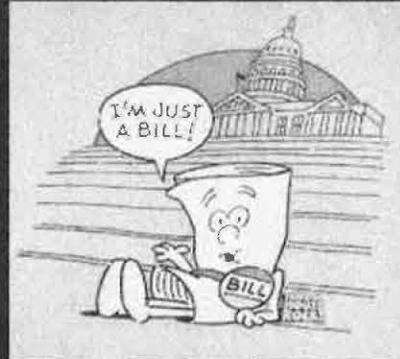


New Laws for Prosecutors 2020-21



Morgan Gire

Menu

- [The Legislative Process](#) – Sausage Making 101
- [The DA Effort](#) – What are you doing about this?
- [Political Thunderdome](#): Initiative v. Statute
- [New Laws](#):
 - Volume of Bills
 - Greatest Hits
 - The B-side
 - Deep Cuts
 - Bonus Tracks
- [Sources, Resources, Next Steps](#)

The Legislative Process

"Politics is the art of looking for trouble, finding it everywhere, diagnosing it incorrectly, and applying the wrong remedies.

- Groucho Marx

The Legislative Process



The Legislative Process

- Statutes: Bills introduced in Assembly/Senate
 - Proceed through committees
 - Presented to Governor for signature into law or veto
 - Effective Jan. 1 of following year
 - UNLESS: Budget or Urgency Legislation requiring 2/3 vote of both
 - Effective immediately upon signature
- Initiatives: Changes to statutes or CA Constitution enacted directly by the voters
- Referendum: Forcing a passed statute onto the ballot "People's veto"

The DA Effort

"What are you doing about this?!"

- CDAA Legislation Committee
- Placer DA's Office
- DA-Statewide Working Groups
- Offense vs. Defense

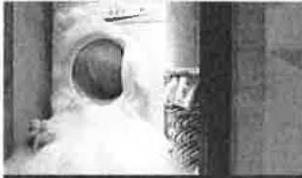


Legal Thunderdome: Initiative vs. Statute

The New Way to Fight

- Passage of new statutes that alter/modify/repeal conflict with voter-enacted Initiatives
 - Statute passed with less than 2/3 majority in Assembly and Senate required to change Initiative
 - Terms of Initiative require change by voters
- Constitutional challenges to invalidly enacted stats.
- DA's and AG's may not see eye-to-eye on issue

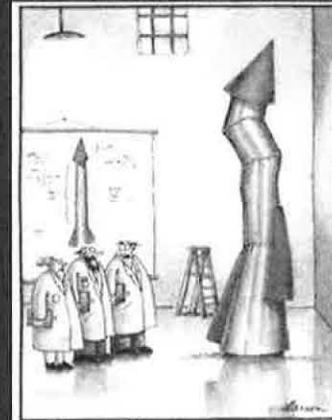




Volume of Bills

<u>2020</u>	(2019)
Bills introduced:	2,203 (2576)
To Governor's desk:	428 (1042)
Signed into law by Governor:	372 (870)
Vetoed:	56 (172)
 Bills tracked by CDAA/Placer DA:	 447 (621)

New Laws



"It's time we face reality, my friends...
We're not exactly rocket scientists."

Greatest Hits

AB 3070 – Peremptory Challenges – C.C.P. 231.7

- Creates presumptively invalid reasons for exercising Peremptory Challenges in criminal cases
- Eliminates need for challenging counsel to make *prima facie* case of discrimination – objection itself triggers need to provide reasons for challenge
- Requires court evaluate based on record alone – court cannot use independent observation or any other possible justifications
 - If RENO was factor, challenge must be sustained even if no purposeful discrimination
- *Effective January 1, 2022

Greatest Hits

AB 3070 – Peremptory Challenges – C.C.P. 231.7

Presumptively Invalid Reasons:

- Does race, ethnicity, gender/gender identity, s/o, national origin, religious affiliation, etc. bear on the facts of the case
- Number and types of questions posed to jurors:
 - Cursory questioning, different questions to challenged juror in contrast to others, similarity of answers of jurors not challenged
 - Is reason given disproportionately associated with RENO?
 - Has counsel or counsel's office exercised challenges disproportionately against a given RENO in present or past cases? History of *Batson/Wheeler*?

Greatest Hits

AB 3070 – Peremptory Challenges – C.C.P. 231.7

Presumptively Invalid Reasons:

- Expressing distrust or having negative experience with law enforcement or the criminal justice system
- Expressing a belief that law enforcement officers engage in racial profiling or that criminal laws have been enforced in discriminatory manner
- A prospective juror's neighborhood
- Dress, attire, or personal appearance
- Employment in field that is disproportionately occupied by members in any cognizable group or serves a population disproportionately comprised of members
- Lack of employment
- Additional presumptively invalid reasons historically associated with improper discrimination:
 - Inattentiveness, staring, or failing to make eye contact
 - Lack of rapport or problematic attitude, body language or demeanor
 - Unintelligent or confused answers

Greatest Hits

AB 2542 – CA Racial Justice Act – PC 745

- Prohibits state from seeking or obtaining or upholding a criminal conviction, or imposing a sentence, that is discriminatory on the basis of RENO
- Establishing a violation (by a preponderance of the evidence):
 - Judge, attorney, law enforcement officer, expert witness, or juror exhibited bias or animus towards defendant on basis of RENO
 - During trial or proceedings, judge, attorney, L/E officer, expert witness, or juror used racially discriminatory language about defendant's RENO
 - Otherwise exhibited bias or animus because of RENO, whether or not purposeful
 - Defendant was charged with or convicted of a more serious offense than defendants of other RENOs who commit similar offenses and are similarly situated
 - A longer or more severe sentence was imposed on defendant than was imposed on other similarly situated individuals convicted of the same offense – and longer or more severe sentences were more frequently imposed for that offense on people that share the defendant's race

Greatest Hits

AB 2542 – CA Racial Justice Act – PC 745

- Bias or Animus: Legislative findings discussing bias in judicial context
- Isolated incident: "some toxins are deadly in small doses"
- Racially discriminatory language:
 - Explicitly or implicitly appeals to racial bias
 - Racially charged or coded language
 - Language that compares the defendant to an animal
 - Language that references the defendant's physical appearance, culture, ethnicity, or national origin
 - Exception: relevant, racially neutral and unbiased physical description or language used by another that's relevant to the case

Greatest Hits

AB 2542 – CA Racial Justice Act – PC 745

- Motions can be filed in trial court or if judgment has been imposed, may file habeas corpus petition or motion to vacate conviction or sentence
 - Trial court: if motion is filed and defendant makes prima facie showing that PC 745 has been violated, the court must hold a hearing where evidence may be presented, including:
 - Statistical evidence
 - Aggregate data
 - Expert testimony
 - Sworn testimony of witnesses
- Remedies include:
- Mistrial
 - Discharge of jury panel
 - Dismissal of charges, enhancements, special circumstances, or allegations
 - Reduction of charges or post-judgment modification of charges or sentence
 - Ineligibility for death penalty

Greatest Hits

AB 1950 – Probation Limits – PC 1203 & 1203.1

- Limits the term of probation for felonies to no longer than 2 years
 - Violent felonies are excluded from this, as are any other felonies with specific probation lengths. Felony convictions for PC 487(b)(3), 503, and 532a are also excluded and limited to 3 year probation terms.
- Limits the term of probation for felonies to no longer than 1 year unless a specific provision of law requires more
 - PC 290 and Wet Reckless subject to new limitation

Greatest Hits

AB 3234 – Court Initiated Misdemeanor Diversion – PC 1001.95-97

- Authorizes judge to grant diversion to misd defendant over the objection of the prosecution
 - Unlike MHD PC 1001.36, no provision to even consider position of prosecution
- No criteria or guidelines for court to consider
- Diversion period limited to no more than 24 months but no minimum diversion period
- No limit on number of times a defendant may be diverted
- Excludes: PC 290 offenses, PC 273.5, PC 243(e), PC 646.9
 - ALL other misdemeanors are eligible

(Elder Parole change: New- 50 y/o, 20 years served, Old- 60 y/o, 25 years served)

The B-Side

SB 384 – Tiered PC 290 Registration

- Changes the lifetime registration requirement into 3-tiered system
- Passed in 2018, effective 1/1/2021
- Tier I: 10 years – misds., non-serious/violent, non-Tier II or III
- Tier II: 20 years: serious/violent, non-Tier I or III
 - Not capable of giving consent sections
- Tier III: Lifetime: PC 187 during 290 offense, PC 207 or 209, PC 261(a)(2)-(4), 264, 266(h),(i),(j), 288(b), 2 x 288(a), etc.
- Petition process to remove from registry

The B-Side

SB 145 – Removal of Offenses from PC 290 Registration

- Deletes 6 'voluntary' sexual offenses - if defendant was not more than 10 years older than minor-victim
 - Acts of sodomy, oral copulation, and digital penetration
 - 286(b)(1),(2), 287(b)(1),(2), 289(h),(i)
- Purpose was to equalize the registration requirements to be consistent with *Hofsheier* decision that was overturned in *Johnson v. Dept. of Justice* in 2015
 - Make registration requirements consistent with PC 261.5
 - All registration requirements the same for non-forcible sexual conduct in specified ranges

The B-Side

AB 1775 – Use of 911 to Harass – PC 653y

- New misdemeanor and infraction crime for misusing 911 to harass another person
- Knowingly using the 911 Emergency system for the purpose of harassing another person
 - 1st violation = infraction or misdemeanor
 - 2nd an subsequent = misdemeanor, 180-day max.
- New subdivision (c) references harassment as defined in PC 422.55 or 422.85 (hate crimes)– punishable by up to a year

The B-Side

AB 2655 – First Responder Photographing Deceased Person

- New misdemeanor crime of a first responder photographing the image of deceased person at scene of accident or crime for any purpose other than official law enforcement purpose or genuine public interest
 - Whether on personal or government device
 - Fine only (\$1000) – no jail time is permissible
- Does not require photo to be sold or distributed – simply taken
- Amends PC 1524 to allow search warrant to issue for suspected violation
- Every agency with 1st responders must inform about prohibition on 1/1/21

The B-Side

SB 1196 – Price Gouging – PC 396

- Adds pandemics and epidemic disease outbreaks to the list of emergency events (earthquakes, floods, fires, riots, locusts, etc.) that triggers the prohibition of price-gouging
 - Whether on personal or government device
 - Fine only (\$1000) – no jail time is permissible
- Also prevents price-gouging during state of emergency whether offered or sold in person, in stores, or online
- PG: more than 10% greater than the price charged immediately prior to the declaration of emergency

The B-Side

AB 1927 – Sexual Assault Victim Amnesty – PC 1324.2

- Provides immunity for a sexual assault survivor or witness who unlawfully possessed or used a controlled substance or alcohol at or around the time of the crime
- Testimony cannot be used in separate prosecution of that victim or witness to prove illegal possession or use of that controlled substance

The B-Side

SB 203 – Custodial Interrogation of Minors – PC 625.6

- Extends ban on custodial interrogations of minors without prior consultation with counsel to all minors – 17 years of age or younger
 - Current law requires all minors 15 and younger to consult with legal counsel prior to a custodial interrogation and prior to waiving *Miranda*
 - Additionally, the court shall consider any willful violation to comply in evaluating the credibility of law enforcement in determining the admissibility of statements of a youth 17 years of age or younger

The B-Side

AB 1506 – OIS Investigations – PC 12525.3

- Provides that the Attorney General will conduct an investigation into an officer-involved shooting that results in the death of an unarmed civilian
 - “Unarmed” = anyone who is not in possession of a deadly weapon – see list (?)
- Require the Attorney General to prosecute the case against a LEO if the Attorney General determines charges should be filed
- Beginning 7/1/2023, to operate a Police Practices Division to review use of deadly force policies

The B-Side

AB 2617 – Out-of-State Gun Violence Restraining Orders

- Provides that a person who owns or possesses a firearm or ammunition with knowledge that they are prohibited from doing so by a similar or equivalent valid out-of-state issued GVRO order, is guilty of misdemeanor
- Require the Attorney General to prosecute the case against a LEO if the Attorney General determines charges should be filed

The B-Side

AB 904 – Tracking Devices – PC 1534

- Provides that if a law enforcement agency uses software to track the movement of a person or object, whether in conjunction of a 3rd party or by interacting with a person’s electronic device, the requirements for obtaining a tracking device warrant apply

The Deep Cuts

SB 118 – Compassionate Release

- Changes the requirement for application for release of an inmate who is terminally ill from 6-months life-expectancy to 12 months

AB 2147 – Fire Crew Expungement – PC 1203.4b

- Provides that a defendant who successfully participates in CA Conservation Camp Program or local fire crew may be allowed to petition to withdraw their plea
 - Excludes violent sex crimes (but not financial/fraud crimes)
 - Successful petitioners are not required to disclose the conviction for any licensing application (except Teacher Credentialing)
 - Still prohibited from possessing firearms

The Deep Cuts

AB 901 – Eliminating Truancy from Juvenile Court Jurisdiction

- W&I 691
- Eliminates truancy as a basis for juvenile court jurisdiction

AB 2512 – Intellectual Disability for Death Penalty

- Changes the definition of 'intellectual disability' to include conditions that manifest before the end of the developmental period, as defined by clinical standards
 - Current standard: a condition of significantly subaverage intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before 18 years of age

Bonus Tracks

AB 1963 – Human Resource Employees as Mandated Reporters

- HR employees in businesses with 5 or more employees that employ minors are added to list of mandated reporters
- Any adult whose duties require direct contact with and supervision of minors in a business with 5 or more employees are also mandated reporters

AB 1196 – Carotid Restraints and Choke Holds

- Eliminates Law Enforcement ability to use carotid restraints and choke-holds

Bonus Tracks

SB 823 – Elimination of Department of Juvenile Justice – Realignment

- Eliminates DJJ and the proposed Dept. of Youth and Community Restoration
- Provides for responsibility of housing juvenile offenders at the local level
- Any person whose case originated in juvenile court would remain in county juvenile facility until age 25, unless exception applies
- This is referred to as "juvenile realignment" – prohibit further DJJ commitments on July 1, 2021

Bonus Tracks

SB 592 – Tax Filers Added to Jury Pool

- Adds state tax filers to the Motor-Voter system for jury pool selection

AB 2471 – Senior Citizens' Ability Cancel Contracts

- Extends the ability of a person 65 or older to cancel certain home improvement contracts (labor, services, materials) from 3 business days to 5 business days

AB 2014 – Medical Misconduct

- Extends Statute of Limitations for crimes involving the misuse of sperm, ova, or embryos in assisted reproduction – 1 year from date of discovery
(yes, we have to have a law for this)

Bonus Tracks

SB 3364 – Implicit Bias Training

- Implementation of new implicit bias training requirements for State Bar MCLE beginning with N-Z

AB 2717 – Exemption from Liability for Saving a Child

- Provides for exemption for a person from criminal and civil liability resulting from property damage or trespass to a motor vehicle while rescuing a child 6 years of age or younger
 - If child is in vehicle under circumstances that reasonably could cause suffering, disability, or death (
 - Extra steps for peace officers, firefighters, EMS
- Extends the ability of a person 65 or older to cancel certain home improvement contracts (labor, services, materials) from 3 business days to 5 business days
(yes, we have to have a law for this too)

Sources & Resources

- CDAA Legislative Digest
- Omnibus Bill for Technical Cleanup
- Legislative Proposal Request
 - Problem/Issue/Idea
 - Placer DA's offices efforts...
 - Our proposals
 - Our Leg. Team
- Just remember the times we're in...

