the presiding judge of the superior court who may have a designee, the other members of the Executive Committee must personally be involved and in attendance at meetings, since there are no provisions permitting a designee to serve in their place.]

#### **XIV. Parole (Penal Code §§ 3000–3061)**

##### **A. Penal Code Section 3000: A Sentence to State Prison Must Include a Period of Parole or Postrelease Community Supervision**

[AB 117]

Penal Code section 3000(a) was amended to add that a sentence to state prison must include a period of parole supervision or postrelease community supervision.

The period of parole was increased from 20 years to 20 years and six months for a person convicted of a specified sex offense against a victim under age 14.

[*Note:* The parole period was increased so that the amendments to Penal Code section 3000 could be made with a majority vote of the Legislature, rather than the two-thirds vote required by Jessica’s Law (Proposition 83—effective November 8, 2006). Section 33 of Jessica’s law requires a two-thirds vote of the Legislature in order to amend any of its provisions (or a vote of the electorate), unless the amendment increases punishment or penalties, in which case a majority vote of the Legislature is sufficient.]

##### **B. Felons Released on Parole Before October 1, 2011 (New Penal Code § 3000.09)**

[ABX1 17]

New Penal Code section 3000.09 provides that felons released on parole before October 1, 2011 remain under the supervision of CDCR until one of the following occurs:

1. Jurisdiction is terminated by operation of law.
2. The parole authority discharges the offender from parole, upon the supervising parole agent’s recommendation.
3. If the offender is subject to a period of parole for up to three years pursuant to Penal Code section 3000(b)(1) and was not imprisoned for committing a violent felony, a serious felony, or required to register pursuant to Penal Code section 290, **and** the parolee completes six consecutive months of parole without violating parole conditions, the supervising agent is required to review and make a recommendation about whether to discharge the offender to the parole authority, and the parole authority approves the discharge.

Penal Code section 3000.09 provides that parolees who are being held for parole violation in state prison on October 1, 2011, shall either remain on parole pursuant to section 3000.08 (specified serious offenders) or be placed on postrelease community supervision if the parole revocation term is completed on or after November 1, 2011. The intent behind this amendment is to give probation departments time to prepare for additional inmates who will be subject to postrelease community supervision.

Any parolee in county jail serving a term of parole revocation or being held pursuant to Penal Code section 3056 on October 1, 2011, and released directly from county jail without returning to state prison, shall remain under the parole supervision of CDCR.

Any parolee pending final adjudication of a parole violation prior to October 1, 2011, whether in local jail or state prison, may be returned to state prison and confined pursuant to Penal Code section 3057 (maximum of 12 months). Any subsequent parole revocations of most parolees shall be served in county jail after October 1, 2011.

The Legislature created Penal Code sections 3000.08 and 3000.09 in AB 109 and then amended them in three bills: AB 116, AB 117, and ABX1 17. Moreover, Penal Code section 3000.08 has two versions: one that takes effect on October 1, 2011, and one that takes effect on July 1, 2013.

Penal Code section 3000.09(d) requires any parolee paroled prior to October 1, 2011, to be subject to the parole revocation procedures of CDCR. After July 1, 2013, any parolee who paroled prior to October 1, 2011, shall be subject to the procedures of section 3000.08.

### **C. CDCR Remains the Supervising Authority for Specified Felons Released On or After October 1, 2011, and Before July 1, 2013 (New Penal Code § 3000.08)**

[ABX1 17]

New Penal Code section 3000.08 provides that a specified offender released from state prison on or after October 1, 2011, or a specified offender whose prison sentence is deemed served pursuant to section 2900.5 (referred to as a “paper” prison commitment in some counties) is subject to CDCR’s jurisdiction.

CDCR and the Board of Parole Hearings (BPH) will handle parole supervision and parole revocation until July 1, 2013.

Penal Code section 3000.08 applies to inmates released from prison or released directly onto parole, on or after October 1, 2011, after serving a term for:

1. a serious felony (Penal Code § 1192.7(c));
2. a violent felony (Penal Code § 667.5(c));
3. a crime for which the parolee was sentenced as a third striker (Penal Code § 667(e)(2)/1170.12(c)(2));
4. any crime where the parolee is classified as a High Risk Sex Offender; or
5. any crime where the person is required as a condition of parole to undergo treatment by Department of Mental Health pursuant to section 2962 (Mentally Disordered Offenders).

Penal Code section 3000.08(b) provides that **all** other offenders released from prison are to be placed on postrelease community supervision pursuant to Penal Code sections 3450–3458, and supervised at the county level, including non-non-nons incarcerated prior to October 1, 2011, and offenders serving a prison sentence for one of the crimes deliberately exempted from sentencing pursuant to Penal Code section 1170(h) by the Legislature. [See Section XII above.]

However, Penal Code section 3000.08(c) provides that specified offenders shall be on parole for up to three years or the parole term the person was subject to at the time of the commission of the offense, whichever is greater. Thus the following offenders will remain on parole and are not subject to post community release supervision.

1. The person is required to register as a sex offender pursuant to Penal Code section 290 and was subject to a period of parole of more than three years at the time he or she committed a felony that resulted in a state prison sentence; or
2. The person was subject to parole for life pursuant to Penal Code section 3000.1 at the time of the commission of the offense that resulted in a state prison sentence.

For all others, Penal Code section 3000.08(d) provides that an offender, who is on parole and qualifies for community supervision, shall discharge from state parole at the time of release to community supervision.

#### **D. County Courts Will Handle Parole Revocations for Specified Felons Released From State Prison On or After July 1, 2013, Who Are Supervised by Parole**

*(This version of Penal Code section 3000.08 is operative on July 1, 2013.)*

[ABX1 17]

This version of Penal Code section 3000.08 applies to inmates released from prison or released directly onto parole, on or after July 1, 2013, after serving a term for:

1. a serious felony (Penal Code § 1192.7(c));
2. a violent felony (Penal Code § 667.5(c));
3. a crime for which the parolee was sentenced as a third striker (Penal Code § 667(e)(2)/1170.12(c)(2);
4. any crime where the parolee is classified as a High Risk Sex Offender; or
5. any crime where the person is required as a condition of parole to undergo treatment by Department of Mental Health pursuant to Penal Code section 2962 (Mentally Disordered Offenders).

CDCR and the Board of Parole Hearings (BPH) will continue to handle parole supervision for specified offenders, but the county courts will handle parole revocation starting July 1, 2013.

Parolees subject to Penal Code section 3000.08 who are being held for parole violation in a county jail on July 1, 2013, will remain subject to the jurisdiction of the Board of Parole Hearings.

**All** other offenders released from prison are to be placed on postrelease supervision pursuant to Penal Code section 3450–3458 and supervised at the county level. [See Section XII above.]

However, Penal Code section 3000.08(i) provides that the specified offenders shall be on parole for up to three years or the parole term the person was subject to at the time of the commission



of the offense, whichever is greater. Thus the following offenders will stay on parole and not be on postrelease community supervision.

1. The person is required to register as a sex offender pursuant to Penal Code section 290 and was subject to a period of parole of more than three years at the time he or she committed a felony that resulted in a state prison sentence; or
2. The person was subject to parole for life pursuant to Penal Code section 3000.1 at the time of the commission of the offense that resulted in a state prison sentence.

Penal Code section 3000.08(k) provides that an offender, who is on parole and qualifies for community supervision, shall discharge from state parole at the time of release to community supervision.

## **E. Post-July 1, 2013, Parole Revocation Procedures (Penal Code § 3000.08)**

### **1. Parole Agent and Peace Officer Authority**

A parole agent or peace officer who has probable cause to believe a parolee is violating any term or condition of parole may, with or without a warrant, arrest the parolee and bring him or her before the parole authority, or the parole authority may issue a warrant for the parolee's arrest.

### **2. Intermediate Sanctions**

After review of the alleged violation and a finding of good cause that a parolee has committed a law violation or has violated a condition of parole, the parole authority may impose "additional and appropriate conditions of supervision, including rehabilitation and treatment services and appropriate incentives for compliance, and impose immediate, structured, and intermediate sanctions for parole violations, including flash incarceration in a county jail."

Limits flash incarceration to between 1–10 consecutive jail days (to limit disruptions to the parolee's home and work situation).

Pursuant to Penal Code section 4019(i), conduct credits cannot be earned for a period of flash incarceration.

### **3. Revocation Hearings and Revocation Hearing Officers**

If the parole agency determines that intermediate sanctions (including flash incarceration) are not appropriate, the agency may petition the revocation hearing officer appointed pursuant to new Government Code section 71622.5. A parolee may waive, in writing, his or her right to counsel and a court hearing, admit the parole violation, and accept the parole modification. The parole agency is required to prepare a written petition for the revocation hearing officer and requires the Judicial Council to adopt forms and rules to establish uniform, statewide procedures. Upon the revocation hearing officer finding that the parolee has violated a condition of parole, the revocation hearing officer may do any of the following:

- Return the offender to parole supervision with a modification of conditions, including a period in jail incarceration; or
- Revoke parole and order the person to confinement in the county jail; or
- Refer the offender to a reentry court pursuant to Penal Code section 3015, or other evidence-based program in the court's discretion.

Incarceration is limited to 180 days in jail under any of these scenarios.

These provisions may implicate the victim's right to be notified, upon request, of any public proceeding (Cal. Const., art. I, § 28(b)(7)), and also the victim's right to be heard, upon request, at any proceeding in which a right of the victim is at issue (art. I, § 28(b)(8)).

New Government Code section 71622.5 authorizes the superior court of any county to appoint as many revocation hearing officers as needed to conduct parole revocation hearings pursuant to Penal Code sections 3000.08 and 3000.09 and postrelease supervision revocation hearings pursuant to Penal Code section 3455.

Eligibility criteria for a revocation hearing officer include:

- active member of the state bar for 10 years prior to appointment; or
- is or was a judge within the last five years or is currently eligible for the assigned judge program; or
- was a commissioner, magistrate, referee, or hearing officer authorized to perform the duties of a subordinate judicial officer within the last five years.

The courts are authorized to prescribe additional minimum qualifications and to require training. Compensation is to be determined by the court. The superior courts of two or more counties are permitted to appoint the same person as a revocation hearing officer.

#### **4. Murderers and Specified Sex Offenders**

Pursuant to Penal Code section 3000.08(h), if there is good cause to believe that a person on lifetime parole pursuant to section 3000.1 (murder or specified sex offenses) has committed a violation of the law or has violated a parole condition and a period of imprisonment longer than 30 days is imposed, the parolee must be remanded to the custody of CDCR and the Board of Parole Hearings "for the purpose of future parole consideration."

#### **F. Lifetime Parole for Murder and Specified Sex Offenses (Penal Code § 3000.1)**

[AB 117]

Penal Code section 3000.1 was amended to add a cross-reference to section 3000.08(d). Upon a finding of good cause that the parolee has violated the law or a condition of parole, the parole authority is permitted to impose additional conditions of supervision, rehabilitation, and treatment, and may also impose intermediate sanctions, including flash incarceration.

## G. Discharge From Parole (Penal Code § 3001)

[ABX1 17]

The period of time a specified sex offender (Penal Code § 3000(b)(3)) serving a life sentence must be on continuous parole before being discharged from parole, unless the Board of Parole Hearings, for good cause, decides to retain the offender on parole, was increased from six years to six years and six months.

[*Note:* The parole period increase was done so that the amendments to Penal Code section 3001 could be made with a majority vote of the Legislature, rather than the two-thirds vote required by Jessica's Law (Proposition 83—effective November 8, 2006). Section 33 of Jessica's law requires a two-thirds vote of the Legislature in order to amend any of its provisions (or a vote of the electorate), unless the amendment increases punishment or penalties, in which case a majority vote of the Legislature is sufficient.]

However, AB 117 also **decreases**, from one year to six months, the period of time a parolee pursuant to Penal Code section 3000(b)(1) must be on continuous parole before being discharged from parole, unless the Board of Parole Hearings, for good cause, decides to retain the offender on parole. [Since AB 117 did not get a two-thirds vote of the Legislature (51 aye votes in the Assembly and 24 aye votes in the Senate), this provision may not be operative.]

Serious felons (Penal Code § 1192.7(c)), violent felons (Penal Code § 667.5(c)), and Penal Code section 290 sex registrants are not eligible for parole discharge after six months. Penal Code section 3001(f) provides that the six-month period applies prospectively from October 1, 2011 and that no six-month parole discharge can happen unless either:

1. The person has been on parole continuously for six consecutive months after October 1, 2011, and the person is not retained by the Board of Parole Hearings for good cause; or
2. The person has, on or after October 1, 2011, been on parole for one year and the Board of Parole Hearings does not retain the person for good cause.

These provisions may implicate a victim's right to have the defendant be punished sufficiently (Cal. Const., art. I, § 28(a)(5)), and may violate the victim's right to be informed and participate in the parole process (art. I, § 28(b)(15)).

## H. Parolees and Postrelease Supervisees are Returned to the County of Last Legal Residence (Penal Code § 3003)

[ABX1 17]

Penal Code section 3003 was amended to cross-reference Penal Code sections 3450–3458 in order to provide that prison inmates released on postrelease supervision shall be returned to the county that was the last legal residence of the inmate prior to incarceration. Inmates released on postrelease supervision are added to those inmates (paroled from prison) for whom CDCR is required to release to local law enforcement agencies information such as a name, date of birth, physical identifiers, social security number, and address.

County agencies supervising inmates on postrelease supervision are required to provide information requested by CDCR to ensure the availability of accurate information about paroled or released inmates.

On or before August 1, 2011, counties were required to notify CDCR of which county agency was designated to supervise inmates released to postrelease supervision.

Penal Code section 3003(*l*) requires CDCR to submit to the Department of Justice data to be included in the supervised release file of the California Law Enforcement Telecommunications Systems (CLETS) so that law enforcement can be advised through CLETS of all persons on postrelease community supervision and which county agency supervises them.

### **I. Parole Reentry Court Program (Penal Code § 3015)**

[AB 117]

Penal Code section 3015 was amended to permit offenders released on postrelease community supervision to participate in reentry courts, which were previously limited to offenders on formal parole. Reentry court is offered to parolees or offenders on postrelease community supervision with a history of substance abuse or mental illness who violate parole conditions or postrelease conditions. A parole officer, a local supervising agency, or a revocation hearing officer may refer an offender to a reentry court program. Each county may develop its own program.

In a reentry court program, the court, with the assistance of the offender's parole agent or local supervising agent, has the exclusive authority to determine the appropriate conditions of parole, order rehabilitation and treatment services, order appropriate sanctions, lift parole holds, and hold violation hearings.

These provisions may implicate the victim's right to be notified, upon request, of any public proceeding (Cal. Const., art. I, § 28(b)(7)), and also the victim's right to be heard, upon request, at any proceeding in which a right of the victim is at issue (art. I, § 28(b)(8)).

### **J. Most Parole Revocation Terms to Be Served in County Jail (Penal Code § 3056)**

[ABX1 17]

Pursuant to Penal Code section 3056 with some exceptions noted below, a parolee will serve a parole revocation term in county jail, not in state prison, for violations occurring on or after October 1, 2011. The parole revocation term is limited to 180 days in local jail. When a parolee is housed in a county facility for a violation, the parolee will be under the legal custody and jurisdiction of local county facilities. But when the parolee is released from custody, these parolees shall be returned to the parole supervision of CDCR for the duration of parole.

Inmates paroled pursuant to Penal Code section 3000.1 (murderers and specified sex offenders sentenced to a life term) are the exceptions. These offenders may be returned to prison following the revocation of parole by the Board of Parole Hearings until July 1, 2013, and thereafter by a court pursuant to Penal Code section 3000.08.

**K. One-Year Parole Revocation Term Applies Only to Parolees Sentenced to a Life Term (Penal Code § 3057)**

[ABX1 17]

Penal Code section 3057 was amended to provide that in the absence of a new conviction and commitment to prison, only inmates sentenced to a life term, or parolees who are pending a final adjudication of a parole revocation charge on or before September 30, 2011, and are subject to Penal Code section 3000.09(c), can be returned to state prison for a parole violation for up to 12 months beginning October 1, 2011. The parole violation term for other violators is limited to 180 days in jail pursuant to Penal Code section 3056.

**L. Powers of Parole Authority are in Effect Only Until July 1, 2013 (Penal Code § 3060)**

[AB 117]

Penal Code section 3060 will remain in effect only until July 1, 2013 and then is repealed.

Penal Code section 3060 provides that the parole authority has full power to suspend or revoke parole, and that the written order of the parole authority is a sufficient warrant for any peace officer or prison officer to return to actual custody any conditionally released or paroled prisoner.

**M. Peace Officer's Duty to Execute Parole Warrant is Repealed (Penal Code § 3061)**

[AB 109]

Penal Code section 3061 is repealed as of October 1, 2011. It had required peace officers to execute parole warrants.

**XV. Parole and Probation Officer Powers Extend to Postrelease Supervision (Penal Code § 830.5)**

[AB 116]

Penal Code section 830.5 is amended to provide that the authority of parole and probation officers extends to persons on postrelease community supervision and conditions of postrelease community supervision. Technical corrections were also made by correcting outdated references to the Youth Authority.

**XVI. Juveniles: No Change in How Counties Commit Juveniles to DJJ**

AB 109 amended Welfare and Institutions Code section 1731.5 and created new section 1710.5 to prohibit the Division of Juvenile Justice from accepting any juvenile offender commitments from the juvenile courts on and after July 1, 2011, unless a county had entered into a memorandum of understanding with the state pursuant to new section 1710.5 (to provide for the admission of minors adjudicated for a section 707(b) offense to the Division of Juvenile Justice). AB 117 then repealed new Welfare and Institutions Code section 1710.5, and AB 116 amended section 1731.5 back to its pre-AB 109 language by eliminating the provision prohibiting state juvenile offender commitments.

The net result of all of this is that Realignment does not change how counties commit juveniles to the state's Division of Juvenile Justice.

However, pursuant to SB 92, Welfare and Institutions Code section 912 has been amended, effective January 1, 2012, to increase the rate a county must pay the state to house any person under the jurisdiction of the Division of Juvenile Facilities (DJF) or in any institution, boarding home, foster home, or other private or public institution in which they are placed by DJF or on parole. The rate was increased from \$176 per month to \$125,000 per year, and applies to any person committed to DJF, including persons committed before January 1, 2012, who, on or after January 1, 2012, remain in or return to DJF facilities.

It should also be noted that Welfare and Institutions Code section 1766.01(b)(1) was amended by AB 117 to change a reference from "juvenile court" to the more generic "committing court." According to the legislative history, in 2010, the state Division of Juvenile Justice parole responsibility was transferred to county probation departments, and there was a concern that this transfer could not take place if a "superior court" rather than a "juvenile court" had made the original commitment order. "Committing court" applies to both.

## **XVII. Contracts with Other Agencies to House Inmates Serving Jail Sentences (New Penal Code §§ 2057 and 4115.55)**

### **A. Contracting with CDCR to House Inmates Sentenced Pursuant to Penal Code Section 1170(h) (Penal Code § 2057)**

[AB 117]

New Penal Code section 2057 authorizes counties to contract with CDCR for the commitment of persons who have suffered a felony conviction. It also provides that an offender sentenced to a term of imprisonment in county jail, who serves his or her sentence in the state prison, shall be required to comply with the rules and regulations of CDCR.

Thus, counties with no room in their jails for felons may pay the state to house offenders who are sentenced to county jail. However, it is unclear how this is affected by Penal Code section 1170(h), which states that offenders "shall be punishable by imprisonment in a county jail. Additionally, there is no specific language indicating what this will cost the county or how it will work with the split sentences and "mandatory supervision." Finally, this may raise equal protection and due process claims by the defense since it appears to give the authority to the county jail to make this decision without a court hearing.

### **B. Contracting with Other Public Agencies (Penal Code § 4115.55)**

[AB 117]

New Penal Code section 4115.55 provides that until January 1, 2015, and with the agreement of the sheriff or the director of a county department of corrections, a board of supervisors may contract with other public agencies to house defendants sentenced to jail in community correctional facilities created pursuant to Penal Code sections 6250–6259. [Existing Penal

Code sections 6250-6259 authorize the director of CDCR to establish and operate community correctional centers that offer programs for the treatment of alcohol and drug addiction, based on a therapeutic community model.]

## **XVIII. Counties No Longer Reimbursed by CDCR for Housing Parole Violators (Penal Code § 4016.5)**

[AB 117]

Penal Code section 4016.5 was amended to eliminate the requirement that CDCR reimburse a county for the cost of housing parolees and for costs incurred from parole revocation proceedings. This amendment is operative October 1, 2011.

## **XIX. Miscellaneous**

### **A. Petty Theft With Theft-Related Priors (Penal Code § 666)**

[AB 117]

Penal Code section 666 was amended to make theft with three theft-related priors punishable pursuant to Penal Code section 1170(h).

AB 109 eliminated any exceptions to the requirement that there be three theft-related priors in order for Penal Code section 666 to apply (e.g., serious and violent felons and sex offenders), but AB 117 restored Penal Code section 666 to its September 9, 2010, language and retained the cross-reference to section 1170(h) for theft with three theft-related priors. Theft with one theft-related prior when the defendant is a serious or violent felon, or a sex offender, is punishable by imprisonment in the state prison. Theft with three theft-related priors is punishable pursuant to Penal Code section 1170(h).

If the prior that elevates the theft to a felony is a serious or violent prior or Penal Code section 290 registration, the defendant is ineligible for section 1170(h) sentencing to a term of imprisonment in county jail, pursuant to Penal Code section 1170(h)(3) and (f), and must be sentenced to state prison if traditional probation is not granted.

### **B. Escape (Penal Code § 4532)**

[AB 109]

AB 109 adds home detention programs pursuant to Penal Code sections 1203.017 (involuntary home detention for sentenced misdemeanor inmates) and 1203.018 (pre-conviction home detention) to the home detention escapes (Penal Code § 1203.016) that Penal Code section 4532 applies to. Penal Code section 4532 is **not** amended to cross-reference section 1170(h). Therefore, defendants convicted of this section are eligible for a state prison sentence regardless of their criminal histories.

**C. Felon or Specified Person With a Firearm (Penal Code §§ 12021 and 12021.1)**

[AB 109]

Penal Code sections 12021(a) & (b) and 12021.1(a) & (c) remain nonalternative felonies for which any defendant may be sentenced to state prison for 16 months, two years, or three years. AB 109 amends these sections to specify that the punishment is 16 months, two years, or three years in state prison. This is a nonsubstantive amendment, since Penal Code section 18 had already provided that every offense declared to be a felony is punishable by 16 months, two years, or three years in prison, unless a different range of punishment is specified. Now, the 16 months, two years, and three years range of punishment is actually specified in Penal Code sections 12021 and 12021.1.

**D. CDCR May Contract with Counties to House State Prisoners for the Last 60 Days of a Prison Sentence in Local Custody (Penal Code § 4115.56)**

[Added by ABX1 17]

The board of supervisors, with the agreement of their sheriff, may contract with CDCR to house state prison inmates in county jail instead of prison for the last 60 days of their term to facilitate reentry into the community prior to release. Those inmates would then be under the legal custody and jurisdiction of the county, and not CDCR.

**E. Contracting with CDCR for Clinical Services (New Penal Code § 3073.1)**

[ABX1 17]

Counties may contract with CDCR to obtain correctional clinical services for inmates released on postrelease community supervision with mental health problems.



# Key Terms and Definitions

## **Community-Based Punishment (Penal Code § 3450)**

Community-based punishment is the application of correctional sanctions and programming encompassing a range of custodial and noncustodial responses to criminal or noncompliant offender activity for offenders placed on postrelease community supervision after serving a prison term. *Intermediate sanctions* may be provided by local public safety entities directly or through community-based public or private correctional service providers. The supervising agency may also impose up to 10 days of flash incarceration.

## **Community Corrections Partnership (Penal Code § 1230)**

A committee created by SB 678 (Chapter 608, Statutes of 2009) consisting of the chief probation officer (chair); presiding judge of the superior court, or his or her designee; a county supervisor or the chief administrative officer for the county; the district attorney; the public defender; the sheriff; a chief of police; the head of the county department of social services; the head of the county department of mental health; the head of the county department of employment; the head of the county alcohol- and substance-abuse programs; the head of the county office of education; a representative from a community-based organization with experience in successfully providing rehabilitative services to persons who have been convicted of a criminal offense; and an individual who represents the interests of victims.

## **Community Corrections Partnership Executive Committee (Penal Code § 1230.1)**

An executive committee for each Community Corrections Partnership (CCP) is established “for purposes related to the development and presentation of the plan (required to be recommended by the CCP to the county board of supervisors).” The executive committee consists of: the chief probation officer (chair); a chief of police; the sheriff; the district attorney, the public defender; the presiding judge of the superior court, or his or her designee; and a representative of one of the following: the county department of social services; the county department of mental health; or the county alcohol- and substance-abuse programs. Each member of the committee shall have a vote on the implementation plan.

The full CCP shall recommend a local plan to the county board of supervisors for the implementation of 2011 public safety realignment. The plan shall be deemed accepted by the board unless rejected by a four-fifths vote, in which case it shall be returned to the Community Corrections Partnership for further consideration.

## **Evidence-Based Practices (Penal Code § 3450)**

The supervision policies, procedures, programs, and practices demonstrated by scientific research to reduce recidivism among individuals under probation, parole, or postrelease supervision.

## **Felony (Penal Code § 17)**

A felony is defined as a crime punishable by death, or imprisonment in the state prison, *or imprisonment in a county jail under the provisions of subdivision (h) of section 1170.*

## **Felony, Punishment for (Penal Code § 18)**

Except where a different punishment is prescribed, every offense declared to be a felony is punishable by imprisonment for 16 months, two years, or three years in state prison unless the offense is punishable pursuant to Penal Code section 1170(h).

## **Flash Incarceration (Penal Code § 3454(c))**

The supervising agency of a postrelease community supervisee may use a short term of incarceration in county jail as a sanction for violations of the terms and conditions of postrelease community supervision. “Flash incarceration” is defined as a period of detention in county jail for 1-10 consecutive days. “*Shorter, but if necessary more frequent, periods of detention for violations of an offender’s postrelease supervision conditions shall appropriately punish an offender while preventing the disruption in a work or home establishment that typically arises from longer term revocations.*”

## **Justice Reinvestment (Penal Code § 3450)**

“Justice reinvestment” is defined as a data-driven approach to reduce corrections and related criminal justice spending and reinvest savings in strategies designed to increase public safety. The purpose of justice reinvestment is to manage and allocate criminal justice populations more cost effectively, generating savings that can be reinvested in evidence-based strategies that increase public safety while holding offenders accountable.

## **Last Legal Residence (Penal Code § 3003)**

Inmates released on parole or *postrelease community supervision* are returned to the county that was the inmate’s last legal residence prior to his or her incarceration. This is not construed to refer to the county where an offender was residing if his or her commitment offense occurred while housed in jail, state prison, or a state hospital.

However, inmates may be released to a county other than that of last legal residence in limited circumstances, with specific attention paid to protection of the victim and the safety of the community.

## **Parole (Penal Code § 3000)**

State prison sentences must include either a period of parole or *postrelease community supervision*. Pursuant to (new) Penal Code section 3000.08, persons released from state prison on or after October 1, 2011, until July 1, 2013, after serving a prison term (or whose sentence has been deemed served pursuant to Penal Code section 29005) for the following crimes will be subject to parole supervision and revocation:

- a serious felony pursuant to Penal Code section 1192.7(c);
- a violent felony pursuant to Penal Code section 667.5(c);

- a crime for which the person was sentenced pursuant to Penal Code section 667(e) or 1170.12(c) (Three Strikes defendant);
- any crime where the person is classified by CDCR as a High Risk Sex Offender; and
- any crime where the person is required, as a condition of parole, to undergo treatment by the Department of Mental Health pursuant to Penal Code section 2962.

### **Postrelease Community Supervision Act of 2011(Penal Code §§ 3450–3458)**

Felons released from prison on or after October 1, 2011 including those released after serving a parole violation, or who have a “paper commitment” because their prison sentence is deemed served pursuant to Penal Code section 2900.5 (new Penal Code § 3451), will be subject to *postrelease community supervision* by counties.

Exceptions are those released from prison after having served a term for a serious or violent felony, or for a third-strike offense, or any person classified as a High Risk Sex Offender by CDCR or any mentally disordered offender, who will be on state parole when released.

### **Prison Prior (Penal Code § 667.5(b))**

Any felony for which a prison sentence or a sentence of imprisonment in a county jail under Penal Code section 1170(h) is imposed, qualifies as a prison prior for purposes of this one-year enhancement. The usual prison prior rules, such as the five-year washout rule, apply.

### **Reentry Court (Penal Code § 3015)**

Persons on *postrelease community supervision* with a history of substance abuse or mental illness are eligible to participate in a reentry court program. A subject may be referred by his or her parole agent, *local supervising agent*, or a *revocation hearing officer*. The reentry court has discretion to determine whether a subject shall be admitted into the program and, in so doing, shall consider, among other factors, whether the offender will benefit from the program, the risk the offender poses to the community, and the history and nature of the committing offense.

The purpose of reentry court is to promote public safety, hold offenders accountable, and reduce recidivism. The program shall include key components of drug and collaborative courts using a highly structured model, including close supervision and monitoring, dedicated calendars, nonadversarial proceedings, frequent drug and alcohol testing, and close collaboration between the respective entities involved to improve the participant’s likelihood of success.

The court, with the assistance of the participant’s parole agent or *local supervising agent*, shall have exclusive authority to determine the participant’s conditions of parole or *postrelease community supervision*, order rehabilitation and treatment services to be provided, determine appropriate incentives, order appropriate sanctions, lift parole holds, and hear and determine appropriate responses to alleged violations, unless and until, the court terminates the participant’s enrollment in the program.

## Revocation Hearing Officer

Pursuant to (new) Government Code section 71622.5, the superior court of any county may appoint as many hearing officers as necessary to conduct parole revocation hearings (Penal Code §§ 3000.08 and 3000.09), to determine violations of *postrelease community supervision* (Penal Code § 3455) and to perform related duties as authorized by the court.

A person is eligible to be appointed as a *revocation hearing officer* if he or she:

- has been an active member of the State Bar of California for at least 10 years continuously prior to appointment, or
- was a judge of a court of record of California within the last five years or is eligible for the assigned judge program, or
- was a commissioner, magistrate, referee, or hearing officer authorized to perform the duties of a subordinate judicial officer of a court of record of California within the last five years.

## Resources

Realignment training resources are available, and will be continuously updated, on the CDAA website at <http://www.cdaa.org/Realignment2011/index.htm>

Examples include video presentations and handouts by allied organizations, such as the joint presentation by CSAC, CPOC, CDAA, CPDA, CSSA, and AOC in early September, and the presentation given at the CDAA Rural Counties Conference on September 9.

If your office has produced Realignment-related training materials, please consider sharing them with your colleagues throughout the state by providing a copy to CDAA Publications Director Tom Toller at [ttoller@cdaa.org](mailto:ttoller@cdaa.org).

To access the full text of the bills that enacted Realignment (AB 109, AB 116, AB 117, AB 118, ABX1 16, ABX1 17) go to <http://www.leginfo.ca.gov/bilinfo.html>.

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## Appendix A

# Crimes That Disqualify a Defendant From Sentencing Pursuant to Penal Code Section 1170(h)

*Serious Felonies (Penal Code § 1192.7(c)), Violent Felonies (Penal Code § 667.5(c)), Penal Code Section 290 Offenses, and Penal Code Section 186.11 Enhancements*

*Prepared by Kathryn B. Storton (Santa Clara County District Attorney's Office)*

*Note:* A current or prior conviction for a serious felony or a violent felony disqualifies a defendant from sentencing pursuant to Penal Code section 1170(h).

Any current or prior crime (felony or misdemeanor) requiring registration as a sex offender is a disqualifier. The Penal Code section 290 crimes listed here are the ones specified in section 290(c).

Even if a currently charged crime is one that has been amended to cross-reference Penal Code section 1170(h), (ie., listed in Appendix C), the defendant is disqualified from section 1170(h) sentencing if the listed crime qualifies as a serious or violent felony (e.g., through personal use of a firearm or a deadly weapon, or through personal infliction of GBI) or is a section 290 offense.

The imposition of a Penal Code section 186.11 aggravated white collar crime enhancement is also a disqualifier.

**The list below may not be exhaustive.**

Penal Code sections 1192.7(c), 667.5(c), and 290(a)-(c) are reprinted in their entirety at the end of the list. All crimes listed here are felonies unless designated “F/M” or “M,” which means that a felony or misdemeanor (F/M) violation of that section or a misdemeanor (M) violation is a disqualifying crime. Penal Code crimes are listed first, followed by Health and Safety Code, Military and Veterans Code, and Vehicle Code crimes.

Penal Code sections 1192.7(c) and 667.5(c) have two versions printed below, one in effect until December 31, 2011, and one that is effective on January 1, 2012. The 2012 versions contain updated cross-references to weapons statutes that are renumbered effective January 1, 2012.

## Penal Code

37(a)	Treason
128	Perjury Causing Execution of Innocent Person
136.1	Dissuading or Threatening a Witness or Victim
182	Conspiracy to Commit Any Serious Felony or Any Crime Specified in Penal Code Section 290
182.5	Conspiracy to Commit a Gang Crime Punishable by Life or Death
186.11	Aggravated White Collar Crime Enhancement
186.22(a)	Active Participation in a Criminal Street Gang
186.22(b)	Any Felony With a Gang Enhancement (Penal Code § 186.22(b)) Attached
187	Murder
191.5	Vehicular Manslaughter With Personal Infliction of Great Bodily Injury (i.e., death)
192(a)	Voluntary Manslaughter
192(b)	Involuntary Manslaughter With Personal Use of a Firearm or Weapon, or Personal Infliction of Great Bodily Injury (i.e., death)
192(c)	Vehicular Manslaughter With Personal Infliction of Great Bodily Injury (i.e., death)
192.5	Vehicular Manslaughter Involving a Vessel With Personal Infliction of Great Bodily Injury (i.e., death)
203	Mayhem
205	Aggravated Mayhem
206	Torture
207	Kidnapping
208	Kidnapping (Victim Under 14 Years of Age)
209	Kidnapping For Ransom, Reward, or Extortion, or to Commit Robbery or Rape
209.5	Kidnapping in the Commission of Carjacking
211	Robbery (All Robberies, Including Bank Robbery)
215	Carjacking
217	Assault With Intent to Commit Murder ( <i>repealed in 1980</i> )
217.1(b)	Attempted Murder of Government Official
218	Acting With Intent to Derail or Wreck a Train
219	Derailing or Wrecking a Train
220	All Violations of Penal Code § 220 (Assault With Intent to Commit Rape, Mayhem, Sodomy, Oral Copulation, Robbery, Penal Code § 264.1, 288, or 289)
243(d)	Battery With Personal Infliction of Serious Bodily Injury
243.4 (F/M)	Sexual Battery
244	Placing or Throwing Acid or a Flammable Substance or a Caustic Chemical With the Intent to Disfigure
245(a)(1)	Assault Involving a Deadly Weapon (regardless of personal use)
245(a)(2)	Assault With a Firearm
245(a)(3)	Assault With an Assault Weapon or Machinegun
245(b)	Assault With a Semiautomatic Firearm
245(c)	Assault on a Peace Officer or Firefighter With a Deadly Weapon or By Means of Force Likely to Produce GBI
245(d)	Assault on a Peace Officer or Firefighter With a Firearm
245.2	Assault on a Public Transit Employee With a Deadly Weapon or Firearm
245.3	Assault on a Custodial Officer With a Deadly Weapon or Firearm
245.5	Assault on a School Employee With a Deadly Weapon or Firearm



245.6	Hazing with Personal Infliction of Death or Serious/Great Bodily Injury
246	Discharging a Firearm at an Inhabited Dwelling House, Occupied Building, Occupied Motor Vehicle, Occupied Aircraft, Inhabited Housecar, or Inhabited Camper
246.3	Personally Discharging a Firearm in a Grossly Negligent Manner
247	Personally Discharging a Firearm at an Unoccupied Aircraft, Building, or Dwelling House
261	Rape
262	Rape of Spouse
264.1	Forcible Rape in Concert or Forcible Sexual Penetration in Concert
266 (F/M)	Enticing or Procuring a Female for Prostitution or Illicit Purposes
266c (F/M)	Inducing a Sex Act by a False Representation Creating Fear
266h(b)	Pimping Involving a Victim/Prostitute Who is a Minor
266i(b)	Pandering Involving a Victim/Prostitute Who is a Minor
266j	Providing or Transporting a Child Under Age 16 for a Lewd Act
267	Abducting a Minor for Purposes of Prostitution
269	Aggravated Sexual Assault of a Child
272 (M)	Contributing to the Delinquency of a Minor If Lewd Conduct is Involved
273ab	Assaulting a Child Under Age 8 That Results in Death
285	Incest
286 (F/M)	Sodomy
288 (F/M)	Lewd or Lascivious Act on a Minor or Dependent Person
288a (F/M)	Oral Copulation
288.2	Distributing or Exhibiting Harmful Matter to a Minor for the Purpose of Seduction
288.3	Contacting or Communicating With a Minor With the Intent to Commit a Specified Offense
288.4 (F/M)	Arranging a Meeting With a Minor or Person Believed to be a Minor For Purposes of Engaging in Lewd Behavior
288.5	Continuous Sexual Abuse of Child Under Age 14
288.7	Engaging in Sexual Intercourse, Sodomy, Oral Copulation, or Sexual Penetration With a Child Age 10 or Younger
289 (F/M)	Sexual Penetration
311.1 (F/M)	Sending, Bringing, or Possessing Obscene Matter Depicting a Person Under Age 18, With the Intent to Distribute or Exhibit
311.2(b)	Sending, Bringing, or Possessing Obscene Matter Depicting a Person Under Age 18, With the Intent to Distribute or Exhibit For Commercial Consideration
311.2(c) (F/M)	Sending, Bringing, or Possessing Obscene Matter Depicting a Person Under Age 18, With the Intent to Distribute or Exhibit to a Person 18 Years of Age or Older
311.2(d)	Sending, Bringing, or Possessing Obscene Matter Depicting a Person Under Age 18, With the Intent to Distribute or Exhibit to a Person Under Age 18
311.3 (F/M)	Sexual Exploitation of a Child
311.4 (F/M)	Using or Permitting a Minor to Pose or Model for Obscene Matter
311.10 (F/M)	Advertising for Sale or Distribution Obscene Matter Depicting a Person Under Age 18
311.11 (F/M)	Possession of Child Pornography
314.1/.2 (F/M)	Indecent Exposure
422	Threatening to Commit a Crime That Will Result in Death or GBI

451	Arson
451.5	Aggravated Arson
455	Attempted Arson
459–460(a)/.1	Any Burglary of the First Degree ( <i>Penal Code § 460(a) defines first-degree burglary as a burglary of an inhabited dwelling house, vessel, floating home, trailer coach, or inhabited portion of any building. This definition includes old second-degree daytime residential burglaries that occurred before January 1, 1983 (Penal Code §§ 459–460.2), if the structure burglarized was an inhabited dwelling.</i> )
487(d)/.3	Grand Theft Involving a Firearm
647.6 (F/M)	Annoying or Molesting a Child Under Age 18, or Engaging in Such Conduct With an Adult Who is Believed to Be a Minor ( <i>formerly Penal Code § 657a</i> )
653f(c)	Solicitation to Commit a Specified Sex Crime
664 (F/M)	Attempting to Commit Any Serious Felony or Attempting to Commit Any Crime Specified in Penal Code Section 290
664–187	Attempted Murder
667/1192.7	Any Felony in Which Defendant [1] Personally Used a Dangerous or Deadly Weapon (e.g., Vehicle Code § 2800.2), [2] Personally Used a Firearm (e.g., Penal Code §§ 246.3 and 247), or [3] Personally Inflicted Great Bodily Injury (No Specific Intent Required) (e.g., Penal Code § 243(d))
4500	Assault by Life Prisoner
4501	Assault With a Deadly Weapon by State Prison Inmate
4503	Holding a Hostage by State Prison Inmate
11418(b)(1)	Using a Weapon of Mass Destruction That May Cause Widespread, Disabling Illness or Injury in Humans
11418(b)(2)	Using a Weapon of Mass Destruction That Actually Causes Death
11418(b)(3)	Using a Weapon of Mass Destruction That May Cause Widespread Damage to or Disruption of the Food Supply or Drinking Water
11418(b)(4)	Using a Weapon of Mass Destruction That May Cause Widespread Damage to or Diminution in the Value of Stock Animals, Crops, or Seed
11418(c)	Using a Weapon of Mass Destruction That May Cause Widespread and Significant Damage to Public Natural Resources
12022(b)	Any Felony With Personal Use of a Deadly or Dangerous Weapon
12022.3(a)	Any Felony With Personal Use of a Firearm or Deadly Weapon in the Commission of a Sex Crime (Penal Code § 261, 262, 264.1, 286, 288, 288a, 289, or an attempt)
12022.5	Any Felony With Personal Use of a Firearm
12022.53	Any Felony With a Penal Code Section 12022.53 Firearm Enhancement
12022.55	Any Felony With Personal Discharge of a Firearm From a Motor Vehicle Which Results in Great Bodily Injury or Death
12022.7	Any Felony With Personal Infliction of Great Bodily Injury
12022.8	Any Felony With Personal Infliction of Great Bodily Injury in the Commission of Certain Sex Offenses
12022.9	Any Felony With Personal Infliction of Injury Which Results in the Termination of a Pregnancy
12034(c)	Discharging a Firearm From a Vehicle at Another Person [ <i>renumbered to Penal Code § 26100(c) as of January 1, 2012</i> ]
12034(d)	Discharging a Firearm From a Vehicle [ <i>renumbered to Penal Code § 26100(d) as of January 1, 2012</i> ]

12303.3	Exploding a Destructive Device or Explosive With Intent to Injure <i>[renumbered to Penal Code § 18740 as of January 1, 2012]</i>
12308	Exploding a Destructive Device or Explosive With Intent to Murder <i>[renumbered to Penal Code § 18745 as of January 1, 2012]</i>
12309	Exploding a Destructive Device or Explosive Causing Bodily Injury <i>[renumbered to Penal Code § 18750 as of January 1, 2012]</i>
12310(a)	Exploding a Destructive Device or Explosive Causing Death <i>[renumbered to Penal Code § 18755(a) as of January 1, 2012]</i>
12310(b)	Exploding a Destructive Device or Explosive Causing Great Bodily Injury or Mayhem <i>[renumbered to Penal Code § 18755(b) as of January 1, 2012]</i>
18740	Exploding a Destructive Device or Explosive With Intent to Injure <i>[renumbered from Penal Code § 12303.3 as of January 1, 2012]</i>
18745	Exploding a Destructive Device or Explosive With Intent to Murder <i>[renumbered from Penal Code § 12308 as of January 1, 2012]</i>
18750	Exploding a Destructive Device or Explosive Causing Bodily Injury <i>[renumbered from Penal Code § 12309 as of January 1, 2012]</i>
18755(a)	Exploding a Destructive Device or Explosive Causing Death <i>[renumbered from Penal Code § 12310(a) as of January 1, 2012]</i>
18755(b)	Exploding a Destructive Device or Explosive Causing Great Bodily Injury or Mayhem <i>[renumbered from Penal Code § 12310(b) as of January 1, 2012]</i>
26100(c)	Discharging a Firearm From a Vehicle at Another Person <i>[renumbered from Penal Code § 12034(c) as of January 1, 2012]</i>
26100(d)	Discharging a Firearm From a Vehicle <i>[renumbered from Penal Code § 12034(d) as of January 1, 2012]</i>

### **Health and Safety Code**

11353	Selling, Furnishing, Administering, Giving, or Offering to Sell, Furnish, Administer, or Give Heroin or Cocaine to a Minor
11353.7	Selling or Giving Heroin, Cocaine, PCP, or Methamphetamine to a Minor
11354	Selling, Furnishing, Administering, Giving, or Offering to Sell, Furnish, Administer, or Give Heroin or Cocaine to a Minor
11380	Furnishing or Offering to Furnish Methamphetamine or PCP to a Minor
11380.5	Furnishing or Offering to Furnish PCP to a Minor <i>(repealed January 1, 1991)</i>

### **Military and Veteran's Code**

1670/1672(a)	Sabotage: Hindering or Delaying Preparation for Defense or War and Causing Death or Great Bodily Injury
1671/1672(a)	Sabotage: Making or Omitting to Note Defects in Things Intended to be Used for Defense or War and Causing Death or Great Bodily Injury

### **Vehicle Code**

2800.2	Personally Driving a Vehicle in a Willful or Wanton Disregard for the Safety of Persons or Property While Eluding a Pursuing Peace Officer (e.g., where the car is used as a deadly or dangerous weapon)
2800.3	Driving a Vehicle in Violation of Vehicle Code Section 2800.1 and Personally Inflicting Death or Serious Bodily Injury

- 20001 Hit and Run and Personally Causing Great/Serious Bodily Injury or Death  
*[A section 20001 violation is a serious felony only if the victim suffers serious/great bodily injury and it is proved that the defendant's leaving the scene (i.e., flight), rather than the accident itself, caused the serious injury. (People v. Wood (2000) 83 Cal.App.4th 862, People v. Braz (1998) 65 Cal.App.4th 425.) This is because the gravamen of a section 20001 offense is not the initial injury to the victim, but leaving the scene without rendering aid.]*
- 23104(b) Reckless Driving With Personal Infliction of Great Bodily Injury
- 23105 Reckless Driving With Personal Infliction of Great Bodily Injury
- 23109.1 Engaging in a Speed Contest and Personally Inflicting Great Bodily Injury
- 23110(b) Personally Throwing a Projectile Capable of Doing Serious Bodily Harm at a Vehicle or Occupant, or Discharging a Firearm at a Vehicle or Occupant
- 23153 w/GBI Driving Under the Influence and Personally Inflicting Great Bodily Injury

**Any Felony Punishable by Death or Life Imprisonment (most are listed above)**

## Penal Code Section 290 Offenses [(a)–(c) only]

290.

(a) Sections 290 to 290.023, inclusive, shall be known and may be cited as the Sex Offender Registration Act. All references to “the Act” in those sections are to the Sex Offender Registration Act.

(b) Every person described in subdivision (c), for the rest of his or her life while residing in California, or while attending school or working in California, as described in Sections 290.002 and 290.01, shall be required to register with the chief of police of the city in which he or she is residing, or the sheriff of the county if he or she is residing in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence within, any city, county, or city and county, or campus in which he or she temporarily resides, and shall be required to register thereafter in accordance with the Act.

(c) The following persons shall be required to register:

Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 187 committed in the perpetration, or an attempt to perpetrate, rape or any act punishable under Section 286, 288, 288a, or 289, Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, or 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, Section 266j, 267, 269, 285, 286, 288, 288a, 288.3, 288.4, 288.5, 288.7, 289, or 311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; any statutory predecessor that includes all elements of one of the above-mentioned offenses; or any person who since that date has been or is hereafter convicted of the attempt or conspiracy to commit any of the above-mentioned offenses.

## **Penal Code Section 667.5(c) Violent Felonies [effective through December 31, 2011]**

### 667.5

(c) For the purpose of this section, “violent felony” shall mean any of the following:

- (1) Murder or voluntary manslaughter.
- (2) Mayhem.
- (3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.
- (4) Sodomy as defined in subdivision (c) or (d) of Section 286.
- (5) Oral copulation as defined in subdivision (c) or (d) of Section 288a.
- (6) Lewd or lascivious act as defined in subdivision (a) or (b) of Section 288.
- (7) Any felony punishable by death or imprisonment in the state prison for life.
- (8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7, 12022.8, or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in subdivision (a) of Section 12022.3, or Section 12022.5 or 12022.55.
- (9) Any robbery.
- (10) Arson, in violation of subdivision (a) or (b) of Section 451.
- (11) Sexual penetration as defined in subdivision (a) or (j) of Section 289.
- (12) Attempted murder.
- (13) A violation of Section 12308, 12309, or 12310.
- (14) Kidnapping.
- (15) Assault with the intent to commit a specified felony, in violation of Section 220.
- (16) Continuous sexual abuse of a child, in violation of Section 288.5.
- (17) Carjacking, as defined in subdivision (a) of Section 215.
- (18) Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1.
- (19) Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22 of the Penal Code.
- (20) Threats to victims or witnesses, as defined in Section 136.1, which would constitute a felony violation of Section 186.22 of the Penal Code.
- (21) Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.
- (22) Any violation of Section 12022.53.
- (23) A violation of subdivision (b) or (c) of Section 11418. The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence to display society’s condemnation for these extraordinary crimes of violence against the person.

## **Penal Code Section 667.5(c) Violent Felonies [effective January 1, 2012]**

[*Note:* Nonsubstantive renumbering of weapons statutes is effective January 1, 2012, and affects only paragraph (13) of subdivision (c).]

667.5

(c) For the purpose of this section, “violent felony” shall mean any of the following:

- (1) Murder or voluntary manslaughter.
- (2) Mayhem.
- (3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.
- (4) Sodomy as defined in subdivision (c) or (d) of Section 286.
- (5) Oral copulation as defined in subdivision (c) or (d) of Section 288a.
- (6) Lewd or lascivious act as defined in subdivision (a) or (b) of Section 288.
- (7) Any felony punishable by death or imprisonment in the state prison for life.
- (8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7, 12022.8, or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in subdivision (a) of Section 12022.3, or Section 12022.5 or 12022.55.
- (9) Any robbery.
- (10) Arson, in violation of subdivision (a) or (b) of Section 451.
- (11) Sexual penetration as defined in subdivision (a) or (j) of Section 289.
- (12) Attempted murder.
- (13) A violation of Section 18745, 18750, or 18755.
- (14) Kidnapping.
- (15) Assault with the intent to commit a specified felony, in violation of Section 220.
- (16) Continuous sexual abuse of a child, in violation of Section 288.5.
- (17) Carjacking, as defined in subdivision (a) of Section 215.
- (18) Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1.
- (19) Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22 of the Penal Code.
- (20) Threats to victims or witnesses, as defined in Section 136.1, which would constitute a felony violation of Section 186.22 of the Penal Code.
- (21) Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.
- (22) Any violation of Section 12022.53.
- (23) A violation of subdivision (b) or (c) of Section 11418. The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence to display society’s condemnation for these extraordinary crimes of violence against the person.

## Penal Code Section 1192.7(c) Serious Felonies [effective through December 31, 2011]

### 1192.7.

- (c) As used in this section, “serious felony” means any of the following:
- (1) Murder or voluntary manslaughter;
  - (2) mayhem;
  - (3) rape;
  - (4) sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person;
  - (5) oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person;
  - (6) lewd or lascivious act on a child under 14 years of age;
  - (7) any felony punishable by death or imprisonment in the state prison for life;
  - (8) any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm;
  - (9) attempted murder;
  - (10) assault with intent to commit rape or robbery;
  - (11) assault with a deadly weapon or instrument on a peace officer;
  - (12) assault by a life prisoner on a noninmate;
  - (13) assault with a deadly weapon by an inmate;
  - (14) arson;
  - (15) exploding a destructive device or any explosive with intent to injure;
  - (16) exploding a destructive device or any explosive causing bodily injury, great bodily injury, or mayhem;
  - (17) exploding a destructive device or any explosive with intent to murder;
  - (18) any burglary of the first degree;
  - (19) robbery or bank robbery;
  - (20) kidnapping;
  - (21) holding of a hostage by a person confined in a state prison;
  - (22) attempt to commit a felony punishable by death or imprisonment in the state prison for life;
  - (23) any felony in which the defendant personally used a dangerous or deadly weapon;
  - (24) selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug, as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code;
  - (25) any violation of subdivision (a) of Section 289 where the act is accomplished against the victim’s will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person;
  - (26) grand theft involving a firearm;
  - (27) carjacking;
  - (28) any felony offense, which would also constitute a felony violation of Section 186.22;
  - (29) assault with the intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220;
  - (30) throwing acid or flammable substances, in violation of Section 244;
  - (31) assault with a deadly weapon, firearm, machinegun, assault weapon, or semiautomatic firearm or assault on a peace officer or firefighter, in violation of Section 245;



- (32) assault with a deadly weapon against a public transit employee, custodial officer, or school employee, in violation of Sections 245.2, 245.3, or 245.5;
- (33) discharge of a firearm at an inhabited dwelling, vehicle, or aircraft, in violation of Section 246;
- (34) commission of rape or sexual penetration in concert with another person, in violation of Section 264.1;
- (35) continuous sexual abuse of a child, in violation of Section 288.5;
- (36) shooting from a vehicle, in violation of subdivision (c) or (d) of Section 12034;
- (37) intimidation of victims or witnesses, in violation of Section 136.1;
- (38) criminal threats, in violation of Section 422;
- (39) any attempt to commit a crime listed in this subdivision other than an assault;
- (40) any violation of Section 12022.53;
- (41) a violation of subdivision (b) or (c) of Section 11418; and
- (42) any conspiracy to commit an offense described in this subdivision.

## Penal Code Section 1192.7(c) Serious Felonies [effective January 1, 2012]

[*Note:* Nonsubstantive renumbering of weapons statutes is effective January 1, 2012 and affects only paragraph (36) of subdivision (c).]

### 1192.7

(c) As used in this section, “serious felony” means any of the following:

- (1) Murder or voluntary manslaughter;
- (2) mayhem;
- (3) rape;
- (4) sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person;
- (5) oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person;
- (6) lewd or lascivious act on a child under 14 years of age;
- (7) any felony punishable by death or imprisonment in the state prison for life;
- (8) any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm;
- (9) attempted murder;
- (10) assault with intent to commit rape or robbery;
- (11) assault with a deadly weapon or instrument on a peace officer;
- (12) assault by a life prisoner on a noninmate;
- (13) assault with a deadly weapon by an inmate;
- (14) arson;
- (15) exploding a destructive device or any explosive with intent to injure;
- (16) exploding a destructive device or any explosive causing bodily injury, great bodily injury, or mayhem;
- (17) exploding a destructive device or any explosive with intent to murder;
- (18) any burglary of the first degree;
- (19) robbery or bank robbery;
- (20) kidnapping;
- (21) holding of a hostage by a person confined in a state prison;
- (22) attempt to commit a felony punishable by death or imprisonment in the state prison for life;
- (23) any felony in which the defendant personally used a dangerous or deadly weapon;
- (24) selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug, as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code;
- (25) any violation of subdivision (a) of Section 289 where the act is accomplished against the victim’s will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person;
- (26) grand theft involving a firearm;
- (27) carjacking;
- (28) any felony offense, which would also constitute a felony violation of Section 186.22;
- (29) assault with the intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220;

- (30) throwing acid or flammable substances, in violation of Section 244;
- (31) assault with a deadly weapon, firearm, machinegun, assault weapon, or semiautomatic firearm or assault on a peace officer or firefighter, in violation of Section 245;
- (32) assault with a deadly weapon against a public transit employee, custodial officer, or school employee, in violation of Section 245.2, 245.3, or 245.5;
- (33) discharge of a firearm at an inhabited dwelling, vehicle, or aircraft, in violation of Section 246;
- (34) commission of rape or sexual penetration in concert with another person, in violation of Section 264.1;
- (35) continuous sexual abuse of a child, in violation of Section 288.5;
- (36) shooting from a vehicle, in violation of subdivision (c) or (d) of Section 26100;
- (37) intimidation of victims or witnesses, in violation of Section 136.1;
- (38) criminal threats, in violation of Section 422;
- (39) any attempt to commit a crime listed in this subdivision other than an assault;
- (40) any violation of Section 12022.53;
- (41) a violation of subdivision (b) or (c) of Section 11418; and
- (42) any conspiracy to commit an offense described in this subdivision.

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## Appendix B

# Excluded Offenses

**This list is not exhaustive**, but each code section below is currently excluded from the Realignment scheme's imposition of a county jail sentence and still qualifies for a state prison commitment. Bear in mind that any crime that makes no specific reference to punishment pursuant to Penal Code section 1170(h), but that is (1) a straight felony with or without a triad, or (2) punished by a fine and imprisonment in the state prison or county jail, still qualifies for a state prison commitment.

### Penal Code

67	Bribing an Executive Officer
68	Executive or Ministerial Officer Accepting a Bribe
85	Bribing a Legislator
86	Legislator Accepting a Bribe
92/93	Judicial Bribery
141(b)	Peace Officer Intentionally Planting Evidence
165	Local Official Accepting a Bribe
186.22(d)	Felony or Misdemeanor Committed for Benefit of Criminal Street Gang
186.26	Street Gang Activity
186.33(b)	Gang Registration Violation and Subsequent Conviction of Specified Crimes
222	Administering Stupefying Drugs in Commission of a Felony
243.7	Battery Against a Juror
243.9	Gassing a Peace Officer or Local Detention Facility Employee
245(a)(1)	Assault With Force Likely to Cause GBI
266a	Abduction or Procurement by Fraudulent Inducement for Prostitution
266e	Purchasing a Person for Prostitution or Placing a Person for Immoral Purposes
266f	Sale of a Person for Immoral Purposes
266h(a)	Pimping
266i(a)	Pandering
273a(a)	Felony Child Abuse Likely to Cause GBI or Death
273.4	Female Genital Mutilation
273.5	Felony Domestic Violence
290.018	Sex Offender Registration Violation
298.2	Knowingly Facilitating the Collection of Wrongfully Attributed DNA Specimens
299.5	Wrongful Use of DNA Specimens
347	Poisoning or Adulterating Food, Medicine, Drink, Etc.
368(b)	Felony Physical Abuse of Elder or Dependent Adult
417(b)	Brandishing a Loaded Firearm Upon the Grounds of a Day Care Center
417(c)	Brandishing a Firearm in the Presence of a Peace Officer
417.8	Felony Brandishing Firearm or Deadly Weapon to Avoid Arrest
424	Misappropriation of Public Funds
452	Reckless Burning
504/514	Embezzlement of Public Funds
598c	Possession or Importation of Horse Meat
598d(c)	Second or Subsequent Conviction for Offering Horse Meat for Human Consumption
600(d)	Harming or Interfering With a Police Dog or Horse and Causing GBI

- 646.9 Felony Stalking
- 653f(b) Solicitation for Murder
- 666(b) Petty Theft With Specified Prior Conviction
- 4530(a) Escape From State Prison by Force or Violence
- 4530(b) Escape From State Prison Without Force or Violence
- 4532 Escape
- 11418(d) Use of a Biologic Weapon of Mass Destruction
- 12021/12021.1 Possession of a Firearm by a Prohibited Person
- 12021.5(b) Carrying Firearm w/ Detachable Magazine During Commission of Street Gang Crime
- 12025(b)(3) Carrying a Concealed Firearm by a Gang Member
- 12025(b)(4) Unlawful Possession of a Firearm by a Person Prohibited per Penal Code Section 12021 or 12021.1, or Welfare & Institutions Code Section 8100/8103
- 12303.1 Carrying or Placement of Explosive Destructive Device on Passenger Vessel, Aircraft, Car, or Other Vehicle
- 12303.2 Possession of an Explosive or Destructive Device Near Specified Places

### **Elections Code**

- 18501 Public Official who Aids and Abets Voter Fraud

### **Government Code**

- 1090/1097 Conflict of Interest by Public Officer or Employee
- 1195 Taking Subordinate Pay
- 1855 Destruction of Documents

### **Health and Safety Code**

- 11361(a); (b) Employment of Minor to Sell Marijuana
- 11370.1 Possession of Controlled Substance While Armed With a Firearm
- 11380(a) Use of Minor to Transport, Possess, or Possess For Sale
- 120291 Knowingly Exposing a Person to HIV

### **Vehicle Code**

- 2800.2 Recklessly Evading a Police Officer  
*(may be a disqualifier under certain circumstances – see Appendix A)*
- 2800.3 Evading a Peace Officer Causing Death or Great Bodily Injury  
*(may be a disqualifier as a personal infliction of GBI – see Appendix A)*
- 20001 Hit and Run Driving Causing Death or Injury  
*(may be a disqualifier under certain circumstances – see Appendix A)*
- 23109(f)(3) Causing Serious Bodily Injury During Speed Contest, With Specified Prior Conviction
- 23110(b) Throwing Object at Motor Vehicle With Intent to Cause Great Bodily Injury  
*(may be a disqualifier under certain circumstances – see Appendix A)*
- 23153 Driving Under the Influence Causing Injury  
*(may be a disqualifier under certain circumstances – see Appendix A)*

## Appendix C

# California Code Sections Affected by Realignment's Penal Code Section 1170(h)

The code sections prefaced by an asterisk [\*] have been amended by implication because the punishment specified for the underlying crime has been explicitly amended to reference Penal Code section 1170(h).

### **Business and Professions Code**

*580-584; 585	Fraud Involving Medical Degrees, Licenses, or Certificates
650	Unearned Rebates, Refunds, and Discounts—Consideration for Referral of Patients, Clients, or Customers
654.1	Unearned Rebates, Refunds, and Discounts—Prohibited Referrals of Patients, Clients, or Customers to Certain Laboratories
655.5	Unearned Rebates, Refunds, and Discounts—Charge, Bill, or Solicitation of Payment for Clinical Laboratory Services
729	Sexual Exploitation by Physicians, Surgeons, Psychotherapists, or Alcohol and Drug Abuse Counselors
1282.3	Clinical Laboratory Technology—Improper Collection or Handling of Biological Specimens
1701	Dentistry—Sales, Purchase, or Barter of Diploma, License, or Transcript; Counterfeiting and Alteration; False Affidavit; Unlicensed Practice; Practice Under Assumed Name
1701.1	Practice of Dentistry Without a Valid Certificate, License, Registration, or Permit; Conspirators, Aiders, and Abettors
1960	Dental Hygienists—Misdemeanors; First Offense
2052	Medicine—Practice, Attempt, or Advertising Without Certificate; Conspiracy or Aiding and Abetting
2273; 2315(b)	Medicine—Employment of Persons to Procure Patients
4324	Pharmacy—Forged Prescriptions; Possession of Drugs Obtained by Forged Prescription
5536.5	Architecture—State of Emergency; Practice Without License or Holding Self Out as Architect
6126	Attorneys—Unauthorized Practice or Attempted Practice; Advertising or Holding Out
6152; 6153	Attorneys—Unlawful Solicitation, Violations
6787; 6788	Professional Engineers—State of Emergency
7028.16	Contractors—State of Emergency; Acting as Contractor Without License; Penalty
7739	Funeral Directors and Embalmers—Preneed Funeral Arrangements
*9889.22	Constitutes Perjury and Punishable as Provided in Penal Code (see P.C. § 126)
10238.6	Real Estate Regulations—Real Property Securities Dealers
*11010	Unlawful Notice of Intention to Sell or Lease
*11010.1	Unlawful Notice of Intention to Issue Notes Secured by Individual Lots in Unrecorded Subdivision

*11013.1	Sale or Lease of Lots in Subdivision Subject to Blanket Encumbrance
*11018.2	Sale or Lease Without Public Report
*11018.7	Unauthorized Amendments or Modifications in Declarations of Restrictions, Bylaws, Articles of Incorporation, or Other Instruments Controlling or Otherwise Affecting Rights to Ownership, Possession, or Use of Interests in Subdivisions
*11019	Violation of Commissioner's Orders
11020	Subdivided Lands—Investigation, Regulation, and Report—Forged, Altered, False, or Counterfeit Public Reports
*11022	False or Misleading Advertising
11023	Subdivided Lands—Investigation, Regulation, and Report—Violations
*11226	Failure to Meet Registration of Sale or Offer to Sell Requirements
*11227	Public Report Violations
*11234	Unlawful Preparation of Public Reports
*11244	Unlawful Release of Escrowed Funds
*11245	Unlawful Misrepresentations With Respect to Timeshares
*11283	Violation of Commissioner's Orders
11286	Vacation Ownership and Time-Share Act of 2004—Powers, Investigation, and Enforcement—Unlawful to Knowingly Make, Issue, Publish, Deliver, or Transfer as True Any Forged, Altered, False, or Counterfeit Public Report
11287	Vacation Ownership and Time-Share Act of 2004—Powers, Investigation, and Enforcement
11320	Licensing and Certification of Real Estate Appraisers—Practicing Without a License
*16721	Discriminatory Exclusion From a Business Transaction
*16721.5	Discriminatory Letters of Credit or Contracts For Goods or Services
*16727	Lease or Sale of Goods Under Agreement With Lessee or Purchaser Not to Use or Deal in Competitor's Goods
16755(a)(2)	Conspiracy Against Trade
17511.9	Telephonic Sellers
*17550.14;	Sellers of Travel
*17550.15(b); (c)	
17550.19	
22430	Manufacture or Sale of Deceptive Identification Document
*25372	Improper Disposal By ABC Agent
*25603	Bringing Alcoholic Beverages Into Prison, Jail, Etc.
25618	Alcoholic Beverages; Regulatory Provisions

### **Civil Code**

892	Rent Skimming
*1695.6; 1695.8	Violations of Home Equity Sales Contracts By Equity Purchaser
*1812.116(b); (c);	Contracts Discount Buying Services
1812.125	
1812.217	Contracts For Seller Assisted Marketing Plans
*2945.4; 2945.7	Mortgage Foreclosure Consultants
2985.2	Encumbering Realty Sold Under Unrecorded Sales Contract in Amount Exceeding Amount Due Under Contract Without Consent
2985.3	Appropriation By Seller of Payment By Buyer When Payment By Seller on Obligation Secured By Encumbrance on Realty Due



## **Corporations Code**

2255	Receipt or Possession of Corporate Property, or Destruction, Falsification or Alteration of Documents, or Omission of Material Entry With Intent to Defraud
2256	Exhibit of False, Forged, or Altered Instrument of Evidence to Public Officer or Board With Intent to Deceive
6811	Nonprofit Public Benefit Corporations—Fraudulent Distributions
6814	Nonprofit Public Benefit Corporations—Deception of a Public Officer Examining Organization of Corporation
8812	Nonprofit Mutual Benefit Corporations—Fraudulent Distributions
8815	Nonprofit Mutual Benefit Corporations—Deception of Public Officer Examining Organization of Corporation
12672	Consumer Cooperative Corporations—Distribution of Assets With Design of Defrauding Creditors or Members, Etc.
12675	Consumer Cooperative Corporations—Knowingly Exhibiting False, Forged, or Altered Books, Papers, Etc. to Public Examiner With Intent to Deceive
22002	Unincorporated Associations—Fraudulent Documents and Accounts
25540	Corporate Securities Law of 1968
22541	Corporate Securities Law of 1968—Use of Device, Scheme, or Artifice to Defraud; Fraudulent Practices
*27101; 27202	Security Owners Protection
28880	Capital Access Companies
*29100–29101; 29102	Bucket Shop Law
*29520; *29535–29538; 29550	Commodities, Willful Violations
31410	Franchise Investment Law
31411	Willful Employment of Device, Scheme, or Artifice to Defraud or Willful Engagement in Practice Which Operates as Fraud or Deceit
35301	Subversive Organization Registration Law, Violation By Officer or Director

## **Education Code**

7054	Political Activities of School Officer and Employees, Use of District Property
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## **Elections Code**

18002	Failure to Perform Violation of Duty
18100	Voter Registration
18101	Willful Registration of a Fictitious Person or Person Not Requesting Registration
18102	Voter Registration, Deputy or Registration Election Official
18106	Voter Registration, Tampering With Party Affiliation Declaration
18200	Nomination of Candidates, Subscription of False Names to Petitions
18201	Nomination of Candidates, False Making, Defacement of, or Destruction of Nomination Papers
18203	Nomination of Candidates, Filing or Submission of False Nomination Papers or Declaration of Candidacy
18204	Nomination of Candidates, Suppression of Nomination Papers or Declarations of Candidacy

18205	Nomination of Candidates, Payment of Consideration to Induce a Person Not to Become or to Withdraw as a Candidate
18310	Political Party Caucuses, Consideration For Voting or Agreeing to Vote Against Nominees or Candidates
18311	Political Party Caucuses, Bribes—Giving or Receiving
18400	Manufacture, Use, or Furnishing of Imitation Ballot Paper or Ballot Cards
18403	Receipt or Examination of, or Solicitation of Voter to Show Voted Ballot
18502	Corruption of the Voting Process, Interference With Officers or Voters
18520	Corruption of Voters, Offer or Promise of Office, Place, or Employment to Induce Other to Vote or Refrain From Voting
18521	Corruption of Voters, Gift or Other Consideration to Induce Person to Vote or Refrain From Voting
18522	Corruption of Voters, Payment or Offer to Pay, Lend, or Contribute to Induce Person to Vote or Refrain From Voting
18523	Corruption of Voters, Bribery, Payment of Consideration With Intent to Bribe
18524	Corruption of Voters, Boarding, Lodging, or Maintaining Persons With Intent to Secure Vote or Induce Voting
18540	Intimidation of Voters, Use of Force, Violence, Tactic of Coercion, or Intimidation
18544(a)	Intimidation of Voters, Persons in Possession of a Firearm or Uniformed Peace Officers or Security Guards Stationed Near Polling Place Without Authorization
18545	Intimidation of Voters—Hiring or Arranging For Another in Possession of Firearm or Uniformed Peace Officer or Security Guard to Be Stationed Near Polling Place
18560	Corruption of Voting—Fraudulent Voting
18561	Corruption of Voting—Procuring or Advising Vote of Unqualified Persons; Aiding or Abetting Offenses
18564	Corruption of Voting—Tampering With or Damaging Voting Machines; Interference With Secrecy of Voting; Unauthorized Making or Possession of Keys; Willful Substitution of Forged Source Codes
18566	Corruption of Voting—Forging or Counterfeiting Election Returns
18567	Corruption of Voting—Altering Returns
18568	Corruption of Voting—Offenses at the Polls
18573	Corruption of Voting—Deceiving Voter Unable to Read; Causing Voter to Vote For Different Person Than Intended Through Fraud
18575	Corruption of Voting—Unlawfully Acting as Election Officers; Acting in Unauthorized Capacity
18578	Corruption of Voting—Vote By Mail Ballot; Fraudulent Signature
18611	Initiative, Referendum, and Recall—False or Ineligible Signatures on Petition—Circulation With False, Forged, or Fictitious Names
18613	Initiative, Referendum, and Recall—False or Ineligible Signatures on Petition—Fictitious Names or Signing Name of Another
18614	Initiate, Referendum, and Recall—False or Ineligible Signatures or Petition—Filing With False Signatures
18620	Initiative, Referendum, and Recall—Improper Payments to Prevent Petition Circulation and Filing; Soliciting or Obtaining Money or Thing of Value For Inducing Proponents to Abandon Petition
18621	Initiative, Referendum, and Recall—Improper Payments to Prevent Petition Circulation and Filing; Receipt By Proponent of Consideration For Abandoning Petitions

- 18640 Initiative, Referendum, and Recall—Refusal of Circulators to Turn in Petitions—  
Failure to Surrender Petitions to Proponents
- 18660 Initiative, Referendum, and Recall—False Affidavits Concerning Petitions; False  
Affidavits
- 18661 Initiative, Referendum, and Recall—False Affidavits Concerning Petitions; Public  
Officers; False Returns, Certifications, or Affidavits
- 18680 Initiative, Referendum, and Recall—Misuse of Campaign Funds—Misappropriation;  
Expenses Within Due and Lawful Execution of the Trust

### **Financial Code**

- 3510 International and Foreign Banking and Financing—Control of Commodity Prices
- 3532 International and Foreign Banking and Financing Corporations—Misrepresentation  
of State Liability For Bonds or Obligations of Corporation
- 5300 Savings Association Law, Violation as a Public Offense
- 5302(a); (b) Savings Association Law—Involvement of Specified Persons in Affairs of  
Association
- 5303(a); (b); (c) Savings Association Law—Making or Publishing False or Untrue Material Intending  
to Deceive
- 5304(a); (b); (c) Savings Association Law—Corrupt Influence of Institution—Affiliated Party
- 5305 Savings Association Law—Misapplication of Association Funds By Institution—  
Affiliated Party
- 5307 Savings Association Law—False Statements or Rumors Circulated to Injure Business  
Reputation, Financial Condition, or Standing
- \*6525.5(a); (b) See Section 5302(a)
- 10004 Savings Association Law—Foreign (National) Savings Companies—Selling,  
Disposing, Taking, or Soliciting Savings Accounts
- 12102 Check Sellers, Bill Payers, and Proraters—Application and Punishment
- 14752 Credit Union Management and Operation, Effect on Exercise of Administrative  
Authority
- \*14753 Receipt of Payment For Favors By Director, Officer, or Employee
- \*14754 Knowing Overdrafts By Director, Officer, or Employee
- \*14755 Unlawful Receipt or Possession of Credit Union Property; Failure to Make Entry in  
Books
- \*14756 False Statements; Refusal or Neglect to Make Entries; Refusal to Allow Inspections
- \*14758 Unlawful Deposits of Funds
- \*14759 False or Untrue Statements Concerning Business or Affairs of Credit Union;  
Alteration, Abstraction, Concealment, or Destruction of Book, Record, Report, or  
Statement
- 17700 Escrow Agents Crimes
- 18349.5(i) Industrial Loan Companies
- 18435 Industrial Loan Companies, Prohibited Practices
- \*18445 Unlawful Commissions
- \*18446 Unlawful Possession of Company Property; Omission of Entries in Books and  
Records
- \*18447 Making or Publishing False Entries in Books or Records, Reports or Statements;  
Refusal to Make Proper Entries or Allow Inspection
- \*18453 Unauthorized Sale of Investment Certificates

*18454	Falsification of Books or Records; Omission to Make New Entries; Alteration or Concealment of Books or Records
*18457	Abstraction or Misapplication of Money, Funds, or Property
22753	California Finance Lenders Law, Consumer Loan
*22780	California Finance Lenders Law, Commercial Loan
31880	Business and Industrial Development Corporations
50500	California Residential Mortgage Lending Act—Willful Violation of Code Provisions, Rules, or Orders

### **Fish and Game Code**

12004(b)	Punishment For Violation of Fish and Game Code Sections 8685.5–8685.7 or 8688
12005(a)	Punishment For Sale of Bear Meat or Other Parts

### **Food and Agriculture Code**

*17551; 17701	Animals, Unlawful Marking and Branding
18932	Slaughtered Animals, Meat and Poultry Inspection
18933	Slaughtered Animals, Adulteration of Meat, Meat Food Product, or Poultry Product With Product of Animal Which Has Died
19440	Slaughtered Animals, Horse Meat and Pet Food
19441	Slaughtered Animals, Horse Meat and Pet Food Adulteration
80174	California Desert Native Plants, Second Conviction

### **Government Code**

1368	Appointments, Nominations, Commissions, and Oaths of Public Officers and Employees
1369	Public Officers and Employees, Advocating Overthrow of Government
3108	Oath or Affirmation of Allegiance For Disaster Service Workers and Public Employees, False Statement as Perjury
3109	Oath or Affirmation of Allegiance For Disaster Service Workers and Public Employees, Advocating or Affiliating With Organization That Advocates Overthrow of Government
*5951; 5954	Public Bonds and Obligations—Fractional Interest in Local Agency Obligations
6200	Public Records, Documents, and Certificates—Custodial Officers; Theft, Destruction, Alteration, Falsification
6201	Public Records, Documents, and Certificates—Noncustodial Officers; Theft, Destruction, Alteration, Falsification
8670.64	Oil Spill Response and Contingency Planning
9056	Crimes Against the Legislative Power—Soliciting or Accepting Pay For Opposing Measure After Having Secured Its Introduction
27443	County Public Administrators—Conflicts of Interest
51018.7(a)	Powers and Duties of Cities and Counties—the Elder California Pipeline Safety Act of 1981; Sign or Marker Offenses

### **Harbors and Navigation Code**

264	Mismanagement of Steam Passenger Vessel Causing Bursting of Boiler
*302	Sinking or Setting Adrift of Vessel of More Than 10 Tons
*304	Sinking or Injuring Vessels or Cargo

*305	Offenses By Persons Other Than Person in Command of Vessel
*306	Fraudulent Documents
310	Navigation Offenses—Felony Violations
*655(f)	Operation Under Influence of Alcoholic Beverage or Drug; Actions Causing Personal Injury
*656.2	Failure to Perform Required Duties of Operator of Vessel Involved in Accident Resulting in Personal Injury
*656.3	Failure to Perform Required Duties of Operator of Vessel Involved in Accident Resulting in Death or Disappearance of Any Person
668(c)(1); (g)	Operation and Equipment of Vessels

### **Health and Safety Code**

1390	Licensing Provisions—Health Care Service Plans
1522.01(c)	Licensing Provisions—California Community Care Facilities Act—Registration as Sex Offender; Disclosure By Community Care Facility Client; Operator Disclosure; Improper Use
1621.5(a)	Licensing Provisions—Human Whole Blood, Human Whole Blood Derivatives, and Other Biologics—Donation of Blood, Etc., By a Person Knowing He or She Has AIDS or Has Tested Reactive to Etiologic Agent of AIDS or Its Antibodies; Exempt Persons; Disclosure of Test Results in Criminal Investigation
7051	Dead Bodies—Unlawful Removal of Human Remains or Foreign Materials
7051.5	Dead Bodies—Unlawful Removal or Possession of Dental Gold or Silver, Jewelry, or Mementos
8113.5(b)(2); (b)(3)	Cemeteries—Requirements For Burials—Interment of More Than One Body in Single Plot or Occupied Grave
8785	Private Cemeteries—Violations Relating to Collection, Investment, or Use of Endowment Care or Special Care Funds
11100(f)(2)	Uniform Controlled Substances Act—Regulation and Control—Transactions Reported; Offenses Involving Minors
11100.1	Uniform Controlled Substances Act—Regulation and Control—Obtaining Substances From Sources Outside State
11105	Uniform Controlled Substances Act—Regulation and Control—False Statement in Connection With Report or Record
11153	Uniform Control Substances Act—Controlled Substances Prescriptions; Issuance; Filling; Legality;
11153.5	Uniform Controlled Substances Act—Furnishing Controlled Substances For Other Than Legitimate Medical Purposes
11162.5(a)	Uniform Controlled Substances Act—Requirements of Prescriptions—Official Blanks; Counterfeit
11350(a); (b)	Uniform Controlled Substances Act—Offenses Involving Controlled Substances Formerly Classified as Narcotics—Possession of Designated Controlled Substances
11351	Uniform Controlled Substances Act—Offenses Involving Substances Formerly Classified as Narcotics—Possession or Purchase For Sale of Designated Controlled Substances
11351.5	Uniform Controlled Substances Act—Possession of Cocaine Base For Sale
11352(a); (b)	Uniform Controlled Substances Act—Transportation, Sale, Giving Away, Etc., of Designated Controlled Substances

- 11353.5 Uniform Controlled Substances Act—Controlled Substances Given Away or Sold to Minors; Locations Where Children Are Present; Comparative Ages of Defendant and Minor
- 11353.6(c) Uniform Controlled Substances Act—Juvenile Drug Trafficking and Schoolyard Act of 1988
- 11353.7 Uniform Controlled Substances Act—Adult Preparing For Sale, Sale, or Gift of Controlled Substance to Minor in Public Parks
- 11355 Sale or Furnishing Substance Falsely Represented to Be a Controlled Substance; Punishment [Added By ABX1 17, Sec. 4]
- 11357(a) Uniform Controlled Substances Act, Possession in School or on School Grounds
- 11358 Cultivation, Harvesting, or Processing Marijuana
- 11359 Marijuana, Possession For Sale
- 11360(a) Marijuana, Transportation, Sale, Import, Give Away, Etc.
- 11366.5(a); (b); (c) Renting, Leasing, or Making Available For Use a Building, Room, Space, or Enclosure For Unlawful Manufacture, Storage, or Distribution of a Controlled Substance; Allowing Building, Room, Space, or Enclosure to Be Fortified to Suppress Law Enforcement Entry to Further Sale of Specified Controlled Substances
- 11366.6 Utilizing Building, Room, Space, or Enclosure Designed to Suppress Law Enforcement Entry in Order to Sell, Manufacture, or Possess For Sale Specified Controlled Substances
- 11366.8(a); (b) Construction, Possession, or Use of False Compartment With Intent to Conceal Controlled Substance
- 11370.6(a) Possession of Moneys or Negotiable Instruments in Excess of \$100,000 Involved in Unlawful Sale or Purchase of Any Controlled Substance
- 11371 Uniform Controlled Substances Act—Prescription Violations; Inducing a Minor to Violate Provisions
- 11371.1 Uniform Controlled Substances Act—Fraud and False Representation; Inducing Minor to Violate Provisions
- 11374.5(a) Manufacturer Violating Hazardous Substance Disposal Law, Disposal of Controlled Substance or Its Precursor
- 11377(a) Uniform Controlled Substance Act—Unauthorized Possession
- 11378 Uniform Controlled Substances Act—Possession For Sale
- 11378.5 Uniform Controlled Substances Act—Possession For Sale of Designated Substances Including Phencyclidine
- 11379(a); (b) Uniform Controlled Substances Act—Offenses Involving Substances Formerly Classified as Restricted Dangerous Drugs—Transportation, Sale, Furnishing, Etc.
- 11379.5(a); (b) Uniform Controlled Substances Act—Offenses Involving Substances Formerly Classified as Restricted Dangerous Drugs—Transportation, Sale, Furnishing, Etc. of Designated Substances Including Phencyclidine
- 11379.6(a); (c) Uniform Controlled Substances Act—Manufacturing, Compounding, Converting, Producing, Deriving, Processing, or Preparing By Chemical Extraction or Independently By Means of Chemical Synthesis Enumerated Controlled Substances
- 11380.7(a) Uniform Controlled Substances Act—Trafficking Violation on Grounds of or Within 1,000 Feet of Drug Treatment Center, Detoxification Facility, or Homeless Shelter

11382	Sale or Furnishing Substances Falsely Represented to Be a Controlled Substance; Punishment [Added By ABX1 17, Sec. 5]
11383(a); (b); (c); (d)	Uniform Controlled Substance Act—Possession With Intent to Manufacture Phencyclidine (PCP) or Any of Its Analogs
11383.5(a)–(f)	Uniform Controlled Substances Act—Possession With Intent to Manufacture Methamphetamine or N-ethylamphetamine
11383.6(a); (b); (c); (d)	Uniform Controlled Substances Act—Possession With Intent to Sell, Transfer, or Furnish Chemicals to Persons Having Intent to Manufacture Phencyclidine (PCP)
11383.7(a)–(f)	Uniform Controlled Substances Act—Possession With Intent to Sell, Transfer, or Furnish Chemicals to Persons Having Intent to Manufacture Methamphetamine or N-ethylamphetamine
115215(b); (c)	Unauthorized Disposal or Transportation of Radioactive Material [Added By AB 117, Sec. 4]
*12305; 12401	Unlawful Possession of Explosives
12700(b)(3); (b)(4)	Explosives—Fireworks and Pyrotechnic Devices—Offenses
17061(b)	Willful Violation of Employee Housing Act Causing Injury
18124.5	Manufactured Housing—Registration and Titling of Manufactured Homes, Mobile Homes, and Commercial Coaches—Alteration, Forgery, Counterfeiting, or Falsifying Documents or Decals
25180.7(c)	Hazardous Waste Control—Designated Government Employee; Disclosure of Information; Failure to Disclose
25189.5(b); (c); (d); (e)	Hazardous Waste Control—Disposal, Treatment, or Storage at, or Transportation to Facilities Without Permits or at Unauthorized Points
25189.6(a); (b)	Hazardous Waste Control—Knowingly or With Reckless Disregard, Treating, Handling, Transporting, Disposing, or Storing in Manner Causing Unreasonable Risk; Public Offense
25189.7(b); (c)	Hazardous Waste Control—Burning or Incineration at Unpermitted Facility or Unauthorized Point
25190	Hazardous Waste Control—Violators Guilty of Misdemeanor
25191	Hazardous Waste Control—Acts Subject to Fine or Imprisonment; Second Conviction
25395.13(b)	Hazardous Substance Account—Prohibited Acts
25515(a)	Hazardous Materials Release Response Plans and Inventory
25541	Hazardous Materials Release Plans and Inventory—False Material Statements, Representations, or Certifications in Documents
42400.3(c)	Nonvehicular Air Pollution Control—Willful and Intentional Emission of Air Contaminant; Causing GBI or Death
44209	Vehicular Air Pollution Control—Used Direct Import Vehicles—Falsification of Test Records or Reports
100895	Regulation of Laboratory Services—Environmental Laboratories Punishment; Subsequent Violations; Effect of Suspension, Revocation, or Withdrawal of Accreditation
109335	Drugs, Devices, and Cosmetics—Treatment of Cancer and Other Serious Diseases—Failure to Comply With Regulations Adopted Under Specified Articles
115215(b)(1); (b)(2); (c)(1); (c)(2)	Radiation Control Law—Unauthorized Disposal or Transportation

116730	Drinking Water—California Safe Drinking Water Act
116750(a); (b)	Tampering With Public Water System
118340(a); (c); (d)	Medical Waste—Transportation, Storage, Treatment, and Disposal;
131130	Public Health—Failure to Comply With Order to Remove From Sale Any Product Linked to Outbreak of Illness, Injury, or Product Tampering

### **Insurance Code**

700(b)	The Business of Insurance—Certificate of Authority—Admittance Required; Exception For State Compensation Insurance Fund; Compliance; Hearings; Issuance of Certificate
750	The Business of Insurance—Unlawful Referrals
833	The Business of Insurance—Issue of Securities—Persons
1043	The Business of Insurance—Proceedings in Cases of Insolvency and Delinquency— Power to Mutualize, Reinsure, or Rehabilitate Insurer; Employment of Commissioner or Deputies
1215.10(d); (e)	The Business of Insurance—Incorporated Insurers—Insurance Holding Company System Regulatory Act
*1760.5	Willful Violation of Placement Limitations
*1761	Willful Placement of Insurance With Non-Admitted Insurer
*1763	Willful Violation of Conditions to Placement of Insurance
*1764.1	Willful Violation of Disclosure Requirements For Placement of Insurance
*1764.2	Willful Violation of Prerequisites to Placement of Insurance
*1764.3	Willful Violation of Requirements to Deliver Policy
*1764.4	Willful Failure to Authenticate as Specified
1764.7	The Business of Insurance—Surplus Line Brokers—Violation; Public Offense
*1765.1	Willful Violation of Requirements For Placing Insurance Providing Coverage in Mexico
*1765.2	Willful Violation of Trust Requirements For Placing Insurance Providing Coverage in Mexico
*1767	Willful Failure to Maintain Office in California
*1780	Willful Failure to Notify Commissioner of Change of Address
1814	Bail Licenses, Qualification and Licensing
1871.4	The Insurance Frauds Prevention Act, False and Fraudulent Claims
10192.165(e)	Medicare Supplement Policies, Knowing or Intentional Violation
*11160; 11161	Prohibited Compensation Payments
11162	Fraternal Benefit Societies, Borrowing Funds or Guaranteeing Loans From Society
11163	Fraternal Benefit Societies, Consideration For Procuring Loan
11760(a)	False or Fraudulent Statement For Purpose of Reducing Premium, Rate, or Cost of Workers' Compensation Insurance
11880(a)	State Compensation Insurance Fund. False or Fraudulent Statement For Purpose of Reducing Premium, Rate, or Cost of Workers' Compensation Insurance
12660	Land Value Insurance Prohibited
12845	Classes of Insurance—Service Contracts—Violations of Sections 12815, 12830, and 12835



## Labor Code

227	Health, Welfare, or Pension Fund or Vacation Plan, Failure to Make Agreed Payments
6425(c)	Violation Causing Death or Impairment of Body of Employee
7771	Mismanagement of Steam Boilers Causing Death

## Military and Veterans Code

145	State Militia—Violation of Martial Law
1318	Veterans Buildings, Memorials, and Cemeteries—Vandalism
*1670, *1671 1672(b)	National Defense—Sabotage Prevention Act of 1950—Violation of Sections 1670–1671 Not Resulting in Death or GBI
1673	National Defense—Sabotage Prevention Act of 1950, Attempt to Commit Crime
*1674	Conspiracy to Commit Sabotage

## Penal Code

*32; 33	Accessories to Crime
38	Misprision of Treason
67.5(b)	Bribes; Giving or Offering to Ministerial Officers, Employees, or Appointees
69	Obstructing or Resisting Executive Officers in Performance of Their Duties
71	Threatening Public Officers and Employees and School Officials
72	Fraudulent Claims
72.5(a); (b)	Seeking Public Funds For Reimbursement of Costs For Attendance at Political Functions
76(a)	Threatening Certain Public Officials, Appointees, Judges, Staff, or Their Immediate Families; Intent and Apparent Ability to Carry Out Threat
95	Corrupt Influencing of Jurors, Arbitrators, Umpires, or Referees
95.1	Threatening Juror
96	Misconduct of Jurors, Arbitrators, Umpires, or Referees
99	Bribery and Corruption—Superintendent of State Printing; Prohibited Interest in Contracts
107	Escapes and Aiding Therein—Public Training School, Reformatory, or County Hospital, Felony Prisoners
109	Escapes and Aiding Therein—Public Training School or Reformatory
113	Manufacture, Distribution, or Sale of False Citizenship or Resident Alien Documents
114	Use of False Citizenship or Resident Alien Documents
115.1(b); (f)	Forging, Stealing, Mutilating, and Falsifying Judicial and Public Records and Documents—Campaign Advertisements; Use of Unauthorized Signatures
*118; *118a; 126	Perjury, False Affidavit
*127	Subornation of Perjury
*129	False Return Required to Be Under Oath
136.7	Sexual Offender Revealing Name and Address of Witness or Victim With Intent That Another Prisoner Initiate Harassing Correspondence
137(b)	Influencing Testimony or Information Given to a Law Enforcement Official
139	Threat to Use Force or Violence Upon Witnesses, Victims, or Their Immediate Families

140(a)	Threatening Witnesses, Victims, or Informants
142(a)	Officer Refusing to Receive or Arrest Person Charged With Offense; Designation of Facilities and Classes of Prisoners By Sheriff
146a(b)	Impersonating Officer
146e(b)	Unlawful Publication, Dissemination, or Disclosure of Residence Address or Telephone Number of Peace Officer, Nonsworn Police Dispatchers, Employees of City Department or County Sheriff's Office, or Public Safety Official; Inclusion of Family Members
148(b); (c); (d)	Resisting, Delaying, or Obstructing Officer or Emergency Medical Technician; Interference With Public Safety Radio Communications; Removal or Taking of Weapon
148.1(a); (b); (c); (d)	False Report of Secretion of Explosive or Facsimile Bomb; Sending or Placing a False or Facsimile Bomb
148.3(b)	False Report of Emergency; Reports of Missing Children
148.4(b)	Fire Protection Equipment; Fire Alarms; Tampering With Systems; False Alarms
148.10(a)	Resisting Peace Officer Resulting in Death or Serious Bodily Injury to Peace Officer
149	Officer Unnecessarily Assaulting or Beating Any Person
153	Compounding or Concealing Crimes
156	False Pretenses Regarding Birth of Child to Intercept Inheritance
157	Substitution of One Child For Another
168(a)	Search Warrant or Warrant of Arrest For Felony; Disclosure Prior to Execution
171c(a)(1)	Loaded Firearms; Bringing Into or Possession Within State Capitol, Legislative Offices, Etc.; Possession of Enumerated Prohibited Weapons
171d	Loaded Firearms; Taking Into, or Possession of, Within Governor's Mansion or Residence of Other Constitutional Office, Etc.
181	Slavery, Infringement of Personal Liberty; Purchase of Custody
182(a)	Conspiracy
*182.5	Participation In Criminal Street Gang; Punished as Conspiracy; Except Crime Punishable By Life or Death ( <i>see disqualifiers—Appendix A</i> )
186.10	Money Laundering
186.28(a)	Firearms; Supply; Sell or Give Possession; Participation In Criminal Street Gangs
191.5(b); (c)(2)	Vehicular Manslaughter While Intoxicated
*192(b); 193(b)	Involuntary Manslaughter; Punishment
*192.5(b); 193.5(b)	Manslaughter Committed During Operation of Vessel
210.5	False Imprisonment For Purposes of Protection From Arrest or Use as Shield
217.1(a)	Assault on Public Officials
218.1	Attempts to Kill—Obstructing Railroad Track
219.1	Throwing Missiles at Common Carrier Vehicles With Intent to Wreck or do Bodily Harm
*236; 237(a)	False Imprisonment
241.1	Assault Upon Custodial Officer
241.4	Assault Upon Peace Officer of School District
241.7	Assault Against Jurors
243(c)(1); (c)(2) (d)	Battery

243.1	Battery Against Custodial Officer In Performance of Duties
243.6	Battery Against School Employee; Retaliation For Performance of Duties
244.5(b); (c)	Assault With Stun Gun or Less Lethal Weapon
245.6(a); (d)	Hazing
246.3(a)	Discharging Firearm In Grossly Negligent Manner [Is There a Strike Per P.C.1192.7(c)(23)?]
247.5	Discharge of Laser at Aircraft
261.5(c); (d)	Unlawful Sexual Intercourse With a Person Under 18
265	Abduction For Marriage or Defilement
266b	Abduction to Live In Illicit Relation
266g	Placing or Permitting Placement of Wife In House of Prostitution
271	Desertion of Child Under 14 With Intent to Abandon
271a	Abandonment or Failure to Maintain Child Under 14; False Representation That Child is Orphan
273d	Corporal Punishment or Injury of Child
273.6(a); (d); (e)	Intentional and Knowing Violation of Court Order to Prevent Harassment, Disturbing the Peace, or Threats or Acts of Violence
273.65(a); (d); (e)	Intentional and Knowing Violations of Restraining and Protective Orders Relating to Minors Adjudged to Be Dependent Children of the Juvenile Court
278	Noncustodial Persons; Detainment or Concealment of Child From Legal Custodian
278.5	Deprivation of Custody of Child or Right to Visitation
280(b)	Out-of-State Removal of Child Involved in Adoption Proceedings
284	Marrying Husband or Wife of Another
288.2(a); (b)	Harmful Matter Sent With Intent of Seduction of Minor <i>[but disqualified as a P.C. 290 registrable offense by P.C. 1170(b)(3)(c)]</i>
290.4(c)(1)	Five-Year Enhancement For Using Disclosed Sex Offender Info to Commit a Felony
290.45(e)(1)	Five-Year Enhancement For Using Information Disclosed By Law Enforcement About a Sex Offender In Order to Commit a Felony
290.46(j)(2)	Five-Year Enhancement For Using Information Disclosed By Megan's Law Sex Offender Website In Order to Commit a Felony
*311.2(a)	Bringing, Sending, or Possessing Obscene Matter With Intent to Distribute or Exhibit, With Specified Prior Conviction ( <i>punishment provisions of P.C. 311.9(a) are amended</i> )
*311.4(a)	Employing or Using a Minor to Engage in or Simulate Sexual Conduct ( <i>punishment provisions of P.C. 311.9(b) are amended</i> )
*311.5	Advertising Obscene Matter, With a Specified Prior Conviction ( <i>punishment provisions of P.C. 311.9(a) are amended</i> )
*311.7(c)	Requiring Acceptance of Obscene Matter As Condition of Receiving Other Merchandise, With Two Specified Priors ( <i>punishment provisions of P.C. 311.9(c) are amended</i> )
311.9(a); (b); (c)	Obscene Matter
*313.1(a); (b); (c) (f)	Crimes Relating to the Sale, Rental or Alteration of Video Recordings ( <i>punishment provisions of P.C. 313.4 are amended</i> )
313.4	Harmful Matter
337b	Sporting Events; Offering or Attempting to Bribe Player
337c	Sporting Events; Player Accepting or Attempting to Accept Bribe

337d	Offer or Attempt to Bribe Sporting Event Official
337e	Sporting Event Official Receiving or Attempting to Receive Bribe
337f(a)	Horse Races; Stimulating or Depressing Horse By Drug or Device; Entering Drugged Horse In Race; Entering Horse Under Fictitious Name
337.3	Horse Racing—Touting; Use of Name of Official
337.7	Horse Racing—Credentials or Licenses; Unauthorized Possession, Forgery, or Simulation
350(a)(2); (b)(c)	Counterfeit of Registered Mark
367f	Sale of Human Organ For Transplantation; Removal of Organ With Knowledge of Sale
367g	Assisted Reproduction Technology; Unauthorized Use or Implantation of Sperm, Ova, or Embryos
368(d)	Theft or Fraud of Elder/Dependent Adult By Non-Caretaker
368(e)	Theft or Fraud of Elder/Dependent Adult By Caretaker
368(f)	False Imprisonment of Elder or Dependent Adult
374.2	Malicious Discharge, Dumping, Etc. of Any Substance Capable of Causing Substantial Damage to Operation of Public Sewer Sanitary Facility or Unauthorized Deposit of Any Other Substance in Commercial Quantities Into Sanitary Sewer Facility
374.8(b)	Hazardous Substances; Deposit on Roads, Railroad Rights-of-Way, Lands of Another, or State Waters
375(a); (d)	Places of Public Assemblage; Injurious, Nauseous, or Offensive Substances; Use or Preparation
382.5	Dinitrophenol; Sale, Administration, or Prescription For Human Consumption
382.6	Eyebrow and Eyelash Dyes; Sale, Administration, or Prescription of Certain Chemicals
386(a); (b)	Fire Protection System; Inoperable or Impaired Operation
387(a)	Corporations; Limited Liability Companies; Managers; Serious Concealed Dangers; Disclosure; Manager Liability
399.5(a)	Dogs Trained to Fight, Attack, or Kill Causing Injury; Negligence of Owner or Custodian
404.6(c)	Incitement to Riot
405b	Lynching
417.3	Drawing or Exhibiting Firearm In Presence of Motor Vehicle Occupant
417.6(a)	Intentionally Inflicting Serious Bodily Injury; Drawing or Exhibiting Firearm or Deadly Weapon
422.7	Hate Crimes Involving the Present Ability to Commit Violent Injury or Actual Physical Injury, or Property Damage of Over \$950, or Where Defendant Has Prior Conviction Section 422.6 or Conspiracy to Commit Section 422.6
453(a)	Flammable or Combustible Materials, Incendiary Devices; Possession, Manufacture, or Disposal
*459-460(b); 461(b)	[Second-Degree] Burglary
463(a); (b)	Looting During Emergency
464	Burglary With Acetylene Torch, Etc., or Explosives
*470	Forgery; Signatures or Seals; Corruption of Records ( <i>punishment provisions of P.C. 473 are amended</i> )

470a	Forgery or Counterfeiting of Driver's License or Identification Car
470b	Display or Possession of Forged Driver's License or Identification Card
*471	Forgery; False Entries in Records or Returns ( <i>punishment provisions of P.C. 473 are amended</i> )
*472	Forgery or Counterfeiting of Seals; Possession and Concealment of Seals ( <i>punishment provisions of P.C. 473 are amended</i> )
473	Forgery
474	Forgery; Telegraph or Telephone Messages
*475	Forgery; Possessing Forged Paper With Intent to Defraud, or Possessing Blank Check With Intent to Complete it and Defraud Another, or Possessing Completed Check With Intent to Pass it and Defraud Another ( <i>punishment provision in P.C. 473 is amended</i> )
*477; 478	Counterfeiting
479	Counterfeit Coin, Bullion, Etc.; Possession or Receipt
480(a)	Counterfeiting; Making or Possessing Dies, Plates, Etc.; Destruction of Dies, Etc.
481	Railroad or Steamship Tickets; Counterfeiting, Forging, or Altering; Uttering; Intent to Defraud
483.5(a); (f)	Deceptive Identification Documents; Requirements For Manufacture, Sale, or Transport;
484b	Diversion of Funds Received to Obtain or Pay For Services, Labor, Materials, or Equipment
*484i(b)	Forgery; Changing Access Card Account Information So Transactions Are Billed to Someone Other Than Cardholder ( <i>punishment provision in P.C. 473 is amended</i> )
484i(c)	Forgery; Access Cards and Information; Equipment to Make Counterfeit Cards
*487(a)	Grand Theft of Money, Labor, or Real or Personal Property of a Value Exceeding \$950 ( <i>grand theft punishment provision in P.C. 489(b) is amended</i> )
*487(b)(1); (b)(2)	Grand Theft of Specified Fowl, Fish, Fruit, Vegetables, or Nuts ( <i>grand theft punishment provision in P.C. 489(b) is amended</i> )
*487(b)(3)	Grand Theft of \$950 or More By Employee Embezzlement ( <i>grand theft punishment provision in P.C. 489(b) is amended</i> )
*487(c)	Grand Theft Person ( <i>grand theft punishment provision in P.C. 489(b) is amended</i> )
*487(d)(1)	Grand Theft Involving an Automobile or Specified Animal ( <i>grand theft punishment provision in P.C. 489(b) is amended</i> )
*487a	Taking the Carcass of a Specified Animal That Belongs to Another ( <i>grand theft punishment provision in P.C. 489(b) is amended</i> )
487b	Grand Theft; Conversion of Real Property to Personal Property By Severance
487d	Grand Theft; Gold Dust, Amalgam, or Quicksilver
*487e	Grand Theft of Dog With Value Exceeding \$950 ( <i>grand theft punishment provision in P.C. 489(b) is amended</i> )
*487h	Grand Theft of Cargo of Value Exceeding \$950 ( <i>grand theft punishment provision in P.C. 489(b) is amended</i> )
*487i	Defrauding Public Housing Program of More Than \$400 ( <i>grand theft punishment provision in P.C. 489(b) is amended</i> )
489(b)	Grand Theft Not Involving a Firearm
496(a)	Buying, Receiving, or Concealing Stolen Property
496(b)	Swap-Meet Vendor or Second-Hand Dealer Buying or Receiving Stolen Property

496(d)	Attempted Stolen Property Offenses
496a(a)	Junk and Second-Hand Dealers; Purchasing Metals Used in Transportation or Public Utility Service
496d(a)	Construction Equipment or Vessel Known to Be Stolen; Knowingly Obtaining, Concealing, Selling, or Withholding From Owner
499c(c)	Trade Secrets; Theft; Solicitation or Bribery to Acquire
499d	Taking Aircraft Without Owner's Consent
500(a); (b)(2)	Transmission of Money to Foreign Countries
502(c)(1)	Computer-Related Crimes: Accessing and Destroying or Deleting
502(c)(2)	Computer-Related Crimes: Accessing and Taking or Copying
502(c)(3)	Computer-Related Crimes: Using Computer Services That Results in Victim Expenditure Over \$5,000, or In Injury, or If Value of Computer Services Uses Over \$950, or Where Defendant Has Prior Conviction
502(c)(4)	Computer-Related Crimes, Accessing and Adding or Damaging Data
502(c)(5)	Computer-Related Crimes, Disrupting Computer Services
502(c)(6)	Computer-Related Crimes, Providing Access to Computer That Results in Victim Expenditure Over \$5,000
502(c)(7)	Computer-Related Crimes, Accessing Computer That Results in Victim Expenditure Over \$5,000
502(c)(8)	Computer-Related Crimes, Introducing Computer Contaminant That Results In Injury, or Where Defendant Has Prior Conviction
502(d)(1); (d)(2)(b); (d)(3)(c); (d)(4)(b)	Unauthorized Access to Computers, Computer Systems, and Data
*503	Embezzlement (Other Than Public Funds)
*504a	Fraudulent Removal, Concealment, or Disposal of Personal Property Under Lease
*504b	Sale of Property Covered By Security Agreement; Willful Failure to Pay Secured Party and Appropriation of Proceeds to Own Use
*505	Carrier or Individual Transporting Property For Hire; Fraudulent Appropriation
*506	Person Controlling or Intrusted With Property of Another; Misappropriation; Payment of Laborers and Materialsmen as Use of Contract Price
506b	Violation of Real Property Sales Contracts Provisions
*507	Bailee; Tenant; Lodger; Attorney In Fact
*508	Clerk; Agent; Servant
*514	Punishment For Embezzlement (Other Than Public Funds Penal Code Section 504) Same as For Theft ( <i>see P.C. 489(b)</i> )
*518; 520	Extortion
529	False Impersonation of Another In Private or Official Capacity; Bail or Surety; Verification, Publication, or Acknowledgment of Instrument; Acts Imposing Liability or Conferring Benefit
529a	False or Counterfeit Certificate of Birth or Certificate of Baptism; Manufacture, Sale, Offer, or Transfer, Display, or Possession With Intent to Misrepresent or Conceal Identity
530.5(a); (c)(2); (c)(3); (d)(1); (d)(2)	Unauthorized Use of Personal Identifying Information of Another Person; Attempt to Obtain Credit, Goods, Services, Real Property, or Medical Information; Commission of Crime; Punishment For First, Subsequent, or Multiple Offenses; Sale of Information; Mail Theft; Liability of Computer Service or Software Providers

*532	False Pretenses; Obtaining Money, Labor, or Property; Punished As Larceny ( <i>see P.C. 489</i> )
532a	False Financial Statements By Use of Fictitious Identifier
532f	Mortgage Fraud; Order For Production of Records
533	Real Estate; Multiple Sales of Same Parcel
535	Mock Auctions; Obtaining Money, Property, or Signature
537e(a)(3)	Possessing, Buying, or Selling Integrated Computer Chip or Panel of Value of \$950 or More, Where Serial or Identification Number Has Been Removed or Altered
*538	Mortgaged Personal Property; Removal From County; Subsequent Sale, Destruction, or Encumbrance; Notice of Intention; Punished As Theft ( <i>see P.C. 489</i> )
538.5	False or Fraudulent Wire, Radio, or Television Communications
548(a)	Defrauding or Prejudicing Insurer
549	False or Fraudulent Claims Against Insurers; Solicitation, Acceptance, or Referral of Business
550(a)(1)–(5)	Insurance Fraud
550(a)(6)–(9)	Insurance Fraud Involving Health Care Benefits Where Claim is Over \$950
550(b)(1)–(4)	Insurance Fraud Involving False Statements or Concealing Information
550(c)	False or Fraudulent Claims or Statements
551	Unlawful Referrals to Auto Repair Dealers Where Amount at Issue Is Over \$950 or Where Defendant Has Specified Prior Conviction
560	Documents of Title; Unlawful Issuance, Negotiation, or Transfer
560.4	Unlawful Issuance of Duplicate or Additional Negotiable Document of Title
566	Dairy Equipment Felony; Use, Possession, Obliteration, or Destruction of Brand Registrations By Unauthorized Persons
570; *571	Unlawful Subleasing of Motor Vehicles
577	Fictitious Bills of Lading, Receipts, or Vouchers; Issuance
578	Fictitious Warehouse Receipts, Bills of Lading, or Vouchers; Issuance
580	Duplicate Receipts or Vouchers; Marking
581	Unauthorized Sale, Hypothecation, or Pledge By Warehouseman or Carrier
587	Malicious Injuries to Railroad Bridges, Highways, Bridges, and Telegraphs
587.1(b)	Moving Locomotive Without Authorization and Creating Substantial Likelihood of Personal Injury or Death
591	Injuring or Removing Telegraph, Telephone, or Cable Television Line
593	Injuring or Removing Electric Power Line
594	Vandalism (Where Damage is \$400 or More)
594.3	Vandalism; Church, Synagogue, Mosque, Temple, Building of Religious Educational Institution, or Other Place of Worship; Punishment if Based on Racial Prejudice
594.35	Destruction of Cemetery or Mortuary Property
594.4	Vandalism With Butyric Acid or Other Caustic Chemical
597(a)	Intentionally Wounding or Killing An Animal
597(b)	Inflicting Unnecessary Cruelty Upon Animal, or Overworking Animal, or Depriving Animal of Proper Food, Drink, or Shelter
597(c)	Maiming or Torturing Specified Mammal, Bird, Reptile, Fish, or Amphibian
597.5(a)	Dog Fighting, or Owning or Possessing Dog With Intent That It Engage In Fighting
600(a)	Striking or Poisoning Peace Officer's Horse or Dog, and Inflicting Serious Injury
600(c)	One-Year Enhancement For Causing Death or Serious Physical Injury to Peace Officer's Horse or Dog

- 601 Trespass By Credible Threat to Cause Serious Bodily Injury With Intent to Place Another in Reasonable Fear and Unlawful Entry Within 30 Days Into Residence or Contiguous Real Property or Workplace of Threatened Person
- \*607 Hydraulic Power, Drainage, Reclamation, or Irrigation Facilities; Injury or Destruction Causing Damage Over \$400; Punished as Vandalism (*see P.C. 594*)
- 610 Masking, Altering, or Removing Light or Signal; Exhibiting False Light or Signal; Endangering Vessel
- 617 Mutilating or Destroying Another's Written Instrument, the False Making of Which Would Be Forgery
- 620 Altering the Effect or Meaning of Telephone or Telegraph Message to the Injury of Another
- 621 Law Enforcement Memorials and Firefighters Memorials; Vandalism
- 625b(b) Damaging Aircraft or Its Contents in Such Manner as to Render Aircraft Unsafe for Flight Operations
- 626.9(b) Possessing Firearm In School Zone (*punishment provision in (f) is amended*)
- 626.9(d) Discharging or Attempting to Discharge Firearm In School Zone (*punishment provision in (f)(3) is amended*)
- 626.9(f) Gun Free School Zone Act
- 626.9(h) Bringing or Possessing Loaded Firearm On Grounds of Public or Private University or College
- 626.9(i) Bringing or Possessing Firearm on Grounds of Public or Private University or College
- 626.95(a) Brandishing Firearm or Carrying Concealed Firearm or Carrying Loaded Firearm on Playground or at Youth Center
- 626.10(a) Bringing or Possessing Specified Weapon on Grounds of Public or Private School
- 626.10(b) Bringing or Possessing Specified Weapon on Grounds of University or Community College
- \*629.50–629.98; 629.84 Interception of Wire, Electronic Digital Pager, or Electronic Cellular Communications Violations
- 631(a) Tapping or Making Unauthorized Connection With Telephone Line or Cable
- 636(a) Eavesdropping On or Recording Conversation Between Person in Police Custody and His/Her Attorney, Religious Adviser, or Physician
- 636(b) Nonelectronically Eavesdropping On Conversation Between Person in Police Custody and His/Her Attorney, Religious Adviser, or Physician
- 637 Disclosure of Telegraphic or Telephonic Message
- 647.6(b) Annoying or Molesting Child Under Age 18 After Entering Habitation [*but disqualified as a P.C. 290 registrable offense By P.C. 1170(h)(3)(c)*]
- 647.6(c)(1) Second or Subsequent Conviction of Annoying or Molesting Child [*but disqualified as a P.C. 290 registrable offense by P.C. 1170(h)(3)(c)*]
- 647.6(c)(2) Annoying or Molesting Child Under Age 18, With Specified Prior Conviction [*but disqualified as a P.C. 290 registrable offense by P.C. 1170(h)(3)(c)*]
- 653f(a) Soliciting Another Person to Commit Specified Crime
- 653f(c) Soliciting Another Person to Commit Specified Sex Crime [*but disqualified as P.C. 290 registrable offense by P.C. 1170(h)(3)(c)*]
- 653f(d)(1) Soliciting Another Person to Commit Specified Drug Offense, Where Defendant Has Prior Conviction For Solicitation to Commit Drug Offense
- 653f(e) Soliciting Another Person to Commit W&I 14014 (Receiving Health Care For Which One is Not Eligible, Based on False Declarations), Where Defendant Has Prior Conviction For This Type of Solicitation



653h	Violations Relating to Sound Recordings, Where at Least 1,000 Pirated Recordings Are Involved or Where Defendant Has Second or Subsequent Conviction
653j	Soliciting, Inducing, Encouraging, or Intimidating Minor to Commit Certain Felonies
653s	Violations Relating to Sound Recordings of Live Performance, Where at Least 1,000 Pirated Recordings Are Involved or Where Defendant Has Second or Subsequent Conviction
653t(a); (c)	Interfering With the Transmission of Emergency Communication Over Amateur or Citizen's Band Radio Frequency When Offense Results in Serious Bodily Injury or Property Loss Over \$10,000
653t(d)	Interfering With Transmission of Emergency Communication Over Public Safety Radio Frequency When Offense Results in Serious Bodily Injury or Property Loss Over \$10,000
653u	Recording Sounds of a Live Performance, Without Permission, For Commercial Gain When Offense Involves at Least 1,000 Articles or Where Defendant Has Prior P.C. 653u Conviction
653w	Failing to Disclose Origin of Recording or Audiovisual Work Where at Least 100 Articles are Involved or Where Defendant Has Prior P.C. 653w Conviction
664(a)	<i>Attempted Crimes [Except attempted disqualifiers (see Appendix A)—P.C. 664(A) now provides that if crime attempted is punishable by imprisonment in state prison or pursuant to new P.C. 1170(H), person guilty of attempt shall be punished in state prison or county jail for one-half the term of imprisonment prescribed.]</i>
666(a)	Petty Theft With Three Specified Priors
666.5(a)	Prior Felony Theft Conviction Involving Vehicle, Trailer, Construction Equipment, or Vessel Known to Be Stolen
836.6	Escape or Attempted Escape From Custody of Police Agency or Peace Officer By Force and Violence, and Proximately Causing Peace Officer Serious Bodily Injury
1320(b)	Failing to Appear on Felony Charge After Release on Own Recognizance
1320.5	Failing to Appear on Felony Charge After Release on Bail
2772	Interfering With Prisoner Working at Road Camp or Giving or Attempting to Give Prisoner Controlled Substance, Liquor, Weapons, or Explosives
2790	Interfering With Prisoner Working in Park, Forest, or Camp, or Giving or Attempting to Give Prisoner Controlled Substance, Liquor, Weapons, or Explosives
4011.7	Prisoner Escaping From Hospital By Force and Violence
4131.5	County Industrial Farms and Road Camps—Battery Upon Person Not Confined or Sentenced to Same Facility
4501.1(a)	State Prisoner Committing Battery By Gassing Upon Peace Officer or State Prison Employee
4502(a)	Possession or Control of Specified Weapon By Inmate
4502(b)	Manufacture or Attempted Manufacture of Specified Weapon By Inmate
4533	Prisons—Keeper or Other Officer Permitting Escape
4536(a)	Escape From State Hospital or Mental Health Facility By Mentally Disordered Sex Offender
4550	Rescuing or Attempting to Rescue Prisoner From Prison or Jail
4573(a)	Bringing Controlled Substance or Paraphernalia Into Prison or Jail
4573.6(a)	Possessing Controlled Substance or Paraphernalia In Prison or Jail
4573.9(a)	Noninmate Selling or Furnishing Controlled Substance to State Prison or Jail Inmate

4574(a)	County Jail Inmate Possessing Firearm, Deadly Weapon, or Explosive, or Bringing Such Weapon Into Prison or Jail
4574(b)	Bringing Tear Gas Weapon Into Prison or Jail Where Release of Tear Gas Results
4600(a)	Destroying or Injuring Jail or Prison Property
11411(c)	Terrorizing the Owner of Private Property By Placing Sign or Mark (e.g., Nazi Swastika) on Victim's Property on Two or More Occasions
11411(d)	Burning or Desecrating Cross or Other Religious Symbol on Private Property or Grounds of School, For Purpose of Terrorizing
11413(a)	Exploding or Attempting to Explode Destructive Device or Explosive, or Committing Arson, at Specified Location (e.g., Health Facility, Church, Library, Judge's Home, School) For Purpose of Terrorizing
11418(a)(1)	Possessing or Producing Weapon of Mass Destruction
11418(a)(2)	Possessing or Producing Weapon of Mass Destruction Where Defendant Has Specified Prior Conviction
11419(a)	Possession of Restricted Biological Agents
12021.5(a)	Street Gang Crimes; Firearm
12022(a)(1)	Enhancement For Armed With Firearm
12022(a)(2)	Enhancement For Armed With Assault Weapon, Machinegun, or .50 BMG Rifle
12022(c)	Enhancement For Personally Armed With Firearm During Specified Drug Crime
12022(d)	Enhancement For Knowing Another Principal is Personally Armed During Specified Drug Crime
12025(a); (b)(1)	Carrying Concealed Firearm on Person or in Vehicle Where Defendant Has Specified Prior Conviction
12025(a); (b)(2)	Carrying Concealed Firearm on Person or in Vehicle Where Defendant Knew Firearm Was Stolen
12025(a); (b)(5)	Carrying Concealed Firearm on Person or in Vehicle Where Defendant Has Been Convicted of Crime Against Person or Property, or Drug Crime
12025(b)(6)	Carrying Concealed Firearm on Person or in Vehicle Where Defendant Has Ammunition or Firearm is Loaded, and Defendant is Not Registered Owner of Firearm
12035	Criminal Storage of Firearm in First Degree
12040	Criminal Possession of Firearm
12072(g)(2); (3); (4)	Unlawful Transfer of Firearms
12076(b)(1)	Furnishing Fictitious Firearm Registration Information
12076(c)(1)	Furnishing Fictitious Firearm Registration Information Electronically
12090	Firearms—Unauthorized Alteration of Identification Marks
12101(a)(1); (c)(1)	Minor In Possession of Concealable Firearm, With Specified Prior
12101(b)(1); (c)(1)	Minor In Possession of Live Ammunition, With Specified Prior
12220(a); (b)	Unauthorized Possession, Transportation, Manufacture, or Sale of Machine Guns
12280(a)(1)	Transporting, Importing, or Giving Assault Weapon or .50 BMG Rifle
12280(a)(2)	Enhancement For Selling or Giving Assault Weapon or .50 BMG Rifle to Minor
12280(b)	Second or Subsequent Violation of Possessing Assault Weapon
12281(J)	Failing to Properly Relinquish or Dispose of SKS Rifle
12303.3	Possessing or Exploding Destructive Device With Intent to Injure
12303.6	Sale or Transportation of Destructive Device Other Than Fixed Ammunition
12304	Second or Subsequent Conviction of Selling or Possessing Fixed Ammunition
12312	Possession of Materials With Intent to Make Explosive or Destructive Device

12320	Possessing Handgun Ammunition Designed to Penetrate Metal or Armor
12355(a)	Assembling or Placing Boobytrap
12355(b)	Possessing Device With the Intent to Use As Boobytrap
12370(a)	Violent Felon Purchasing, Possessing, or Owning Body Armor
12403.7(g)	Using Tear Gas Weapon Except in Self-Defense, or Against Peace Officer
12422	Changing or Removing Identification Mark On Tear Gas Weapon
12520	Possessing Silencer
18715	<i>Effective 1/1/2012, (Formerly P.C. 12303.2) Possessing Destructive Device or Explosive [Note: Inclusion of this crime appears to be a mistake, since P.C. 12303.2 is not a crime that was amended to cross-reference P.C. 1170(h).]</i>
18720	<i>Effective 1/1/2012, (Formerly P.C. 12312) Possessing Materials With Intent to Make Explosive</i>
18725	<i>Effective 1/1/2012, (Formerly P.C. 12303.1) Carrying or Placing Destructive Device or Explosive on Vessel, Aircraft, or Vehicle [Note: Inclusion of this crime appears to be a mistake, since P.C. 12303.1 is not a crime that was amended to cross-reference P.C. 1170(h).]</i>
18730	<i>Effective 1/1/2012, (Formerly P.C. 12303.6) Selling or Transporting Destructive Device</i>
18735(c)	<i>Effective 1/1/2012, (Formerly P.C. 12304) Second or Subsequent Conviction of Selling or Possessing Fixed Ammunition</i>
18740	<i>Effective 1/1/2012, (Formerly P.C. 12303.3) Exploding Destructive Device With Intent to Injure</i>
20110(a)	<i>Effective 1/1/2012, (Formerly P.C. 12355(a)) Assembling or Placing Boobytrap</i>
20110(b)	<i>Effective 1/1/2012, (Formerly P.C. 12355(b)) Possessing Device With Intent to Use as Boobytrap</i>
22810(g)(1); (2)	<i>Effective 1/1/2012, (Formerly P.C. 12403.7) Using Tear Gas Weapon Except in Self-Defense or Against Peace Officer</i>
22910(a)	<i>Effective 1/1/2012, (Formerly P.C. 12422) Changing or Removing Identification Mark On Tear Gas Weapon</i>
23900	<i>Effective 1/1/2012, (Formerly P.C. 12090) Alteration, Removal, or Obliteration of Firearm Identification Numbers or Marks</i>
25110(a)	<i>Effective 1/1/2012, (Formerly P.C. 12035(d)(1)) Criminal Storage of Firearm in the First Degree</i>
25300(b)	<i>Effective 1/1/2012, (Formerly P.C. 12040) Criminal Possession of Firearm</i>
25400(c)(5)	<i>Effective 1/1/2012, (Formerly P.C. 12025(b)(5)) Carrying Concealed Firearm on Person or In Vehicle Where Defendant Has Been Convicted of Against Person or Property, or Drug Crime</i>
25400(c)(6)	<i>Effective 1/1/2012, (Formerly P.C. 12025(b)(6)) Carrying Concealed Firearm on Person or In Vehicle Where Defendant Has Ammunition or Firearm is Loaded, and Defendant is Not Registered Owner of Firearm</i>
25850(c)(5)	<i>Effective 1/1/2012, (Formerly P.C. 12031(a)(2)(e)) Carrying Loaded Firearm Where Defendant Has Been Convicted of Crime Against Person or Property, or Drug Crime [Note: the inclusion of this crime appears to be a mistake, since P.C. 12031 is not a crime that was amended to cross-reference P.C. 1170(h).]</i>
25850(c)(6)	<i>Effective 1/1/2012, (Formerly P.C. 12031(a)(2)(f)) Carrying Loaded Firearm Where Defendant is Not the Registered Owner [Note: inclusion of this crime appears to be a mistake, since P.C. 12031 is not a crime that was amended to cross-reference P.C. 1170(h).]</i>

27590(b)	<i>Effective 1/1/2012, (Formerly P.C. 12072(g)(2))</i> Unlawful Transfer of Firearm
27590(c)	<i>Effective 1/1/2012, (Formerly P.C. 12072(g)(3))</i> Unlawful Transfer of Firearm
27590(d)	<i>Effective 1/1/2012, (Formerly P.C. 12072(g)(4))</i> Enhancement For Unlawful Transfer of Firearm
28250(b)	<i>Effective 1/1/2012, (Formerly P.C. 12076(b)(1) &amp; (c)(1))</i> Furnishing False Information or Omitting Information; Other Violations
*29610	<i>Effective 1/1/2012, (Formerly P.C. 12101(a)(1))</i> Minor in Possession of Concealable Firearm With Specified Prior
*29650	<i>Effective 1/1/2012, (Formerly P.C. 12101(b)(1))</i> Minor In Possession of Live Ammunition With Specified Prior
29700(a)	<i>Effective 1/1/2012, (Formerly P.C. 12101(c))</i> Penalties For Unlawful Possession By Minor of Pistol, Revolver, Concealable Firearm, or Live Ammunition
30315	<i>Effective 1/1/2012, (Formerly P.C. 12320)</i> Possessing Handgun Ammunition Designed to Penetrate Metal or Armor
30600(a)	<i>Effective 1/1/2012, (Formerly P.C. 12280(a)(1))</i> Transporting, Importing, or Giving An Assault Weapon or .50 BMG Rifle
30600(b)	<i>Effective 1/1/2012, (Formerly P.C. 12280(a)(2))</i> Enhancement For Selling or Giving Assault Weapon or .50 BMG Rifle to Minor
30605(a)	<i>Effective 1/1/2012, (Formerly P.C. 12280(b))</i> Second or Subsequent Violation of Possessing Assault Weapon
30725(b)	<i>Effective 1/1/2012, (Formerly P.C. 12281(j))</i> Failing to Properly Relinquish or Dispose of SKS Rifle
31360(a)	<i>Effective 1/1/2012, (Formerly P.C. 12370)</i> Violent Felon Purchasing, Possessing, or Owning Body Armor
32625(a)	<i>Effective 1/1/2012, (Formerly P.C. 12220(a))</i> Transporting Machinegun
32625(b)	<i>Effective 1/1/2012, (Formerly P.C. 12220(b))</i> Converting Firearm Into Machinegun
33410	<i>Effective 1/1/2012, (Formerly P.C. 12520)</i> Possessing Silencer

### **Public Contract Code**

*10280	Corrupt Performance of Official Acts
*10281	Corrupt Action By Contractor
*10282	Failure of Subcontractor or Certain Other Persons to Give Notice of Contract Violations
10283	State Contract Act—Punishment
*10870	Corrupt Performance of Official Duty
*10871	Corrupt Permission of Violation of Contract
*10872	Knowledge of Violation and Failure to Disclose Violation
10873	Contracting By State Agencies

### **Public Resources Code**

15097.99(b); (c)	Obtaining or Possessing Native American Artifacts or Human Remains Taken From Grave or Cairn
14591(b)	California Beverage Container Recycling and Litter Reduction Act
25205	State Energy Conservation and Development Commission—Conflict of Interest
48680(b)	California Oil Recycling Enhancement

## Public Utilities Code

- 7680 Railroad Collision Causing Death
- 7724(a) Railroad Safety and Emergency Planning and Response
- 7903 Telegraph or Telephone Corporations, Use or Appropriation of Information From Private Messages
- \*21407.1(a); (b) Aircraft or Parachuting Under the Influence Causing Injury
- 21407.6(b) Regulation of Aeronautics

## Revenue and Taxation Code

- 7093.6(n) or (j) Sales and Use Tax—CA Taxpayers Bill of Rights—Discontinued or Transferred Businesses; Offers in Compromise on Final Tax Liability; Authority of Board to Accept Offers
- 9278(n) or (j) Use Fuel Tax—CA Taxpayers Bill of Rights—Discontinued or Transferred Businesses; Offers in Compromise on Final Tax Liability; Authority of Board to Accept Offers; Conditions; Rescission of Compromise
- 14251 Prohibition of Gift and Death Taxes—Disclosure of Confidential Information and Records
- 16910 Generation Skipping Transfer Tax—Inspection of Records—Disclosure of Confidential Nature of Information and Records
- 18631.7(d) Administration of Franchise and Income Tax Laws—Information Returns—Check Cashiers; Checks Totaling More Than \$10,000; Filing Deadline; Contents
- 19705 Administration of Franchise and Income Tax Laws, Willful False Return, Etc.; Offense; Name as Prima Facie Evidence of Signature
- 19708 Administration of Franchise and Income Tax Laws, Willful Failure to Collect, Account For and Pay Tax or Required Amounts
- 30459.15(p) or (l) Cigarette Tax, Compromise of Final Tax Liability
- 32471.5(p) or (l) Alcoholic Beverage Tax, Compromise of Final Tax Liability
- \*32552; Alcoholic Beverage Tax Violations
- \*32553; 32555
- 38800(l) Timber Yield Tax, Compromise of Final Tax Liability
- 40211.5(l) Energy Resources Surcharge Law, Compromise of Final Surcharge Liability
- 41171.5(p) or (l) Emergency Telephone User Surcharge Law, Compromise of Final Surcharge Liability
- 43522.5(l) Hazardous Substances Tax Law, Compromise of Final Surcharge Liability
- \*43604; 43606 Hazardous Substances Tax Law, Violations Lacking Specific Penalties
- 45867.5 (l) Integrated Waste Management Fee Law, Compromise of Final Fee Liability
- \*45953; 45955 Integrated Waste Management Fee Law, Violations of Part Not Otherwise Provided For
- 46628(p) or (l) Oil Spill Response, Prevention, and Administration Fees, Compromise of Final Fee Liability
- \*46703; 46705 Oil Spill Response, Prevention, and Administration Fees, Felony Violations Not Specifically Provided For in Part
- 50156.18(n) or (j) Underground Storage Tank Maintenance Fee Law, Discontinued or Transferred Businesses; Offers in Compromise on Final Tax Liability; Authority of Board to Accept Offers; Conditions; Rescission of Compromise
- 55332.5(p) or (l) Fee Collection Procedures Law, Compromise of Final Fee Liability
- 55363 Fee Collection Procedures Law, Evasion of Payment
- 60637(p) or (l) Diesel Fuel Tax Law, Compromise of Final Tax Liability

## Unemployment Insurance Code

2118.5 Unemployment and Disability Compensation, Willful Failure to Collect, Truthfully Account For, or Pay Over Tax or Amount

## Vehicle Code

2478 Second or Subsequent Conviction of Violation Relating to Inedible Kitchen Grease (see V.C. 2470; 2472; 2474 & 2476)

2800.4 Fleeing Peace Officer By Driving in Wrong Direction on Highway

4463(a) Crimes Related to False or Altered Documents, Such as Certificate of Ownership, Registration Card, or License Plate

10501 Second or Subsequent Conviction of Filing False Report of Vehicle Theft

10752 Possessing or Selling Genuine or Counterfeit Vehicle Serial or Identification Number

10801 Operating Chop Shop

10802 Altering or Removing Vehicle Identification Number (VIN)

10803(a); (b) Buying, Selling, Transferring More Than One Vehicle or Vehicle Part Knowing VIN Has Been Altered or Removed

10851(a) Driving or Taking Vehicle Not One's Own

10851(b) Driving or Taking Specified Vehicle Not One's Own (Ambulance, Police Vehicle, or Vehicle Modified For Disabled Person)

21464(a); (d) Injuring or Removing Traffic Control Device or Callbox That Results in Injury or Death

21464(b); (d) Using Device Capable of Disrupting Traffic Control Signal That Results in Injury or Death

21464(c); (d) Possessing or Selling Device Capable of Disrupting Traffic Signal That Results in Injury or Death

21651(b); (c) Driving Across Divided Highway, Resulting in Injury or Death

23104(b) Reckless Driving Causing GBI, Where Defendant Has Specified Prior [but may be disqualified as strike for personal infliction of GBI per P.C. 667.5(c)(8)—see Appendix A]

23105(a) Reckless Driving Causing Specified Serious Injury to Another [but may be disqualified as strike for personal infliction of GBI per P.C. 667.5(c)(8)—see Appendix A]

23109.1(a) Engaging in Speed Contest Causing Specified Serious Injury [but may be disqualified as strike for personal infliction of GBI per P.C. 667.5(c)(8)—see Appendix A]

23550(a) DUI Within 10 Years of Three or More DUIs (“Superdeuce”)

42000 “Unless a different penalty is expressly provided by this Code, every person convicted of a felony for a violation of any provision of this code shall be punished by a fine of not less than one thousand dollars (\$1,000) or more than ten thousand dollars (\$10,000), or by imprisonment pursuant to subdivision (h) of section 1170 of the penal code, or by both such fine and imprisonment.” [This appears to mean that if a Vehicle Code felony provides for imprisonment in the state prison (e.g., V.C. 23109, 23110, 23153), the crime continues to be prison-eligible, but if the crime is designated as a felony and does not contain a penalty provision, it is punishable pursuant to P.C. 1170(h)]

## Water Code

\*13375 Radiological, Chemical or Biological Warfare Agents; Discharge Prohibited

\*13376 Discharging Pollutants or Dredged or Fill Material or Operating Treatment Works; Reports of Discharges or Proposed Discharges; Prohibited Discharges

13387(b) Second or Subsequent Negligent Violation of Sections 13375, 13376, Certification Requirements or Specified Sections of Federal Clean Water Act

- 11387(c) Knowing Violations of Subdivision (a)
- 11387(d) Knowing Violations of Subdivision (a) Placing Another Person in Imminent Danger of Death or Serious Bodily Injury

**Welfare And Institutions Code**

- 871.5(a) Juvenile Court Law—Bringing or Sending Contraband Into or Possession Within Juvenile Facility; Posting of Penalties
- 1001.5(a) Delinquents and Wards of the Juvenile Court—Bringing or Selling Contraband Into Grounds of or Possession in Youth Authority Institutions
- 1768.7(a); (b) Youth Authority—Escape or Attempt to Escape Without Force or Violence
- 1768.85(a) Youth Authority—Battery By Gassing of Peace Officer or Institution Employee
- 3002 Commitment and Treatment of Narcotic Addicts—Escape or Attempted Escape
- 7326 State Hospitals For Mentally Disordered—Assisting Escape
- 8100(a); (b)(1); (g) Firearms—Possession, Purchase or Receipt By Person Receiving Inpatient Treatment For Mental Disorder or Who Has Communicated Threat of Physical Violence to Psychotherapist
- 8101(a) Knowingly Supply, Sell, Give, or Allow Possession or Control of Deadly Weapon to Any Person Described in V.C. 8100 or 8103
- 8101(b) Knowingly Supply, Sell, Give, or Allow Possession or Control of Firearm to Any Person Described in V.C. 8100 or 8103
- 8103(i) Firearms—Particular Persons; Weapons Restrictions
- 10980(b); (c)(2); (d); (g); (h)(1) Public Social Services—Unlawful Acts
- 14107.2(a); (b) Public Social Services—Aid and Medical Assistance—Basic Health Care—Kickbacks, Bribes, or Rebates
- 14107.3 Public Social Services—Aid and Medical Assistance—Basic Health Care—Knowing and Willful Charging of Sum in Addition to Amount Owed as Precondition to Providing Services or Merchandise
- 14107.4(a); (b) Public Social Services—Aid and Medical Assistance—Basic Health Care—Cost Reports; Fraud;
- 17410 Public Social Services—County Aid and Relief to Indigents—Termination and Recovery of Assistance

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## Appendix D

# Victims' Bill of Rights

(Cal. Const., art. I, § 28)

(a) The People of the State of California find and declare all of the following:

(1) Criminal activity has a serious impact on the citizens of California. The rights of victims of crime and their families in criminal prosecutions are a subject of grave statewide concern.

(2) Victims of crime are entitled to have the criminal justice system view criminal acts as serious threats to the safety and welfare of the people of California. The enactment of comprehensive provisions and laws ensuring a bill of rights for victims of crime, including safeguards in the criminal justice system fully protecting those rights and ensuring that crime victims are treated with respect and dignity, is a matter of high public importance. California's victims of crime are largely dependent upon the proper functioning of government, upon the criminal justice system and upon the expeditious enforcement of the rights of victims of crime described herein, in order to protect the public safety and to secure justice when the public safety has been compromised by criminal activity.

(3) The rights of victims pervade the criminal justice system. These rights include personally held and enforceable rights described in paragraphs (1) through (17) of subdivision (b).

(4) The rights of victims also include broader shared collective rights that are held in common with all of the People of the State of California and that are enforceable through the enactment of laws and through good-faith efforts and actions of California's elected, appointed, and publicly employed officials. These rights encompass the expectation shared with all of the people of California that persons who commit felonious acts causing injury to innocent victims will be appropriately and thoroughly investigated, appropriately detained in custody, brought before the courts of California even if arrested outside the State, tried by the courts in a timely manner, sentenced, and sufficiently punished so that the public safety is protected and encouraged as a goal of highest importance.

(5) Victims of crime have a collectively shared right to expect that persons convicted of committing criminal acts are sufficiently punished in both the manner and the length of the sentences imposed by the courts of the State of California. This right includes the right to expect that the punitive and deterrent effect of custodial sentences imposed by the courts will not be undercut or diminished by the granting of rights and privileges to prisoners that are not required by any provision of the United States Constitution or by the laws of this State to be granted to any person incarcerated in a penal or other custodial facility in this State as a punishment or correction for the commission of a crime.

(6) Victims of crime are entitled to finality in their criminal cases. Lengthy appeals and other post-judgment proceedings that challenge criminal convictions, frequent and difficult parole hearings that threaten to release criminal offenders, and the ongoing threat that the sentences of criminal wrongdoers will be reduced, prolong the suffering of crime victims for many years after the crimes themselves have been perpetrated. This prolonged suffering of crime victims and their families must come to an end.

(7) Finally, the People find and declare that the right to public safety extends to public and private primary, elementary, junior high, and senior high school, and community college, California State University, University of California, and private college and university campuses, where students and staff have the right to be safe and secure in their persons.

(8) To accomplish the goals it is necessary that the laws of California relating to the criminal justice process be amended in order to protect the legitimate rights of victims of crime.

(b) In order to preserve and protect a victim's rights to justice and due process, a victim shall be entitled to the following rights:

(1) To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment, and abuse, throughout the criminal or juvenile justice process.

(2) To be reasonably protected from the defendant and persons acting on behalf of the defendant.

(3) To have the safety of the victim and the victim's family considered in fixing the amount of bail and release conditions for the defendant.

(4) To prevent the disclosure of confidential information or records to the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, which could be used to locate or harass the victim or the victim's family or which disclose confidential communications made in the course of medical or counseling treatment, or which are otherwise privileged or confidential by law.

(5) To refuse an interview, deposition, or discovery request by the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, and to set reasonable conditions on the conduct of any such interview to which the victim consents.

(6) To reasonable notice of and to reasonably confer with the prosecuting agency, upon request, regarding, the arrest of the defendant if known by the prosecutor, the charges filed, the determination whether to extradite the defendant, and, upon request, to be notified of and informed before any pretrial disposition of the case.

(7) To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other post-conviction release proceedings, and to be present at all such proceedings.

(8) To be heard, upon request, at any proceeding, including any delinquency proceeding, involving a post-arrest release decision, plea, sentencing, postconviction release decision, or any proceeding in which a right of the victim is at issue.

(9) To a speedy trial and a prompt and final conclusion of the case and any related post-judgment proceedings.

(10) To provide information to a probation department official conducting a pre-sentence investigation concerning the impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant.

- (11) To receive, upon request, the pre-sentence report when available to the defendant, except for those portions made confidential by law.
- (12) To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant, and the release of or the escape by the defendant from custody.
- (13) To restitution.
- (A) It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to seek and secure restitution from the persons convicted of the crimes causing the losses they suffer.
- (B) Restitution shall be ordered from the convicted wrongdoer in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss.
- (C) All monetary payments, monies, and property collected from any person who has been ordered to make restitution shall be first applied to pay the amounts ordered as restitution to the victim.
- (14) To the prompt return of property when no longer needed as evidence.
- (15) To be informed of all parole procedures, to participate in the parole process, to provide information to the parole authority to be considered before the parole of the offender, and to be notified, upon request, of the parole or other release of the offender.
- (16) To have the safety of the victim, the victim's family, and the general public considered before any parole or other post-judgment release decision is made.
- (17) To be informed of the rights enumerated in paragraphs (1) through (16).
- (c)
- (1) A victim, the retained attorney of a victim, a lawful representative of the victim, or the prosecuting attorney upon request of the victim, may enforce the rights enumerated in subdivision (b) in any trial or appellate court with jurisdiction over the case as a matter of right. The court shall act promptly on such a request.
- (2) This section does not create any cause of action for compensation or damages against the State, any political subdivision of the State, any officer, employee, or agent of the State or of any of its political subdivisions, or any officer or employee of the court.
- (d) The granting of these rights to victims shall not be construed to deny or disparage other rights possessed by victims. The court in its discretion may extend the right to be heard at sentencing to any person harmed by the defendant. The parole authority shall extend the right to be heard at a parole hearing to any person harmed by the offender.

(e) As used in this section, a “victim” is a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act. The term “victim” also includes the person’s spouse, parents, children, siblings, or guardian, and includes a lawful representative of a crime victim who is deceased, a minor, or physically or psychologically incapacitated. The term “victim” does not include a person in custody for an offense, the accused, or a person whom the court finds would not act in the best interests of a minor victim.

(f) In addition to the enumerated rights provided in subdivision (b) that are personally enforceable by victims as provided in subdivision (c), victims of crime have additional rights that are shared with all of the People of the State of California. These collectively held rights include, but are not limited to, the following:

(1) Right to Safe Schools. All students and staff of public primary, elementary, junior high, and senior high schools, and community colleges, colleges, and universities have the inalienable right to attend campuses which are safe, secure and peaceful.

(2) Right to Truth-in-Evidence. Except as provided by statute hereafter enacted by a two-thirds vote of the membership in each house of the Legislature, relevant evidence shall not be excluded in any criminal proceeding, including pretrial and post conviction motions and hearings, or in any trial or hearing of a juvenile for a criminal offense, whether heard in juvenile or adult court. Nothing in this section shall affect any existing statutory rule of evidence relating to privilege or hearsay, or Evidence Code Sections 352, 782 or 1103. Nothing in this section shall affect any existing statutory or constitutional right of the press.

(3) Public Safety Bail. A person may be released on bail by sufficient sureties, except for capital crimes when the facts are evident or the presumption great. Excessive bail may not be required. In setting, reducing or denying bail, the judge or magistrate shall take into consideration the protection of the public, the safety of the victim, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case. Public safety and the safety of the victim shall be the primary considerations.

A person may be released on his or her own recognizance in the court’s discretion, subject to the same factors considered in setting bail.

Before any person arrested for a serious felony may be released on bail, a hearing may be held before the magistrate or judge, and the prosecuting attorney and the victim shall be given notice and reasonable opportunity to be heard on the matter.

When a judge or magistrate grants or denies bail or release on a person’s own recognizance, the reasons for that decision shall be stated in the record and included in the court’s minutes.

(4) Use of Prior Convictions. Any prior felony conviction of any person in any criminal proceeding, whether adult or juvenile, shall subsequently be used without limitation for purposes of impeachment or enhancement of sentence in any criminal proceeding. When a prior felony conviction is an element of any felony offense, it shall be proven to the trier of fact in open court.

(5) Truth in Sentencing. Sentences that are individually imposed upon convicted criminal wrongdoers based upon the facts and circumstances surrounding their cases shall be carried out in compliance with the courts' sentencing orders, and shall not be substantially diminished by early release policies intended to alleviate overcrowding in custodial facilities. The legislative branch shall ensure sufficient funding to adequately house inmates for the full terms of their sentences, except for statutorily authorized credits which reduce those sentences.

(6) Reform of the parole process. The current process for parole hearings is excessive, especially in cases in which the defendant has been convicted of murder. The parole hearing process must be reformed for the benefit of crime victims.

(g) As used in this article, the term "serious felony" is any crime defined in subdivision (c) of Section 1192.7 of the Penal Code, or any successor statute.

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