California Legislative & Legal Digest

2022 Laws

A PRODUCT OF THE:

ACKNOWLEDGMENTS

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CIVIL PROCEDURE/COURT ORDERS

AB 127 (Kamlager)- Arrest warrants: declaration of probable cause

Penal Code Section 817 (Amend)

Effective Date: January 1, 2022

SUMMARY:

Requires a magistrate, before issuing an arrest warrant, to examine the declaration of probable cause made by a peace officer, or an employee of a public prosecutor's office when the subject of the arrest warrant is a peace officer.

HIGHLIGHTS:

- **PC 817.**

  (1) ~~If a declaration of probable cause is made to a magistrate,~~ *Before issuing an arrest warrant, the magistrate shall examine a declaration of probable cause made by a peace officer or, when the defendant is a peace officer, an employee of a public prosecutor's office of this state,* in accordance with subdivisions (b), (c), and (d), as ~~applicable, the~~ *applicable. The* magistrate shall issue a warrant of probable cause for the arrest of the defendant only if the magistrate is satisfied after reviewing the declaration that there exists probable cause that the offense described in the declaration has been committed and that the defendant described therein has committed the offense.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

These cases are likely to be highly sensitive and a judge's oversight will enhance the overall integrity of a likely high-profile case with a lot of attention from the media.

NOTES:

AB 262 (Patterson)- Human trafficking: vacatur relief for victims

Penal Code Section 236.14 (Amend)

Effective Date: January 1, 2022

SUMMARY:

Provides additional legal rights when a victim of human trafficking petitions the court to vacate a conviction for a non-violent crime that was committed while the petitioner was a victim of human trafficking.

HIGHLIGHTS:

- Allows a person, when petitioning to vacate a non-violent conviction because the petitioner was a victim of human trafficking and the conviction was a direct result of being a victim of human trafficking, to appear at the court hearings by counsel and removes time limitations to bring the petition.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

AB 341 (Horvath)- Credibility of witnesses: sexual conduct: social media content

Evidence Code Section 782 (Amend)

Effective Date: January 1, 2022

SUMMARY:

Defines “evidence of sexual conduct” to include the portions of a social media account about the complaining witness that depict sexual content, as specified, unless the content is related to the alleged offense, for purposes of the Rape Shield Law that requires such evidence to first be presented to the judge to determine admissibility in specified sex offense cases.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

Prior case law interpreting EC 782:

Evidence Code section 782 is designed to protect victims of molestation from “embarrassing personal disclosures” unless the defense can show in advance that the victim's sexual conduct is relevant to the victim's credibility. (*People v. Harlan* (1990) 222 Cal.App.3d 439, 447 [271 Cal. Rptr. 653].)

Under the amended law, the court will still act as a gate keeper to ensure that social media posts are not admitted before a jury absent a finding of relevance to the victim’s credibility. (*People v. Bautista* (2008) 77 Cal. Rptr. 3d 824 [evidence regarding pastor defendant’s interference with relationship between his female victim and her boyfriend excluded on the basis that it did not establish a credible reason for her to lie about her allegations of abuse].)

NOTES:

AB 514 (Ward)- Injunctions: civil actions: distribution of sexually explicit materials

Civil Code Section 1708.85 (Amend) and Code of Civil Procedure Section 529 (Amend)

Effective Date: January 1, 2022

SUMMARY:

Exempts a person who is a victim of the distribution of sexually explicit material from an undertaking requirement, as specified; alters the knowledge threshold that makes a person liable for distributing sexually explicit materials; and allows a victim of the distribution of sexually explicit material to serve notice on a redistributor to cease distributing the material.

HIGHLIGHTS:

- Exempts a person seeking to enjoin the distribution of sexually explicit material from the usual requirement of making an undertaking (posting a bond) sufficient to pay the party enjoined any damages sustained as a result of the injunction, if the court finally determines the applicant was not entitled to an injunction.
- Changes the knowledge threshold in one of the elements creating liability for distributing sexually explicit material from "knew" to "knew, or reasonably should have known" that the person depicted in the material had a reasonable expectation that the material would remain private.
- Provides that a person may be liable for distributing sexually explicit material even if the material was previously distributed by another person, if the plaintiff served on the defendant, by certified mail, a notice to cease distribution of the material, and the defendant failed to cease distribution within 20 days of receiving the notice.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

AB 764 (Cervantes)- Contempt of court: victim intimidation

Penal Code Section 166 (Amend)

Effective Date: January 1, 2022

SUMMARY:

Increases the maximum punishment for misdemeanor contempt of court that applies when a person who has previously been convicted of stalking, willfully contacts a victim by social media, electronic communication, or electronic communication device, from six months in jail to one year in jail.

HIGHLIGHTS:

- Specifies that a fine imposed for contempt of court for willfully contacting a victim following a conviction for stalking may be no more than $5,000.
- Provides that unlawful contact with a victim in violation of a court order for purposes of the one-year misdemeanor include social media, electronic communication, or electronic communication device, instead of being limited to direct contact, telephone, or mail.
- Defined terms for the purposes of this bill as follows:
    - "Social media" means an electronic service or account, or electronic content, including, but not limited to, videos or still photographs, blogs, video blogs, podcasts, instant and text messages, email, online services or accounts, or Internet Web site profiles or locations.
    - "Electronic communication device" includes, but is not limited to, telephones, cellular telephones, computers, video recorders, fax machines, or pagers; and,
    - "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photo optical system that affects interstate or foreign commerce.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

AB 887 (Levine)- Domestic violence: restraining orders

Family Code Sections 6306.5 and 6306.6 (Add)

Effective Date: January 1, 2022

SUMMARY:

Upon an appropriation of funds, requires courts to accept petitions for domestic violence restraining orders and domestic violence temporary restraining orders (TROs) that are submitted electronically.

HIGHLIGHTS:

- Requires that petitions for domestic violence restraining orders and domestic violence temporary restraining orders be permitted to be filed electronically in every trial court.
- Provides that existing deadlines still apply.
- Provides that court responses shall be remitted to the petitioner electronically unless the petitioner elects to receive the documents by regular mail or pick them up from the court.
- Provides that there is no fee for filing these petitions or related documents electronically. Provides that this provision is operative only upon an appropriation of funds for this purpose in the budget or other statute.
- Requires that information about access to self-help services regarding domestic violence restraining orders be prominently visible on a court's internet website. Requires the Judicial Council to develop or amend rules to implement this.
- Make the court's acceptance of domestic violence restraining orders by electronic filing contingent of an appropriation and revise the requirement of what must be prominently visible on superior court's websites.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

AB 1243 (Rubio) Protective orders: elder and dependent adults

Welfare and Institutions Code Section 15657.03 (Amend, Repeal and Add)

Effective Date: January 1, 2023

SUMMARY:

Effective January 1, 2023, allows, after notice and a hearing, an interested party to seek a protective order for isolation of an elder or dependent adult under the Elder Abuse and Dependent Adult Civil Protection Act (EADACPA) and for the court to make a finding that specific debt was incurred as the result of financial abuse of the elder or dependent adult.

HIGHLIGHTS:

- Provides that, if an elder or dependent adult abuse petition under EADACPA alleges isolation as the form of abuse, the petition may be brought by an individual with a personal, preexisting relationship with the elder or dependent adult. Provides that the preexisting relationship may be shown by a description of past involvement with the elder or dependent adult, time spent together, and any other proof that the individual spent time with the elder or dependent adult.
- Allows an order enjoining a party from abusing an elder or dependent adult by isolating them, issued after notice and a hearing, to restrain the respondent from a reoccurrence of isolation if the court finds, by a preponderance of the evidence, to the satisfaction of the court, all of the following:
    - The respondent's past acts of isolation of the elder or dependent adult repeatedly prevented contact with the interested party;
    - The elder or dependent adult expressly desires contact with the interested party and requires the court to use all means at its disposal to determine whether the elder or dependent adult desires contact with the person and has capacity to consent to that contact;

      and
    - The respondent's isolation of the elder or dependent adult from the interested party was not in response to actual or threatened abuse of the elder or dependent adult by the interested party or the elder or dependent adult's desire not to have contact with the interested party.
- Allows an order issued above, to specify actions to be enjoined, including enjoining the respondent from preventing in-person or remote, online visits with the elder or dependent adult.
- Provides that an order enjoining isolation above, is not required for an elder or dependent adult to visit with anyone with whom the elder or dependent adult desires visitation.

- Prohibits an order enjoining isolation above, from being issued if the elder or dependent adult resides in a long-term care facility or a residential facility, both as defined, or is a patient of a health facility, as defined.
- Allows a protective order, issued after notice and a hearing to prevent elder or dependent adult abuse, to include a finding that specific debts were incurred as the result of financial abuse of the elder or dependent adult by the respondent.
    - Provides that acts that support this finding may include, but are not limited to, obtaining a party's personal identifying information, and using it for any unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, real property, or medical information without the consent of that person. Provides that the finding does not affect the priority of any lien or other security interest, nor does it entitle the petitioner to any remedies other than those actually set for in the protective order statute.
- Provides that the following requirements do not apply if the protective order was made solely on the basis of isolation unaccompanied by force, threat, harassment, intimidation, or any other form of abuse:
    - That protective orders be transmitted to the Department of Justice to be entered into the California Law Enforcement Telecommunications System (CLETS); and
    - That persons subject to the protective orders may not own, possess, purchase, receive, or attempt to receive a firearm or ammunition while the protective order is in effect.
    - Requires Judicial Council, on or before February 1, 2023, to revise or promulgate forms as necessary to implement this bill.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

SB 24 (Caballero)- Domestic violence: protective orders: information pertaining to a child

Family Code Section 6323.5 (Add)

Effective Date: January 1, 2023

SUMMARY:

Beginning January 1, 2023, enhances protections against a third party's disclosure of a minor's protected information under a domestic violence restraining order.

HIGHLIGHTS:

- Authorizes a court to include in an *ex parte* restraining order a provision restraining a party from accessing records and information pertaining to the health care, education, daycare, recreational activities, or employment of a minor child of the parties.
- Requires certain third parties that provide services to children to adopt protocols to ensure that restrained parties pursuant to above, are not able to access records or information pertaining to the child in the possession of the third parties. At a minimum, the protocols must include designating appropriate personnel to receive such protective orders, establishing a means of ensuring that the restrained party is identified and not able to access the records or information, and implementing a procedure for documenting receipt of a copy of the protective order.
- Such protocols must, by February 1, 2023, be adopted as a matter of course by "essential care providers," defined to include organizations that frequently provide essential social, health, or care services to children.
- By contrast, "discretionary services organizations," defined as organizations that provide non-essential services to children, such as recreational activities, entertainment, and summer camps, are required to adopt a protocol only if they are provided with a copy of a restraining order issued pursuant to above.
- Prohibits essential care providers and discretionary services organizations that are provided with a restraining order issues pursuant to above, from releasing information or records pertaining to the child to the restrained party.
- Requires the Judicial Council to update forms or rules as necessary.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

Expanding the scope of the restraining order to work in an overall capacity to provide the best opportunity to enhance the victim's and children's safety has enhanced our ability in law enforcement

to provide a comprehensive safety plan and make it very difficult for the dominant aggressor and/or arrestee to reoffend or re-victimize.

NOTES:

SB 71 (McGuire)- Infractions: community service: education programs

Penal Code Section 1209.5 (Amend)

Effective Date: January 1, 2022

SUMMARY:

Allows a court to permit a person to participate in an educational program as part of their community service to pay off the fine imposed for an infraction.

HIGHLIGHTS:

- Provides that an educational program includes, but is not limited to, high school or General Education Development classes, college courses, adult literacy or English as a second language programs, and vocational education programs.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

SB 320 (Eggman)- Domestic violence protective orders: possession of a firearm

Family Code Sections 3044, 6304, 6306, 6323 (Amend) and 6322.5 (Add)

Penal Code Sections 11108.2, 25555, 26379, 26405, 26540, and 30342 (Amend)

Welfare and Institutions Code Section 213.5 (Amend)

Effective Date: January 1, 2022

SUMMARY:

Codifies existing Rules of Court related to the relinquishment of a firearm by a person subject to a civil domestic violence restraining order and requires the courts to notify law enforcement and the county prosecutor's office when there has been a violation of a firearm relinquishment order.

HIGHLIGHTS:

- Codifies California Rule of Court 5.495 related to court procedures when the court is presented with information that a restrained person is in possession of a firearm.
- Requires the court to provide information about how any firearms or ammunition still in the restrained party's possession are to be relinquished, according to local procedures, and the process for submitting a receipt to the court showing proof of relinquishment.
- Provides that a court holding a hearing on the matter of whether the respondent has relinquished any firearms or ammunition shall review the file to determine whether the receipt has been filed and inquire of the respondent whether they have complied with the requirement.
- States that violations of the firearms prohibition of any civil domestic violence restraining order shall be reported to the prosecuting attorney in the jurisdiction where the order has been issued within two business days of the court hearing unless the respondent provides a receipt showing compliance at a subsequent hearing or by direct filing with the clerk of the court.
- States that if the results of the court's search of records and databases indicate that the subject of the order owns a registered firearm or if the court receives evidence of the subject's possession of a firearm or ammunition, the court shall make a written record as to whether the subject has relinquished the firearm and provided proof of the required storage, sale, or relinquishment of the firearm. If evidence of compliance is not provided as required, the court shall order the court of the court to immediately notify law enforcement officials and law enforcement officials shall take all actions necessary to obtain those and any other firearms or ammunition owned, possessed, or controlled by the restrained person and to address the violation of the order as appropriate and as soon as practicable.

- Requires that the court consider whether a party is a restrained person in possession or control of a firearm or ammunition when making specified determinations related to child custody and visitation matters.
- Requires the juvenile court to make a determination as to whether the restrained person is in possession or control of a firearm or ammunition.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

SB 374 (Min)- Protective Orders: reproductive coercion

Family Code Section 6320 (Amend)

Effective Date: January 1, 2022

SUMMARY:

Adds "reproductive coercion" as an additional example of coercive control which disturbs the peace of another and for which a restraining order may be granted under the Domestic Violence Prevention Act (DVPA).

HIGHLIGHTS:

- Reproductive coercion = controlling the reproductive autonomy of another through force, threat of force, or intimidation, which may include unreasonably pressuring the other party to become pregnant, deliberately interfering with contraception use or access to reproductive health information, or using coercive tactics to control, or attempt to control, pregnancy outcomes.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

SB 538 (Rubio)- Domestic violence and gun violence restraining orders

Family Code Section 6222 (Amend), 6307 and 6308 (Add)

Penal Code Sections 18121 (Amend), 18122 (Repeal and Add) and 18123 (Add)

Effective Date: January 1, 2023

SUMMARY:

Facilitates the filing of a domestic violence restraining order (DVRO) and gun violence restraining order (GVRO) by allowing petitions to be submitted electronically and hearings to be held remotely.

HIGHLIGHTS:

- Requires, by July 1, 2023, that a court or court facility that receives petitions for DVRO or GVRO to permit those petitions to be submitted electronically during and after normal business hours.
- Provides that a party or witness may appear remotely at the hearing on a petition for a GVRO or DVRO. Requires the superior court of each county to develop local rules and instructions for remote appearances and requires they be posted on its internet website.
- Requires that the superior court of each county provide, and post on its internet website, a phone number for the public to call to obtain assistance regarding remote appearances. Requires the phone number be staffed 30 minutes before the start of the court session at which the hearing will take place, and during the court session.
- Provides that there is no fee for any filings related to a petition filed to obtain a GVRO or DVRO.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES

CONTROLLED SUBSTANCES/NARCOTICS

AB 527 (Wood)- Controlled substances

Health and Safety Code Sections 11056, 11057, 11050.2 and 11165 (Amend) and 11059 (Add)

Effective Date: January 1, 2022

SUMMARY:

Provide that if any cannabinoids are federally rescheduled or otherwise made legally prescribable, they shall also be legal to prescribe under state law and would reconcile conflicts between state and federal controlled substance schedules.

HIGHLIGHTS:

- Expand existing provisions authorizing the prescription, furnishing, dispensing, transfer, transportation, possession, or use of cannabidiol products in accordance with federal law, upon the specified changes being made to federal law, to include all products with cannabinoids.
- Exempt from specified schedules compounds, mixtures, or preparations that contain a nonnarcotic controlled substance in combination with a derivative of a specified substance listed in the federal Table of Exempted Prescription Products and that has been exempted pursuant to federal law or regulation.
- Require the California Department of Justice (DOJ) to provide the University of California (UC) with access to identifiable data for research purposes, provided that existing requirements in the Information Practices Act (IPA) are satisfied.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

AB 1138 (Rubio)- Unlawful cannabis activity: civil enforcement

Business and Professions Code Section 26038 (Amend)

Effective Date: January 1, 2022

SUMMARY:

Subjects any person who aids and abets unlicensed commercial cannabis activity to civil penalties of up to $30,000 per day.

HIGHLIGHTS:

- Adjusts the allowable civil penalties to be no more than three times the amount of the license fee for each violation, not to exceed $30,000.
- Requires a court to consider whether, and to what extent, the licensee or person profited from the unlicensed cannabis activity when considering the appropriateness of the amount of the civil penalty.
- Requires the action for civil penalties to be brought within three years from the date of the violation, rather than from the date of discovery by an authority.
- Requires that it be demonstrated that the person alleged to have aided and abetted in the activity be an owner, officer, controlling shareholder, or in a similar position of authority allowing them to make command or control decisions regarding the operations and management of the unlicensed cannabis activity or the property in which the activity is taking place.
- Limit the authority to bring actions for civil penalties under this bill to the Attorney General on behalf of the people, on behalf of the Department of Cannabis Control, or on behalf of the participating agency, or by a city or county counsel or city prosecutor in a city or county having a population in excess of 750,000.
- Expressly state that the bill does not limit, preempt, or otherwise affect any other state or local law, rule, regulation, or ordinance applicable to unlicensed cannabis activity, or otherwise relating to commercial cannabis activities.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

AB 1222 (Chen)- Cannabis packaging: beverages

Business and Professions Code Section 26120 (Amend)

Effective Date: January 1, 2022

SUMMARY:

Allows cannabis beverages to be packaged in clear or colored glass containers.

HIGHLIGHTS:

BPC 26120 (a)

- Prior to delivery or sale at a retailer, cannabis and cannabis products shall be labeled and placed in a tamper-evident, child-resistant package and shall include a unique identifier for the purposes of identifying and tracking cannabis and cannabis products. If the cannabis or cannabis product contains multiple servings, the package shall also be resealable.

BPC 26120 (e)

- Cannabis beverages may be packaged in glass containers that are clear or any color.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

SB 544 (Laird)- Cannabis testing

Business and Professions Code Section 26100 (Amend)

Effective Date: January 1, 2023

SUMMARY:

Requires establishment, by January 1, 2023, of one or more standardized cannabinoids test methods to be used by all testing laboratories and authorizes the Department of Cannabis Control (Department) to establish testing standards through a reference laboratory.

HIGHLIGHTS:

- Changes “medical” to “medicinal” cannabis.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

CORRECTIONS/PAROLE

AB 110 (Petrie-Norris)- Fraudulent claims for unemployment compensation benefits: inmates

Penal Code Section 11105.9 (Amend) and Unemployment Insurance Code Section 321.5 (Add)

Effective Date: October 5, 2021

SUMMARY:

Requires CDCR to provide, as specified, the names and social security numbers of current inmates to the Employment Development Department (EDD) for the purpose of preventing payments on fraudulent claims for unemployment compensation benefits, as specified, and would require EDD to cross match that information before any payment of unemployment compensation benefits is provided.

HIGHLIGHTS:

- Requires, in addition to names and SSNs of current inmates, that CDCR provide known aliases, birthdates, booking date and expected release date, of current inmates to EDD.
- Requires EDD to complete necessary system programming or automation upgrades to allow electronic monitoring of CDCR inmate data to prevent payment on fraudulent claims for unemployment compensation benefits at the earliest possible date, but not later than September 1, 2023.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

Administrative and paperwork burden placed on CDCR operational and prison staff.

NOTES:

AB 292 (Stone)- Corrections: rehabilitative programming

Penal Code Section 2933.7 (Add)

Effective Date: January 1, 2022

SUMMARY:

Directs CDCR to conduct rehabilitative programming in a manner that meets specified requirements, such as minimizing program wait times and offering a variety of program opportunities to inmates regardless of security level or sentence length.

HIGHLIGHTS:

- Directs CDCR to conduct programming in a manner that minimizes (rather than prevents) transfers from institutions, facilities, or sections of the institutions or facilities from disrupting an incarcerated person's programming.
- Directs CDCR to conduct programming in a manner that prioritizes, to the greatest extent possible, an incarcerated person that has transferred from institutions, facilities, or sections of the institutions or facilities for non-adverse reasons to resume programming. States that to accomplish this, an incarcerated person shall be prioritized for similar programs at the new institution, facility, or sections of the institutions or facilities. If a program is temporarily canceled or terminated, the incarcerated person shall be prioritized for similar programming if available.
- Directs CDCR to conduct programming in a manner that offers programming to the greatest extent possible (rather than ensure programming is offered), even if the institution, facility, or section of the institution or facility is restricting in-person programming for reasons including, but not limited to, a security or medical concern.
- Directs CDCR to conduct programming in a manner that minimizes programming waitlist times to the greatest extent possible, especially in those institutions, facilities, or sections of institutions or facilities where programming waitlists exceed one year by, among other things, increasing virtual or in-person programming opportunities.
- Directs CDCR to conduct programming in a manner that is accessible in a timely manner (rather than available without restrictions) to incarcerated persons that have recently changed status, security level, or facility.
- Directs CDCR to conduct programming in a manner that offers a variety of programming opportunities (rather than offer an equitable selection of programming to incarcerated persons regardless of security level or sentence length.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

SB 416 (Hueso)- Corrections: educational programs

Penal Code Section 2053.1 (Amend)

Effective Date: January 1, 2022

SUMMARY:

Requires the Department of Corrections and Rehabilitation (CDCR) to make college programs provided by the various California college systems or other regionally accredited, nonprofit colleges or universities in the state available to state prison inmates with a GED certificate or a high school diploma, establishes a set of criteria to be used to prioritize those college programs, and defines the responsibilities of those college education providers.

HIGHLIGHTS:

- Requires CDCR to make college programs available at every state prison for the benefit of inmates who have obtained a general education development certificate or equivalent or a high school diploma. Requires that the college programs be provided by the California Community Colleges, the California State University, the University of California, or other regionally accredited, nonprofit colleges or universities.
- Requires CDCR to prioritize colleges and universities that: provide face-to-face, classroom-based instruction; provide comprehensive in-person student supports, including counseling, advising, tutoring, and library services; offer transferable degree-building pathways; facilitate real-time student-to-student interaction and learning; coordinate with other colleges and universities serving students in the department so that inmate students who are transferred to another institution can continue building toward a degree or credential; coordinate with the California Community Colleges Rising Scholars Network, the California State University Project Rebound Consortium, the University of California Underground Scholars Initiative, or other nonprofit postsecondary programs specifically serving formerly incarcerated students so that incarcerated students who are paroled receive support to continue building toward a degree or credential; do not charge incarcerated students or their families for tuition, course materials, or other educational components; and waive or offer grant aid to cover tuition, course materials, or other educational components for incarcerated students.
- Provides that accredited postsecondary education providers are responsible for determining and developing curricula and degree pathways; determining certificate pathways, in consultation with, and with the approval of, CDCR; providing instructional staff and academic advising or counseling staff; and determining what specific services, including, but not limited to tutoring, academic counseling, library, and career advising, must be offered to ensure incarcerated students can successfully complete their course of study.

- Requires CDCR to deem an inmate enrolled in a full-time college program consisting of 12 semester units, or the academic quarter equivalent, of credit-bearing courses leading to an associate degree or a bachelor's degree as assigned to a full-time work or training assignment.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

CRIMES & CRIMINAL PROCEDURE

AB 124 (Kamlager)- Criminal procedure

Penal Code Sections 236.23 and 1170 (Amend) and 236.15, 236.24 and 1016.7 (Add)

Effective Date: January 1, 2022

SUMMARY:

Requires courts to consider whether specified trauma to a defendant and other factors contributed to the commission of an offense when making sentencing and resentencing determinations and expands the affirmative defense of coercion for human trafficking victims and extends it and vacatur relief to victims of intimate partner violence and sexual violence.

HIGHLIGHTS:

- Rules that mental state evidence may be admitted solely on the issue of whether or not the accused actually formed a required specific intent, premeditated, deliberated, or harbored malice aforethought, when a specific intent crime is charged.
- Restores the limitation excluding violent felonies from vacatur relief for victims of human trafficking. Make similar changes to vacatur relief for victims of intimate partner violence and sexual violence.
- Restores the prohibition against applying the affirmative defense of coercion for victims of human trafficking to violent felonies and make the prohibition applicable to the affirmative defense of coercion for victims of intimate partner and sexual violence.
- Removes the presumption against imposing consecutive terms of imprisonment for two or more felonies where trauma, youthfulness, or having been a victim of intimate partner battering or human trafficking was a contributing factor in the commission of the alleged offense.
- Removes the presumption against imposing a term of imprisonment for any enhancement found true where trauma, youthfulness, or having been a victim of intimate partner battering or human trafficking was a contributing factor in the commission of the alleged offense.
- Limits the mandate on imposing the lower term at sentencing to when the aggravating circumstances outweigh the mitigating circumstances, instead of when they so outweigh the mitigating circumstances.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

AB 223 (Ward)- Wildlife: dudleya: taking and possession

Fish and Game Code Section 2024 (Add)

Effective Date: January 1, 2022

SUMMARY:

Makes it a misdemeanor to uproot, harvest or cut dudleya from state or local government property or from private property without permission and to sell, export, or purchase dudleya that was taken illegally.

HIGHLIGHTS:

- Modifies the criminal penalties as follows:
  - Require a total value of the dudleya of $250 or more for a first conviction.
  - Caps the monetary penalty for a first conviction at not more than $50,000.
  - Changes the monetary penalty for a second or subsequent conviction to not less than $10,000 and not more than $500,000.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

AB 277 (Valladares)- Domestic violence: victims: address confidentiality

Family Code Section 6226.5 (Add) and Government Code Sections 6206, 6209.5 (Amend) and 6209.6 (Add)

Effective Date: January 1, 2023

SUMMARY:

Requires, as of January 1, 2023, the Secretary of State (SOS) to provide application forms, notices, and explanatory materials related to the Safe at Home program available in at least five languages and requires information about the Safe at Home program to be included on Judicial Council forms relating to domestic violence.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

AB 331 (Jones-Sawyer)- Organized theft

Penal Code Section 490.4 (Add and repeal) and Chapter 13 (repeal)

Effective Date: July 21, 2021

SUMMARY:

Re-establishes the crime of organized retail theft until to January 1, 2026, and also empowers the existence of a taskforce established by the California Highway Patrol to analyze organized retail theft and vehicle burglary and assist local law enforcement in counties identified as having elevated property crime.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

Removed language related to the sunset of Penal Code Section 409.4

NOTES:

AB 333 (Kamlager)- Participation in a criminal street gang: enhanced sentence

Penal Code Section 186.22 (Amend) and 1109 (Add)

Effective Date: January 1, 2023

SUMMARY:

Redefines the terms "pattern of criminal gang activity" and "criminal street gang" for the purposes of the gang offense, enhancement, and alternate penalty under the STEP Act and requires bifurcation of gang-related prosecutions from prosecutions that are not gang-related.

HIGHLIGHTS:

- Revises the definition of “pattern of criminal gang activity” to additionally require that the last of those offenses have occurred within three years of the prior offense and within three years of the current offense, the offenses were committed by two or more members, the offenses commonly benefited a criminal street gang, and the common benefit from the offenses is more than reputational.
- Removes looting, felony vandalism, offenses related to unlawful theft or use of an access card, and unlawful use of personal identifying information from the list of crimes that define “pattern of criminal gang activity.”
- States that the currently charged offense shall not be used to establish the pattern of criminal gang activity.
- Revises the definition of “criminal street gang” to replace “ongoing organization, association” with “ongoing, organized association” and to require that engagement in a pattern of criminal activity must be done by members collectively, not individually.
- States that for purposes of the Act, “to benefit, promote, further, or assist” means “to provide a common benefit to members of a gang where the common benefit is more than reputational. Examples of a common benefit that are more than reputational may include, but are not limited to, financial gain or motivation, retaliation, targeting a perceived or actual gang rival, or intimidation or silencing of a potential current or previous witness or informant.”
- Requires, if requested by the defense in a case where a sentencing enhancement for participation in a criminal street gang is charged shall be tried in separate phases as follows:
    - The question of defendant’s guilt of the underlying offense must first be determined.
    - If the defendant is found guilty of the underlying offense, there shall be further proceedings to the trier of fact on the question of the truth of the enhancement. Allegations that the underlying offense was committed for the benefit of, at the direction of, or in association with, a criminal street gang and that the underlying offense was committed with the specific

intent to promote, further, or assist in criminal conduct by gang members shall be proved by direct or circumstantial evidence.

- Requires that a charge for active participation in a criminal street gang be tried separately from all other counts that do not otherwise require gang evidence as an element of the crime. This charge may be tried in the same proceeding with an allegation of an enhancement for participation in a criminal street gang.
- States that its provisions shall be known, and may be cited, as the STEP Forward Act of 2021.
- Extends until January 1, 2023, the requirement that the court, when applying an enhancement, to select the sentence that best serves the interest of justice.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

Removal of these from the existing law, but more specifically (i.e., identity fraud) would only serve to empower gangs and gang members, while furthering the negative impact of the victim. Many of these people are from neighborhoods already plagued by gangs and gang violence. Allowing gangs and their members to operate without accountability only makes things worse.

If Gangs/ and their members have the ability to earn more money through fraud/ ID Theft it gives them more buying power, which in turn can lead to the purchase of more weapons and a larger stake in the drug trade. This in turn can lead to more violent crime in the neighborhoods already impacted, as well as continued drug access and use among teens/ young adults. Some statistics show 2020 and the start of 2021 seeing increases in violent crime throughout California and the US with rates in LA up 30.4pct, Oakland 37.8pct, San Fran 32.4 and Sacramento 33.3pct

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NOTES:

AB 419 (Davies)- Criminal procedure: victim and witness privacy

Penal Code Section 1054.2 (Amend)

Effective Date: January 1, 2022

SUMMARY:

Prohibits an attorney from disclosing all personal identifying information of a victim or witness, instead of merely prohibiting the disclosure of their address and telephone number.

HIGHLIGHTS:

- Eliminates the existing misdemeanor penalty for willfully disclosing such information.

- Defines "personal identifying information," by cross reference to Penal Code Section 530.55, as "any address, telephone number, health insurance number, taxpayer identification number, school identification number, state or federal driver's license, or identification number, social security number, employee identification number, professional or occupational number, mother's maiden name, demand deposit account number, savings account number, checking account number, PIN (personal identification number) or password, alien registration number, government passport number, date of birth, unique biometric data including fingerprint, facial scan identifiers, voiceprint, retina or iris image, or other unique physical representation, unique electronic data including information identification number assigned to the person, address or routing code, telecommunication identifying information or access device, information contained in a birth or death certificate, or credit card number of an individual person."
    - Does not include name, place of employment or an equivalent form of identification**.**

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

AB 700 (Cunningham)- Criminal procedure: arraignment and trial

Penal Code Sections 977, 1043, and 1043.5 (Amend)

Effective Date: January 1, 2022

SUMMARY:

Allows a defendant who is in custody to appear by counsel in criminal proceedings, with or without a written waiver, if the court makes specified findings on the record by clear and convincing evidence.

HIGHLIGHTS:

- Court may allow a defendant to appear by counsel on that day, at a trial, hearing, or other proceeding, with or without a written waiver, if the court finds, by clear and convincing evidence, all of the following are true:
    a) The defendant is in custody and is refusing, without good cause, to appear in court on that day for the trial, hearing or other proceeding.
    b) The defendant has been informed of their right and obligation to be personally present in court.
    c) The defendant has been informed that the trial, hearing, or other proceeding will proceed without the defendant being present.
    d) The defendant has been informed that they have the right to remain silent during the trial, hearing, or other proceeding.
    e) The defendant has been informed that their absence without good cause will constitute a voluntary waiver of any constitutional or statutory right to confront witnesses against them or to testify on their own behalf.
    f) The defendant has been informed whether defense counsel will be present.
- If the trial, hearing, or other proceeding lasts more than one day, the court is required to make the required findings anew on each day.
- The defendant in a felony case shall be personally present at the trial. However, the absence of the defendant in a felony case after the trial has commenced in their presence shall not prevent continuing the trial to, and including, the return of the verdict in any of the following cases:
    a) Any case in which the defendant, after he has been warned by the judge that he will be removed if he continues his disruptive behavior, nevertheless insists on conducting himself in a manner so disorderly, disruptive, and disrespectful of the court that the trial cannot be carried on with him in the courtroom; or
    b) Any prosecution for an offense which is not punishable by death in which the defendant is voluntarily absent. (Penal Code §§ 1043 (a) & (b).)

- Authorizes the court to proceed with a misdemeanor trial if the defendant fails to appear and if the defendant has authorized counsel to proceed in their absence, unless good cause for a continuance exists. (Penal Code § 1043 (e).)
- Provides that if there is no authorization and if the defendant fails to appear, the court, in its discretion, may do one or more of the following, as it deems appropriate:
    a) Continue the matter.
    b) Order bail forfeited or revoke release on the defendant's own recognizance.
        - Issue a bench warrant; and/or,
        - Proceed with the trial if the court finds the defendant has absented themselves voluntarily with full knowledge that the trial is to be held or is being held. (Penal Code § 1043, subd. (e).)

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

Under current law, defendants in felony cases are generally required to be personally present during trial or preliminary examination. Prosecutors have repeatedly been running into problems with defendants in custody who refuse to come to court for the commencement of trial or preliminary examination.

The sheriff's department will not physically remove the defendant from his or her jail cell to bring the defendant to court (i.e., out of fear of injury to themselves, injury to the defendant, or out of concern of enhancing the risk of contracting an illness). This fear of physical contact has been exacerbated by the COVID pandemic.

AB 700 would allow a preliminary examination or trial to proceed when there is clear and convincing evidence that an in-custody defendant is voluntarily refusing to appear. This bill will help move these cases along and mitigate the backlog of cases that are piling up from the pandemic's impact on our court system.

NOTES:

AB 1003 (Gonzalez)- Wage theft: grand theft

Penal Code Section 487m (Add)

Effective Date: January 1, 2022

SUMMARY:

Creates a new offense for the intentional theft of wages by an employer, punishable as either a felony or a misdemeanor.

HIGHLIGHTS:

- Makes the intentional theft of wages in an amount greater $950 from any one employee, or $2,350, in aggregate, from more two or more employees, in any 12 consecutive month period, punishable as grand theft, an alternate felony/misdemeanor ("a wobbler.")
- Defines "theft of wages" as the intentional deprivation of wages as defined, benefits, or other compensation, by fraudulent or other unlawful means, with the knowledge that such wages, benefits or other compensation is due to the employee under the law.
- Specified that wages benefits, or other compensation that are the subject of a prosecution under this section may be recovered in a civil action by the employee or the Labor Commissioner.
- Authorizes wages, gratuities, benefits, or other compensation that are the subject of a prosecution under these provisions to be recovered as restitution, as specified.
- Specifies that these provisions do not prohibit an employee or the Labor Commissioner from commencing a civil action to seek remedies for acts prosecuted under these provisions.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

AB 1247 (Chau)- Criminal procedure: limitations of actions

Penal Code Section 801.7 (Add)

Effective Date: January 1, 2022

SUMMARY:

Amends the existing statute of limitations that applies to the prosecution for a felony violation for unlawful access of computer services to authorize the prosecution to be commenced within three years after discovery of the commission of the offense, or within three years after the offense could have reasonably been discovered, provided however, that the filing of a criminal complaint shall not be filed more than six years after the commission of the offense.

HIGHLIGHTS:

- Specifies that the amended statute of limitations applies to crimes committed on or after January 1, 2021.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

AB 1259 (Chiu)- Criminal procedure: motion to vacate

Penal Code Section 1473.7 (Amend)

Effective Date: January 1, 2022

SUMMARY:

Allows a person to make a motion to vacate any conviction or sentence because it was invalid due to prejudicial error damaging the moving party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of the conviction.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

AB 1281 (Rubio)- Criminal procedure: protective orders

Penal Code Sections 1203.4, 1203.4a, 1203.4b, and 1203.425 (Amend)

Effective Date: January 1, 2022

SUMMARY:

Provides that expungement of a criminal conviction does not release the defendant from specified, unexpired criminal protective orders issued by the court in the underlying case.

HIGHLIGHTS:

- Dismissal of an accusation or information following successful completion of probation does not release the defendant from the terms and conditions of an unexpired criminal protective order that has been issued by the court in connection with an underlying offense for specified sex offenses, domestic violence, elder or dependent adult abuse, or stalking.
- dismissal of an accusation or information following full compliance with a non-probation sentence does not release the defendant from the terms and conditions of any unexpired criminal protective order that has been issued by the court in connection with the underlying offense for specified sex offenses, domestic violence, elder or dependent adult abuse, or stalking.
- Dismissal of an accusation or information following successful participation in the California Conservation Camp program as an incarcerated individual hand crew member, as a member of a county incarcerated individual hand crew does not release the defendant from the terms and conditions of any unexpired criminal protective order that has been issued by the court in connection with the underlying offense for specified sex offenses, domestic violence, elder or dependent adult abuse, or stalking.
- Persons who qualify for, and who are granted automatic conviction relief are not released from the terms and conditions of any unexpired criminal protective order that has been issued by the court in connection with the underlying offense for specified sex offenses, domestic violence, elder or dependent adult abuse, or stalking.
- For all such dismissals, the protective order shall remain in full force and effect until its expiration, or until any further order by the court modifying or terminating the order, despite the dismissal of the underlying accusation or information.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

AB 1391 (Chau)- Unlawfully obtained data

Civil Code Section 1724 (Add)

Effective Date: January 1, 2022

SUMMARY:

Makes it unlawful for a person to sell data, or sell access to data, that the person has obtained or accessed pursuant to the commission of a crime. It further makes it unlawful for a person, who is not an authorized person, to purchase or use data from a source that the person knows or reasonably should know has obtained or accessed that data through the commission of a crime.

HIGHLIGHTS:

- Specify that this bill does not limit providing or obtaining data in an otherwise lawful manner for the purpose of protecting a computer system or protecting an individual from risk of identity theft or fraud.
- Provides that the court in an action pursuant to this bill may award equitable relief, including, but not limited to, an injunction, costs, and any other relief the court deems proper.
- Clarifies that a violation of the bill shall not constitute a crime.
- Clarifies that "authorized person" means a person who has come to possess or access the data lawfully and who continues to maintain the legal authority to possess, access, or use that data, under state or federal law, as applicable.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

AB 1455 (Wicks)- Sexual assault by law enforcement officers: actions against public entities: statute of limitations

Government Code Section 945.9 (Add)

Effective Date: January 1, 2022

SUMMARY:

Revives otherwise time-barred claims arising out of an alleged sexual assault by a law enforcement officer, as specified; modifies the statute of limitations claims arising out of an alleged sexual assault by law enforcement officer; and exempts such claims from all state and local government claim presentation requirements.

HIGHLIGHTS:

- Exempts from all state and local government claim presentation requirements any claim arising out of an alleged sexual assault by a law enforcement officer if the alleged assault occurred on or after the plaintiff's 18th birthday and while the officer was employed by a law enforcement agency.
- Provides, notwithstanding any other law, that the time for commencement of a claim seeking to recover damages arising out of an alleged sexual assault by a law enforcement officer, if the alleged assault occurred on or after the plaintiff's 18th birthday and while the officer was employed by a law enforcement agency, shall be the later of either of the following dates:
    - Within 10 years after the date of judgment against a law enforcement officer for a crime of sexual assault or a judgement against a law enforcement officer if a crime of sexual assault was alleged and the crime for which there was a judgment against a law enforcement officer arose out of the same operative facts as the allegation of sexual assault in the present claim.
    - Within 10 years after the law enforcement officer is no longer employed by the law enforcement agency that employed the officer when the alleged assault occurred.
- Notwithstanding above, revives a claim seeking to recover damages arising out of an alleged sexual assault by a law enforcement officer if all of the following are true:
    - The alleged sexual assault occurred on or after the plaintiff's 18th birthday while the officer was employed by a law enforcement agency.
    - The claim has not been litigated to finality or compromised by an executed written settlement agreement.
    - The claim would otherwise be barred because the applicable statute of limitations, any state or local government claim presentation deadline, or any other applicable time limit has expired.

- Provides that claims revived pursuant to above, may be commenced if filed within either of the following periods of time:
    - Ten years from the date of the last act, attempted act, or assault with the intent to commit an act, of sexual assault against the plaintiff.
    - Three years from the date the plaintiff discovers or reasonably should have discovered that an injury or illness resulted from an act, attempted act, or assault with the intent to commit an act, of sexual assault against the plaintiff
- Defines "sexual assault" to mean a crime defined in specified Penal Code Sections.
- Specifies that assaults covered by this bill apply only to assaults that occur on or after the plaintiff's 18th birthday.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

SB 317 (Stern)- Competence to stand trial

Penal Code Section 4019 (Amend) and 1370.01 (Repeal and Add)

Effective Date: January 1, 2022

SUMMARY:

Authorizes good conduct credits for a person found incompetent to stand trial who is receiving treatment in a treatment facility; and makes modifications to existing procedures related to a finding of mental incompetence for misdemeanor defendants to provide for community-based treatment rather than confinement in a treatment facility.

HIGHLIGHTS:

- Clarifies that this bill's provisions apply to defendants who are found to be mentally incompetent to stand trial (IST) on misdemeanor or violation of probation for misdemeanor charges;
- Specifies that a defendant not in actual custody shall otherwise receive day for day credit against the term of diversion from the date the defendant is accepted into diversion.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

SB 366 (Umberg)- Automobile dismantling: task force

Vehicle Code Section 11500 (Amend), 11545 (Add and Repeal) and 1662 (Repeal)

Effective Date: January 1, 2022

SUMMARY:

Reconstitutes the Vehicle Dismantling Industry Strike Team (VDIST) and implements several of the recommendations from the VDIST's 2020 report to the Legislature.

HIGHLIGHTS:

- Recreates the VDIST with the same duties, sunsets the VDIST on January 1, 2025.
- Requires the VDIST to submit a report to the Legislature, by January 1, 2024, including the number of unlicensed automobile dismantlers investigated and the number of investigations that resulted in enforcement actions, including specifically the theft of catalytic converters; the number of locations used for unlicensed automobile dismantling and the number of actions taken; compliance progress; any statutory, administrative, or regulatory gaps that exist; and any additional recommendations.
- Deletes a conflicting statute, specifying that the DMV does not have a duty to investigate alleged violations, as recommended by the strike team report.
- Changes the fine structure to set minimum fines of $250, $500, and $1,000 for first, second, and subsequent violations.
- Specifies that a building or place used for the purpose of unlawful auto dismantling is a public nuisance subject to being enjoined, abated, and prevented, and for which damages may be recovered by any public body or officer. Defines "public body" to mean any state agency, county, city, district, or any other political subdivision of the state

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

SB 715 (Portantino)- Criminal law

Government Code Section 12525.3 (Amend)

Penal Code Sections 11106, 11108.2, 26406, 27505, 27570, 28050, 28055, 28100, 28210, 28215, 28220, 28230, 29610, 29615, 29700, 29750, 31700, and 32000 (Amend). Sections 16685, 26537, 27963, 31833, and 31834 (Add) and Section 27945 (Repeal and Add).

Effective Date: January 1, 2022

SUMMARY:

1) Makes changes to hunting licenses and firearms possession for minors
2) Clarifies what qualifies as an "unarmed" civilian to trigger investigations of officer involved shootings by the Attorney General's office.

HIGHLIGHTS:

GC 12525.3

- Clarifies that a state prosecutor may investigate and gather facts in an incident involving a shooting by a peace officer that results in the death of a civilian if the civilian was unarmed, or if there is a reasonable dispute as to whether the civilian was unarmed.

PENAL CODE SECTIONS

- Prohibits minors from possessing a semiautomatic centerfire rifle with specified exemptions.
- Prohibits, as of July 1, 2023, minors from possessing any firearm with specified exemptions.
- Provides until July 1, 2024, that when a dealer is unable to process a transfer of a firearm, and the dealer cannot legally return the firearm to the transferor or the seller or the person loaning the firearm, then the dealer must deliver the firearm to the sheriff of the county or the chief of police or other head of a municipal police department of any city or city and county who shall then dispose of the firearm in a specified manner.
- Authorizes a dealer who cannot legally return a firearm to the transferor or seller or the person loaning the firearm to charge a fee of up to $10 for any firearm stored by the dealer.
- Exempts any federally licensed manufacturer of ammunition, as specified, from state licensing requirements pertaining to firearms and ammunition, as specified.
- Deletes obsolete provisions related to the Department of Justice's (DOJ's) authority to impose fees for non-electronic transfers of firearm purchaser information to the department.

- Defines a valid and unexpired hunting license as one that has been issued but has not yet expired.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

Last year, this Legislature passed, and the Governor signed AB 1506 (McCarty). In that bill, the Legislature gave the authority to a state prosecutor (or the Attorney General) to investigate shootings by peace officers of unarmed civilians that result in death. This bill expands that role by also granting the Attorney General the authority to investigate instances where the there is a reasonable dispute as to whether the civilian was armed or unarmed.

NOTES:

DNA/FORENSICS

SB 215 (Leyva)- DNA Evidence

Penal Code Section 680.1 and 680.3 (Amend)

Effective Date: July 1, 2022

SUMMARY:

Provides sexual assault survivors the ability to privately, securely, and electronically track their own sexual assault evidence kit through the Sexual Assault Forensic Evidence Tracking (SAFE-T) database.

HIGHLIGHTS:

- Requires that on or before July 1, 2022, the Department of Justice (DOJ), in consultation with law enforcement agencies and crime victims groups, to establish a process that allows sexual assault survivors to track and receive updates privately, securely, and electronically regarding the status, location, and information pertaining to their sexual assault evidence kit in the department's SAFE-T database.
- Allows sexual assault survivors to access this data privately, securely, and electronically on or before July 1, 2022.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

EMPLOYMENT OF PEACE OFFICERS

AB 89 (Jones-Sawyer)- Peace officers: minimum qualifications

Government Code Section 1031.4 (Add) and Penal Code Section 13511.1 (Add)

Effective Dates: January 1, 2022 (for new age minimum)

January 1, 2023 (for policing degree program development)

SUMMARY:

Requires all peace officers employed by agencies that participate in the Peace Officer Standards and Training (POST) program, who are not employed in or enrolled in academy for that position as of 2024, to be at least age 21 and meet specified education requirements.

HIGHLIGHTS:

GC 1031.4.

- (a) In addition to the standards in Section 1031, each state officer and employee designated as peace officers as described in Section 830.1, with the exception of those described in subdivision (c) of that section, 830.2, with the exception of those described in subdivision (d) of that section, 830.3, 830.32, or 830.33 of the Penal Code, or any other peace officer employed by an agency that participates in the Peace Officer Standards and Training (POST) program shall be at least 21 years of age at the time of appointment.
- (b) This section shall not apply to any person who, as of December 31, 2021, is currently enrolled in a basic academy or is employed as a peace officer by a public entity in California.

PC 13511.1

- "Modern policing degree program" to be recommended to the Legislature by January 1, 2023, by the Chancellor of CA Community Colleges, with POST, LE stakeholders (admin and employees), CSU, and community organizations to serve as advisors.
- Recommendations shall:
    - Focus on courses pertinent to law enforcement, which shall include, but not be limited to, psychology, communications, history, ethnic studies, law, and those determined to develop necessary critical thinking skills and emotional intelligence.
    - Include allowances for prior law enforcement experience, and appropriate work experience, postsecondary education experience, or military experience to satisfy a portion of the employment eligibility requirements.
        - Prior military experience intended to be those with specializations pertinent to LE, including community relations, de-escalation, foreign language translators, and those which require necessary critical thinking and emotional intelligence skills.

- Prior "experience" be granted to good moral character (i.e., no prior sustained disciplinary actions), except that POST may grant partial allowance.

- Include both policing degree program and BA (in discipline of their choosing) as minimum education requirements for employment as a peace officer.

- Within two years of the Chancellor's report, POST to adopt.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

POST- Fiscal impact of $1.3 million General Fund in 2021-22 to develop the required list of basic certificate courses and establish a media campaign, and $550,000 General Fund ongoing for additional staffing to process compliance checks for basic certificates and implement the higher education financial support program.

LOCAL AGENCIES- You may have to update your receruitment and retention policies/practices to adhere to the 21-age minimum.

NOTES:

SB 2 (Bradford)- Public employment: certification: civil rights

- **Civil Code** Section 52.1 (Amend)
- **Government Code** Section 1029 (Amend)
- **Penal Code** Sections 832.7, 13503, 13506, 13510, 13510.1, (Amend) and 13509.5, 13509.6, 13510.8, 13510.85, and 13510.9 (Add)

Effective Date: January 1, 2022

SUMMARY:

(1) Grants new powers to POST to investigate and determine peace officer fitness and to decertify officers who engage in "serious misconduct"

(2) Makes changes to the Bane Civil Rights Act to limit immunity as specified.

HIGHLIGHTS:

Disqualifying Provisions (GC 1029)

- Specifies that any person who, after January 1, 2004, has been convicted of a crime based upon a verdict or finding of guilt of a felony by the trier of fact, or upon the entry of a plea of guilty or nolo contendere to a felony, is disqualified from being a peace officer, even if the court sets aside, vacates, withdraws, expunges or otherwise dismisses or reverses the conviction, unless the court finds the person to be factually innocent of the crime for which they were convicted at the time of entry of the order.
- Provides that any person who has been issued peace officer certification and has had that certification revoked by POST, or who has voluntarily surrendered that certification permanently, or having met the minimum requirement for issuance of certification, has been denied issuance of certification, is disqualified from being a peace officer.
- Requires the Department of Justice (DOJ) to supply POST with necessary disqualifying felony and misdemeanor conviction data for all persons known to be current/former peace officers.
- Provides that POST shall be permitted use of the information from DOJ for de-certification purposes and that the data, once received by POST, will become information releasable under the California Public Records Act (CPRA), including documentation of the person's appointment, promotion, and demotion dates, as well as certification/licensing status and reason/disposition for leaving service.

POST

- Grants POST the power to investigate and determine the fitness of any person to serve as a peace officer within the POST training program, as specified, in the State of California
- Grants POST the power to audit any law enforcement agency that employs peace officers, as specified, without cause and at any time.
- Creates a Peace Officer Standards Accountability Division within POST.

- to review investigations conducted by law enforcement agencies or any other investigative authority and to conduct additional investigations, as necessary, into serious misconduct that may provide grounds for decertification, present findings and recommendations to the advisory board created by this bill and to POST and bring proceedings seeking the revocation of certification of peace officers as directed by the board and POST.

- Requires POST to establish procedures for accepting complaints from members of the public regarding peace officers or law enforcement agencies that may be investigated by the accountability division or referred to the peace officers' employing agency or the Department of Justice (DOJ).

Peace Officer Standards Accountability Division (within POST)

- Creates a 9-member Advisory Board for the purpose of making recommendations on the decertification of peace officers to POST.
  - One peace officer (or former) appointed by the Governor
  - One peace officer (or former) with substantial experience at a management rank in IA or disciplinary proceedings, appointed by the Governor
  - Two members of the public, working in nonprofit or academic institutions on issues related to police misconduct (one by Governor, other by Speaker of the Assembly)
  - Two members of the public working at community-based organizations on issues related to police misconduct (one by Governor and one by Senate Rules Committee)
  - Two members shall be members of the public, who shall not be former peace officers, with strong consideration given to individuals who have been subject to wrongful use of force likely to cause death or serious bodily injury by a peace officer, or who are surviving family members of a person killed by the wrongful use of deadly force by a peace officer, appointed by the Governor.
  - One attorney with substantial professional experience involving oversight of peace officers, as appointed by the Governor

Grounds for Decertification, Investigation, Appeal

- Requires that a certified peace officer have their certification revoked, and an applicant have their application for certification denied, upon a determination that the peace officer or applicant has done any of the following:
  - The person is or has become ineligible to hold office as a peace officer, as specified;
  - The person has been terminated for cause from employment as a peace officer for, or has, while employed as a peace officer, otherwise engaged in, any "serious misconduct," as defined.

Serious Misconduct

- By January 1, 2023, the commission shall adopt by regulation a definition of "serious misconduct" that shall serve as the criteria to be considered for ineligibility for, or revocation of, certification.

- This definition shall include all of the following:
  - Dishonesty relating to the reporting, investigation, or prosecution of a crime, or relating to the reporting of, or investigation of misconduct by, a peace officer or custodial officer, including, but not limited to, false statements, intentionally filing false reports, tampering

with, falsifying, destroying, or concealing evidence, perjury, and tampering with data recorded by a body-worn camera or other recording device for purposes of concealing misconduct.

- Abuse of power, including, but not limited to, intimidating witnesses, knowingly obtaining a false confession, and knowingly making a false arrest.
- Physical abuse, including, but not limited to, the excessive or unreasonable use of force.
- Sexual assault, as described in subdivision (b) of Section 832.7.
- Demonstrating bias on the basis of race, national origin, religion, gender identity or expression, housing status, sexual orientation, mental or physical disability, or other protected status in violation of law or department policy or inconsistent with a peace officer's obligation to carry out their duties in a fair and unbiased manner. This paragraph does not limit an employee's rights under the First Amendment to the United States Constitution.
- Acts that violate the law and are sufficiently egregious or repeated as to be inconsistent with a peace officer's obligation to uphold the law or respect the rights of members of the public, as determined by the commission. Whether a particular factual or legal determination in a prior appeal proceeding shall have preclusive effect in proceedings under this chapter shall be governed by the existing law of collateral estoppel.
- Participation in a law enforcement gang. For the purpose of this paragraph, a "law enforcement gang" means a group of peace officers within a law enforcement agency who may identify themselves by a name and may be associated with an identifying symbol, including, but not limited to, matching tattoos, and who engage in a pattern of on-duty behavior that intentionally violates the law or fundamental principles of professional policing, including, but not limited to, excluding, harassing, or discriminating against any individual based on a protected category under federal or state antidiscrimination laws, engaging in or promoting conduct that violates the rights of other employees or members of the public, violating agency policy, the persistent practice of unlawful detention or use of excessive force in circumstances where it is known to be unjustified, falsifying police reports, fabricating or destroying evidence, targeting persons for enforcement based solely on protected characteristics of those persons, theft, unauthorized use of alcohol or drugs on duty, unlawful or unauthorized protection of other members from disciplinary actions, and retaliation against other officers who threaten or interfere with the activities of the group.
- Failure to cooperate with an investigation into potential police misconduct, including an investigation conducted pursuant to this chapter. For purposes of this paragraph, the lawful exercise of rights granted under the United States Constitution, the California Constitution, or any other law shall not be considered a failure to cooperate.
- Failure to intercede when present and observing another officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, taking into account the possibility that other officers may have additional information regarding the threat posed by a subject.

- Requires, beginning no later than January 1, 2023, that each law enforcement agency be responsible for the completion of investigations of allegations of serious misconduct by a peace officer, regardless of their employment status.
- POST may consider the officer's prior conduct and service record in determining whether revocation is appropriate for serious misconduct.

QUALIFIED IMMUNITY

- SB 2 does nothing to alter qualified immunity in federal civil rights litigation.
- In state litigation matters, SB 2 makes largely technical changes within Civil Code section 52.1. However, it leaves untouched Civil Code section 825, et seq., which is the statutory basis upon which peace officers frequently secure indemnity and defense by their employers against lawsuits for matters within the scope of their employment.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

Stakes are high when a peace officer's livelihood is at issue so it's incumbent that agency leaders gain a basic understanding of the substantive and procedural elements of the bill.

Agencies are advised to contact legal counsel for a more comprehensive analysis and to determine what negotiable effects, if any, are triggered by the bill.

NOTES:

SB 270 (Durazo)- Public employment: labor relations: employee information

Government Code Section 3558 (Amend)

Effective Date: July 1, 2022

SUMMARY:

Authorizes public employee unions to file a special unfair labor practices charge before the Public Employment Relations Board (PERB) against public employers that fail to comply with existing law requiring disclosure of employee information to public employee unions.

HIGHLIGHTS:

Starting July 1, 2022:

- Authorizes a public employee union to file a special charge of an unfair labor practice with PERB against a public employer alleging a violation of GC § 3558's employee information disclosure obligations after the following:
  - The union provides written notice to the employer's designated representative, as specified.
  - The employer fails to comply with limited cure provisions, as specified. The employer has 20 calendar days to cure.
    - For certain violations there are no cure provisions (e.g., the employer's failure to provide the union a list of newly hired employees or a list of bargaining unit members within specified time frames).
    - Also, the employer can use the cure provision not more than three times in any 12-month period.
- Provides, for the City and County of Los Angeles, unions would have the right to file this special charge with the city and county's respective employee relations commissions, not PERB. Those commissions, not PERB, would be required to levy the fines, fees, and costs pursuant to this bill's provisions, as described below.
- Requires PERB to assess, in addition to any other remedy provided by law, a civil penalty of up to $10,000 against the employer if PERB finds that the employer violated the union's right to receive the employee information. PERB shall determine the actual amount of the penalty based on the application of certain criteria, as specified, including the employer's annual budget, the severity of the violation, and any prior history of violations. The employer shall pay the penalty to the state's General Fund.
- Requires PERB to award the prevailing party (i.e., either the union or the employer) attorney's fees and costs that accrue from the inception of proceedings before PERB's Division of Administrative Law until PERB's final disposition of the charge. However, PERB shall not award attorney's fees and costs under

this section for any proceedings before the board itself that challenge the dismissal of an unfair practice charge by PERB's Office of the General Counsel.

- Requires a reviewing court to award PERB attorney's fees and costs if PERB is the prevailing party where PERB initiates proceedings with a superior court to enforce or achieve compliance with a PERB order or is required to defend a PERB decision after a party seeks judicial review involving this bill's provisions.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

SB 278 (Leyva)- PERS: disallowed compensation: benefit adjustments

Government Code Section 20164.5 (Add)

Effective Date: July 1, 2022

SUMMARY:

Provides that, when a retiree's California Public Employees' Retirement System (CalPERS) pension is reduced post-retirement, due to the inclusion of compensation agreed to under a collective bargaining agreement that is later determined to be non-pensionable, the public employer must cover the difference between the pension as originally calculated and as reduced by CalPERS.

HIGHLIGHTS:

- Requires that, if CalPERS determines that the compensation reported for a CalPERS member by a public employer is in conflict with existing law or regulations, CalPERS must prohibit the public employer from continuing to report the disallowed compensation.
    - This requirement also applies to determinations made on or after January 1, 2017, if the appeal rights of the CalPERS member have not been exhausted.
- Requires that, in the case of an active CalPERS member, all contributions on disallowed compensation must be credited against future contributions to the benefit of the public employer by CalPERS and the public employer must return the member's contributions that were paid on the disallowed compensation.
- Requires, in the case of a retired CalPERS member or survivor or beneficiary whose final compensation at the time of retirement was based on disallowed compensation, the contributions made on the disallowed compensation must be credited against future contributions to the benefit of the public employer.
- Requires CalPERS to permanently reduce the retired CalPERS member or survivor or beneficiary's benefit to exclude the disallowed compensation.
- Requires CalPERS to also provide a notice to the public employer and affected retired CalPERS member or survivor or beneficiary that includes, at a minimum:
    - The amount overpayment resulting from the disallowed compensation made by the public employer;
    - The actuarial equivalent present amount owed to the retired CalPERS member, survivor, or beneficiary; and
    - Written disclosures by the public employer's obligations to the retired member under this bill.
- Requires that the double-payment described above is only due if the following is applicable:
    - The compensation was reported to CalPERS and the contributions were made on that compensation while the member was actively employed;

- The compensation was agreed to in a memorandum of understanding or collective bargaining agreement between the employer and the recognized employee organization as compensation for pension purposes and the employer and the recognized organization did not knowingly agree to compensation that was disallowed;
- The determination by the system that compensation was disallowed was made after the date of retirement; and
- The member was not aware that the compensation was disallowed at the time it was reported.

- Specifies that if the above conditions are met, the state, school employer, or contracting agency that reported contributions on the disallowed compensation shall do all of the following:
  - Pay to the system, as a direct payment, the full cost of any overpayment of the prior paid benefit made to an affected retired member, survivor, or beneficiary resulting from the disallowed compensation.
  - Pay a penalty, as specified, equal to 20 percent of the amount calculated as a lump sum of the actuarial equivalent present value representing the difference between the monthly allowance that was based on the disallowed compensation and the adjusted monthly allowance calculated, as specified, for the duration that allowance is projected to be paid by the system to the retired member, survivor, or beneficiary.
  - Ninety percent of the penalty to be paid shall be paid by the state, school employer, or contracting agency as restitution to the affected retired member, survivor, or beneficiary who was impacted by disallowed compensation and 10 percent shall be paid to the system, which shall not be applied to normal contributions or additional contributions that would stand to the credit of the employer, or a member's individual account.
- Requires CalPERS to provide, upon request, to the state, a school employer, or a contracting agency with contact information data in its possession of a relevant retired member, survivor, or beneficiary for the state, a school employer, or a contracting agency to fulfill their obligations to that retired member, survivor, or beneficiary pursuant to this section. The recipient of this contact information data shall keep it confidential.
- Permits public employers to submit to CalPERS for review any compensation proposal intended to form the basis of a pension benefit calculation in order to determine compliance with California Public Employment Retirement Law. CalPERS must provide guidance on the compensation proposal within 90 days.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

SB 586 (Bradford)- Public employment: certification

Penal Code Section 13510.8 (Amend)

Effective Date: January 1, 2022

SUMMARY:

Corrects a technical drafting error by Legislative Counsel to SB 2 (Bradford) of this Legislative session regarding the *collateral estoppel* provision.

HIGHLIGHTS:

- Collateral estoppel (prevention of relitigating an issue), as it relates to those decisions resulting from appeals of an agency's action not precluding action by POST to investigate, suspend, or revoke a peace officer's certification, will be governed by existing law.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

FIREARMS

AB 1057 (Petrie-Norris)- Firearms

Family Code Section 6216 (Add) and Penal Code Section 16520 (Amend, Repeal and Add)

Effective Date: July 1, 2022

SUMMARY:

Includes in the definition of "firearm" a frame, receiver, or precursor part for the purpose of surrender or seizure pursuant to a Gun Violence Restraining Order (GVRO) and a domestic violence restraining order.

HIGHLIGHTS:

- Becomes operative on July 1, 2022.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

AB 1191 (McCarty)- Firearms: tracing

Penal Code Section 11108.3 (Amend)

Effective Date: January 1, 2023 (for reporting)

SUMMARY:

DOJ must analyze data reported by law enforcement agencies regarding the history of a recovered firearm that is illegally possessed, has been used or is suspected of having been used in a crime.

HIGHLIGHTS:

- Required DOJ to analyze the data law enforcement agencies are required to report to DOJ regarding information necessary to identify and trace the history of all recovered firearms for trends relating to the sources and origins of firearms used in crimes if the firearms:
  - Are illegally possessed;
  - Have been used in a crime; or,
  - Are suspected of having been used in a crime.
- Specified that DOJ shall, by no later than January 1, 2023, and annually thereafter, prepare and submit a report to the Legislature summarizing the analysis, as specified.
- The report to the Legislature shall, without limitation and to the extent possible, include all of the following:
  - The total number of firearms (including unserialized) recovered in the state;
  - The number of firearms recovered, disaggregated by county and by city;
  - The number of firearms recovered, disaggregated by the firearms dealer where the most recent sale or transfer of the firearm occurred. This shall include the full name and address of the firearms dealer;
  - The number of firearms recovered, disaggregated by manufacturer;
  - The number of unserialized firearms recovered, disaggregated by county and by city.
- Specified that DOJ shall, by no later than January 1, 2023, and annually thereafter, prepare and submit a report to the Legislature summarizing the analysis, as specified.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact, but make sure data is accurate and updated.

NOTES:

HOMLESSNESS & MENTAL HEALTH

AB 1065 (Maienschein)- Personal income taxes: voluntary contributions: Mental Health Crisis Prevention Voluntary Tax Contribution Fund

Revenue and Taxation Code Section 18857 (Add and Repeal)

Effective Date: January 1, 2022

SUMMARY:

Establishes the Mental Health Crisis Prevention Voluntary Tax Contribution Fund on the personal income tax return.

HIGHLIGHTS:

- Creates the Mental Health Crisis Prevention Voluntary Tax Contribution Fund where the Controller deposits the donations received. The measure then continuously appropriates money from the fund to the California Highway Patrol (CHP) for disbursement to the National Alliance on Mental Illness (NAMI) California to fund the Crisis Intervention Team Program that trains police officers to assist and engage safely with persons living with mental illness, after Franchise Tax Board (FTB), the Controller, and the CHP subtract their administrative costs.
- Prohibits NAMI California from using more than five percent of the money received for administrative purposes.
- Allows the Fund to remain on the Personal Income Tax Return until it either does not meet a $250,000 minimum contribution requirement, or has made seven appearances on the return, whichever comes first.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

Requires CHP to report on an internet website information that NAMI California provides on the process for awarding money, the amount of money spent on administration, and an itemization of how program funds were awarded.

NOTES:

JUVENILES

AB 624 (Bauer-Kahan)- Juveniles: transfer to court of criminal jurisdiction: appeals

Welfare and Institutions Code Section 801 (Add)

Effective Date: January 1, 2022

SUMMARY:

Authorizes immediate appellate review of an order transferring a minor from the juvenile court to a court of criminal jurisdiction if a notice of appeal is filed within 30 days of the transfer order.

HIGHLIGHTS:

- Upon request of the minor, the superior court must issue a stay of the criminal court proceedings until a final determination of the appeal. Provides that the superior court retains jurisdiction to modify or lift the stay upon request of the minor.
- The appeal shall have precedence in the court to which the appeal is taken and shall be determined as soon as practicable after the notice of appeal is filed.
- Requires the Judicial Council to adopt rules of court to ensure all of the following:
    - The juvenile court advises the minor of the right to appeal, of the necessary steps and time for taking an appeal, and of the right to the appointment of counsel if the minor is unable to retain counsel.
    - Following the timely filing of a notice of appeal, the record is promptly prepared and transmitted from the superior court to the appellate court; and,
    - Adequate time requirements exist for counsel and court personnel to implement the objectives of this bill.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

AB 788 (Calderon)- Juveniles: reunification

Welfar and Institutions Code Section 361.5 (Amend)

Effective Date: January 1, 2022

SUMMARY:

Clarifies the meaning of "resisted" within current provisions that enable a juvenile dependency court to deny reunification services for a parent with a history of drug or alcohol abuse.

HIGHLIGHTS:

- "Resisted" means the parent or guardian refused to participate meaningfully in a prior court-ordered drug or alcohol treatment program and does not include "passive resistance," as described in *In re B.E. (2020)* 46 Cal.App.5th 932.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

SB 92 (Budget Committee)- Juvenile Justice

Welfar and Institutions Code Section 361.5 (Amend)

Effective Date: January 2, 2022

SUMMARY:

Budget trailer bill within the overall 2020-21 budget package with technical changes necessary to implement the realignment of the Division of Juvenile Justice (DJJ) that was included in the 2020 Budget Act.

HIGHLIGHTS:

- Allows counties to establish secure youth treatment facilities for certain youth who are 14 years of age or older and found to be a ward of the court based on an offense that would have resulted in a commitment to DJJ.
- Provides guidance on how counties will adjudicate, house and facilitate services for these youth.
- Requires the court to set a maximum term of confinement for the youth in a secure treatment facility and requires the submission of a rehabilitation plan to the court from the probation department and any other entity that is designated by the court to develop the plan.
- Requires the court to hold regular progress review hearings for youth who are in a secure youth treatment facility. It also allows probation or the youth to make a motion to the court for transfer to a less restrictive program.
- Requires the Judicial Council to develop and adopt a matrix of offense-based classifications.
- Closes DJJ on June 30, 2023, and requires the Director of DJJ to develop a plan by January 2, 2022, for the transfer of jurisdiction of any remaining youth in DJJ who are unable to be discharged or otherwise moved.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

SB 383 (Cortese)- Juveniles: informal supervision: deferred entry of judgement

Welfar and Institutions Code Section 654.3, 790 and 791 (Amend)

Effective Date: January 2, 2022

SUMMARY:

Provides certain court procedures for minors eligible for deferred entry of judgement (DEJ).

HIGHLIGHTS:

- Authorizes a court, if a minor is eligible for deferred entry of judgment (DEJ), but the minor resides in a different county and the case will be transferred to the minor's county of residence, to adjudicate the case without determining the minor's suitability for DEJ
- Authorizes the receiving court to make a determination regarding the minor's suitability for DEJ if the transferring court did not do so, and to modify the transferring court's finding; accordingly, and makes changes to the eligibility criteria for informal supervision.
- Excludes a minor alleged to have committed one of several specified felony offenses from eligibility for informal supervision except in unusual cases where the court determines the interests of justice would best be served and restore a provision of existing law excluding a minor alleged to have committed certain offenses on a school ground from eligibility for informal supervision.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

LOCAL OPERATIONS & POLICIES

AB 481 (Chiu)- Law enforcement and state agencies: military equipment: funding, acquisition, and use

Government Code Section 7070 (Add)

Effective Date: January 1, 2022

SUMMARY:

Establishes requirements that must be met before a law enforcement agency may take several specified actions related to the acquisition and use of military equipment.

HIGHLIGHTS:

APPROVAL PROCESS: GC 7071 (a)

- A law enforcement agency will have to obtain approval of their governing body (as defined) by ordinance, prior to requesting, seeking, or using 'military equipment' either permanently or temporarily.
  - "Law enforcement" agency means any of the following:
    - PD (including transit, school district, UC, CSU or Community College police)
    - Sheriff's dept.
    - DA's office
    - Probation
  - "Military equipment" means the following:
    - UAS or drones
    - MRAPs or armored personnel carriers
      - Police versions of standard consumer vehicles excluded
    - Humvees, or wheeled vehicles with breaching or entry apparatus attached
    - Tracked armored vehicles providing ballistic protection
    - Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.
    - Weaponized aircraft, vessels, or vehicles of any kind.
    - Battering rams, slugs, and breaching apparatuses that are explosive in nature. However, items designed to remove a lock, such as bolt cutters, or a handheld ram designed to be operated by one person, are specifically excluded from this subdivision.
    - Firearms of .50 caliber or greater. However, standard issue shotguns are specifically excluded from this subdivision.

- Ammunition of .50 caliber or greater. However, standard issue shotgun ammunition is specifically excluded from this subdivision.
- Specialized firearms and ammunition of less than .50 caliber, including assault weapons as defined in Sections 30510 and 30515 of the Penal Code, with the exception of standard issue service weapons and ammunition of less than .50 caliber that are issued to officers, agents, or employees of a law enforcement agency or a state agency.
- Any firearm or firearm accessory that is designed to launch explosive projectiles.
- "Flashbang" grenades and explosive breaching tools, "tear gas," and "pepper balls," excluding standard, service-issued handheld pepper spray.
- Taser Shockwave, microwave weapons, water cannons, and the Long-Range Acoustic Device (LRAD).
- The following projectile launch platforms and their associated munitions: 40mm projectile launchers, "bean bag," rubber bullet, and specialty impact munition (SIM) weapons.
- Any other equipment as determined by a governing body or a state agency to require additional oversight.

- Does not include general equipment not designated as prohibited or controlled by the federal Defense Logistics Agency.
- No later than May 1, 2022, a law enforcement agency seeking to continue the use of any military equipment that was acquired prior to January 1, 2022, shall commence a governing body approval process in accordance with this section.
    - If the governing body does not approve the continuing use of military equipment, including by adoption pursuant to this subdivision of a military equipment use policy submitted pursuant to subdivision (b), within 180 days of submission of the proposed military equipment use policy to the governing body, the law enforcement agency shall cease its use of the military equipment until it receives the approval of the governing body in accordance with this section.
- In seeking the approval of the governing body pursuant to subdivision (a), a law enforcement agency shall submit a proposed military equipment use policy to the governing body and make those documents available on the law enforcement agency's internet website at least 30 days prior to any public hearing concerning the military equipment at issue.
- The governing body shall consider a proposed '**military equipment use policy'** as an agenda item for an open session of a regular meeting and provide for public comment in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2) or the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), as applicable.
    - "Military equipment use policy" means a publicly released, written document governing the use of military equipment by a law enforcement agency or a state agency that addresses, <u>at a minimum, all of the following</u>:

- A description of each type of military equipment, the quantity sought, its capabilities, expected lifespan, and product descriptions from the manufacturer of the military equipment.
- The purposes and authorized uses for which the law enforcement agency or the state agency proposes to use each type of military equipment.
- The fiscal impact of each type of military equipment, including the initial costs of obtaining the equipment and estimated annual costs of maintaining the equipment.
- The legal and procedural rules that govern each authorized use.
- The training, including any course required by POST, that must be completed before any officer, agent, or employee of the law enforcement agency or the state agency is allowed to use each specific type of military equipment to ensure the full protection of the public's welfare, safety, civil rights, and civil liberties and full adherence to the military equipment use policy.
- The mechanisms to ensure compliance with the military equipment use policy, including which independent persons or entities have oversight authority, and, if applicable, what legally enforceable sanctions are put in place for violations of the policy.
- For a law enforcement agency, the procedures by which members of the public may register complaints or concerns or submit questions about the use of each specific type of military equipment, and how the law enforcement agency will ensure that each complaint, concern, or question receives a response in a timely manner.

PUBLIC NOTIFICATION: GC 7072 (a)

- Agencies who receive approval for a military equipment use policy (pursuant to above) must submit an annual report (within a year of approval) for each type of military equipment, and annually thereafter while used.
- LE agency must make each annual report publicly available on its website if equipment is available for use. Report must include:
  - A summary of how the military equipment was used and the purpose of its use.
  - A summary of any complaints or concerns received concerning the military equipment.
  - The results of any internal audits, any information about violations of the military equipment use policy, and any actions taken in response.
  - The total annual cost for each type of military equipment, including acquisition, personnel, training, transportation, maintenance, storage, upgrade, and other ongoing costs, and from what source funds will be provided for the military equipment in the calendar year following submission of the annual military equipment report.
  - The quantity possessed for each type of military equipment.
  - If the law enforcement agency intends to acquire additional military equipment in the next year, the quantity sought for each type of military equipment.

- Within 30 days of submitting and publicly releasing an annual military equipment report pursuant to this section, the law enforcement agency shall hold at least one well-publicized and conveniently located community engagement meeting, at which the general public may discuss and ask questions regarding the annual military equipment report and the law enforcement agency's funding, acquisition, or use of military equipment.

STATE AGENCIES: GC 7073 (a)

- State agency shall create a military equipment use policy prior to any of the following:
  - Requesting military equipment made available pursuant to Section 2576a of Title 10 of the United States Code.
  - Seeking funds for military equipment, including, but not limited to, applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.
  - Acquiring military equipment either permanently or temporarily, including by borrowing or leasing.
  - Collaborating with a law enforcement agency or another state agency in the deployment or other use of military equipment within the territorial jurisdiction of the governing body.
  - Using any new or existing military equipment for a purpose, in a manner, or by a person not previously approved by the governing body pursuant to this chapter.
  - Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, or to apply to receive, acquire, use, or collaborate in the use of, military equipment.
  - Acquiring military equipment through any means not provided by this subdivision.
- By May 1, 2022, state agencies must have a policy in place for equipment acquired prior to January 1, 2022.
- Within 180 days of completing the policy, state agencies must:
  - Publish the policy on the agency's website
  - Provide a copy of the policy to the Governor or Governor's designee

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

Could result in significant additional workload and related costs for law enforcement agencies to implement the provisions of this bill. However, the requirements of the bill only apply to law enforcement agencies that opt to use or acquire military equipment, **which could be viewed as a voluntary activity and therefore not a reimbursable mandate.**

NOTES:

AB 490 (Gipson)- Agency policies: arrests: positional asphyxia

Government Code Section 7286.5 (Amend)

Effective Date: January 1, 2022

SUMMARY:

Prohibits a law enforcement agency from authorizing techniques and transport methods that involve a substantial risk of positional asphyxia.

HIGHLIGHTS:

GC 7286.5 (a)

- A law enforcement agency shall not authorize the use of a carotid restraint or choke hold by any peace officer employed by that agency.
- A law enforcement agency shall not authorize techniques or transport methods that involve a substantial risk of positional asphyxia.
    - *"Positional asphyxia" means situating a person in a manner that compresses their airway and reduces the ability to sustain adequate breathing. This includes, without limitation, the use of any physical restraint that causes a person's respiratory airway to be compressed or impairs the person's breathing or respiratory capacity, including any action in which pressure or body weight is unreasonably applied against a restrained person's neck, torso, or back, or positioning a restrained person without reasonable monitoring for signs of asphyxia.*

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

There are a lot of ambiguities built into this language that will have to be further defined through evolving case law if this bill is enacted into law.

In sum, monitor suspects closely if you have applied a hobble, tarp or other restraint device, or have used body weight for any significant period of time to control a suspect.

Also ensure that the suspect is placed in a proper recovery position, or other appropriate steps are taken, to ensure the ability to breath if there are complaints or signs of the inability to breath (turning blue for example).

NOTES:

AB 958 (Gipson)- Peace officers: law enforcement gangs

Penal Code Section 13670 (Add)

Effective Date: January 1, 2022

SUMMARY:

Requires all law enforcements agencies to maintain a policy that prohibits participation in a law enforcement gang and makes a violation of that policy grounds for termination.

HIGHLIGHTS:

- "Law enforcement gang" means a group of peace officers within a law enforcement agency who may identify themselves by a name and may be associated with an identifying symbol, including, but not limited to, matching tattoos, and who engage in a pattern of on-duty behavior that intentionally violates the law or fundamental principles of professional policing, including, but not limited to, excluding, harassing, or discriminating against any individual based on a protected category under federal or state antidiscrimination laws, engaging in or promoting conduct that violates the rights of other employees or members of the public, violating agency policy, the persistent practice of unlawful detention or use of excessive force in circumstances where it is known to be unjustified, falsifying police reports, fabricating or destroying evidence, targeting persons for enforcement based solely on protected characteristics of those persons, theft, unauthorized use of alcohol or drugs on duty, unlawful or unauthorized protection of other members from disciplinary actions, and retaliation against other officers who threaten or interfere with the activities of the group.
- Each law enforcement agency shall maintain a policy that prohibits participation in a law enforcement gang and that makes violation of that policy grounds for termination. A law enforcement agency shall cooperate in any investigation into these gangs by an inspector general, the Attorney General, or any other authorized agency. Notwithstanding any other law, local agencies may impose greater restrictions on membership and participation in law enforcement gangs, including for discipline and termination purposes.
- Except as specifically prohibited by law, a law enforcement agency shall disclose the termination of a peace officer for participation in a law enforcement gang to another law enforcement agency conducting a preemployment background investigation of that former peace officer.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

Potentially significant administrative and fiscal impacts to develop and adopt the policies required.

NOTES:

AB 1475 (Low)- Law enforcement: social media

Penal Code Section 13665 (Add)

Effective Date: January 1, 2022

SUMMARY:

Limits a police department and sheriff's department from sharing a booking photo of an individual on social media.

HIGHLIGHTS:

- Prohibits a PD or SO from sharing on social media the booking photos of an individual arrested on suspicion of committing a nonviolent crime unless any of the following circumstances exist:
  - Agency has determined that the suspect is a fugitive or an imminent threat to an individual or to public safety and releasing or disseminating the suspect's image will assist in locating or apprehending the suspect or reducing or eliminating the threat;
  - A judge orders the release or dissemination of the suspect's image based on a finding that the release or dissemination is in furtherance of a legitimate law enforcement interest;
  - There is an exigent circumstance that necessitates the dissemination of the suspect's image in furtherance of an urgent and legitimate law enforcement interest.
- "Nonviolent crime" means a crime not identified in subdivision (c) of Section 667.5.
- "Social media" has the same meaning as in Section 632.01, except that social media does not include an internet website or an electronic data system developed and administered by the police department or sheriff's office.

Violent v. Nonviolent removal

- Nonviolent crime- remove the booking photo from its social media page within 14 days of request unless the circumstances above apply.
- Violent crime- remove within 14 days of request if the individual or their representative demonstrates any of the following:
  - The individual's record has been sealed.
  - The individual's conviction has been dismissed, expunged, pardoned, or eradicated pursuant to law.
  - The individual has been issued a certificate of rehabilitation.
  - The individual was found not guilty of the crime for which they were arrested.

- The individual was ultimately not charged with the crime, or the charges were dismissed.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

Does not apply to your departmental webpage –Not considered “social media.”

Only applies to “booking photos.”

Nothing prohibits posting of still shots from store surveillance cameras/Ring cameras, etc.

You can get ahead and start removing photos now if you would like to prevent rush of work on January 1st.

If you want to keep photo up on your social media, be prepared to articulate exigency that requires you to do so. Recommend proactively removing once exigency passes…

NOTES:

SB 98 (McGuire)- Public peace: media access

Penal Code Section 409.7 (Add)

Effective Date: January 1, 2022

SUMMARY:

'Reporters' may access areas shut off by police for a command post or similar during a protest, march, rally, etc.

HIGHLIGHTS:

409.7. (a) If peace officers, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, close the immediate area surrounding any emergency field command post or any other command post, or establish a police line, or rolling closure at a demonstration, march, protest, or rally where individuals are engaged in activity that is protected pursuant to the First Amendment to the United States Constitution or Article I of the California Constitution, the following requirements shall apply:

(1) A duly authorized representative of any news service, online news service, newspaper, or radio or television station or network may enter the closed areas described in this section.

(2) A peace officer or other law enforcement officer shall not intentionally assault, interfere with, or obstruct the duly authorized representative of any news service, online news service, newspaper, or radio or television station or network who is gathering, receiving, or processing information for communication to the public.

(3) A duly authorized representative of any news service, online news service, newspaper, or radio or television station or network that is in a closed area described in this section shall not be cited for the failure to disperse, a violation of a curfew, or a violation of paragraph (1) of subdivision (a) of Section 148, for gathering, receiving, or processing information. If the duly authorized representative is detained by a peace officer or other law enforcement officer, that representative shall be permitted to contact a supervisory officer immediately for the purpose of challenging the detention, unless circumstances make it impossible to do so.

(b) This section does not prevent a law enforcement officer from enforcing other applicable laws if the person is engaged in activity that is unlawful.

(c) This section does not impose, and shall not be used as the basis for, criminal liability.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

- The "any other command post" language may leave open the opportunity for 'duly authorized media' to gain access to a command post, particularly one that may be set up inside a department's headquarters or station.

- This bill grants access during First Amendment-protected activity. If and when activity becomes violent or unruly, 'duly authorized' media are not to be granted access.
- Minor costs to CHP to update policy and training materials related to media access to areas around emergency command posts during protests.

NOTES:

MISCELLANEOUS

AB 229 (Holden)- Private investigators: private security: training: use of force

Business and Profession Code Sections 7583.2, 7583.3, 7587.8, and 7587.9 (Amend), 7542, 7574.18, 7583.5, 7583.6, 7583.7, 7583.10, 7585, 7585.6, 7587.1, 7596, 7596.3, 7598.1, 7598.2, 7598.3, 7599.37, and 7599.38 (Amend, repeal and add)

Effective Date: January 1, 2023

SUMMARY:

Requires, beginning January 1, 2023, that various licensees regulated by the Bureau of Security and Investigative Services (BSIS) complete a course of training in the exercise of the appropriate use of force in order to be issued a license or a firearms permit.

HIGHLIGHTS:

- Specifies that in addition to existing reporting requirement, a private patrol operator must report within seven business days any incidents involving physical altercation with a member of the public requiring any type of first aid or other medical attention, and any physical use of force or violence on any person while on duty. Increase the fines for failing to report incidents to $5,000.
- Mandates that the training on the appropriate use of force be conducted through traditional classroom instruction where the instructor is physically present with students in a classroom for a minimum of 50% of the course and is available at all times, including during instruction provided through distance learning or remote platforms, to answer students' questions while providing the required training.
- Requires private security guard registrants to maintain certificates of training completion until their registration expires or has been canceled. Specifies that if a registrant is unable to provide the employer with a certificate of completion, the registrant must complete the training within six months of the registrant's employment date.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

SB 296 (Limón)- Code enforcement officers: safety standards

Penal Code Section 829.7 (Add)

Effective Date: January 1, 2022

SUMMARY:

Requires each local jurisdiction that employs code enforcement officers to develop code enforcement officer safety standards appropriate for the code enforcement officers employed in their jurisdiction.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

SB 827 (Public Safety Committee)- Public safety omnibus

Various Codes

Effective Date: January 1, 2022

SUMMARY:

This bill is the annual Public Safety Omnibus bill and makes corrective, non-controversial changes to various code sections relating generally to criminal law.

HIGHLIGHTS:

PC 209.5

- A youth offender (under 22 years old) committed to CDCR will automatically be granted a youth offender lower security level than what corresponds to the individual's classification score or placement in a facility with access to programs.
    - Exception: an offender who has committed a serious in-custody offense, where they shall then be reviewed by a classification committee.

PC 16590

- Removes nunchuks or "nunchaku" from list of deadly weapons
    - In related sections, notes that a "billy," "blackjack," or "slungshot" does not include a nunchaku.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

PROBATION

AB 898 (Lee)- Criminal records: automatic conviction record relief

Penal Code Sections 1203.425, 1203.9 and 13151 (Amend)

Effective Date: January 1, 2022

SUMMARY:

Provides that if probation is transferred to another county, and a prosecutor or probation department in either county is seeking to file a petition to prohibit DOJ from granting automatic conviction record relief, the petition must be filed in the county of current jurisdiction and expands notice provisions regarding conviction record relief to include probation transfer cases.

HIGHLIGHTS:

- Requires DOJ, in cases where probation has been transferred, to electronically submit notice of conviction record relief to both the transferring court and any subsequent receiving court.
- Requires a receiving court that reduces a felony to a misdemeanor or dismisses a conviction under specified provisions to provide a disposition report to DOJ with the original case number from the transferring court; DOJ must electronically submit a notice to the court that sentenced the defendant.
- Provides that if probation was transferred multiple times, DOJ must electronically submit notice to all involved courts.
- States that any court receiving notice of a reduction or dismissal must update its records to reflect the same.
- Prohibits a court receiving notification of dismissal, as specified, from disclosing information concerning the dismissed conviction except to the person whose conviction was dismissed or a criminal justice agency, as specified.
- States that a prosecuting attorney or probation department, in either the receiving county or transferring county, seeking to file a petition to prohibit the department from granting automatic conviction record relief must file the petition in the county of current jurisdiction.
- Requires DOJ, in cases where relief is denied, to electronically submit notice to the transferring court, and, if probation was transferred multiple times, to all other involved courts. Requires DOJ to provide similar notice if relief is subsequently granted.
- Requires the receiving court to provide a receipt of records from the transferring court, including the new case number.
- Provides that the transferring court must report to DOJ that probation was transferred and identify the receiving court and new case number, if applicable.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

SB 73 (Wiener)- Probation: eligibility: crimes relating to controlled substances

Health and Safety Code Section 11370 (Amend)

Penal Code Sections 29820 (Amend), 1203.073 (Repeal) and 1203.07 (Repeal and Add)

Effective Date: January 1, 2022

SUMMARY:

Permits a court to grant probation for specified drug offenses which are currently either ineligible or presumptively ineligible for probation.

HIGHLIGHTS:

- Removes certain drug offenses from the prohibition against granting probation or suspending a sentence except those offenses involving minors.
- Authorizes the court to grant probation for drug offenses involving minors only where the interests of justice would best be served.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

PROSTITUTION, SEX CRIMES & HUMAN TRAFFICKING

AB 453 (Christina Garcia)- Sexual battery: nonconsensual condom removal (NCCR)

Civil Code Section 1708.5 (Amend)

Effective Date: January 1, 2022

SUMMARY:

Expands what actions constitute a sexual battery, under the Civil Code, to include an act that causes contact between a penis, from which a condom has been removed, and the intimate part of another who did not verbally consent to the condom being removed.

HIGHLIGHTS:

- Adds NCCR to the existing civil sexual battery statute, making it a civil sexual battery for a person to:
  - Cause contact between a sexual organ, from which a condom has been removed, and the intimate part of another who did not verbally consent to the condom being removed; or
  - Cause contact between an intimate part of the person and a sexual organ of another from which the person removed a condom without verbal consent.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

AB 939 (Cervantes)- Sex offenses: evidence

Evidence Code Section 1103 (Amend)

Effective Date: January 1, 2022

SUMMARY:

Prohibits the admission of evidence of the manner in which a victim was dressed, when offered by either the prosecution or the defendant on the issue of consent, during the prosecution of specified sex crimes even if the evidence is determined to be relevant outside the presence of the jury and the interests of justice favor its admission.

HIGHLIGHTS:

- States that its provisions shall be known, and may be cited, as Denim Day Act.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

AB 1171 (Christina Garcia)- Rape of a spouse

Various Codes

Effective Date: January 1, 2022

SUMMARY:

Repeals the existing stand-alone provision of law relating to spousal rape and, except as specified, expands the definition of rape to include the rape of a spouse, thereby making a state prison sentence mandatory in most circumstances, and requiring the convicted spouse to register as a sex offender.

HIGHLIGHTS:

- Provides that sexual intercourse with a person who is incapable of giving legal consent because of a mental disorder or developmental or physical disability is not rape where the act is committed by the person's spouse.
    - Specifies that the disability exemption does not prevent prosecution of a spouse under other categories of rape.
- Removes the court's authority to impose specified conditions in lieu of a fine when probation is granted to a perpetrator who is the victim's spouse.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

SB 23 (Rubio)– Disorderly conduct: distribution of intimate images: statute of limitations

Penal Code Section 803 (Amend)

Effective Date: January 1, 2022

SUMMARY:

Authorizes the prosecution for the crime of “revenge porn” to commence within one year of discovery of the offense, but no later than four years after the commission of the offense.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

SB 248 (Bates)- Sexually violent predators: open court proceedings

Welfare and Institutions Code Section 6601 (Amend)

Effective Date: January 1, 2022

SUMMARY:

Requires CDCR to refer a person directly to the Department of State Hospitals (DSH) for an evaluation as to whether the person still meets the criteria as a sexually violent predator (SVP) if the person is in CDCR for an offense committed while the person was previously serving an indeterminate term in DSH as an SVP.

HIGHLIGHTS:

- Modifies the procedures for the SVP evaluations of individuals in the custody of CDCR for a new offense committed while they were serving an indeterminate term in a state hospital as an SVP as follows:
  - For persons in the custody of CDCR for the commission of a new offense committed while serving in a state hospital as an SVP, CDCR shall at least 6-months prior to the individual's scheduled release date, refer the person directly to the DSH for a full SVP evaluation;
  - If the inmate was received by CDCR with less than 9-months of their sentence to serve, or if the inmate's release date is modified by a judicial or administrative action, CDCR may refer the person for evaluation at a date that is less than 6-months prior to the inmate's scheduled release.
  - If both evaluators concur that the person has a diagnosed mental disorder so that the person is likely to engage in acts of sexual violence without appropriate treatment and custody, the Director of State Hospitals shall forward a request for a court order, no less than 20-calendar-days prior to the person's scheduled release date, authorizing a transfer of the individual from the CDCR to the DSH to continue serving the remainder of the individual's original indeterminate commitment as a sexually violent predator if the original petition has not been dismissed; and
  - If the petition has previously been dismissed, the Director of State Hospitals shall forward a request for a new petition to be filed for commitment, as specified, no less than 20-calendar days prior to the scheduled release date of the person.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

RECORD RELEASE

AB 473 (Chau)- California Public Records Act

Government Code Sections 6276.50 (Add and Repeal) and 7920.000 (Add)

Effective Date: January 1, 2023

SUMMARY:

Recodifies and reorganizes the provisions of the California Public Records Act (CPRA) in the CPRA Recodification Act of 2021 without making any substantive changes to the act and makes related findings.

HIGHLIGHTS:

- Repeals, as of January 1, 2023, Government Code (GOV) Article 1, Division 7, Chapter 3.5, regarding Inspection of Public Records (Sections 6250 to 6276.48).
- Recodifies and reorganizes the provisions of the California Public Records Act (CPRA) in the CPRA Recodification Act of 2021 without making any substantive changes to the act.
- States the following about the effect of its recodification and reorganization:
    - Nothing in the CPRA Recodification Act of 2021 is intended to substantively change the law relating to inspection of public records. The act is intended to be entirely nonsubstantive in effect.
    - Every provision of this division and every other provision of this act, including, without limitation, every cross-reference in every provision of the act, shall be interpreted consistent with the nonsubstantive intent of the act.
- States the following about how its provisions should be interpreted by agencies and the public:
    - A provision of this division, or any other provision of the CPRA Recodification Act of 2021, insofar as it is substantially the same as a previously existing provision relating to the same subject matter, shall be considered as a restatement and continuation thereof and not as a new enactment.
    - A reference in a statute to a previously existing provision that is restated and continued in this division, or in any other provision of the CPRA Recodification Act of 2021, shall, unless a contrary intent appears, be deemed a reference to the restatement and continuation.
- A reference in a statute to a provision of this division, or any other provision of the CPRA Recodification Act of 2021, which is substantially the same as a previously existing provision, shall, unless a contrary intent appears, be deemed to include a reference to the previously existing provision.
- States the following about how past court decisions and legal opinions apply to its provisions:

- That a judicial decision interpreting a previously existing provision is relevant in interpreting any provision of this division, or any other provision of the CPRA Recodification Act of 2021, which restates and continues that previously existing provision, but that the Legislature has not evaluated the correctness of any judicial decision interpreting a provision of the CPRA, and the bill is not intended to, and does not, reflect any assessment on the part of the Legislature about the merits of any such judicial decision.
- That an opinion of the Attorney General interpreting a previously existing provision is relevant in interpreting any provision of this division, or any other provision of the CPRA Recodification Act of 2021, which restates and continues that previously existing provision, but that the Legislature has not evaluated the correctness of any Attorney General opinion interpreting a provision affected by the bill, and that the bill does not reflect any assessment on the part of the Legislature about the merits of any such Attorney General opinion.

- Provides that the reorganization and recodification shall not be deemed in any manner to affect the status of judicial records as it existed immediately before the effective date of the provision that is continued in this section, nor to affect the rights of litigants, including parties to administrative proceedings, under the laws of discovery of this state, nor to limit or impair any rights of discovery in a criminal case.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

SB 16 (Skinner)- Peace officers: release of records

Evidence Code Section 1045 (Amend) and Penal Code Sections 832.5, 832.7, and 832.12 (Amend) and 832.13 (Add)

Effective Date: January 1, 2022

SUMMARY:

Expands the categories of police personnel records that are subject to disclosure under the California Public Records Act (CPRA); and modifies existing provisions regarding the release of records subject to disclosure.

HIGHLIGHTS:

PC 832.5 (b)

- Complaints and any reports or findings relating to these complaints shall be retained for a period of no less than 5 years (not sustained) and no less than 15 years for sustained findings of misconduct.

PC 832.7

- Requires disclosure of an incident involving use of force that resulted in death or GBI
- A sustained finding involving a complaint that alleges unreasonable or excessive force.
- A sustained finding that an officer failed to intervene against another office using force that is clearly unreasonable or excessive.
- Phases-in implementation of this bill so that records relating to incidents that relate to the new categories of offenses added by this bill that occurred before January 1, 2022, shall not be required to be disclosed until January 1, 2023. However, records of incidents that occur after January 1, 2022, shall be subject to disclosure pursuant to the provisions of this bill.

REDACTION ALLOWANCES

- To preservice anonymity of whistleblowers, complainants, victims, and witnesses.
- If invasion of personal privacy clearly outweighs strong public interest in records about possible misconduct and serious use of force….

COSTS & RETENTION

- The cost of copies of records subject to disclosure pursuant to this subdivision that are made available upon the payment of fees covering direct costs of duplication pursuant to subdivision (b) of Section 6253 of the Government Code shall not include the costs of *searching for*, editing or redacting the records.

- For purposes of releasing records pursuant to this subdivision, lawyer-client privilege does not prohibit the disclosure of either of the following:
    - Factual information provided by the public entity to its attorney or factual information discovered in any investigation conducted by, or on behalf of, the public entity's attorney.
    - Billing records related to the work done by the attorney so long as the records do not relate to active and ongoing litigation and do not disclose information for the purpose of legal consultation between the public entity and its attorney.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

Biggest impact will relate to management of 5-yr (non-sustained) or 15-year (sustained) records. Costs associated with compliance to Public Records Act are non-reimbursable.

NOTES:

RULES OF THE ROAD/TRANSPORTATION

*Analyses provided by the California Highway Patrol's Office of Special Representative

AB 3 (Fong)- Exhibition of speed on a highway: punishment

Vehicle Code Sections 13352 and 23109 (Amend)

Effective Date: January 1, 2025

SUMMARY:

Beginning January 1, 2025, permits, but does not require, a court to suspend a person's driver's license for a period of 90 days to six months, if they are convicted of engaging in, or aiding and abetting, a motor vehicle exhibition of speed.

HIGHLIGHTS:

- Limit the license suspension or restriction to motor vehicle exhibitions of speed that are classified as "sideshows" as defined.
- Require courts to take into consideration the existence of a defendant's medical, personal, or family hardship that requires a person to have a driver's license for such limited purpose as the court deems necessary to address the hardship.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

Section 23109 (c) of the Vehicle Code will define “sideshow” within the exhibition of speed context as an event in which two or more persons block or impede traffic on a highway, for the purpose of performing motor vehicle stunts, motor vehicle speed contests, motor vehicle exhibitions of speed, or reckless driving, for spectators.

NOTES:

AB 43 (Friedman)- Traffic safety

Amends Vehicle Code Sections 627, 21400, 22352, 22354, 22358, and 40802.

Adds Vehicle Code Sections 22358.6, 22358.7, 22358.8, and 22358.9.

Effective Date: January 1, 2022

SUMMARY:

Grants the California Department of Transportation (Caltrans) and local authorities greater flexibility in setting speed limits based on recommendations the Zero Traffic Fatality Task Force (Task Force) made in January 2020.

HIGHLIGHTS:

- Allows local authorities to set lower speed limits beyond the 85th percentile, with additional consideration for vulnerable road users, such as pedestrians and bicyclists.
- Additionally, the bill establishes two new roadway terms which will be eligible for reduced speed limits within local jurisdictions: “safety corridor” and “business activity district.”
- Finally, the bill extends the length of time an engineering and traffic survey may be used to justify a speed limit for a roadway and exempts the newly defined “business activity district” from the engineering and traffic survey requirement.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

Local authorities shall only issue warning citations for violations of exceeding the speed limit by 10 miles per hour or less for the first 30 days that the lower speed limit is in effect.

NOTES:

AB 232 (Gallagher)- Off-highway vehicles: reciprocity

Amends Vehicle Code Section 38010

Effective Date: January 1, 2022

SUMMARY:

The bill establishes reciprocity agreements between states for off-highway vehicles.

HIGHLIGHTS:

- If another state recognizes an identification or registration permit issued by DMV as valid in their respective state, statute as amended now directs California to accept that state's identification or registration permit as valid.

- California statute as amended now allows an off-highway motor vehicle to be exempt from this DMV identification requirement only if the other state recognizes an identification plate or device issued by the California DMV as valid for use in their state.

- Statute as amended does not require reimbursement to a local agency or school district, pursuant to Section 6 of Article XIII B of the California Constitution, for the cost of policy and program changes resulting from these changes (due to minimal to no projected fiscal impact to localities).

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

AB 773 (Nazarian)- Street closures and designations

Vehicle Code Section 21101 (Amend)

Effective Date: January 1, 2022

SUMMARY:

Authorizes local authorities to implement a slow streets program to close or limit access to vehicular traffic on certain neighborhood local streets.

HIGHLIGHTS:

- Allows authorities to implement a slow streets program, which may include closures to vehicular traffic or through vehicular traffic of neighborhood local streets with connections to citywide bicycle networks; destinations, such as a business district, that are within walking distance; or green space.
- Allow a local authority to implement a slow streets program by adopting an ordinance that provides for the closing of streets to vehicular traffic or limiting access and speed on a street using roadway design features, including, but not limited to, islands, curbs, or traffic barriers.
- Allow a local authority to implement a slow streets program if it meets all requirements:
    - Conducts an outreach and engagement process that includes notification to residents and owners of property abutting any street being considered for inclusion in the slow streets program.
    - Determines that the closure or traffic restriction leaves a sufficient portion of the streets in the surrounding area for other public uses, including vehicular, pedestrian, and bicycle traffic.
    - Provides advance notice of the closure or traffic restriction to residents and owners of property abutting the street.
    - Clearly designates the street closure or traffic restriction with signage in compliance with the California Manual on Uniform Traffic Control Devices.
    - Determines that the closure or traffic restriction is necessary for the safety and protection of persons who are to use that portion of the street during the closure or traffic restriction.
    - Maintains a publicly available internet website with information about its slow streets program, a list of streets that are included in the program or are being evaluated for inclusion in the program, and instructions for participating in the public engagement process.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

AB 917 (Bloom)- Vehicles: video imaging of parking violations

Amends Vehicle Code Sections 40240 and 40241.

Repeals and adds Vehicle Code Section 40240.5.

Effective Date: January 1, 2022

SUMMARY:

Authorizes all public transit operators to install automated forward-facing cameras on transit vehicles for the purposes of enforcing parking violations occurring in transit-only traffic lanes, during specified hours of operation, and at transit stops and stations until January 1, 2027, when the section will be repealed.

HIGHLIGHTS:

- Provisions in this bill are extended to the City and County of San Francisco indefinitely.
- The established program will only issue warning notices for the first 60 days, and mandates payment options for low-income persons.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

AB 1337 (Lee)- Transportation: San Francisco Bay Area Rapid Transit District: policing responsibilities

Penal Code Section 369i (Amend) and Public Utilities Code Sections 99170 and 99171 (Amend) and 99580.5 (Add)

Effective Date: January 1, 2022

SUMMARY:

Extends the authority of the San Francisco Bay Area Rapid Transit District (BART) to issue prohibition orders to include the property, facilities, and vehicles upon which it owes policing responsibilities to a local government and expands current law to make entering or remaining on those properties without permission a misdemeanor.

HIGHLIGHTS:

- Provides that a person who enters or remains on any property, facilities, or vehicles on which the applicable transit entity owes policing responsibilities to a local government pursuant to an operations and maintenance agreement or similar interagency agreement without permission, or whose entry, presence, or conduct on that property interferes with, interrupts, or hinders the safe and efficient operation of the transit-related facility, is guilty of a misdemeanor.
- Extends the transit entity's authority to issue prohibitions and the scope of the prohibition orders to include these properties.
- Authorizes BART's ordinance to be enforced outside of its jurisdiction only where the local jurisdiction has adopted the ordinance by reference as authorized by the local jurisdictions' governing body.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

SB 287 (Grove)- Vehicles: trailers

Amends Vehicle Code Sections 12804.9 and 12804.12

Effective Date: January 1, 2027

SUMMARY:

Allows drivers with a class C driver license to operate a vehicle towing a trailer between 10,001 pounds and 15,000 pounds gross vehicle weight rating or gross vehicle weight, provided that the trailer is utilized for either purely recreational purposes, or the transportation of property or human habitation, or both.

HIGHLIGHTS:

- Additionally, this bill allows for the issuance of a restricted class A driver's license for towing trailers over 10,000 pounds under the aforementioned provisions.

- These provisions have a delayed implementation date of January 1, 2027.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

SENTENCING

AB 518 (Wicks)- Criminal law: violations punishable in multiple ways

Penal Code Section 654 (Amend)

Effective Date: January 1, 2022

SUMMARY:

654. (a) An act or omission that is punishable in different ways by different provisions of law may be punished under either of such provisions, but in no case shall the act or omission be punished under more than one provision. An acquittal or conviction and sentence under any one bars a prosecution for the same act or omission under any other.

(b) Notwithstanding subdivision (a), a defendant sentenced pursuant to subdivision (a) shall not be granted probation if any of the provisions that would otherwise apply to the defendant prohibits the granting of probation.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

AB 1540 (Ting)- Criminal procedure: resentencing

Penal Code Sections 1170 and 5076.1 (Amend) and 1170.03 (Add)

Effective Date: January 1, 2022

SUMMARY:

Requires the court to provide counsel for the defendant when there is recommendation from the Secretary of CDCR, the Board of Parole Hearings (BPH), Sheriff, or the prosecuting agency, to recall an inmate's sentence and resentence that inmate to a lesser sentence.

HIGHLIGHTS:

- Creates a presumption favoring recall and resentencing, as specified, when the recommendation has been made by one of the agencies described above.
- Specifies that a person may be resentenced under the provisions of this bill whether or not the defendant is still in custody.
- Specifies that the procedure for recall and resentencing can be applied once a defendant has been convicted for any felony offense and has been committed to the custody of the Secretary of the Department of Corrections and Rehabilitation or to the custody of the county correctional administrator on a realigned felony.
- States that if the court vacates the defendant's conviction and imposes judgment on any necessarily included lesser offense or lesser related offense, whether or not that offense was charged in the original pleading, and then resentences the defendant to a reduced term of imprisonment, it requires the concurrence of both the defendant and the district attorney of the county in which the defendant was sentenced or the Attorney General if the Department of Justice originally prosecuted the case.
- Clarifies that the court shall state on the record the reasons for its decision to grant or deny recall and resentencing and if a hearing is held, the defendant may appear remotely and the court may conduct the hearing through the use of remote technology, unless counsel requests their physical presence in court.
- Specifies that the court shall provide notice to the defendant and set a status conference within 30 days after the date that the court received the request.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

SB 81 (Skinner)- Sentencing: dismissal of enhancements

Penal Code Section 1385 (Amend)

Effective Date: January 1, 2022

SUMMARY:

States that the court shall, in exercising its discretion to dismiss an enhancement in the interests of justice, consider and afford great weight to evidence offered by the defendant to prove that any of the specified mitigating circumstances are present.

HIGHLIGHTS:

- Provides that the presence of one or more of the following circumstances weighs greatly in favor of dismissing the enhancement, unless the court finds that dismissal of the enhancement would endanger public safety:
  - Application of the enhancement would result in a discriminatory racial impact as described in the California Racial Justice Act of 2020.
  - Multiple enhancements are alleged in a single case. In this instance, all enhancements beyond a single enhancement shall be dismissed.
  - The application of an enhancement could result in a sentence of over 20 years. In this instance, the enhancement shall be dismissed.
  - The current offense is connected to mental illness.
  - The current offense is connected to prior victimization or childhood trauma.
  - The current offense is not a violent felony as defined in subdivision (c) of Section 667.5.
  - The defendant was a juvenile when they committed the current offense or any prior juvenile adjudication that triggers the enhancement or enhancements applied in this case.
  - The enhancement is based on a prior conviction that is over five years old.
  - Though a firearm was used in the current offense, it was inoperable or unloaded.
- Clarifies that the above list is not exhaustive and that the court maintains authority to dismiss or strike an enhancement in the interests of justice.
- Defines "endanger public safety" to mean there is a likelihood that the dismissal of the enhancement would result in physical injury or other serious danger to others.
- States that while the court may exercise its discretion at sentencing, nothing in the bill shall prevent a court from exercising its discretion before, during, or after trial or entry of plea.
- Provides that the following definitions apply:
  - A mental illness is a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, including, but not limited to, bipolar disorder,

schizophrenia, schizoaffective disorder, or post-traumatic stress disorder, but excluding antisocial personality disorder, borderline personality disorder, and pedophilia. A court may conclude that a defendant's mental illness was connected to the offense if, after reviewing any relevant and credible evidence, including, but not limited to, police reports, preliminary hearing transcripts, witness statements, statements by the defendant's mental health treatment provider, medical records, records or reports by qualified medical experts, or evidence that the defendant displayed symptoms consistent with the relevant mental disorder at or near the time of the offense, the court concludes that the defendant's mental illness substantially contributed to the defendant's involvement in the commission of the offense.

- "Childhood trauma" means that as a minor the person experienced physical, emotional, or sexual abuse, physical or emotional neglect. A court may conclude that a defendant's childhood trauma was connected to the offense if, after reviewing any relevant and credible evidence, including, but not limited to, police reports, preliminary hearing transcripts, witness statements, medical records, or records or reports by qualified medical experts, the court concludes that the defendant's childhood trauma substantially contributed to the defendant's involvement in the commission of the offense.
- "Prior victimization" means the person was a victim of intimate partner violence, sexual violence, or human trafficking, or the person has experienced psychological or physical trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence. A court may conclude that a defendant's prior victimization was connected to the offense if, after reviewing any relevant and credible evidence, including, but not limited to, police reports, preliminary hearing transcripts, witness statements, medical records, or records or reports by qualified medical experts, the court concludes that the defendant's prior victimization substantially contributed to the defendant's involvement in the commission of the offense.

- Specifies that this bill's provisions do not apply to an enhancement if dismissal of that enhancement is prohibited by any initiative statute.
- States that this bill's provisions apply to sentencings occurring after the effective date of this bill

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

SB 483 (Allen)- Sentencing: resentencing to remove enhancements

Penal Code Sections 1171 and 1171.1 (Add)

Effective Date: January 1, 2022

SUMMARY:

Applies the repeal of sentence enhancements for prior prison or county jail felony terms and for prior convictions of specified crimes related to controlled substances retroactively.

HIGHLIGHTS:

- States that any sentence enhancement imposed prior to January 1, 2018, for a specified prior drug conviction, except if the enhancement was imposed for a prior conviction of using a minor in the commission of offenses involving specified controlled substance, is legally invalid.
- States that any enhancement imposed prior to January 1, 2020, for a prior separate prison or county jail felony term, except if the enhancement was for a prior conviction of a sexually violent offense, as specified, is legally invalid.
- Requires the Secretary of the Department of Corrections and Rehabilitation (CDCR) and the county correctional administrator of each county to identify those persons in their custody currently serving a term that includes one of the repealed enhancements and to provide the name of each person, along with the person's date of birth and relevant case number or docket number, to the sentencing court that imposed the enhancement. This information shall be provided as follows:
    - By March 1, 2022, for individuals who have served their base term and any other enhancements and are currently serving a sentence based on the repealed enhancement. For purposes of this deadline, CDCR shall consider all other enhancements to have been served first; and
    - By July 1, 2022, for all other individuals.
- Provides that upon receiving the information, the court shall review the judgment and verify that the current judgement includes one of the repealed enhancements and the court shall recall the sentence and resentence the defendant. The review and resentencing shall be completed as follows:
    - By October 1, 2022, for individuals who have served their base term and any other enhancements and are currently serving a sentence based on the repealed enhancement; and
    - By December 31, 2023, for all other individuals.
- Creates a presumption that resentencing shall result in a lesser sentence than the one originally imposed as a result of the elimination of the repealed enhancement unless the court finds by clear and convincing evidence that imposing a lesser sentence would endanger public safety.
- States that resentencing cannot result in a longer sentence.

- Requires the court to apply the Rules of Court on resentencing and any other changes in the law that reduce sentences so as to promote uniformity of sentencing.
- Allows the court to consider post-conviction factors at resentencing.
- Provides that, unless the court originally imposed the upper term, the court may not impose a sentence in excess of the middle term unless circumstances in aggravation have been stipulated by the defendant or found true by the trier of fact.
- Requires the court to appoint counsel for resentencing.
- Allows waiver of the resentencing hearing upon agreement of the parties.
- Provides that if a resentencing hearing is not waived, the defendant may appear at the hearing remotely, if the defendant agrees.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

SB 567 (Bradford)- Criminal procedure: sentencing

Penal Code Sections 1170 and 1170.1 (Amend)

Effective Date: January 1, 2022

SUMMARY:

Provides that when a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall, in its sound discretion, order imposition of a sentence not to exceed the middle term, except as provided.

HIGHLIGHTS:

- Authorizes a court to impose a sentence exceeding the middle term only when there are circumstances in aggravation of the crime that justify a term of imprisonment exceeding the middle term and the facts underlying those circumstances have been stipulated to by the defendant or found true beyond a reasonable doubt at trial by the jury or by the trial in a court trial.
- States that except where evidence supporting an aggravating circumstance is admissible to prove or defend against the charged offense or enhancement at trial, or it is otherwise authorized by law, upon request of a defendant, trial on the circumstances in aggravation alleged in the indictment or information shall be bifurcated from the trial of charges and enhancements. The jury shall not be informed of the bifurcated allegations until there has been a conviction of a felony offense.
- Specifies that the court may consider the defendant's prior conviction in determining sentencing based on a certified record of conviction without submitting the prior conviction to a jury. However, this provision does not apply to enhancements imposed on prior convictions.
- Clarifies the requirements in existing law that the court shall set forth on the record the facts and reasons for choosing the sentence imposed and that the court may not impose an upper term by using the fact of any enhancement upon which the sentence is imposed.
- Provides that when an enhancement is punishable by one of three terms, the court shall order imposition of a sentence not to exceed the middle term, unless there are circumstances in aggravation that justify the imposition of a term exceeding the middle term and the facts underlying those circumstances have been stipulated to by the defendant, or have been found true beyond a reasonable doubt at trial by a jury or by the judge in a court trial.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

SB 775 (Becker)- Felony murder: resentencing

Penal Code Section 1170.95 (Amend)

Effective Date: January 1, 2022

SUMMARY:

Clarifies that a person who was convicted of attempted murder under the natural and probable consequences doctrine or any other theory under which malice is imputed to the person based solely on their participation in a crime or who was convicted of manslaughter when the prosecution was allowed to proceed on a theory of felony murder or murder under the natural and probable consequences doctrine, to apply to have their sentence vacated and be resentenced.

HIGHLIGHTS:

- Requires a court to find a *prima facie showing* (i.e. accepted until proven otherwise) has been made that a petitioner falls within resentencing provisions unless the declaration fails to show that they meet the requirements for resentencing.
- Specifies that upon receiving a petition in which the information required is set forth or a petition where any missing information can be readily ascertained by the court, if the petitioner has requested counsel the court shall appoint counsel to represent the petitioner.
- Specifies that a finding that there is substantial evidence to support a conviction of murder, attempted murder, or manslaughter is insufficient to prove beyond a reasonable doubt that the petitioner is ineligible for resentencing.
- Provides that a person convicted of murder, attempted murder, or manslaughter whose conviction is not final may challenge on direct appeal the validity of that conviction.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

TRAINING

AB 57 (Gabriel)- Law enforcement: hate crimes

Penal Code Sections 422.87 and 13519.6 (Amend)

Effective Date: January 1, 2022

SUMMARY:

Requires the basic peace officer course curriculum to include instruction on the topic of hate crimes, which shall incorporate a specified hate crimes video developed by POST.

HIGHLIGHTS:

- Requires POST to consult with subject matter experts including but not limited to law enforcement agencies, civil rights groups, academic experts and the DOJ in developing guidelines and a course of instruction on "Hate crimes" for peace officers, and for persons not yet employed as peace officers but are enrolled in a training academy for law enforcement officers.
- Requires POST, commencing on or after June 1, 2022, to incorporate the November 2017 video course entitled "Hate Crimes: Identification and Investigation" or any successor video thereto into the basic course curriculum.
- Provides that POST make the Hate Crimes: Identification and Investigation video available to stream via the learning portal.
- Requires each peace officer, on or before January 1, 2023, to complete the above Hate Crimes video, or any other POST certified hate crimes course via the learning portal or in-person instruction.
- Provides that POST shall develop and periodically update an interactive refresher course of instruction and training for in-service peace officers on the topic of hate crimes and make the course and make the course available via the learning portal. The course shall cover the fundamentals of hate crime law and preliminary investigation of hate crimes incidents and shall include updates on recent changes in the law, hate crime trends, and best enforcement practices.
- Requires that the above hate crimes refresher course to be taken by in-service peace officers every six years.
- Requires any local law enforcement agency that adopts or updates a hate crimes policy to include instructions for officers to consider whether there were targeted attacks, or bias references to, symbols of importance or articles of spiritual significance in a particular religion, in order to assist in recognizing religious-bias hate crimes.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

USE OF FORCE

AB 26 (Holden)- Peace officers: use of force

Government Code Section 7286 (Amend)

Effective Date: January 1, 2022

SUMMARY:

Requires use of force policies for law enforcement agencies to include the requirement that officers "immediately" report potential excessive force, and further describes the requirement to "intercede" if another officer uses excessive force.

HIGHLIGHTS:

GC 7286(a)

- Law enforcement agency policies must include:
  - A requirement that an officer intercede when present and observing another officer using force that is **clearly beyond** that which is necessary, as determined by an objectively reasonable officer under the circumstances, taking into account the possibility that other officers may have additional information regarding the threat posed by a subject.
  - A requirement that an officer that has received all required training on the requirement to intercede and fails to act, be disciplined up to and including in the same manner as the officer that committed the excessive force.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

Federal law on the issue:

“Police officers have a duty to intercede when their fellow officers violate the constitutional rights of a suspect or other citizen." (United States v. Koon, 34 F.3d 1416, 1447 n.25 (9th Cir. 1994), reviewed on other grounds, 518 U.S. 81, 135 L. Ed. 2d 392, 116 S. Ct. 2035 (1996).

Importantly, however, officers can be held liable for failing to intercede only if they had an opportunity to intercede. (See Bruner v. Dunaway, 684 F.2d 422, 426-27 (6th Cir. 1982) (holding that officers who were not present at the time of the alleged assault could not be held liable in a section 1983 action); Gaudreault v. Municipality of Salem, 923 F.2d 203, 207 n.3 (1st Cir. 1990) (granting arresting officers' motion for summary judgment because the officers had no "realistic opportunity" to prevent an attack committed by another officer).

GC 7286(a) does not take prior law into account. However, federal law on the duty to intervene, while not binding on state law issues, should be persuasive in interpreting this law.

NOTES:

AB 48 (Gonzalez, Lorena)- Law enforcement: use of force

Government Code Sections 12525.2 (Amend) and Penal Code Sections 13652 and 13652.1 (Add)

Effective Date: January 1, 2022

SUMMARY:

Provides that the use of kinetic energy projectiles or chemical agents, as defined, shall only be used by a peace officer that has received training on their proper use by POST for crowd control if the use is objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including any peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control, and in compliance with specified requirements.

HIGHLIGHTS:

USE AT PROTEST/DEMONSTRATION

- Kinetic energy projectiles and chemical agents shall not be used by any law enforcement agency to disperse any assembly, protest, or demonstration.
- Exceptions:
  - Deployed by a peace officer who has received training (from POST) on their proper use for crowd control is the use if objectively reasonable to defend against life or SBI and in accordance with several requirements
  - To bring an objectively dangerous and lawful situation safely and effectively under control.
  - Not aimed at the head, neck, or any other vital organs
- If the chemical agent is tear gas, only a commanding officer at the scene (of assembly, protest, etc.) may authorize the use of tear gas.

GENERAL USE

- Kinetic energy projectiles and chemical agents can be only be used if all of the following are met:
  - De-escalation techniques are attempted and have failed
  - Repeated, audible announcements are made (and attempted in various languages, if necessary) noting intent to use
  - Persons are given objectively reasonable (OR) opportunity to disperse
  - OR effort made to identify persons engaged in violent acts and projectiles and agents are used only towards those individuals
  - Used only with frequency, intensity and in a manner proportional to the threat

- OR effort made to extract individuals in distress
- Medical assistance is promptly procured or provided for injured persons

- Kinetic energy projectiles and chemical agents cannot be used:
  - Due to violation of curfew
  - In response to verbal threat
  - **Noncompliance with a law enforcement directive**

DEFINITIONS

- "Kinetic energy projectiles" means any type of device designed as less lethal, to be launched from any device as a projectile that may cause bodily injury through the transfer of kinetic energy and blunt force trauma. For purposes of this section, the term includes, but is not limited to, items commonly referred to as rubber bullets, plastic bullets, beanbag rounds, and foam tipped plastic rounds.
- "Chemical agents" means any chemical that can rapidly produce sensory irritation or disabling physical effects in humans, which disappear within a short time following termination of exposure. For purposes of this section, the term includes, but is not limited to, chloroacetophenone tear gas, commonly known as CN tear gas; 2-chlorobenzalmalononitrile gas, commonly known as CS gas; and items commonly referred to as pepper balls, pepper spray, or oleoresin capsicum**.**

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

This issue will be difficult for personnel to navigate. Make sure that you can satisfy the requirements of the statute regarding use and procedural steps taken prior thereto.

No private right of action taken but can be used to support a Bane Act claim under state law, particularly where First Amendment rights are implicated.

NOTES:

CASE LAW


OFFICE OF THE ATTORNEY GENERAL
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FOURTH AMENDMENT: *TERRY* STOPS

1. *People v. Flores* (2021) 60 Cal.App.5th 978*: Do police have a reasonable basis to conduct a *Terry* stop when a suspect walks away, conceals himself from officers as they approach, and ignores requests to stand up?

> **RULE: Officers are permitted to make commonsense judgments and inferences about human behavior, and such factors can provide a reasonable basis to detain someone and investigate further.**

2. FACTS: At 10:00 p.m., in a cul-de-sac known for illegal drug and gang activity, police saw def. standing in the street. When def. saw them, he moved around a car and ducked behind it. Twice, def. popped his head up from behind the car and ducked back down. When an officer approached to see what was going on, Flores remained crouched, with his hands out of sight and moving his arms away from the approaching officer and the officer's bright flashlight, which cast a bright beam. Despite the approaching light and noise from the officer's radio, def. continued to face away from the officer, and continued to move his arms, and keep his hands out of the officer's view. The footage from the body-worn camera showed def. stayed ducked down for about 20 seconds, which was "odd" in this context. The officer asked him to stand and he remained in his crouch. The officer said, "Hey hurry up," and he started to stand. The officer ordered def. to put his hands on his head, and he complied. They handcuffed def. out of concern for their safety. One officer checked def. for weapons, patting an electronic car key that activated the lights on the parked car. The other looked through the car window and saw a methamphetamine bong. Police asked def. if this was his car; Flores said yes. They asked for identification. Def. directed officers to his wallet, which was inside the car in the driver's side door. Def. consented to police retrieving and opening his wallet. In the wallet was a bindle of what looked like methamphetamine. Officers searched the car and found a loaded and unlicensed gun.

3. HELD: 1.) The detention began when the officer told def. to stand and put his hands behind his head, not when the police shined a flashlight on him. "Without more, a law enforcement officer shining a spotlight on a person does not constitute a detention." 2.) The *Terry* stop was justified because def.'s conduct in context of this encounter gave officers a particularized and objective basis for suspecting that he was engaged in criminal activity. "Common sense takes context into account."

*****The California Supreme Court has granted review and deferred action pending its consideration of the detention-by-spotlight issue in *People v. Tacardon* (2020) 53 Cal.App.5th 89, case no. S264219.

FOURTH AMENDMENT: REASONABLE SUSPICION FOR DETENTION

1. ***In re Edgerrin J.*** **(2020) 57 Cal.App.5th 752:** Is there reasonable suspicion for a detention based on a neighbor's tip about a parked car occupied by four teens "acting shady" in a high crime area?

> **RULE: Even a brief investigatory detention requires reasonable suspicion—"specific articulable facts that, considered in light of the totality of the circumstances, provide some objective manifestation that the person detained may be involved in criminal activity."**

2. FACTS: Gang officers had Edgerrin, a gang member, under surveillance. After receiving a tip that black males in a Mercedes were "acting shady," four gang officers parked two cars behind the Mercedes, an officer stood outside each of its four doors, and the minors were ordered to produce identification. It was unclear whether the officers knew when they arrived that one of the occupants was Edgerrin. The officers verified that Edgerrin, the driver, was on probation with a search clause, searched the car, and found a loaded firearm and a pair of sneakers connected to a robbery.

3. HELD: (1.) A nonconsensual detention occurred when two patrol cars parked behind suspect's vehicle, one activated its emergency lights, and four officers positioned themselves at doors of the car. (2.) The tip of "shady" behavior did not, by itself, furnish reasonable suspicion because it was highly subjective, unreliable, and too vague to support indication of illegal conduct. The case was remanded for the juvenile court to determine whether officers knew Edgerrin was on probation at the time of the detention.

PRACTICE POINTER: A tip can be a good starting point. When "confronted with a tip that was insufficient to create reasonable suspicion, officers were nonetheless entitled to investigate further. . . . [T]hey had a right to drive to the location after receiving the tip. Once there, they could have made additional observations before approaching or attempted a consensual encounter by asking if the minors were willing to answer a few questions. What they could not do, without more, was immediately detain the minors."

PRACTICE POINTER: If you know prior to any detention that a suspect is on supervision and searchable, make it clear in your communication with other officers, report(s), and testimony. Here, the officer who had been surveilling the minor knew he was on searchable probation and driving this black Mercedes and communicated these crucial facts to the officers who detained the minor but failed to include these critical facts in her report. Her testimony was also equivocal. "A detention may not be justified after the fact on a basis not relied on by the officer."

FOURTH AMENDMENT: DETENTIONS VERSUS CONSENSUAL ENCOUNTERS, AND THE ATTENUATION DOCTRINE

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1. *People v. Kasrawi* (2021) 65 Cal.App.5th 751*: May police detain a person because he is in a residential area late at night where burglaries have occurred? When does the use of a spotlight in combination with other factors constitute a detention? And if such a detention is unlawful, must the evidence obtained be suppressed even if the officer discovers that the person has an outstanding arrest warrant?

> **RULES: Merely being out late at night in an area where burglaries have occurred is not reasonable suspicion justifying a detention. A detention occurs if facts are present that remove any ambiguity as to whether a person is free to leave. Pulling up behind a car and using a patrol car spotlight may be a detention if combined with additional circumstances. An unlawful detention does not result in suppression if an outstanding arrest warrant was discovered prior to the search.**

2. FACTS: At 4:00 a.m. in a residential neighborhood, an officer saw def. cross a street and begin to get into a Prius. The officer was suspicious based on the def. being out in the early morning and the fact that two car burglaries had recently occurred in the area. He shined the patrol car spotlight on def. and pulled up behind and to the side of the Prius. The officer asked def. where he was coming from, found the answer unsatisfactory, and detained him. The officer then learned that def. had an outstanding arrest warrant and formally arrested him. A search incident to arrest revealed contraband and stolen items. Def. moved to suppress the evidence on the basis that the initial detention was unlawful.

3. HELD: (1.) The contact between the officer and def., from the first moment, was a non-consensual detention. Although the use of a spotlight alone does not necessarily transform a contact into a detention, here the officer used a spotlight while parking his patrol car close to def., advancing toward him, and immediately asked pointed questions that a reasonable person would not feel free to ignore.

(2.) The detention was unlawful. Def. did nothing to give the officer a reasonable suspicion of criminal activity, just because he was out late at night and walking to a car.

(3.) If a detention is unlawful, evidence obtained in the search that follows generally should be suppressed. But there is an exception when the officer discovers some "intervening circumstance" after the detention but before the search that makes the search lawful—so long as the officer does not engage in any flagrant abuse of power. Here, the officer learned of the outstanding warrant before he began the search and there was no evidence that he had a pretextual reason to target def. or engaged in a flagrant abuse of power. For that reason, the evidence was admissible despite the unlawful detention.

***** The California Supreme Court has granted review and deferred action pending its consideration of the detention-by-spotlight issue in *People v. Tacardon* (2020) 53 Cal.App.5th 89, case no. S264219.

FOURTH AMENDMENT: SEIZURE BY DEADLY FORCE

1. *Torres v. Madrid* (2021) 141 S.Ct. 989: When an officer shoots someone to detain/restrain them, but the suspect temporarily eludes capture, was there a "seizure" for purposes of the Fourth Amendment?

> **RULE:** "The application of physical force"—in this case bullets—"with intent to restrain is a seizure, even if the force does not succeed in subduing the person."

2. FACTS: Four New Mexico State Police officers in tactical vests with police insignia set out at dawn to execute an arrest warrant at an apartment in Albuquerque. Torres was standing with another person in the apartment parking lot near a Toyota Cruiser; neither Torres nor her companion was the target of the warrant. As the officers approached the vehicle, the companion departed, and Torres—at the time experiencing methamphetamine withdrawal—got into the driver's seat. The officers attempted to speak with her, but she did not notice their presence until one of them tried to open the door of her car. Torres thought the officers were carjackers, and she hit the gas. The officers fired 13 shots at Torres, striking her twice in the back and temporarily paralyzing her left arm; she escaped. Then she stopped in another parking lot, and stole a Kia Soul that was idling nearby. She managed to drive 75 miles to a hospital but was air-lifted back to Albuquerque, where she was arrested.

In the criminal case, Torres pleaded no contest to aggravated fleeing from a law enforcement officer, assault on a peace officer, and unlawfully taking a motor vehicle. She then sought monetary damages in a civil suit (42 U.S.C. § 1983), claiming the officers had used excessive force, making the shooting an unreasonable seizure under the Fourth Amendment.

3. HELD: The application of physical force with an intent to restrain is a Fourth Amendment seizure even if the person does not submit and is not subdued. It is important to note, however, that the seizure only "lasts only as long at the application of force." Torres was not still seized when she drove away.

FOURTH AMENDMENT: SEARCH AND SEIZURE OF NON-INDIANS BY TRIBAL POLICE ON INDIAN RESERVATIONS

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1. ***United States v. Cooley*** **(2021) __ U.S.__, 141 S.Ct. 1638:** May Indian tribal police temporarily detain and search a non-Indian person on a public right of way that runs through a tribal reservation?

> **RULE: Tribal police may temporarily detain and search a non-Indian person inside a reservation, including on state highways running through it, where the officer has a reasonable suspicion of criminal activity.**

2. FACTS: Def., a non-Indian person, was in a parked car late at night on a highway running through the Crow Reservation in Montana when he was contacted by tribal police. Def. had bloodshot eyes and there were two rifles in plain view on the front seat, as well as drug paraphernalia. The tribal officer seized the contraband, took def. to a tribal police station, and detained him until federal and local officers arrived. He was later charged with federal drug and gun offenses. Def. claimed the tribal officer had no authority to detain and search a non-Indian on a public highway.

3. HELD: The authority of tribal police over non-Indian people is limited because non-Indians are not subject to tribal law. But tribes do retain the right to respond to conduct that threatens or has a direct effect on the welfare of the tribe. Here, the detention and search pending the arrival of non-Indian authorities were based on possible danger to the tribe, given the rifles and drugs, and did not subject def. to tribal law. Tribal police authority would not extend to arrest for state or federal offenses.

FOURTH AND FIFTH AMENDMENTS: THE AUTOMOBILE EXCEPTION, PLAIN VIEW DOCTRINE, STANDARD TO OBTAIN A SEARCH WARRANT FOR CELL PHONES, AND DEFINITION OF AN "INTERROGATION" FOR PURPOSES OF *MIRANDA*

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1. *People v. Tousant* (2021) 64 Cal.App.5th 804: May police conduct a warrantless search of a vehicle, including a cell phone left behind inside it, when the vehicle is suspected of being involved in a shooting? What is the standard for obtaining a search warrant to search cell phone data? What is the threshold for when a police interaction becomes an interrogation for purposes of *Miranda*?

> **RULES: A warrantless searches of a vehicle is lawful where there is probable cause that it was involved in a crime. A cell phone in plain view inside such a vehicle may be seized, but its data may not be searched without a search warrant.**
>
> **If an officer has reason to know that a suspect's answer may incriminate him, even routine questioning may amount to interrogation.**

2. FACTS: Def. suspected that local gang members had killed his son. Several months later, there were two shootings—one in Berkeley and one in Oakland. At the Berkeley shooting, a man was injured. At the Oakland shooting, someone shot 14 times at an occupied vehicle. Nobody was hit but def.'s rented Camaro was found partially blocking a private driveway a few feet from the shell casings and directly across a narrow street from where victim's truck was shot. Police searched the Camaro without a warrant and seized def.'s cell phone that had been left inside. An officer turned on the phone; she checked the Settings folder to determine its phone number, and found a photo of def.'s driver's license saved in the phone. The phone number and information from the driver's license were included in the affidavit supporting the warrant to download the rest of the phone's memory.

Def. was later arrested by Oakland police, but the arresting officer only knew that def. was being sought by Berkeley police for an unspecified violent crime. Def. was taken to a Berkeley police station, told he was being arrested for a firearms violation (not for a shooting) and *Mirandized* by Berkeley police.

However, he was then also questioned by Oakland police, who did not *Mirandize* him. An Oakland police officer spoke to def. about his son's murder, which Oakland police were still investigating. Def. told the officer about his son's feud with a gang, and this information was later used against def. when he was prosecuted for the Berkeley shooting.

3. HELD: (1.) The warrantless search of the car was lawful under the "automobile exception" to the search warrant requirement because there was probable cause to believe that it was connected to the shooting. It was a rental car blocking a private residential driveway at the scene of the shooting, was unlocked and abandoned, and was surrounded by shell casings.

(2.) It was lawful for officers to seize the cell phone from the car. It was in plain view inside the suspicious car, and it was reasonably probable that it contained evidence about the shooting.

(3.) It was unlawful for police to extract def.'s phone number and driver's license photo from the phone before obtaining a search warrant, given the privacy interests inherent to cell phones. (*Riley v. California* (2014) 573 U.S. 373.)

(4.) Based on the "independent source" doctrine, the cell phone data were admissible at trial because sufficient facts, independent from the initial improper search of the phone, provided probable cause to support the warrant.

(5.) There was no *Miranda* violation. *Miranda* warnings must be given before any "custodial interrogation," but the conversation def. had with Oakland police was not an interrogation. Although def. was in Berkeley police custody at that time, that arrest was for a firearms violation, not the shootings. Also, the Oakland officer did not know and had no reason to think def. would incriminate himself in the Berkeley shooting. The discussion was about the death of def.'s son, and about Oakland police's fear that def. *might* retaliate against the gang in the future, not that he had already done so.

FOURTH AMENDMENT: MARIJUANA IN CARS

1. *People v. Hall* (2020) 57 Cal.App.5th 946: Is a plastic baggie of marijuana considered an "open container" sufficient to allow search of a vehicle?

> **RULE: A warrantless search of a vehicle for a violation of Health and Safety Code, § 11362.3(a)(4) is permissible as long as the officer has specific, articulable facts demonstrating that a particular plastic baggie constitutes an "open container."**

2. FACTS: During a traffic stop for a nonoperational license plate lamp, the officer saw a clear plastic baggie of marijuana in the center console of def.'s vehicle, burnt cigar wrappers commonly used to wrap marijuana, and loose marijuana leaf on the center console and def.'s lap. Concluding that def. was driving with an "open container" of marijuana, the officer searched the car and found a firearm in a closed backpack.

3. HELD: (1.) Possession of a lawful quantity of marijuana in a vehicle, i.e. 28.5 grams or less (Health and Saf. Code, § 11362.1(c)), by itself, does not justify the search of a vehicle for additional quantities of marijuana. (2.) There was insufficient evidence to prove that the plastic baggie was an "open container" under Health and Safety Code section 11362.3, subdivision (a)(4):

- No evidence about the condition of the plastic baggie. "For all we know, the baggie was purchased from a dispensary and had never been opened."
- No evidence that the vehicle smelled of marijuana.
- Officers did not seize the marijuana from the def.'s lap, leading to an inference that def. had only trace amounts that were not necessarily related to the baggie or an open container.

FOURTH AMENDMENT: MARIJUANA IN CARS

1. *People v. Moore* (2021) 64 Cal.App.5th 291: Can officers rely on their training and experience when articulating the probable cause justifying a search conducted pursuant to the automobile exception?

> **RULE: A vehicle search may be based on an odor of marijuana if the officer can articulate a reasonable basis for concluding that more than one ounce was in the vehicle. This may require an officer to describe his or her expertise in discerning the differences between the odors of burnt marijuana and fresh marijuana.**

2. FACTS: A police sergeant noticed a Jeep parked on a curb next to a park known for drug transactions. Def. was leaning into the open front passenger door of the Jeep. Based on his training and experience, the sergeant believed that def. may be engaged in a narcotics transaction. When he parked his patrol unit behind the Jeep, def. walked away and to the middle of the park. The sergeant approached the driver of the Jeep. When the driver opened the driver's side door, the driver appeared nervous, and the officer smelled a "strong" odor of "fresh marijuana." The driver denied there was any marijuana in the car, but produced an empty glass jar that appeared to have marijuana residue in it and said there was no marijuana in the car because he had smoked it. When asked if there was anything illegal in the Jeep, the driver responded, "[n]ot that I know of." The driver told the officer that a backpack on the front passenger floorboard belonged to def., who had left it in the car.

During his interaction with the driver, the officer saw def. watching from a gazebo in the park. The officer detained the driver, and searched the vehicle. When he picked up the backpack, def. approached and claimed the backpack as his property. The sergeant told Moore "he was going to conduct a probable cause search" of the backpack. When the sergeant asked def. for his name, he turned and walked away towards a parked Mercedes with another individual in the driver's seat. Moore got into the parked Mercedes, which drove away. Inside the backpack, the sergeant found a jar containing approximately one-quarter pound of marijuana, a loaded .40-caliber handgun, and additional materials indicative of narcotics sales.

3. HELD: Probable cause must be based on the totality of the circumstances, not singular facts viewed in isolation, and the facts and circumstances must be analyzed "as understood by those versed in the field of law enforcement." Here, the sergeant's observations, his encounter with the driver, and the "strong" odor of "fresh marijuana," supported a reasonable belief that the Jeep contained an illegal amount of marijuana. Based on this training and experience, the sergeant disbelieved the driver's claims that the strong smell of fresh marijuana was actually the smell of recently burnt marijuana or came from an empty jar with marijuana residue.

PRACTICE POINTER: This case shows how detailed testimony about an officer's training and experience makes all the difference. When articulating the basis for a search based on probable cause in reports/testimony, include details about your training and experience. At this suppression hearing, the sergeant testified about his 12 years of experience as a peace officer, his current position as a sergeant supervising a gang enforcement team, and his year of academy training which included instruction from numerous drug experts. He testified about his extensive experience in the field including a role as supervisor of a marijuana abatement team in which he investigated illegal indoor marijuana grows. He also testified to encountering marijuana for sales or simple possession hundreds of times throughout his career.

FOURTH AMENDMENT: COMMUNITY CARETAKING IN HOMES

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1. *Caniglia v. Strom* (2021) __ U.S.__, 141 S.Ct. 1596: Does "community caretaking" allow police to enter and search a home to remove firearms absent evidence of an emergency?

> **RULE: A warrantless search of a home is unlawful if based merely on "community caretaking" for the welfare of the homeowner, i.e., where officers are not actively investigating a crime and there is no emergency.**

2. FACTS: A man had an argument with his wife, urging her to shoot him with one of his guns. She left and called the police to perform a welfare check on her husband. When officers arrived, the man denied he was suicidal but agreed to go to a hospital for a psychiatric evaluation on the condition officers did not enter his home while he was gone and confiscate his guns. Officers agreed but, once the homeowner left, they entered and seized his guns. The homeowner sued, alleging a violation of his Fourth Amendment rights.

3. HELD: (1.) The "community caretaking" exception to the search warrant requirement permits police to conduct warrantless searches and seizures of vehicles on public roads for public safety reasons, even when no crime is suspected, such as where a vehicle is disabled or has been involved in an accident. (*Cady v. Dombrowski* (1973) 413 U.S. 433.) But this rule does not apply to private homes, and it could not justify the search and seizure here. The expectation of privacy in homes is greater than in vehicles.

(2.) Officers may conduct a warrantless search and seizure in a home in an emergency to protect the occupant from imminent injury, but that was not the basis for the search here.

FOURTH AMENDMENT: HOT PURSUIT OF MISDEMEANANT INTO RESIDENCE

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1. *Lange v. California* (2021) __U.S.__, 141 S.Ct. 2011: When may officers pursue a fleeing suspect into a home if the crime is only a misdemeanor?

> **RULE: The commission of the misdemeanor crime of failing to comply with a lawful order (Veh. Code, § 2800(a)), does not, on its own, allow an entry into a residence under the "hot pursuit" exception. The new formula for "hot pursuit" entries following flight after the commission of a misdemeanor requires: (1) the commission of an offense, (2) flight, and (3) an exigency. This rule does <u>not</u> apply to a "hot pursuit" following the commission of a felony.**

2. FACTS: A CHP officer in Sonoma County noticed the driver of a car that had just passed him was playing extremely loud music (windows rolled down) and was repeatedly honking his horn. When the officer attempted to conduct a vehicle stop, the driver kept driving for 100 feet and drove into the attached garage of a home. The officer walked into the garage and quickly determined that def. might have been DUI. Def. failed FST's, and an analysis of his blood showed that it was three times over the limit. Def. moved to suppress, claiming that the officer's entry into his garage was unlawful. After California courts affirmed the denial of the motion, he appealed to the United States Supreme Court.

3. HELD: Exigent circumstances must exist to justify entrance into a home to arrest a fleeing misdemeanant, such as the potential destruction of evidence, escape, imminent harm to others, or a threat to officers. Previously, the Supreme Court had never ruled that the seriousness of the crime was a factor in relying on the "hot pursuit" exception. Because the court announced a new rule, the case was sent back to the trial court to determine whether exigent circumstances existed.

PRACTICE POINTER: Including the following facts in reports and/or testimony will help to satisfy the new test under *Lange*:

- Make clear that the attempt to apprehend the suspect began in a public place prior to suspect's entry into a residence.

- State the facts supporting that the crime qualifies as a felony, particularly if the offense is a wobbler that could be charged as either a felony or misdemeanor. And remember that if force was used against an officer in the suspect's attempt to flee, the use of force elevates a Pen. Code, § 148 offense to a felony violation of Pen. Code, § 69.

- Even if it seems obvious, point out that evidence could have been destroyed if the suspect escaped arrest. For purposes of DUI investigations, ingesting alcohol or narcotics inside the residence could mask (destroy) evidence of driving under the influence. Be specific, if possible, as to what could be destroyed and how evidence would be eliminated.

- Include details about the residence, particularly if there are means of escape through doors or windows.

- Include any information about potential dangers to officers or others tied to the suspect's flight or the nature of the crime.

FOURTH AMENDMENT: EXIGENT CIRCUMSTANCES EXCEPTION

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1. *People v. Nunes* (2021) 64 Cal.App.5th 1: After responding to a call of a "whole structure fire," finding no fire, and detecting the smell of smoke "not consistent with cooking," could a fire captain open a cabinet in a backyard shed?

RULE: The justification for a search based on exigent circumstances ends when the emergency passes.

2. FACTS: A fire captain responded a report of a "whole structure fire" at def.'s house. When he arrived, he saw no fire and no smoke. Neighbors said they had recently seen a plume of smoke coming from the backyard. The captain opened a gate and entered the backyard, where he smelled smoke in the air "not consistent with cooking." The smell was "around the entire backyard," not coming from an identifiable place. He investigated to confirm there was no imminent danger, i.e. an active fire, and found none. Because there was still an odor of smoke, he and four other firefighters "continued to search around the back." There were test tubes and chemistry equipment on the ground, as well as a homemade toy rocket that looked burned. Then the captain noticed a closed shed. No smoke was coming from it, nor did the smell of smoke seem to originate from there. He opened the shed "to make sure everything [was] clear." Inside was a metal cabinet. Although nothing specific about the cabinet made him think he should look inside, he opened the cabinet, and saw bottled chemicals he was not familiar with. He called the hazardous materials team to respond. Police ultimately obtained a search warrant, and def. was charged with the possession of an explosives and destructive device.

3. HELD: The exigent circumstances exception did not justify the search of the cabinet. Whether exigent circumstances justify a search depends on the circumstances known to the officer at the time of the search. While the fire captain was entitled to enter the backyard and the shed, by the time he opened the cabinet inside the shed, there was no visible smoke, only a persistent odor in the general area that was not consistent with cooking. So the urgency of the situation had dissipated, and the facts did not support a reasonable belief that the search was necessary to avoid imminent danger to life or serious property damage.

FOURTH AMENDMENT: USE OF FELONY ARRESTEE'S DNA IDENTIFICATION SAMPLE

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1. ***People v. Roberts*** **(2021) 68 Cal.App.5th 64:** Does a district attorney's post-arrest decision not to file charges mean that law enforcement cannot analyze that arrestee's DNA identification sample taken at booking?

> **RULE: If an arrest was based on probable cause, law enforcement may analyze and compare an arrestee's DNA even if he was not later charged for the crime of arrest.**

2. FACTS: Thirteen-year-old Jessica went alone to a playground, where she was brutally murdered. The killer left his DNA on her belt buckle and cigarettes that he smoked with her. The case was unsolved. A year later, def. was validly arrested for rape of his ex-wife, and he was swabbed at booking for a DNA identification sample. The DA declined to file rape charges. Def.'s DNA was analyzed and matched the unknown DNA profile found at the scene of Jessica's murder. Def. moved to suppress, arguing that the analysis of his DNA after the DA did not charge with rape him violated the federal and state constitutions.

3. HELD: If a suspect was validly arrested for a felony based upon probable cause, law enforcement may analyze and compare his DNA identification sample even if he is never formally charged with the crime of arrest. This type of booking search is "no different than taking fingerprints and photographs of someone arrested," and "the later use of that evidence in the investigation of another crime is not constitutionally prohibited."

FOURTH AMENDMENT: SEARCH OF EMAIL ATTACHMENTS AFTER BEING FLAGGED BY PRIVATE SERVER

1. *People v. Wilson* (2020) 56 Cal.App.5th 128*: Did it violate the Fourth Amendment when the government viewed email attachments, without a warrant, that had been flagged as depicting child pornography and provided by the private company that hosts the email server?

> **RULE: The Fourth Amendment does not apply to private searches and does not prohibit the governmental use of information in which any expectation of privacy was already frustrated by a private-party search.**

2. FACTS: Using his "Gmail" account, def. communicated with and paid women to photograph lewd acts with minors, and he emailed the images to others. Google, which operates the Gmail server, identified an email from def. as having four image files containing child pornography. Google uses a proprietary "hashing" technology to identify child sexual abuse images on its servers by assigning a "hash" value (a "digital fingerprint") to unopened images and matching those values against those of known images of child pornography kept in a repository. Google sent the four flagged files to the National Center for Missing and Exploited Children, which forwarded the "Cybertip" to the San Diego Internet Crimes Against Children (ICAC) task force. ICAC investigators viewed the images without a warrant. Based on the review of the images and information in the Cybertip, they obtained a search warrant for all Google content and user information associated with def., which led to the discovery of his emails to an accomplice and the electronic distribution of child pornography.

3. HELD: The government's warrantless search of the four images attached to def.'s email was permissible under the private search doctrine. Google's private search frustrated any expectation of privacy def. had in the image files before they were viewed by the government. Google had already identified def.'s image files as having matching hash values to images that had previously been viewed and identified by a Google employee as child pornography, so it was virtually certain that the images were contraband. The government's subsequent opening and viewing of the photographs did not significantly expand the search that Google had already conducted. **"**No privacy interest remained in the four images following the private search by Google."

NOTE: This def. was later convicted of federal charges of possession and distribution of child pornography. On appeal, the Ninth Circuit reached a different conclusion than the California Court of Appeal. It held that the warrantless search of def.'s email attachments exceeded the scope of the prior private search by Google, and any expectation of privacy that the def. had in the child pornography images attached to the email was not fully frustrated when Google scanned them and reported them as suspicious.

*****A petition for writ of certiorari is pending in the United States Supreme Court.

FIFTH AMENDMENT: ROUTINE BOOKING QUESTIONS

1. *In re J.W.* (2020) 56 Cal.App.5th 355: Does the admission of minor's response to routine booking questions about age and date of birth violate his privilege against self-incrimination absent *Miranda* warnings when a minor's age is an element of the crime?

> **RULE: Under the "routine booking question," an arrestee's answers to core booking questions are admissible in the absence of *Miranda* warnings.**

2. FACTS: The police found a loaded firearm in J.W.'s backpack and arrested him. During booking, the police asked J.W. for his age and date of birth, and he said he was 16 years old and gave his birthdate. At the juvenile adjudication hearing, the court admitted J.W.'s statements for the purpose of establishing his age—an element of the charged offense of being a minor in possession of a firearm.

3. HELD: The "routine booking question" exception to *Miranda* applies to questions that fall squarely within the core definition of "booking questions" (*Pennsylvania v. Muniz* (1990) 496 U.S. 582) even when, on the facts of the specific case, they are nevertheless reasonably likely to lead to an incriminating response from the suspect. Questions about the seven categories of basic identifying biographical data during the booking process—name, address, height, weight, eye color, date of birth, and age—"do not subject suspects to 'inherently compelling pressures' that might 'compel them to speak when they would not otherwise do so.'"

J.W. follows the reasoning of the California Supreme Court in *People v. Elizalde* (2015) 61 Cal.4th 523, which distinguished the seven questions bearing on biographical data from questions reasonably related to administrative concerns (e.g. gang classification).

PRACTICE POINTER: An obligation to give *Miranda* advisements during booking arises if you start asking questions that go beyond the biographical data approved by *Muniz* and that you "should know are reasonably likely to elicit an incriminating response."

FIFTH AMENDMENT: *MIRANDA* CUSTODY OF ADULT SUSPECT

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1. *People v. Potter* (2021) 66 Cal.App.5th 528: Under what circumstances should an investigator give *Miranda* warnings to a suspect who voluntarily comes to the police station, answers questions, and leaves without being arrested?

> **RULE: *Miranda* warnings must be given if, based on the totality of circumstances, a reasonable person in the suspect's position would not feel free to end the interrogation.**

2. FACTS: Def. repeatedly sexually abused his five-year-old daughter. When she was seven years old, she told a therapist that her father used to have her orally copulate him "every day." The therapist called the police. A detective telephoned def.; he conceded that his daughter "may" have been abused but denied that he was the abuser. A few weeks later, def. went to the police station and was interviewed without *Miranda* warnings. He confessed to the crimes and wrote a letter of apology.

3. HELD: Based on the totality of circumstances, def. was not in *Miranda* custody, thus his statements were admissible because *Miranda* advisements were not required. The following facts supported a finding that a reasonable person in def.'s position would have felt free to terminate the interrogation:

- Def. appeared voluntarily at the police station, knowing he was suspected of sexual abuse.
- Def. was expressly told "you don't have to talk to me if you don't want."
- Def. was told three separate times that he was free to leave.
- While the door of the interview room was closed, the detective told def. that it was "for privacy, but it's unlocked."
- Def. was not handcuffed or otherwise restrained.
- The interview was more "like a therapy session" about def.'s history of being sexually abused as a child and not "particularly intense or confrontational."
- The total length of questioning was under two hours.
- Def. was not arrested and allowed to leave the station after questioning.

FIFTH AMENDMENT: *MIRANDA* CUSTODY OF JUVENILE SUSPECT

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1. *In re Matthew W.* (2021) 66 Cal.App.5th 392: Under what circumstances should a detective give *Miranda* warnings to a 17-year-old suspect who is questioned at his home and is arrested at the conclusion of the interrogation?

> **RULE: *Miranda* warnings must be given if, based on the totality of circumstances, a reasonable juvenile in the suspect's position would not feel free to end the interrogation.**

2. FACTS: Matthew stabbed the victim following a late-night confrontation. In the early morning hours following the stabbing, a detective questioned minor inside his home without reading him *Miranda* rights. The detective was accompanied by two other officers, all of whom were armed, and denied Matthew's mother's request to be present for questioning. During the interrogation, Matthew admitted to having stabbed the victim.

3. HELD: (1.) Minor was in *Miranda* custody when he made the statements. Although some factors pointed to a lack of custody (detective's calm, professional tone of voice and fact he told minor he was not under arrest), the weight of facts supported a finding of custody. The interrogation was initiated by police to question Matthew as a suspect in stabbing, and the questioning was accusatory. Five officers arrived at minor's home at 6:00 a.m. Matthew did not consent to be questioned. Detective questioned minor while armed, another armed officer stood behind minor, and another stood at the front door. Matthew was never told that, at any time, he could end the interview or leave. Detective denied minor's mother's request to be present during questioning. Matthew was 17 years old, and his age "would certainly have intensified the effect of the factors . . . in causing him to feel 'pressured to submit' to the police interrogation." Matthew was arrested at the end of the interrogation. All of these circumstances would have suggested to minor that he was not free to leave or end the interrogation.

(2.) The error was prejudicial. The juvenile court relied heavily on the inconsistencies between Matthew's pre-arrest statements and his trial testimony in concluding that minor's version of events was not credible. Without his pre-arrest statements, the evidence would have supported a finding that minor acted in self-defense or in a reasonable belief in the need to protect his friend or himself from the victim's unprovoked aggression.

FIFTH AMENDMENT: ILLEGAL "TWO-STEP" INTERROGATION TACTIC USED TO EVADE *MIRANDA*

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1. *People v. Sumagang* (2021) 69 Cal.App.5th 712: When a suspect is questioned about the details surrounding a crime, may law enforcement wait until after he confesses to give him *Miranda* warnings and then question him further?

> **RULE: A person subjected to custodial interrogation must, in advance, be advised of his *Miranda* rights to be admissible at a subsequent trial. Questioning a suspect first and waiting until after a confession to give *Miranda* warnings before continuing questioning is a prohibited tactic that deprives a suspect of the knowledge essential to understanding the nature of his rights and consequences of abandoning them.**

2. FACTS: Def. was found asleep in a car holding the deceased victim's body. He was taken into custody. At the police station, a detective knew that def. was in custody but he "chose not to" give *Miranda* warnings because the detective "wanted to see what he had to say first." For 25 minutes, he asked questions about how the victim died. After a two minute break, the detective gave def. *Miranda* warnings, and continued questioning for another 45 minutes. In the pre- and post-warning statements, def. confessed that he had killed the victim, claiming that she had asked him to kill her.

3. HELD: (1.) Based on the overall setting and context of the interrogation, the detective deliberately undermined *Miranda* by employing the prohibited two-step interrogation tactic. The confession was inadmissible. The court relied on following factors:

a) Completeness and detail of questions and answers in pre-warning interview: During the 25-minute interview, the detective elicited a detailed narrative of the night the victim died, including all of the facts needed to inculpate def. Def. was considered a suspect at that time.

b) Overlapping content of two statements: In post-warning interview, detective elicited the same basic narrative of events, used facts elicited from pre-warning interview, and def. confessed again that victim asked him to kill her. Similar to his statement in pre-warning portion of the interview, def. admitted in the post-warning portion that, "I gave it to her," and admitted he had his "hands on" her, her arms went limp, and her body stopped moving.

c) Other Factors: The first and second parts of interrogation occurred in the same room, and the same interrogator conducted both sessions.

(2.) The error in admitting the confession at trial was prejudicial. The remaining evidence was not so overwhelming that it would have resulted in a guilty verdict of first degree murder beyond a reasonable doubt.