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Crimes

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Crimes

Crimes; arson

Penal Code § 454 (amended).
SB 2067 (Robert); 1992 STAT. Ch. 581
(Effective August 31, 1992)

Prior law provided that every person who committed arson that caused great bodily injury or that caused an inhabited structure to burn, during and within an area of a state of insurrection or a state of emergency, was punishable by imprisonment in the state prison for three, five, or seven years. Chapter 581 changes the punishment for these types of arson, when committed within these specified areas, to five, seven or nine years.

In addition, Chapter 581 provides that every person who unlawfully possesses, manufactures, or disposes of a firebomb.


5. CAL. PENAL CODE § 454(b) (amended by Chapter 581). Chapter 581 also provides that any person who violates § 452 or subdivision (b) of § 453 will be punished by imprisonment in the state prison for three, five, or seven years. Id. Arson, as defined in § 451 of the Penal Code is willfully and maliciously setting fire to, or burning or causing to be burned, or aiding, counseling, or procuring the burning of any structure, forest land or property. Id. § 451 (West Supp. 1992). Section 452 of the Penal Code addresses the crime of unlawfully causing a fire and defines the crime as recklessly setting fire to, or burning, or causing to be burned, any structure, forest land or property. Id. § 452 (West 1988). Section 453(b) of the Penal Code provides that every person who possesses, manufactures, or disposes of a firebomb is guilty of a felony. Id. § 453(b) (West 1988). Chapter 581 also states that probation may not be granted to any person convicted of violating this section, except in unusual cases where the interest of justice would best be served. Id. § 454(c) (amended by Chapter 581); see id. § 1203(a) (West Supp. 1992) (defining probation).

6. See id. § 453(b) (West 1988) (defining firebomb as a breakable container containing a flammable liquid with a flashpoint of 150 degrees Fahrenheit or less, having a wick or similar device capable of being ignited, but specifying that no device commercially manufactured primarily for the purpose of illumination will be deemed to be a firebomb for the purposes of this subdivision). See People v. Diamond, 2 Cal. App. 3d. 860, 863, 83 Cal. Rptr. 11, 13 (1969) (holding that § 452(a) of

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during and within these specified areas shall be punished by imprisonment in the state prison for three, five, or seven years.\textsuperscript{2}

CPH

Crimes; child abuse--sentencing enhancement

Penal Code § 273d (amended).

SB 14 (Lockyer); 1992 STAT. Ch. 917

Under existing law, anyone who willfully\textsuperscript{1} inflicts cruel or inhuman corporal punishment or injury upon a child\textsuperscript{2}, which results in a traumatic condition,\textsuperscript{3} is guilty of a felony that is punishable by imprisonment in a state prison for two (2), four (4), or six (6) years or in a county jail for not more than one year, or by a fine of up to $6,000 or by both.\textsuperscript{4}

the Penal Code (now § 453) is not unconstitutionally vague, and that mere possession of a flammable explosive or combustible material, substance or device is not a crime; to constitute a crime, such possession must be accompanied by a specific intent to wilfully and maliciously burn buildings or property).

7. \textsuperscript{7}CAL. PENAL CODE § 454(b) (amended by Chapter 581); see 1992 Cal. Stat. ch. 581, sec. 3, at ___ (amending CAL. PENAL CODE § 454) (stating that this is an urgency statute necessary for the protection of the public from situations similar to those which occurred during the Los Angeles and San Francisco riots of April 29 through May 3, 1992).

1. \textsuperscript{1}See CAL. PENAL CODE § 7(1) (West 1988) (defining willfully); see also People v. Atkins, 53 Cal. App. 3d 348, 358, 125 Cal. Rptr. 855, 861 (1975) (holding that a general intent to inflict any cruel or inhuman corporal punishment or injury on a child will suffice for "willfully").

2. \textsuperscript{2}See CAL. PENAL CODE § 11165 (West Supp. 1992) (defining child); see also People v. Thomas, 65 Cal. App. 3d 854, 858, 135 Cal. Rptr. 644, 646 (1976) (holding that "child" means "minor" and is a chronological, not a physical, determination).

3. \textsuperscript{3}See CAL. PENAL CODE § 273.5(c) (West Supp. 1992) (defining traumatic condition); see Thomas, 65 Cal. App. 3d at 857, 135 Cal. Rptr. at 646 (describing "traumatic condition" as a wound or any type of detrimental condition of the body caused by the use of force by another).

4. \textsuperscript{4}CAL. PENAL CODE § 273d(a) (amended by Chapter 917); see People v. Lofink, 206 Cal. App. 3d 161, 163-64, 253 Cal. Rptr. 384, 385-86 (1988) (stating that three-month old child's father was properly convicted of felony child abuse under § 273d after it was shown that the child's broken wrist, ankle and rib occurred while he was in the care of his father, and that the injuries were non-accidental); cf. FLA. STAT. ANN. § 827.03 (West Supp. 1992) (defining and criminalizing aggravated child abuse); LA. REV. STAT. ANN. § 14:93 (West 1986) (defining and criminalizing cruelty to juveniles); Kama v. State, 507 So.2d 154, 155 (Fla. Dist. Ct. App. 1987) (stating that father was guilty of aggravated child abuse under § 827.03(3) after hitting his ten (10) year old stepson across...
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Prior to Chapter 917, if such injury resulted in the child’s death and the prosecutor could not prove murder or voluntary manslaughter, the most severe charge available to the prosecutor was that of involuntary manslaughter which carries a lighter sentence than if the injury to the child did not result in the child’s death.

Under Chapter 917, willful infliction of injury upon a child, which is the direct cause of the child’s death, but is done without

the back with a belt and in the face with his fist); State v. Sumler, 395 So.2d 766, 767, 769-70 (La. Sup. Ct. 1981) (affirming conviction of a mother under § 14:93 for cruelty to juveniles when she prevented her 18-month old son from leaving a tub full of scalding hot water which resulted in his sustaining third degree burns over 30% of his body).

5. See CAL. PENAL CODE §§ 187(a), 189, 190 (West 1988 & Supp. 1992) (defining first and second degree murder and their respective penalties of death or 25 years to life and 15 years to life in a state prison); see id. § 188 (West 1988) (defining malice); see also People v. Smith, 35 Cal. 3d 798, 803-04, 678 P.2d 886, 889, 201 Cal. Rptr. 311, 314 (1984) (holding that felony child abuse that results in the child’s death is “an integral part of the homicide,” and is therefore precluded from supporting a conviction based upon the felony-murder rule); People v. Caffero, 207 Cal. App. 3d 678, 682-84, 255 Cal. Rptr. 22, 25 (1989) (holding that felony child abuse is not “inherently dangerous to human life,” and therefore may not support a conviction based upon the felony-murder rule). See generally Barry Bendetowies, Felony Murder and Child Abuse: A Proposal For The New York Legislature, 18 FORDHAM URB. L.J. 383, 383-84 (1990) (advocating the passage of a child abuse statute that would suffice as the predicate felony supporting a felony-murder charge).

6. See CAL. PENAL CODE §§ 192(a), 193(a) (West 1988) (defining voluntary manslaughter). The penalty for voluntary manslaughter is three (3), six (6), or eleven (11) years in a state prison. Id. § 193(a) (West 1988).

7. See id. § 192(b), 193(b) (West 1988) (criminalizing involuntary manslaughter and providing a penalty of two (2), three (3), or four (4) years in a state prison).

8. Id. § 190(a)-(b) (West Supp. 1992); id. § 193(a)-(c) (West 1988) (describing the punishments for murder, voluntary manslaughter and involuntary manslaughter). See generally Jim Trotter, Child Got Death; Killer Got 7 Years, SACRAMENTO BEE, Sept. 14, 1990, at A2 (describing the death of Danielle Edson-Savory, an 18-month old child who was beaten to death by her babysitter in Yolo County). According to the Los Angeles District Attorney’s Office, of the 64% of the child abuse deaths filed in that county as second degree murder cases during the fiscal year June 1990-91, 23% resulted in convictions, 72% resulted in convictions for involuntary manslaughter or felony child abuse, and the remaining 5% resulted in acquittals. See generally Pat Alston, Murder Most Foul: Prosecutor says laws too soft on parents who kill, SANTA MONICA OUTLOOK, Sept. 2, 1991, at § A (discussing the lack of statutory protection for children abused to death).

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malice or intent, shall carry a penalty of imprisonment for three (3), six (6), or nine (9) years, which is similar to the penalty for voluntary manslaughter.\(^9\)

ACR

**Crimes; commuted sentences--battered women**

Penal Code § 4801 (amended).
AB 3436 (Friedman); 1992 STAT. Ch. 1138

Existing law provides that the Board of Prison Terms (Board)\(^1\) may report to the Governor the names of any persons imprisoned in any state prison that the Board determines should receive a commuted sentence or be pardoned due to good conduct, unusual term of sentence, or any other cause which should entitle the prisoner to a pardon or commuted sentence.\(^2\) Chapter 1138 specifies that the

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9. *Cal. Penal Code* § 273d(b) (amended by Chapter 917) (providing that a conviction shall be punished by imprisonment in state prison for three (3), six (6), or nine (9) years).

1. *See Cal. Penal Code* § 3040 (West 1982) (empowering the Board to parole prisoners outside prison walls or prison camps); *id.* § 4810 (West 1982) (providing the powers and duties of the Board); *id.* § 5003.5 (West 1982) (providing that the Board may advise and recommend specific policies to the Director of Corrections, and stating that the Board and Director should cooperate to establish policies regarding classification, transfer, and discipline).

2. *Id.* § 4801(a) (amended by Chapter 1138).
Crimes

Board may report to the Governor names of prisoners that the Board determines should receive a commuted sentence or pardon on account of Battered Woman Syndrome (BWS).3

TRF

Crimes; controlled substances

AB 823 (Alpert and Peace); 1992 STAT. Ch. 49

3. Id. (amended by Chapter 1138); see CAL. CODE REGS. tit. 15, §§ 2815-2819 (1991) (specifying the requirements needed to be fulfilled in order for the Governor to commute a sentence); Edward S. Coleman, Commutation of Sentence, Conditions Attached by Governor, 26 S. CAL. L. REV. 92, 92 (1952) (discussing the Governor’s powers to commute prisoners’ sentences); Carolyn W. Kaas, The Admissibility of Expert Testimony on the Battered Woman Syndrome in Support of a Claim of Self-Defense, 15 CONN. L. REV. 121, 121 n.1 (1982) (defining BWS); Rebecca Hudsmith, The Admissibility of Expert Testimony on Battered Woman Syndrome in Battered Women’s Self-Defense Cases in Louisiana, 47 LA. L. REV. 979, 979-83 (1987) (establishing a workable definition of BWS); cf. MD. CODE ANN. CTS. & JUD. PROC. § 10-916(a)(2),(b)(2) (Supp. 1992) (permitting expert testimony on Battered Spousal Syndrome at trial, and defining Battered Spousal Syndrome as the same condition recognized in the medical and scientific community as BWS); OHIO REV. CODE ANN. § 2901.06 (Anderson Supp. 1991) (permitting introduction of expert testimony on BWS into evidence at trial); MONT. CODE ANN. § 46-23-210 (1992) (providing that parole board can release a prisoner on medical parole if a physician diagnoses the prisoner as having a syndrome that renders the person incapable of presenting a danger to society); Mo. REV. STAT. § 38-563.033 (West 1992) (permitting evidence of BWS at trial in determining whether the defendant acted in self-defense). See generally CHARLES P. EWING, BATTERED WOMEN WHO KILL: PSYCHOLOGICAL SELF-DEFENSE AS LEGAL JUSTIFICATION (1987) (arguing that there should be a new legal justification of homicide which the author terms “psychological self-defense”); CYNTHIA K. GILLESPIE, JUSTIFIABLE HOMICIDE: BATTERED WOMEN, SELF-DEFENSE, AND THE LAW (1989) (exploring the historical, legal, and societal reasons why battered women have generally been unsuccessful in using self-defense as an excuse to their committing homicide); LENORE WALKER, THE BATTERED WOMEN (1979) (detailing the results of the author’s studies on battered women, and coining the term “battered woman syndrome”); Mira Mihajlovich, Does Plight Make Right: The Battered Woman Syndrome, Expert Testimony, and the Law of Self-Defense, 62 IND. L.J. 1253 (1987) (arguing that expert testimony should not be used in the trials of battered women); Florida Oks ‘battered woman’ defense, CHI. TRIB., Dec. 19, 1991, at 21 (stating that Ohio, Texas, Maryland, Massachusetts, and Florida currently allow BWS to be considered in clemency board hearings, and that 14 other states are considering allowing a similar review process); Abuse: Valid Defense? Battered woman syndrome makes gains in the courtroom, ATLANTA CONST., Nov. 21, 1991, at 1 (stating that Washington allows clemency hearings for woman who suffer from BWS).
Existing law provides that any person who possesses ephedrine in combination with other specified chemicals, with the intent to manufacture methamphetamine, is guilty of a felony. Under Chapter 49, any person who, with the intent to manufacture methamphetamine or any of its analogs, possesses ephedrine alone is guilty of a felony.

CPH
Crimes; controlled substances

SB 1363 (Mello); 1992 STAT. Ch. 680

Existing law provides sentencing enhancements for any person convicted of possession or sale of designated controlled substances, including cocaine, or the transporting, selling or giving away of designated controlled substances, with the length of the additional term dependent on the weight or volume of the substance involved. Chapter 680 reduces the weights or volumes required to apply the additional terms, and increases the additional terms of imprisonment for persons convicted of violating these provisions. Chapter 680


2. See CAL. HEALTH & SAFETY CODE § 11351.5 (West 1991) (prohibiting the possession of cocaine, and providing the punishment for possession of cocaine); see also People v. Rushing, 209 Cal. App. 3d 618, 622, 257 Cal. Rptr. 286, 289 (1989) (holding that the jury could reasonably infer that the defendant knew of the controlled nature of cocaine because the cocaine was hidden in a can with a false bottom, and that conviction for possession of cocaine was therefore supported).

3. See CAL. HEALTH & SAFETY CODE § 11352 (West 1992) (prohibiting the transportation, sale, or giving away of designated controlled substances).

4. Id. § 11370.4(a) (amended by Chapter 680); see People v. Pieters, 52 Cal. 3d 894, 903, 802 P.2d 420, 426, 276 Cal. Rptr. 918, 923-24 (1991) (stating that drug quantity enhancements are imposed according to the total weight of any compound or mixture containing the drug rather than by weight of the drugs in pure form only); People v. Medina, 27 Cal. App. 3d 473, 476, 103 Cal. Rptr. 721, 722-23 (1972) (holding that if specific intent to sell a narcotic is present, the offense of offering to sell is complete at time of offer, and delivery is not an essential element); cf. ILL. ANN. STAT. ch. 56 1/2, paras. 1401-1402 (Smith-Hurd Supp. 1992) (providing enhancements based on the amount of the controlled substance); N.Y. PENAL LAW § 220.06-220.21 (McKinney 1989) (providing for different degrees of the crime of possession of a controlled substance based on the amount of the substance possessed).

5. CAL. HEALTH & SAFETY CODE § 11370.4(a)(1)-(6) (amended by Chapter 680). Chapter 680 provides the following prison term enhancements: (1) Where the substance exceeds one kilogram by weight, the person will receive an additional term of three years; (2) where the substance exceeds four kilograms by weight, the person will receive an additional term of five years; (3) where the substance exceeds ten kilograms by weight, the person will receive an additional term of ten years; (4) where the substance exceeds twenty kilograms by weight, the person will receive an additional term of fifteen years; (5) where the substance exceeds forty kilograms by weight, the person will receive an additional term of twenty years; and (6) where the substance exceeds eighty kilograms by weight, the person will receive an additional term of twenty-five years. Id. § 11370.4(a)(1)-(6)
also reduces the weights or volumes required to apply the additional terms of imprisonment, and increases the terms of imprisonment for persons who possess for sale, transport, or sell a substance containing methamphetamine, amphetamine, or phenacyclidine.\footnote{6}

\textbf{CPH}

\textbf{Crimes; driving with suspended license}

Vehicle Code § 14601.5 (renumbered & new).
SB 2022 (Leslie); 1992 STAT. Ch. 982

Under existing law, it is a crime for any person to drive a motor vehicle knowing\footnote{1} that his or her driver’s license has been sus-

\footnote{6} CAL. HEALTH & SAFETY CODE § 11370.4(b) (amended by Chapter 680); see People v. Glass, 44 Cal. App. 3d 772, 777, 118 Cal. Rptr. 797, 798 (1975) (holding that, to support a conviction of possession of amphetamines for sale, it must be shown that the accused exercised control or had the right to exercise control over the controlled substance, that he had knowledge of its nature, and that he had specific intent to sell the controlled substance). Chapter 680 provides the following prison term enhancements: (1) Where the substance exceeds one kilogram by weight, or thirty liters by liquid volume, the person will receive an additional term of three years; (2) where the substance exceeds four kilograms by weight, or 100 liters by liquid volume, the person will receive an additional term of five years; (3) where the substance exceeds ten kilograms by weight, or 200 liters by volume, the person shall receive an additional term of ten years; (4) where the substance exceeds twenty kilograms by weight, or 400 liters by volume, the person will receive an additional term of fifteen years. CAL. HEALTH & SAFETY CODE § 11370.4(b)(1)-(4) (amended by Chapter 680).

\footnote{1} See CAL. VEH. CODE § 14601.2(c) (West Supp. 1992) (stating that people are presumed to know that their licenses have been suspended or revoked if notice has been given to them by the Department of Motor Vehicles (DMV), and knowledge of a restriction is presumed when the individuals have been given notice by the court). Under Chapter 982, knowledge is presumed if the DMV has given notice to the defendant. Id. § 14601.5(c) (enacted by Chapter 982). The DMV must provide notice and an opportunity to be heard when it proposes to suspend or revoke the driving privileges of a person. Id. § 13950 (West 1987); see Bell v. Burson, 402 U.S. 535, 539 (1971) (holding that the Fourteenth Amendment to the United States Constitution requires notice and an opportunity to be heard when a state seeks to suspend or revoke a driver’s license); Bennett v. Bodily, 211 Cal. App. 3d 133, 138, 259 Cal. Rptr. 199, 203 (1989) (stating that due process requirements must be met before withdrawing driving privileges once conferred). When the DMV has given notice of a pending action for certain offenses, including violations of §§ 13353 and 13353.2, the person receiving such notice may within 10 days demand a hearing. CAL. VEH. CODE
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pended, revoked or restricted, unless in compliance with the restriction, for specified offenses related to driving under the influence of drugs or alcohol. Chapter 982 makes it a crime for any person to drive a motor vehicle when the person knows that his or her license has been suspended, revoked or restricted for refusing to take or complete a chemical test to determine the person’s blood-

§ 14100 (West Supp. 1992). An administrative decision to revoke or suspend a license may be reviewed by a court of competent jurisdiction. Id. § 14400 (West 1987); see Berlinghieri v. Department of Motor Vehicles, 33 Cal. 3d 392, 398, 657 P. 2d 383, 387, 188 Cal. Rptr. 891, 895 (1983) (holding that the reviewing court may look at the administrative record for errors of law, and may also make an independent judgment on the evidence).

4. See id. § 13353.6(a) (West Supp. 1992); id. § 13353.7 (West Supp. 1992) (restricting commercial driver licensees upon violation of §§ 13353 and 13353.2, respectively). Chapter 982 subjects commercial driver’s licensees driving in violation of the restrictions imposed upon them to criminal liability. Id. § 14601.5(b) (enacted by Chapter 982).
5. See id. § 14601.2(a) (West Supp. 1992) (listing specified offenses as: (1) Driving under the influence of alcohol or drugs; (2) driving while addicted to any drug; and (3) causing bodily injury to another while driving under the influence of alcohol or drugs); see also id. § 13352(a) (West 1987) (providing for suspension or revocation upon conviction for violations of §§ 23152 or 23153 of the Vehicle Code).
6. Id. § 14601.2(a) (West Supp. 1992).
7. See Payne v. Department of Motor Vehicles, 235 Cal. App. 3d 1514, 1518, 1 Cal. Rptr. 2d 528, 530 (1991) (holding that a defendant refused to submit to the required blood alcohol test when he refused to take the test unless it could be administered by his personal physician); Webb v. Miller, 187 Cal. App. 3d 619, 626, 232 Cal. Rptr. 50, 53 (1986) (noting that the only excuse recognized by California courts for refusing to take the required blood alcohol test is officer-induced confusion).

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alcohol level\(^8\) or for driving a motor vehicle and having a blood-alcohol level of 0.08%\(^9\) or higher.\(^{10}\)

**JSP**

**Crimes; eavesdropping--cellular phones**

Penal Code § 632.7 (new); §§ 631, 632, 632.5, 632.6, 633, 633.1, 633.5, 634, 637.2 (amended).
AB 2465 (Connelly); 1992 STAT. Ch. 298

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8. See CAL. VEH. CODE § 13353(a) (West Supp. 1992) (requiring suspension or revocation of a person's driver's license upon refusal to submit to a chemical blood, breath or urine test for blood-alcohol content); see also South Dakota v. Neville, 459 U.S. 553, 554 (1983) (holding that the introduction into evidence of a defendant's refusal to submit to a blood alcohol test did not violate the prohibition in the Fifth Amendment of the United States Constitution against compelled self incrimination); Hernandez v. Department of Motor Vehicles, 30 Cal. 3d 70, 634 P.2d 917, 177 Cal. Rptr. 566 (1981) (upholding the constitutionality of the "implied consent" rule contained in § 13353); Goodman v. Orr, 19 Cal. App. 3d 845, 852, 97 Cal. Rptr. 226, 230 (1976) (stating that the purpose of § 13353 of the California Vehicle Code is to obtain the best evidence of blood alcohol content at the time of arrest and, in the long run, to deter drunken driving). See generally Jay Mathews, New Weapons Against Drunken Drivers; Laws Allowing Police to Revoke Licenses on Street Seen as Effective, WASH. POST, Sept. 16, 1991, at A12 (reporting on the nature and effectiveness of California's license suspension and revocation laws); Kerry Wangberg, Administrative Driver's License Suspension, ARIZ. ATT'Y, Dec. 25, 1988, at 28, available in WESTLAW, TP-All file (reviewing the provisions, known as administrative per se laws, of Arizona and other states which allow suspension or revocation of driver's licenses for refusal to submit to a blood alcohol test); An Interim Report to the Nation From the Presidential Commission on Drunk Driving, Dec. 13, 1982, at 46-47 (suggesting that, as part of the effort to combat the problem of drunken driving, states should adopt administrative per se statutes allowing for immediate suspension or revocation of driving privileges upon a driver's refusal to submit to a blood alcohol test).

9. See CAL. VEH. CODE § 13353.2(a) (West Supp. 1992) (requiring suspension when a person is found driving or in actual physical control of a motor vehicle when he or she has a blood-alcohol level of 0.08% or higher).

10. Id. § 14601.5(a) (enacted by Chapter 982). Upon a first conviction for violation of § 14601.5(a), a person is fined between $300 and $1,000 or is punished by imprisonment in the county jail for not more than six months, or by both the fine and imprisonment. Id. § 14501.5(d)(1) (enacted by Chapter 982). A subsequent violation of § 14601.5 or of §§ 14601 or 14601.2 of the Vehicle Code within five years of violating § 14601.5 subjects the person to a minimum ten day jail term and a maximum term of one year, and a fine of between $500 and $2,000. Id. § 14601.5(d)(2) (enacted by Chapter 982).
Existing law provides that it is a crime to intentionally eavesdrop upon or record a confidential communication without the consent of all parties to that communication. Existing law further provides that it is a crime for anyone to maliciously intercept or receive a communication transmitted via cellular or cordless telephones without the consent of all of the parties. Chapter 298 provides that any person who intentionally intercepts or receives and records a communication transmitted via cordless or cellular phones shall be punished by a fine not exceeding $2,500 or by imprisonment in a county jail or state prison for up to one year, or by both a fine and imprisonment.

1. See CAL. PENAL CODE § 632(c) (amended by Chapter 298) (defining confidential communication); see Frio v. Superior Court, 203 Cal. App. 3d 1480, 1488, 250 Cal. Rptr. 819, 823 (1988) (holding that a communication is confidential if either party reasonably expects the communication to be confined to the parties).

2. CAL. PENAL CODE § 631 (amended by Chapter 298); see People v. Ratekin, 212 Cal. App. 3d 1165, 1168, 261 Cal. Rptr. 143, 145 (1989) (distinguishing wiretapping, defined as the interception of communications by an unauthorized connection to the transmission line, and eavesdropping, defined as the interception of communications by the use of equipment which is not connected to any transmission line).


4. See id. § 632.6(c) (amended by Chapter 298) (defining cordless telephone).


6. CAL. PENAL CODE § 632.7(a) (enacted by Chapter 298). Chapter 298 further provides that if the offender has been previously convicted of this section, or of any section governing the prohibition on eavesdropping or recording of conversations, the offender will be punished by a fine not exceeding $10,000, or imprisonment for up to one year in a county jail or state prison, or by both fine and imprisonment. Id.; cf. ILL. ANN. STAT. ch. 38, para. 108B-1 (Smith-Hurd Supp. 1992)
Crimes

Under prior law, a person who was injured by a violation of one of the specified statutes could bring suit against the violator with damages being measured as the larger of either $3,000, or three times the actual damages.\(^7\) Chapter 298 increases the damages recoverable under such suit to permit the larger of either $5,000 or three times the actual damages.\(^8\)

NCL

Crimes; firearm dealer registers

Penal Code §§ 11106, 12001, 12027, 12070, 12071, 12072, 12073, 12076, 12077, 12078, 12082, 12084, 12280, 12290 (amended); Public Contract Code § 10334 (amended); Welfare and Institutions Code §§ 8100, 8103, 8104, 8105 (amended).

AB 3552 (Hauser and Peace); 1992 STAT. Ch. 1326

Under existing law all dealers who sell, lease, or transfer firearms\(^1\) must maintain a register of transactions\(^2\) as a condition of their dealer’s license.\(^3\) Chapter 1326 provides that a dealer need not


\[^{8}\] CAL. PENAL CODE § 637.2(a) (amended by Chapter 298); see Beeman v. Burling, 216 Cal. App. 3d 1586, 1601, 265 Cal. Rptr. 719, 728 n.9 (1990) (defining actual damages as real, substantial, and just damages, or the amount awarded to the complainant in compensation for his actual and real loss or injury); Ribas v. Clark, 38 Cal. 3d 355, 365, 696 P.2d 637, 643, 212 Cal. Rptr. 143, 149 (1985) (holding that an award to the victim of a violation of § 637.2 accrues at the time of the violation).

\(^1\) See CAL. PENAL CODE § 12001(b) (amended by Chapter 1326) (defining firearm); cf. 18 U.S.C. § 921(a)(3) (1988) (defining firearm as: (1) Any weapon(including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (2) the frame or receiver of any such weapon; (3) any firearm muffler or firearm silencer; or (4) any destructive device). Antique firearms are not included. \textit{Id.}

\(^2\) See CAL. PENAL CODE § 12077(a)(1)-(e)(2) (amended by Chapter 1326) (specifying what information the register must include); \textit{id.} § 12077(b)(5) (amended by Chapter 1326) (defining transaction).

\(^3\) \textit{Id.} § 12073(a) (amended by Chapter 1326).

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maintain a register for unloaded firearms which are not pistols, revolvers, or concealable weapons. Chapter 1326 further provides that it is a misdemeanor for a dealer not to keep the specified register.

Existing law provides for a fifteen day waiting period before firearms may be delivered by a firearms dealer. Chapter 1326 provides that the delivery, sale, or transfer of non-concealable firearms from one dealer to another, the delivery of firearms from a California dealer to an out-of-state licensed person, and the return of a firearm to a wholesaler, are exempt from the fifteen day waiting period.

Under existing law when two unlicensed parties wish to sell or transfer firearms, they must make the transaction through a licensed dealer or law enforcement agency. Chapter 1326 provides that delivery, sale, or transfer of firearms from a person inside California to a licensed person outside the state need not be made through a licensed dealer.

Under existing law it is, with certain exceptions, a felony to import an assault weapon into California. Under Chapter 1326, certain persons who are going to or leaving an organized compe-

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4. *Id.* § 12073(b)(1) (amended by Chapter 1326); see *id.* § 12001(a) (amended by Chapter 1326) (defining the terms pistol, revolver, and firearm capable of being concealed upon the person); cf. 18 U.S.C. § 923(g)(1)(A) (1988) (specifying that under federal law, a register must be maintained for all firearms).

5. **CAL. PENAL CODE** § 12073(c) (amended by Chapter 1326); see Lisa Mascaro, *Anahiem Passes Ordinance Requiring Registration of Gun Dealers, New Fee*, L.A. TIMES, Feb. 28, 1990, at B6 (discussing the approval of an ordinance that requires gun dealers to keep a register and pay extra fees); cf. 18 U.S.C. § 924(a)(1) (1988 & Supp.II 1990) (specifying that a licensed person who knowingly makes false statements about requested records shall be fined not more than $5,000, imprisoned not more than five years, or both); OR. REV. STAT. § 166.420(8) (1989) (specifying the penalty for not keeping a similar register as a Class C felony).


7. *Id.* § 12078(k)(1)-(3) (amended by Chapter 1326).

8. *Id.* § 12072(d) (amended by Chapter 1326).

9. *Id.* § 12078(f) (amended by Chapter 1326).

10. *Id.* § 12280(a) (amended by Chapter 1326); see *id.* § 12280(d)-(k) (amended by Chapter 1326) (specifying exempt persons as including various law enforcement officers, military personnel, and various permit and license holders).

11. *See id.* § 12280(k)(5) (amended by Chapter 1326) (specifying persons must be 18 years or older and must not be prohibited from having firearms under any other sections of the Penal Code).
Homicide and bombing are for theft. Criminal law or league competition involving the use of an assault weapon are exempt from the import law if properly transported. Under existing law it is a felony for persons who have been taken into custody and admitted to a mental health facility to own, possess, control, or receive a firearm, or to purchase any firearm for five years after being released. Existing law also provides that such a person may have access to a firearm if after the person filed a petition, a superior court finds by a preponderance of evidence that the patient would use firearms safely and lawfully. Prior law further provided that the person in charge of the mental facility could certify that the patient would use firearms safely and lawfully. Chapter 1326 deletes the option that a person in charge of the mental facility may certify a person safe to use firearms.

Under existing law the Department of Justice may obtain from the Department of Mental Health, records concerning permit applications, purchase or transfer of explosives, machine guns, short-barreled shotguns or rifles, assault weapons and destructive devices. Chapter 1326 provides that the Justice Department may obtain records to determine whether a person may acquire, carry, or

12. See id. § 12280(k)(2)-(3) (amended by Chapter 1326) (specifying requirements concerning where the competitive matches may take place, and stating that the match must be approved by law enforcement or a nationally or state recognized entity which promotes firearm safety and education).
13. Id. § 12280(k) (amended by Chapter 1326); see id. § 12280(k)(4) (amended by Chapter 1326) (specifying that assault weapons must also be transported in accordance with § 12026.1 or § 12026.2 of the Penal Code). See generally Michael Connelly, Gun Hobbyists Hope to Achieve Their Aim, L.A. TIMES, July 5, 1990, at B1 (discussing the wide use of assault weapons in competition matches); Jay Mathews, Groups Sue to Overturn California Gun Restriction; National Debate Shifts to Judicial Arena, WASH. POST, Feb. 15, 1990, at A30 (discussing a law suit in which a plaintiff's inability to legally transport his weapon through California to a shooting competition in Oregon is in direct conflict with the federal Firearms Owners' Protection Act of 1986 which allows such transport).
15. Id. § 8103(f)(4) (amended by Chapter 1326).
17. CAL. WELF. & INST. CODE § 8103(f)(4) (amended by Chapter 1326).
18. Id. § 8104 (amended by Chapter 1326).
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possess a firearm, explosive or destructive device, if that person is under criminal investigation involving such activities.¹⁹

EB

Crimes; firearm possession on grounds of a youth center

Penal Code § 626.95 (new).
AB 2777 (Archie-Hudson); 1992 STAT. Ch. 750

Existing law provides that all but specified persons,¹ are prohibited from bringing certain weapons,² including loaded³ or unloaded firearms,⁴ upon any school⁵ ground unless it is with the written permission of the school superintendent or equivalent school authority.⁶ Chapter 750 makes it unlawful for any person to violate

¹. See CAL. PENAL CODE §§ 626.9(c), 626.10(a)-(f) (West Supp. 1992) (listing those exempt from the restrictions imposed by this section, including peace officers and military personnel); id. § 7 (West 1988) (defining person).
². See id. § 626.10(a) (West Supp. 1992) (listing dirks, daggers, knives having blades longer than 3.5 inches as some of the weapons prohibited by § 626.10); People v. Pettaway, 233 Cal. App. 3d 1067, 1069, 285 Cal. Rptr. 147, 148 (1991) (holding that a knife with a handle molded to fit the palm of one’s hand with a 2.25 inch blade protruding out through the middle fingers is a “dirk or dagger”); Conrad v. Forden, 176 Cal. App. 3d 775, 778, 222 Cal. Rptr. 552, 554 (1986) (holding that a knife, sharpened only on one side, with no handguard, with a 1.5 inch blade is not a dirk or dagger).
³. See CAL. PENAL CODE §§ 626.9(d), 12031(g) (West Supp. 1992) (defining a loaded firearm as one in which there is an unexpended cartridge or shell, consisting of a case which holds a charge of powder and a bullet or shot, in, or attached in any manner to the firearm).
⁵. See CAL. PENAL CODE § 626(a)(4) (West Supp. 1992) (defining school); see also id. § 626(a)(1)-(3) (West Supp. 1992) (defining university, state university, and community college, respectively).
⁶. Id. §§ 626.9, 626.10 (West Supp. 1992); see Gardenhire v. Chalmers, 326 F. Supp. 1200, 1204 (D. Kan. 1971) (holding that a student suspended for possessing a firearm on a university campus was denied his rights to procedural due process when he was not given notice of the grounds for the charge, not informed of the witnesses or evidence to be presented against him, and not given an opportunity to be heard in his own defense); People v. Singer, 56 Cal. App. 3d Supp. 1, 4, 128 Cal. Rptr. 920, 922 (1976) (holding that § 626.9 is not unconstitutionally vague or ambiguous, and clearly gives notice that the possession of unloaded firearms on a university campus is prohibited).

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certain provisions\(^7\) of the Penal Code while upon or within a playground\(^8\) or youth center\(^9\) grounds during open hours, knowing\(^10\) that he or she is on those grounds.\(^11\)


\(^8\) See *Cal. Penal Code* § 417(a)-(c) (West Supp. 1992) (stating that it is unlawful, in general or on the grounds of a day care or recreational center, to draw a loaded firearm in the presence of another in a rude, angry, or threatening manner unless done in self-defense); *id.* § 12025(a)-(b) (West Supp. 1992) (prohibiting persons from carrying concealed, in any vehicle or on their person, any firearm capable of being concealed upon the person, without a license); *id.* § 12031(a)(1) (West Supp. 1992) (prohibiting all but specified persons from carrying firearms on their person in any public place); see also *Cal. Educ. Code* § 10901(f) (West Supp. 1992) (defining recreational center); *Cal. Health & Safety Code* § 1596.76 (West 1990) (defining day care center); *Cal. Penal Code* § 12001(a) (West Supp. 1992) (defining firearm capable of being concealed upon the person); *id.* § 12026(a) (West Supp. 1992) (stating that those persons generally exempt from the mandates of § 12025 include any United States citizen or legal resident of the United States over 18 years of age who resides or is temporarily within the state and not within classes described in § 12021); *id.* § 12021(a)-(g) (West 1992) (prohibiting persons convicted of a felony or certain misdemeanors from possessing a firearm); *id.* § 12031(b)-(d) (West Supp. 1992) (describing persons exempted from the mandates of § 12031); People v. Kirk, 192 Cal. App. 3d Supp. 15, 16, 238 Cal. Rptr. 42, 42 (1986) (holding that Penal Code § 417(a)(2) does not prevent a person from displaying a weapon in a threatening manner in order to defend others); People v. May, 33 Cal. App. 3d Supp. 888, 891-92, 109 Cal. Rptr. 396, 398-99 (1973) (holding that although the arresting officer could see the firearm by looking down into defendant's pocket, it was concealed within the meaning of § 12025).

\(^9\) See *Cal. Penal Code* § 626.95(c)(1) (enacted by Chapter 750) (defining playground as any park or recreational area specifically designed to be used by children that has play equipment installed, including public grounds designed for athletic activities located on public or private school grounds).

\(^10\) See *id.* § 626.95(c)(2) (enacted by Chapter 750) (defining youth center as any public or private facility that is used to host recreational or social activities for minors while minors are present).

\(^11\) See *id.* § 7(5) (West 1988) (defining knowingly); Calban v. Flores, 65 Cal. App. 3d 578, 584, 135 Cal. Rptr. 441, 444 (1976) (holding that the word knowing in a criminal statute means that the violator has only to be aware of the facts which bring the prohibited acts within the terms of the statute).

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Crimes; grand theft and vandalism of water

Penal Code §§ 592, 607 (amended).
SB 1665 (McCorquodale); 1992 STAT. Ch. 402

Under existing law, the unauthorized taking of water from specified areas,1 with the intent to defraud,2 the unauthorized tampering of any gate used for the control or measurement of water, or the unauthorized placement of rubbish or obstruction to the free flow of water is punishable as a misdemeanor.3 Chapter 402 makes this conduct punishable as a misdemeanor or a felony if the total value of the offense is more than $400.00, or if the defendant is a repeat offender.4

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1. CAL. PENAL CODE § 592(a) (amended by Chapter 402) (specifying canal, ditch, flume, or reservoir used for the purpose of holding or conveying water for manufacturing, irrigating, agricultural or domestic uses, mining, or generation of power). See CAL. WATER CODE § 100 (West 1971) (providing that the general state policy regarding water use is that waste or unreasonable use should be prevented, and that conservation should be exercised); Baldwin Park County Water Dist. v. Los Angeles County, 208 Cal. App. 2d 87, 97, 25 Cal. Rptr. 167, 174 (1962) (holding that the Water Code shows the intention of the Legislature to adopt a general and complete scheme for the conservation and distribution of water).

2. CAL. CIV. CODE § 3294 (West Supp. 1992) (defining fraud as an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intent on the part of the defendant thereby depriving a person of a property or legal right or otherwise causing injury). See generally Muller v. Justice Court of Third Township, 123 Cal. App. 2d 696, 698, 267 P. 2d 406, 407 (1954) (holding that a judge need not take evidence, examine the case and determine therefrom whether there is reasonable and probable cause to believe that the offense charged has been committed before issuing an arrest warrant from a verified complaint charging a violation of the Penal Code section making it a misdemeanor for any person to take water with intent to defraud); Symposium: Revisiting California Water Law, 19 PAC. L.J. 957 (1988) (examining the history and progress of California’s water laws).


4. CAL. PENAL CODE § 592(b) (amended by Chapter 402). Under prior law a violation of this provision was punishable by a six-month jail term. 1899 Cal. Stat. ch. 110, sec 1, at 146 (amending CAL. PENAL CODE § 592).
Existing law provides that tampering with or maliciously injuring structures erected to create hydraulic power, drain or reclaim any wetland, or to store water is a misdemeanor. Chapter 402 expands existing law and provides that, depending on the amount of damages, the above conduct is punishable as a misdemeanor or a felony.

Crimes; insurance fraud

Business and Professions Code § 9884.75 (repealed); §§ 9884.7, 9889.3 (amended); Insurance Code § 1871.1 (repealed); §§ 1872, 1872.3 (amended); Penal Code §§ 550, 551 (new).

AB 3067 (Burton); 1992 STAT. Ch. 675

Existing law provides that it is illegal to commit certain specified acts relating to false insurance claims. Chapter 675 specifies sen-
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tence enhancements for persons with prior felony convictions for various forms of insurance fraud, and increases the fine for crimes involving fraudulent claims in excess of $50,000, by permitting recovery of double the amount of the fraud.  

Existing law provides that it is unlawful for any automotive repair dealer to offer payment to an insurance agent, broker, or adjuster for referrals. Chapter 675 increases the penalties for offering, with fraudulent intent, a discount intended to offset an insurance deductible. Chapter 675 extends to the Director of Consumer
Affairs the authority to refuse to validate, or to invalidate temporarily, the registration of an automotive repair dealer.\footnote{6}{CAL. BUS. & PROF. CODE § 9884.7(1) (amended by Chapter 675). The following reasons can result in such action: (1) Making or authorizing a statement which is untrue or misleading; (2) causing or allowing a customer to sign a work order which does not state the repairs requested or odometer reading; (3) failing to give the customer a copy of a document requiring his or her signature; (4) any fraudulent conduct; (5) grossly negligent conduct; (6) failure to comply with the provisions of this chapter; (7) willful departure from accepted trade standards; (8) making false promises; or (9) having repair done by someone other than the dealer without the consent of the customer. Id. § 9884.7(1)(a)-(i) (amended by Chapter 675).}

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**HAT**

**Crimes; looting**

Penal Code § 463 (amended).
SB 2066 (Roberti); 1992 STAT. Ch. 1339
(Effective September 30, 1992)

Existing law states that every person who commits second degree burglary\footnote{1}{See CAL. PENAL CODE § 459 (West Supp. 1992) (defining burglary as entering any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, floating home, railroad car, locked or sealed container, trailer coach, house car, inhabited camper, vehicle, aircraft, or mine or any underground portion thereof, with intent to commit grand or petty larceny or any felony); id. § 461(a) (West 1988) (providing the punishment scheme for second degree burglary); see also 5 CALJIC §§ 14.50-14.51 (West Supp. 1992) (providing the jury instructions for second degree burglary).} or grand theft\footnote{2}{See CAL. PENAL CODE § 487 (West Supp. 1992) (defining grand theft as theft committed when the money, labor or real or personal property taken is of a value exceeding four hundred dollars; provided, that when domestic fowls, avocados, olives, citrus or deciduous fruits, other fruits, vegetables, nuts, artichokes, or other farm crops are taken of a value exceeding one hundred dollars; provided, further, that when fish, shellfish, mollusks, crustaceans, kelp, algae, or other aquacultural products are taken from a commercial or research operation which is producing that product, of a value exceeding one hundred dollars; provided further, that where the money labor, real or personal property is taken by a servant, agent or employee from his principal or employer and aggregates four hundred dollars or more in any consecutive twelve month period, then the same shall constitute grand theft); see also 5 CALJIC §§ 14.02, 14.20 (West 1988) (providing the jury instructions for grand theft).} within an affected county in a state of
emergency\textsuperscript{3} or a local emergency\textsuperscript{4} resulting from an earthquake or a flood is guilty of the crime of looting, punishable by imprisonment in a county jail for one year or in the state prison.\textsuperscript{5} Existing law also provides that every person who commits the crime of petty theft\textsuperscript{6} under the same circumstances is guilty of a misdemeanor.\textsuperscript{7}

Chapter 1339 expands these provisions to apply to every person who commits the crime of second degree burglary, grand theft, or petty theft during and within an affected county in a state of emergency or a local emergency resulting from a fire, riot\textsuperscript{8} or other natural or manmade disaster.\textsuperscript{9}

\textit{CPH}

\textbf{Crimes; precursor chemicals and laboratory equipment}

Health and Safety Code § 11104.5 (new); §§ 11104, 11107, 11107.1 (amended).
SB 1820 (Killea); 1992 STAT. Ch. 580  
(Effective August 31, 1992)

\textsuperscript{3} See \textit{CAL. PENAL CODE} § 463(d)(1) (amended by Chapter 1339) (defining state of emergency as conditions which, by reason of their magnitude, are, or are likely to be, beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat). Chapter 1339 further provides that a state of emergency will exist from the time of the proclamation of the condition of the emergency until terminated. \textit{Id.} § 463(d)(3) (amended by Chapter 1339).

\textsuperscript{4} See \textit{id.} § 463(d)(2) (amended by Chapter 1339) (defining local emergency).

\textsuperscript{5} \textit{Id.} § 463 (amended by Chapter 1339). Chapter 1339 further provides that the fact that the structure entered has been damaged by the earthquake, fire, flood, or other natural or manmade disaster will not, in and of itself, preclude conviction. \textit{Id.} 463(a) (amended by Chapter 1339).

\textsuperscript{6} See \textit{id.} § 488 (West 1988) (defining petty theft as theft in other cases); see also 5 \textit{CALJIC} §§ 14.02, 14.20 (West 1988) (providing the jury instructions for petty theft).

\textsuperscript{7} \textit{CAL. PENAL CODE} § 463(c) (amended by Chapter 1339).

\textsuperscript{8} See \textit{id.} § 404(a)-(b) (West 1988) (defining riot).

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Under existing law, any manufacturer, retailer or other person who sells, transfers or otherwise furnishes specified precursor chemical substances, with knowledge or the intent that they will be used by the recipient to unlawfully manufacture a controlled substance, is guilty of a felony. Chapter 580 makes it a misdemeanor for any manufacturer, retailer or other person to sell, transfer or otherwise furnish any laboratory glassware, apparatus or chemical reagent or solvent, exceeding $100 in value, or any other specified chemical substances, having knowledge that the

2. See id. § 11016 (West 1991) (defining furnish).
3. See.id. § 11100(a) (West 1991) (listing the substances included in regulation of chemical precursors as: (1) Phenyl-2-propanone; (2) methylvamine; (3) ethylamine; (4) D-lysergic acid; (5) ergotamine tartrate; (6) diethyl malonate; (7) malonic acid; (8) ethyl malonate; (9) barbituric acid; (10) piperidine; (11) N-acetylanthranilic acid; (12) pyrrolidine; (13) phenylacetic acid; (14) anthranilic acid; (15) morpholine; (16) ephedrine; (17) pseudoephedrine; (18) norpseudoephedrine; (19) phenylpropanolamine; (20) propionic anhydride; (21) isosafrole; (22) safrole; (23) piperonal; (24) thionylchloride; (25) benzyl cyanide; (26) ergonovine maleate; (27) N-methylpseudopersulfide; (28) N-ethylpseudopersulfide; (29) N-methylypersulfide; (30) N-ethylpersulfide; (31) chloropersulfide; (32) chloropseudopersulfide).
4. See CAL. PENAL CODE § 7(5) (West 1988) (defining knowingly); see also 5 CALJIC § 1.21 (1988) (providing instruction to be given when knowingly is part of a criminal statute).
5. See CAL. PENAL CODE § 21 (West 1988) (inferring intent from circumstances connected with the offense).
7. Id. § 11104(d) (amended by Chapter 580); see People v. Meyer, 169 Cal. App. 3d 496, 502, 215 Cal. Rptr. 352, 355 (1985) (holding that the focus of § 11104 is on whether the supplier had knowledge or the intent that the recipient would use the precursor chemicals to produce a controlled substance); see also 21 U.S.C. § 841(d) (1992); ARIZ. REV. STAT. ANN. § 13-3404.01 (1991); (making illegal the knowing possession or distribution of listed chemicals knowing or having reason to know that the chemicals will be used to manufacture a controlled substance); MONT. CODE ANN. § 45-9-107 (1992) (criminalizing possession of precursor chemicals); TEX. HEALTH & SAFETY CODE ANN. § 481.079 (West 1992) (criminalizing the transfer or receipt of chemical precursors). See generally Review of Selected 1978 California Legislation 10 PAC. L.J. 406 (1979) (discussing the passage of § 11104 of the California Health and Safety Code).
8. See CAL. HEALTH & SAFETY CODE § 11107(c)(1) (amended by Chapter 580) (defining laboratory glassware).
9. See id. § 11107(c)(2) (amended by Chapter 580) (defining apparatus).
10. See id. § 11107(c)(3) (amended by Chapter 580) (defining chemical reagent).
11. See id. § 11107(c)(4) (amended by Chapter 580) (defining chemical solvent).
12. See id. § 11107.1(a) (amended by Chapter 580) (listing the specified substances as sodium cyanide, potassium cyanide, cyclohexanone, bromobenzene, magnesium turnings, mercuric chloride, sodium metal, lead acetate, paladium black, red phosphorous, trichlorofluoromethane, dichlorodifluoromethane, 1,1,2-trichloro-1,1,2-trifluoroethane, sodium acetate and acetic anhydride).
goods will be used to unlawfully manufacture a controlled substance.\textsuperscript{13} It is also a misdemeanor under Chapter 580 for any person to knowingly or intentionally possess any laboratory glassware, apparatus or chemical reagent or solvent, exceeding $100 in value, with the intent of manufacturing a controlled substance.\textsuperscript{14}

Under existing law, any manufacturer, wholesaler, retailer or other person who sells to any person in this state any laboratory glassware or apparatus or any chemical reagent or solvent, exceeding $100 in value, must require identification\textsuperscript{15} from the purchaser and must record the purchaser’s identification number on the bill of sale.\textsuperscript{16} Furthermore, the bill of sale must be retained for three years, and must be presented upon demand by any law enforcement officer or authorized representative of the Attorney General.\textsuperscript{17} Under Chapter 580, the bill of sale must identify the specific items and quantities purchased.\textsuperscript{18} Finally, Chapter 580 makes it a misdemeanor for any person to distribute or receive any of specified chemical precursors\textsuperscript{19} or any laboratory glassware or apparatus or chemical reagent or solvent, exceeding $100 in value, or any specified chemical substances,\textsuperscript{20} with the intent of causing the evasion of recording and recordkeeping requirements.\textsuperscript{21}

\textit{JSP}

\begin{itemize}
\item \textsuperscript{13} JSP Id § 11104(b) (amended by Chapter 580).
\item \textsuperscript{14} JSP Id § 11104.5 (enacted by Chapter 580).
\item \textsuperscript{15} See id. § 11100(c)(2) (West 1991) (defining the requirements for proper purchaser identification).
\item \textsuperscript{16} JSP Id § 11107(a)(1)-(2) (amended by Chapter 580); see id. § 11107.1(a),(a)(1) (amended by Chapter 580) (providing similar purchaser recording requirements for specified substances); see also Tex. Health & Safety Code Ann. § 481.080 (West 1992) (requiring similar reporting requirements with a sale or transfer of chemical precursors and laboratory equipment).
\item \textsuperscript{17} Cal. Health & Safety Code § 11107(a)(2) (amended by Chapter 580).
\item \textsuperscript{18} Id. § 11107(a)(1) (amended by Chapter 580); see id. § 11107.1(a)(1) (amended by Chapter 580) (requiring that the bill of sale required by this section also identify the items and quantities of specified substances purchased).
\item \textsuperscript{19} See id. § 11100 (West 1991); id. § 11107.1(a) (amended by Chapter 580) (identifying the specified substances subject to the reporting requirements).
\item \textsuperscript{20} See id. § 11107.1(a) (amended by Chapter 580) (listing the specified chemical substances).
\item \textsuperscript{21} Id. § 11104(c) (amended by Chapter 580).
\end{itemize}
Crimes; receiving stolen property

Penal Code § 496 (amended).
AB 3326 (Boland); 1992 STAT. Ch. 1146

Under existing law, every person who knowingly buys or receives any property that is stolen or obtained through theft or extortion is punishable by imprisonment for not more than one year. Chapter 1146 allows a principal in the actual theft to be convicted of buying or receiving property stolen in that theft.

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2. See id. § 518 (West 1988) (defining extortion).
3. CAL. PENAL CODE § 496 (amended by Chapter 1146); see id. (stating that every person who conceals, sells, or withholds stolen property, or aids in the concealing, selling, or withholding of stolen property, with knowledge that the property was stolen or obtained through theft or extortion, is also punishable by imprisonment for not more than one year); id. (providing that the district attorney or grand jury, in the interest of justice, may determine that such offense is a misdemeanor if the value of the property does not exceed four hundred dollars ($400)); see also People v. Lohman, 6 Cal. App. 3d 760, 767, 86 Cal. Rptr. 221, 226 (1970) (finding that a defendant who actually participated in a theft of property during a burglary could not be convicted of receiving stolen property); People v. Williams, 253 Cal. App. 2d 952, 958, 61 Cal. Rptr. 238, 242 (1967) (finding that where a defendant is established as the thief, he may not be convicted of receiving stolen property if concealment or withholding of the stolen goods is part of the activities connected with the theft); cf. People v. Sweeney, 46 Cal. App. 2d 332, 337, 120 Cal. Rptr. 148, 151 (1975) (stating that when a thief engages in new acts of concealment, separate from any acts connected with the actual theft, he may be prosecuted for the later concealment).
4. See CAL. PENAL CODE § 31 (West 1988) (defining principal as a person concerned with a crime either through direct commission of an act constituting an offense, aiding and abetting such commission, or advising and encouraging such commission).
5. Id. § 496(a) (amended by Chapter 1146); see People v. Price 1 Cal. 4th 324, 463-64, 821 P.2d 610, 691, 3 Cal. Rptr. 2d 106, 189 (1991) (allowing a conviction for receiving stolen property when the statute of limitations for the actual theft had elapsed). No person may be convicted of receiving stolen property pursuant to § 496(a), and of theft of the same property. CAL. PENAL CODE § 496(a) (enacted by Chapter 1146); People v. Campbell 63 Cal. App. 3d. 599, 614, 133 Cal. Rptr. 815, 823 (1976).
Crimes

Crimes; release on recognizance

Penal Code § 853.85 (new); §§ 1318.1, 1319 (amended).
AB 3621 (Boland) 1992 STAT. Ch. 1009

Existing law provides that a court may employ an investigative staff to recommend whether defendants should be released on their own recognizance.1 Chapter 1009 requires that if a court has employed an investigative staff in a case involving a violent felony2 or felony drunk driving causing bodily injury,3 an investigative report must be prepared recommending whether the defendant should be released on his or her own recognizance.4 The report must contain written verification of any outstanding warrants against the defendant, any prior incidents where the defendant failed to appear in court, the defendant’s criminal record, and the defendant’s residence during the past year.5

2. See id. § 667.5(a) (West 1992) (providing a list of violent felonies, which includes murder or voluntary manslaughter, mayhem, rape, sodomy or oral copulation by force, child molestation, any felony punishable by death or imprisonment, any felony in which the defendant inflicted serious bodily injury or used a firearm, robbery of an inhabited dwelling, arson, attempted murder, kidnapping for purposes of committing child molestation, and continuous child sexual abuse); In re Mary Loera Hernandez, 231 Cal. App. 3d 1260, 1263, 282 Cal. Rptr. 709, 711 (1991) (treating the crime of selling drugs the same as the violent felonies enumerated in Penal Code § 667.5 by finding the denial of bail to be proper where defendant’s failure to meet her burden of showing by clear and convincing evidence that she would not continue to sell drugs led judge to conclude that she posed a similarly sufficient threat to justify denial).
3. See CAL. VEH. CODE § 23153(a) (West Supp. 1992) (making it unlawful for any person, while under the influence of alcohol or drugs, to drive a vehicle and injure any person other than the driver).
4. CAL. PENAL CODE § 1318.1(b) (amended by Chapter 1009). The person charged with authority over the investigative staff, prior to submitting any recommendation for release to the court, must provide written certification that he or she has reviewed the report prepared by an investigative staff member. Id.
5. Id. § 1318.1(b)(1)-(4) (amended by Chapter 1009). The fact that the court has not received the report at the time of the defendant’s hearing to determine whether he or she shall be released on his or her own recognizance does not preclude that release. Id. § 1319(b)(2) (amended by Chapter 1009). See generally Bail Reform Act of 1984, § 3124(a), 18 U.S.C. §§ 3141-3150 (1984) (allowing a judicial officer to choose among four alternate pretrial dispositions, including releasing defendants on their own recognizance, imposing statutorily defined conditions such as bail, temporarily detaining the defendant until he or she is taken into custody if the person is already on conditional release, and detain the person pending trial under certain circumstances such as a defendant who poses a serious flight risk or a serious risk to a prospective witness or juror); United States v. Salerno, 794 F.2d 64, 71 (2d Cir. 1986) (holding that the Due Process Clause prohibits the deprivation of liberty solely as

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Under existing law, a court cannot release, on their own recognizance, defendants charged with a violent felony where it appears by clear and convincing evidence that they have previously been charged with a felony offense and have willfully and without the court’s excuse failed to appear in court as required while the charge was pending. Chapter 1009 requires that in all other violent felony cases, when the court is deciding whether or not to grant defendants release on their own recognizance, it must consider the existence of any outstanding felony warrants, any other information in the investigative report, and any other information presented by the prosecuting attorney.

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a means of preventing future criminal acts, and that where the judicial officer concludes that detention is necessary because the defendant is dangerous, this finding must be based on clear and convincing evidence).

6. CAL. PENAL CODE § 1319(b) (amended by Chapter 1009).
7. Id. § 1319(b)(1)-(3) (amended by Chapter 1099); see CALIFORNIA SENATE JUDICIARY COMMITTEE, REPORT TO THE GENERAL ASSEMBLY OF 1992, at 2 (June 23, 1992) (stating that over 61% of individuals arrested on felony offenses, and released on their own recognizance or on citation, fail to appear as promised). Pretrial release programs which currently allow many potentially dangerous criminals to be released without adequate review can be improved to reduce this failure to appear rate by providing the judge with sufficient information about a defendant to make an informed decision about whether he or she should be released on his or her own recognizance. Id. See generally James K. Stewart, Quid Pro Quo: Stay Drug-Free and Stay on Release, 57 GEO. WASH. L. REV. 68, 70, 72 (1988) (finding that from 54% to 90% of those arrested for serious crimes tested positive for cocaine, PCP, heroin, marijuana, or amphetamines, and suggesting a drug screening and supervision program to both lower rates of drug use and crime, and to provide judges with added information concerning a defendant’s drug use to assist them in assessing the risk of a defendant’s pretrial misconduct). Many drug-abusing suspects were charged with violent and property crimes. Id. For example, in Los Angeles, 85% of those charged with burglary tested positive for drug use. Id.
Crimes; relinquishing control of motor vehicle to minor under the influence

Penal Code § 193.8 (new).
AB 3365 (Umberg); 1992 STAT. Ch. 329

Existing law prohibits a person, less than eighteen years of age and with a blood-alcohol level of 0.05% or more from driving a vehicle. Existing law prohibits any person, while under the influence of an alcoholic beverage, drug or both, from doing any unlawful act or neglecting any legal duty while driving which proximately causes bodily injury to any person other than the driver. Existing law also prohibits reckless driving, vehicular

2. Id. § 23140(a) (West Supp. 1992); see id. § 670 (West 1987) (defining vehicle); CAL. CIV. CODE § 2985.7(a) (West Supp. 1992) (defining vehicle).
3. See CAL. VEH. CODE § 109 (West 1987) (defining alcoholic beverage as any liquid or solid material intended to be ingested by a person which contains ethanol or alcohol); CAL. BUS. & PROP. CODE § 23004 (West 1985) (defining alcoholic beverage as alcohol, spirits, liquor, wine, beer and every liquid or solid containing such substances and which contain one-half of 1% or more of alcohol by volume); see also People v. Rosseau, 100 Cal. App. 245, 247, 279 P. 819, 820 (1929) (stating that an intoxicating liquor is a beverage containing an alcoholic content of one-half of 1% or more).
4. See CAL. VEH. CODE § 312 (West 1987) (defining drug as any substance or combination of substances, other than alcohol, which could impair to an appreciable degree a person’s ability to drive a vehicle in a prudent and cautious manner).
5. See People v. Hernandez, 219 Cal. App. 3d 1177, 1184, 269 Cal. Rptr. 21, 25 (1990) (holding that the defendant was “driving” when he was steering his moving truck on the freeway even though his engine had stalled and was not running).
6. See People v. Dakin, 200 Cal. App. 3d 1026, 1036, 248 Cal. Rptr. 206, 212-13 (1988) (holding that the defendant had caused “bodily injury” when he caused the victim’s head to shatter the rear glass of his truck which resulted in the victim’s receiving two cuts on his forehead).
7. CAL. VEH. CODE § 23153(a) (West Supp. 1992); see id. § 305 (West 1987) (defining driver as a person who is in actual physical control of a vehicle); see also People v. Ferrara, 202 Cal. App. 3d 201, 207, 248 Cal. Rptr. 311, 314-15 (1988) (holding that although the defendant was found to have been driving drunk and was involved in an accident which resulted in the death of another, he could not be found guilty of felony drunk driving since the prosecution failed to prove that he was also engaged in an unlawful act which was the proximate cause of the collision); People v. Watson, 30 Cal. 3d 290, 296-97, 637 P.2d 279, 283, 179 Cal. Rptr. 43, 47 (1981) (holding that because vehicular manslaughter and second degree murder require different degrees of culpability, a charge of vehicular manslaughter will not preclude a charge of second degree murder); cf. CAL. VEH. CODE § 23152 (West Supp. 1992) (prohibiting any person from driving a vehicle while under the influence of drugs or alcohol). See generally Robert Brooks Beauchamp, “Shed Thou No Blood”: The Forceable Removal of Blood Samples from Drunk Driving Suspects, 60 S. CAL. L. REV. 1115, 1128-35 (1987) (outlining constitutional barriers to the forceable removal of blood from a drunk driving suspect);
manslaughter\textsuperscript{9} while under the influence of alcohol or drugs, and gross vehicular manslaughter while intoxicated.\textsuperscript{10}

Chapter 329 prohibits any adult who is the registered owner\textsuperscript{11} of a motor vehicle\textsuperscript{12} or in possession of a motor vehicle from relinquishing possession of the vehicle to a minor\textsuperscript{13} if: (1) The adult owner\textsuperscript{14} knew or reasonably should have known that the minor was intoxicated at the time; (2) the minor was found in violation of specified code sections;\textsuperscript{15} and (3) the minor did not otherwise have a lawful right to possession of the vehicle.\textsuperscript{16} Chapter 329 provides

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8. See CAL. VEH. CODE § 23103(a)-(b) (West Supp. 1992) (defining reckless driving as the driving of any vehicle upon a highway or in any offstreet parking facility in willful or wanton disregard for the safety of persons or property).

9. See CAL. PENAL CODE § 192(c)(3) (West 1988) (defining vehicular manslaughter as driving while under the influence of drugs or alcohol and in the commission of an unlawful act not amounting to a felony and causing death, or in the commission of a lawful act which might produce death in an unlawful manner, but without gross negligence).


11. See CAL. VEH. CODE § 505 (West 1987) (defining registered owner as a person registered by the Department of Motor Vehicles as the owner of a vehicle); see also Rody v. Winn, 162 Cal. App. 2d 35, 327 P.2d 579 (1958) (holding that although the wife was the registered owner of a vehicle, since it was community property with her husband, he also could be held liable as an owner of the vehicle with which his wife caused damages through negligence).


15. See CAL. PENAL CODE § 193.8(a)(2) (enacted by Chapter 329) (listing code sections referring to: (1) reckless driving; (2) accepting a guilty plea for reckless driving in place of a charge of driving under the influence; (3) driving under the influence as a minor; (4) driving under the influence; (5) causing bodily injury by driving under the influence; (6) committing gross vehicular manslaughter while intoxicated; and (7) committing vehicular manslaughter while intoxicated but without gross negligence).

16. Id. § 193.8(a)(1)-(3) (enacted by Chapter 329); cf. State v. Stratton, 591 A.2d 246, 246 (Me. Sup. Ct. 1991) (convicting the defendant as an accomplice to the driver’s DUI crime since, as the driver’s drinking partner, he was aware of the large number of drinks the driver had consumed, and nonetheless gave his keys to the driver because he thought the driver was “soberer” than he); State v. Whitaker, 259 S.E.2d 316, 319 (N.C. Sup. Ct. 1979) (holding that an owner who relinquishes control of his motor vehicle to an intoxicated driver while the owner is still in the car, is tantamount to the owner driving drunk himself); Joner v. State, 279 S.W.2d 333, 334 (Tex. Crim. 1955) (holding
that this offense is punishable as an infraction by six months or less in a county jail, by a fine of $1,000 or less, or both, but not by suspension or revocation of the offender's driver's license.\textsuperscript{17} Chapter 329 does not apply to commercial bailments,\textsuperscript{18} motor vehicle leases\textsuperscript{19} or parking arrangements provided for by hotels, motels or food facilities.\textsuperscript{20}

\textit{ACR}

\textbf{Crimes; sale of firearms}

Penal Code § 186.28 (new).
SB 437 (Green); 1992 STAT. Ch. 370

Existing law makes it a crime to knowingly\textsuperscript{1} sell, transfer, supply, or give possession or control, of a firearm to any person that an automobile owner could not be found guilty as a principal to the crime of driving while intoxicated unless he knew that the person was intoxicated when he gave her the keys to his car; State v. Storms, 10 N.W.2d 53, 54 (Iowa Sup. Ct. 1943) (holding that defendant's act in seating himself in the right front seat of the car was evidence that the defendant at least implicitly invited his intoxicated friend to occupy the driver's seat, and therefore aided and abetted him in the crime of driving under the influence).

\textsuperscript{17.} CAL. PENAL CODE § 193.8(c) (enacted by Chapter 329); see id. § 17 (West Supp. 1992) (defining felony, misdemeanor and infraction).
\textsuperscript{18.} See CAL. CIv. CODE § 2985.7(b)-(c) (Vest Supp. 1992) (defining bailor and bailee).
\textsuperscript{19.} CAL. REV. & TAX. CODE § 6006.3 (West 1987) (defining lease).
\textsuperscript{20.} CAL. PENAL CODE § 193.8(b) (enacted by Chapter 329).

\textsuperscript{1.} See CAL. PENAL CODE § 7 (West 1988) (defining knowingly as imparting only a knowledge that facts exist which bring the act or omission within the provision of the Penal Code, and that knowledge of the unlawfulness of an act or omission is not required).
within a class of persons prohibited from having possession of a firearm.\(^2\) Chapter 370 provides that any person who knowingly supplies, sells, or gives possession or control of a firearm to any person shall be punished by imprisonment for up to one year and/or by a fine of up to $1,000 if: (1) The person has actual knowledge that an individual will use the firearm to commit a specified felony,\(^3\) while actively participating in any criminal street gang;\(^4\) (2) the firearm is in fact used in the commission of the felony; and (3) the individual to whom the firearm has been supplied is convicted of the felony.\(^5\) Chapter 370 also provides that this section shall only be applicable where the person who supplies the firearm is not convicted

\(^2\) Id. § 12072(a)(1),(2) (West Supp. 1992); see Katona v. County of Los Angeles, 172 Cal. App. 3d 53, 57, 218 Cal. Rptr. 19, 22 (1985) (holding that the corollary to the restriction on certain classes of persons possessing firearms, for example ex-felons or narcotic addicts, is that it is also a crime for anyone to sell, deliver, or transfer such a weapon to a person whom the former has reason to believe is within one of those categories); cf. 18 U.S.C. § 922 (1992) (providing Federal regulation of possession and ownership of firearms); ALA. CODE § 13A-11-72 (1982) (forbidding certain persons from possessing a pistol); ARK. CODE. ANN. § 5-73-103 (1991) (prohibiting possession of firearms by certain persons); HAW. REV. STAT. § 134-4(d) (1991) (providing Hawaii’s regulations on the lending of weapons to persons who are prohibited from possessing or owning firearms); See generally Rick L. Jett, Note, Do Victims of Unlawful Handgun Violence Have a Remedy Against Handgun Manufacturers: An Overview and Analysis, 1985 U. ILL. L. REV. 967, 969 (1985) (stating that Congress' intent in passing the Federal Gun Control Act of 1968 was to aid crime prevention, by making handguns less available to high-risk individuals without substantially restricting law-abiding citizens from having handguns).

\(^3\) See CAL. PENAL CODE § 186.22(e) (West Supp. 1992) (specifying the following crimes as those that constitute criminal gang activity if committed two or more times in connection with a gang: (1) Assault with a deadly weapon; (2) robbery; (3) unlawful homicide or manslaughter; (4) sale or possession of drugs; (5) shooting at an inhabited dwelling or occupied car; (6) arson; and (7) intimidation of witnesses and victims).

\(^4\) See id. § 186.22(f) (West Supp. 1992) (defining criminal street gang as any ongoing organization having as one of its primary activities the commission of one or more specified crimes, which has a common name or identifying symbol or sign, and whose members individually or collectively engage in a pattern of criminal gang activity).

\(^5\) Id. § 186.28(a)(1)-(3) (enacted by Chapter 370); see id. 186.28(a)(1) (providing that the felony committed must fall within the scope of § 186.22 subdivision (c)); see also People v. Green, 227 Cal. App. 3d 692, 700, 278 Cal. Rptr. 140, 146 (1991) (holding that active participation in a criminal street gang means that there is a relationship between the defendant and the gang that is more than nominal, passive, inactive, or purely technical, and that the defendant must devote all or a substantial part of his time and efforts to the gang); People v. Calban, 65 Cal. App. 3d 578, 583, 135 Cal. Rptr. 441, 444 (1976) (holding that a requirement of knowledge in a criminal statute is not a requirement that the act be done with specific intent, but rather that the defendant have awareness of the specific facts which bring the proscribed act within the terms of the statute).
Crimes

as a principal\(^6\) to the felony offense committed pursuant to this section.\(^7\)

\(NCL\)

Crimes; sex offenses

Penal Code §§ 264.2, 266c (amended).
SB 1960 (McCorquodale); 1992 STAT. Ch. 224

Existing law makes it a crime for any person to induce another person, except the spouse of the perpetrator, to engage in sexual activities when his or her consent is obtained by false or fraudulent representation that is made with the intent to create fear\(^1\), and which does create fear.\(^2\) Prior law defined fear as the fear of unlawful physical injury or death to the person or to any relative of the person

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7.  Id. § 186.28(b) (enacted by Chapter 370); see People v. Brigham, 216 Cal. App. 3d 1039, 1045, 265 Cal. Rptr. 486, 489 (1989) (holding that the criminal liability of an aider and abettor is not relieved as a matter of law when the act of the perpetrator is an "independent product" of his mind, and is outside the scope of the original criminal offense the aider and abettor originally agreed to aid or facilitate). The Brigham court stated that relief from liability must be factually determined by the test of whether the criminal act committed by the principal was a natural and foreseeable consequence of an act the aider and abettor knowingly aided, encouraged, or facilitated. Id.

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1.  CAL. PENAL CODE § 266c (amended by Chapter 224) (defining fear).
2.  Id.

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or member of the person's family.\textsuperscript{3} Chapter 224 deletes the word unlawful from the definition of fear.\textsuperscript{4}

\textit{CPH}

\textbf{Crimes; sexual battery}


\textit{AB 3388 (Alpert); 1992 STAT. Ch. 1219}

Under existing law, a person is guilty of misdemeanor sexual battery\textsuperscript{1} if he or she touches\textsuperscript{2} an intimate part\textsuperscript{3} of another person against the other's will\textsuperscript{4} and for the purpose of sexual gratification,

\vspace{1cm}

\textsuperscript{3} 1986 Cal. Stat. ch. 1299, sec. 2, at 4593 (amending \textit{CAL. PENAL CODE} § 266c).

\textsuperscript{4} \textit{CAL. PENAL CODE} § 266c (amended by Chapter 1219); \textit{see Boro v. Superior Court}, 163 Cal. App. 3d 1224, 1231, 210 Cal. Rptr. 122, 126 (1985) (holding that the defendant could not be prosecuted for rape where he fraudulently induced the victim to have sex with him by convincing her that the sex act was necessary to save her life); \textit{ASSEMBLY COMMITTEE ON PUBLIC SAFETY OF 1992, ANALYSIS OF SB 1960}, at 2 (June 9, 1992) (recounting the facts of the 1985 Boro case where a man posing as a doctor called women to inform them that they were suffering from a disease that could only be cured by intercourse with a proper donor, of which he was one). Some women believed his story, consented to intercourse with him, and paid him for his services. \textit{Id.} The author of Chapter 224, attempting to address Boro's conduct, concludes that Boro did not induce fear of unlawful physical injury, and thus the statutory prohibition did not encompass his acts. \textit{Id.} The author of Chapter 224 has therefore removed the word unlawful from the definition of fear in order to encompass Boro's actions. \textit{Id.}

\vspace{1cm}

\textsuperscript{1} \textit{See CAL. PENAL CODE} § 243.4(d)(1) (amended by Chapter 1219) (providing that the punishment under this section is a fine not exceeding $2,000, or imprisonment in a county jail for not more than six months, or both).

\textsuperscript{2} \textit{See id.} § 243.4(d)(2) (defining touch for the purpose of misdemeanor sexual battery as physical contact with another person, whether or not through the defendant's or victim's clothing).

\textsuperscript{3} \textit{See id.} § 243.4(f)(1) (amended by Chapter 1219) (defining intimate part as the sexual organ, anus, groin or buttocks of any person, and the breast of a female).

\textsuperscript{4} \textit{See CAL. PENAL CODE} § 261.6 (West Supp. 1992) (defining consent as used in rape statute); \textit{see also CALJIC} § 10.00 (CALJIC 5th ed. 1988) (defining "against the will" in jury instructions for rape to mean without consent); CALJIC § 1.23.1 (CALJIC Supp. 1992) (outlining the instruction for "consent" given in rape, sodomy, unlawful penetration and oral copulation cases); 17 \textit{CAL. JUR. 3d} Part 2, § 722 (1984) (defining consent).
arousal or abuse. Chapter 1219 increases the penalty for misdemeanor sexual battery when the defendant is an employer of the victim. Chapter 1219 also specifies that it shall be a felony whenever any person is convicted of sexual battery and the victim was a minor, if the person has a prior felony conviction for sexual battery.

Under existing law, a person is guilty of either felony or misdemeanor sexual battery if he or she touches an intimate part of another person against the will of that person for the purpose of sexual gratification, arousal or abuse, and if that person is unlawfully restrained or is institutionalized for medical treatment and is

5. **CAL. PENAL CODE** § 243.4(d)(1) (amended by Chapter 1219); see People v. White, 179 Cal. App. 3d 193, 205-06, 224 Cal. Rptr. 467, 475-76 (1986) (reading the statute in the disjunctive, so that the conditions of sexual battery are met when the unwanted sexual touching is committed for the purpose of either sexual arousal, or sexual gratification or sexual abuse, and defining sexual abuse).

6. See **CAL. GOV'T CODE** § 12926(c) (West Supp. 1992) (defining employer as any person regularly employing five or more persons, or any person acting directly or indirectly as an agent of an employer, or the state or any of its political subdivisions, but not including nonprofit corporations or religious associations).

7. **CAL. PENAL CODE** § 243.4(d)(1) (amended by Chapter 1219). See **IND. CODE ANN.** § 35-42-4-8 (Burns Supp. 1992); **KAN. STAT. ANN.** § 21-3517 (1991); **MONT. CODE ANN.** § 45-5-502 (1992); **N.M. STAT. ANN.** § 30-9-12 (Michie 1992) (criminalizing unwanted sexual contact made for the purposes of sexual gratification). Under Chapter 1219, the fine for misdemeanor sexual battery is increased from $2,000 to $3,000 when the person convicted was an employer of the victim. **CAL. PENAL CODE** § 243.4(d)(1) (amended by Chapter 1219). Any amount of fine above $2,000 is to be distributed to the Department of Fair Employment and Housing for the purpose of enforcement of the California Fair Employment and Housing Act, including, but not limited to, laws that proscribe sexual harassment in places of employment. *Id.*


9. See *id.* § 243.4(a)-(c) (amended by Chapter 1219) (providing punishments of either imprisonment in a county jail for not more than one year and a fine, or imprisonment in the state prison for two, three or four years and a fine); see also *id.* § 17 (West Supp. 1992) (classifying offenses and providing criteria for determining when an alternate felony-misdemeanor punishment becomes a misdemeanor).

10. *Id.* § 243.4(e) (amended by Chapter 1219) (defining touch for purposes of alternate felony-misdemeanor sexual battery); see also *In re* Gustavo M., 214 Cal. App. 3d 1485, 1498, 263 Cal. Rptr. 328, 335 (1989) (holding that actual contact with the skin is essential for an alternate felony-misdemeanor conviction).

11. See People v. Arnold, 6 Cal. App. 4th 18, 25-28, 7 Cal. Rptr. 2d 833, 836-38 (1992) (noting that the definition of unlawful restraint was never clarified by the Legislature, and holding that the unlawful restraint required for violation of § 243.4 is something more than the exertion required to commit the prohibited sexual act).

seriously disabled\textsuperscript{13} or medically incapacitated\textsuperscript{14} A person is guilty of the same offense if he or she under the same conditions causes the victim to masturbate or touch an intimate part of the person or a third party.\textsuperscript{15} Chapter 1219 makes it an aggravating factor\textsuperscript{16} for the purpose of sentencing for a felony sexual battery that the defendant is an employer of the victim.\textsuperscript{17} Chapter 1219 also allows the court to order any person convicted of felony or attempted felony sexual battery to register with the Chief of Police in the city in which the person is domiciled.\textsuperscript{18}

\textit{JSP}

\textbf{Crimes; sexual battery--enhancements}

AB 2351 (Friedman); 1992 STAT. Ch. 235

\footnotesize
\begin{enumerate}
\item \textit{See id.} § 243.4(f)(3) (amended by Chapter 1219) (defining seriously disabled).
\item \textit{See id.} § 243.4(a)(b) (amended by Chapter 1219); \textit{see id.} § 243.4(f)(4) (amended by Chapter 1219) (defining medically incapacitated); \textit{see also} CAL. CIV. CODE § 1708.5(b) (West Supp. 1992) (creating civil liability for sexual battery).
\item \textit{See CAL. PENAL CODE} § 243.4(c) (amended by Chapter 1219).
\item \textit{See CAL. R. Ct. 405(d) (defining aggravation and circumstances of aggravation); see also CAL. PENAL CODE} § 1170(b) (West Supp. 1992) (providing that an aggravating factor may be used to justify the imposition of the highest of the three possible base terms).
\item \textit{CAL. PENAL CODE} § 243.4(h) (amended by Chapter 1219).
\item \textit{Id.} § 243.4(j) (amended by Chapter 1219); \textit{see id.} § 290 (West Supp. 1992) (governing registration of sex offenders). Only persons convicted after January 1, 1993 are subject to the reporting requirements of this section. \textit{Id.} § 243.4(j) (amended by Chapter 1219).
\end{enumerate}
Crimes

Under existing law, when two or more specified enhancements may be imposed for one offense, only the greatest enhancement may be applied. However, existing law provides exceptions to the "single-enhancement" rule when specified offenses are involved. Chapter 235 adds the offense of sexual battery to the list of exceptions to the single-enhancement rule, thus allowing one enhancement for the use of a weapon and one enhancement for infliction of great bodily injury when the underlying offense is sexual battery.

JSP

1. See CAL. R. CT. § 405(c) (defining enhancement); see also People v. Superior Court, 84 Cal. App. 3d 506, 512, 148 Cal. Rptr. 740, 743 (1978) (noting that enhancements in California generally relate to the penalty imposed rather than defining an offense in themselves); People v. Boerner, 120 Cal. App. 3d 506, 511, 174 Cal. Rptr. 629, 631 (1981) (holding that, because an enhancement provision does not define an offense, the use of a knife to inflict great bodily injury constituted two distinct enhancements, notwithstanding the prohibition in § 654 of the California Penal Code against multiple punishment for a single offense).


3. See id. § 1170.1(e) (amended by Chapter 235) (listing the offenses which are exempt from the single enhancement rule); see also People v. Martinez, 171 Cal. App. 3d 727, 734, 217 Cal. Rptr. 546, 550 (1985) (upholding the application of the double enhancement rule in a prosecution for attempted rape); People v. Reiley, 192 Cal. App. 3d 1487, 1490, 238 Cal. Rptr. 297, 300 (1987) (holding that the imposition of double enhancements is a matter of judicial discretion, which requires a statement of reasons from the trial judge).


5. See CAL. PENAL CODE § 1170.1(e) (amended by Chapter 235) (mandating that, for the purpose of adding enhancements, any enhancement for use of a weapon must fall under the requirements of Penal Code §§ 12022, 12022.4, 12022.5(a), or 12022.5(b)(2) of the Penal Code); see also CALJIC § 17.16 (5th ed. 1988) (providing the recommended jury instruction for cases involving the use of a dangerous or deadly weapon).

6. See CAL. PENAL CODE § 1170.1(e) (amended by Chapter 235) (mandating that any enhancement for the infliction of great bodily injury must fall under the requirements of Penal Code §§ 12022.7 or 12022.9); see also id. § 12022.7 (defining great bodily injury); People v. Johnson, 104 Cal. App. 3d 598, 608, 164 Cal. Rptr. 69, 74 (1980) (holding that a fractured jaw meets the definition of great bodily injury); People v. Kent, 96 Cal. App. 3d 130, 136, 158 Cal. Rptr. 35, 38 (1979) (holding that a broken hand meets the definition of great bodily injury); CALJIC § 17.20 (5th ed. 1988) (giving the recommended jury instruction for cases involving great bodily injury).

Crimes; stalking

Penal Code § 646.9 (amended).
SB 1342 (Royce); 1992 STAT. Ch. 627

Under existing law, it is unlawful for any person to commit the crime of stalking.¹ Under existing law a credible threat, in the context of the crime of stalking, is defined as a threat made with the intent and apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety.² Chapter 627 redefines a credible threat to include placing the person in reasonable fear of the death of, or great bodily injury to, the person's immediate family.³

Existing law provides that a second or subsequent conviction for stalking occurring within seven years of a prior conviction of stalking against the same victim involving an act of violence or a credible threat of violence is punishable as a misdemeanor or as a felony.⁴ Chapter 627 provides that a second or subsequent conviction occurring within seven years of a prior conviction of stalking against the same victim, and involving an act of violence or a credible threat of violence is punishable by imprisonment, a fine of $1,000, or by both.⁵

1. CAL PENAL CODE § 646.9 (amended by Chapter 627). Stalking is defined as willfully, maliciously, and repeatedly following or harassing another person while making a credible threat intended to instill in that person a reasonable fear of death or great bodily harm. Id. § 646.9(a) (amended by Chapter 627). Many other states make it unlawful to follow a person in public, or to otherwise harass a person. See, e.g., ARK. CODE ANN. § 5-71-208(a)(3) (Michie 1988); COLO. REV. STAT. ANN. § 18-9-111(1)(c) (West 1987); KY. REV. STAT. ANN. § 525.070(1)(c) (Baldwin 1991); N.Y. PENAL LAW § 240.25(3) (McKinney 1989). See generally Andrea J. Robinson, A Remedial Approach to Harassment, 70 VA. L. REV. 507 (1984) (addressing stalking by strangers and harassment in general, surveying criminal sanctions, and offering a model statute).
2. CAL PENAL CODE § 646.9(f) (amended by Chapter 627).
3. Id. § 646.9(a), (f) (amended by Chapter 627).
4. Id. § 646.9(c) (amended by Chapter 627).
5. Id. Chapter 627 also provides that every person who has been convicted of a felony stalking crime and commits a second or subsequent stalking crime against the same victim involving an act of violence or a credible threat of violence is punishable by imprisonment in the state prison and a fine of up to $10,000. Id. § 646.9(d) (amended by Chapter 627).
Chapter 627 requires any person who is convicted of stalking and who is subsequently granted probation to participate in counseling.\(^6\) Chapter 627 also requires the court to consider issuing a restraining order that may be valid for up to ten years.\(^7\) However, the restraining order may be longer than five years only in an extreme case, where a longer duration is needed to protect the victim or the victim’s immediate family.\(^8\)

**CPH**

**Crimes; white collar crime--Economic Crime Act of 1992**

Penal Code § 1203.044 (new).
SB 541 (Presley); 1992 STAT. Ch. 1334

Existing law states that probation will not be granted to any person convicted of a theft crime in an amount exceeding $100,000 except under specified circumstances.\(^1\) Chapter 1334 establishes the Economic Crime Act of 1992, which provides that probation will not be granted if a defendant is convicted of theft of an amount exceeding $50,000 in a single transaction or occurrence.\(^2\) Chapter 1334 states that probation may not be granted to a defendant who has been previously convicted of a crime for which specified enhancements

\(^6\) Id. § 646.9(h) (amended by Chapter 627).

\(^7\) Id. § 646.9(i) (amended by Chapter 627).

\(^8\) Id.

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Crimes were found to be true.\(^3\) Chapter 1334 provides that the prior conviction must be alleged in the accusatory pleading and either admitted by the defendant in open court or found to be true by the trier of fact.\(^4\)

In deciding whether to grant probation to a defendant, Chapter 1334 allows the court to consider all relevant information, including the defendant's attempt to pay restitution during the period between conviction and sentencing.\(^5\) Chapter 1334 provides that if a defendant claims an inability to pay restitution before sentencing, the defendant must provide a statement of assets, income, and liabilities\(^6\) to the court, to the probation department, and to the prosecution.\(^7\)

Chapter 1334 provides that if a defendant is convicted of theft in an amount in excess of $100,000, probation may not be granted, except in unusual cases where probation should be granted in the interests of justice.\(^8\) If probation is granted, the court must specify the circumstances indicating that the interests of justice would best be served by granting probation.\(^9\)

Chapter 1334 mandates that if a defendant is convicted of theft in an amount in excess of $50,000, the court must impose a mandatory jail sentence of at least ninety days as a condition of probation.\(^10\) If the conviction is for theft of an amount exceeding $100,000, the

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3. CAL. PENAL CODE § 1203.044(b) (enacted by Chapter 1334); see id. § 12022.6 (West 1992) (providing the sentence enhancement scheme for the taking, damaging or destruction of property in the commission of a felony).
4. Id. § 1203.044(b) (enacted by Chapter 1334); see People v. Howard, 1 Cal. 4th 1132, 1179, 824 P.2d 1315, 1339, 5 Cal. Rptr. 2d 268, 295 (1992) (holding that a defendant must be expressly advised by the court of his or her right against self-incrimination, the right to a trial by jury, and the right to confront his or her accusers before an admission by the defendant of a prior conviction may be used by the court for sentence enhancement purposes).
5. CAL. PENAL CODE § 1203.044(c) (enacted by Chapter 1334).
6. See id. § 1203.044(j)(1)-(15) (enacted by Chapter 1334) (listing the items that may be included in a statement of assets, income, and liabilities, including, but not limited to, all real property and personal property exceeding $3,000 in value in which the defendant has an interest, all insurance policies in which the defendant or the defendant’s spouse or children retain a cash value, and all pension funds in which the defendant has a vested right).
7. Id. § 1203.044(c) (enacted by Chapter 1334).
8. Id. § 1203.044(d) (enacted by Chapter 1334); see People v. Cazarez, 190 Cal. App. 3d. 833, 837, 235 Cal. Rptr. 604, 606 (1987) (stating that a trial court’s finding that defendant’s case is not unusual, and therefore the defendant is not eligible for probation, is the only finding required before a trial court may deny probation).
9. CAL. PENAL CODE § 1203.044(d) (enacted by Chapter 1334).
10. Id. § 1203.044(e) (enacted by Chapter 1334).
mandatory sentence will be 180 days. In addition, Chapter 1334 requires that the defendant serve a specified "mandatory in-custody term." During this term, the defendant may not be released on any program, including any work furlough, work release, public service, or electronic surveillance program.

Chapter 1334 provides that if a defendant is convicted under this Act, and if probation is granted, the defendant must pay restitution as a condition of probation, and must pay a surcharge of twenty percent of the restitution amount to the county as specified. Chapter 1334 further requires as a condition of probation, that the defendant provide the county financial officer with all income and property tax records, and a statement on income, assets, and liabilities within thirty days of being granted probation, and annually thereafter.

Chapter 1334 requires a defendant to notify the county financial officer within thirty days after receipt of any source of money or property worth over $5,000. The defendant must also report the source and value of the money or property received.

Chapter 1334 mandates that the term of probation for all offenses under this Act must be ten years. Chapter 1334 additionally

11. Id.
12. Id. § 1203.044(f) (enacted by Chapter 1334). Chapter 1334 provides that if a defendant is convicted for theft of an amount exceeding $50,000, the mandatory in-custody term must be no shorter that 30 days, and if the defendant is convicted of theft of an amount exceeding $100,000, the mandatory in-custody term must be no shorter than 60 days. Id. § 1203.044(f)(1),(2) (enacted by Chapter 1334); see United States v. Brewer, 899 F.2d 503, 507 (6th Cir. 1990) (stating that the definite prospect of a prison sentence, even if only a short term, will act as a significant deterrent to many white collar offenders, especially when compared to probation alone). But see Browder v. United States, 398 F. Supp. 1042, 1047 (D. Ore. 1975) (holding that well-crafted parole and probation programs are better solutions than prison terms).
13. CAL. PENAL CODE § 1203.044(f) (enacted by Chapter 1334).
14. Id. § 1203.044(g) (enacted by Chapter 1334).
15. Id. § 1203.044(b)(1),(2) (enacted by Chapter 1334).
16. Id. § 1203.044(o) (enacted by Chapter 1334).
17. Id.
18. Id. § 1203.044(p) (enacted by Chapter 1334). After a defendant has served five years of probation, Chapter 1334 requires that the defendant be released from all terms and conditions of probation except those covered by this Act. Id.
prohibits a court from revoking or otherwise terminating a defendant's probation within the ten years unless and until the defendant has satisfied both the restitution and the surcharge, or has been imprisoned for a violation of probation.19

Chapter 1334 provides that the county financial officer must establish a suggested payment schedule each year to ensure that the defendant remits amounts to pay restitution and the surcharge.20 Under Chapter 1334, a willful failure to pay the amount required by the payment schedule or to comply with the requirements of the county financial officer or the probation department pursuant to this section is a violation of probation.21 Chapter 1334 further requires a defendant to personally appear at any hearing held pursuant to any provision of this section unless the defendant is incarcerated or otherwise excused by the court, in which case the defendant may appear by counsel.22

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19. *Id.; see id.* § 1203.2(a) (West Supp. 1992) (providing for the re-arrest of any defendant, without a warrant, if there is probable cause that the defendant is violating any term or condition of his or her probation).

20. *Id.* § 1203.044(q) (enacted by Chapter 1334).

21. *Id.* § 1203.044(r) (enacted by Chapter 1334).

22. *Id.* § 1203.044(t) (enacted by Chapter 1334).