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Criminal Procedure

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Criminal Procedure

Criminal Procedure; adoption of bail schedules

Penal Code §§1269c, 1276, 1320.5 (repealed); §1269c (new); §1269b (amended).

AB 1277 (Cullen); STATS 1973, Ch 810

Requires adoption of uniform, countywide bail schedules for all bailable felony offenses; specifies manner by which arresting officer may apply for increase of arrestee's bail; provides for defendant's application for reduction of bail.

Chapter 810 has amended Section 1269b of the Penal Code to provide that, with respect to persons arrested for having committed a felony, misdemeanor, or an infraction and held pursuant to such an arrest either prior to or as a consequence of the filing of a formal complaint, indictment, or information, bail shall be determined by reference to the following: (1) the amount set by the judge at the time the defendant appears before the judge on the charge contained in the complaint, indictment, or information; (2) the amount set forth in the warrant of arrest if no appearance before a judge has been made; or (3) the amount contained in a uniform, countywide schedule of bails if no warrant has been issued. With regard to all bailable felony offenses, such a schedule shall be prepared and adopted by a majority vote of all the superior, municipal, and justice court judges in each county at a meeting called by the presiding judge of the superior court of the county. Such a uniform, countywide schedule must also be prepared by municipal and justice court judges with respect to all misdemeanor and infraction offenses. The presiding judges may call one or more meetings per year to set or revise the bail schedule. Prior to amendment, the presiding judge could call no more than two nor less than one meeting per year. Also, there was no provision for the establishment of a bail schedule for bailable felony offenses.

Section 1269c has been repealed, and a new Section 1269c has been added by Chapter 810 to provide that an arresting officer may request an order setting a higher bail in instances when a defendant is arrested without a warrant for a bailable felony offense and the officer has reasonable cause to believe that the amount of bail set

forth in the schedule of bail will not suffice to guarantee the defendant's appearance before the court. In such a situation, the officer shall prepare a declaration under penalty of perjury setting forth the facts and circumstances in support of his belief, and file it with a magistrate or the magistrate's commissioner in a county in which the offense is alleged to have taken place.

The new section also provides that the defendant may make application to such a magistrate or commissioner for release on *lower* bail than that provided in the schedule, or for release on his own recognizance. Such an application may be made by the defendant personally or through his attorney, a friend, or member of his family. The magistrate or his commissioner to whom such an application is made may set the bail at such an amount as he deems sufficient to guarantee the appearance of the defendant, or may release the defendant upon his own recognizance. In addition, the bail may be set on such terms and conditions as the magistrate or commissioner believes appropriate. If no action is taken on such an application within eight hours after the defendant is booked, the defendant shall be entitled to release upon posting the amount of bail set forth in the applicable bail schedule. Prior to its repeal, former Section 1269c prohibited any magistrate, prior to the time of arraignment, from lowering the bail set by another magistrate for a felony defendant arrested without a warrant unless good cause was shown. An identical prohibition with regard to a release upon one's own recognizance (§1320.5) has also been repealed by Chapter 810. Chapter 810 has also repealed Section 1276, which provided for the setting of bail for persons who were arrested without a warrant for a bailable offense and who had not been taken before a magistrate. This situation is covered by Section 1269b as amended.

See Generally:

- 1) WITKIN, CALIFORNIA CRIMINAL PROCEDURE, *Proceedings Before Trial* §148 *et seq.* (1963).

**Criminal Procedure; bail for mentally
disordered sex offenders**

Welfare and Institutions Code §6325.5 (new).

AB 833 (Briggs); STATS 1973, Ch 346

After an individual has been convicted of any criminal offense and there is probable cause to believe that he is a mentally disordered sex offender, the trial judge may certify the defendant to the superior court for an examination and hearing upon this issue before sentencing

him [CAL. WELF. & INST. CODE §6302]. If the superior court then determines that the defendant is a mentally disordered sex offender within the provisions of Section 6300 of the Welfare and Institutions Code, and that he could be benefited by treatment in a state mental hospital, the court may order him committed to a state hospital for an indeterminate sentence [CAL. WELF. & INST. CODE §6316]. Whenever a person is committed to a state hospital pursuant to Section 6316, the hospital superintendent must file an opinion with the superior court concerning the mental health of the defendant [CAL. WELF. & INST. CODE §6325]. Section 6325.5 has been added to provide that if in the opinion of the superintendent the defendant has not recovered and is still a danger to the health and safety of others, then he may not be released until such time as probation is granted or such other disposition is made of the case as the criminal court may deem necessary and proper.

COMMENT

Since Section 6325.5 provides that a defendant may not be released if the hospital superintendent files an opinion that the defendant is still a danger to others, the issue is raised as to whether it is constitutionally permissible to in effect deny such a defendant's right to be released on bail between the time of conviction and the time of sentencing. Article 1, Section 6 of the California Constitution provides that a defendant in a criminal action is entitled to bail as a matter of right in all cases other than a capital offense. This section has been construed as vesting an absolute right to bail prior to conviction, but that bail is discretionary after conviction and before sentencing [See, for example, *In re Scaggs*, 46 Cal. 2d 416, 303 P.2d 1009 (1956); *Ex parte Voll*, 41 Cal. 29 (1871); CAL. PEN. CODE §1272]. Therefore, it would seem that Section 6325.5 is constitutional.

Criminal Procedure; criminal offender record information

Penal Code Chapter 2 (commencing with §13100) (new).

AB 135 (Crown); STATS 1973, Ch 992

Declares necessity for complete criminal offender record information system; defines criminal record information and criminal justice agency; provides standard data elements to be used in recording such information; stipulates procedures for reporting and gaining access to such information.

Chapter 2 (commencing with §13100) has been added to the Penal Code to establish procedures governing criminal offender record infor-

mation. Article 1 (commencing with §13100) contains the legislative declaration that accurate, reasonably complete criminal offender record information is required in California. Therefore, the recording, reporting, storage, analysis, and dissemination of such information must be made more uniform and efficient and better controlled and coordinated.

Article 1 contains the definitions of "criminal justice agencies" and "criminal offender record information." Criminal justice agencies are defined as agencies at all levels of government which perform, as their principal functions, activities which relate to either: (1) the apprehension, prosecution, adjudication, incarceration, or correction of criminal offenders; or (2) the collection, storage, dissemination, or usage of criminal offender record information. Criminal offender record information is defined as the records and data which identify criminal offenders and includes a summary of arrests, pretrial proceedings, the nature and disposition of criminal charges, sentencing, incarceration, rehabilitation, and release.

Article 2 (commencing with §13125) provides standard data elements which, when applicable and available, must be used in recording criminal offender record information. These elements include personal identification data, arrest data, lower and superior court data, and corrections data including adult probation, county jail, youth authority, department of corrections, and mentally disordered sex offender information where applicable. The compiled information need not be limited to these elements. Section 13126 provides that the Department of Justice shall modify the list of data elements in accord with changes in criminal procedures or the organization of criminal justice agencies.

Article 3 (commencing with §13150) provides procedures for the reporting of information. Specifically, it sets forth the time within which information must be reported, to whom the reporting agency must report, and under what circumstances a report is required. Article 4 (commencing with §13175) provides that when a criminal justice agency supplies fingerprints or other appropriate personal identifiers to the Department of Justice, the department shall provide the agency, if the agency so requests, with the identification, arrest, and, where applicable, final disposition data relating to the individual within 72 hours. If the criminal justice agency is one entitled to the criminal history of the individual, it shall be supplied with such information or the needed portion thereof within 72 hours of having supplied

the department with the appropriate personal identifiers. Section 13177 affirms the right of the Department of Justice to require criminal justice agencies to report more criminal offender record information than this chapter requires or to record or report it more quickly, or to establish any other regulations that would improve criminal justice systems.

Article 5 (commencing with §13200) states that this chapter shall neither restrict nor increase any person's or public agency's rights of access to individual criminal offender record information. Section 13202 provides that every public agency or research body immediately concerned with the prevention or control of crime, the quality of criminal justice, or the custody or correction of offenders is to be provided with the aggregate of criminal offender record information as is required for the performance of its duties, or the execution of research projects relating to the activities of criminal justice agencies, or changes in legislative or executive policies. This section stipulates, however, that before such information is released all material identifying individuals must be removed, and the agency or body seeking the information must pay the cost of the processing of the data when necessary. Section 2 of Chapter 992 provides that this act shall become operative July 1, 1978.

See Generally:

- 1) A.B. 2268, 1972 Regular Session.
- 2) Roberts, *Towards a Modern Public Records System*, 39 PENN. B.A.Q. 406 (1968).
- 3) Comment, *Constitutional Law—Maintenance and Dissemination of Records of Arrest Versus the Right to Privacy*, 17 WAYNE L. REV. 995 (1971).
- 4) Comment, *Maintenance and Dissemination of Criminal Records: Legislative Proposals*, 19 U.C.L.A. L. REV. 654 (1972).
- 5) Comment, *Retention and Dissemination of Arrest Records: Judicial Response*, 38 U. CHI. L. REV. 850 (1971).

Criminal Procedure; court-appointed counsel's compensation

Penal Code §987.3 (new).

SB 303 (Grunsky); STATS 1973, Ch 101

Support: State Bar of California

Section 987.2 of the Penal Code requires the court to give reasonable compensation to court-appointed trial counsel for services rendered in criminal cases. Section 987.3 has been added to provide guidelines which the court shall use in determining this compensation. The factors set forth in this new section are: (1) the customary fee in the community for similar services rendered by privately retained counsel to a nonindigent client; (2) the time and labor required to

be spent by the attorney; (3) the difficulty of the defense; (4) the novelty or uncertainty of the law upon which the decision depended; (5) the degree of professional ability, skill, and experience called for and exercised in the performance of the services; and (6) the professional character, qualification, and standing of the attorney. No one of these factors is to control the court's decision.

See Generally:

- 1) CAL. PEN. CODE §§858, 859, 987, 987.2 (right to and assignment of counsel).

Criminal procedure; fines and imprisonment

Penal Code §1205 (amended).

AB 1111 (Crown); STATS 1973, Ch 689

Section 1205 of the Penal Code requires that in instances where a judgment against a defendant includes a fine, and failure to pay the fine results in imprisonment, the judgment shall specify the extent of the imprisonment for nonpayment of the fine. Section 1205 has been amended by Chapter 689 to provide that imprisonment shall not be more than one day for each \$20 of the fine. Previously, imprisonment could not be more than one day for each \$5 of the fine. The enactment of Chapter 689 brings Section 1205 into conformity with Sections 2900.5 and 2900.6 of the Penal Code, which provide that when a defendant has been imprisoned prior to sentencing and is then fined as part or all of his sentence, he must receive credit at the rate of at least \$20 a day for each day served prior to sentencing.

Criminal Procedure; grand juries

Penal Code §925a (new); §§914.1, 926 (amended).

AB 1047 (Crown); STATS 1973, Ch 1036

Section 925a has been added to the Penal Code to authorize the grand jury to examine the books and records of fiscal matters of any incorporated city located in the county. Prior to this addition the grand jury was required by Section 925 to look into these records of the county but there was no mention of city records. Section 926 has been amended to allow the grand jury to spend up to \$25,000 annually for the services of one or more experts for investigations of the financial records of a city, county, or any special-purpose assessing or taxing district. Prior to amendment the services of only one expert could be procured, though he could have assistants, and the grand jury was limited to expenditures of \$7500 annually on such ex-

perts unless more was approved by the board of supervisors. Section 914.1 has been amended to require the judge to *inform* the grand jury as to its *powers* and duties.

See Generally:

- 1) San Diego County Bar Ass'n, *Report of the Grand Jury Committee*, 9 SAN DIEGO L. REV. 145 (1972).
- 2) Institute of Contemporary Law, *The Nature Of The California Grand Jury: An Evaluation*, 2 SANTA CLARA LAW. 72 (1962).

Criminal Procedure; grand juror qualifications

Penal Code §893 (amended).

AB 67 (Priolo); STATS 1973, Ch 416

Section 893 of the Penal Code has been amended to provide that a person eighteen years of age or older may serve as a grand juror. Formerly, a grand juror was required to be twenty-one years of age or older.

See Generally:

- 1) *Scott v. Superior Court*, 27 Cal. App. 3d 292, 103 Cal. Rptr. 683 (1972).
- 2) 4 PAC. L.J., REVIEW OF SELECTED 1972 CALIFORNIA LEGISLATION 677 (1973).

Criminal Procedure; grand jury term

Penal Code §905.5 (new); §895 (amended).

AB 802 (Crown); STATS 1973, Ch 428

Section 905.5 has been added to the Penal Code to provide that the grand jury shall be impaneled and serve during the fiscal year of the county. Section 3 of Chapter 428 provides that any grand jury impaneled on the effective date of this chapter shall serve until June 30, 1974; they may, however, be selected to serve for the fiscal year commencing July 1, 1974, if they were not, prior to the effective date of this chapter, originally impaneled at the beginning of the fiscal year to serve during such fiscal year.

COMMENT

Prior to the enactment of this chapter, the law did not state when the grand jury's one-year term commenced. [CAL. PEN. CODE tit. 4 (commencing with §888).] The result was that some grand juries served their terms six months in one fiscal year and six months in another. The addition of Section 905.5 enables a new grand jury to perform its "audit function" [See CAL. PEN. CODE §925] without having to catch up with the preceding six months nor be unable to follow-up its investigation of the first six months.

Criminal Procedure; homicide hearing transcripts

Penal Code §869 (amended).

AB 271 (Chappie); STATS 1973, Ch 229

Section 869 of the Penal Code requires a court reporter, within ten days of the close of a preliminary hearing in a homicide case, to transcribe his notes, make an original and specified copies, and certify to the county clerk of the county in which the defendant was examined. Previously this action was required whenever the defendant was held to answer the charge. Chapter 229 has amended Section 869 to require the reporter to so act only when the defendant is held to answer the charge in a *superior court*, or when either the defendant or prosecutor orders the transcript.

Criminal Procedure; magistrate on call

Penal Code §810 (new).

SB 1401 (Bradley); STATS 1973, Ch 956

Section 810 has been added to the Penal Code to provide that the presiding judge of the superior court, the presiding judge of each municipal court in a county, and the judge of each justice court in a county shall, as often as necessary, designate not less than one judge of the superior court, municipal court, or justice court to be reasonably available on call as a magistrate at all times when a court is not in session in the county. The function of said magistrate shall be to set orders for discharge from actual custody upon bail, issue search warrants, and perform such other matters as the magistrate may deem appropriate.

The new statute also requires the officer in charge of a jail in which an arrested person is held in custody to assist that person or his attorney in contacting the magistrate as soon as possible for the purpose of obtaining release on bail. Any phone call made by an arrested person, or his attorney, while in custody in order to contact the on-call magistrate shall not count as one of the two phone calls allowed him under Section 851.5.

See Generally:

- 1) CAL. PEN. CODE §825 (time within which defendant must be taken before magistrate), §859 (bringing the defendant before superior court magistrate).
- 2) Annot., 98 A.L.R.2d 966 (1964) (delay in taking before magistrate or denial of opportunity to give bail as supporting action for false imprisonment).

Criminal Procedure; prisoner release

Penal Code §4024.1 (new).

AB 1020 (Harvey Johnson); STATS 1973, Ch 392

Section 4024.1 has been added to the Penal Code to allow the sheriff, chief of police, or other person responsible for a county or city jail to apply to the presiding judge of the justice, municipal, or superior court for an authorization, valid for 30 days, to release prisoners early if inmate count exceeds bed capacity. The release, discharge, or expiration of sentence date of an inmate may only be accelerated up to a maximum of five days. No acceleration, however, shall exceed ten percent of the particular inmate's original sentence, and inmates closest to their normal release date must be given accelerated release priority. The actual number of inmates released pursuant to this authorization is not to exceed the number necessary to balance the inmate count and actual bed capacity. Section 2 of Chapter 392 provides that the provisions of Section 4024.1 are to be operative through December 31, 1975, after which time the provisions of the section shall have no force or effect and shall be repealed.

Criminal Procedure; prisoner transfer

Penal Code §2911 (new).

SB 164 (Biddle); STATS 1973, Ch 187

Support: Department of Corrections

Section 2911 has been added to the Penal Code to allow the Director of Corrections, with approval of the Director of General Services, to contract with federal officials and agencies for confinement, care, education, treatment, and employment of such prisoners as the director believes will derive benefit from such action. In order for an inmate to be transferred pursuant to such a contract, he must first execute a written consent in the presence of the warden or other head of the institution in which he is confined. The inmate also has the right to consultation with an attorney of his choice prior to executing such consent.

This section also provides that when the inmate is transferred he remains subject to the jurisdiction of California and may at any time be removed from the facility in which he is confined for return to this state, for transfer to another facility in which this state has the right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of California.

In all other respects the transferred inmate is subject to the regulations applicable to persons committed for violations of laws of the United States not inconsistent with the sentence imposed on such inmate.

Section 2911 also provides that the Adult Authority and the California Women's Board of Terms and Parole may meet at the federal facility where an inmate is confined or enter into cooperative arrangements with corresponding agencies or officials to carry out term-fixing and parole functions. The section affirms the inmate's right to personally appear before the Adult Authority or the California Women's Board of Terms and Parole.

Section 2911 provides for the inmate to be released in California. However, when the inmate and state and federal officials all agree, release of the inmate may take place at a site outside of California.

See Generally:

- 1) CAL. PEN. CODE §2090 (maintenance of federal prisoners in California facilities), §11175 *et seq.* (interstate compacts).

Criminal Procedure; probation departments

Penal Code §1203.14 (new); Welfare and Institutions Code §536.5 (new).

SB 971 (Roberti); STATS 1973, Ch 512

Chapter 512 adds Section 1203.4 to the Penal Code and Section 536.5 to the Welfare and Institutions Code to allow probation departments to engage in activities and programs designed to prevent adult and juvenile delinquency. Pursuant to Section 1203.4 of the Penal Code, probation departments may render direct and indirect services to persons in the community and are not limited to aiding persons on probation. Similarly, Section 536.5 of the Welfare and Institutions Code allows probation departments to engage in activities in the community designed to prevent juvenile delinquency and are not limited to aiding juveniles presently being supervised under Section 654 of the Welfare and Institutions Code, relating to the supervision of a juvenile by a probation officer.

COMMENT

Chapter 512 was enacted primarily to clarify the law relating to the authority of a probation department to engage in preventive community activities directed toward actual or potential offenders. [Senator David Roberti, Press Release #18, Apr. 25, 1973]. Prior to the

enactment of Chapter 512, probation departments were authorized to "establish, or assist in the establishment of, any public council or committee having as its object the prevention of crime, and . . . cooperate with or participate in the work of any such council or committee for the purpose of preventing or decreasing crime, including the improving of recreational, health, and other conditions in the community" [CAL. PEN. CODE §1203.13]. To the extent that Section 1203.13 restricted a probation department to *organized* community or group activities, Section 1203.14 seems to remove such restrictions and broaden the authority of the department. Since no authorizing legislation similar to Section 1203.13 previously existed for juvenile probation departments, Section 536.5 of the Welfare and Institutions Code expands and clarifies the authority of juvenile departments to render community service to prevent crime.

See Generally:

- 1) 2 WITKIN, *CALIFORNIA CRIMES, Probation* §1048, *Probation Officers* §1049 (1963).
- 2) Comment, *Juvenile Law—A Potential California Change*, 2 PAC. L.J. 737 (1971).
- 3) Comment, *Juvenile Probation: Restrictions, Rights and Rehabilitation*, 16 ST. LOUIS U.L.J. 276 (1971).

Criminal Procedure; release on bail and own recognizance

Penal Code §§822, 1318 (amended).

AB 1408 (Sieroty); STATS 1973, Ch 620

Support: State Bar of California

Section 822 of the Penal Code has been amended to clarify the authority of local magistrates to set bail when a person is apprehended under the power of an out-of-county misdemeanor warrant. Once a person is apprehended, the arresting officer must inform the person of his right to immediate local arraignment. If the defendant subsequently requests such arraignment, Chapter 620 specifies that the local magistrate before whom the defendant is arraigned has the authority to set bail if the judicial officer who signed the warrant failed to affix a bail amount to the warrant.

Section 1318 of the Penal Code has been amended to specify that any court or magistrate who could release a defendant from custody upon his giving bail, including a defendant arrested on an out-of-county warrant, may release such defendant on his own recognizance.

COMMENT

A recent study by the Santa Clara County Bar Association revealed

that when the bail was left off out-of-county misdemeanor warrants, defendants were not being released on their own recognizance or on bail because of the lack of statutory authority [See STATE BAR OF CALIFORNIA, 1972 CONFERENCE RESOLUTION 3-17]. Chapter 620 was enacted to help remedy this problem as well as to ultimately help remedy the problem of overcrowding in jails.

See Generally:

- 1) WITKIN, CALIFORNIA CRIMINAL PROCEDURE, *Proceedings Before Trial* §§115, 152, 166 (1963), (Supp. 1969).

Criminal Procedure; reports of child abuse

Penal Code §11161.5 (amended).

SB 398 (Petrís); STATS 1973, Ch 1151

Support: Children's Home Society of California; California Children's Lobby

Opposition: California District Attorneys' Association; California Police Officers' Association

Section 11161.5 of the Penal Code lists persons required to report suspected child abuse (among those listed are physicians, school principals, teachers, and camp and child care center administrators); any of these persons who fail to report a case of suspected child abuse is guilty of a misdemeanor punishable by up to six months in jail or up to a \$500 fine, or both. Section 11161.5 provides that the report is to be made by telephone and in writing within 36 hours to both the local police and the juvenile probation department. This section has been amended to provide that as an alternative the report may be made to either the county welfare department or to the county health department who must, in turn, file a report *without delay* with the local police and the juvenile probation department. Prior to amendment, the welfare department could wait up to 36 hours after receiving a report of an abused child before reporting to the investigative authorities. Section 11161.5(c) has been added to define a minor as used in this section as a person twelve years of age or under.

See Generally:

- 1) 4 PAC. L.J., REVIEW OF SELECTED 1972 CALIFORNIA LEGISLATION 403 (1973).
- 2) 3 PAC. L.J., REVIEW OF SELECTED 1971 CALIFORNIA LEGISLATION 308, 368 (1972).
- 3) Comment, *The Battered Child: Logic in Search of Law*, 8 SAN DIEGO L. REV. 364, 387 (1971).

Criminal Procedure; service on corporations

Penal Code §1392 (amended).

AB 1215 (Ingalls); STATS 1973, Ch 248

Section 1392 of the Penal Code provides that the service of summons on a corporation in an accusatory proceeding [See CAL. PEN. CODE ch. 9 (commencing with §1390)] must be made at least five days before the day of appearance fixed therein. The service is made by delivering a copy of the summons and showing the original to the president or other head of the corporation, or the secretary, cashier, or managing agent. Chapter 248 has amended Section 1392 by expanding the class of people upon whom the service may be made to include an agent of the corporation designated for service of civil process [See CAL. CORP. CODE §§3301, 3301.5].

See Generally:

- 1) CAL. CODE CIV. PROC. §416.10 (service on corporations).
- 2) WITKIN, CALIFORNIA CRIMINAL PROCEDURE, *Introduction* §17 (1963).
- 3) 2 WITKIN, CALIFORNIA PROCEDURE, *Actions* §§602, 649 (1970) (agent for receiving service).
- 4) 3 PAC. L.J., REVIEW OF SELECTED 1971 CALIFORNIA LEGISLATION 326 (1972).

Criminal Procedure; suspension of imprisonment

Vehicle Code §42004.5 (new).

AB 189 (Boatwright); STATS 1973, Ch 1184

Section 42004.5 has been added to the Vehicle Code to provide that upon conviction of any Vehicle Code violation other than a felony, execution of sentence of imprisonment in the county jail shall be suspended, at the request of the convicted person, for a period of 24 hours. However, such suspension is not allowed if the judge determines that such suspension would cause risk to the community or that the person would not return. If the 24-hour suspension is granted and, prior to the end of such period, the person does not deliver himself into custody for commencement of the execution of his sentence, his failure to appear shall constitute a misdemeanor.

Criminal Procedure; time requirement for retrial

Penal Code §1382 (amended).

AB 2357 (Waxman); STATS 1973, Ch 847

Support: State Bar of California

Section 1382 of the Penal Code provides that a defendant must be brought to trial within a specified time in certain actions or the

action will be dismissed. Subdivision (2) of the section covers trials and retrials in superior court. Chapter 847 has amended subdivision (2) to provide that when a defendant is granted a new trial on the issuance of a writ or a court order he must be brought to trial within 60 days after notice of the writ or order is filed in the trial court and served upon the prosecuting attorney. However, when the district attorney chooses to resubmit the case for preliminary examination after an appeal or the issuance of a writ reversing a judgment of conviction where the defendant pleaded guilty prior to a preliminary hearing in a municipal or justice court, the trial must be brought within 90 days after notice has been filed and served. It is significant to note that the prosecution has a ten-day grace period upon good cause after the above time limits expire before the action in the superior court may be dismissed. Prior to this chapter, Section 1382 was mute on the situation in which the defendant is granted a new trial on the issuance of a writ or a court order.

COMMENT

Chapter 847 appears to be a legislative response to *Sykes v. Superior Court* [9 Cal. 3d 83, 507 P.2d 90, 106 Cal. Rptr. 786 (1973)] in which the California Supreme Court faced the situation where the defendant was granted a new trial as a result of a writ. Copies of the writ were served upon the trial court, prison officials, and the Attorney General. However, nothing was done to bring the defendant to trial for 228 days, at which time he was finally rearraigned. The court found that there was no justification for such a delay of retrial and issued a writ of mandate directing dismissal of charges. The court noted that Section 1382 of the Penal Code did not specifically cover the retrial situation but that Article I, Section 13 of the California Constitution was alone sufficient to require a speedy retrial pursuant to the issuance of a writ, and took the 60-day trial provision of Section 1382 as a guideline for what constitutes a speedy retrial. Chapter 847 clarifies the scope of Section 1382 to specifically cover the above situation.

See Generally:

- 1) STATE BAR OF CALIFORNIA, 1972 CONFERENCE RESOLUTION 3-12.
- 2) WITKIN, CALIFORNIA CRIMINAL PROCEDURE, *Trial* §§310, 311, 317 (1963), (Supp. 1969).

Criminal Procedure; victims of crimes

Government Code Article 1 (commencing with §13960) (re-

pealed); Article 1 (commencing with §13959) (new).

SB 149 (Behr); STATS 1973, Ch 1144

Support: Office of the Attorney General

Chapter 1144 has been enacted to make a number of detailed changes in California's law providing indemnification and assistance in rehabilitation to the victims of violent crimes. The new chapter expands the situations in which a victim can be given assistance, increases the assistance available, and also makes a number of substantive changes in the procedures for obtaining such assistance. However, the basic intent and approach of the prior enactment remains [See CAL. STATS 1970, c. 389, at 801; CAL. STATS 1967, c. 1546, at 3707].

Section 13960 expands the definitions given in the prior act. The most important of these changes is that a person definable as a "victim" is not only a person who sustains physical injury or death as a direct result of criminal violence, or anyone legally dependent on his support, but also includes, in the event of death caused by any crime of violence, any individual who legally assumes the obligation to pay, or who voluntarily pays, the medical or burial expenses incurred as a result of the crime. Further, any intentional infliction of injury or death through the use of a motor vehicle, aircraft, or water vehicle shall now constitute a crime of violence within the meaning of this chapter. Also new is the inclusion of injury or death from any of these vehicles in a hit-and-run situation, or where the driver was under the influence of alcohol or any drug. "Pecuniary loss" has now also been clarified to mean the amount of medical expenses and loss of income or support which the victim incurs as a direct result of the injury or death, to the extent that the victim is not indemnified from any other source. Such loss must be an amount exceeding \$100 or twenty percent of the victim's net monthly income, whichever is less. As in the previous statutes, the victim may file an application for assistance with the State Board of Control provided he was a resident of California at the time the crime was committed, and either: (1) the crime was committed in California; or (2) the person whose death or injury gave rise to the application was a resident of California injured or killed while temporarily outside the state.

As a change in procedure, Section 13961 now provides that the application shall be verified and shall contain: (1) a description of the date, nature, and circumstances of the crime; (2) a complete financial statement including the cost of medical care, burial expenses, loss

of wages or support, and extent of indemnification from any source; (3) a statement indicating the extent of disability, if any, resulting from the injury; and (4) an authorization permitting the Attorney General to verify the contents of the application. The staff of the board shall appoint a clerk to review all applications for completeness and shall refer it to the Attorney General for verification. The victim must cooperate with the Attorney General in his investigation and failure to do so shall be reported to the board which, in its discretion, may reject the application on this ground alone.

With respect to the hearing of the board on the application, Chapter 1144 has now added several new provisions: (1) if the victim chooses not to appear, the board may act solely in reliance on the application and the report of the Attorney General and any other evidence obtained in his investigation; (2) if the board finds that the victim or the person whose injury or death gave rise to the application for assistance knowingly and willingly participated in the commission of the crime, then no financial assistance will be given; (3) the board can also find that, because of the victim's involvement in the events leading to the crime, recovery should be denied; and (4) if the board finds, considering all the financial resources of the victim, that the victim will not suffer any serious financial hardship as a result of loss of earnings or support and out-of-pocket expenses, the board shall deny the application. Another new responsibility of the board, as defined in Section 13965, is that after approval of the application it shall determine which type of state assistance will best aid the victim. The board is authorized to adopt one or more of several types of compensatory schemes: (1) direct payment to cover medical expenses up to \$10,000; (2) direct payment equal to loss of wages and support up to \$10,000; or (3) direct payments up to \$3,000 for job retraining or similar employment-oriented rehabilitative services. These payments do not disqualify an otherwise eligible person from other public assistance programs. The payments can be all at once, or periodic; if periodic, the board may increase, decrease, or terminate them according to need.

While the previous enactment had a provision for attorneys' fees, Chapter 1144 limits the fees the board may authorize to an amount not exceeding ten percent of the amount of the award or \$500, whichever is smaller. Also, no attorney shall demand or collect any amount for services rendered in connection with any proceedings under this article except as authorized by this section.

Under both the old and new enactments, the State of California is subrogated to the rights of the victim who receives cash payments to the extent of those payments, less the amount of any fine imposed by the court on the perpetrator of the crime. Such subrogation of rights is against the perpetrator of the crime or any person liable for the pecuniary loss. Section 13966 has been amended to add the provision that the state is now also entitled to a lien, in the amount of the cash payments on any recovery made by or on behalf of the victim. The state may recover this amount in a separate action, or may intervene in an action brought by or in behalf of the victim. Section 13968 adds the provision that it shall be the duty of every hospital to prominently display in its emergency room posters giving notification of the existence and general provisions of this chapter. The board shall promulgate rules for the location of such posters and shall provide posters, application forms, and general information regarding the provisions of this chapter to each hospital and physician licensed to practice in the state. It shall also be the duty of every local law enforcement agency to inform victims of violent crimes of the provisions of this chapter and provide application forms to victims who desire to seek assistance. Section 13969 provides that claims under this article shall be paid from a separate appropriation made to the State Board of Control in the Budget Act, as such claims are approved by the board.

See Generally:

- 1) CAL. GOV'T CODE art. 1 (commencing with §13960) (victims of crime).
- 2) CAL. VEHICLE CODE §§20001, 23101, 23102, 23106 (felony, misdemeanor drunk driving, non-narcotic drugs).
- 3) Shank, *Aid to Victims of Violent Crimes in California*, 43 So. CAL. L. REV. 85 (1970).