McGeorge Law Review

Volume 5 | Issue 1 Article 21

1-1-1974

# Crimes

University of the Pacific; McGeorge School of Law

# Crimes

## Crimes; animal pelts

Penal Code §598a (new).
AB 461 (Boatwright); STATS 1973, Ch 778

Section 598a has been added to the Penal Code to make it a misdemeanor to: (1) kill any dog or cat with the sole intent to sell or give away the pelt of the animal; (2) possess, import into this state, sell, buy, give away, or accept the pelt of a dog or cat with the sole intent of selling or giving away that pelt; or (3) to possess, import into this state, sell, buy, give away, or accept a dog or cat with the sole intent to kill it or have it killed for the purpose of selling or giving away the pelt.

---

**See Generally:**
1) Annot., 82 A.L.R.2d 794 (1962) (cruelty to animals).

## Crimes; boxing matches

Business and Professions Code §§18753.5, 18753.6 (new).
AB 469 (Garcia); STATS 1973, Ch 486

Section 18753.5 has been added to the Business and Professions Code to provide that any person who throws any object or thing at the ring during a boxing contest or match is guilty of a misdemeanor. Section 18753.6 has been added to require that a notice in English and Spanish be posted in public view at every place where a boxing match is held, warning that it is unlawful to throw any object or thing at the ring during a boxing contest or match.

## Crimes; controlled substances

Health and Safety Code §§11056, 11377 (amended).
AB 2500 (Fenton); STATS 1973, Ch 1088
(Effective October 1, 1973)

Section 11056 of the Health and Safety Code has been amended to provide that any material, compound, mixture, or preparation which contains any quantity of methaqualone or its salts having a potential

for abuse associated with a depressant effect on the central nervous system is included in Schedule III of the California Uniform Controlled Substances Act [CAL. HEALTH & SAFETY CODE div. 10 (commencing with §11000)].

Section 11377 has been amended to provide that, except as otherwise provided in Article 8 (commencing with §4211) of the Business and Professions Code (details exceptions to prohibitions against possessing, furnishing, or dispensing drugs without prescription), every person who possesses any controlled substance containing methaqualone or its salts, unless upon prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by a fine not exceeding $500 or by imprisonment in the county jail not exceeding six months, or by both.

The first conviction for unlawful *possession for sale* of any substance classified in Schedule III is punishable under Section 11378 by imprisonment in the state prison for not less than two years or more than ten years. Section 11379 provides that every person who unlawfully transports, imports into the state, sells, manufactures, compounds, furnishes, administers, or gives away any controlled substance classified in Schedule III, or offers to do so, or attempts to import or transport any such substance, shall be punished by imprisonment in the state prison for five years to life. Both sections provide increased penalties for persons with prior, drug-related felony convictions.

*COMMENT*

Methaqualone, marketed principally under the trade name "Quaalude," was developed in 1965 and is a non-barbiturate, hypnotic sedative [Assemblyman Jack R. Fenton, Press Release, May 17, 1973]. As of this writing, methaqualone is not listed as a controlled substance under federal law.

---

**See Generally:**

1) 21 U.S.C. §801 *et seq.* (1970) (federal drug abuse prevention and control).
2) CAL. HEALTH & SAFETY CODE div. 10 (commencing with §11000) (California Uniform Controlled Substances Act).
3) 4 PAC. L.J., REVIEW OF SELECTED 1972 CALIFORNIA LEGISLATION 378 (1973) (California Uniform Controlled Substances Act).

## Crimes; death penalty

Penal Code §§190, 190.1, 209, 219, 4500 (repealed); §§190, 190.1, 190.2, 190.3, 209, 219, 4500 (new); §1018 (amended). SB 450 (Deukmejian); STATS 1973, Ch 719

Support: California Peace Officers Association; The District Attorneys of California; California State Sheriffs' Association; California Correctional Officers' Association

In *People v. Anderson* [6 Cal. 3d 628, 493 P.2d 880, 100 Cal. Rptr. 152 (1972)] the California Supreme Court declared that imposition of the death penalty was "cruel or unusual" punishment in violation of Article I, Section 6 of the California Constitution. The following November, a state constitutional amendment was adopted which deemed the death penalty, as provided for under state statutes, to be neither cruel or unusual nor otherwise in violation of the state constitution [See CAL. CONST. art. I, §27]. However, in *Furman v. Georgia* [408 U.S. 238 (1972)] the United States Supreme Court, in a split *per curiam* decision, held the imposition of the death penalty *in the particular cases* before the Court violated the eighth amendment ban on cruel and unusual punishment. The thrust of this ruling has been interpreted as being aimed more at the *procedure* for imposing the death penalty than as declaring it unconstitutional per se. Chapter 719 operates as a substantive revision of California's capital punishment law in response to the decision rendered in *Furman.*

Section 190, as enacted by Chapter 719, has been added to the Penal Code to require a mandatory death sentence for every person found guilty of first-degree murder if any one or more of the special circumstances enumerated in Section 190.2 (discussed *infra*) have been charged and found to be true in the manner provided in Section 190.1 (discussed *infra*). Every person otherwise guilty of first-degree murder shall suffer life imprisonment. Every person guilty of second-degree murder is subject to imprisonment from five years to life. Former Section 190, repealed by Chapter 719, provided for the court or jury, *at their discretion,* to determine whether the punishment of death or life imprisonment would be imposed on a person convicted of first-degree murder.

Section 190.2, as added, provides that the penalty for a person found guilty of first-degree murder *shall* be death in any case in which the trier of fact makes a special finding in the penalty phase of a bifurcated trial (§190.1 as added) that either (a) or (b) of the following special circumstances exist: (a) the murder was intentional and was carried out pursuant to an agreement to accept valuable consideration for the murder from any person other than the victim; or (b) the defendant personally committed the act which caused the death of the victim and any of the following *additional circumstances* exist: (1) the victim

is a peace officer (as defined in §830.1, subdivision (a) of §830.2, or subdivision (b) of §830.5) who was intentionally killed in the performance of his duty, and the defendant knew or reasonably should have known the victim was a peace officer engaged in the performance of his duty; (2) the murder was willful, deliberate, and premeditated, and the victim was a witness to a crime who was intentionally killed for the purpose of preventing his testimony in any criminal proceeding; (3) the murder was willful, deliberate, and premeditated and was committed during the commission or attempted commission of any of the following crimes: (i) robbery (§211); (ii) kidnapping (§§207, 209 discussed *infra*)—however, brief movements of the victim which are only incidental to the commission of another offense and which do not substantially increase the risk of harm over that necessarily inherent in the other offense do not constitute kidnapping for purposes of this section; (iii) rape by force or violence or by threat of immediate bodily harm (§261(2) or (3)); (iv) performance of a lewd act with a child under 14 years of age (§288); (v) burglary of an inhabited dwelling entered by the defendant with the intent to commit grand or petit larceny or rape (§460(1)); or (4) the defendant is a multiple murderer having been convicted of more than one offense of first *or* second degree murder in this or any prior proceeding (an offense committed in another jurisdiction which if committed in California would be punishable as first or second degree murder shall be deemed to be murder of the first or second degree for purposes of this paragraph).

It is important to note that S.B. 450 was amended in the Assembly to delete a subdivision of Section 190.2, consistent with prior law, which would have required a mandatory death penalty if the trier of fact made a special finding of "aggravating circumstances" surrounding the offense which, when viewed in light of the defendant's background and history, would demonstrate a "substantial likelihood" that he would kill again. Such an evaluation by the court or jury of the applicability of the death penalty to the particular defendant would have exhibited a degree of discretion which would have posed serious constitutional problems in light of the Supreme Court's ruling in *Furman* (discussed *infra*).

Section 190.1, as enacted by Chapter 719, provides for a bifurcated trial procedure to be followed in any case in which the death penalty is to be imposed for an offense involving one or more of the special circumstances enumerated in Section 190.2. The first proceeding is to determine only the issue of guilt or innocence. If the defendant

has been found guilty of first-degree murder, and has been found sane on any plea of not guilty by reason of insanity, there shall be further proceedings on the issue of the special circumstances charged. In such further proceedings the defendant must again be represented by counsel. Evidence may be presented at these proceedings to establish whether or not the special circumstances charged are true or not true. In case of a reasonable doubt of the truth of a special circumstance, the defendant is entitled to a finding that it is not true. The trier of fact shall make a special finding that each special circumstance charged is either true or not true.

The identity of the trier of fact in the "special circumstances" phase is determined in a substantially different manner than was provided for under prior law (former §190.1) which applied the bifurcated trial procedure to all first-degree murder cases. Under the newly enacted Section 190.1, if the defendant was convicted in the first phase by the court sitting without a jury, the trier of fact shall be a jury, unless a jury is waived by the defendant *with the consent of the defendant's counsel*, in which case the trier of fact shall be the court. If the defendant was convicted by a plea of guilty, the trier of fact shall be a jury unless a jury is waived by the defendant *with the consent of his counsel.* If the defendant was convicted by a jury, the trier of fact shall be the same jury unless, for good cause shown, the court discharges that jury, in which case a new jury shall be drawn. It should be noted that Chapter 719 has also amended Section 1018 of the Penal Code which, in pertinent part, now provides that no plea of guilty of a capital offense shall be received from a defendant who does not appear with counsel, *nor shall any such plea be received without the consent of the defendant's counsel.* Further, a plea of guilty shall not be received from a defendant charged with a capital offense which does not require the further proceedings provided for in Section 190.1.

Section 190.1 also provides that if *any one* of the special circumstances charged is found in the penalty proceeding to be true, the defendant shall suffer death. The penalty shall stand regardless of whether remaining special circumstances alleged are found to be not true, or whether a jury is unable to agree on the truth of any such remaining special circumstances.

If the jury in the penalty phase is unable to reach a unanimous verdict that one or more of the special circumstances charged are *true*, and does not reach a unanimous verdict that *all* of the special circum-

stances are *not true*, Section 190.1 provides that the jury shall be dismissed and a new jury empaneled. Such new jury shall not retry the issue of guilt, nor the issue of the truth of any special circumstances which were found by a unanimous verdict of the previous jury to be untrue. If the new jury is also unable to reach a unanimous verdict that one or more of the special circumstances are true, the court shall dismiss the jury and impose the punishment of life imprisonment. Before this section was passed, it was amended to delete a provision which would have allowed the court, after dismissing a jury which was unable to find at least one special circumstance as true, to *either* impose the punishment of life imprisonment or order a new jury empaneled to try the issues. Again a serious potential constitutional challenge was avoided by amending out the discretionary aspect of a procedure involved in the imposition of the death penalty.

Chapter 719 also establishes mandatory death sentences for the crimes of kidnapping (§209 as added) and trainwrecking (§219 as added). The punishment shall be death in any case in which *any* person subjected to the above acts suffers death as a result. The penalty shall be life imprisonment *without* possibility of parole in cases where any such person suffers bodily harm, or life imprisonment *with* possibility of parole in cases where no person suffers death or bodily harm. Previous law (§§209, 219 as repealed) provided an alternative penalty of death or life imprisonment to be imposed at the discretion of the trier of fact.

Section 4500, as added, requires a *mandatory* death sentence for any life prisoner who commits a malicious assault with a deadly weapon or deadly force upon the person of one other than another inmate. If the victim does not die within a year and a day, or if the victim is another inmate, the penalty is life imprisonment without possibility of parole for nine years. This section is expressly stated to also apply when the assault was committed *outside* the walls of any prison as long as the person committing the assault was undergoing a life sentence in a state prison at the time.

Section 190.3 has been added to the Penal Code to provide that the death penalty shall not be imposed upon any person who was under the age of 18 years at the time of the commission of the crime. The burden of proof as to age shall be on the defendant. It also shall *not* be imposed upon any person who is a principal in the commission of a capital offense *unless*: (1) he was personally present and directly committed or aided in the commission of such act or acts; (2) the murder was committed pursuant to an agreement as defined

in subdivision (a) of Section 190.2 (discussed *supra*); or (3) a person is convicted of a violation of Section 37 (treason against the State) or Section 128 (procuring the execution of an innocent person by perjury).

Section 15 of Chapter 719 declares the provisions of the chapter to be severable.

*COMMENT*

Chapter 719 comprises the initial legislative response to *Furman v. Georgia* [408 U.S. 593 (1972)]. In *Furman* the Supreme Court, in a decision including five separate supporting and four separate dissenting opinions, held that the imposition and carrying out of the death penalty under the currently administered systems of the cases before the Court constituted cruel and unusual punishment in violation of the eighth and fourteenth amendments. The cases before the Court involved state statutes providing for imposition of the death penalty, or life imprisonment in the alternative, at the discretion of the court or jury. Three of the concurring justices (Justices Stewart, White, and Douglas) took the position that the cruel and unusual characteristic of the death penalty was the manner in which it has been administered. They left open the question whether *any* system of capital punishment would be unconstitutional per se.

Mr. Justice Stewart, in his concurring opinion, observed that because the legislature provided for an alternative penalty of life imprisonment in capital offenses, it follows that the legislature did not make a determination that those offenses could be deterred *only* by imposing the death penalty on all who perpetrate them. He concluded that death sentences are therefore "cruel" because they go excessively beyond the punishments that the legislature has determined to be necessary. The sentences are "unusual" in that they are infrequently imposed. Pointing out that many murderers and rapists just as reprehensible as those before the Court did not receive as severe a penalty, he emphasized, "I simply conclude that the Eighth and Fourteenth Amendments cannot tolerate the inflicting of a sentence of death under legal systems that permit this unique penalty to be so wantonly and so freakishly imposed" [408 U.S. at 310].

Justice Stewart made it clear he was not deciding the issue of the death penalty "in the abstract." On that issue he conceded that retribution is a constitutionally permissible ingredient in the imposition of a punishment, stating, "We would need to decide whether a legislature . . . could constitutionally determine that certain criminal conduct

is so atrocious that society's interest in deterrence and retribution wholly outweighs any considerations of reform or rehabilitation of the perpetrator, and that, despite the inconclusive empirical evidence, only the automatic penalty of death will provide maximum deterrence" [408 U.S. at 307-08 (emphasis added)].

It is fairly clear from his specific conclusion and the reference to an automatic penalty that the mandatory scheme of Chapter 719 is consistent with Justice Stewart's holding in *Furman*. It is also clear that such a scheme presents to him a further issue "in the abstract." One may infer from the mere fashioning of the balancing test above that Justice Stewart does not consider the legislature an infallible reflection of the public attitudes on such an issue, but rather subject to judicial consideration of whether the relevant factors have been properly applied. Whether he will find the legislative decision embodied in Chapter 719 to be properly arrived at "despite inconclusive empirical data" is not indicated by his opinion.

Concurring, Justice White maintained that when the death penalty ceases realistically to further the social ends for which it was imposed, then it violates the eighth amendment as a pointless and needless extinction of life with only "marginal contributions to any discernible social or public purposes" [408 U.S. at 312]. In his judgment, the penalty no longer serves its intended purpose of deterrence when juries refuse to impose it. "I cannot avoid the conclusion that as the statutes before us are now administered, the penalty is so infrequently imposed that the threat of execution is too attenuated to be of substantial service to criminal justice" [408 U.S. at 313]. Legislative policies are therefore defined by what juries and judges do in exercising the discretion conferred on them, and not by what is legislatively authorized.

Chapter 719 has removed the discretionary element Justice White found so objectionable in *Furman*. However, his opinion does not imply that a mandatory sentencing procedure would insure a deterrent effect. He left the issue largely open, conceding only that it is difficult to prove that capital punishment, "however administered," is a more effective deterrent to crime than is imprisonment [408 U.S. at 313].

Justice Douglas found that the basic theme of equal protection is implicit in the eighth amendment ban on cruel and unusual punishment. Relying on studies and commentaries to the effect that the death penalty is imposed disproportionately often on the poor, black, young, and ignorant, he concluded, "Thus, these discretionary statutes are unconstitutional in their operation. They are pregnant with dis-

crimination and discrimination is an ingredient not compatible with the idea of equal protection of the laws that is implicit in the ban on 'cruel and unusual' punishments" [408 U.S. at 256-57]. The procedures provided by Chapter 719 would seem to satisfy the equal protection requirements of Justice Douglas; but whether he would find a mandatory death penalty to be otherwise constitutional is a question he expressly declined to answer.

Justices Brennan and Marshall also concurred in the judgment of the Court. Six other justices asserted that Justices Brennan and Marshall had concluded that the eighth amendment abolishes capital punishment altogether. However, this is not a necessary inference from their opinions.

Justice Brennan relied on four principles to determine whether a punishment is cruel and unusual: (1) "a punishment must not be so severe as to be degrading to the dignity of human beings" [408 U.S. at 271]; (2) "the government must not arbitrarily inflict a severe punishment" [408 U.S. at 274]; (3) "a severe punishment must not be unacceptable to contemporary society" [408 U.S. at 277]; and (4) "a severe punishment must not be excessive," *i.e.*, "unnecessary" [408 U.S. at 279]. He concluded that capital punishment by its very nature violates the first principle and would have held it unconstitutional on that ground alone "*were it not that death is a punishment of long-standing usage and acceptance in this country*" [408 U.S. at 291]. In discussing the remaining three principles, Justice Brennan relied heavily on the fact of infrequent and arbitrary imposition of the penalty under current systems. The death penalty was being inflicted in a "trivial" number of cases in which it was available; therefore, it was probably being inflicted arbitrarily in violation of the second principle. When a penalty is authorized for wide-scale application and it is inflicted only in a few instances, the inference is that society does not accept the penalty, violating the third principle. When the death penalty is arbitrarily and infrequently applied, the risk of death to the potential perpetrator is remote and improbable, and the deterrent effect can be no greater than the threat of life imprisonment; the death penalty is therefore excessive and violates the fourth principle. Finding the punishment inconsistent with all four principles, he concluded it did not comport with human dignity and was therefore cruel and unusual.

Justice Marshall concluded that the death penalty violates the eighth amendment on two *independent* grounds: (1) "it is excessive and

serves no valid purpose" [408 U.S. at 353]; and (2) "it is abhorrent to currently existing moral values" [408 U.S. at 360]. Relying on statistical data showing no correlation between the rate of capital crimes and the presence or absence of the death penalty, he saw no rational basis upon which a legislature could conclude that capital punishment is not excessive; that is, death is not a more effective deterrent than life imprisonment. As for the second ground, Justice Marshall concluded that the average citizen, if he had knowledge of all the pertinent facts, *would* find capital punishment "shocking to his conscience and sense of justice" [408 U.S. at 369].

Although the first ground would seem to allow the imposition of a mandatory death sentence for certain crimes where life imprisonment is not a deterrent (*i.e.*, crimes committed by life prisoners), the second subjective ground appears to preclude any system of capital punishment.

Dissenting Chief Justice Burger, joined by Justices Blackmun, Powell, and Rehnquist, concluded that the eighth amendment cannot be construed to bar the imposition of the death penalty. He observed that it is primarily the responsibility of the legislatures, not the courts, to decide what is cruel and unusual. "Whether or not provable, and whether or not true at all times, in a democracy the legislative judgment is presumed to embody the basic standards of decency prevailing in the society. This presumption can only be negated by unambiguous and compelling evidence of legislative default" [408 U.S. at 384]. To the Chief Justice there were no obvious indicators that the death penalty offended the conscience of society at the time of *Furman*. In light of the people's initiative enabling the enactment of Chapter 719, it would seem Chief Justice Burger would have little hesitation in upholding the constitutionality of the death penalty.

However, contrary to the plurality opinions, Justice Burger saw juror discretion as the keystone of criminal justice. "I could more easily be persuaded that mandatory sentences of death, without the intervening and ameliorating impact of lay jurors, are so arbitrary and doctrinaire that they violate the Constitution" [408 U.S. at 402]. He further stated that he would have preferred the majority to opt for total abolition if mandatory sentences are the only alternative.

Thus the mandatory procedures of Chapter 719 may present a serious constitutional question to the Chief Justice. He may well hesitate on this position, however, as a decision invalidating a mandatory death sentence would, combined with *Furman*, eliminate the penalty

altogether. Such a result would not seem to reflect the primary holding of the Chief Justice's opinion.

Justices Blackmun, Powell, and Rehnquist, in their separate opinions, emphasized again that what is cruel and unusual within the meaning of the eighth amendment is a question of public opinion, that the assessment of such public opinion is essentially a legislative function, and that the legislatures do not support the contention that evolving standards of decency require abolition of capital punishment.

In conclusion, it appears clear that Chapter 719 is generally responsive to procedural guidelines laid down by the plurality opinion in *Furman.* The discretion of the court or jury has been removed, and an automatic penalty of death is imposed upon the finding of certain specified facts coincident to certain specified crimes. However, the very change in the nature of the penalty which may make it appealing to the pivotal members of the plurality may also cause it to lose support among other members of the court. Whether Chapter 719, or any system of capital punishment, can withstand a challenge as to its constitutional validity as a punishment per se is a question which can still command only a very speculative answer. It appears probable that the four dissenting justices in *Furman* would again uphold validity. It is not decidedly improbable they would be joined by either Justice Stewart or Justice White, or both.

---

**See Generally:**

1) H. BEDAU, THE DEATH PENALTY IN AMERICA (1964).
2) Bedau, *Deterrence and the Death Penalty: A Reconsideration,* 61 J. CRIM. L.C. & P.S. 539 (1970).
3) Polsby, *The Death of Capital Punishment? Furman v. Georgia,* 1972 SUP. CT. REV. 1.
4) Sellin, *The Death Penalty,* appendix to A.L.I. MODEL PENAL CODE (Tent. Draft No. 9) (1959) (critique of comparative data on deterrent effect of death penalty).

## Crimes; fetus experimentation

Health and Safety Code §25956 (new).
SB 1046 (Roberti); STATS 1973, Ch 720
(Effective September 14, 1973)
AB 1724 (Antonovich); STATS 1973, Ch 980

Section 25956 has been added to the Health and Safety Code to provide that it is unlawful for any person to use any aborted product of human conception, other than fetal remains, for any type of scientific or laboratory research or for any other kind of experimentation or study, except to protect or preserve the life and health of the fetus. "Fetal remains" is defined as a lifeless product of conception

regardless of the duration of pregnancy. A fetus shall not be deemed to be lifeless for the purposes of this section, unless there is an absence of a discernible heartbeat. Section 25956(b) states that in addition to any other criminal or civil liability which may be imposed by law, a violation of this section constitutes unprofessional conduct within the meaning of the State Medical Practice Act [CAL. BUS. & PROF. CODE ch. 5 (commencing with §2000)]. Thus any licensee violating this section may have his professional license suspended or revoked or may be subjected to other disciplinary proceedings.

---

**See Generally:**

1) Diamond, *Humanity of the Unborn Child,* 17 CATH. LAW. 11 (1971).

## Crimes; forged county warrants

Penal Code §475a (amended).
AB 1626 (Berman); STATS 1973, Ch 822
Support: Los Angeles District Attorney

Section 475a of the Penal Code has been amended to include *county warrants* within the list of negotiable instruments which may not be possessed with the intent to pass for the purpose of defrauding others. Prior to amendment, the section included only checks, money orders, and travelers' checks. The section has also been amended to reduce the maximum prison term which may be imposed for violations of this section from 14 years to 10 years in state prison. The amendment of this section appears to be in response to *People v. Norwood* [26 Cal. App. 3d 148, 103 Cal. Rptr. 7 (1972)]. In that case, Norwood was found guilty of three counts of violating Penal Code Section 475a. Two of the counts involved possession of a completed county warrant, and the third was based on possession of a travelers' check. The court of appeal reversed the counts related to possession of the county warrant, taking the view that a county warrant did not come within the definition of any of the instruments listed in the statute.

---

**See Generally:**

1) CAL. GOV'T CODE §53911; CAL. COMM. CODE §3104(2)(b) (county warrants are not technically checks and cannot be included within §475a of the Penal Code as such).

## Crimes; interference with a fireman

Penal Code §§148.3, 245.1 (amended).
AB 1033 (Alatorre); STATS 1973, Ch 471
Support: League of California Cities

Section 148.2 of the Penal Code establishes misdemeanor penalties for a person who: (1) resists or interferes with the lawful efforts of any fireman engaged in the discharge or attempted discharge of an official duty; (2) disobeys the lawful orders of any fireman or public officer; (3) engages in disorderly conduct which delays or prevents a fire from being timely extinguished; or (4) forbids or prevents others from assisting in extinguishing a fire or exhorts another person, as to whom he has no legal right or obligation to protect or control, from assisting in extinguishing a fire. Section 148.2 has been amended to place interference with emergency rescue personnel within this prohibition.

Section 245.1 has been amended to define emergency rescue personnel, as used in Section 148.2, to be fire department officers, employees, members, or volunteers while they are actually engaged in on-the-site rescue of persons or property during an emergency.

## Crimes; penalties associated with hallucinogens and amphetamines

Health and Safety Code §§11350, 11351, 11352, 11353, 11354, 11355, 11357, 11358, 11359, 11360, 11361, 11363, 11364, 11365, 11366, 11368, 11370, 11371, 11376, 11377, 11378, 11379, 11380, 11382, 11550 (amended).
AB 2228 (Sieroty); STATS 1973, Ch 1078
(Effective October 1, 1973)

The 1972 session of the California Legislature enacted the Uniform Controlled Substances Act [CAL. HEALTH & SAFETY CODE §11000 *et seq.*]. This Act placed each controlled substance within one of five schedules which were then used for imposing penalties for offenses connected therewith. The most dangerous of the substances were placed in Schedule I and the least dangerous in Schedule V. Those substances which had formerly been classified as *restricted dangerous drugs* were generally placed in Schedule III or IV. However, certain substances were not. These include the hallucinogens and the amphetamines which were placed in Schedules I and II. The punishment for an offense associated with a restricted dangerous drug had been either a misdemeanor or a felony. The punishment for an offense associated with the substances in Schedules I and II was a mandatory felony. Thus there was a great increase in punishment for an offense associated with the same substance depending on whether one was tried under the old or the new law. Chapter 1078 has been enacted

to bring the penalties for offenses associated with the hallucinogens and amphetamines back to the degree of severity which they previously had.

Chapter 1078 also instructs the courts that they may, if so petitioned, grant a reduction in punishment for those convicted under the 1972 enactment if their punishment was harsher than would be imposed under this chapter.

## Crimes; telephone fraud penalties

Penal Code §502.7 (amended).
SB 1262 (Song); STATS 1973, Ch 1127

Section 502.7 of the Penal Code provides misdemeanor penalties for a variety of acts which defraud telephone or telegraph companies of charges for telephone or telegraph services. Prior to amendment, the penalties increased to up to one year in the county jail or five years in the state prison, or a fine of up to $5,000, or both, if the value of the services improperly obtained exceeded $200 over any 12-month period during the three years preceding the filing of charges. Chapter 1127 amends Section 502.7 of the Penal Code to decrease the maximum state prison sentence to one year and one day.