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Crimes

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Crimes

Crimes; battery--sports officials

Penal Code § 243.8 (new).
AB 925 (Hannigan); 1991 STAT. Ch. 575

Under existing law, battery is a misdemeanor offense punishable by up to six months in a county jail, a maximum fine of $1,000, or both imprisonment and fine. Existing law provides for increased penalties when battery is committed against specified persons or occurs in specified places. Under Chapter 575, a person who knows, or reasonably should know, that an official is engaged in the duties of officiating any organized sporting event and who commits a battery against that official prior to, during, or immediately following such an event may be punished by imprisonment in county jail for up to one year, a fine of up to $2,000, or both.

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3. See id. § 243(c) (West Supp. 1991) (declaring that battery is punishable by imprisonment in a county jail for up to one year, a fine of up to $2,000, or both when committed against a peace officer, custodial officer, firefighter, emergency medical technician, mobile intensive care paramedic, lifeguard, process server, traffic officer, or animal control officer while working); § 243.7 (West 1988) (declaring that battery committed against a juror by a person who is a party to the case is punishable by imprisonment in a county jail for up to one year, a fine of up to $5,000, or both, or by imprisonment in the state prison for 16 months, or two or three years).
4. See id. § 243.2 (West Supp. 1991) (specifying that battery committed on school or park property is punishable by up to one year in a county jail, or fine of up to $2,000, or both).
5. See id. § 243.8(b) (enacted by Chapter 575) (definition of sports official). Legal counsel to the National Association of Sports Officials stated that there are at least 100 publicized cases of assault committed on officials in youth sports annually. L.A. Times, January 31, 1990, at C8, col. 1. (Orange County ed.). One disgruntled Little League coach fired several shots at a sixteen-year old umpire for making bad calls. L.A. Times, June 23, 1991, at C2, col. 4 (Home ed.).
Crimes

Crimes; care facilities—unauthorized disclosure of impending inspection

Health and Safety Code §§ 1568.0823, 1568.092, 1569.625, 1569.70 (new); §§ 1522, 1540.2, 1568.09, 1569.145, 1569.17, 1569.314, 1569.406, 1569.47, 1596.871, 1596.8915 (amended). SB 994 (Mello); 1991 STAT. Ch. 888

Existing law requires state inspection of child day care facilities, community care facilities, residential care facilities for the elderly, and residential care facilities for persons with a chronic, life-threatening illness. Existing law provides that the unauthorized disclosure by any person of an impending inspection of a community care facility, child day care facility, residential care facility for the elderly, or residential care facility for persons with a chronic, life-threatening illness is a misdemeanor. Chapter 888 modifies the definition of this crime by making it a misdemeanor for any person to give an unauthorized disclosure of an impending inspection, except for a site visit prior to licensing the facility.

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1. See CAL. HEALTH & SAFETY CODE § 1596.750 (West 1990) (definition of a child day care facility).
2. See id. § 1502(a) (West Supp. 1991) (definition of a community care facility).
3. See id. § 1569.2(j)-(k) (West 1990) (definition of a residential care facility for the elderly).
5. Id. §§ 1596.8915, 1540.2, 1569.145, 1569.406 (West 1990) (amended by Chapter 888). See id. § 1568.0823 (enacted by Chapter 888) (governing the crime of informing a facility of an impending inspection). Conviction results in a fine of not more than $1,000, a jail term of not more than 180 days, or both. Id. See also Review of Significant 1989 Legislation, 21 PAC. L.J. 406, 407 (1990) (stating that the reason for making the disclosure of an impending inspection a misdemeanor is because disclosure allows noncomplying facilities to evade detection).
Crimes; civil and criminal penalties for civil rights violations

Business and Professions Code § 6071 (new); Civil Code §§ 52, 52.1 (amended); Government Code § 6254 (amended); Penal Code §§ 422.75, 422.95 (new); §§ 422.6, 422.7, 1170.75 (amended).

SB 98 (Lockyer); 1991 STAT. Ch. 607

Existing law prohibits a person from using another person’s race, color, religion, ancestry, national origin, or sexual orientation as a basis for willfully interfering with that person’s exercise of rights which are secured by federal or state law.1 Existing law also prohibits the destruction of real or personal property for the above reasons.2 Chapter 607 increases the penalty for this crime from six months to one year.3

Existing law permits specified crimes4 to be punished more severely5 if the crime is committed for the purpose of interfering with another’s constitutionally or statutorily secured rights because of that person’s race, color, religion, ancestry, national origin, or sexual orientation.6 Chapter 607 expands this law by also permitting its application when a crime is committed because of another’s disability or gender.7

1. CAL. PENAL CODE § 422.6(a) (amended by Chapter 607). This law cannot be violated by speech alone, unless the speech itself threatens violence. Id. § 422.6(c) (amended by Chapter 607).

2. Id. § 422.6(b) (amended by Chapter 607).

3. Id. § 422.6(c) (amended by Chapter 607).

4. See id. § 422.7(a)-(c) (amended by Chapter 607) (including as specified crimes those against the person with the present ability to commit a violent injury, property damage in excess of five hundred dollars, and crimes committed by a person who has been previously convicted of violating California Penal Code section 422.6). A sentencing enhancement cannot be applied if the crime involves a violation of California Penal Code section 422.6, or it is made punishable by imprisonment. Id.

5. See id. § 422.7 (amended by Chapter 607). Certain crimes which are not made punishable by imprisonment can be made punishable by one year imprisonment, a fine of ten thousand dollars, or by both. Id.

6. Id. § 422.7 (amended by Chapter 607). In order to be punished more severely, the crime must have included the present ability to commit a violent injury, or it must have caused over five hundred dollars of property damage, or the person charged must have previously been convicted of violating California Penal Code section 422.6. Id. § 422.7(a)-(c) (amended by Chapter 607).

7. Id. § 422.7 (amended by Chapter 607).
Existing law provides that when one commits a felony due to another’s race, color, religion, nationality, country of origin, ancestry or sexual orientation, it is considered an aggravating circumstance for purposes of sentencing.\(^8\) Existing law also provides for sentencing enhancements in certain circumstances.\(^9\) Chapter 607 permits a court to impose a sentencing enhancement of one, two or three years where a person commits a felony due to the victim’s race, color, religion, nationality, country of origin, ancestry, or sexual orientation.\(^10\) Chapter 607 also permits a sentencing enhancement to be applied to those who acted in concert with another to commit such a crime.\(^11\) Further, Chapter 607 provides that where a sentencing enhancement is applied pursuant to this provision, a separate additional term of one year will be applied for all prior felonies which were committed due to the victim’s race, color, religion, nationality, country of origin, ancestry, disability or sexual orientation.\(^12\)

Existing law provides that all persons have a right to be free from personal violence due to their race, color, religion, ancestry, national origin, political affiliation, gender, sexual orientation, age, or disability.\(^13\) Prior law provides that one who denies another of these rights is liable for actual damages incurred, plus an amount of up to three times the actual damages, and a ten thousand dollar

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8. Id. § 1170.75 (amended by Chapter 607).
9. See id. § 667(a) (West Supp. 1991) (specifying that any person convicted of a serious felony who has previously been convicted of a serious felony can receive a five year enhancement); § 667.5(a) (West Supp. 1991) (permitting any person convicted of a violent felony to receive an additional sentence of three years for each prior violent felony conviction); § 667.5(c) (West Supp. 1991) (definition of violent felony).
10. Id. § 422.75(a) (enacted by Chapter 607). See generally Leo, Legislative Responses to Hate-Motivated Violence: The Massachusetts Experience and Beyond, 25 HARV. C.R.-C.L. L. REV. 287 (1990) (listing recommendations for state legislatures in enacting statutes to combat hate-motivated violence); Note, Bias Crimes: Unconscious Racism in the Prosecution of “Racially Motivated Violence,” 99 YALE L.J. 845 (1990) (addressing the current inadequacy of state bias crime statutes and proposing reforms, including limitations on prosecutorial discretion).
11. CAL. PENAL CODE § 422.75(b) (enacted by Chapter 607). The sentencing enhancement for acting in concert with another to commit this crime is two, three or four years. Id.
12. Id. § 422.75(c) (enacted by Chapter 607). This additional term will be applied only if the defendant admits that the prior felony was committed due to the victim’s personal characteristics, or if a jury found it to be so. Id.
criminal penalty.\textsuperscript{14} Chapter 607 increases the civil penalty to twenty-five thousand dollars, and allows for exemplary damages instead of an amount limited to three times the actual damages.\textsuperscript{15}

**ACS**

**Crimes; confiscation of firearms used in criminal street gang activity**

Penal Code § 186.22a (amended).

SB 809 (Deddeh); 1991 STAT. Ch. 260

Under existing law, it is unlawful to actively participate in criminal gang activity.\textsuperscript{1} Existing law also provides that every place used by criminal street gangs for the commission of specified offenses\textsuperscript{2} is a nuisance\textsuperscript{3} which shall be abated.\textsuperscript{4} Existing law additionally provides that firearms can be declared a nuisance under certain circumstances.\textsuperscript{5} Chapter 260 permits firearms, ammunition, and other deadly weapons to be confiscated by any...

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{1} \textsuperscript{\textsuperscript{*}}CAL. PENAL CODE § 186.22(a) (West Supp. 1991). \textit{See id.} 186.22(a)(1)-(8) (West Supp. 1991) (definition of criminal gang activity); People v. Leland D., 223 Cal. App. 3d 251, 259, 272 Cal. Rptr. 709, 713 (1990) (finding that there does not need to be proof of prior convictions to constitute criminal gang activity, but there must be proof that the specified prior offenses were in fact committed).
\item \textsuperscript{2} \textsuperscript{\textsuperscript{*}}\textit{See CAL. PENAL CODE} § 186.22a(a) (amended by Chapter 260) (stating that specified offenses include any offense involving dangerous or deadly weapons, burglary or rape); \textit{id.} § 186.22(c) (West Supp. 1991) (stating that specified offenses also include any public offense punishable as a felony or misdemeanor which is committed in association with any criminal street gang).
\item \textsuperscript{3} \textsuperscript{\textsuperscript{*}}\textit{See CAL. CIV. CODE} § 3480 (West 1970) (definition of public nuisance); \textit{id.} § 3481 (West 1970) (definition of private nuisance).
\item \textsuperscript{4} \textsuperscript{\textsuperscript{*}}\textsuperscript{\textsuperscript{*}}CAL. PENAL CODE § 186.22(a) (amended by Chapter 260).
\item \textsuperscript{5} \textsuperscript{\textsuperscript{*}}\textit{id.} § 12028(b) (West Supp. 1991) (providing that a firearm used in the commission or attempt of any misdemeanor or felony is a nuisance).
\end{enumerate}
\end{footnotesize}
law enforcement agency if they are owned or possessed by a criminal street gang\(^6\) member for the purpose of committing specified offenses,\(^7\) including burglary or rape.\(^8\) Chapter 260 also provides that when a law enforcement agency believes the confiscated item will be used in criminal street gang activity, the law enforcement agency shall initiate a petition in the superior court to determine whether the item should be returned or declared a nuisance.\(^9\) Chapter 260 provides that the lawful owner of the confiscated item may request a hearing to have the item returned.\(^10\)

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\(^6\) See \textit{id.} § 186.22(f) (West Supp. 1991) (definition of criminal street gang).

\(^7\) See \textit{id.} § 186.22(c) (West Supp. 1991) (listing specified offenses as any public offense punishable as a felony or misdemeanor which is committed in association with any criminal street gang).

\(^8\) \textit{id.} § 186.22a(e)(1) (amended by Chapter 260).

\(^9\) \textit{id.} § 186.22a(e)(2) (amended by Chapter 260). The law enforcement agency must give reasonable notice to the registered owner that the owner has thirty days to request a hearing and that failure to respond will result in a default order rendering the confiscated item a nuisance. \textit{id.} § 186.22a(e)(3) (amended by Chapter 260).

\(^10\) \textit{id.} § 186.22a(e)(3) (amended by Chapter 260). The law enforcement agency has the burden of proof at the hearing to show that the seized item will be used in criminal street gang activity. \textit{id.} § 186.22a(e)(5) (amended by Chapter 260).
Crimes; controlled substance possession--minimum fines and community service

AB 1706 (Becerra); 1991 STAT. Ch. 257
Support: Los Angeles Police Department, California Peace Officers Association, California Police Chiefs Association, and California State Sheriffs Association

Existing law provides that persons convicted of possession of specified controlled substances are subject to fines of up to $20,000 in addition to imprisonment in the state prison. Except in unusual cases where the interests of justice would not be served, Chapter 257 requires a court to assess, as a condition of probation, a minimum fine of $1,000 or community service for the first offense, a minimum fine of $2,000 or community service for any

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1. See People v. Rice, 59 Cal. App. 3d 998, 1002-03, 131 Cal. Rptr. 330, 332 (1978) (holding that exclusive possession or control is not necessary for a conviction of possession of narcotics).

2. See CAL. HEALTH & SAFETY CODE § 11350 (amended by Chapter 257) (listing the classifications of controlled substances of which possession is felonious unless accompanied by the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in California). See also id. § 11054(b), (c), (f)(1) (West Supp. 1991) (prohibiting unauthorized possession of opiates, opium derivatives, and drugs with a cocaine base); § 11054(d)(14), (15), (20) (West Supp. 1991) (prohibiting unauthorized possession of mescaline and synthetic Cannabis); § 11055(b), (c), (g) (West Supp. 1991) (prohibiting unauthorized possession of opium, cocaine, and hallucinogenic substances); § 11056 (West Supp. 1991) (definition of Schedule III drugs); § 11057 (West Supp. 1991) (definition of Schedule IV drugs); § 11058 (West Supp. 1991) (definition of Schedule V drugs).

3. See id. § 11372(a) (West Supp. 1991) (authorizing a court to impose a fine of up to $20,000 for each offense on a person who is convicted of violating section 11350, 11351.5, 11353, 11355, 11359, 11360, or 11361 of the Health and Safety Code).

4. Id. § 11350(a) (amended by Chapter 257).
subsequent offense, or community service in lieu of the fine if the offender does not have the ability to pay the fine.\footnote{Id. § 11350(d) (amended by Chapter 257). See \textit{In re Simeon Antazo}, 3 Cal. 3d 100, 115, 473 P.2d 999, 1009, 89 Cal. Rptr. 255, 265 (1970) (holding that a minimum fine as a condition of probation may be unconstitutional, unless the defendant has the ability to pay). See generally Note, "User-Accountability" Provisions in the Anti-Drug Abuse Act of 1988: Assaulting Civil Liberties in the War on Drugs, 40 Hastings L.J. 1223, 1224-25 (1989) (discussing the effectiveness and constitutionality of civil penalties for unlawful possession of controlled substances).}

\textit{JEL}

\textbf{Crimes; domestic violence}

Penal Code §§ 277, 1387 (amended).
SB 19 (Lockyer); 1991 STAT. Ch. 400

Existing law provides that, in the absence of a court order determining custody or visitation rights to a minor child, any person having custody rights to a child, who maliciously takes, detains, conceals, or entices away the child without, good cause, intentionally depriving another's right to custody is guilty of a felony or misdemeanor.\footnote{\textit{CAL. PENAL CODE} § 277 (amended by Chapter 400). Punishment includes imprisonment in a county jail for up to a year, a $1,000 fine, or both, or imprisonment in the state prison for 16 months, or two or three years, a fine of $10,000, or both. \textit{Id.}} Existing law defines good cause as a good faith and reasonable belief that taking the child is necessary to protect the child from immediate corporal or emotional harm.\footnote{\textit{Id.} The person who takes the child must submit a report to the district attorney's office within a reasonable time in the jurisdiction where the child had resided. \textit{Id.} See \textit{People v. McGirr}, 198 Cal. App. 3d 629, 633-37, 243 Cal. Rptr. 793, 795-98 (1988) (defining good cause as acting on reasonable grounds and in good faith).} Chapter 400 expands the definition of good cause to include a good faith and reasonable belief by a victim of domestic violence,\footnote{\textit{See CAL. PENAL CODE} § 277(a)(1)-(2) (amended by Chapter 400) (definition of domestic violence).} who has a custody right to the child, that the child will suffer immediate
corporal or emotional harm if left with the aggressor who also has a custody right to the child.  

Prior law provided that the address of the parent or legal guardian who took the child with good cause was to remain confidential until released by the district attorney or by court order.  

Under Chapter 400, the address may be released only by a court order.  

Existing law provides, with limited exceptions, that the prosecution may not refile a felony that has been dismissed twice or a misdemeanor that has been dismissed once.  

Chapter 400 permits refiling of certain offenses which are dismissed due to the failure of the victim of domestic violence to appear in court.

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7. *See id. § 1387(a)(1)-(2)* (amended by Chapter 400) (specifying the exceptions to be the discovery of substantial new evidence by the prosecution which could not have been discovered prior to the end of the action by exercising reasonable diligence, and termination of the action due to intimidation of a material witness shown by a preponderance of the evidence).
8. *Id. § 1387(a)* (amended by Chapter 400). *See In Re Williams*, 164 Cal. App. 3d 979, 983, 211 Cal. Rptr. 32, 34 (1984) (finding that the purpose of this rule is the prevention of prosecutorial harassment).
9. The offenses where refiling would be permitted include battery on a noncohabitating former spouse or fiance, rape of a spouse, willful infliction of physical injury on a spouse, and willful violation of a court order to prevent domestic violence. *CAL. PENAL CODE § 1387(a)(3)* (amended by Chapter 400).
10. *Id.* This applies only within six months of the original dismissal, and may be used only once in each action. *Id.*

*Selected 1991 Legislation*
Crimes; firearms

Penal Code § 12084 (new); §§ 11106, 12026.2, 12072, 12073, 12076 (amended); Welfare and Institutions Code § 8108 (new); §§ 8100, 8105 (amended).
AB 664 (Hauser); 1991 STAT. Ch. 951

Under existing law, any person who carries a concealed firearm without a license is guilty of a misdemeanor. Existing law also provides for specified exemptions from this law. Chapter 951 additionally exempts from this law the transportation of a firearm when a person is going directly to or from a law enforcement agency for the purpose of performing a lawful transfer, and the transportation of a firearm for purposes of protection at a lawful camping activity.

Under existing law, the sale and transfer of firearms must be conducted through a licensed dealer. Chapter 951 provides that the parties to the purchase of a firearm may complete the transaction through a sheriff's department in counties with a

1. See CAL. PENAL CODE § 12001(a) (amended by Chapter 955) (definition of "firearm capable of being concealed upon the person"); § 12001(b) (amended by Chapter 955) (definition of firearm). Firearms which are carried openly in belt holsters and knives carried openly in sheaths are not considered concealed weapons within the meaning of this section. Id. § 12025(c) (West Supp. 1991).
2. Id. § 12025(b) (West Supp. 1991). See People v. Marroquin, 210 Cal. App. 3d 77, 82, 258 Cal. Rptr. 290, 294 (1989) (holding that there does not need to be proof of operability of the concealed weapon to convict pursuant to California Penal Code section 12025(b)). But see People v. Clouseman, 183 Cal. App. 3d Supp. 1, 4, 229 Cal. Rptr. 453, 455 (1986) (finding that the Legislature did not intend to include inoperable weapons within the meaning of a concealable weapon for purposes of California Penal Code section 12025(a)).
3. CAL. PENAL CODE §§ 12025.5, 12026 (West Supp. 1991), 12026.2 (amended by Chapter 951). See id. § 12025.5 (West Supp. 1991) (providing that a violation of California Penal Code section 12025 is justified when a person reasonably believes that he or she is in grave danger because of circumstances forming the basis of a restraining order which was issued to protect his or her life or safety); § 12026 (West Supp. 1991) (permitting a United States citizen over the age of 18 to keep a concealed weapon within the citizen's residence, business, or private property); § 12026.2 (amended by Chapter 951) (delineating numerous activities which are exempt from California Penal Code section 12025).
4. Id. § 12026.2(a)(11)-(12) (amended by Chapter 951). In order for an activity to be exempted pursuant to this section, the firearm must be kept in a locked container during transportation. Id. § 12026.2(a)(12)(b) (amended by Chapter 951).
5. Id. § 12082 (amended by Chapter 955).
population of less than 200,000 persons. Chapter 951 additionally states that it is a misdemeanor to furnish a fictitious name or address, or knowingly to furnish incorrect information or omit information on the Law Enforcement Firearms Transfer Form which is utilized to purchase a firearm pursuant to this section.

Under existing law, all public and private mental hospitals, sanitariums, and institutions must submit to the Department of Justice all requested information with respect to mental patients which is necessary for the department to carry out its duties. Under prior law, a mental patient in, or on leave of absence from, a hospital or institution could not own, possess, purchase, or receive any firearms or deadly weapons. Chapter 951 stipulates that no person may possess, purchase or receive any firearm or deadly weapon when an attending health care professional, who is responsible for the patient's treatment of a mental disorder, determines that the patient is a danger to self or others and the patient has been admitted to a facility to receive inpatient treatment. Chapter 951 also provides that a person may not possess, purchase or receive any firearm for a period of six months after that person has communicated to a licensed psychotherapist a serious threat of physical violence against an identifiable victim.

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6. Id. § 12084(a)(1), (b) (enacted by Chapter 951). The sheriff's department shall not deliver the firearm to the purchaser within 15 days of the application for purchase prior to January 1, 1996, unless the firearm is unloaded, is wrapped or in a locked container, the purchaser has evidence of identity and age, and delivery is at the premises of the sheriff's department. Id. § 12084(d)(7)(A)-(F) (enacted by Chapter 951).

7. Id. § 12084(g) (enacted by Chapter 951).

8. CAL. WELF. & INST. CODE § 8105 (amended by Chapter 951).


10. See CAL. WELF. & INST. CODE § 8100(e) (amended by Chapter 952) (definition of deadly weapon).

11. See id. § 8100(d) (amended by Chapter 952) (definition of attending health care professional).

12. See id. § 8100(f) (amended by Chapter 952) (definition of "danger to self").

13. Id. § 8100(a) (amended by Chapter 952). An individual is not subjected to this subdivision once the person has been discharged from the facility. Id. Discharge for purposes of this section does not include a leave of absence. Id. § 8100(g) (amended by Chapter 952). A violation of this subdivision is punishable by imprisonment in the state prison, or in county jail for not more than one year, by a fine not exceeding $1000.00, or by both. Id. § 8100(g) (amended by Chapter 952).
Crimes

and the licensed psychotherapist notifies the local law enforcement agency of such threat.\textsuperscript{14}

ACS

Crimes; firearms--silencers, concealable firearms, sawed-off firearms

Penal Code § 12100 (amended).
AB 131 (Murray and Peace); 1991 STAT. Ch. 165

Under existing law, it is a misdemeanor\textsuperscript{1} for any person or corporation to sell any concealable firearm\textsuperscript{2} to a minor, or to give, supply, or provide any concealable firearm to a minor without the written consent or implied permission of a parent or legal guardian.\textsuperscript{3} Existing law provides that a person may be punished by imprisonment in a state prison or in a county jail for up to one year for violating one of these provisions subsequent to a conviction for such an offense,\textsuperscript{4} or for violating one of these provisions

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\textsuperscript{14} See id. § 8100(b)(1) (amended by Chapter 952). The individual prohibited from possessing a firearm pursuant to this section may petition the superior court for an order to regain possession. Id. § 8100(b)(3) (amended by Chapter 952). Cf. Tarasoff v. Regents of University of California, 17 Cal. 3d 425, 439, 551 P.2d 334, 345, 131 Cal. Rptr. 14, 25 (1976) (holding that when a therapist determines or should determine that a patient presents a serious danger of violence to another, the therapist has a duty to notify the endangered party or one reasonably expected to notify the victim).

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\textsuperscript{1} See CAL. PENAL CODE § 17(b) (West Supp. 1991) (definition of misdemeanor).
\textsuperscript{2} See id. § 12001(a) (West Supp. 1991) (defining a concealable firearm as any weapon that is capable of firing a projectile by the force of an explosion or combustion and has a barrel length less than 16 inches). See also id. § 12001(b) (West Supp. 1991) (definition of firearm). Cf. People v. Talkington, 140 Cal. App. 3d 557, 562-63, 189 Cal. Rptr. 735, 736-38 (1983) (holding that a tightly rolled tube of paper with one end closed with melted plastic and loaded with 30 match heads was a firearm within the meaning of Penal Code section 4574, which proscribes possession of firearms within a detention facility, even though there was no showing that the device would work or cause injury).
\textsuperscript{3} CAL. PENAL CODE § 12100(a)-(b) (amended by Chapter 165).
\textsuperscript{4} Id. § 12100(c)(2)(A) (amended by Chapter 165).
subsequent to the conviction for other specified offenses. Chapter 165 expands existing law by imposing imprisonment in a state prison or in a county jail for up to one year on first time violators who are among a certain class of persons.

5. Id. § 12100(c)(2)(B) (amended by Chapter 165). The specified offenses include the manufacture, sale, or possession of concealable weapons, explosive agents, and firearms not immediately recognizable as firearms, the possession of any firearm by a felon convicted of certain violent crimes, the knowing sale of firearms to certain prohibited persons, the sale, possession, or knowing transportation of a machinegun, the possession of a silencer, and the knowing sale of firearms to mental patients or those adjudged insane. Id. See id. § 12020 (West Supp. 1991) (prohibiting the manufacture, sale, and possession of concealable weapons, explosive agents, and firearms not immediately recognizable as firearms); § 12021.1(b) (West Supp. 1991) (listing certain violent offenses); § 12072 (West Supp. 1991) (prohibiting sales, deliveries, and transfers of firearms to certain persons); § 12220 (West Supp. 1991) (prohibiting the possession or the knowing transportation of a machinegun); § 12520 (West Supp. 1991) (prohibiting the possession of a silencer); CAL. WELF. & INST. CODE § 8101 (West Supp. 1991) (prohibiting the sale, gift, or transfer of possession of a firearm to mental patients or persons adjudged insane).

6. Id. § 12100(c)(2)(C) (amended by Chapter 165). The prohibited class includes convicted felons, those convicted of violent crimes, narcotics addicts, mental patients, anyone adjudged to be dangerous to others, or any mentally disturbed sex offender. Id. See id. § 12021.1 (West Supp. 1991) (stating that anyone convicted of certain crimes in possession of a firearm is guilty of a felony); CAL. WELF. & INST. CODE § 8100 (West Supp. 1991) (prohibiting mental patients from possessing firearms); § 8103 (West Supp. 1991) (prohibiting those adjudged dangerous to others from possessing firearms). See also Katona v. Los Angeles County, 172 Cal. App. 3d 53, 58-60, 218 Cal. Rptr. 19, 22-23 (1985) (holding that a county mental health facility did not have a duty to warn the gun dealer, Department of Justice, or other law enforcement agency of the patient's suicidal tendencies after finding a layaway ticket from the gun dealer in the patient's possession where the facility notified the patient's parents of the pending sale). Cf. Review of Selected 1990 California Legislation, 22 PAC. L.J. 484 (1991) (discussing the expansion of the law prohibiting the sale of firearms).
Crimes; hate crimes

Civil Code § 52 (amended); Penal Code § 422.8 (amended).
AB 1169 (Lee); 1991 STAT. Ch. 839

Under prior law, to file a complaint for violation of a plaintiff’s civil rights, the plaintiff was required to demonstrate that there is reasonable cause to believe that a person or group of persons is engaged in a pattern or practice of the resistance of the plaintiff’s full enjoyment of his or her civil rights secured by law.\(^1\) Under Chapter 839, a complaint filed pursuant to Chapter 839 must demonstrate that a person or group of persons is engaged in conduct of the resistance of the full enjoyment of any individual’s rights secured by law.\(^2\)

Under existing law, courts must dispose of criminal cases in the following order: Minors detained as a material witness, a person seventy years or older at the time of the alleged offense, or a victim of specified felonies\(^4\) committed by force or violence.\(^5\) Under Chapter 839, any person interfering with the exercise of a person’s civil rights by discriminating against the person or property of another shall be given precedence over other criminal actions.\(^6\)

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1. See CAL. CIV. CODE § 51, 52 (Unruh Civil Rights Act) (West Supp. 1991) (enacted to protect individual civil rights).
3. CAL. CIV. CODE § 52(c) (amended by Chapter 839). See id. § 52(a) (amended by Chapter 839) (stating that any person making a distinction based upon sex, color, race, religion, ancestry, national origin, blindness, or any other physical handicap is liable for the actual damages).
4. See CAL. PENAL CODE § 1048(b)(3) (amended Chapter 839) (listing the following felonies as receiving preference on the court calendar: Corporal punishment of a child, willful cruelty of a child, rape by foreign object, rape, sodomy, incest, lewd acts with child under the age of 14, oral copulation).
5. Id. § 1048(b)(1)-(3) (amended by Chapter 839).
6. Id. § 1048(b)(4) (amended by Chapter 839).
Crimes

COMMENT

Current federal law requires a civil rights action brought by the Attorney General or Equal Employment Opportunity Commission to be based upon a pattern or practice of resistance of an individual's full enjoyment of the rights secured by law. Unlike existing federal law, Chapter 839 only requires a civil rights complaint filed in California to show that there exists reasonable cause to believe that a person, or group of persons, is engaged in conduct of the resistance. One of the goals of Chapter 839 is to remove the hurdle of showing numerous incidents of resistance, thus opening the door to an increase in California cases involving Civil Rights violations.

ALG

Crimes; graffiti--personal property

Penal Code § 640.6 (new); § 640.5 (amended).
AB 446 (Boland); 1991 STAT. Ch. 556

Existing law provides that when any person maliciously defaces, damages, or destroys real or personal property.

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7. 42 U.S.C.A. § 2000e-6(a) (West 1981). See United States v. Hunter, 459 F.2d 205, 217 (4th Cir. 1972) (holding that it takes more than an isolated or accidental instance of conduct; instead the Attorney General must show intentional, regular, or repeated violations of peoples civil rights in a housing discrimination case).
8. CAL. CIV. CODE § 52(c) (amended by Chapter 839).
9. Senate Committee on Judiciary, Committee Analysis AB 1169 (August 20, 1991) (copy on file at the Pacific Law Journal) (stating the author's purpose of AB 1169 was to remove the burden of proving a pattern or practice). According to the author this bill will allow the recent dramatic increase in the numbers of victims of hate crimes an opportunity to obtain injunctive relief by demonstrating isolated instances of discrimination. Id.

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2. See id. § 594(a) (West Supp. 1991) (providing sanctions for malicious defacement with paint or other liquid); § 594.1(a) (West Supp. 1991) (establishing that it is unlawful to sell or furnish a minor with any aerosol container of paint without obtaining evidence of majority and identity).
belonging to another, that person is guilty of vandalism. Chapter 556 establishes a fine not to exceed $250, community service not to exceed forty-eight hours, and restitution to the owner of personal or real property which has been subject to graffiti. Chapter 556 applies only when the graffiti results in less than $250 worth of damage, and does not preclude filing of charges under the existing vandalism provisions.

PLB
Crimes; interception of police communications

Penal Code § 636.5 (amended).
SB 554 (Mello); 1991 STAT. Ch. 515

Under existing law, it is a misdemeanor to intercept a police radio service communication and divulge its contents to a person suspected of having committed a crime, with the intent of aiding that suspect. Existing law, however, does not prohibit the mere listening to a police radio service communication. Chapter 515 expands existing law by making it a misdemeanor to intercept police communications, by scanner or other means, if it is done for the purpose of assisting in a criminal offense or avoiding arrest, trial, conviction or punishment.

ACS

Crimes; littering and dumping

Penal Code § 374.8 (new).
SB 1197 (Kopp); 1991 STAT. Ch. 1120

Under existing law, any person, firm, or corporation who dumps or causes to be dumped any waste in or upon specified places is guilty of an infraction. Existing law additionally

1. See CAL. PENAL CODE § 636.5 (amended by Chapter 515) (definition of police radio service communication).
2. Id. One must intend to aid the suspect in avoiding or escaping from arrest, trial or conviction. Id.
3. See id. (providing that there is no misdemeanor in the absence of a divulgence of the communication).
4. Id.

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1. See CAL. PENAL CODE § 374.3(a) (West Supp. 1991) (prohibiting the dumping of waste on any highway or road, in or upon any private property in which the public is admitted by easement or license, upon any private property without permission by the owner, or in or upon any public park or other public property, except for property designated or set aside for that purpose).

579
provides that any person who litters or causes to be littered, or dumps or causes to be dumped, any waste into specified areas is guilty of a misdemeanor. Existing law imposes mandatory fines for the dumping or littering of waste into such areas as follows: (1) An amount between $100 and $1,000 for first convictions; (2) an amount between $500 and $1,000 for second convictions; and (3) an amount between $750 and $1,000 for subsequent convictions. Chapter 1120 additionally regulates hazardous substances and provides that any person who knowingly causes any hazardous substances to be deposited into or upon any road, street, highway, alley, or railroad right-of-way, or on another person’s land without the owner’s permission, or into any state waters, will be guilty of a misdemeanor or felony. Chapter 1120 provides punishment for violating its provisions as follows: (1) Imprisonment in the county jail for a maximum term of one year; (2) imprisonment in the state prison for sixteen months, two, or three years; (3) a fine of not less than fifty dollars, nor more than $10,000; or (4) both fine and imprisonment.

DKA
Crimes; loaded firearms and concealed weapons

Penal Code §§ 12031.5, 12289 (new); §§ 12027, 12027.1, 12031, 12076, 12276, 12276.5, 12280, 12285 (amended); Welfare and Institutions Code § 8100 (amended).
AB 1904 (Peace); 1991 STAT. Ch. 952
AB 637 (Friedman); 1991 STAT. Ch. 1022
SB 263 (Roberti); 1991 STAT. Ch 954

Under prior law, the carrying of a loaded firearm in a public place constitutes a misdemeanor. Under Chapter 1022, a repeat conviction for this activity can be charged as either a felony or a misdemeanor.

Existing law allows a peace officer to perform a misdemeanor arrest without a warrant only if the officer has reasonable cause.

Selected 1991 Legislation
to believe the offense was committed in his presence. Chapter 1022 authorizes an officer to arrest for a violation of carrying a loaded weapon whenever the officer has reasonable cause to believe there was a violation even if it was not committed in the officer’s presence.

Existing law requires that an honorably retired peace officer receive an identification certificate. This certificate can be endorsed to allow the retired officer to legally carry a concealed weapon. Chapter 952 mandates a standardized format for both the identification certificate and the endorsement stamp.

Prior law provided for the removal of an endorsement by the issuing agency upon a good cause determination. Under Chapter 952, the issuing agency can either deny or revoke an endorsement only upon a hearing. Under prior law, upon receipt of this notice the officer was required to immediately surrender his endorsement. Chapter 952 requires the surrender of the

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7. CAL. PENAL CODE § 836(1) (West 1985). A warrantless arrest is permissible if the activity is a felony violation, regardless of whether or not the officer personally observed the activity. Id. § 836(2)-(3) (West 1985). An officer is also authorized to examine any firearm for a determination of whether it is loaded. Id. § 12031(e) (amended by Chapter 1022). Denial of a request to inspect constitutes probable cause to arrest for a violation of section 12031(a)(1). Id.

8. Id. § 12031(a)(1)-(2) (amended by Chapter 1022).


10. Id. § 12027(a)(1) (amended by Chapter 952). The issuing agency is the agency from which the officer retired. Id. Chapter 952 allows an agency to charge the officer a fee to cover issuing expenses. Id. §§ 12031(b)(1), 12027(a)(1)(A) (amended by Chapter 952).

11. Id. § 12027(a)(1)(B) (amended by Chapter 952). The endorsement requirement applies to officers retiring after January 1, 1981. Id. The endorsement must be renewed every five years. Id. § 12027(a)(2) (amended by Chapter 952).

12. Id. § 12027(a)(1)(D) (amended by Chapter 952). A non-conforming endorsement is invalid. Id. § 12027(a)(1)(C) (amended by Chapter 952).


14. CAL. PENAL CODE § 12027.1(a)-(b) (amended by Chapter 952). See id. § 12027.1(b)(1) (requiring that the hearing board make a good cause determination for the revocation or denial of the endorsement). Any violation of state and federal law or departmental rules which would result in an active duty officer being arrested, suspended or removed from duty is grounds for revoking or denying an endorsement. Id. § 12027.1(a)(2) (amended by Chapter 952).

endorsement only after a hearing or the officer’s forfeiture of the right to a hearing.\textsuperscript{17}

Existing law makes the possession of an assault weapon illegal except as permitted by the Roberti-Roos Assault Weapons Control Act of 1989.\textsuperscript{19} Chapter 954 creates an exemption for an estate’s personal representative handling an assault weapon as authorized by the probate court and in compliance with the provisions of the Roberti-Roos Assault Weapons Control Act of 1989.\textsuperscript{20} Chapter 954 also establishes a limited exemption for the lending of a lawfully registered assault weapon.\textsuperscript{21}

Existing law enables the California Attorney General to designate a firearm not listed in California Penal Code section 12276 as an assault weapon upon an order of the superior court.\textsuperscript{22} Chapter 954 further requires that the Attorney General promulgate and file with the Secretary of State a list for publication of all assault weapons.\textsuperscript{23}

\begin{itemize}
  \item \textsuperscript{16} See \textit{CAL. PENAL CODE} § 12027.1(d) (delineating the make-up of hearing board).
  \item \textsuperscript{17} \textit{Id.} § 12027.1(e) (amended by Chapter 952). Failure to request a hearing within 15 days of receiving either notice of hearing to revoke or deny endorsement or of a denial of an endorsement request forfeits the officer’s right to a hearing. \textit{Id.} § 12027.1(b)(2)-(3) (amended by Chapter 952).
  \item \textsuperscript{18} See \textit{id.} § 12276(a)-(d) (amended by Chapter 954) (specifying firearms within the meaning of assault weapon). Chapter 954 identifies assault weapons by specified types, series and models. \textit{id.} § 12276(a)-(o) (amended by Chapter 954). Series is defined as any model variations of an enumerated rifle regardless of manufacturer. \textit{id.} § 12276(e) (amended by Chapter 954).
  \item \textsuperscript{19} \textit{Id.} § 12280(b) (amended by Chapter 954). The manufacture, distribution, transportation, importation, keeping for sale, or lending of an assault weapon is a felony offense. \textit{Id.} § 12280(a)(1) (amended by Chapter 954). \textit{See generally} \textit{Review of Significant 1989 Legislation}, 21 PAC. L. J. 333, 442 (1990) (discussing implementation of the Roberti-Roos Assault Weapons Control Act).
  \item \textsuperscript{20} \textit{CAL. PENAL CODE} § 12280(g)-(h) (amended by Chapter 954).
  \item \textsuperscript{21} \textit{id.} § 12280(i)(j) (amended by Chapter 954). To legally lend the weapon the borrower must be over 18 years old, not prohibited from possessing a firearm, and must remain in the presence of the registered possessor of the weapon at a location that is a licensed target range, organized club with a range or an approved firearm function site. \textit{id.} § 12280(i)(1)(A)-(C) (amended by Chapter 954).
  \item \textsuperscript{22} \textit{Id.} § 12276.5(f) (amended by Chapter 954). The court is also authorized to declare a temporary suspension of the manufacture, sale, distribution, transportation, importation, giving or lending of the alleged assault weapon within California. \textit{Id.} § 12276.5(a) (amended by Chapter 954).
  \item \textsuperscript{23} \textit{id.} § 12276.5(h) (amended by Chapter 954). The Attorney General must file an amended list within 90 days of the court declaring any firearm an assault weapon. \textit{Id.} Chapter 954 also grants the Attorney General the power to fashion any necessary rules or regulations. \textit{id.} § 12276.5(i) (amended by Chapter 954).
\end{itemize}
Existing law requires that all lawfully possessed assault weapons be registered with the Department of Justice (Department). Chapter 954 creates a ninety day grace period commencing on January 1, 1992 to allow all persons lawfully possessing an assault weapon to register those weapons without being charged with violating California Penal Code section 12280 subdivision (b). Chapter 954 further requires that all individuals lawfully possessing a firearm prior to the date it is specified as an assault weapon must register the weapon within ninety days of the date it is so specified. Additionally, Chapter 954 requires the Department to establish a notification and education program regarding assault weapon registration and the ninety day grace period.

Under prior law, a mental patient in, or on leave of absence from, a hospital or institution could not own, possess, purchase, or receive any firearm or deadly weapon. Chapter 952 prohibits a person from either attempting to or actually possessing, purchasing, or receiving any firearm or deadly weapon where the attending health care professional believes that the person is a danger to self or others while receiving inpatient treatment in a

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24. Id. § 12285(a) (amended by Chapter 954).
25. Id. § 12285(f)-(g) (amended by Chapter 954). The grace period under Chapter 954 does not apply to charges filed prior to January 1, 1992 in which law enforcement knew of the violation prior to registration. Id. § 12285(g) (amended by Chapter 954).
26. See id. § 12280(k) (amended by Chapter 954) (definition of phrase "specified as an assault weapon").
27. Id. § 12285(a) (amended by Chapter 954). California Penal Code section 12285 subdivisions (a) through (c) specify registration procedures and restrictions on possession and transfer of any lawful registered assault weapon. Id. § 12285(a)-(c) (amended by Chapter 954).
28. Id. § 12289 (enacted by Chapter 954). Chapter 954 also requires that the Department conspicuously post in all licensed gun stores the responsibilities of assault weapon owners. Id.
30. See id. § 5601(f) (West Supp. 1991) (definition of institution).
32. See id. § 8100(d) (amended by Chapter 952) (definition of attending health care professional). The health care professional making the determination must be the person primarily responsible for the patient's mental disorder treatment. Id. § 8100(a) (amended by Chapter 952).
33. See id. § 8100(f) (amended by Chapter 952) (definition of phrase "danger to self").
facilities. Chapter 952 also prohibits a person from either attempting to or actually possessing, purchasing or receiving any firearm or deadly weapon after communicating a serious threat of physical violence against an identifiable victim to a licensed psychotherapist who reports the threat to law enforcement. A violation of these prohibitions is punishable as either a felony or a misdemeanor.

Existing law requires the Department to notify the firearms dealer handling the firearm sale or transfer if the person seeking possession is prohibited from possessing a firearm. Chapter 954

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34. Id. § 8100(a) (amended by Chapter 952) This provision only applies to persons admitted on or after January 1, 1992 prior to their discharge from the facility. Id. Discharge does not include a leave of absence. Id. § 8100(d) (amended by Chapter 952). Persons admitted prior to January 1, 1992 are governed by California Welfare and Institutions Code section 8100 as amended by Chapter 1090 of the Statutes of 1990 until discharged. Id. § 8100(f) (amended by Chapter 952). Cf. CAL. HEALTH & SAFETY CODE § 1250 (West 1990) (definition of health facility).

35. See CAL. PENAL CODE § 1102.6(e) (West Supp. 1991) (definition of victim).


37. CAL. WELF. & INST. CODE § 8100(b)(1) (amended by Chapter 952). The prohibition applies for a six month period from the date local law enforcement is notified of the threat. Id. An individual prohibited from possessing a firearm pursuant to this section shall receive notice from the Department and may petition the court for an order to regain the right to possession. Id. § 8100(b)(2)-(3) (amended by Chapter 952). Chapter 954 allows the Department to charge firearms dealers a fee sufficient to reimburse its costs including those incurred meeting the above notification obligations and any costs pursuant to California Civil Procedure Code section 550 subdivision (b) and California Welfare and Institutions Code section 8105 subdivision (c). CAL. PENAL CODE § 12076(d) (amended by Chapter 954). Cf. Tarasoff v. Regents of University of California, 17 Cal. 3d 425, 439, 551 P.2d 334, 345, 131 Cal. Rptr. 14, 25 (1976) (holding that when a therapist determines, or should determine, that a patient presents a serious danger of violence to another, the therapist has a duty to notify the endangered party or one reasonably expected to notify the victim).

38. CAL. WELF. & INST. CODE § 8100(g) (amended by Chapter 952). A fine not exceeding $1,000.00 can be imposed either instead of or in addition to incarceration. Id. The prohibitions in this section are in addition to those already in existence under California Welfare and Institutions Code section 8103. Id. § 8100(h) (amended by Chapter 952).

39. See CAL. PENAL CODE § 12071 (West Supp. 1991) (delineating requirements for obtaining a firearms sale license). See also id. § 12070(a) (West Supp. 1991) (prohibiting any person from selling, leasing, transferring, advertising or offering for sale, lease, or transfer any firearm without a license). The violation of this prohibition is a misdemeanor. Id.

40. Id. § 12076(c) (amended by Chapter 954).
also requires that the Department notify the chief of police of the city where the sale or transfer was attempted.41

BJJ

Crimes; possession of beverage container pallets

Business and Professions Code §§ 22750, 22751, 22752, 22753 (new).
AB 206 (Floyd); 1991 STAT. Ch. 642

Under existing law, theft is the unlawful taking of personal property of another with the intent to permanently deprive the person of the property.1 Under Chapter 642, any purchaser of a beverage container pallet2 must retain proof of purchase of the pallet.3 Chapter 642 prohibits that the unauthorized possession4 of, or the obliteration of the company name on a beverage container pallet by making it a new crime.5

WY

41. Id. The county sheriff is notified if the transaction occurs in a district without a municipal police department. Id.

1. See CAL. PENAL CODE § 484 (West 1988). See also People v. Turner, 267 Cal. App. 2d 440, 443, 73 Cal. Rptr. 263, 265 (1968) (holding that there is no larceny unless the taking is with the specific intent, existing at the time of the taking, to appropriate property of another and permanently deprive him of its possession).
2. See CAL. BUS. & PROF. CODE § 22750(a) (enacted by Chapter 642) (definition of beverage container pallet). Chapter 642 limits its application to nonalcoholic beverage container pallets. Id. § 22750 (enacted by Chapter 642).
3. Id. § 22751 (enacted by Chapter 642).
4. See id. § 22752 (enacted by Chapter 642) (definition of unauthorized possession).
5. Id. § 22753 (enacted by Chapter 642). Chapter 642 makes the aforementioned acts punishable by the same penalties as theft under Penal Code § 489(b) or § 490. Id.
Crimes; possession of false bombs

SB 384 (Russell); 1991 STAT. Ch. 503

Under existing law, any person who maliciously sends or gives a false bomb with the intent to cause the recipient a belief that it is real, and intends for them to fear for their safety, is guilty of a crime punishable by imprisonment. Chapter 503 makes the malicious possession of a false bomb with the intent to cause the recipient to believe it is real a crime.

ALG

2. Id. § 148.1(d) (amended by Chapter 503). See People v. Delph, 94 Cal. App. 3d 411, 419, 156 Cal. Rptr. 422, 426 (1979) (holding that sufficient evidence produced so that a reasonable jury could conclude that the false bomb threats were made by defendant). See also Selected Review of 1972 California Legislation, 4 PAC. L.J. 211, 374 (1973) (discussing Penal Code section 148.1).
3. CAL. PENAL CODE §148.1(d) (amended by Chapter 503). Punishment for a conviction under Chapter 503 is imprisonment in the state prison or in the county jail for one year or less. Id.
Crimes; penalty for manufacture of drug paraphernalia

Health and Safety Code §§ 11364.7, 11369 (amended). AB 898 (Tucker); 1991 STAT. Ch. 573
Support: California District Attorney’s Association, California Peace Officers Association, California Narcotics Officers Association.
Opposition: American Civil Liberties Union, California Public Defenders Association, California Attorneys for Criminal Justice.

Existing law provides that anyone who manufactures, delivers, or transfers drug paraphernalia¹ and who knows, or has reason to know, that it will be used to commit specified controlled substance offenses² is guilty of a misdemeanor.³ Prior law stated that the maximum penalty for a violation was imprisonment for not more than one year, a fine not to exceed $1,000, or both.⁴ Chapter 573 increases the possible penalty for a violation of this provision as it relates to the manufacture of paraphernalia that one knows or should know would be used in offenses involving cocaine, cocaine base, heroin, phencyclidine or methamphetamine, to a full year in county jail, or, at the discretion of the trial judge, incarceration in the state prison.⁵

2. See id. § 11364.7(b) (amended by Chapter 573) (stating that if a manufacturer knows or has reason to know that the paraphernalia in question would be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance, then they are in violation of this section).
3. Id. § 11364.7(c) (amended by Chapter 573).
5. CAL. HEALTH & SAFETY CODE § 11364.7 (amended by Chapter 573). Cf. IDAHO CODE § 37-2734B (1990) (stating that the manufacture or distribution of drug paraphernalia is a felony, and is punishable by imprisonment for not more than nine years, a fine not to exceed $30,000, or both). See generally Note, The Constitutionality of Anti-Drug Paraphernalia Laws—The Smoke Clears, 58 NOTRE DAME L. REV. 833 (1983) (discussing several cases in which the Constitutionality of anti-drug paraphernalia laws was challenged and upheld). Washington state courts have upheld one significant exception to the anti-drug paraphernalia laws: the organized distribution of needles to intravenous drug users. Tacoma Needle Exchanges Ruled Legal, Seattle Times, Feb. 17, 1990, at A1. The
Crimes

Under existing law, if an arresting agency believes that a person arrested for a violation of certain drug-related offenses\(^6\) is not a United States citizen, that agency is to notify the federal agency that is in charge of deportation matters.\(^7\) Chapter 573 includes the offenses of possession of marijuana, possession of cocaine base for sale, and possession of other controlled substances as offenses which trigger this notification requirement.\(^8\)

JWD

Crimes; railroad employees--use of controlled substances

Public Utilities Code § 7679 (amended).
AB 1367 (Clute); 1991 STAT. Ch. 631

Under existing law, it is a misdemeanor for specified railroad pioneing Tacoma-Pierce County needle exchange program was upheld as an exception to the laws of the state because the health workers involved are carrying out their duty in preventing the spread of diseases, most importantly AIDS. \textit{Id.} Similar programs are in effect in some places in California, but operate illegally, and only because local police and officials allow them to continue. \textit{Clean Needle Programs for Addicts Proliferate; Some are Legal, Others Depend on an Uneasy Truce With Officials}, Washington Post, April 23, 1991, at Z6. Apparently, the intent of Chapter 573 is to create a "wobbler" crime, which can be tried either as a misdemeanor or a felony. L.A. Times, Dec. 16, 1990, sec. A, at 43, col. 1. According to an editorial written by Los Angeles County Superior Court Judge Terry Smerling, one of the practical means of reducing the caseloads of courts with regard to drug offenses is to create more "wobblers," giving more discretion to the judge and prosecutors to decide which offenses are egregious enough to be tried as felonies. \textit{L.A. Times}, Nov. 13, 1989, sec. B, at 5, col. 2.

6. See \textit{CAL. HEALTH & SAFETY CODE} § 11369 (amended by Chapter 573) (stating that various offenses involving the possession and transportation of controlled substances, as well as offenses regarding the recruiting of minors to take part in controlled substances dealing, are included in the notification requirement).

7. \textit{Id.}

8. \textit{Id.}
employees\textsuperscript{1} to perform their duties while intoxicated,\textsuperscript{2} and it is a felony if death or bodily injury results from an act or neglected duty due to intoxication.\textsuperscript{3} Under Chapter 631, it is a misdemeanor for specified railroad employees to perform their duties while under the influence of an unlawful controlled substance,\textsuperscript{4} and it is a felony if death or bodily injury results from an act or neglected duty due to the illegal use of any controlled substance.\textsuperscript{5}

\textit{JEL}

Crimes; sexual assault--restitution

Penal Code §§ 1203.1h, 13823.95 (amended).
AB 659 (Wright); 1991 STAT. Ch. 377
SB 768 (Vuich); 1991 STAT. Ch. 824

Under existing law, a defendant who has been convicted of sexual assault on a minor\textsuperscript{1} shall be ordered, as a condition of probation, to make restitution for the expenses incurred by the victim for medical or psychological treatment needed as a result of

\begin{enumerate}
\item \textit{See CAL. PUB. UTIL. CODE § 7679 (amended by Chapter 631) (stating that specified employees include engineers, conductors, baggage-masters, brakemen, switchmen, firemen, bridge-tenders, flagmen, signal-men, or any employee in charge of regulating or operating trains on any railroad).}
\item \textit{See CAL. PENAL CODE § 22(c) (West 1988) (defining voluntary intoxication as the voluntary taking of any liquor, drug, or other substance).}
\item \textit{CAL. PUB. UTIL. CODE § 7679 (amended by Chapter 631).}
\item \textit{See CAL. HEALTH & SAFETY CODE § 11007 (West Supp. 1991) (definition of controlled substance).}
\item \textit{CAL. PUB. UTIL. CODE § 7679 (amended by Chapter 631). Cf. Skinner v. Railway Labor Executives' Ass'n., 489 U.S. 602, 618-21 (1989) (holding that drug and alcohol tests mandated by the Federal Railroad Administration are reasonable searches under the fourth amendment, even though there is no requirement of a warrant or reasonable suspicion, due to the governmental interest in regulating the conduct of railroad employees to ensure the safety of the travelling public).}
\end{enumerate}

\begin{enumerate}
\item \textit{See CAL. PENAL CODE § 11165.1(a)-(b) (West Supp. 1991) (definition of sexual assault on minors); § 11165 (West Supp. 1991) (defining "child," for purposes of the Child Abuse and Neglect Reporting Act, as a person under the age of eighteen).}
\end{enumerate}
the assault.² Existing law also provides that a defendant who is convicted of an offense involving child abuse or neglect³ may be required to pay for the costs of medical examinations conducted to determine the extent of abuse or neglect.⁴ Chapter 377 provides that upon conviction of any sexual assault offense⁵ the defendant may be ordered to pay the cost of medical examinations conducted on the victim to collect and preserve evidence.⁶

Prior law provided that costs incurred for the examination of a sexual assault victim conducted in order to gather evidence may be charged to the county in specified circumstances.⁷ Chapter 824 provides that the expenses incurred to conduct these examinations will always be charged to the local government agency in whose jurisdiction the offense was committed.⁸

ACS

2. Id. § 1203.1g (West Supp. 1991). A convicted defendant must seek and maintain employment in order to fulfill this obligation. Id. See People v. Wardlow, 227 Cal. App. 3d 360, 370-71, 278 Cal. Rptr. 1, 6 (1991) (finding that for purposes of California Penal Code section 1203.1g, a "victim" includes only the direct actual victim of an assault, and not an indirect victim or government agency).


4. Id. § 1203.1h(a) (amended by Chapter 377). The court will require the defendant to pay only a sum that is compatible with the defendant's financial ability. Id. See Wardlow, 227 Cal. App. 3d at 371, 278 Cal. Rptr. at 7 (1991) (refusing to order a defendant to pay costs pursuant to California Penal Code section 1203.1h where neither the costs incurred for such a medical examination nor the defendant's ability to pay were determined at the time of sentencing).

5. See CAL. PENAL CODE § 1203.1h(b) (amended by Chapter 377) (stating that the offense may also involve attempted sexual assault or child molestation).

6. Id. Chapter 377 also provides that a court may not impose an additional period of imprisonment in place of payment. Id.

7. 1986 Cal. Stat. ch. 84, sec. 2, at 210 (enacting CAL. PENAL CODE § 13823.95) (amended by Chapter 824). Prior law provided that if the examination was conducted at a county or city hospital, or hospital district facility, the county pays the expenses. Id. Existing law provides that when the examination is conducted at a private hospital or in a qualified health care professional's office, the local government agency in whose jurisdiction the alleged crime occurred pays the expenses. CAL. PENAL CODE § 13823.95(b) (amended by Chapter 824).

8. CAL. PENAL CODE § 13823.95 (amended by Chapter 824).
Crimes

Crimes; sexual assault--unknown object of penetration

Penal Code § 289.5 (new).
AB 418 (Hunter); 1991 STAT. Ch. 293

Existing law criminalizes the nonconsensual penetration of the genital or anal openings with a foreign object. Existing law also criminalizes the nonconsensual contact between the genital or anal openings and a penis. Chapter 293 creates a new sexual assault crime where the genital or anal openings are nonconsensually penetrated and it cannot be established whether the penetration was

Crimes

by a penis or by a foreign object, substance, instrument, or device.\(^3\)

RDN

Crimes; sexual battery--punishment

AB 180 (Ferguson); 1991 STAT. Ch. 149

Under existing law, an act of sexual battery\(^1\) is punishable by

1. See CAL. PENAL CODE § 243.4(a)-(e) (amended by Chapter 149) (defining sexual battery as the touching of an intimate part of a nonconsenting, medically institutionalized, or unlawfully restrained person for the purpose of sexual arousal, sexual gratification, or sexual abuse); § 243.4(e) (amended by Chapter 149) (defining touching as physical contact with the victim’s skin whether accomplished directly or through the accused’s clothing); § 243.4(f) (amended by Chapter 149) (defining “intimate part,” “seriously disabled,” “medically incapacitated and institutionalized,” and excluding crimes defined in Penal Code sections 261 and 289 from definition of sexual battery); § 243.4(d) (amended by Chapter 149) (defining misdemeanor sexual battery to include touching

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imprisonment for up to one year in a county jail, or for two, three or four years in the state prison. Chapter 149 expands the punishment for sexual battery to include a fine of up to $2,000 in addition to imprisonment if prosecuted as a misdemeanor, or a fine of up to $10,000 in addition to imprisonment if prosecuted as a felony.

JEL

Crimes; stealing animals for medical research

Health and Safety Code § 9703 (new); Penal Code § 487g (amended).
SB 15 (Robbins); 1991 STAT. Ch. 490

Under existing law, every person who feloniously steals, takes, or carries away the dog of another for purposes of sale, medical research, or other commercial uses, is guilty of grand theft. Chapter 490 expands this provision to include all animals taken for such purposes. Chapter 490 also makes it a crime to maliciously take or carry away any animal of another or through victim's clothing). See also Review of Selected 1989 California Legislation, 21 PAC. L.J. 434 (1990) (discussing the expansion of the definition of sexual battery). Cf. In re Gustavo M., 214 Cal. App. 3d 1485, 1492, 263 Cal. Rptr. 328, 335-36 (1989) (holding that the defendant's touching of the victim's groin through her clothing was not sexual battery). Cf. 1985 Slat. Ch. 782, sec. 1, at 614 (amending CAL. PENAL CODE § 243.4) (limiting the definition of touching to include only contact with the victim's skin). Cf. Senate Committee on Judiciary Report on Assembly Bill No. 2721, quoted in In re Keith T., 156 Cal. App.3d 983, 987, 203 Cal. Rptr. 112, 113 (1984) (declaring the apparent intent of the legislature to restrict sexual battery to those cases where a victim was partially naked to give a prosecutor the option to charge the offender with either sexual battery or attempted rape).

2. CAL. PENAL CODE § 243.4(a)-(c) (amended by Chapter 149).
3. Id.

2. Id. § 487g (amended by Chapter 490).
3. Id. Chapter 490 also reclassifies the crime from grand theft to a public offense punishable by imprisonment not exceeding one year in a county jail or in the state prison. Id.
4. See id. § 7(a) (West 1988) (definition of maliciously).
knowingly defraud another person of any animal by false representation or pretense for the purpose of sale, medical research, or other commercial uses.\(^5\)

**Crimes; substance abuse program**

Penal Code § 1203.096 (new).
AB 170 (Bentley); 1991 STAT. Ch. 552

Existing law provides that upon being convicted\(^1\) of a felony,\(^2\) the court may sentence the defendant to death, prison, or may order the defendant to pay a fine, or some other reasonable condition.\(^3\) Under Chapter 552, the court, upon finding that the defendant committed a felony under the influence of an alcoholic beverage\(^4\) or controlled substance,\(^5\) shall recommend that, while imprisoned, the defendant participate in an education program or seek

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5. *Id.* § 487g (amended by Chapter 490). Stealing or taking animals under false pretenses for slaughter is a growing trend. See generally Harrison, *Selling Horse Meat Is Big Business*, L. A. Times, Apr. 23, 1991, at Part E1, col. 3 (reporting horses stolen and taken to slaughterhouses); McClellan, *The Recession Is Forcing some Horse Owners to Sell Their Stock; Many Animals Are Sent to Slaughter; End of the Trail*, L. A. Times, Apr. 23, 1991, at Part E1, col. 2 (reporting that slaughterhouses occasionally place advertisements in horse sellers’ publications stating they will provide a good home for any unwanted horses).

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2. See CAL. PENAL CODE § 17(a) (West Supp. 1991) (defining a felony as a crime punishable by death or imprisonment in the state prison).
3. See id. § 15 (West 1988) (explaining the ways in which crimes can be punished).
4. See CAL. BUS. & PROF. CODE § 23004 (West 1964) (definition of alcoholic beverage).

*Selected 1991 Legislation*
counseling that has a substance abuse component.\(^6\)

JEK

Crimes; terrorism--cross burning

Penal Code § 11411 (amended).
AB 1829 (Umberg); 1991 STAT. Ch. 605

Under existing law, it is a misdemeanor\(^1\) to burn or desecrate a cross or other religious symbol, or place a sign, mark, symbol, emblem or other physical impression\(^2\) on the private property of another without authorization for the purpose of, or in reckless disregard of, terrorizing another person.\(^3\) Under Chapter 605, this conduct is punishable as an alternate felony/misdemeanor.\(^4\) Additionally, Chapter 605 prohibits a person from engaging in a

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\(6\). CAL. PENAL CODE § 1203.096(a) (enacted by Chapter 552). The court shall further recommend treatment if the defendant has a demonstrated substance abuse history or if the offense convic ted of is drug related. Id. § 1203.096(b)(3)-(4) (enacted by Chapter 552). See Comment, Prison Overcrowding--The Time for Policy Change has Come! 18 FLA. ST. U.L. REV. 489, 507 (1991) (stating that Florida needs to adopt a policy of helping inmates detoxify before leaving prison).

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\(1\). See CAL. PENAL CODE § 11411(a) (amended by Chapter 605) (indicating punishment for a first violation is up to one year in a county jail and/or a fine of up to $5,000, and that subsequent violations are punishable by up to one year in county jail and/or a fine of up to $10,000).

\(2\). See id. (stating that "other physical impression" includes, but is not limited to, a swastika).

\(3\). Id. (amended by Chapter 605). See Supreme Court Will Decide If It's Legal to Bar Hate Acts Based on Race or Religion, Los Angeles Times, June 11, 1991, at 16, col. 1 (stating that section 11411 has been upheld as constitutional in the state courts).

\(4\). CAL. PENAL CODE § 11411(b)-(e) (amended by Chapter 605). See id. § 11411(a) (amended by Chapter 605) (stating that punishment for first offense is imprisonment in state prison for sixteen months, two or three years and/or a fine of up to $10,000, or by one year in county jail and/or a fine of up to $5,000). Cf. WASH. REV. CODE § 9A.36.080 (1990) (providing that it is a felony to burn a cross on or deface another person's property for the purpose of harassing that person due to his/her race, color, religion); MONT. CODE ANN. § 45-5-221 (1990) (providing that a person who is convicted of maliciously intimidating or harassing another person because of that person's race, creed, religion, color, shall be imprisoned in state prison for a term not to exceed five years and/or fined not more than $5,000).
pattern of conduct for the purpose of terrorizing the owner or occupant by placing or displaying a sign, mark, symbol, emblem or other physical impression on the private property of another.

**JTC**

**Crimes; trespass--private property**

Penal Code § 602.1 (new).
SB 564 (Beverly); 1991 STAT. Ch. 673

Under existing law, anyone who wilfully trespasses by committing specified acts is guilty of a misdemeanor. Additionally, anyone who enters or remains in any noncommercial dwelling house without the owner’s consent is guilty of a misdemeanor. Under Chapter 673, anyone who intentionally interferes with a lawful business and refuses to leave the premises

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5. *See CAL. PENAL CODE § 11411(d) (amended by Chapter 605) (defining “terrorize” as causing a person of ordinary emotions and sensibilities to fear for personal safety).*

6. *CAL. PENAL CODE § 11411(c) (amended by Chapter 605).*

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2. *See id. § 602 (West Supp. 1991) (indicating that specified acts include: (1) Cutting and carrying away timber; (2) injury to a freehold; (3) soil removal; (4) damaging highway signs; (5) entering oyster lands; (6) destroying private fences, gates and signs; (7) building fires; (8) entering land with purpose of injuring property or interfering with lawful business; and (9) entering posted lands).*

3. *Id.*


5. *See People v. Wilkinson, 248 Cal. App. 2d Supp. 906, 907-08, 56 Cal. Rptr. 261, 262-63 (1967) (holding that consent can be implied as well as express).*

6. *CAL. PENAL CODE § 602.5 (West Supp. 1991). This section does not apply to public officers or employees acting within the course and scope of employment. Id. See id. §§ 19, 19a, 672 (West Supp. 1991) (establishing punishment of misdemeanor).*


8. *See CAL. PENAL CODE § 602.1 (enacted by Chapter 673) (noting that intentional interference means obstructing or intimidating those attempting to carry on business or their customers). See also In re Ball, 23 Cal. App. 3d 380, 382, 100 Cal. Rptr. 189, 191 (1972) (finding*
after being requested to do so by the owner or a peace officer is guilty of a misdemeanor.\textsuperscript{9}

\textit{JTC}

\section*{Crimes; victims of crime--indemnification}

SB 736 (Davis); 1991 Cal. STAT. Ch. 657

Under existing law, a court must order the defendant to pay restitution in the form of a penalty assessment upon a conviction for any crime and to pay restitution directly to the victim.\textsuperscript{1} If the defendant is convicted of a felony, the court must additionally impose a separate restitution fine.\textsuperscript{2} Existing law further provides that where a victim has suffered economic loss as a result of the defendant’s criminal conduct, and the defendant is denied probation, the court must order restitution to be paid to the victim

1. \textit{See CAL. GOV'T CODE} § 13967(a) (amended by Chapter 657) (requiring a fine in the form of a penalty assessment in accordance with Penal Code Section 1464). \textit{See generally} CAL. CONST. art. I, § 28(b) (declarating the intention of the people of California that all persons who suffer losses as a result of criminal activity have the right to restitution from the persons convicted of the crimes). \textit{See CAL. GOV'T CODE} § 13959 (West Supp. 1991) (declaring the public interest in indemnifying and assisting victims of crime in their recovery).

2. \textit{CAL. GOV'T CODE} § 13967(a) (amended by Chapter 657). In setting the amount of the fine, the court must consider any relevant factors, including the gravity of the offense and the circumstances of its commission, the economic gain realized by the defendant, and the extent of suffering by others due to the crime. \textit{Id. See generally Comment, Rehabilitation of the Victims of Crime: An Overview,} 21 U.C.L.A. L. REV. 317, 324 (1973) (recognizing the argument that restitution contributes to the defendant’s self-esteem while alleviating the guilt that may lead to further criminal activity).

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\textsuperscript{9} \textit{See} CAL. PENAL CODE § 830 (West Supp. 1991) (definition of a peace officer).

\textsuperscript{10} \textit{Id.} § 602.1 (enacted by Chapter 673). This provision does not apply to persons engaged in lawful labor union activities and activities protected by the California Constitution or the United States Constitution. \textit{Id.}
Crimes

in lieu of imposing all or part of the restitution fine. Under Chapter 657, a defendant convicted of a felony conviction for child molestation may be ordered to pay restitution to the victim whether or not the defendant is denied probation. Chapter 657 further provides that restitution may cover non-pecuniary losses such as psychological harm.

TD III

Crimes; wards--aiding in the escape of an inmate

Welfare and Institutions Code § 1152 (amended).
SB 1040 (Johnston); 1991 STAT. Ch. 687

Under existing law, a person who knowingly aids an inmate of a California Youth Authority institution to escape or conceals an inmate with the intent to elude pursuit is guilty of a misdemeanor.

3. CAL. GOV'T CODE § 13967(c) (amended by Chapter 657). Chapter 657 provides that full restitution be ordered unless the court finds clear and compelling reasons for not doing so. Id. Chapter 657 further provides that the restitution order identify the losses to which it pertains. Id. See generally People v. Williams, 247 Cal. App. 2d 394, 399-400, 55 Cal. Rptr. 550, 556 (1966) (holding that imprisonment for failure to make restitution, ordered as a condition of probation, does not violate the constitutional ban on imprisonment for one's debts, but is imposed for the offense for which the probationer is convicted, and not as punishment for failure to make prescribed payments). Cf. N.Y. PENAL LAW § 65.10(g) (McKinney Supp. 1991) (sanctioning restitution by convicted criminals as a condition of probation).


5. CAL. GOV'T CODE § 13967(c) (amended by Chapter 657).

6. Id. If the conviction is for a felony violation of Section 288 of the Penal Code, restitution is not limited to economic losses. Id. For minors who are victims of crimes involving sexual assault, Chapter 657 raises state assistance from $23,000 to $50,000, or if Federal funds are available, from $46,000 to $100,000. Id. § 13965 (amended by Chapter 657).

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Chapter 687 provides that a person who uses force or violence to willfully assist a specified individual\(^2\) to escape\(^3\) or attempt to escape from the lawful custody of the Youth Authority may be guilty of a felony.\(^4\)

\(\text{JEL}\)

custody, who attempts to escape is guilty of a misdemeanor punishable by imprisonment up to one year in a county jail, but any minor who uses force or violence in an escape or attempted escape may be imprisoned up to one year in the state prison. CAL. WELF. & INST. CODE § 871(a)-(b) (West Supp. 1991).

2. \text{See CAL. WELF. & INST. CODE § 1152(a) (amended by Chapter 687) (listing the following specified individuals: (1) Any parolee of the Youth Authority whose parole has been revoked; (2) any escapee; (3) any ward confined to a Youth Authority facility; (4) any ward who is being transported to or from a Youth Authority facility; or (5) any person in the lawful custody of an officer).}


4. \text{CAL. WELF & INST. CODE § 1152(b) (amended by Chapter 687) (specifying that punishment for such an offense may be either imprisonment in the state prison for 16 months, two, or three years, or imprisonment in the county jail for up to one year). Cf. CAL. PENAL CODE § 4534 (West 1982) (declaring that one who aids or abets a prisoner of the state prison, or of a county jail, to escape or attempt to escape is punishable by imprisonment in the state prison and a fine up to $10,000).}