



1971

Crimes

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Crimes; bomb threats

Penal Code §148.1 (amended).

SB 347 (Deukmejian); STATS 1971, Ch 634

Section 148.1 of the Penal Code is amended to provide that it is a crime, punishable by imprisonment in the state prison for not more than 3 years, or imprisonment in the county jail for not more than 1 year for any person to maliciously inform any other person that a bomb or other explosive has been placed or secreted in any public or private place knowing that such information is false.

Prior to amendment, §148.1 provided that it was a crime to make a false bomb report to only the following people: any police officer; sheriff or deputy sheriff; district attorney or deputy district attorney; member of the California Highway Patrol, newspaper, radio, or television station or news reporters thereof; employees of a fire department, fire service, airline, airport, railroad, or busline; or the occupants of a building.

See Generally:

- 1) 2 WITKIN, CALIFORNIA CRIMES, *Crimes against Governmental Authority* §806 (1963).

Crimes; advocating harm to peace officers

Penal Code §151 (new).

SB 382 (Grunsky); STATS 1971, Ch 1248

Chapter 1248 adds §151 to the Penal Code to provide that it is a crime for any person to advocate the willful and unlawful killing or injuring of a peace officer, with the specific intent to cause the willful and unlawful killing or injuring of a peace officer, and such advocacy is done at a time, place, and under circumstances in which the advocacy is likely to cause the imminent willful and unlawful killing or injuring of a peace officer. A person convicted of a violation of this section shall be guilty of:

- 1) A misdemeanor if such advocacy does not cause the unlawful and willful killing or injuring of a peace officer; or

2) A felony if such advocacy causes the unlawful and willful killing or injuring of a peace officer.

COMMENT

To avoid a conflict with the constitutional guaranty of free speech, it appears that the legislature adopted the express language of *Brandenburg v. Ohio*, [395 U.S. 444 (1969)] in defining advocacy, as the direct incitement of others to cause the imminent willful and unlawful killing or injuring of a peace officer, and not the mere abstract teaching of a doctrine [§151(b)]. Recent decisions have allowed States to forbid or proscribe advocacy of the use of force or of law violation which is directed to the inciting or producing of imminent lawless action.

See Generally:

- 1) 3 WITKIN, SUMMARY OF CALIFORNIA LAW, *Constitutional Law* §65 (1960), (Supp. 1969).
- 2) Strong, *Fifty Years of "Clear and Present Danger": From Schenck to Brandenburg—and Beyond*, 1969 SUP. CT. REV. 41 (1969).
- 3) *People v. Davis*, 68 Cal. App. 2d 481 (1968).

Crimes; family support

Penal Code §§270, 270h (amended).
SB 1397 (Way); STATS 1971, Ch 1587

Section 270 of the Penal Code sets forth the punishment for failure of a mother or father to provide support for their child. Chapter 1587 amends §270 to provide that if a court of competent jurisdiction has made a final adjudication, in either a civil or a criminal action, that a person is the father of a minor child and the person has notice of such adjudication; if he then willfully omits, without lawful excuse, to furnish necessary support of his child, he shall be subject to punishment of imprisonment in the county jail not exceeding one year or in a state prison not exceeding one year, or by a fine not exceeding \$1,000 or by both.

Chapter 1587 deletes the provision in §270 that a father remaining out of the state who refuses to comply with a support order is guilty of a felony.

Section 270h of the Penal Code provides for the issuance and execution of a support order included in an order granting probation. Chapter 1587 authorizes the court, in an order granting probation which includes a support order, upon conviction of criminal nonsupport, to require the assignment of wages as a condition of probation.

See Generally:

- 1) 1 WITKIN, CALIFORNIA CRIMES, *Introduction* §13 (1963); *Crimes Against Decency and Morals* §§585-587 (1963); §585 (Supp. 1969).
- 2) WITKIN, CALIFORNIA CRIMINAL PROCEDURE, *Jurisdiction and Venue* §79 (1963); §341 (Supp. 1969); *Trial* §§347-348 (1963); §§348-348A (Supp. 1969).
- 3) REVIEW OF SELECTED 1965 CODE LEGISLATION, CONTINUING EDUCATION OF THE BAR 176.
- 4) REVIEW OF SELECTED 1968 CODE LEGISLATION, CONTINUING EDUCATION OF THE BAR, 25, 188.
- 5) REVIEW OF SELECTED 1969 CODE LEGISLATION, CONTINUING EDUCATION OF THE BAR 157.

Crimes; unsolicited delivery of tobacco

Penal Code §308b (new).

AB 372 (McAlister); STATS 1971, Ch 1005

Section 308b is added to the Penal Code to provide that it is a misdemeanor to knowingly deliver or cause to be delivered to any residence in this state any unsolicited tobacco products unless the recipient is personally known to the defendant at the time of the delivery. It is also a nuisance within the provisions of §3479 of the Civil Code to distribute such products to a residence.

Expressly excepted from the provisions of §308b are employees of the United States Postal Service who are acting within the scope of their employment.

Chapter 1005 provides that it is the specific intent of the Legislature "to prevent the furnishing in any manner of tobacco products to persons under the age of 18 years, to prevent the unsolicited distribution of tobacco products to persons who object to such distribution, to prevent interference with the comfortable enjoyment of life and property, and to protect against the invasion of the privacy of persons in their homes."

See Generally:

- 1) 1 WITKIN, CALIFORNIA CRIMES, *Crimes Against Decency and Morals* §592 (1963).

Crimes; poisoning

Penal Code §347 (amended).

AB 6 (Cullen); STATS 1971, Ch 91

Section 347 of the Penal Code, as amended, states that every person who willfully mingles any *harmful substance* with any food, drink, or medicine, with the intent that the same shall be taken by any human being to his injury, and every person who willfully poisons any spring,

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well, or reservoir of water, is punishable by imprisonment in the state prison for one to ten years.

Prior to this amendment it was a crime to willfully mingle any poison, rather than any harmful substance, with food, drink, or medicine.

See Generally:

- 1) 2 WITKIN, CALIFORNIA CRIMES, *Crimes Against Public Peace and Welfare* §666 (1963).

Crimes; drugs

Penal Code §367d (amended).

AB 1369 (Biddle); STATS 1971, Ch 896

Penal Code §367d is amended to include a provision that any person driving a motor vehicle while under the influence of any drug is guilty of a misdemeanor.

Prior to this Chapter, the law provided that it was a misdemeanor for one to drive a motor vehicle while under the influence of intoxicating liquor, or while under the *combined* influence of intoxicating liquor and any drug.

See Generally:

- 1) 2 WITKIN, CALIFORNIA CRIMES, *Crimes Against Public Peace and Welfare* §634 (1963), (Supp. 1969); §640 (Supp. 1969).
- 2) *People v. Keith*, 184 Cal. App. 2d 855 (1960); *People v. Fair*, 254 Cal. App. 2d 890 (1967).

Crimes; razor blades

Penal Code §402d (new).

AB 2520 (Greene); STATS 1971, Ch 1430

Section 402d is added to the Penal Code to provide that it shall be a misdemeanor for any person to knowingly deliver, or cause to be delivered, any unsolicited razor blades to any residence in this state. It shall be a defense to a violation of this section that the donee of the razor blades is personally known to the donor, or that the donee knowingly and personally accepts the articles.

Expressly excepted from the provisions of this section are employees of the United States Postal Services acting within the scope of their employment.

Crimes; defrauding innkeepers

Penal Code §537 (amended).

AB 407 (Chappie); STATS 1971, Ch 198

Penal Code §537, as amended provides that it is a misdemeanor for any person to: (1) obtain food or accommodations at a hotel, inn, restaurant, boarding house, lodging house, apartment house, bungalow court, motel, auto camp or *public or private campground* with intent to defraud, (2) obtain credit by means of false pretenses at such a place, or (3) obtain credit, food or accommodations at such a place and abscond, or by force, menace, or threats, remove any part of his baggage without paying. Evidence showing that a person left without paying, or offering to pay, is *prima facie* evidence of intent to defraud.

Prior to this amendment, §537 did not include public and private campgrounds.

See Generally:

- 1) 1 WITKIN, CALIFORNIA CRIMES, *Crimes Against Property* §514 (1963); *Introduction* §33 (Supp. 1969).

Crimes; school security patrol

Penal Code §626.8 (amended).

AB 2244 (Russell); STATS 1971, Ch 1384

Section 626.8 provides that when a person is present on school property without lawful business, and his presence or acts interfere with the peaceful conduct of the school, he may be asked to leave. If he remains, or he returns within 72 hours, he is guilty of a misdemeanor. Presently only the following persons are authorized to ask him to leave: the chief administrative official of that school, his duly authorized agent, or a person acting as the chief administrative official. As amended, §626.8 now permits a member of the security patrol to ask such a person to leave the school grounds.

See Generally:

- 1) 2 WITKIN, CALIFORNIA CRIMES, *Crimes Against Public Peace and Welfare* §926 H (Supp. 1969).
- 2) REVIEW OF SELECTED 1969 CODE LEGISLATION, CONTINUING EDUCATION OF THE BAR 150.

Crimes; disposal of fetal remains and human anatomical parts

Health and Safety Code §§7054.3, 7054.4 (new); Penal Code §643 (new).

AB 315 (Townsend); STATS 1971, Ch 377

Section 7054.3 is added to the Health and Safety Code to provide

that any recognizable dead human fetus of less than 20 weeks uterogestation shall be disposed of by interment or incineration. Furthermore, Section 7054.4 requires disposal by interment or incineration of any recognizable anatomical parts, human tissues, or anatomical human remains following conclusion of scientific use.

Section 643 is added to the Penal Code providing that any person who knowingly disposes of fetal remains in a public or private dump, refuse, or disposal site or place open to public view is guilty of a misdemeanor. For this section, "fetal remains means the lifeless product of conception regardless of the duration of the pregnancy."

Crimes; arrest records

Penal Code §851.6 (amended).

SB 533 (Moscone); STATS 1971, Ch 1149

Section 851.6 of the Penal Code provides that whenever a person is arrested and released because there were insufficient grounds to make a criminal complaint against him, or because he was released to a facility for drug treatment, such arrest shall be considered a detention. The person arrested shall be issued a certificate, signed by the releasing officer or his superior officer, describing the action as a detention.

Chapter 1149 adds subsection (b) to §851.6 to provide that any reference to the action as an arrest shall be deleted from the arrest records of the arresting agency and of the Bureau of Criminal Identification and Investigation of the Department of Justice. Thereafter such record of the action shall refer to it as a detention.

See Generally:

- 1) REVIEW OF SELECTED 1969 CODE LEGISLATION, CONTINUING EDUCATION OF THE BAR 170.

Crimes; reporting mistreatment of children

Penal Code §11161.5 (amended).

AB 361 (Cologne); STATS 1971, Ch 635

Penal Code §11161.5, as amended, now includes "any supervisor of child welfare and attendance, or any certificated pupil personnel employee" among those enumerated persons who shall report any physical injuries that appear to have been inflicted on a minor by other than accidental means.

Such supervisor of child welfare and attendance, or any certificated pupil personnel employee shall not incur any civil or criminal liability as a result of making any report authorized by this section.

Reports and other pertinent information received from the State Bureau of Criminal Identification and Investigation shall be made available to any supervisor of child welfare and attendance, or any certificated pupil personnel employee having a direct interest in the welfare of the minor.

Subsection (b) is added to §11161.5 to provide that a report shall also be made to the county welfare department by *all* persons required to file a report under subsection (a) above, if a minor is a person described in §600 of the Welfare and Institutions Code (minors within the jurisdiction of the juvenile court which may be adjudged a dependent child of the court), and the duty of the probation officer has been transferred to the county welfare department pursuant to §576.5 of the Welfare and Institutions Code (Delegation of certain duties of the probation officer to county welfare department).

See Generally:

- 1) 1 WITKIN, CALIFORNIA CRIMES, *Elements of Crime* §68 (Supp. 1969), *Defenses* §197 (Supp. 1969); 2 WITKIN, SUMMARY OF CALIFORNIA LAW, *Torts* §52 (Supp. 1969).
- 2) REVIEW OF SELECTED 1965 CODE LEGISLATION, CONTINUING EDUCATION OF THE BAR 197.
- 3) REVIEW OF SELECTED 1968 CODE LEGISLATION, CONTINUING EDUCATION OF THE BAR 217.

Crimes; explosives

Penal Code §§12303.1 (Chapter 1421, STATS 1970), 12303.5 (Chapter 1421, STATS 1970), 12303.5 (Chapter 1425, STATS 1970), 12303.7, 12312 (Chapter 1421, STATS 1970) (repealed), 12303.1, 12303.6 (amended).

AB 2298 (Ketchum); STATS 1971, Ch 905

Consolidates and makes changes in the provisions relating to the unlawful use of destructive devices and explosives.

Section 12303.1 of the Penal Code provides that it is a felony to willfully carry onto, or willfully place any explosive or destructive device on any vessel, aircraft, car, or other vehicle that carries passengers for hire, or to place such a device in any baggage that is to be checked by any common carrier. Chapter 905 amends this section to provide a penalty of imprisonment in the state prison not exceeding 15 years, for violation of this section.

Chapter 905 repeals §12303.1 (Chapter 1421, Stats 1970), §12303.5 (Chapter 1421, Stats 1970) and §12303.5 (Chapter 1425, Stats 1970).

Section 12303.6 provides that, except as otherwise specified in this chapter, it is a felony for any person, firm, or corporation to sell, offer for sale, or knowingly transport within this state, any destructive device, other than fixed ammunition of a caliber greater than .60 caliber. Chapter 905 amends this section to provide a penalty of imprisonment in the state prison not exceeding 15 years for violation of this section.

Chapter 905 repeals §12303.7.

Section 12312 (Chapter 1421, Stats 1970) provided that it is a felony to possess, without a permit, any material or substance with the intent to make a destructive device or explosive punishable by imprisonment in the state prison not to exceed 15 years. Chapter 905 repeals this section.

COMMENT

Chapters 1421 and 1425 (Stats 1970) added the same sections to the Penal Code relating to the use of destructive devices and explosives. When two chapters amend or create the same code sections, as long as they are not inconsistent, they will both stand as law. However, in attempting to subsequently amend a section created by one of the chapters, an inconsistency is created unless the section in the other chapter is also amended in the same manner. Therefore, when Chapter 905 amended §12303.1 (Chapter 1425, Stats 1970), it also had to repeal the same section created by Chapter 1421 to eliminate any inconsistency. Both chapters created a §12303.5. Since the provisions of §12303.5 are incorporated into §12303.1, §12303.5 is no longer needed, hence Chapter 905 repeals both §§12303.5 created by Chapters 1421 and 1425, Stats 1970.

Section 12303.6 was added by a third chapter from Stats 1970 and was not duplicated in any other chapter. Therefore this section could be amended without involving an inconsistency with any other chapter enacted in 1970. The same is true for the repeal of §12303.7.

Chapter 905 repealed §12312 (Chapter 1421, Stats 1970) but did not repeal §12312 (Chapter 1425, Stats 1970). Hence §12312 will still appear in the code providing the penalty for possessing, without a permit, any material with the intent to make a destructive device or explosive.

Prior to the enactment of Chapter 905, the penalty for violating §12303.6 was placed in §12303.7 which stated that anybody convicted of a felony described in the chapter on Explosives and Destructive Devices is punishable by a minimum of 15 years. Technically, §12303.7 did not provide the penalty for any other section in the chapter other than §12303.6 since every offense in the chapter other than §12303.6 carried its own specific penalty. However by placing the penalty in §12303.6 and repealing §12303.7, any confusion that might have existed with §12303.7 is now eliminated.

See Generally:

- 1) 2 WITKIN, CALIFORNIA CRIMES, *Crimes Against Public Peace and Welfare* §783 (Supp. 1969).
- 2) REVIEW OF SELECTED 1967 CODE LEGISLATION, CONTINUING EDUCATION OF THE BAR 182.
- 3) 2 PAC. L.J., REVIEW OF SELECTED 1970 CODE LEGISLATION 479 (1971).

Crimes; female bartenders

Business & Professions Code §25656 (repealed).
SB 439 (Beilenson); STATS 1971, Ch 152

Chapter 152 repeals §25656 of the Business and Professions Code. This section previously provided that it was a misdemeanor for any person to utilize the services of a female in dispensing wine or distilled spirits from behind any permanently affixed fixture used for preparation or concoction of alcoholic beverages, or in the mixing of alcoholic beverages containing distilled spirits, on any premises used for the sale of alcoholic beverages for consumption on the premises. It was not unlawful under this section to so employ a female if such female was the sole owner or she and her husband were the sole owners of the establishment in which such services were used.

COMMENT

The apparent purpose for the repeal of this section was that a recent decision held §25656 to be unconstitutional. [See *Sail'er Inn, Inc. v. Kirby*, 5 Cal. 3d 1 (1971)].