



NEW LAWS FOR 2021

AB 2542 – Prohibition from Seeking or Upholding a Conviction or Sentence that is Discriminatory based on Race, Ethnicity, or National Origin.

- The most significant and consequential bill of the legislative session in terms of immediate impact and affect.
- Allows for a Writ of Habeas Corpus to be prosecuted on the basis of that prohibition.
- Requires the prosecution to disclose pursuant to a written request all evidence relevant to a potential violation of that prohibition.
- Would require a court that finds a violation of that prohibition to dispose of the case against the defendant.
- CDAA TRAINING Webinar is available.
- Challenges: Vast Discovery Obligations re: Distinctions and differences in ways that cases are being prosecuted.






The Hearing: Two Step Process



Adds California Penal code section 745:

(c) If a motion is filed in the trial court and the defendant **makes a prima facie** showing of a violation of subdivision (a), the trial court shall hold a hearing.

- (1) **At the hearing**, evidence may be presented by either party, including, but not limited to, statistical evidence, aggregate data, expert testimony, and the sworn testimony of witnesses. The court may also appoint an independent expert.
 - (2) The defendant shall have the burden of proving a violation of subdivision (a) by a **preponderance of the evidence**.
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The Inquiry

- Grounds for Relief:
- The judge, an attorney in the case, a law enforcement officer involved in the case, an expert witness, or juror exhibited bias or animus towards the defendant because of the defendant's race, ethnicity, or national origin.
- [U]sed racially discriminatory language.
- [E]xercise of peremptory challenges. The defendant need not show that purposeful discrimination occurred in the exercise of peremptory challenges to demonstrate a violation of subdivision (a).
- Charging and plea bargaining in a racially discriminatory manner.
- Disparate sentencing in a racially discriminatory manner.

Racially Discriminatory Language

“Racially discriminatory language” means language that, to an objective observer, explicitly or implicitly appeals to racial bias, including, but not limited to, racially charged or **racially coded language**, language that compares the defendant to an animal, or language that references the defendant’s physical appearance, culture, ethnicity, or national origin. Evidence that particular words or images are used exclusively or disproportionately in cases where the defendant is of a specific race, ethnicity, or national origin is relevant to determining whether language is discriminatory.

Examples
Given at
Training of
Racial Coded /
Charged
Language

- Super Predator, Thug, Urban, Ghetto, Hood Rat, Welfare Queen, Spade, Shyster, Macho, Illegal, Illegal immigrant, Gorilla Pimp, Bottom Bitch, Coyote, Snake, Brute, Savage, Feral

Pre- Judgment Remedies

(1) Before a judgment has been entered, the court may impose any of the following remedies:

- (A) Reseat a juror removed by use of a peremptory challenge.
- (B) Declare a mistrial, if requested by the defendant.
- (C) Discharge the jury panel and empanel a new jury.
- (D) If the court determines that it would be in the interest of justice, dismiss enhancements, special circumstances, or special allegations, or reduce one or more charges.

Post-Judgment Remedies

- Vacating the conviction
- Modifying the sentence

AB 1950 – Reduction of Length of Probationary Terms

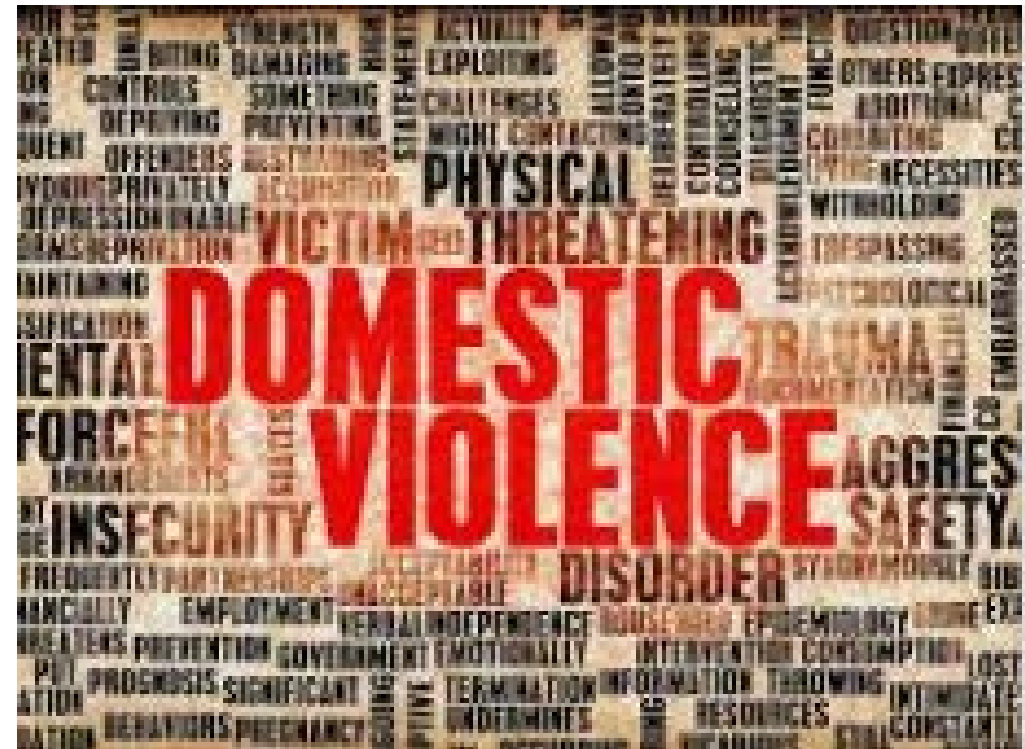
- Limits the term of probation to no longer than 2 years for felony convictions and 1 year for a misdemeanor conviction except when probation limits are within the statute (DUI and DV cases - PC§1203.097: 3 year minimum).
- Amends Penal Code §§
 - 1203a (misdemeanor)
 - 1203.1 (felony)
- No reference to retroactivity.
 - 2 Published Opinions have held AB 1950 **IS RETROACTIVE.**
 - *P v. Quinn* – 1st DCA: 2021 Cal. App. LEXIS 27
 - *P v. Sims* – 4th DCA: 2021 Cal. App. LEXIS 33



Penal Code §1203.097

(a) If a person is granted probation for a crime in which the victim is a person defined in Section 6211 of the Family Code, the terms of probation shall include all of the following:

(1) A minimum period of probation of 36 months, which may include a period of summary probation as appropriate.



Family Code § 6211

“Domestic violence” is abuse perpetrated against any of the following persons:

- (a) A spouse or former spouse.
- (b) A cohabitant or former cohabitant, as defined in Section 6209. (“Cohabitant” – a person who regularly resides in the household).
- (c) A person with whom the respondent is having or has had a dating or engagement relationship.
- (d) A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12).
- (e) A child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected.
- (f) Any other person related by consanguinity or affinity within the second degree.

Consanguinity

- (i) First-degree relatives include an individual's parents, siblings, and children.
- (ii) Second-degree relatives include an individual's grandparents, grandchildren, uncles, aunts, nephews, nieces, and half-siblings.



Cal Veh Code § 23600 – DUI Probation



California Vehicle Code §23600(b)(1):

(b) If any person is convicted of a violation of Section 23152 or 23153 and is granted probation, the terms and conditions of probation shall include, but not be limited to, the following:

(1) Notwithstanding Section 1203a of the Penal Code, **a period of probation not less than three nor more than five years;** provided, however, that if the maximum sentence provided for the offense may exceed five years in the state prison, the period during which the sentence may be suspended and terms of probation enforced may be for a longer period than three years but may not exceed the maximum time for which sentence of imprisonment may be pronounced.

Other Exceptions to 2 year limitation – Penal Code §1203.1(m)

An offense listed in subdivision (c) of Section 667.5 (violent felonies) and an offense that includes specific probation lengths within its provisions.

- An offense listed in subdivision (c) of Section 667.5 and an offense that includes specific probation lengths within its provisions. For these offenses, the court, or judge thereof, in the order granting probation, may suspend the imposing or the execution of the sentence and may direct that the suspension may continue for a period of time not exceeding the maximum possible term of the sentence and under conditions as it shall determine.
- A felony conviction for paragraph (3) of subdivision (b) of Section 487, Section 503, and Section 532a, if the total value of the property taken exceeds \$25,000 (term of probation may not exceed 3 years).

Disturbing the Peace

Senate Bill 1141



- Expands the definition of “Disturbing the Peace” in the issuance of *ex parte* Restraining Orders.
- Amends Family Code § 6320. Disturbing the Peace: Refers to conduct that, based on the totality of the circumstances, destroys the mental or emotional calm of the other party. . . Examples:
 - Isolating the other party from friends, relatives, or other sources of support.
 - Depriving the other party of basic necessities.
 - Controlling, regulating or monitoring the other party’s movements, communications, . . . Economic resources.

AB 1927: Immunity for Sexual Assault Survivors and Witnesses Related to Drug &/or Alcohol Use.

- **Adds Penal Code §1324.2**
- Policy: This will encourage victims and witnesses of sexual assault to come forward without fear of prosecution.
- Adds PC§1324.2: **Testimony** of a Victim or Witness in a Felony prosecution for a violation or attempted violation of:
 - PC220, PC243.4, PC261, PC261.5, PC286, PC287, PC288, PC289 is inadmissible in a separate prosecution of that victim or witness to prove that they used a controlled substance or alcohol.
 - Evidence of use is admissible in the sex crime prosecution.
 - Evidence of the Use Immunity is admissible in the sex crime prosecution.





ELDER
ABUSE

349 x 316

AB 2471 – Elder Consumer Protection

- Provides senior citizens with a 5 day right to cancel various contracts and agreements.
- Previously senior citizens only had a 3 day right to cancel.

SB 1220 – Amends Evidence Code section 1045

VETOED



- Would have required prosecuting agencies to maintain a *Brady* list and law enforcement to provide annually a list of updates for officers who have suffered a sustained finding of moral turpitude within 5 years.
- State Agencies – CHP has resisted the mandate to provide prosecutors with Brady material. Bill vetoed by Governor.
- Governor veto message: “I am thereby directing the California Highway Patrol and the California Department of Corrections and Rehabilitation to develop a process in which they proactively provide information in the form of a list containing officer names and badge numbers to the 58 California district attorneys’ offices in order to assist them to fulfill their prosecutorial discovery obligations.”

Assembly Bill 2147

- Adds Penal Code §1203.4b
- AB 2147 Allows a person who has successfully participated in the California Conservation Camp Program or in a County incarcerated individual hand crew to petition for expungement.
- No oversight or supervision, No Parole, No PRCS prompted CDAA opposition.
- Application for expungement can be almost immediately. Application for a state or local license would not have to list conviction (Child abuse, Elder abuse – Financial crime)



AB 2425 - Juvenile Police Records

- **Amends Welfare and Institutions Code §§ 786.5 and 827:**
- Limits the ability of a law enforcement agency to release a copy of a juvenile police record and to prohibit the release of information by the arresting law enforcement agency when a juvenile has completed a program of diversion or supervision.
- ***Brady* concerns addressed in the bill:** “Notwithstanding those provisions, the bill would authorize a record sealed pursuant to those provisions to be accessed, inspected, or utilized by the prosecuting attorney in order to meet a statutory or constitutional obligation to disclose favorable or exculpatory evidence to a defendant in a criminal case in which the prosecuting attorney has reason to believe that access to the record is necessary to meet the disclosure obligation.”



AB 2512 – Revision of Definition of Intellectual Disability for Purposes of the Death Penalty

- Paralleling the United States Supreme Court's holding in Atkins v. Virginia (2002) 536 U.S. 304 – California law (Penal Code § 1376) provides for a hearing to determine whether an individual suffers from an “intellectual disability” exempting them from eligibility for the death penalty.

Amends Penal Code § 1376:

- Revises the definition of “intellectual disability” for the purposes of the death penalty.
- The past definition requires that the condition manifests itself before the age of 18. The change in the law would permit consideration of a condition that manifests before the end of the developmental period as defined by clinical standards.

AB 3070 – Peremptory Challenges



- Separate training on February 3 – CDAA – **Effective – January 1, 2022**
- Changes the procedures to determine whether peremptory challenges and challenges for cause have been improperly used to exclude jurors because of their race, ethnicity, gender, gender identity, sexual orientation, national origin or religious affiliation or perceived membership with any of those groups.
- CCP section 231.7 – Targets justifications which are often used by prosecutors. These will now be presumptively invalid.
- One sided legislation - Defense can strike jurors who have conservative beliefs or support law enforcement.

AB 3070 – Peremptory Challenges

Guiding Principle



- A party shall not use a peremptory challenge to remove a prospective juror on the basis of the prospective juror's race, ethnicity, gender, gender identity, sexual orientation, national origin, or religious affiliation, or perceived membership in any of those groups.
- “It is the intent of the Legislature that this act be broadly construed to further the purpose of eliminating the use of group stereotypes and discrimination, whether based on conscious or unconscious bias, in the exercise of peremptory challenges.”

Presumptively Invalid Reasons

Unless the Party Exercising the Challenge can Prove by Clear and Convincing Evidence that an Objectively Reasonable Person Would View the Rationale as Unrelated to a Prospective Juror's Membership or Perceived Membership in the Aforementioned Groups.

- **(1) Expressing a distrust of or having a negative experience with law enforcement or the criminal legal system.**
- **(2) Expressing a belief that law enforcement officers engage in racial profiling or that criminal laws have been enforced in a discriminatory manner.**
- **(3) Having a close relationship with people who have been stopped, arrested, or convicted of a crime.**
- (4) A prospective juror's neighborhood.
- (5) Having a child outside of marriage.
- (6) Receiving state benefits.
- (7) Not being a native English speaker.
- (8) The ability to speak another language.
- (9) Dress, attire, or personal appearance.
- (10) Employment in a field that is disproportionately occupied by members listed in subdivision (a) or that serves a population disproportionately comprised of members of a group or groups listed in subdivision (a).
- (11) Lack of employment or underemployment of the prospective juror or prospective juror's family member.
- (12) A prospective juror's apparent friendliness with another prospective juror of the same group as listed in subdivision (a).
- (13) Any justification that is similarly applicable to a questioned prospective juror or jurors, who are not members of the same cognizable group as the challenged prospective juror, but were not the subject of a peremptory challenge by that party. The unchallenged prospective juror or jurors need not share any other characteristics with the challenged prospective juror for peremptory challenge relying on this justification to be considered presumptively invalid.

AB 3234 – Misdemeanor Diversion and Elderly Parole

Adds Penal Code §§1001.95, 1001.96, and 1001.97:

- Diversion for some misdemeanors over the prosecutor's objection with the following exceptions:
 - Offenses which require PC§290 registration
 - Violations of Sections 273.5 and 243(e)
 - Violations of Section 646.9.
- Currently allows diversion for DUI – Believed to be an oversight which is supposed to be a priority fix.
- Concern: There are many misdemeanors that result in firearm prohibition. Legislation is silent on this issue.

Amends Penal Code §3055:

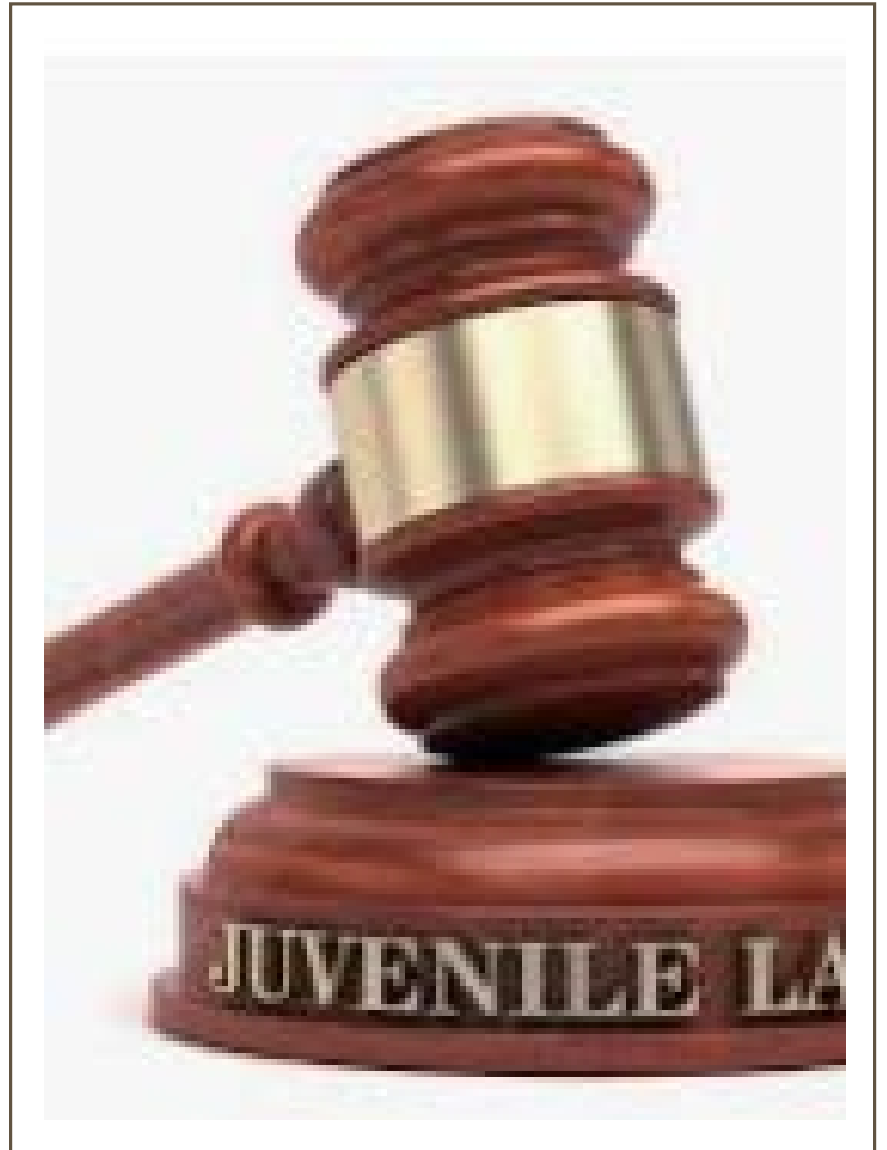
- Modifies Elderly Parole Eligibility from 60 to 50.
- Requires minimum of 20 years of continuous incarceration (formerly 25 years).

SB 203 – Juvenile Custodial Interrogations

- Amends Welfare and Institutions Code § 625.6:
- “Prior to a **custodial interrogation**, and **before** the waiver of any Miranda rights, a youth **17 years of age** (previously 15 years old) or younger **shall** consult with legal counsel in person, by telephone, or by video conference. **The consultation may not be waived.**”
- Failure to adhere to this procedure can be considered to:
 - 1) Determine the admissibility of statements taken in violation of this requirement; AND
 - 2) Determine the credibility of a law enforcement officer.

EXCEPTION

- 1) The information sought was reasonably believed to be necessary to protect life or property from imminent threat; AND
- 2) The officer’s questions were limited to questions reasonably necessary to obtain that information.





AB 1506 – Investigation of Deadly Use of Force Incidents by Law Enforcement.

- Adds Government Code §12525.3
- “A state prosecutor shall investigate incidents of an officer-involved shooting resulting in the death of an unarmed civilian. The Attorney General is the state prosecutor unless otherwise specified or named.”
- “Unarmed” – not in possession of a deadly weapon.
- Creates a division within the DOJ to (upon request) review the use of force policy of a law enforcement agency and make recommendations.

SB 823 – Division of Juvenile Justice Realignment

- Commencing on July 1, 2021, further commitments of wards to the Division of Juvenile Justice are prohibited.
- Reduces the age wherein the Juvenile Court maintains jurisdiction from 25 to 23 unless they could have received a sentence of 7 years or greater in criminal court.
- Establishes the Office of Youth and Community Restoration to help with transition to “county based custody, care, and supervision of youth.”
- Requires that any person whose case originated in juvenile court remain in a county juvenile facility until they turn 25 years of age (direct file cases)



AB 2321 – Access to Juvenile Records – U- Visa

- Amends Welfare and Institution Code §§ 781 & 786:
 - Authorizes a judge or prosecutor to access specified sealed records under these provisions for the limited purpose of processing the request of a victim or victim's family member to certify victim helpfulness on specified U.S. Department of Homeland Security forms.

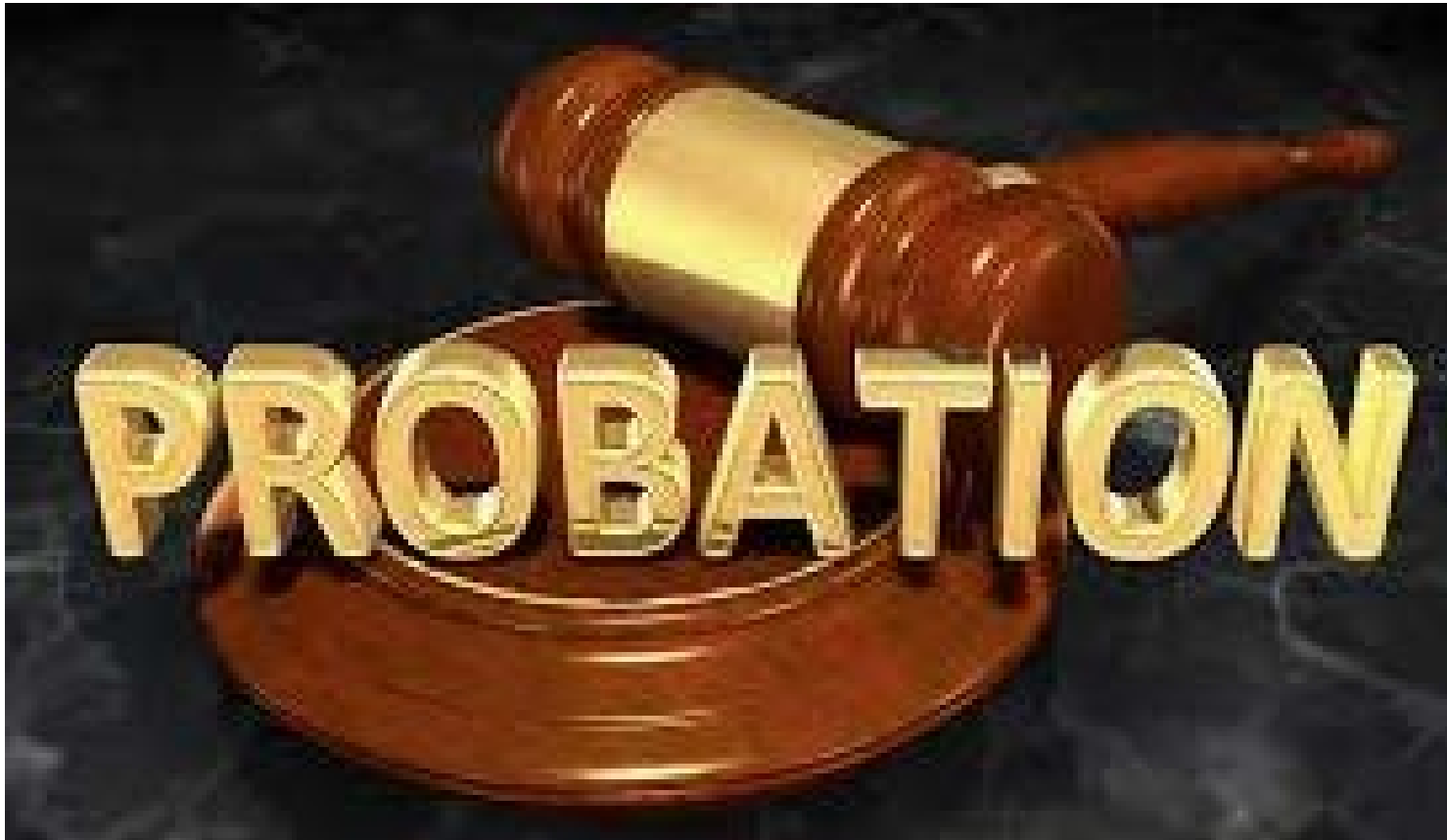


SB 1126 – Juvenile Court Records – Competency

- **Amends Welfare and Institutions Code §786.**
- Allows for access of sealed juvenile records by the probation department, the prosecuting attorney, counsel for the minor, and the court for the purpose of assessing the minor's competency in proceedings on a subsequent petition against the minor where the issue of competency has been raised.



AB 2606 – Supervised Release Database



- **Amends Penal Code § 14216:**
- Adds County Probation Departments to list of agencies required to update supervised release files available to them on CLETS (California Law Enforcement Telecommunications System) every 10 days.
- It requires entry of any person placed onto postconviction supervision within the jurisdiction under their authority, including persons on probation, mandatory supervision, and postrelease community supervision.

Child Abuse – Mandated Reporting Legislation

AB 1145 - Redefines “child abuse” for purposes of mandated reporting requirements eliminating from reportable conduct voluntary sexual activity between persons who are between the ages of 20 and 16 years of age (unless there are indicators of abuse).

AB 1929 – Child Abuse and Neglect Reporting – Extends pilot program for internet-based reporting system.

AB -1963 –Adds Human Resource Employee of a business with more than 5 employees that employs minors to list of mandated reporters.



AB 2617 – Gun Violence Restraining Orders

- Amends Penal Code §§ 18410 & 18205:
- Requires law enforcement to file a copy of the GVRO as soon as practicable, but not later than 3 days.
- Amended to include Out of State Orders as qualifying orders which if violated constitute a misdemeanor.



SB 723 Firearms: Prohibited Persons

- Amends Penal Code §§29800 and 29805.
- Clarifies that in order to charge someone with PC§29800(a)(3) and/or PC§29805(a)(2) (owning, purchasing, receiving, or possessing a firearm while being the subject of an outstanding warrant for an enumerated offense) must have knowledge of the existence of the warrant.



SB 592 – Taxpayer lists for Jury Summons

Amends California Code of Civil Procedure §197(a):

- Currently, only DMV and Voter Registration lists are considered as source lists for jury summons.
- Beginning on January 1, 2022, the list of resident state tax filers will be included as a source list for jury summons.



AB 904 – Tracking Search Warrant

Amends Penal Code §1534 to add “software” within the definition of “tracking device” warrants described in Penal Code §1524(a)(12).

Previously, the definition of “tracking device” only included “electronic or mechanical device[s] that permits the tracking of the movement of a person or object.”



SB 145 – Exemptions from PC 290 registration

Amends Penal Code §290 adding (c)(1)(2):

- “[A] person convicted of a violation of subdivision (b) of Section 286, subdivision (b) of Section 287, or subdivision (h) or (i) of Section 289 **shall not** be required to register if, at the time of the offense, the person is not more than 10 years older than the minor, as measured from the minor’s date of birth to the person’s date of birth, and the conviction is the only one requiring the person to register. This paragraph **does not preclude the court from requiring a person to register pursuant to Section 290.006.**”

AB 2655 – Invasion of Privacy by First Responders

Adds Penal Code § 647.9(a)

- It is a misdemeanor for a first responder (including peace officers, paramedics, EMTs, firefighters, coroner, etc.) 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 (i.e. member of the media).

Amends Penal Code § 1524 adding:

- (20) When the property or things to be seized consists of evidence that tends to show that a violation of Section 647.9 has occurred or is occurring. Evidence to be seized pursuant to this paragraph shall be limited to evidence of a violation of Section 647.9 and shall not include evidence of a violation of a departmental rule or guideline that is not a public offense under California law.

AB 1775 – Individuals who use 911 to Harass a person because that person belongs to a protected class

Amends Penal Code §653y(c) adding:

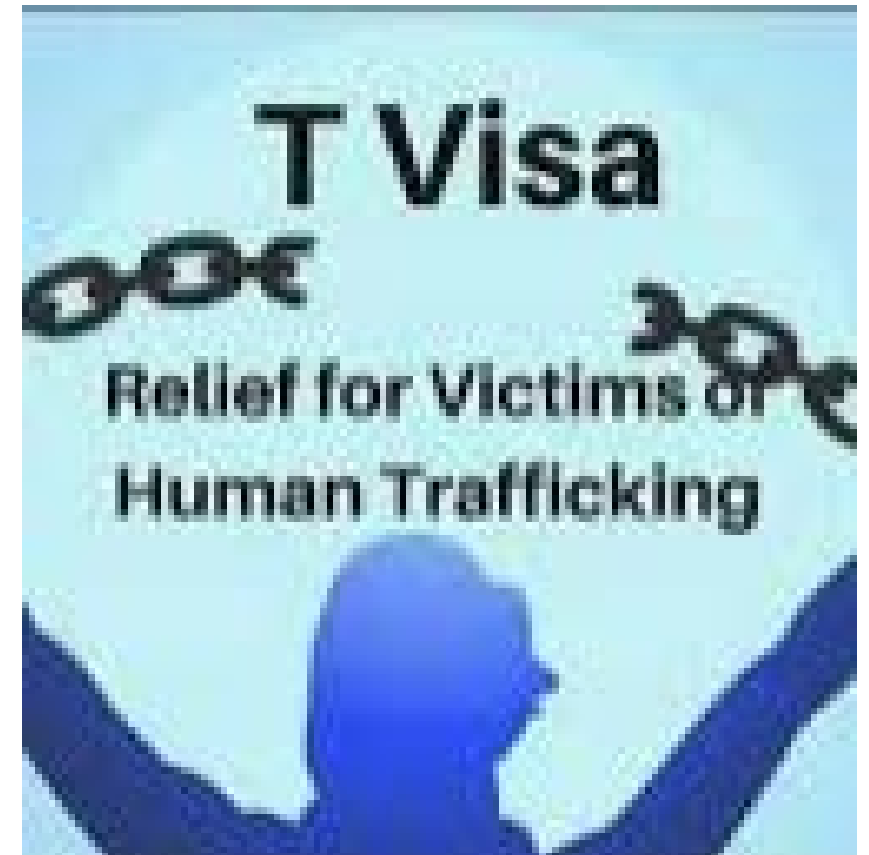
- “If a person knowingly allows the use of or uses the 911 emergency system for the purpose of harassing another person and that act is an act described in Section 422.55 or 422.85, the person who commits the act is guilty of a misdemeanor punishable by up to one year in a county jail, a fine of not less than five hundred dollars (\$500) nor more than two thousand dollars (\$2,000), or both that imprisonment and fine.”



AB 2426 – U-Visa / T-Visa Access

Amends Penal Code §679.10 adding Penal Code §679.10(k)(2) which states:

- A certifying official shall not refuse to complete the Form I-918 Supplement B certification or to otherwise certify that a victim has been helpful, **solely because a case has already been prosecuted or otherwise closed, or because the time for commencing a criminal action has expired.**



AB 1869 – Criminal Fees



- **Repeals 23 criminal fees including:**
 - Government Code §§ 29550.2 (county booking fee) and 29550.3 (city booking fee)
 - Penal Code § 1203.016(g) (adult home detention administrative fee)
 - Penal Code §1203.018(j)(electronic monitoring administrative fee)
 - Penal Code §1203.1e (parole supervision fee)
 - Penal Code §1210.15 (continuous electronic monitoring fee)
 - Penal Code §3010.8 (parole continuous electronic monitoring fee)
 - Penal Code §4024.2(e)(work furlough administrative fee)
 - Penal Code §6266 (work furlough program fee)

AB 3043 – CDCR Calls Between Inmates and Attorneys

Adds Penal Code §5058.7:

- Requires CDCR to approve an attorney's request to have a confidential call with the inmate they represent.
- The parties must be afforded at 30 minutes once per month, per inmate, per case.



SB 1196 – Price Gouging



Amends Penal Code §369:

- Expands liability for price gouging (misdemeanor) for businesses / individuals increasing prices over 10% from a designated date set by a proclamation or declaration of emergency.
- Also, makes liable individuals who sell goods at more than 50 % greater than the seller's existing costs as specified.