

GENERAL OFFICE MEMORANDUM 20-139

TO: ALL DISTRICT ATTORNEY PERSONNEL

FROM:  JOSEPH P. ESPOSITO
Chief Deputy District Attorney

SUBJECT: NEW CHAPTERED LEGISLATION

DATE: OCTOBER 14, 2020

At the conclusion of the recent legislative session, the Governor signed into law approximately 25 new pieces of legislation that will affect Office operations. Most of the new laws will take effect on January 1, 2021. Some are already in effect, while others will not go into effect until 2022.

Deputies who have expertise in the relevant subjects are analyzing some of these new laws and additional General Office Memorandum (GOM) or Special Directives will be forthcoming.

This GOM provides a *basic* summary of some of the new laws. Deputies are strongly encouraged to read the laws provided in the links below, conduct further research if necessary, and consult with supervisors or other deputies with an expertise in the relevant areas.

Assembly Bill (AB) 1775 (False Reports and Harassment) amended Penal Code (PC) § 653y and makes the knowing use of the 911 emergency system for the purpose of harassment a crime that is punishable as follows:

- For a first violation, an infraction with a \$250 fine or as a misdemeanor punishable by up to six months in a county jail, a fine of up to \$1,000, or both that imprisonment and fine
- For a second or subsequent violation, as a misdemeanor punishable by up to six months in a county jail, a fine of up to \$1,000, or both that imprisonment and fine
- If an act described in PC §§ 422.55 or 422.85 [hate crimes], a misdemeanor punishable by up to one year in a county jail, a fine of not less than \$500 nor more than \$2,000, or both that imprisonment and fine
- http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1775

AB 1869 (Criminal Fees), effective September 18, 2020, *repealed* the authority for courts to impose or collect fines and fees upon conviction and supervision. Additionally, unpaid balances of these court-imposed costs are now unenforceable and uncollectible and requires any portion of a judgment imposing those costs to be vacated. This law does not apply to victim restitution.

- http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1869

AB 1927 (Witness Testimony in Sexual Assault Cases & Immunity in Separate Prosecutions) added PC § 1324.2 and provides that a victim or witness’s testimony in a felony prosecution for a violation or attempted violation of PC §§ 220, 243.4, 261, 261.5, 286, 287, 288, or 289 that the victim or witness possessed or used a controlled substance or alcohol is inadmissible in a *separate* prosecution of that victim or witness to prove possession or use of that controlled substance or alcohol. It is important to note that in the underlying case, evidence that the witness unlawfully possessed or used a controlled substance or alcohol is not excluded, nor is the fact that the witness received use immunity for his/her testimony.

- http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1927

AB 1950 (Probation: Length of Terms) amended PC §§ 1203a and 1203.1 and reduces probation as follows:

- Misdemeanor is now **1 year**, but shall not apply to any offense that includes a specific probation length within its provisions
- Felony is now **2 years**, but shall not apply to PC § 667.5(c) [violent felonies], any offense that includes a specific probation length within its provisions, or violations of PC §§ 487(b)(3), 503, or 532a, if the total value of the property taken exceeds \$25,000
- http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1950

AB 2014 (Medical Misconduct: Statute of Limitations) amended PC § 803 and allows a criminal complaint charging PC § 367g [unauthorized use or implantation of sperm, ova, or embryos] to be filed within one year of the crime’s *discovery* or within one year after the crime could have reasonably been *discovered*. This new statute of limitations applies to crimes that were committed on or after January 1, 2021, and to crimes for which the statute of limitations that was in effect before January 1, 2021, has not run as of January 1, 2021.

- http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB2014

AB 2077 (Hypodermic Needles and Syringes) *repealed* Business and Professions Code § 4326. Hence, it will no longer be a crime to obtain a hypodermic needle or syringe by false or fraudulent representation or design or by a forged or fictitious name.

- http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB2077

AB 2147 (Convictions: Expungement: Hand Crew Inmates) added PC § 1203.4b and allows an inmate who successfully participated in the California Conservation Camp program [“fire camp”] to petition the sentencing court to have the case recalled and dismissed. The court, in its discretion and in the *interest of justice*, may permit the defendant to withdraw his/her plea or if the defendant has been convicted, the court may set aside the guilty verdict and may dismiss the case. This expungement process is not available for inmates convicted of PC §§ 187, 261, 288,

290 registration crimes, escape within the previous 10 years, 451, or any life crime. Key provisions include:

- Any denial of relief pursuant to this section shall be *without* prejudice
- The defendant is not required to complete the term of his/her probation, parole, or supervised release
- All convictions for which the defendant is serving a sentence are subject to relief
- A defendant granted relief shall not be required to disclose the conviction on an application for licensure by any state or local agency (excluding peace officer, public office, or California State Lottery Commission)
- The relief available shall not be granted if the defendant is currently charged with the commission of any other offense
- Dismissal of the case does not permit a person to own, possess, or have custody/control any firearm or prevent his/her conviction under PC § 29800 (or related firearm statutes)
- **15 days' notice** of the petition for relief is required, it is presumed that the prosecuting attorney has received notice if proof of service is filed with the court, and if, after receiving notice, the prosecuting attorney fails to appear and object to a petition for dismissal, the prosecuting attorney may **not** move to set aside or otherwise appeal the grant of that petition
- http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB2147

AB 2152 (Prohibition on the Retail Sale of Dogs, Cats, and Rabbits) added a new Health and Safety Code § 122354.5 and prohibits a pet store's *retail sale* of dogs, cats, and rabbits. A violation shall result in a single written notice and shall include a direction to cease the specific activity found to be in violation. A failure to correct shall be punished by a civil penalty of \$1,000 for a first violation, \$2,500 for a second violation, and \$5,000 for subsequent violations. The district attorney or city attorney may bring an action and is authorized to apply to the court for a temporary or permanent injunction enjoining or restraining any person or entity from violating any provision of this statute.

- http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB2152

AB 2655 (Invasion of Privacy) [Kobe Bryant Law] added PC § 647.9 and makes it a misdemeanor crime punishable by a fine not exceeding \$1,000 per violation for a first responder who responds to the scene of an accident or crime and captures the photographic image of a deceased person, for any purpose other than an official law enforcement purpose or a genuine public interest. The new law also amended PC § 1524 and adds an additional statutory basis to seek a search warrant when the property or things to be seized consists of evidence that tends to show a violation of this law has occurred or is occurring. Moreover, evidence to be seized

pursuant to this paragraph shall be limited to evidence of a violation of this new law and shall not include evidence of a violation of a departmental rule or guideline that is not an offense under California law.

- http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB2655

AB 3234 (Public Safety, Misdemeanor Diversion, and Elderly Parole) added PC § 1001.95 and allows for a court, at the judge’s discretion, and over the objection of a prosecuting attorney, to offer pre-trial diversion (maximum of 24 months) to a defendant charged with *misdemeanor* crimes. Misdemeanor diversion is not available for any person who, upon conviction, would be required to register pursuant to PC § 290, or if charged with PC §§ 243(e)(1), 273.5, or 646.9. If granted diversion, defendants must complete all conditions ordered by the court, make full restitution (but inability to pay due to indigence shall not be grounds for denial or a finding that the defendant has failed to comply with the terms of diversion), and must comply with a court-ordered protective order, stay-away order, or order prohibiting firearm possession (if applicable). Upon successful completion, the arrest upon which diversion was imposed shall be deemed to have never occurred.

The legislation also amended PC § 3055 and allows for elderly parole suitability hearings for inmates who are 50 years old (vs. 60) and after serving 20 years (vs. 25) of continuous incarceration. The law *excludes* those convicted of 2nd and 3rd strike cases, 1st degree murder of a peace officer engaged in the performance of duties, and LWOP/Death cases.

- http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB3234

SB 1196 (Price Gouging) amended PC § 396 and added “pandemic” or “epidemic disease outbreak” as additional types of states of emergency and now also prohibits any person, contractor, business, or other entity from charging a price that is more than 50% greater than the cost thereof if they did not charge a price for the goods or services immediately prior to the proclamation or declaration of emergency. Extensions of the emergency declarations by a local legislative body or local official shall not exceed 30 days and extensions may also authorize specified price increases that exceed the amount that would be permissible under this section during the initial 30 or 180 days after a proclamation or declaration of emergency. A violation of this section is a misdemeanor punishable by imprisonment in a county jail for a period not exceeding one year, or by a fine of not more than \$10,000, or by both that fine and imprisonment.

- http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB1196

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