

New Laws for 2023

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DISCLAIMERS

- Does not cover ALL new laws.
- These are my summaries and opinions about these laws and are not the official position of the OCDA.
- Unless stated otherwise, these laws became effective on Jan 1, 2023

Drug Paraphernalia

AB 1598

AB 1598

Drug Paraphernalia

- Previously - “drug paraphernalia” included “Testing equipment designed for use or marketed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances.” (HS 11014.5(a)(4))
- Now - Excludes “any testing equipment designed, marketed , or intended to be used to test a substance for the presence of fentanyl, ketamine, gamma hydroxybutyric acid, or any analog of fentanyl.” (HS 11014.5(a)(4) & (d))
- Purpose – combat the opioid epidemic by encouraging testing of drugs for fentanyl

Revenge Porn

SB 1081

SB 1081

Revenge Porn

- Amends PC 647(j)(4) - Expands crime of intentionally distributing an intimate image of an identifiable person
- Adds defn. of “distribute” → including “exhibiting in public or giving possession.”
 - Shasta County case – perpetrator put victims naked body on his car and drove it around town.
 - Purpose – ordinary definition of “distribute” would suggest it requires transfer to another person and just displaying would not be sufficient.
- Adds defn. of “identifiable” → “capable of identification, or capable of being recognized, meaning that someone, including the victim, could identify or recognize the victim. It does not require the victim’s identity to actually be established.”
- Creates exception if “the distribution is related to a matter of public concern or public interest. Distribution is not a matter of public concern or public interest solely because the depicted individual is a public figure.” (PC 647(j)(4)(D)(iv))

Street Racing/Exhibitions of Speed/ Side Shows

AB 2000

SB 1472

AB 2000

- Previously, all crimes in VC 23109 (speed contests and exhibitions of speed) were only violations if they occurred on a “highway”
 - “Highway” defined as “a way or place of whatever nature, publically maintained and open to the use of the public for purposes of vehicular travel. Highway includes street.” (VC 360)
- AB 2000 expands all crimes in VC 23109 to “off street parking facilities.”
 - “Offstreet parking facility” is defined as “any offstreet facility held open for use by the public for parking vehicles and includes any publically owned facilities for off street parking, and privately owned facilities for offstreet parking where no fee is charged for the privilege to park and which are held open for the common public use of retail customers.” (VC 23109(l) & 12500(c))
- Purpose – to combat street racing and “sideshow.” Bill’s author pointed to sideshow happening in parking lot in Anaheim where the vehicle drifted into the audience killing a 23 year old.

SB 1472

- For the crime of Vehicular Manslaughter with Gross Negligence (PC 192(c)(1)), SB 1472 expands the definition of “gross negligence” to include:
 - Participating in a sideshow under VC 23109(i)(2)(A)
 - An exhibition of speed under (VC 23109(a))
 - Speeding over 100 mph
- Note drafting error – “An exhibition of speed” is not VC 23109(a) – should have been VC 23109(c).
 - When there is a conflict between a code section and its description, the code section would prevail unless it is clear from the context that the descriptive language is intended to narrow the application of the code section. (PC 7.5)
 - Unclear how courts will interpret this
- Purpose – to combat street racing and “sideshows.” Author cites increasing traffic fatalities as a result of these behaviors.

Hate Crimes

AB 2282

AB 2282

Hate Crimes

- Amends PC 11411 [Hate Crime conduct and sentencing] in a variety of ways
- Expands the prohibited locations for all conduct in the section [hate crimes] to include all private property, schools, college campuses, public places, places of worship, and places of employment.
- Prohibition on hanging a noose
 - Penalty – elevated from misdemeanor to wobbler
 - Previously – misdemeanor only
 - Now – Wobbler
 - 1st conviction – 16/2/3 per 1170(h) (and/or \$10,000) or 1 yr/\$5000
 - 2nd + conviction – 16/2/3 (per 1170(h)) (and/or \$15,000) or 1 yr/\$10,000)
- Placing a sign, mark or symbol, including a Nazi swastika, for purpose of terrorizing another
 - # of times
 - Previously – required two or more occasions
 - Now – single occasion is enough
 - Penalty
 - Previously – all convictions were 16/2/3 per 1170(h) (and/or \$10,000) or 1 yr/\$5000
 - Now – 2nd + conviction – 16/2/3 (per 1170(h)) (and/or \$15,000) or 1 yr/\$10,000)
- Burning or desecrating a cross
 - Penalty
 - Previously – all convictions were 16/2/3 per 1170(h) (and/or \$10,000) or 1 yr/\$5000
 - Now – 2nd + conviction – 16/2/3 (per 1170(h)) (and/or \$15,000) or 1 yr/\$10,000)
- Section also now specifies that the law is not intended to criminalize the ancient swastika symbol of peace that is associated with Hinduism, Buddhism, and Jainism

Theft/Fraud

AB 1899

AB 2356

AB 1613

AB 2294

AB 1899

Fraudulent Impersonation of Specified Persons Through Internet or Electronic Means

- The law prohibits knowingly and without consent credibly impersonating another actual person through a website or by other electronic means for purposes of ... defrauding another person. (PC 528.5(a)&(d))
- Prior law stated that credibly impersonating the following type of people for the purpose of defrauding another is a crime, but does not explicitly prohibit such impersonation through the internet or other electronic means:
 - police officer (PC 538d)
 - fire department of State Fire Marshall member or officer (PC 538e)
 - employee of public utility or district (PC 538f)
 - public officer or employee (PC 538g)
 - search and rescue team member or officer (PC 538h)
- **New law extends these offenses to include impersonation through or on internet website or through other electronic means for purpose of defrauding another.**

AB 1899

Fraudulent Impersonation of Specified Persons Through Internet or Electronic Means

- Purpose of New Law (from bill's author)
 - Existing law does not reflect the current methods of fraudulent and criminal impersonation, which have increased in frequency and sophistication, especially during the COVID-19 pandemic
 - Common sense measure to update the state's laws regarding impersonation via electronic means, and tackle a growing trend in fraudulent activity

AB 2356

Aggregation of Value from Related Thefts

- Added Penal Code § 487(e) - if the value of property taken exceeds \$950 over the course of distinct but related acts, the value of the property may be aggregated to charge a count of grand theft if the acts are motivated by one intention, one general impulse, and one plan.
- Codifies existing law from *People v. Bailey* (1961) 55 Cal.2d 514
 - D made one fraudulent statement about household income that allowed her to receive multiple fraudulent welfare payment, each below the grand theft threshold.
 - Cal. Supreme Court said appropriate to aggregate.

AB 2356

Aggregation of Value from Related Thefts

- Prop 47 created confusion about whether *Bailey* rule still applied to shoplifting cases
 - Prop 47 created new crime of shoplifting (PC 459.5)
 - Defn – entering a commercial establishment with intent to commit larceny while that establishment is open during regular business hours, where the value of the property that is taken... does not exceed \$950.
 - Prop 47 also added PC 490.2
 - defined “petty theft” as obtaining any property by theft where the value of the [property] taken did not exceed \$950.
 - stated this definition applies notwithstanding “any other provision of law.”
 - Question was whether this “notwithstanding any other provision of law” excluded the *Bailey* rule from shoplifting cases
- Courts have disagreed with whether thefts involving multiple victims can be aggregated, even when single plan and intent.
 - *Ppl v. Columbia Research Grp* (1980) 103 Cal.App.3d Supp. 33 [allowed aggregation];
 - *People v. Garcia* (1990) 224 Cal.App.3d 297 [separate charges proper].
- This law passed to:
 - Codify *Bailey*
 - Clarify that Prop 47 did not change the *Bailey* Rule – can aggregate in shoplifting when appropriate
 - Specify that can aggregate loss to separate victims when part of one plan and intent

AB 1613

Expands Some Theft Related Jurisdiction for AG

- History

- 1/1/2019 – AB 1065 created
 - PC 490.4 - The crime of organized retail theft &
 - PC 786.5 - Expanded jurisdiction for theft or receipt of stolen merchandise or organized retail theft to:
 - County theft occurred
 - County where merchandise was recovered
 - County where any act instigating, procuring, promoting, or aiding the crime occurred
 - If multiple offenses of theft, 496, or org. retail theft occurred in multiple jurisdictions, then any of those jurisdictions are proper for all offenses IF
 - All involve the same defendant(s) and same merchandise OR
 - All involve the same defendant(s) and the same scheme or substantially similar activity.
 - If one of the above, then jurisdiction extends to all associated offenses connected in their commission to underlying theft, 496, or org. retail theft offense.
- AB 1065 scheduled to sunset on July 1, 2021.

AB 1613

Expands Some Theft Related Jurisdiction for AG

- History

- 1/1/2021 – AB 331

- Extended PC 490.4 - The crime of organized retail theft

- Did not extend PC 786.5 Expanded Jurisdiction statute ~~–Expanded jurisdiction for theft or receipt of stolen merchandise or organized retail theft to:~~

- ~~County theft occurred~~

- ~~County where merchandise was recovered~~

- ~~County where any act instigating, procuring, promoting, or aiding the crime occurred~~

- ~~If multiple offenses of theft, 496, or org. retail theft occurred in multiple jurisdictions, then any of those jurisdictions are proper for all offenses IF~~

- ~~All involve the same defendant(s) and same merchandise OR~~

- ~~All involve the same defendant(s) and the same scheme or substantially similar activity.~~

- ~~If one of the above, then jurisdiction extends to all associated offenses connected in their commission to underlying theft, 496, or org. retail theft offense.~~

- AB 331 scheduled to sunset on July 1, 2026.

AB 1613

Expands Some Theft Related Jurisdiction for AG

- NEW LAW AB 1613
 - 1/1/2023 – AB 1613 revived PC 786.5... with one key change
 - PC 786.5 - Expanded jurisdiction **FOR ATTORNEY GENERALS** for theft or receipt of stolen merchandise or organized retail theft to:
 - County theft occurred
 - County where merchandise was recovered
 - County where any act instigating, procuring, promoting, or aiding the crime occurred
 - If multiple offenses of theft, 496, or org. retail theft occurred in multiple jurisdictions, then any of those jurisdictions are proper for all offenses IF
 - All involve the same defendant(s) and same merchandise OR
 - All involve the same defendant(s) and the same scheme or substantially similar activity.
 - If one of the above, then jurisdiction extends to all associated offenses connected in their commission to underlying theft, 496, or org. retail theft offense.
 - Excludes DAs or City Attorneys from using extended jurisdiction
 - DAs & City Attorneys can only charge if traditional jurisdiction under PC §§ 777, 781, 782

AB 2294

Nonrelease & Bench Warrants for Specified Retail Thefts

- When a person is arrested for a misd., that person shall be released unless a enumerated reason for nonrelease exists, in which case the officer either may release them or must indicate what enumerated reason was the basis for nonrelease. (PC 853.6(i))
- AB 2294 adds the following two new reasons for nonrelease:
 - The person has been cited, arrested, or convicted for misd. or felony theft from a store in the previous 6 months. (PC 853.6(i)(11))
 - There is probable cause to believe that the person arrested is guilty of committing organized retail theft. (PC 853.6(i)(12))
- Amended PC 978.5 to explicitly authorize a court to issue a bench warrant when a defendant fails to appear in court if the defendant:
 - has been cited or arrested for misd. or felony theft from a store and
 - failed to appear in court in connection with that charge/charges in the previous 6 months. (PC 978.5(a)(7))

New Laws Aimed at Mitigating Bias

SB 357

AB 2147

AB 256

AB 2799

SB 836

SB 357

Loitering with Intent to Commit Prostitution

- Repeals Penal Code section 653.22 [loitering with the intent to commit prostitution]
 - No longer a basis for detention or arrest
- Amends PC 653.23 [Supervising or otherwise aiding prostitution]:
 - Deletes any reference to PC 653.23
 - Deletes enumerated circumstantial evidence that would go to prove intent in PC 653.22
- Purpose – to eliminate a loitering offense that leads to harmful treatment of people for simply appearing to be sex workers.
- However, PC 647(b) [prostitution], PC 266h [pimping], and PC 266i [pandering] are still crimes
- Retroactive Remedies
 - Creates PC 653.29 - Process for defendants to petition for dismissal of prior PC 653.22 convictions
 - Amends PC 1203.47 – allows juveniles previously convicted of PC 647(b) to petition to seal records upon reaching age 18

AB 2147

Jaywalking

- Prohibits a peace officer from stopping a pedestrian for “jaywalking” unless a reasonably careful person would realize there is an immediate danger of collision with a moving vehicle or other device moving exclusively by human power.
- No longer a basis for detention... or citation?
 - “A peace officer... shall not **stop** a pedestrian....”
- Purpose – to prevent police from stopping pedestrians for jaywalking when it is not hazardous to do so. Cite previous racial disparities in enforcement and pretext stops.
- Amends the following statutes:
 - VC 21451, VC 21452, VC 21453, VC 21456, VC 21461.5, VC 21462, VC 21950, VC 21953, VC 21954, VC 21955, VC 21956, VC 21961, VC 21966

AB 256

Expansion of the Racial Justice Act

- The Racial Justice Act of 2020 (AB 2542 or “RJA”) prohibits the state from seeking or obtaining a criminal conviction, or imposing a sentence, on the basis of race, ethnicity or national origin. (PC 745.)
- Provided that a violation is established if defendant proves specified charging/sentencing based on race, ethnicity, or national origin by a preponderance.
- AB 256 makes a number of substantive changes and changes regarding retroactivity

AB 256

Expansion of the Racial Justice Act

- Previously, PC 745 applied prospectively to cases in which judgement was not entered before January 1, 2021.
- New changes regarding RJA retroactivity
 - Beginning 1/1/23 – applies to cases:
 - In which judgment is not yet final
 - Where a defendant who files a habeas petition alleging RJA violation (PC 1473(f)) has been sentenced to death, and
 - Where a defendant has filed a PC 1473.7 (immigration) motion regardless of when judgment or disposition became final.
 - Beginning 1/1/24 – will apply to cases where a defendant is currently serving an 1170(h)/state prison sentence, or is committed to DJJ, at the time a PC 1473(f) habeas petition alleging RJA violation is filed, regardless of when judgment or disposition became final.
 - Beginning 1/1/25 – will apply to all cases:
 - filed pursuant to PC 1473(f) or PC 1473.7 in which judgment became final for a felony conviction, or
 - for juvenile disposition that resulted in DJJ commitment, on or after 1/1/15.
 - Beginning 1/1/26 – will apply to all cases filed pursuant to PC 1473(f) or PC 1473.7 in which judgment was for a felony conviction, or for juvenile disposition that resulted in DJJ commitment, regardless of when the judgment or disposition became final.

AB 256

Expansion of the Racial Justice Act

- Other Substantive Changes

- Definitions:

- Redefines the phrases “more frequently sought or obtained” and “more frequently imposed in terms of what the totality of the evidence demonstrates.”
 - Adds a definition of “relevant factors”
 - Adds a definition of “similarly situated”

- Disqualification of judges – Adds that if motion is made in whole or part on conduct or statements by a judge, the judge must disqualify himself/herself from any further proceeding under RJA

- Timeliness – Adds that if RJA motion is made at trial, it must be made as soon as practicable upon defense learning of alleged violation. Timeliness can be waived in court’s discretion.

- Evidence – In PC 745 hearing, out of court statements that the court finds trustworthy and reliable, statistical evidence, and aggregated data are all admissible for the limited purpose of determining whether a violation occurred.

- Type of Discrimination – Defendant does not need to prove intentional discrimination

- Protective Orders – adds that a judge may subject disclosure of evidence to a defendant to a protective order instead of redaction. But if a statutory privilege or constitutional privacy right cannot be protected by protective order or redaction, the court is prohibited from ordering the release of the items.

- Modification of Judgement – adds that if court finds violation of PC 745(a)(3) [charged/convicted of more serious offense that similarly situated defendants of other races etc. who engaged in similar conduct], court can modify judgment to lesser included or related offense.

- Adds subdivision (k) – for PC 745 petitions filed in cases for which judgment was entered before 1/1/21, and that are based on PC 745(a)(1) or (a)(2), the petitioner is entitled to relief unless the state proves BRD that the violation did not contribute to the judgment.

- (a)(1) – judge, attorney, LEO, expert wit, or juror exhibited bias or animus toward D because of D’s protected class
 - (a)(2) – in court and during proceedings, the judge, attorney, LEO, expert wit, or juror (A) used racially discriminatory language about D’s protected group or (B) otherwise exhibited bias or animus toward D because of D’s protected group, whether purposeful or not

AB 2799

Admissibility of Creative Expression Evidence

- Adds new Evidence Code section 352.2
- In any criminal proceeding, where a party seeks to admit a form of “creative expression,” the court, while balancing the probative value against substantial danger of undue prejudice, must consider that:
 - The probative value of such expression for its literal truth or truthful narrative is minimal unless:
 - the expression is created at or near the time of the charged crime(s),
 - bears sufficient level of similarity to the charged crime(s), or
 - includes factual detail not otherwise publically available; and
 - Undue prejudice includes the possibility that
 - the trier of fact will treat the expression as evidence of the defendant’s propensity for violence or general criminal disposition and
 - the evidence will explicitly or implicitly inject racial bias into the proceedings.
- Generally referred to as a rap lyrics rule, but actually much broader
 - “Creative expression” is defined as the expression or application of creativity or imagination in the production of arrangement of forms, sounds, words, movements, or symbols, including but not limited to music, dance, performance art, visual art, poetry, literature, film, and other such objects or media.
- Requires the question of the admissibility of such evidence to be made in limine and outside the presence of the jury

SB 836

Immigration Status Disclosure in Court

- Reenacts EC 351.4, which sunset on 1/1/22
- Prohibits disclosure of a person's immigration status in open court unless a judge first determines in an in camera hearing that immigration status is admissible.
 - Excludes cases where a person's immigration status is necessary to prove an element or an affirmative defense
 - Does not limit discovery
 - Does not prohibit a person or his/her attorney from voluntarily revealing immigration status to the court
- Note:
 - Does not specify that it only applies to "illegal" immigration status. It appears to apply to both legal and illegal status.
 - Applies in any open court proceeding – not just trials.
 - Is not limited to defendants – also applies to any witness or victim.

Requirement to Confirm Vehicle
Registration Before Citation

SB 1359

Requirement to Confirm Vehicle Registration

- Amends Vehicle Code sections 5204 and 40225
- Requires an officer or parking enforcement to confirm with DMV that a vehicle doesn't have current registration before issuing a citation for failure to display current registration tabs.
- Prohibits issuance of a citation for failing to display current registration tabs either:
 - 1. when registration is current with DMV OR
 - 2. The person issuing the citation does not have immediate access to DMV records
- NOTE – this section does NOT prohibit a traffic stop for failure to display current tabs for or expired registration is the registration later turns out to be current.
- Purpose – concerned about stolen registration tabs and doesn't want to victimize theft victims

Effect of Unpaid Restitution or Restitution Fines

SB 1106

SB 1106

Effect of Unpaid Restitution or Restitution Fines

- Amends/creates numerous statutes to prohibit judges from denying motions/relief on the grounds that a defendant has unpaid victim restitution/ restitution fines
- Affected Statutes
 - Amends PC 17 – motion to reduce felony to misdemeanor
 - Amends PC 1203.4, PC 1203.4a, PC 1203.41, PC 1203.42 – petitions to expunge/dismiss a conviction
 - Creates PC 1210.6 – petitions for dismissal, expungement, or sealing under PC 1191 – 1210.5
 - Repeals 11177.2 to eliminate prohibition on parolee who owes victim restitution or restitution fines from being permitted to reside in another state unless bond for restitution amount is posted.

Changes to Diversion Programs

AB 200

SB 184

SB 1223

AB 200

Misdemeanor Diversion

- “Existing law prohibits [misdemeanor diversion] when, [in addition to PC 290 and PV 646.9 offenses], the current charged offense is willfully inflicting corporal injury upon a spouse, cohabitant or former cohabitant, fiancé or fiancée, or the mother or father of the offender’s child or battery against those same victims or a person with whom the offense has, or has had, a dating relationship.”
- Existing law only excluded misdemeanor codes Penal Code sections 243(e) and 273.5(a).
- SB 200 expands disqualifying offenses for misdemeanor diversion to include domestic violence offenses described under Family Code 6211 & Penal Code 13700, subd. (b)
- Covers broader category of victims (grandparents, grandchildren, siblings, parents, children).

SB 184

Mental Health Diversion

- Effective 6/30/22
- Eliminated requirement for defendant to agree to comply with treatment in order to be granted diversion if defendant was found mentally incompetent and found by the court to be an appropriate candidate for diversion (PC 1001.36)

SB 1223

Mental Health Diversion

- Effective 1/1/23 – made following additional changes to mental health diversion
 - No longer requires the court be satisfied that the D suffers from a mental disorder. Defense is now required to prove defendant has been diagnosed with a qualifying mental disorder by a “qualified mental health professional.”
 - Instead of requiring D to have “recent diagnosis” for a mental disorder, a defendant must now have a “diagnosis or treatment for a diagnosed mental order within the last 5 years.”
 - There is now a presumption that a mental disorder was a significant factor in the commission of the crime if the defendant has been diagnosed with a mental disorder “unless there is clear and convincing evidence that it was not a motivating factor, causal factor, or contributing factor to the defendant’s involvement in the alleged offense.”
 - The maximum mental health diversion period for misdemeanors is reduced to a year. (Retains 2 year maximum diversion period for felony crimes).
 - Also made cross reference changes to PC 1370 & 1370.1

Sentencing/Resentencing/Relief

AB 2195

AB 2746

SB 1209

SB 731

AB 2195

Alternative Plea Option for Drug Crimes

- Adds Section 372.5 to the Penal Code
- Gives the prosecutor the discretion to offer the defendant a negotiated disposition, on a case-by-case basis, whereby the defendant can plead to the charge of “Public Nuisance” (PC 370) in lieu of a drug charge.
- Applies to any charge that alleges
 - cultivating, manufacturing, transporting, giving away, and/or selling a drug
 - offering to transport, give away, or sell a drug
 - possession or use of a drug or drug paraphernalia
- Purpose of law is to help avoid collateral immigration consequences for drug crimes
- Note
 - Nuisance offense can only result from negotiated disposition. Cannot be charged.
 - Can only be offered by prosecutor – not the Court

AB 2195

Alternative Plea Option for Drug Crimes

If the Dismissed Drug Charge is:	Then the Conviction for Public Nuisance is:	With a Penalty of
Infraction	Infraction	Up to \$250 fine
Misdemeanor	Misdemeanor →	Up to 1 year/\$1000
	OR	
	Infraction →	Up to \$250 fine
Felony	Felony →	16mo/2yr/3yr
	OR	
	Misdemeanor →	Up to 1 year/\$1000

AB 2746

New VC 12500 Punishment Provisions (VC 40000.10)

- 1st or 2nd violation
 - infraction – fine up to \$100
- 1st or 2nd violation w/ prior license suspension for specified violation
 - Either
 - Misdemeanor – up to 6 months/\$1000 OR
 - Infraction – fine up to \$250
 - Specified violation
 - PC 192(c) – vehicular manslaughter
 - VC 12809(e) - negligent or incompetent operator of motor vehicle
 - VC 13353 – refusing to take a chemical test
 - VC 13353.1 – refusing to take a PAS test
 - VC 13353.2 – immediate license suspension by DMV for specified alcohol levels
 - VC 23103 – reckless driving
 - VC 23104 – reckless driving causing bodily injury
 - VC 23105 – reckless driving causing serious bodily injury
 - VC 23109 – speed contests or exhibitions of speed
 - VC 23152 – DUI
 - VC 23153 – DUI with injury
 - VC 23154 – driving with a 0.01 BAC while on probation for DUI
 - Language does not require prior conviction for driving on suspended or revoked license – just requires a prior specified suspension/revocation
- 3rd or subsequent violation
 - Either
 - Misdemeanor – up to 6 months/\$1000 OR
 - Infraction – fine up to \$250

SB 731

Criminal Records Relief

- Amends PC 851.93 – Eff. 7/1/23
 - Expands DOJ automatic arrest record relief program, in felony arrest category, beyond arrests for 1170(h) felonies to state prison felonies.
 - For felonies punishable for fewer than 8 years, an offender is eligible for relief if at least 3 calendar years have elapsed since the date of arrest and
 - No conviction occurred or
 - There was an acquittal
 - For felonies punishable by 8 years or more, at least 6 years must have elapsed since the date of arrest and
 - No conviction occurred or
 - There was an acquittal.

SB 731

Criminal Records Relief

- Amends PC 1203.41 – Eff. 1/1/23
 - Prior law authorizes a defendant who was sentenced to county jail for a felony and who met specified criteria to petition for withdraw of their plea as specified, and would require the court to dismiss the charging document against them and relieve them of all penalties resulting from it, except as specified.
 - Expands expungement/dismissal relief beyond PC 1170(h) cases to cases in which a defendant was sentenced to state prison.
 - Excludes Defendants convicted of PC 290 offenses
 - If defendant was placed on mandatory supervision – relief cannot be granted until 1 year after sentence completion
 - If defendant given straight jail sentence with no supervision or a prison sentence, cannot get relief until 2 years after sentence completed.
 - New subdivision states that this relief does not lease defendant from the terms of any unexpired protective order.

SB 731

Criminal Records Relief

- Amends PC 1203.425 – Eff. 7/1/23
 - Expands DOJ automatic conviction record relief program from felony probation cases to include 1170(h) & state prison felonies
 - Conviction must meet following to be eligible for relief:
 - Conviction occurred on or after 1/1/05
 - Defendant “appears to have completed all terms of incarceration, probation, mandatory supervision, and parole.”
 - Four years have elapsed since completed probation/supervision
 - During four years, not convicted of new felony offense
 - Conviction was not for any of the following types of crimes:
 - Serious felonies
 - Violent felonies
 - 290 registration felonies

Changes to Firearm Laws

AB 2239

AB 1621

AB 2156

SB 315

AB 2239

10 Year Firearm Prohibition Expansion

- Prior law prohibited a person convicted of specified misdemeanors from possessing a firearm for 10 years after that conviction (PC 29805(a)(1))
- New law includes in this prohibition a misd. conviction for child abuse (PC 273a) or elder abuse (PC 368) as specified, that occurred on or after 1/1/23

AB 1621 (Eff. 6/30/22)

Ghost Guns

- New crime of knowingly possessing any firearm, on or after 1/1/24, that does not have valid state or federal serial number or mark of identification (PC 23920(b))
 - Subject to exceptions in PC 23925
- Expands crime of selling or transferring ownership of a handgun that does not have a manufacturer's name and serial number (of # assigned by DOJ) to apply to all firearms, subject to enumerated exceptions (PC 27530(a))
- New misd. crime of a person, corporation, or firm knowingly manufacturing or assembling, or knowingly causing, allowing, facilitating, aiding, or abetting the manufacture or assembly of, a firearm that is not imprinted with a valid state or federal serial number or mark of identification.
 - For a handgun – 1 year/\$1000 (PC 29180(g))
 - For any other gun – 6 mo/\$1000 (PC 29180(g))
 - Each gun is a separate offense

AB 1621 (Eff. 6/30/22)

Firearm Precursor Parts

- For numerous statutes “firearm” now includes firearm precursor parts (PC 16520(b))
- Firearm Precursor Part definition expanded
 - Previously - “a component of a firearm that is necessary to build or assemble a firearm and that is either an unfinished receiver or an unfinished handgun frame”
 - Now - “a forging, casting, printing, extrusion, machined body, or similar article that has reached a stage in manufacture where it may readily be completed, assembled, or converted to be used as the frame or receiver of a functional firearm, or that is marketed or sold to the public to become or be used as the frame or receiver of a functional firearm once completed, assembled or converted.” (PC 16531)

AB 1621 (Eff. 6/30/22)

Firearm Precursor Parts

- Effect of including “Firearm Precursor Part” as “Firearm”
 - A person possessing only a precursor part who is prohibited from having firearms because of a felony conviction, a specified misd. conviction, a probation condition, or a restraining order can be charged with a felony crime in PC 29800, OC 29805, PC 29815, or PC 29825.
 - Firearm precursor parts can now be the subject of a gun violence restraining order (PC 18100-18205) or seized at the scene of a DV incident (PC 18205-18500).
 - Firearm precursor parts are now subject to laws relating to licenses to sell or transfer firearms (PC 26500-26590), gun shows (PC 27200-27415) and the sale, lease, transfer, or delivery of firearms (PC 27500-28000).

AB 2156 (Eff. 6/30/22)

Firearm Manufacturer Limits & Prohibitions

- New law prohibits a person, firm, or corporation from manufacturing more than three firearms in a calendar year unless licensed by the state (PC 29010(a))
 - Prior law allowed a federally licensed firearms manufacturer to produce up to 49 firearms in a calendar year without being licensed by the state. (50 or more was a misdemeanor) (PC 29010(a))
- Creates new crime of using a 3D printer to manufacture a firearm, frame, receiver, or precursor part, unless the person or business holds a California firearms manufacturing license. (PC 29010(b))

SB 715

Minor Possession of Firearms

- This was a 2021 law with staggered effective dates
- 1/1/22-7/31/23 – Minors prohibited from possessing handguns or semiautomatic centerfire rifles.
- Effective 7/1/23 – prohibits a minor from possessing any firearm
 - Subject to exceptions in PC 29615
 - Penalty
 - If minor has a prior conviction for specified crime involving a firearm – 16/2/3 (1170(h))
 - If the gun is a handgun – 16/2/3 (1170(h))
 - If not - wobbler

Out-of-Custody Misdemeanor Trials in Absentia

SB 1493

Out-of-Custody Misd. Trials in Absentia

- Amends PC 1043(e)(4) to restore long standing law authorizing a court to proceed with a misdemeanor trial when an out-of-custody defendant is voluntarily absent with knowledge that the trial is being/to be held.
 - In 2021, this long standing rule for misdemeanor out-of-custody defendants was inadvertently deleted when AB 700 amended PC 1043 to add a new subdivision (f) authorizing a court to proceed with a hearing when an in-custody defendant refuses transportation.
- Penal Code Section 1043(e)(4) will now read:
 - (A) If the defendant is in custody, proceed with the trial in the defendant's absence as authorized in subdivision (f).
 - (B) If the defendant is out of custody, proceed with the trial if the court finds the defendant has absented themselves voluntarily with full knowledge that the trial is to be held or is being held

Questions?