California Legislative & Legal Digest

2021 Laws

A PRODUCT OF THE:

ACKNOWLEDGMENTS

This 2021 Legislative Update Digest was prepared and published by the California Peace Officers' Association (CPOA) in cooperation with the Office of the California Attorney General and the California Highway Patrol.

CPOA, in conjunction with the California Attorney General's Office and the California Highway Patrol, are responsible for the overall research and compilation of the bills contained in this digest.

CPOA wishes to thank and commend Hon. Xavier Becerra, California Attorney General and Commissioner Warren Stanley of the California Highway Patrol for volunteering the services of highly qualified personnel to make presentations on the legislation covered within this digest.

Shaun Rundle is CPOA's Deputy Director, and he handles legislative affairs. Any inquiries regarding the content of this digest, or requests for an electronic version should be directed to him at 916-520-2248, or via email at: SRundle@cpoa.org.

Table of Contents

GENERAL LAW/STATUTE- CPOA & CHP

CIVIL PROCEDURE/COURT ORDERS

AB 904- Search warrants: tracking devices 7

AB 1869- Criminal fees 8

AB 1927- Witness testimony in sexual assault cases: inadmissibility in a separate prosecution 9

AB 2147- Convictions: expungement: incarcerated individual hand crews 10

AB 2338- Courts: contempt orders 11

AB 3234- Public safety: misdemeanor diversion 12

SB 1141- Domestic violence: coercive control 13

COMMUNICATIONS/9-1-1

AB 1775- False reports and harassment 16

CONTROLLED SUBSTANCES/NARCOTICS

AB 1458- Cannabis testing laboratories 18

AB 2077- Hypodermic needles and syringes 19

SB 1244- Cannabis testing laboratories 20

CORRECTIONS/PAROLE

AB 1304- California MAT Re-entry incentive program 22

AB 3043- Corrections: confidential calls 24

SB 132- Corrections 25

CRIMES/CRIMINAL PROCEDURE

AB 1969- Secondhand goods: personal property: reporting requirements 27

AB 2512- Death penalty: person with an intellectual disability 28

AB 2542- Criminal procedure: discrimination 30

AB 2655- Invasion of privacy: first responders 33

SB 903- Grand theft: agricultural equipment 34

EMPLOYMENT OF PEACE OFFICERS

AB 846- Public employment: public officers or peace officers 36

FIREARMS

AB 2061- Firearms: inspections 38

AB 2362- Firearms dealers: conduct of business 39

AB 2617- Firearms: gun violence restraining orders 40

AB 2699- Firearms: unsafe handguns 41

AB 2847- Firearms: unsafe handguns 42

SB 723- Firearms: prohibited persons 43

HOMELESSNESS & MENTAL HEALTH

AB 465- Mental health workers: supervision 45

AB 2275- State armories: homeless shelters: security 46

JAIL OPERATIONS

AB 732- County jails: prisons: incarcerated pregnant persons 48

JUVENILES

AB 2425- Juvenile police records 51

AB 2805- Juveniles: reunification 53

SB 203- Juveniles: custodial interrogation 54

SB 823- Juvenile just realignment: Office of Youth and Community Restoration 55

SB 1126- Juvenile court records 57

SB 1290- Juveniles: costs 58

LOCAL OPERATIONS & POLICIES

AB 1185- County board of supervisors: sheriff oversight 61

AB 2968- County emergency plans: best practices 62

AB 3099- DOJ: law enforcement assistance with tribal issues: study 63

SB 1123- Elder and dependent adult abuse 64

SB 1159- Workers' comp: COVID-19: critical workers 65

MISCELLANEOUS

AB 1945- Emergency services: first responders 68

SB 118- Public safety omnibus 69

SB 480- Law enforcement uniforms 71

PROBATION

AB 1950- Probation: length of terms 73

AB 2606- Criminal justice: supervised release file 74

PROSTITUTION, SEX CRIMES & HUMAN TRAFFICKING

AB 1145- Child abuse: reportable conduct 76

SB 145- Sex offenders: registration 77

RULES OF THE ROAD/TRANSPORTATION

AB 2285- Transportation 79

AB 2717- Motor vehicles: unattended children: liability 80

SB 909- Emergency vehicles 81

USE OF FORCE

AB 1196- Peace officers: use of force 84

AB 1506- Police use of force 85

2021 CPOA Legislative Platform 87

CASE LAW-DOJ

FOURTH AMENDMENT

People v. Tran **(2019) 42 Cal.App.5th 1**: Seizure of property 90

People v. Flores **(2019) 48 Cal.App.5th 617:** Detention of suspect on foot 91

People v. Tacardon **(2020) 53 Cal.App.5th 89:** Detention via vehicle stop 92

Kansas v. Glover **(2020) 140 S.Ct.1183:** Reasonable suspicion for vehicle stop 93

People v. Mendoza **(2020) 44 Cal.App.5th 1044:** Reasonable suspicion for vehicle stop 94

People v. Shumake **(2019) 45 Cal.App.5th Supp.1:** Vehicle search-marijuana, PC, and automobile exemption 95

People v. McGee **(2020) 53 Cal.App.5th 796**: Vehicle search-marijuana, PC, and automobile exemption 96

People v. Lee **(2019) 40 Cal.App.5th 853:** Vehicle search-marijuana, automobile exemption, and vehicle inventory 97

People v. Vargas **(2019) 9 Cal.5th 793:** Probation search condition 98

People v. Rosas **(2020) 50 Cal.App.5th 17:** Probation search condition 99

People v. Rubio **(2019) 43 Ca.App.5th 342:** Residential search-emergency and exigency 100

FIFTH AMENDMENT

People v. Flores (2020) 9 Cal.5th 371: Questions to clarify a *Miranda* waiver 101

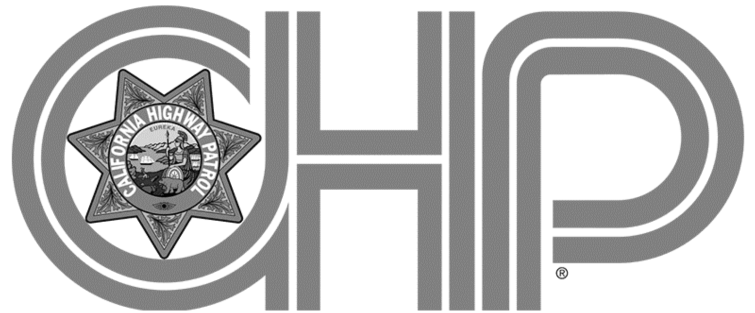
People v. Hernandez **(2020) 9 Cal.5th 1013:** Invocation to right to counsel 102

People v. Frederickson **(2020) 8 Cal.5th 963:** Post-waiver invocation of right to counsel 103

In re. Anthony L. **(2019) 43 Cal.App.5th 438:** Validity of juvenile's *Miranda* waiver and admissions 104

People v. Leon **(2020) 8 Cal.5th 831:** Effect of consular notice on *Miranda* waiver 105

STATUTE



CIVIL PROCEDURE/COURT ORDERS

AB 904 (Chau)- Search warrants: tracking devices

Penal Code Section 1534 (Amend)

SUMMARY:

Provides that *if* a law enforcement agency utilizes software to track a person's movements, whether in conjunction with a third party or by interacting directly with a person's electronic device, the provisions for obtaining a tracking device search warrant apply.

HIGHLIGHTS:

- PC 1534 does not specifically authorize (but allows) the use of any device or software for the purpose of tracking the movement of a person or object.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

In addition to the PC 1534 requirements, agencies must continue to comply with the California Electronic Communications Privacy Act (CalECPA), which mandates a warrant for non-exigency phone or online searches.

In the case of emergency warrants, it does not appear to interfere with *Missouri v. McNeely* (2013) case law, where it clearly defines exigent situations where a warrant is not necessary.

There could be an interpretation of the bill by the telecom companies themselves, where they could deny exigency warrants due to lack of a search warrant, but we would still have case law on our side.

NOTES:

AB 1869 (Budget Committee)- Criminal fees

Various Codes

SUMMARY:

Makes changes to 23 criminal administrative fees.

HIGHLIGHTS:

Government Code Section 27706

- Repeals statutes associated with Public Defense Fees, Cost of Counsel, Public Defense Registration Fee, and Public Defense Fees for Minors.
- Repeals statutes associated with various Criminal Justice Administration Fees. Specifically, repeals provisions allowing for the recovery of costs associated with arrest.
- Repeals statutes associated with the $25 Administrative Processing Fee and $10 Citation Processing Fee.
- Repeals the Interstate Compact Supervision Fee. Specially repeals statutes that provides that a probationer cannot be released to another state until the probationer has paid the reasonable costs of processing their request to move states.
- Repeals statutes associated with alternative custody.
    - Eliminates the ability to charge an administrative or application fees for work furlough or home detention and eliminates other fees relating to home detention.
    - Repeals provisions that allows fees for pretrial electronic monitoring, provides the ability of probation to charge a person for electronic monitoring, and gives a county the ability to seek reimbursement for the reasonable costs of county parole supervision. Finally, it repeals the Probation Department Investigation/Progress Report Fee.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

AB 1927 (Boerner Horvath)- Witness testimony in sexual assault cases: inadmissibility in a separate prosecution.

Penal Code Section 1324.2 (Add)

SUMMARY:

Makes testimony that a victim or witness in a felony sexual assault prosecution was using or in possession of drugs or alcohol at the time of the sexual assault inadmissible in a separate prosecution of that victim or witness.

HIGHLIGHTS:

- Specifies that evidence that the testifying witness unlawfully possessed or used a controlled substance or alcohol is not excluded in the felony prosecution of a violation or attempted violation of specified sexual assault offenses.
- Specifies that evidence that a witness received use immunity for testimony related to possession of drugs or alcohol is not excluded in the felony prosecution of a violation or attempted violation of specified sexual assault offenses.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

AB 2147 (Reyes)- Convictions; expungement; incarcerated individual hand crews.

Penal Code Section 1203.4(b) (Add)

SUMMARY:

Allows a defendant who successfully participated in the California Conservation Camp Program (Fire Camp) or a county incarcerated individual hand crew to petition for a dismissal of their conviction.

HIGHLIGHTS:

- Successful participation in a conservation camp program and successful participation as a member of a county incarcerated individual hand crew, as determined by the appropriate county authority, means the incarcerated individual adequately performed their duties without any conduct that warranted removal from the program.
- A defendant who successfully participated in a fire crew, as specified, must also be released from custody before a court would be authorized to order a dismissal of conviction as provided by this bill.
- Defendants are automatically ineligible, if convicted of the following crimes:
  - Murder
  - Kidnapping
  - Rape [PC 261(a)(2) or (6)] or spousal rape [PC 262(a)(1) or (4)]
  - Lewd acts on a child under 14 years of age
  - Any felony punishable by death or LWOP
  - PC 290 sex offenses
  - Escape from secure perimeter within the previous 10 years
  - Arson

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact to policing, but unknown, potentially significant workload cost pressures to the courts in the low hundreds of thousands of dollars to hear and adjudicate petitions for relief pursuant to this measure.

NOTES:

AB 2338 (Weber)- Courts: contempt orders

Civil Procedure Code Section 1218 (Amend)

SUMMARY:

In lieu of an order of imprisonment, community service, or both, for a person found in contempt for failure to comply with a court order under the Family Code, the court may grant probation, as defined, or a conditional sentence, as defined, for a period not to exceed one year upon a first finding of contempt, a period not to exceed two years upon a second finding of contempt, and a period not to exceed three years upon a third or any subsequent finding of contempt.

HIGHLIGHTS:

- "Probation" is defined to mean "the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer."

- "Conditional sentence" is defined to mean "the suspension of the imposition or execution of a sentence and the order of revocable release in the community subject to conditions established by the court without the supervision of a probation officer."

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

AB 3234 (Ting)- Courts: contempt orders

Penal Code Chapter 2.96 (Commencing with Section 1001.95) of Title 2, Part 2 (Add)

SUMMARY:

Creates a court-initiated misdemeanor diversion program and lowers the minimum age limitation (from 60 years old or older) for the Elderly Parole Program to inmates who are 50 years of age and who have served a minimum of 20 years.

HIGHLIGHTS:

- A superior court judge would be authorized to divert a misdemeanor defendant over the objection of the prosecution. Unlike existing general misdemeanor diversion, this bill has no statutory requirements for the defendant to satisfy in order to be eligible nor would any misdemeanors be statutorily excluded. Whether or not to divert a misdemeanor defendant would be in the trial court's discretion.
- Provides that the following misdemeanors cannot be diverted: any offense for which the defendant would be required to register as a sex offender; domestic violence; or stalking.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

SB 1141 (Rubio)- Domestic violence: coercive control

Family Code Section 6320 (Amend)

SUMMARY:

Codifies and elaborates on case law defining when a restraining order under the Domestic Violence Prevention Act ([DVPA] Fam. Code § 6200 et seq.[1]) may be issued because a person was "disturbing the peace of the other party" (§ 6320), which includes coercive control.

HIGHLIGHTS:

- Makes certain findings and declarations relating to the impact of COVD-19 on victims of domestic violence.
- Drawing on relevant case law, defines the term "disturbing the peace of the other party" under Section 6320 as conduct that, based on the totality of the circumstances, destroys the mental or emotional calm of the other party.
- Specifies that such conduct may be committed directly or indirectly, including through the use of a third party, and by any method or through any means including, but not limited to, telephone, online accounts, text messages, internet-connected devices, or other electronic technologies.
- Specifies that such conduct includes, but is not limited to, coercive control, defined as a pattern of behavior that in purpose or effect unreasonably interferes with a person's free will and personal liberty.
- States that examples of coercive control include, but are not limited to unreasonably engaging in any of the following:
    - 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, daily behavior, finances, economic resources, or access to services.
    - Compelling the other party by force, threat of force, or intimidation, including threats based on actual or suspected immigration status, to engage in conduct from which the other party has a right to abstain or to abstain from conduct in which the other party has a right to engage.
- States that it does not limit any remedies available under any provision of law.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

In writing a police report, if an officer needs to articulate that a person is “disturbing the peace” of a protected person based on the new criteria of “coercive control”, the officer will need to articulate in the report that the offender unreasonably interfered with a protected party’s free will and personal liberty to interact with family, friends or household members.

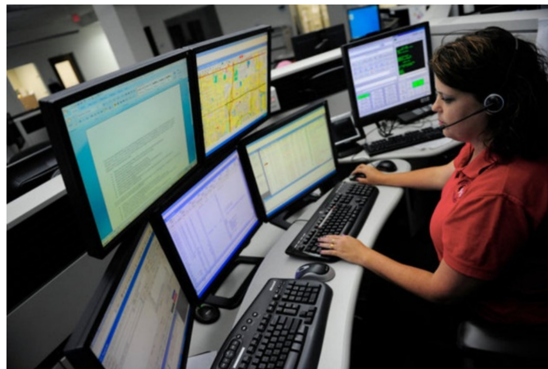
The acts can include:

- Texts, messages and internet use to family and relatives to prevent or discourage visiting that is intended to isolate the protected party from their friends and family
- Controlling, regulating, or monitoring movements and communication such as distributing emails or posting to social media to discourage family, friends and household members from communicating or having relations with the protected party.
- Making threats against immigration status of a protected party

---

NOTES:

COMMUNICATIONS/ 9-1-1



AB 1775 (Jones-Sawyer)- False reports and harassment.

Civil Code Sections 47 and 51.7 (Amend) and Penal Code Section 653y

---

SUMMARY:

Makes it a "wobblette" to knowingly use the 911 emergency system for the purpose of harassing another, and increases the penalty for this crime by up to one year in county jail, or a fine of no more than $2,000 if the harassment is also an act defined to be a hate crime or is an offense committed against a person based on their perceived race, ethnicity, religion, nationality, country of origin, ancestry, disability, gender, gender identity, gender expression, or sexual orientation.

HIGHLIGHTS:

- Establish a misdemeanor or infraction ('wobblette') if a person knowingly uses the 911 emergency system for the purpose of harassing another is a crime, punishable as follows:
  - For a first violation, as an infraction punishable by 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 a person knowingly allows the uses 911 to harassing another person and that act is described in Section 422.55 or 422.85, the person is guilty of a misdemeanor punishable by up to one year in a county jail, a fine of not less than $50 nor more than $2,000, or both that imprisonment and fine.
- Provides that a "privileged communication" does not include calls using the 911 emergency system for purposes of making a false report.
- Amends the Ralph Civil Rights Act to hold that "intimidation by threat of violence" includes making a threatening claim or report to a peace officer or law enforcement agency that falsely alleges that another person is engaged in unlawful activity, knowing that the claim is false or with a reckless disregard for the falsity.
- State that this bill does not apply to uses of the 911 emergency system by a person with an intellectual disability or other mental disability that makes it difficult or impossible for the person to understand the potential consequences of their actions

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

CONTROLLED SUBSTANCES/NARCOTICS

AB 1458 (Quirk)- Cannabis testing laboratories

Business and Professions Code Section 26100 (Amend)

SUMMARY:

Requires, for edible cannabis products, the certificate of analysis to report that the milligrams (mg) of Tetrahydrocannabinol (THC) per serving does not exceed 10 mg per serving, plus or minus 12% until January 1, 2022, and plus or minus 10% after January 1, 2022.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

May impact DRE responses to edible products.

NOTES:

AB 2077 (Ting)- Hypodermic needed and syringes

Business and Professions Code Sections 4145.5 (Amend), 4142 and 4326 (Repeal) and Health and Safety Code Sections 11364 (Amend) and 121285 (Repeal)

SUMMARY:

- Extends the sunset, from January 1, 2021 to January 1, 2026, of an existing law that does the following:
  - Permits pharmacists or physicians to furnish hypodermic needles and syringes for personal use by a person 18 years or older without a prescription or permit.
  - Permits a person who is 18 years of age or older to obtain hypodermic needles and syringes solely for personal use, without a prescription or license, from a physician or pharmacist
  - Requires a pharmacy or hypodermic needle and syringe exchange program to counsel consumers on one or more safe disposal options identified in the language of the bill.
- This bill also decriminalizes specified conduct related to obtaining hypodermic needles or syringes and repeals the Disease Prevention Demonstration Project.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

Does nothing to encourage treatment and instead facilitates, thereby encouraging drug use.

NOTES:

SB 1244 (Bradford)- Cannabis testing laboratories

Business and Professions Code Section 26104 (Amend)

SUMMARY:

Authorizes a testing laboratory to receive samples of cannabis or cannabis products from state or local law enforcement, or a prosecuting or regulatory agency in order to test the cannabis or cannabis products.

HIGHLIGHTS:

- Clarifies that testing conducted by a testing laboratory for state or local law enforcement, a prosecuting agency, or a regulatory agency, is not commercial cannabis activity and prohibits that testing from being arranged or overseen by the Bureau of Cannabis Control.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

CORRECTIONS/PAROLE

AB 1304 (Waldron)- California MAT Re-entry incentive program

Penal Code Section 3000.02 (Add)

SUMMARY:

Establishes the California medically assisted treatment (MAT) Re-Entry Incentive Program which would make a person on parole, except as specified, eligible for a reduction in the period of parole if the person successfully participates in a substance abuse treatment program, as specified, including medication-assisted treatment.

HIGHLIGHTS:

- Make a person eligible for a 30-day reduction to the period of parole for every six months of treatment that is not ordered by the court, up to a maximum 90-day reduction, if the person meets all of the following requirements:
  - The person has been released from state prison on parole supervision by CDCR.
  - The person has been enrolled in, or successfully participated in, an institutional substance abuse program; and,
  - The person successfully participates in a substance abuse treatment program that employs a multifaceted approach to treatment, including the use of United States Food and Drug Administration approved MAT, and, whenever possible, is provided through a program licensed or certified by the State Department of Health Care Services, including federally qualified health centers (FQHS), community clinics, and Native American Health Centers
- Specifies that the sentence reduction shall be contingent upon successful participation in treatment, as determined by the treatment provider.
- Provides that this incentive program does not apply to the following:
  - Inmates who have been sentenced for a violent sex offense, as specified;
  - Inmates who have been convicted of an offense for which the inmate has received a life sentence for kidnapping with the intent to commit a specified sex offense or other specified sex offenses; or,
  - Inmates who have been convicted of and are required to register as a sex offender for the commission of a specified sex offense in which one or more of the victims of the offense was a child under 14 years of age.

- Makes operation of this program contingent upon the appropriation to the State Department of Health Care Services of funds received pursuant to a federal Substance Abuse and Mental Health Services Administration (SAMHSA) State Opioid Response Grant, opioid use disorder or substance use disorder grant. To the extent consistent with the terms of the grant, the sum of one million dollars ($1,000,000) of the grant funds appropriated for these purposes shall be allocated to CDCR for use in implementing this program.
- Requires CDCR to collect data and analyze utilization and program outcomes and to provide that information in the report required pursuant to the medication assisted treatment for substance abuse pilot program.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

AB 3043 (Jones-Sawyer)- Corrections; confidential calls

Penal Code Section 5058.7 (Add)

SUMMARY:

Requires CDCR to approve an attorney's request to make a confidential call to a client they represent at a CDCR facility, and requires CDCR to provide the inmate at least 30 minutes per month, per inmate, per case, to make such calls unless the attorney or the inmate requests less time.

HIGHLIGHTS:

- Specifies that the attorney must make the request for the call rather than the inmate.
- Specifies that CDCR must provide 30 minutes per month, per inmate, for each case the inmate has, rather than simply providing 30 minutes per month per inmate.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

SB 132 (Wiener)- Corrections

Penal Code Sections 2605 and 2606 (Add)

SUMMARY:

Requires CDCR to, during initial intake and classification, and in a private setting, ask each individual entering into the custody of the department to specify the individual's gender identity and sex assigned at birth, whether the individual identifies as transgender, nonbinary, or intersex, and their gender pronoun and honorific.

HIGHLIGHTS:

- Would prohibit the department from disciplining a person for refusing to answer or not disclosing complete information in response to these questions.
- Would authorize a person under the jurisdiction of the department to update this information.
- Would prohibit staff, contractors, and volunteers of the department from failing to consistently use the gender pronoun and honorific an individual has specified in verbal and written communications with or regarding that individual that involve the use of a pronoun or honorific.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

CRIMES & CRIMINAL PROCEDURE

AB 1969 (Rubio)- Secondhand goods: personal property: reporting requirements

Business and Professions Code Section 21628 (Amend, Repeal and Add)

SUMMARY:

Beginning January 1, 2023, eliminates the requirement that the name and address of a seller or pledger of secondhand goods be reported to law enforcement when the seller or pledger verifies their identity with a Matricula Consular (or Consular Identification Card), and requires the state's database of secondhand property transactions to direct law enforcement to the dealer to obtain the seller or pledger's identity.

HIGHLIGHTS:

- Specifies that in these cases no personal identifying information would be reported to CAPSS and would instead require each secondhand dealer or coin dealer to record and maintain the name, current address, and the Matricula Consular number of the seller or pledger for 3 years from the date the item was reported to CAPSS, and to also record and maintain a certification by the intended seller or pledger that they are the owner of the property or have the authority of the owner to seller or pledge the property, along with taking a legible fingerprint from that person.
- Would also require each secondhand dealer or coin dealer, upon receiving notification from local law enforcement that the item has been reported lost, stolen, or embezzled, to provide law enforcement with the information collected from the identification used by the intended seller or pledger.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

Because dealers will no longer be required to report personal identifying information to CAPSS whenever a seller or pledger uses a Matricula Consular as a form of identification, search results will show “on file” rather than the seller or pledger’s personal identifying information. To obtain a seller or pledger’s actual personal identifying information, LE personnel must provide written notice to the dealer that an item has been reported lost, stolen, or embezzled, and inspect the dealer’s records.

In addition, LE personnel conducting a “Seller or Pledger Search” or creating a “Person Watch” notification on CAPSS will not receive hits on sellers or pledgers who use a Matricula Consular as a form of identification.

NOTES:

AB 2512 (Stone)- Death penalty: person with intellectual disability

Penal Code Section 1376 (Amend)

SUMMARY:

Authorizes a defendant in a death penalty case to apply for an order directing that a hearing to determine intellectual disability be conducted as part of a habeas corpus petition and revises the definition of intellectual disability.

HIGHLIGHTS:

- Revises the definition of "intellectual disability", for the purposes of a case in which the death penalty is charged, to mean the condition of significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before the end of the developmental period, as defined by clinical standards.
- Defines "prima facie showing of intellectual disability" to mean that the defendant's allegation of intellectual disability is based on the type of evidence typically relied on by a qualified expert in diagnosing intellectual disability, as defined in current clinical standards, or when an expert provides a declaration diagnosing the defendant as intellectually disabled.
- Requires the court to order a hearing to determine whether the defendant is a person with an intellectual disability upon a *prima facie* showing, as defined.
- Authorizes a defendant to apply for an order directing that a hearing to determine intellectual disability be conducted as part of a petition for a writ of habeas corpus.
- Provides that when the claim of intellectual disability is raised in a petition for habeas corpus, and a petitioner makes a prima facie showing of intellectual disability, the reviewing court shall issue an order to show cause if the defendant has met the prima facie standard.
- Specifies that the petitioner bears the burden of proving by a preponderance of the evidence that the petitioner is a person with an intellectual disability.
- Provides that the respondent may present the case regarding the issue of whether the defendant is a person with an intellectual disability. Each party may offer rebuttal evidence.
- Provides that during an evidentiary hearing under the habeas corpus provisions, an expert may testify about the contents of out-of-court statements, including documentary evidence and statements from witnesses when those types of statements are accepted by the medical community as relevant to a diagnosis of intellectual disability if the expert relied upon these statements as the basis for their opinion.

- Prohibits changing or adjusting the results of a test measuring intellectual functioning based on race, ethnicity, national origin, or socioeconomic status.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

AB 2542 (Kalra)- Criminal procedure: discrimination

Penal Code Sections 1473 and 1473.7 (Amend) and 745 (Add)

SUMMARY:

Prohibits the state from seeking or obtaining a conviction or sentence based on race, ethnicity, or national origin.

HIGHLIGHTS:

- A violation is established if the defendant proves, by a preponderance of the evidence, any of the following:
  - 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;
  - During the trial, in a court and during the proceedings, the judge, an attorney in the case, a law enforcement officer involved in the case, an expert witness, or juror, used racially discriminatory language about the defendant's race, ethnicity, or national origin, except as specified, or otherwise exhibited bias or animus towards the defendant because of the defendant's race, ethnicity, or national origin, whether or not purposeful;
  - Race, ethnicity, or national origin was a factor in the exercise of peremptory challenges, whether or not purposeful;
  - The defendant was charged or convicted of a more serious offense than defendants of other races, ethnicities, or national origins who commit similar offenses and are similarly situated and the evidence establishes that the prosecution more frequently sought or obtained convictions for more serious offenses against people who share the defendant's race, ethnicity, or national origin in the county where the convictions were sought or obtained;
  - A longer or more severe sentence was imposed on the 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, ethnicity, or national origin than on defendants of other races, ethnicities, or national origins in the county where the sentence was imposed; or,
  - A longer or more severe sentence was imposed on the 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 the same offense on

defendants in cases with victims of one race, ethnicity, or national origin than in cases with victims of other races, ethnicities, or national origins in the county where the sentence was imposed.

- States that a defendant may file a motion in the trial court, or if judgement has been imposed, may file a petition for writ of habeas corpus or a motion to vacate the conviction or sentence in a court of competent jurisdiction alleging a violation of the prohibition.
- States that if a motion is filed in the trial court and the defendant makes a *prima facie* showing of a violation, the court shall hold a hearing, as specified.
- Provides that a defendant may file a motion requesting disclosure of all evidence relevant to a potential violation of the prohibition that is in the possession or control of the prosecutor. Upon a showing of good cause, and if the records are not privileged, the court shall order the records to be released and may permit, upon a showing of good cause, redaction thereof.
- States that, notwithstanding any other law, except for an initiative approved by the voters, if the court finds by a preponderance of evidence a violation of the prohibition, the court shall impose a remedy specific to the violation found from the following list of remedies:
    - Before a judgment has been entered, the court may reseat a juror removed by use of a peremptory challenge, declare a mistrial if requested by the defendant, discharge the jury panel and empanel a new jury, or, in the interests of justice, the court may dismiss enhancements, special circumstances, or special allegations, or reduce one or more charges;
    - When judgement has been entered:
        - If the court finds that the conviction was sought or obtained in violation of the prohibition, the court shall vacate the conviction and sentence, find that it is legally invalid, and order new proceedings;
        - If the court finds the violation was based only on the defendant being charged or convicted of a more serious offense than defendants of other races, ethnicities, or national origins, and the court has the ability to rectify the violation by modifying the judgment, the court may do so and impose an appropriate remedy for the violation that occurred, except that the court shall not impose a sentence greater than that previously imposed; and,
        - If the court finds that only the sentence was sought or obtained in violation of the prohibition, the court shall vacate the sentence, find that it is legally invalid, and impose a new sentence no greater than the sentence previously imposed.
- Prohibits imposition of the death penalty where the court finds a violation of the prohibition.
- Provides that a court is not foreclosed from imposing any other remedies available under the United States Constitution, the California Constitution, or any other law.

- Specifies that these provisions apply to adjudications and dispositions in the juvenile delinquency system.
- Defines "more frequently sought or obtained" or "more frequently imposed" as meaning that statistical evidence or aggregate data demonstrate a significant difference in seeking or obtaining convictions or in imposing sentences comparing individuals who have committed similar offenses and are similarly situated and the prosecution cannot establish race-neutral reasons for the disparity.
- Defines "prima facie showing" as meaning that the defendant produces facts that, if true, establish a substantial likelihood that a violation of the prohibition occurred, as specified.
- Defines "racially discriminatory language" as meaning 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.
- Applies these provisions only prospectively to cases in which a judgment has not been entered prior to January 1, 2021.
- States that a writ of habeas corpus may be prosecuted, as specified, following a judgment entered on or after January 1, 2021, based on evidence of a violation of the prohibition.
- Makes conforming changes to allow a person who is no longer in custody to vacate a conviction or sentence based on a violation of the prohibition.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

A LE officer’s potential bias, if found by the court, may be the cause for vacation of a conviction.

NOTES:

AB 2655 (Gipson)- Invasion of privacy: first responders

Penal Code Sections 1524 (Amend) and 647.9 (Add)

SUMMARY:

Makes it a misdemeanor for a first responder, as defined, operating under color of authority, to use an electronic at the scene of an accident or crime to capture the image of a deceased person for any purpose other than an official law enforcement purpose or for a genuine public interest.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

Requires an agency that employs first responders on January 1, 2021 to notify its employees who are first responders of the prohibition imposed by this bill.

NOTES:

SB 903 (Grove)- Grand theft: agricultural equipment

Penal Code Section 489 (Amend)

SUMMARY:

Provides a schedule for the State Controller's Office (SCO) to properly allocate funds to the Central Valley Rural Crime Prevention Program and Central Coast Rural Crime Prevention Programs (CVRCPP and CCRCPP).

HIGHLIGHTS:

- Requires the proceeds of a fine imposed for grand theft involving agricultural equipment be allocated according to the Rural Crime Prevention Program schedule, which will give the SCO the ability to properly distribute the funds.
- Declares an urgency to take effect immediately.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

CPOA Position: Support

NOTES:

EMPLOYMENT OF PEACE OFFICERS

AB 846 (Burke)- Public employment: public officers or employees declared by law to be peace officers

Government Code Sections 1031 (Amend), 1031.3 (Add) and Penal Code Section 13561 (Add)

SUMMARY:

Requires that evaluations of peace officers include an evaluation of bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation; also requires every department or agency that employs peace officers to review their job descriptions and deemphasize the paramilitary aspects of employment and place more emphasis on community interaction and collaborative problem solving.

HIGHLIGHTS:

- Requires that prospective officers' evaluations for mental fitness include bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation.
- Requires, by January 1, 2022, for POST to study, review, and update regulations and screening materials to identify explicit and implicit bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation related to emotional and mental condition evaluations.
- Specifies that the recruitment provisions change is not intended to alter the required duties of any peace officer.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

Local law enforcement agencies shall review their job descriptions used to recruit and hire peace officers and shall make changes that emphasize community-based policing, familiarization between law enforcement and community residents, and collaborative problem solving, and de-emphasize the paramilitary aspects of the job.

NOTES:

FIREARMS

AB 2061 (Limón)- Firearms: inspections

Penal Code Sections 27310 and 30345 (Amend)

SUMMARY:

Commencing July 1, 2022, DOJ may inspect any firearms dealers, ammunition vendors, or manufacturers participating in a gun show or event in order to endure compliance with applicable state and federal laws.

HIGHLIGHTS:

- Provides that, commencing July 1, 2022, DOJ may inspect ammunition vendors to ensure compliance with conditions, requirements, and prohibitions
- Provides that DOJ may adopt regulations to administer the application and enforcement provisions of federal firearms laws.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

AB 2362 (Muratsuchi)- Firearms dealers: conduct of business

Penal Code Section 26800 (Amend, Repeal and Add)

SUMMARY:

Authorizes, commencing July 1, 2021, DOJ to impose civil fines on firearms dealers for breaches of regulations or prohibitions related to their firearms dealer's license.

HIGHLIGHTS:

- Require that any fines collected by the DOJ be deposited in the Dealers Record of Sale Special Account (DROSS), for expenditure by the department to offset the cost of firearms related regulatory or enforcement activity.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

AB 2617 (Gabriel)- Firearms: gun violence restraining orders

Penal Code Sections 18140 and 18205 (Amend)

SUMMARY:

Requires California to honor similar or equivalent Gun Violence Restraining Orders (GVRO), as specified, that are issued by states other than California. Clarifies time frame for a law enforcement officer to file a copy of a temporary emergency GVRO with the court.

HIGHLIGHTS:

- A valid order issued in another state that is similar or equivalent to a California gun violence restraining order must be issued upon a showing by clear and convincing evidence that the person poses a significant danger of causing personal injury to themselves or another because of owning or possessing a firearm or ammunition.
- Specifies that if any provision of the bill are held invalid, that invalidity shall not affect other provisions that can be given effect without the invalid provision.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

Updates PC 18140 language to note that a copy of a GVRO be filed with the court no later than 3 court days after issuance.

NOTES:

AB 2699 (Santiago)- Firearms: unsafe handguns

Penal Code Sections 11106, 25555, 26379, 28230 and 32000 (Amend)

SUMMARY:

Exempts specified entities from the prohibition against the sale or purchase of an "unsafe" handgun, if the handgun is purchased or sold for use by the sworn officers of that entity as a service weapon, and if those officers have satisfactorily completed the firearms portion of the basic training course prescribed by POST.

HIGHLIGHTS:

- Exempted the following entities and sworn peace officers employed by those entities that have completed POST firearms training from the prohibition against the purchase or sale of an "unsafe handgun":
    - The California Horse Racing Board;
    - The State Department of Health Care services;
    - The State Department of Public Health;
    - The State Department of Social Services;
    - The Department of Toxic Substances Control;
    - The Office of Statewide Health Planning and Development;
    - The Public Employees Retirement System;
    - The Department of Housing and Community Development;
    - Investigators of the Department of Business Oversight;
    - The Law Enforcement Branch of the Office of Emergency Services;
    - The California State Lottery; and,
    - The Franchise Tax Board.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

AB 2847 (Chiu)- Firearms: unsafe handguns

Penal Code Section 31910 (Amend)

SUMMARY:

Requires commencing July 1, 2022, for all semiautomatic pistols that are not already listed on the DOJ roster of not unsafe handguns, be designed and equipped with a microscopic array of characters that identify the make, model, and serial number of the pistol, etched or otherwise imprinted in one or more places on the interior surface or internal working parts of the pistol, and that are transferred by imprinting on each cartridge case when the firearm is fired.

HIGHLIGHTS:

- Requires commencing July 1, 2022 for all semiautomatic pistols that are not already listed on the DOJ roster of not unsafe handguns be equipped with a chamber load indicator and a magazine disconnect mechanism if it has a detachable magazine.
- Provides that the DOJ shall, for each newly added semiautomatic pistol added to the roster of not unsafe handguns, remove from the roster exactly three semiautomatic pistols lacking a chamber load indicator, magazine disconnect mechanism, or microstamping technology. Each semiautomatic pistol removed from the roster shall be considered an unsafe handgun. The Attorney General (AG) shall remove semiautomatic pistols from the roster in reverse order of their date of addition to the roster.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

SB 723 (Jones)- Firearms: prohibited persons

Penal Code Sections 29800 and 29805 (Amend) and 29851 (Repeal)

SUMMARY:

Clarifies in both Penal Code sections that a person with an active arrest warrant for a prohibited offense must have knowledge of the warrant in order to be criminally liable as a person prohibited from possessing a firearm.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

The arresting officer must clearly state in their arrest report that the suspect had knowledge of the warrant.

Best Practice: Ask the subject if they knew they had a warrant for their arrest and document what they said in the arrest report.

NOTES:

HOMLESSNESS & MENTAL HEALTH

AB 465 (Eggman)- Mental health workers: supervision

Welfare & Institutions Code Section 5848.7 (Add)

SUMMARY:

Mental health professionals must be supervised by a licensed mental health professional if they participate any program or pilot program in which they respond in collaboration with law enforcement personnel, or in place of law enforcement, to emergency calls related to a mental health crises.

HIGHLIGHTS:

- Defines a "licensed mental health professional" as any one of the following (pursuant to Business and Professions Code definitions):
    - A licensed clinical social worker
    - A licensed professional clinical counselor
    - A licensed marriage and family therapist
    - A licensed psychologist

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

AB 2275 (Nazarian)- State armories: homeless shelters: security

Government Code Section 15301.3 (Amend)

SUMMARY:

Requires cities and counties to notify and request law enforcement visits to armories used as shelters rather than ensure those visits occur.

HIGHLIGHTS:

- Took effect immediately (as of 09/25/2020)

BACKGROUND:

The California Military Department (CMD) operates approximately 99 active armory sites in California. Armories (or "readiness centers") are the primary sites for unit training, staging areas, and for equipment storage. Since the 1990s, the Legislature enacted several measures to allow cities and counties to utilize armories for purposes of providing temporary shelters for individuals experiencing homelessness during specific months during cold weather. Per CMD, five armories were licensed for use which sheltered 64,604 individuals experiencing homelessness in the 2019 – 2020 winter season.

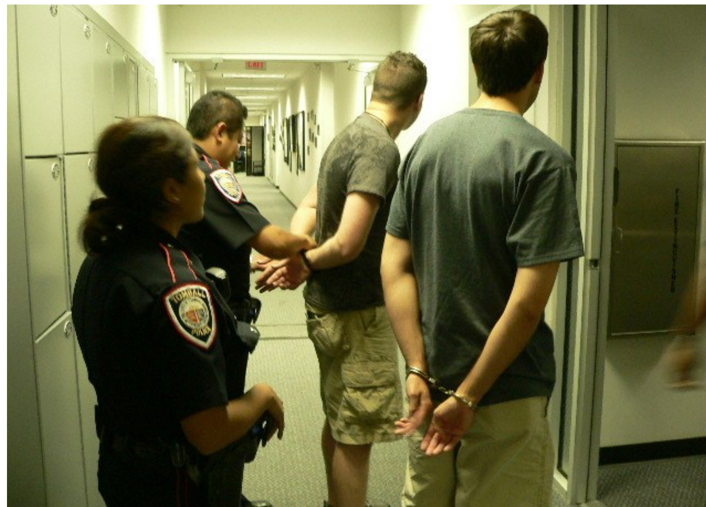
According to the author, "*This bill is needed to remove a state statutory barrier to sheltering California's most vulnerable residents. In previous years, uncertainty around this piece of statute has delayed the opening of needed shelter beds, including during times of inclement weather, which puts unsheltered individuals at serious risk of hypothermia*."

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

By having law enforcement visit when requested, it may help reduce the cost incurred from such calls and visits.

NOTES:

JAIL OPERATIONS



AB 732 (Bonta)- County jails: prisons: incarcerated pregnant persons

Penal Code Sections 3405, 3406, 3409, 4023.5, 4023.6 and 4028 (Amend) and 3408 and 4023.8 (Add)

SUMMARY:

Requires jails and prisons to offer inmates who are possibly pregnant or capable of becoming pregnant a pregnancy test and requires specified medical treatment and services for county jail and state prison inmates who are pregnant.

HIGHLIGHTS:

- Prohibits the use of pepper spray and tasers, and restraints on pregnant or postpartum incarcerated women.
- Requires an incarcerated person who is identified as "possibly pregnant" or capable of becoming pregnant be offered a voluntary pregnancy test during an intake health exam with 72 hours of arrival at the jail or prison, or at any point during incarceration.
- States that an incarcerated person that declines a pregnancy test will have to sign an "Informed Refusal of Pregnancy Test" form that becomes a part of their medical file.
- States an incarcerated person confirmed to be pregnant, have a pregnancy examination with a physician, nurse practitioner, midwife or physician within seven days of arrival at the jail or prison. These medical providers will also provide postpartum exams within one week from childbirth and as necessary for up to 12 weeks.
- Requires the pregnancy exam include the following: a determination of the term of pregnancy, plan of care which includes referrals to evaluate for the presence of chronic medical conditions or infectious diseases, and an order for any prenatal labs and diagnostic studies needed.
- Requires prenatal visits to be in accordance with medical standards outlined in the most-current edition of Guidelines for Perinatal Care, unless more frequent visits are indicated by the treating healthcare worker
- Mandates pregnant incarcerated persons have access to daily prenatal vitamins and newborn care as specified.
- Requires pregnant incarcerated persons in a multi-tier housing unit be assigned lower bunk and lower tier housing.
- Prohibits the use of tasers, pepper spray, or any other chemical weapon on pregnant incarcerated persons.

- States that eligible pregnant incarcerated persons must be notified of community-based programs serving pregnant, birthing or lactating inmates
- Requires each incarcerated pregnant person be referred to a social worker who must discuss options for placement and care of the child after delivery, assist with phone access to contact relatives for purposes of placement of the newborn, and oversee the placement.
- States incarcerated persons who have used opioids prior to incarceration, or who are currently receiving methadone treatment, shall be offered medication assisted treatment with methadone or buprenorphine. They will also be given information on the risks of withdrawal.
- States that a pregnant incarcerated person in labor should be treated as an emergency, taken to a hospital for purposes of giving birth, and shall be transported in the least restrictive way possible. They are also allowed to have a verified support person present during childbirth.
- Requires incarcerated persons be provided materials necessary for personal hygiene, at no charge, with regard to their menstrual cycle and reproductive system specifying products like tampons, pads, etc.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

Potentially-significant costs ranging from the hundreds of thousands of dollars to the low millions of dollars annually in the aggregate for counties to comply with this measure, with higher initial one-time costs for signage and ensuring practices and procedures align with the requirements of the measure.

NOTES:

JUVENILES

AB 2425 (Stone)- Juvenile police records

Welfar and Institutions Code Sections 786.5, 827 and 828 (Amend) and 827.95 (Add)

SUMMARY:

Prohibits the release of information by a law enforcement, social worker, or probation agency when a juvenile has participated in or completed a diversion program.

HIGHLIGHTS:

- "Juvenile police record" refers to records or information relating to the taking of a minor into custody, temporary custody, or detention.
- With respect to a juvenile police record, "any other juvenile" refers to additional minors who were taken into custody or temporary custody or detained and who also could be considered a subject of the juvenile police record.
- "Diversion" refers to an intervention that redirects youth away from formal processing in the juvenile justice system, including, but not limited to, counsel and release or a referral to a diversion program as defined in Section 1457.
- "Diversion service provider" refers to an agency or organization providing diversion services to a minor.
- "Diversion service provider record" refers to any records or information collected, created, or maintained by the service provider in connection to providing diversion program services to the minor.
- "Satisfactory completion" refers to substantial compliance by the participant with the reasonable terms of program participation that are within the capacity of the participant to perform, as determined by the service provider.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

WIC 786.5

- The probation department shall notify the arresting law enforcement agency to seal the arrest records of a juvenile who participated in a diversion program.
- The arresting law enforcement agency shall seal the records in its custody relating to the arrest no later than 60 days from the date of notification by the probation department. Upon sealing, the arresting law enforcement agency shall notify the probation department that the records have been sealed.

WIC 827.95

- The diversion service provider shall notify the referring law enforcement agency of a minor's satisfactory completion of a diversion program within 30 days of the minor's satisfactory completion.

NOTES:

AB 2805 (Eggman)- Juveniles: reunification

Welfare and Institutions Code Section 361.5 (Amend)

SUMMARY:

Expands the scope of evidence that a court may consider when determining whether to order reunification services for a child who has been made a dependent of the juvenile court because the child, before reaching five years of age, was the victim of severe physical abuse by a parent or by any person known by the parent.

HIGHLIGHTS:

- Existing law prohibits the court from ordering reunification services if the child was brought into the juvenile welfare system due to the parent's (or someone known to the parent) severe physical abuse against the child when the child was under five years of age. Provides that this presumption may be rebutted if the court finds that those services are likely to prevent further abuse or continued neglect of the child, or that failure to try reunification will be detrimental to the child because the child is closely and positively attached to that parent. Provides that such a finding may be based on competent testimony only. (§ 361.5(c)(3).)
- This bill instead provides that a finding above, may be based on any competent evidence.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

SB 203 (Bradford)- Juveniles: custodial interrogation

Welfare and Institutions Code Section 625.6 (Amend)

SUMMARY:

Expands and extends protections for minors prior to a custodial interrogation by a law enforcement officer.

HIGHLIGHTS:

- Requires that prior to any custodial interrogation and before the waiver of any *Miranda* rights, a youth of 17 years or younger must consult with legal counsel in person, by telephone, or by video conference.
- Prohibits the waiver of such consultation with legal counsel.
- Requires the court to consider a lack of consultation with legal counsel for the purposes of determining the admissibility of any statements made to law enforcement, as well as in determining the credibility of any officer who willfully failed to comply with the consult requirement.
- Eliminates the sunset date of January 1, 2025, for similar protections that applied only to minors under the age of 16, making them permanent.
- Eliminates the requirement that the governor convene a panel of experts to examine the effects and outcomes of requiring minors under the age of 16 to consult with counsel prior to any interrogation or *Miranda* waiver.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

SB 823 (Budget Committee)- Juveniles: justice realignment: Office of Youth and Community Restoration

Various Codes

SUMMARY:

Enacts public safety-related provisions of the Budget Act of 2020, including transferring the Division of Juvenile Justice (DJJ) out of CDCR to county operations.

HIGHLIGHTS:

- Repeals provisions that would have created the Department of Youth and Community Restoration and the provisions that would have transferred the responsibilities of the Division of Juvenile Justice to that department.
  - Commencing July 1, 2021, prohibit further commitment of wards to the Division of Juvenile Justice, except as specified, and would require that all wards committed to the division prior to that date remain within the custody of the division until the ward is discharged, released, or transferred.
  - Commencing July 1, 2021, establish the Office of Youth and Community Restoration in the California Health and Human Services Agency (HHS) to administer these provisions and for other specified purposes to support this transition.
- Establishes a Juvenile Justice Realignment Block Grant program to provide county-based custody, care, and supervision of youth who are realigned from the Division of Juvenile Justice or who would have otherwise been eligible for commitment to the division.
  - Appropriates moneys from the General Fund in specified amounts for these purposes, as specified. The bill would specify how those funds would be allocated to counties based on specified criteria.
- Under existing law, the jurisdiction of the juvenile court may continue until a ward attains 25 years of age if the ward committed specified offenses. This bill would reduce that age to 23 years, unless the ward would, in criminal court, have faced an aggregate sentence of 7 years or more, in which case the juvenile court's jurisdiction would continue until the ward attains 25 years of age.
- Repeals specified provisions that authorize the detention of minors in an adult facility.
  - Now requires any person whose case originated in juvenile court to remain in a county juvenile facility until they turn 25 years of age, except as specified. The bill would make technical and conforming changes to related provisions.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

The bill appropriates moneys from the General Fund annually to a **Juvenile Justice Realignment Block Grant** program, to provide county-based custody, care, and supervision of youth who are being transferred out of CDCR custody.

NOTES:

SB 1126 (Jones)- Juvenile court records

Welfare and Institutions Code Section 786 (Amend)

SUMMARY:

Authorizes specified sealed juvenile records to be accessed, inspected, or utilized by the probation department, the prosecuting attorney, counsel for the minor, and the court for the purpose of assessing the minor's competency in a subsequent proceeding if the issue of competency has been raised.

HIGHLIGHTS:

- Limits access, inspection, or utilization of the sealed records to any prior competency evaluations submitted to the court, whether ordered by the court or not, all reports concerning remediation efforts and success, all court findings and orders relating to the minor's competency, and any other evidence submitted to the court for consideration in determining the minor's competency, including, but not limited to, school records and other test results.
- Prohibits the information obtained from being disseminated to any other person or agency except as necessary to evaluate the minor's competency or provide remediation services, and shall not be used to support the imposition of penalties, detention, or other sanctions on the minor. Specifies that access to the sealed record under this subparagraph shall not be construed as a modification of the court's order dismissing the petition and sealing the record in the case.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

SB 1290 (Durazo)- Juveniles: costs

Welfare and Institutions Code Section 223.2 (Add)

SUMMARY:

Vacates certain county-assessed or court-ordered costs imposed before January 1, 2018, against parents and guardians of youth subject to the juvenile delinquency system and against persons aged 18 to 21 subject to the criminal justice system.

HIGHLIGHTS:

- Provides that the unpaid outstanding balance of any of the following county-assessed or court-ordered costs imposed before January 1, 2018, against the parent, guardian, or other person liable for the support of a minor is vacated and shall be unenforceable and uncollectable if the minor was adjudged to be a ward of the juvenile court, was on probation without being adjudged a ward, was the subject of a petition filed to adjudge the minor a ward, or was the subject of a program of supervision as specified:
    - Reasonable costs of transporting a minor to a juvenile facility and for the costs of the minor's food, shelter, and care at the juvenile facility when the minor has been held in temporary custody (Welfare and Institutions Code, Section 207.2);
    - Costs of support for a minor detained in a juvenile facility (Welfare and Institutions Code, Section 903);
    - Costs to the county or the court of legal services rendered to a minor by an attorney pursuant to an order of the juvenile court (Welfare and Institutions Code, Section 903.1);
    - Registration fee up to $50 for appointed legal counsel (former Welfare and Institutions Code, Section 903.15);
    - Costs of minor's probation supervision, home supervision, or electronic monitoring (Welfare and Institutions Code, Section 903.2);
    - Costs of food, shelter, and care of a minor who remains in the custody of probation or detained at a juvenile facility after the parent or guardian receives notice of release (Welfare and Institutions Code, Section 903.25);
    - Cost of support of a minor placed in out-of-home placement pursuant to a juvenile court order (Welfare and Institutions Code, Section 903.4); or
    - Costs of care, support, and maintenance of a minor who is voluntarily placed in out-of-home care when the minor receives specified aid (Welfare and Institutions Code, Section 903.5).
- Provides that the unpaid outstanding balance of any county-assessed or court-ordered costs imposed before January 1, 2018, to cover the costs of drug testing a minor on probation for a drug case (Welfare and Institutions Code, Section 729.9) is vacated and shall be unenforceable and uncollectable.

- Specifies that the foregoing provisions apply to dual status children for purposes of delinquency jurisdiction.
- Provides that the unpaid outstanding balance of any county-assessed or court-ordered costs imposed before January 1, 2018, for home detention administrative fees and probation drug testing fees (Penal Code, Sections 1203.016, 1203.1ab, and 1208.2) against persons age 18 to 21 and under the jurisdiction of the criminal court is vacated and shall be unenforceable and uncollectable.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

LOCAL OPERATIONS & POLICIES

AB 1185 (McCarty)- County board of supervisors: sheriff oversight

Government Code Section 25303.7 (Add)

SUMMARY:

Authorizes a county to create a sheriff oversight board and an inspector general's office with subpoena power to examine any person or witness upon any subject matter within the jurisdiction of the board, any officer of the county in relation to the discharge of their official duties on behalf of the sheriff's department, or any materials relating to the affairs of the sheriff's department.

HIGHLIGHTS:

- The members of the sheriff oversight board shall be appointed by the board of supervisors. The board of supervisors shall designate one member to serve as the chairperson of the board, who shall issue a subpoena or subpoena *duces tecum* (for production of evidence) in accordance with Sections 1985 to 1985.4, inclusive, of the Code of Civil Procedure whenever the board deems it necessary or important to examine the following:
    - Any person as a witness upon any subject matter within the jurisdiction of the board.
    - Any officer of the county in relation to the discharge of their official duties on behalf of the sheriff's department.
    - Any books, papers, or documents in the possession of or under the control of a person or officer relating to the affairs of the sheriff's department.
- A county, through action of the board of supervisors or vote by county residents, may establish an office of the inspector general, appointed by the board of supervisors, to assist the board of supervisors with its duties required pursuant to Section 25303 that relate to the sheriff.
- The exercise of powers under this section or other investigative functions performed by a board of supervisors, sheriff oversight board, or inspector general vested with oversight responsibility for the sheriff shall not be considered to obstruct the investigative functions of the sheriff.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

CPOA Position: Oppose

NOTES:

AB 2968 (Rodriguez)- County emergency plans: best practices

Government Code Section 8593.9 (Add)

SUMMARY:

Would require CalOES to, by January 1, 2022, establish best practices for counties developing and updating a county emergency plan.

HIGHLIGHTS:

- Would require the office to, by January 1, 2022, establish a review process for a county to request the office to review a county's emergency plan.
- Would require that review process to provide technical assistance and feedback regarding, among other things, an emergency plan's consistency with the office's proposed best practices.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

AB 3099 (Ramos)- DOJ: law enforcement assistance with tribal issues: study

Penal Code Part 4, Chapter 1, Title 1, Article 2.4 (commencing with Section 11070)

SUMMARY:

Requires DOJ, upon funding, provide technical assistance relating to tribal issues to local law enforcement agencies, as specified, and tribal governments with Indian lands. It also would require DOJ, upon funding, to study and report on how to increase state criminal justice protective and investigative resources for reporting and identifying missing Native Americans in California, particularly women and girls.

HIGHLIGHTS:

- Requirements for submitting a report requested by this bill is inoperative on January 1, 2025.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

SB 1123 (Chang)- Elder and dependent adult abuse

Penal Code Section 368.5 (Amend)

SUMMARY:

Clarifies the definition for elder and dependent adult abuse in the Penal Code by using cross-references to Welfare and Institutions Code definitions; and requires law enforcement to update their policy manuals.

HIGHLIGHTS:

- "Elder and dependent adult abuse" means any of the following:
    - Physical abuse, neglect, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering.
- Requirements for submitting a report requested by this bill is inoperative on January 1, 2025.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

Requires law enforcement agencies to update their policy manuals with the new definition of elder and dependent adult abuse.

NOTES:

SB 1159 (Hill)- Workers' comp: COVID-19: critical workers

Labor Code Sections 77.8 (Add), 3212.86, 3212.87 and 3212.88 (Add and Repeal)

SUMMARY:

Adopts a rebuttable presumption that a peace officer, firefighter, specified frontline employees, and certain health care employees, as defined, who contract COVID-19 were infected with the virus via a workplace exposure.

HIGHLIGHTS:

- The presumption exists for employees who suffer illness or death resulting from COVID-19 on or after July 6, 2020 through January 1, 2023.
- Provides that all the normal workers' compensation benefits are available to these employees who become presumptively eligible for workers' compensation benefits.
- Provides that any employee who might benefit from the presumption of compensability must first exhaust any special COVID-19 "time off" benefits provided by federal law before the workers' compensation benefits attach.
- Requires the Commission on Health and Safety and Workers' Compensation (CHSWC) conduct a study on COVID-19 and its impact on the workers' compensation system and issue a report no later than April 30, 2022.
- Provides that the injury (a.k.a. illness) presumptions established by the bill continue for 14 days after the last day of employment with an employer.
- Establishes a presumption of compensability for employees who contract COVID-19 from any employer that experiences an "outbreak" of COVID-19 cases at a particular work location
- Defines an "outbreak" as follows:
  - For employers with 5-100 employees, 5 or more employees who worked at a specific work location contracted the disease within a 14-day period;
  - For employers with more than 100 employees, 5% or more of the employees who worked at a specific work location contracted the disease within a 14-day period.
- Specifies that this presumption is rebuttable, and the evidence to rebut the presumption includes, but is not limited to, evidence of measures in place to prevent transmission of COVID-19 and evidence of an employee's nonoccupational exposure to COVID-19.

- Provides that the presumptions established by the bill sunset on January 1, 2023.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

Potential impact to agency personnel staffing and operations due to definitions and parameters of exposure and illness.

NOTES:

MISCELLANEOUS

AB 1945 (Salas)- Emergency services: first responders

Government Code Section 8562 (Add)

SUMMARY:

Defines a "first responder" in the California Emergency Services Act (CESA) as an employee of the state or a local public agency who provides emergency response services, including any of the following: a peace officer; a firefighter; paramedic; an emergency medical technician; and a public safety dispatcher or public safety telecommunicator.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

CPOA Position: Support

NOTES:

SB 118 (Budget Committee)- Public safety omnibus

Various Codes

PC 290

- Allows a tier one or tier two offender to file petition for registry termination on or after their next birthday after July 1, 2021, following the expiration of mandated minimum registration period.
- Allows courts to summarily deny petitions that are statutorily ineligible and require law enforcement agencies to report receipt of a filed petition in the manner prescribed by the Department of Justice.

WHAT THIS MEANS TO LAW ENFORCEMENT

Agencies must report receipt of filed petition per DOJ guidelines.

PC 851.93 and 1203.425

Pushes back the date of commencement from January 1, 2021 to July 1, 2022, DOJ's monthly review of all criminal records for determination of arrest record relief or expungement.

WHAT THIS MEANS TO LAW ENFORCEMENT

No immediate impact.

PC 3000.01

Requires a parolee released on or after July 1, 2020 and supervised by CDCR to serve a parole term of two years for a determinate term and a parole term of three years for a life term.

WHAT THIS MEANS TO LAW ENFORCEMENT

No immediate impact.

PC 30515

- Expands the definition of an assault weapon to include a "semiautomatic firearm that is not a rifle, pistol, or shotgun, that does not have a fixed magazine, but that has any one of the following:

a. A pistol grip that protrudes conspicuously beneath the action of the weapon.
b. A thumbhole stock.
c. A folding or telescoping stock.
d. A grenade launcher or flare launcher.
e. A flash suppressor.
f. A forward pistol grip.
g. A threaded barrel, capable of accepting a flash suppressor, forward handgrip, or silencer.
h. A second handgrip.
i. A shroud that is attached to, or partially or completely encircles, the barrel that allows the bearer to fire the weapon without burning the bearer's hand, except a slide that encloses the barrel.
j. The capacity to accept a detachable magazine at some location outside of the pistol grip.

- Also includes in 'assault weapon' definition:
  - a semi auto with a fixed mag (w/ capacity for more than 10 rounds)
  - with an overall length of less than 30 inches
- Provides an exception to the prohibition on possessing an assault weapon that is not a rifle, pistol, or shotgun if the person lawfully possessed the weapon prior to September 1, 2020 and registers the weapon by January 1, 2022.
- Prohibits the joint registration of an assault weapon that is not a rifle, pistol, or shotgun.

WHAT THIS MEANS TO LAW ENFORCEMENT

New definition of 'semi-auto' may impact local firearm taskforces and other similar operations who are looking for those types of weapons for confiscation or transfer.

SB 480 (Archuleta)- Law enforcement uniforms

Penal Code Section 13655 (Add)

SUMMARY:

prohibits law enforcement agencies rom authorizing employees to wear a uniform that is made from camouflage material or a uniform that is substantially similar to a uniform of the U.S. Armed Forces or state active militia.

HIGHLIGHTS:

- Provides that a department or agency that employs peace officers shall not authorize or allow its employees to wear a uniform that is made from a camouflage printed or patterned material.
- Specifies that a uniform is "substantially similar" if it so resembles an official uniform of the United States Armed Forces or state active militia as to cause an ordinary reasonable person to believe that the person wearing the uniform is a member of the United States Armed Forces or state active militia. A uniform shall not be deemed to be substantially similar to a uniform of the United States Armed Forces or state active militia if it includes at least two of the following three components: a badge or star or facsimile thereof mounted on the chest area, a patch on one or both sleeves displaying the insignia of the employing agency or entity, and the word "Police" or "Sheriff" prominently displayed across the back or chest area of the uniform.
- Applies to personnel who are assigned to uniformed patrol, uniformed crime suppression, or uniformed duty at an event or disturbance, including any personnel that respond to assist at a protest, demonstration, or similar disturbance. It does not apply to members of a Special Weapons and Tactics team, sniper team, or tactical team engaged in a tactical response or operation.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

Potential changes may need to be made to specific agency insignia worn in the rain, snow or other severe weather conditions.

NOTES:

PROBATION

AB 1950 (Kamlager)- Probation: length of terms

Penal Code Section 1203a and 1203.1 (Amend)

SUMMARY:

Limits the term of probation to no longer than two years for a felony conviction and one year for a misdemeanor conviction, except offenses that include a specific probation term in statute.

HIGHLIGHTS:

- Provides that the two-year probation limit does not apply to offenses defined by law as violent felonies, or to an offense that includes a specific probation term within its provisions. Provides that for these offenses, the court, 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.
- Provides that the two-year probation limit does not apply to a felony conviction for grand theft from an employer, embezzlement, or theft by false pretenses, if the total value of property taken exceeds $25,000. Provides that for these offenses, the court, 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 three years, and upon those terms and conditions as it shall determine.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

AB 2606 (Cervantes)- Criminal justice: supervised release file

Penal Code Section 14216 (Amend)

SUMMARY:

Requires each county probation department or other supervising county agency to update any supervised release file that is available to them on CLETS every 10 days by entering any person placed onto postconviction supervision within their jurisdiction and under their authority, including persons on probation, mandatory supervision, and PRCS.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

PROSTITUTION, SEX CRIMES & HUMAN TRAFFICKING

AB 1145 (Garcia, Cristina)- Child abuse: reportable conduct

Penal Code Section 11165.1 (Amend)

SUMMARY:

Specifies that "sexual assault" for purposes of reporting incidents of abuse under the Child Abuse and Neglect Reporting Act (CANRA) does not include voluntary sodomy, oral copulation, or sexual penetration, if there are no indicators of abuse, unless the conduct is between a person who is 21 years of age or older and a minor who is under 16 years of age.

HIGHLIGHTS:

- Does not make changes to any other existing laws that criminalize statutory rape, oral copulation, sodomy or penetration by a foreign object involving a minor. (See Pen. Code, §§ 286, 288a, 289.)

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

SB 145 (Wiener)- Sex offenders: registration

Penal Code Sectin 290 and 290.006 (Amend)

SUMMARY:

Exempts a person convicted of non-forcible voluntary sodomy with a minor, oral copulation with a minor or sexual penetration with a minor, as specified, from having to automatically register as a sex offender under the Sex Offender Registry Act (SORA) if the person was not more than ten years older than the minor at the time of the offense and the conviction is the only one requiring the person to register.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

No immediate impact.

NOTES:

RULES OF THE ROAD/TRANSPORTATION

AB 2285 (Transportation Committee)- Right of way

Vehicle Code Sections 4853 and 21809 (Amend)

SUMMARY:

Replaces the word" freeway" with "highway" in statutory language governing the "Move Over, Slow Down" driver safety program and extends the Department of Motor Vehicles alternative license plates and vehicle registration pilot program to January 1, 2023.

HIGHLIGHTS:

- Requires a person driving a vehicle on a highway approaching, among other things, a stationary authorized emergency vehicle that is displaying emergency lights to approach with due caution and either:
  - proceed to make a lane change into an available lane, or
  - slow to a reasonable and prudent speed that is safe for existing conditions.
- DMV can continue to evaluate the use of alternatives to stickers, tabs, license plates, and registration cards which shall be approved by the CHP.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

The "Move Over, Slow Down" provisions can now be extended to designated vehicles with their emergency lights or flashing amber lights activated on all highways, not just freeways.

Law enforcement officers will continue to see alternative license plates, stickers, tabs, and/or vehicle registration insignia through January 1, 2023.

NOTES:

AB 2717 (Chau)- Motor vehicles: unattended children: liability

Civil Code Section 43.102 (Add) and Health and Safety Code Section 1799.101 (Add)

SUMMARY:

Provides immunity from liability to a person who rescues an unattended and endangered child from a vehicle, subject to certain conditions.

HIGHLIGHTS:

- Permits a person to take reasonable steps necessary to remove a child (6 years of age or younger) from a motor vehicle if the person holds a reasonable belief that the child's safety is in immediate danger from heat, cold, lack of adequate ventilation, or other circumstances that could reasonably be expected to cause suffering, disability, or death to the child.
- Provides further that a person who removes a child from a vehicle under these circumstances is not criminally liable for actions taken reasonably and in good faith if the person does all of the following:
  - Determines the vehicle is locked or there is otherwise no reasonable manner for the child to be removed from the vehicle.
  - Has a good faith belief that forcible entry into the vehicle is necessary because the child is in imminent danger of suffering harm if not immediately removed from the vehicle, and, based upon the circumstances known to the person at the time, the belief is a reasonable one.
  - Has contacted a local law enforcement agency, the fire department, or the "911" emergency service prior to forcibly entering the vehicle.
  - Remains with the child in a safe location, out of the elements but reasonably close to the vehicle, until a peace officer or another emergency responder arrives.
  - Used no more force to enter the vehicle and remove the child from the vehicle than was necessary under the circumstances.
  - Immediately turns the child over to a representative from law enforcement or another emergency responder who responds to the scene.
- Specifies that a peace officer, firefighter, or other emergency medical technician (EMT) personnel who removes a child shall arrange for treatment or transportation, as specified, and leave a written notice in a secure conspicuous location bearing their name, office, and address of where the child is being treated.
- Provides that a person shall not be civilly liable for property damage or trespass to a motor vehicle if the damage was caused while the person was rescuing a child in accordance with the criteria prescribed above.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

A law enforcement official may remove a child or be called to take custody of a child who has been removed, from a vehicle in specified conditions.

Once on scene, the official shall perform certain acts in order to meet the statutory requirements of this legislation which include arranging for treatment and transport of the child as well as leaving a written notice on the vehicle with specified information.

NOTES:

SB 909 (Dodd)- Emergency vehicles

Vehicle Code Section 27002 (Amend)

SUMMARY:

Allows authorized emergency vehicles to be equipped with a device which emits a "Hi-Lo" audible warning sound that meets regulations established by the California Highway Patrol (CHP).

HIGHLIGHTS:

- The purpose of the sound would be to notify the public of an immediate need to evacuate an area in the event of an emergency.
- The Hi-Lo audible warning sound is not a siren, and the operator of an authorized emergency vehicle would not be provided an exemption under the rules of the road, Section 21055 CVC.
- Declares an urgency to take effect immediately.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

The CHP will continue to receive and approve any exemption requests from law enforcement agencies to install Hi-Lo audible warning devices on their authorized emergency vehicles to test in their respective jurisdictions. These exemptions will remain in effect until the CHP establishes the regulations.

NOTES:

USE OF FORCE

AB 1196 (Gipson)- Peace officers: use of force

Government Code Section 7286.5 (Add)

SUMMARY:

Prohibits law enforcement agencies from authorizing carotid restraint holds and choke holds.

HIGHLIGHTS:

- Defines "carotid restraint" as a vascular neck restraint or any similar restraint, hold, or other defensive tactic in which pressure is applied to the sides of a person's neck that involves a substantial risk of restricting blood flow and may render the person unconscious in order to subdue or control the person.
- Defines "choke hold" means any defensive tactic or force option in which direct pressure is applied to a person's trachea or windpipe.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

Individual departments are going to have to decide if they are going to prohibit use of the carotid or leave it open as a tool of opportunity (i.e. not mention in policy but if it happens and is reasonably based on the totality of the circumstances the officer would be in compliance with policy).

NOTES:

AB 1506 (McCarty)- Police use of force

Government Code Section 7286.5 (Add)

SUMMARY:

Provides that a state prosecutor shall conduct an investigation of any officer-involved shooting that resulted in the death of an unarmed civilian, and beginning July 1, 2023, to operate a Police Practices Division within the Department of Justice to, upon request of a local law enforcement agency, review the use of deadly force policies of that law enforcement agency.

HIGHLIGHTS:

- States that the Attorney General is the state prosecutor unless otherwise specified or named, and is authorized to do all the following:
    - Investigate and gather facts in incidents involving a shooting by a peace officer that results in the death of an unarmed civilian;
    - For all investigations conducted, prepare, and submit a written report. The written report shall include, at a minimum, the following information:
        - A statement of the facts.
        - A detailed analysis and conclusion for each investigatory issue; and
        - Recommendations to modify the policies and practices of the law enforcement agency, as applicable;
    - And, if criminal charges against the involved officer are found to be warranted, initiate and prosecute a criminal action against the officer.
- Specifies that the Police Practices Division shall make specific and customized recommendations to any law enforcement agency that requests a review, based on those policies identified as recommended best practices.
- Specifies that DOJ's implementation of this bill is subject to an appropriation by the Legislature.
- States that "deadly weapon" includes, but it not limited to, any loaded weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged, or a switchblade knife, pilum ballistic knife, metal knuckle knife, dagger, billy, blackjack, plastic knuckles or metal knuckles, for purposes of this bill.
- Specifies that an "unarmed civilian" includes anyone who is not in possession of a deadly weapon.

WHAT THIS BILL MEANS TO LAW ENFORCEMENT

Bypasses local investigatory processes, including established agreements to have outside agencies investigate officer-involved uses of force. Additionally, it is unclear whether a state prosecutor investigation required or permitted by this bill would take the place of, or be in addition to, a local investigation.

CPOA Position: Oppose

NOTES:

CALIFORNIA PEACE OFFICERS' ASSOCIATION

2485 Natomas Park Drive, Suite 540 | Sacramento, CA 95833 | P 916-236-0541 | F 916-236-6090

2021 Legislative Platform & Priorities

Undersheriff Erik Maness, CPOA President, *Sacramento County Sheriff's Department*

Chief W. Paul LeBaron, Law & Legislation Committee Chair, *Hermosa Beach Police Department*

Shaun Rundle, Deputy Director, *California Peace Officers' Association*

The California Peace Officers' Association (CPOA) is a non-union organization of more than 22,000 law enforcement professionals of all jurisdictional levels, representing sworn personnel of all ranks, professional staff, and retired peace officers. It is a profession dedicated to maintaining safe and thriving communities across California. In addition to implementing the most innovative and relevant training and leadership development for law enforcement anywhere in the world, our responsibility to the profession means that we have a large bill load and participate in many legislative issues.

Grouped alphabetically by category, the topics below represent the primary interests of CPOA's advocacy efforts for the 2021 legislative year:

BEHAVIORAL/MENTAL HEALTH RESPONSE

- **Support legislation that expands the treatment of mentally ill persons and inform and educate the Legislature and Governor on the effective mental and behavioral health responses and practices currently being used by law enforcement in California.**
- **Promote policies and funding to alleviate the serious mental health care challenges in county jails by expediting competency hearings and the placement of mentally ill inmates in mental health care facilities.**

CONTROLLED SUBSTANCES

- **Inform the Legislature on growing national and local trends related to substance abuse and its correlations to increased homelessness, transiency, and erratic behavior against peace officers and peers.**
- **Oppose legislation that would expunge or otherwise reduce sentences for the most dangerous drug crimes, including sales to minors, commercial drug trafficking and driving under the influence of drugs (DUID).**

CRIMES & CRIMINAL REFORM

- **Oppose any efforts to further decriminalize existing crimes in California or lessen the sentences of any offenses that would result in the early release of serious criminals who could further harm the safety of the public and law enforcement personnel.**
- **Support legislation that combats the growing crime of human trafficking and provide to the legislature details and figures to further understand the scope of human trafficking in California.**
- **Educate and inform the Legislature and Governor on the continuing interconnectivity of crimes that have occurred in the wake of recent criminal justice reforms, and dispel any confusion between sentencing impacts and law enforcement's sworn duty to respond to pre-trial violations of the law.**

DATA REPORTING

- **Engage the Legislature, Governor and California Department of Justice on effective and relevant reporting of local agency data and ensure that any disclosed data be fair and balanced and protects the safety of officers and the public they serve.**

FUNDING & LOCAL BUDGET CONTROL

- **Support funding initiatives for POST, CalOES, the California Highway Patrol, the Department of Fish & Wildlife, DMV, and other law enforcement support organizations.** We will work with Legislative Budget Committees and the Governor's office to ensure ongoing funding is addressed and achieved.

- **Support and propose funding for officer wellness initiatives and programs, which ensure that California public safety personnel are well equipped to overcome the stresses and aftermath of their duties and calls for service in their communities.**
- **Support funding for agency access to professional defensive tactics and practices, which better ensure the safety of public safety personnel and the public they swore an oath to protect from violent and unpredictable situations.**
- **Ensure local funding for agency compliance on any FBI/CJIS, CLETS, Radio communications and 9-1-1 system requirements and additional data tracking mandates.**
- **Support and encourage legislation and budget negotiations that retain funding for State and local law enforcement agencies to effectively serve their communities.** These needs include behavioral health treatment, local California Public Records Act (CPRA) processing, development and funding of federal, state and local drug and major crimes task forces, crisis intervention teams, and adequate patrol staffing.
- **Identify opportunities for reimbursements to supplement increased custodial and supervision costs resulting from prison realignment.**
- **Oppose legislation with mandates for local agency adherence to operations and programs that may not be reimbursable by State budget funds.**

LEGAL USE OF FORCE

- **Support evidence-based studies that seek to improve law enforcement tactics and non-lethal force options that ensure both the safety of the public and peace officers, and oppose any efforts to challenge any force that is reasonably necessary given the totality of circumstances known to or perceived by officers at the time the force is applied.**
- **Work collectively with the office of the California Attorney General to maintain transparency concerning lethal force encounters while concurrently retaining local control of initial investigations of such incidents.**

LOCAL OPERATIONS

- **CPOA supports the deployment and research of new and emerging technologies that provide law enforcement with the tools to provide the highest level of service to our communities.**
  - **9-1-1 & Communications**-CPOA supports the development and deployment of enhanced 911 services to allow first responders the ability to respond quickly to the needs of the people of California.
  - **Digital Evidence**-CPOA will engage with the Legislature and Governor on the extreme need for local funding to collect, store and retain large amounts of digital evidence as well as secure appropriate legal access to such evidence.
  - **Forensics Analysis**-CPOA will engage with the Legislature, Governor and Department of Justice on the critical need to fund and expand forensic laboratory analysis by rape kit, ballistic, latent print and other trace evidence submitted by local agencies, especially those without current forensic analysis capabilities.

    Expand availability and funding for rapid DNA analyses for mass casualty incidents and to help resolve cold cases and major crime investigations.
  - **New Generation Investigative Technology**-CPOA supports the deployment of new and emerging investigation technology, including unmanned aircraft, and the development of local policies that provides the tools to save abducted children; collect DNA, prevent the exploitation of children and vulnerable adults and prosecute those who violate the rights of any person.
- **CPOA supports transparent government and the role of the California Public Records Act while simultaneously observing and protecting the current Rule of Law in California.**

ROLE OF THE PROFESSION

- **Engage with the Legislature and Governor on proposals that maintain and strengthen the integrity, training and effectiveness of public safety in California, and oppose any measures intending to weaken the same or equate it to incident responses outside of California.**
- **While CPOA recognizes that the law enforcement profession is rapidly changing, CPOA will engage with the Legislature and Governor on, and oppose any legislation that seeks to incorrectly portray, by statute and/or rhetoric, the duties and focuses of California peace officers.**
- **CPOA supports and will educate the Legislature and Governor on evidence and fact-based programs and approaches to public safety policy.**

CASE LAW

FOURTH AMENDMENT: SEIZURE OF PROPERTY

---

1. ***People v. Tran*** **(2019) 42 Cal.App.5th 1:** Under what circumstances may a police officer seize a digital device pending an application for a search warrant?

> **RULE:** Law enforcement may seize a digital device to prevent the destruction or loss of evidence pending an application for a search warrant.

2. FACTS: Def. was driving at high speeds on a winding road. While heading into a curve, he crossed into the opposite lane and hit motorcycle rider causing serious injuries. At the scene, Def. removed the dashboard camera from his vehicle and placed it in his backpack. An officer seized the camera, and subsequently obtained a search warrant before viewing its recording that showed Def.'s reckless driving. He filed a motion to suppress the video.

3. HELD: Conviction affirmed. The trial court correctly denied the suppression motion. While a search implicates one's right to keep the contents of his or her belongings private, a seizure only affects one's right to possess an item. So, police generally have greater leeway in conducting a warrantless seizure than a warrantless search. The seizure of the dashboard camera was justified because there was probable cause to believe Def. had committed reckless driving, and exigent circumstances existed—the potential destruction of evidence.

FOURTH AMENDMENT: DETENTION OF SUSPECT ON FOOT

---

1. *People v. Flores* (2019) 38 Cal.App.5th 617: Can a person be detained solely based on the facts that they are in a high-crime area and fled from law enforcement?

> **RULE:** Flight from a high-crime area is not sufficient, on its own, to establish a reasonable suspicion to detain.

2. FACTS: A seven-member police unit went to an alleyway as part of a continuing investigation in gang-related crimes. There had been multiple complaints regarding gang activity in the area, including shootings and drug sales, though there were no reports of gang activity on this day and time. When the officers approached a group congregating in the alley, Def. and others fled. Officers detained Def. because he was "the closest." They found drugs in his sock.

3. HELD: Reversed. The detention was not supported by reasonable suspicion. Flight from a high-crime area, although probative, is not sufficient on its own to establish reasonable suspicion to detain. Def.'s detention was investigatory and not based on a sufficient individualized suspicion of criminal activity.

FOURTH AMENDMENT: DETENTIONS VIA VEHICLE STOP

---

1. **People v. Tacardon* (2020) 53 Cal.App.5th 89: Was a suspect detained when an officer made a U-turn, parked 15-20 feet behind the suspect's legally parked car, turned his spotlight onto the suspect's car, and immediately got out and approached?

> **RULE: When an officer parks a marked patrol car behind a legally parked car and illuminates the car with a spotlight, the driver may well feel he or she is "the object of official scrutiny," but such directed scrutiny does not amount to a detention.**

2. FACTS: While driving his marked patrol car at night with the high beams on, a uniformed officer saw a gray BMW legally parked with its engine and headlights off. Three people were inside, two of whom were reclining in the front seats wearing hooded sweatshirts, and smoke was coming out of the slightly-cracked car windows. The officer made a U-turn, pulled up 15 to 20 feet behind the BMW, and parked, turning his spotlight on, but not his emergency lights. He got out and began to approach the car; his weapon was not drawn. As he walked over, the rear-seat passenger jumped out and closed the door behind her, moving very quickly. Concerned for his safety, the officer asked her what she was doing, and she said, "I live here." In a moderate, calm, voice, the deputy asked her to stay outside the car and on the sidewalk where he could see her, and she complied. At about the time the officer made contact with the passenger, he was close enough to the car to smell marijuana for the first time. He testified that at that point, he did not consider any of the car's occupants free to leave. The deputy approached the car, illuminated its interior with a flashlight and on the rear passenger floorboard, he saw three large clear plastic bags containing a green leafy substance. He also saw an unlit custom-rolled dark brown and green cigarette in the center console, containing a burnt green leafy substance. The driver/Def. said he was on probation. The deputy told Def. to stay in the car. A records check confirmed Def. was on probation with a search condition, and the deputy placed Def. in the back of his patrol car and (with assistance from other officers) searched the car. The three bags the deputy had seen on the floorboard contained 696.3 grams of marijuana. In addition, officers found an unlabeled prescription vial containing 76 hydrocodone pills, and when Def. was arrested, officer found $1,904 on his person.

3. HELD: Conviction affirmed. The Def. was not detained until the officer ordered him to stay in the car, which was after the deputy smelled marijuana and saw three large bags of the substance on the rear floorboard, at which point he had reasonable suspicion criminal activity was afoot. The officer did not block the vehicle's only means of departure (which would have been a detention), and he activated spotlight, but not emergency lights (use of red and blues would have made it a detention). And while the passenger who exited the car was detained when the deputy ordered her to remain on the sidewalk, there was no evidence that Def. observed that interaction, so it did not impact whether a reasonable person in the *Def.'s* position would have felt free to leave.

*The California Supreme Court has granted review to revolve a split of authority (see *People v. Kidd* (2019) 36 Cal.App.5th 12). The questioned presented is: "Was defendant unlawfully detained when the arresting officer used his spotlight to illuminate defendant's parked car and then directed a passenger who exited the car to remain outside and stay on the sidewalk near the car?"

FOURTH AMENDMENT: REASONABLE SUSPICION FOR VEHICLE STOP

1. *Kansas v. Glover* (2020) 140 S.Ct. 1183: If an officer runs a license plate and learns that the registered owner's driver's license was suspended or revoked, may the officer stop the vehicle to confirm that the driver was the registered owner and, therefore, citable?

> **RULE: If the registered owner's license of a vehicle has been revoked or suspended, a vehicle stop is reasonable unless the officer has information (e.g., wrong sex or wrong race) negating the inference that the owner is the driver.**

2. FACTS: A sheriff's deputy ran the plate on a pickup truck and was informed that the license of the registered owner had been revoked. Although the deputy saw nothing to indicate the driver was impaired or had committed a traffic infraction, he stopped the truck to confirm his suspicion that the driver—Glover—was the registered owner. After he received confirmation, he cited Glover for driving on a revoked license. The Supreme Court of Kansas ruled that the deputy lacked grounds to stop the truck because many people who drive vehicles are not the registered owner, and it was unreasonable for the deputy to assume ("only on a hunch") that the driver of Glover's truck was Glover. Prosecutors appealed the ruling to the U.S. Supreme Court.

3. HELD: Conviction affirmed. An officer may rely on his or her common sense to form a reasonable suspicion that a person is engaged in specific criminal activity. This is a highly fact-specific determination. The deputy was informed that the registered owner's license had been revoked and reasonably concluded that a specific individual was potentially engaged in specific criminal activity. It was immaterial that there existed a possibility that the officer was mistaken. The court recognized a fact that patrol officers know to be true: drivers with revoked or suspended licenses routinely continue to drive and pose safety risks to the public.

FOURTH AMENDMENT: REASONABLE SUSPICION FOR VEHICLE STOP

---

1. *People v. Mendoza* (2020) 44 Cal.App.5th 1044: Does a driver's refusal to make eye contact while driving through a drug trafficking corridor in a truck that recently left Mexico, coupled with evasive but legal driving and nervousness, establish reasonable suspicion?

> **RULE: Reasonable suspicion for an investigative stop or detention requires specific or articulable facts that would cause an officer to suspect that (1) some activity relating to crime has taken place or is occurring or about to occur, and (2) the person to be stopped or detained is involved in that activity.**

2. FACTS: A U.S. Border Patrol agent on roving highway patrol in an unmarked car stopped Def.'s vehicle. A subsequent consent search revealed 7 kilograms of cocaine. The agent justified the stop based on: 1) the area's reputation as a drug smuggling corridor; 2) the fact that Def.'s vehicle had crossed the U.S.-Mexico border less than a week prior; 3) Def.'s evasive driving, which included reducing her speed from 70 to 50 miles per hour, changing lanes to get behind the agent, and refusing to pass him for three miles after he reduced his own speed; and 4) Def.'s nervous physical demeanor, including her rigid posture, unnaturally tight grip on the steering wheel, and avoidance of eye contact with the agent. At trial, Def. moved to suppress the cocaine, arguing the agent did not have reasonable suspicion for a car stop. The trial court denied the motion, and Def. was convicted of transporting cocaine.

3. HELD: Reversed. The agent lacked reasonable suspicion for the stop. The first two factors relied on by the agent (location of stop and recent border crossing) apply to thousands of law-abiding motorists. Further, the agent's method of approach, and the fact that he was in an unmarked car, made it unreasonable for him to assume that Def. recognized him as law enforcement. Consequently, Def.'s evasive driving and nervous conduct could be innocently explained.

- Although officers may draw on their experience and training to make inferences from all of the information available to them that might well elude an untrained person, their suspicion must be objectively reasonable.

- An investigative stop or detention based on curiosity or a hunch is unlawful even though the officer is acting in good faith.

- To infer guilt, rather than general fear or caution from a suspect's reaction to being followed, there must be some indication that the suspect is aware that they are being observed by law enforcement.

FOURTH AMENDMENT: VEHICLE SEARCH – MARIJUANA, PROBABLE CAUSE, AND THE AUTOMOBILE EXCEPTION

1. *People v. Shumake* (2019) 45 Cal.App.5th Supp. 1: May officers search a vehicle upon finding cannabis flower in a closed container in the center console of a vehicle?

> **RULE: (1) Automobile exception permitting warrantless search applies when there is probable cause to believe evidence of a crime or contraband may be found; (2) Veh. Code, § 2322 prohibits possession of loose cannabis flowers "not in a container" while driving a motor vehicle.**

2. FACTS: An officer conducted a traffic stop; Def. was driver. Officer noticed a strong smell of marijuana, both fresh and burnt, coming from his car. The officer asked Def. if he had marijuana, and he stated that he had "some bud" in the center console. The officer searched the car and discovered 1.14 grams of "dried flower" marijuana in a closed tube in the center console. Upon further search, the officer discovered a loaded pistol under the driver's seat.

3. HELD: Reversed. Vehicle Code, § 23222 prohibits the possession of "loose cannabis flower not in a container" while driving a motor vehicle. Because Def. possessed cannabis flower in a closed container, the possession was lawful and could not be relied upon to justify the search. Absent the discovery of the cannabis, there was no probable cause to search the vehicle under the automobile exception, and the firearm would not have been inevitably discovered.

FOURTH AMENDMENT: VEHICLE SEARCH – MARIJUANA, PROBABLE CAUSE, AND THE AUTOMOBILE EXCEPTION

---

1. *People v. McGee* (2020) 53 Cal.App.5th 796: Did officers have probable cause to search the vehicle after observing, in plain view, an open container of marijuana?

> **RULE: The presence of an unsealed bag of marijuana plainly visible on a passenger's person constitutes probable cause to search the vehicle, including containers.**

2. FACTS: Officers initiated a traffic stop of the car Def. was driving for expired registration. After Def. pulled over, one officer approached the driver's side of the car and encountered Def., while his partner approached the passenger's side and encountered a female passenger. As they approached the car, both officers noted the scent of unburned marijuana. When asked about the scent, Def. denied having any marijuana in the car; however, the officer speaking with the female passenger saw an unsealed bag of marijuana in her cleavage. The officers searched the vehicle. On the passenger floorboard was a zipped purse, and inside was a loaded handgun. After *Miranda* warnings, Def. (a felon) admitted the gun was his and that he had placed it in the passenger's purse when he saw the officers behind his car.

3. HELD: Conviction affirmed. The search of the vehicle, including the passenger's purse, was justified pursuant to the automobile exception. While the mere presence of a lawful amount of marijuana is not sufficient to establish probable cause to search under the automobile exception, and there must be some additional evidence of illegality, here there was sufficient additional evidence because the officer observed an open container on the passenger's person (and possession of an unsealed or open container of marijuana in a vehicle is still illegal, no matter the amount). The presence of this contraband provided probable cause to believe the passenger possessed other open containers, and therefore the officers had probable cause to search the passenger and the vehicle for further evidence of contraband.

FOURTH AMENDMENT: VEHICLE SEARCH – MARIJUANA, THE AUTOMOBILE EXCEPTION, AND VEHICLE INVENTORY

----

1. *People v. Lee* (2019) 40 Cal.App.5th 853: Does the seizure of a small amount of marijuana from Def.'s person constitute probable cause to search a vehicle? When may law enforcement impound a vehicle when a driver's license is suspended?

> **RULE: The warrantless search of a vehicle is allowed: (1) under the automobile exception when there is probable cause to believe evidence of a crime or contraband may be found; or (2) during a vehicle inventory properly conducted in the course of impounding an automobile. A vehicle may be impounded only if it serves a community caretaking function.**

2. FACTS: When Def. failed to produce a license after a traffic stop and exiting the vehicle, officers conducted a pat-down search and found a small amount of marijuana and cash in Def.'s pocket. When the officer began to handcuff him, Def. tensed up and leaned back in the car to tell something to his passenger. The officers learned that Def. was driving on a suspended license. They handcuffed Def., detained the passenger, and proceeded to search Def.'s car, telling Def. they were going to impound the vehicle due to his suspended license. During the search, officers found cocaine, a gun, and indicia of drug sales. Def. was charged with drug-and-weapon-related offenses and moved to suppress the evidence. The prosecution argued that the search was justified as an automobile search and a vehicle inventory prior to its impound.

3. HELD: Reversed. The officers lacked probable cause under the automobile exception. Finding a small (legal) amount of marijuana and money on Def. did not provide a reasonable basis to believe contraband would be found in the car. There was no evidence that would cause a reasonable person to believe the Def. had more marijuana than the legal amount he possessed (e.g. no odor, open container, or signs of illegal sales activity).

The decision to impound the vehicle was not justified because no community caretaking function was served by impounding the car. The car was parked in or next to an apartment complex. It was not blocking a roadway, the sidewalk, or a driveway. And the trial court reasonably found the officer's primary motive was to investigate, rather than inventory, the car.

- A motive to impound the vehicle was belied by how the search was conducted and the officer's repeated questions to Def. about whether there was anything illegal inside the vehicle. The officer who performed the search did not complete a required San Diego Police Department form (ARJIS-11) for towing and impound. And he did not assist the officer who ultimately completed the vehicle inventory (after discovery of the contraband).

- Although the Vehicle Code authorizes law enforcement to impound a car when a person is found to be driving on a suspended license, "the fact that an inventory search is authorized is not determinative of the search's constitutionality."

FOURTH AMENDMENT: PROBATION SEARCH CONDITION

1. *People v. Vargas* (2020) 9 Cal.5th 793: Did the defendant freely, knowingly, and voluntarily consent to waive his Fourth Amendment rights as a condition of probation, even where he did not sign the minute order?

> **RULE: A court can look to the totality of the record to determine whether a defendant knowingly and voluntarily consented to a probation search condition.**

2. FACTS: While investigating a string of gang-related robberies, including one in which the victim was murdered, detectives learned Def. was involved. Before traveling to his house, where they intended to conduct a search, the detective reviewed a court order stating Def. was on probation and subject to a search condition. During the search, the detectives recovered two guns; one had been used in the homicide. Def. moved to suppress the firearms, arguing the search condition was invalid because there was no direct evidence that he knowingly, freely, and voluntarily consented to warrantless searches when agreed to be placed on probation.

3. HELD: Conviction affirmed. The trial court correctly found that Def. freely, voluntarily, and knowingly waived his Fourth Amendment rights as a condition of probation. The clerk's minutes reflected that Def. had been advised of his plea's consequences, including an order to submit to searches at any time with or without a warrant or probable cause. And when the detectives entered Def.'s home, he told them he was subject to a search condition, indicating that he was aware the search condition had been imposed as a condition of his probation.

FOURTH AMENDMENT: PROBATION SEARCH CONDITION

1. *People v. Rosas* (2020) 50 Cal.App.5th 17: Was a search premised on erroneous information from dispatch that the suspect was on probation, still valid because it was subject to the good faith exception?

> **RULE: An officer cannot assume, without additional facts, that a probationer's conditions include a search term.**

2. FACTS: Around 2:00 a.m., officers were dispatched in response to a report of a suspicious person in a passenger truck in front of the residence. When the officers arrived, they saw Def. sitting in the driver's seat of a parked truck with the driver's side door open. An officer approached him and asked where he lived; he said he lived two houses away and had come outside to smoke a cigarette and listen to music. During this exchange, the second officer walked over to the front passenger window of the truck, shone a flashlight through the slightly-open window and into the front passenger compartment, and moved the flashlight around to illuminate the compartment. In response to further questioning, Def. said the truck belonged to his father with whom he lived, and he gave the officer the registration for the car, which reflected the car was registered to Def.'s father at the address defendant had provided. The officer asked Def. if he was on probation or parole, and Def. said no. The officer called police dispatch to run a records check, and dispatch verified Def.'s identity and address (consistent with the information Def. had provided) and stated that Def. was on probation and was a § 290 registrant. Dispatch said nothing regarding whether Def. was subject to a search term. The officers assumed, in part due to their inexperience, that Def.'s probation included a search term, and they conducted a probation search of Def. and the truck. They found a small bag of methamphetamine in his pocket, and a glass pipe on the passenger seat of the truck, but under a blanket and not in plain view. In fact, Def. was not on probation, and the information conveyed by dispatch was erroneous.

3. HELD: Reversed. The searches of Def. and the truck were invalid because they were premised upon erroneous information that he was on probation. Even assuming the officers reasonably relied on the information provided by dispatch that Def. was on probation, they had no reason to believe he was subject to search terms as a condition of that probation. The good faith exception did not apply.

FOURTH AMENDMENT: RESIDENTIAL SEARCH – EMERGENCY AID AND EXIGENCY

---

1. *People v. Rubio* (2019) 43 Cal.App.5th 342: Are the facts that shots were fired in driveway of a home in a high-crime neighborhood and the resident of the garage apartment barricaded the door sufficient for a warrantless search of the home when the occupant refuses entry?

> <u>RULE:</u> **The emergency aid exception to the warrant requirement allows police to enter a home without a warrant when they have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury.**

2. FACTS: Officers responded to ShotSpotter reports identifying two bursts of gunshots fired in a driveway in a high-crime, residential area. Witnesses said they had seen flashes coming from the other side of a boat that was parked in the driveway. Officers found a shell casing on the ground at the top of the driveway, near the garage. They encountered a verbally aggressive person whom they recognized and knew he did not live at the residence. The aggressive person became combative and officers detained him. Police found two more spent casings behind an open gate. Police knocked on a side-door to the garage, announced their presence, and heard the sound of someone barricading the door. Officers went to the residence and spoke to Def.'s father who said he had been awakened by gunfire but, after investigating, was not aware of anyone having been shot. The father said Def. lived in the garage. Officers entered the main residence with the father's consent and were about to enter the garage through an interior door when Def. emerged from the garage with his hands in his pockets, yelling at police to shoot him. As Def. left the garage, the door behind him shut and locked. Def. threw keys into the sink. After placing Def. in a police car, the officers broke down the door to the garage and found firearms and an explosive device. They cleared the residence, obtained a warrant, and thereafter recovered more firearms, methamphetamines, and surveillance equipment that showed Def. was responsible for the earlier bursts of gunfire.

In its initial opinion, the Court of Appeal found the warrantless entry into the garage was reasonable under the community caretaker exception. However, after the California Supreme Court issued its opinion in *People v. Ovieda* (2019) 7 Cal.5th 1034 (holding there is no community caretaking exception to the warrant requirement), the Court of Appeal granted rehearing on its own motion.

3. HELD: Reversed. Under *Ovieda*, the officers did not have specific and articulable facts demonstrating that a warrantless entry into the home was necessary to render emergency aid or respond to an exigent circumstance.

- No facts suggested that the shots fired outside Def.'s garage apartment required breaking down the door to rescue someone inside (e.g. no bullet holes, blood trail, reports of a scuffle or any indication someone had been attacked or threatened).

- No facts suggested there was anyone inside the garage apartment who was in danger or distress.

- The antagonism of Def. and person who had earlier emerged from the house supported their detentions, but not a search of the house.

FIFTH AMENDMENT: QUESTIONS TO CLARIFY A *MIRANDA* WAIVER

---

1. ***People v. Flores*** **(2020) 9 Cal.5th 371:** When may interrogating officers ask clarifying questions when seeking a *Miranda* waiver?

> **<u>RULE</u>: If a suspect responds to a *Miranda* warning with an unambiguous reply, clarifying questions are not permitted. If his or her response is ambiguous, it may be clarified. Officers who seek express waivers should not create ambiguity with the form of their questions.**

2. FACTS: Over a 35-hour crime spree, Def., an El Monte Trece gang member, murdered three teenagers in three separate incidents. He was arrested and interviewed about the three murders. A day later, he was interviewed by a different detective about a fourth, separate murder, "the Jaimes killing." After the detective told Def. he was investigating Jaimes's murder and gave him *Miranda* admonishments, the detective said: "Basically what I'd like to do is talk about the case that we investigated that we got called out on back on November 17th, 2000. Uh I'll tell you how we got called out on it in a minute but uh do you want to take a few minutes to talk a little bit about that?" Def. responded either, "No," or, "Nah." The detective sought to clarify, saying he wanted to explain their investigation, and asked Def. if he wanted to answer identifying questions "and talk to me about that stuff?" Def. said, "Oh yeah," and admitted he had killed Jaimes to defend his mother (whom Jaimes had tried to hire as a prostitute) and he "enjoyed doing it...."

After he was convicted of the three murders, during the penalty phase the prosecution presented evidence in aggravation, including Def.'s admission that he had murdered Jaimes.

3. HELD: Conviction and death penalty affirmed. A "no" response to a simple question whether a suspect wishes to speak with law enforcement generally is an unambiguous invocation of the right to silence. But here, considered in context, neither the question, nor the answer was this simple. Several facts, taken together, demonstrate that the officer acted reasonably in clarifying Def.'s intent: (1) the clarity of a suspect's answer may depend in part on the clarity of the officer's question; here the question was imprecise. (2) The background suggested Def. might want to know about the investigation, because the detective had said they had spoken to Def.'s mother. (3) Def.'s demeanor on the videotape (smiling and laughing when he said, "Nah") would have caused a reasonable officer to wonder whether he had misunderstood the officer's question. The detective reasonably asked a neutral follow-up question to clarify Def.'s intent.

FIFTH AMENDMENT: INVOCATION OF RIGHT TO COUNSEL

---

1. *People v. Henderson* (2020) 9 Cal.5th 1013: Did the defendant invoke his right to counsel with sufficient clarity that a reasonable officer should have understood it as a request to speak with an attorney?

> **RULE: The rule that questioning must immediately cease whenever a defendant requests to speak to an attorney is a firm, bright-line rule.**

2. FACTS: After he was arrested for murder, Def. was interviewed by detectives. He was read his *Miranda* rights and waived them both orally and in writing. After Def. was reluctant to admit he had been near the crime scene (a trailer park), the detective asked, "Did you go into the trailer park, that night?" and Def. answered, "...want, uh, want to, speak to an attorney first, because I, I take responsibility for me, but there's other people...." He was then interrupted by the detective, and Def. twice said, "I need to find out...," but again was interrupted by the detective both times before he could finish his sentence. Ultimately, the detectives convinced Def. to just talk about what he took responsibility for, and he confessed to the murder. The trial court denied the motion to suppress, finding his request for an attorney was ambiguous because it was not clear whether he wanted to speak to an attorney before disclosing additional incriminating information about himself, or if he wanted to speak to an attorney about incriminating others. He was convicted and sentenced to death.

3. HELD: Reversed. Def. unambiguously invoked his right to counsel. He expressed his desire for counsel with sufficient clarity "that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney." Def.'s qualification of his request for an attorney (to inquire about incriminating others, not himself) was not a limitation on his request. Nor did the qualification create an ambiguity as there is nothing inconsistent or ambiguous about wanting to speak to an attorney before taking responsibility, and defendant made clear that he wanted to speak to an attorney "first." Further, his reluctance to discuss the murder and his involvement was a factor indicating uncertainty about his waiver, and thus gave additional weight to his request to speak with an attorney. Despite his invocation, questioning did not cease, in violation of his constitutional rights, and the admission of his statement at trial was prejudicial.

FIFTH AMENDMENT: POST-WAIVER INVOCATION OF RIGHT TO COUNSEL

1. ***People v. Frederickson*** **(2020) 8 Cal.5th 963:** After validly waiving his *Miranda* rights and agreeing to be interviewed, was defendant's question about when he would be able to call his attorney, an invocation of his right to counsel?

> **RULE: After a knowing and intelligent *Miranda* waiver, a suspect's invocation of his right to counsel must be unequivocal and unambiguous.**

2. FACTS: Def. walked into a store intending to commit a robbery. When the clerk began counting the cash before handing it over, Def. shot and killed him. Investigators interviewed Def. two days later. They advised Def. of his rights, and after each right, Def. confirmed he understood. After a brief discussion about the murder, the following exchange took place:

> **Def.:** Hey, when am I going to get a chance to call my lawyer. It's getting late, and he's probably going to go to bed pretty soon.
> **Investigator:** Your lawyer? Well you can call your lawyer after we're done in our facility.
> **Def.:** Oh, okay. So what do we got to do in our facility here?
> **Investigator:** Well, we're conducting this interview.
> **Def.:** Can we finish the interview tomorrow?
> **Investigator:** Um, we can continue talking tomorrow; however, we're not going to continue the interview.

The investigator then continued asking Def. about the crime (Statement #1). Def. was charged, arraigned, and the public defender was appointed to represent him. Days later, Def. sent the investigators a letter requesting to meet. The investigators met with him at the jail, advised him he was represented by the public defender, and that his attorney had invoked his (Def.'s) right to remain silent on Def.'s behalf, and Def. had a right to have his attorney present during their meeting. The investigators then asked Def. if he would like to waive those rights, and he replied, "I waive that, and I have since fired him." The investigator advised Def. of his *Miranda* rights again, and he signed a written waiver. Investigators then interviewed Def. again (Statement #2).

3. HELD: Conviction affirmed. Def.'s initial waiver was voluntary, knowing, and intelligent. Investigators explained each *Miranda* right, after which Def. said he understood. Following a complete admonition, Def. began to discuss his role in the murder, indicating that he intended to waive his rights. And, Def. did not unambiguously and unequivocally invoke his right to counsel when he asked when he would be able to call his lawyer. A reasonable officer in that position would have concluded that Def.'s remark expressed concern over the length of the interview and a desire to contact counsel when the interview was over. Because Statement #1 was lawfully obtained, Statement #2 was not tainted, and Def. was readvised, and signed a waiver.

FIFTH AMENDMENT: VALIDITY OF JUVENILE'S *MIRANDA* WAIVER AND ADMISSIONS

---

1. *In re Anthony L.* (2019) 43 Cal.App.5th 438: Does the statutory violation of interrogating a juvenile suspect before the juvenile consults with an attorney render his or her statements involuntary or subject to the exclusionary rule?

> ***RULE: "Prior to a custodial interrogation, and before the waiver of any *Miranda* rights, a youth 17 years of age or younger shall consult with legal counsel in person, by telephone, or by video conference. The consultation may not be waived." (Welf. & Inst. Code, § 625.6(a).) A violation of this statute is a relevant circumstance in evaluating, under the totality of circumstances, the reasonableness of a *Miranda* waiver and the voluntariness of a statement.**

2. FACTS: Fifteen-year-old Def. and a group of juveniles attacked a 61-year old man who had just pulled into his driveway, by banging on his vehicle to draw him out of the car before the group assault. The incident was caught on nearby security cameras. The next day, two officers interviewed Def. in his bedroom with his mother present. In violation of Welf. & Inst. Code, § 625.6(a), the officers did not arrange for the minor to consult with counsel prior to the interview believing that, based on the mother's consent, appellant was not in custody.

Def. moved to suppress his incriminating statements based on the officers' violation of the California statute requiring a juvenile (formerly defined as 15 years or younger) to consult with an attorney before being interrogated. He also claimed his *Miranda* waiver was invalid and his statements were involuntary.

3. HELD: Juvenile wardship affirmed. The violation of Welf. & Inst. Code, § 625.6(a), does not require the exclusion of a minor's confession absent a federal constitutional violation. But, a statutory violation is a relevant circumstance in evaluating, under the totality of circumstances, the reasonableness of the *Miranda* waiver and the voluntariness of the statement. Here, the mother's consent did not constitute Def.'s consent to the interrogation. Nonetheless, in light of conflicting evidence, the Court of Appeal assumed that Def. was in custody for the interrogation and found no federal constitutional violation that required exclusion of the statements.

(2) *Miranda* waiver was knowing and intelligent:
- Advised of rights and acknowledged he understood each one without hesitation
- Provided and reviewed a "Juvenile Know Your Rights" form before interrogation

(3) Confession was voluntary
- No evidence Def. was induced to give a false confession or that his will was overborne through aggressive and suggestive tactics
  - Given *Miranda* admonishments
  - Questioned at home with his mother present
  - Refused to provide requested information (about other participants in assault), showing he was not coerced

***NOTE:** Effective January 1, 2021, Welf. & Inst. Code, § 625.6(a) applies to juveniles "17 years of age or younger," and a trial court "shall consider any willful violation" in determining a law enforcement officer's credibility in a suppression hearing.

FIFTH AMENDMENT: EFFECT OF CONSULAR NOTICE ON *MIRANDA* WAIVER

1. *People v. Leon* (2020) 8 Cal.5th 831: Does the lack of consular notification render a *Miranda* waiver involuntary?

> **<u>RULE:</u> Law enforcement officials must inform any known or suspected foreign national of their right to notify and communicate with his or her consulate when the foreign national has been arrested, booked, or detained for more than two hours. (Pen. Code, § 834c.)**

2. FACTS: While Def.'s estranged girlfriend was studying abroad at Oxford, he fatally stabbed her 13-year old brother and grandmother. He also tried to kill her grandfather by hitting him over the head with a hatchet. In the first minutes of his interview with police, Def. told officers that he was "an illegal Mexican" and did not "have papers here," thus informing officers that he was a foreign national.

Def. waived his *Miranda* rights and denied any involvement. In a second interview, he reaffirmed his *Miranda* waiver and confessed. He later claimed he acted with an actual but unreasonable belief in the need for self-defense ("imperfect self-defense"). The officers never advised Def. of his right to have the Mexican consulate notified of his detention. The trial court found that Def. was properly advised of his *Miranda* rights and made a knowing and intelligent waiver, and the failure to advise him of his consular rights was not prejudicial.

3. HELD: Conviction and death penalty affirmed. Def. understood his *Miranda* rights and validly waived them. His confession was voluntary. The lack of consular notification was not prejudicial.

- A claim premised on a violation of the right to consular notification may be raised as part of a broader challenge to the voluntariness of a confession.
- The *Miranda* waiver was knowing and intelligent and the confession was voluntary (advised in Spanish, videotape showing understanding of waiver, no confusion, etc.).
    - Claim that Def. lacked the intelligence to understand the advisement without consular advice was belied by his immediate, attentive, and active participation. Def. "was not so inattentive or distracted during the questioning that he could not formulate a false account of what happened."
- "Even assuming defendant might have received a more compelling advisement from a consular representative, the suggestion that he would have deferred to this advice is entirely speculative."
- Declined to address potential penalties for noncompliance under state law requiring consular notice because Def. did not raise the state law violation issue in this case.

Practice Pointer: Make the consular advisement part of the *Miranda* advisements to all suspects (e.g., "If you are a foreign national, you have the right to have your consulate notified.").