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Crimes

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Crimes

Crimes; child pornography

Penal Code §§311.2, 311.4 (amended).
SB 968 (Richardson); 1984 STAT. Ch 1489

Existing law provides that any person who knowingly¹ engages in specified conduct² relating to the distribution of obscene matter³ within the state is guilty of a misdemeanor.⁴ If the conduct relating to the distribution of obscene matter is for commercial consideration and is done with knowledge that the material depicts a person under the age of eighteen engaging in or simulating⁵ sexual conduct,⁶ existing law imposes a felony penalty of two, three, or four years imprisonment in state prison, a fine of up to \$50,000, or both.⁷ Chapter 1489 provides an expanded definition of sexual conduct,⁸ and specifies

1. Knowledge is defined as being aware of the character of the matter. CAL. PENAL CODE §311(e).

2. Prohibited conduct includes sending or causing to be sent, or bringing or causing to be brought, into the state for sale or distribution, or possession, preparation, publishing or printing with intent to distribute or exhibit to others, offering to distribute, distributing or exhibiting obscene matter to others. *Id.* §311.2(a).

3. Matter is any book, magazine, newspaper, or other printed or written material or any picture, drawing, photograph, motion picture, or other pictorial representation or any statue or other figure, or any recording, transcription or mechanical, chemical or electrical production or any other articles, equipment, machines or materials. *Id.* §311(b). Obscene live conduct is separately defined. *Id.* §311(g). Obscene matter is matter, taken as a whole, the predominant appeal of which to the average person, applying contemporary standards, is to prurient interest, e.g., a shameful or morbid interest in nudity, sex, or excretion; and is matter which taken as a whole goes substantially beyond customary limits of candor in description or representation of such matters; and is matter which taken as a whole is utterly without redeeming social importance. *Id.* §311(a). See 1 B. WITKIN, CALIFORNIA CRIMES, *Crimes Against Decency and Morals* §551 (1983 Supp.).

4. CAL. PENAL CODE §311.2(a).

5. An act is simulated when it gives the appearance of being sexual conduct. *Id.* §311.4(d).

6. The acts specified by prior law were sexual intercourse, masturbation, sodomy, bestiality, or oral copulation. 1977 Cal. Stat. c. 1061, §1, at 3201. See *infra* note 8 and accompanying text.

7. CAL. PENAL CODE §311.2(b).

8. Sexual conduct means any of the following: sexual intercourse, oral copulation, anal intercourse, anal oral copulation, masturbation, bestiality, sexual sadism, sexual masochism, penetration of the vagina or rectum by any object in a lewd or lascivious manner, exhibition of the genital, pubic, or rectal area for the purpose of sexual stimulation of the viewer, any lewd or lascivious act as defined in Penal Code section 288, or excretory functions performed in a lewd or lascivious manner, whether or not any of the above conduct is performed alone or between members of the same or opposite sex or between humans and animals. *Id.* §311.4(d). Penal Code section 288 prohibits the commission of any lewd or lascivious act with a child under fourteen years of age. *Id.* §288(a). Lewd and lascivious may include simple acts that are neither obviously sexual nor even obscene, provided the requisite intent is present. B. WITKIN,

additional prohibited conduct relating to the distribution of material depicting a person under eighteen.⁹

Chapter 1489 imposes criminal penalties for conduct relating to the distribution of *any* matter, regardless of whether the matter is obscene or for commercial consideration,¹⁰ with knowledge that the matter depicts a person under the age of seventeen years engaging in or simulating sexual conduct.¹¹ If the matter is distributed or intended for distribution to a person under eighteen years of age, the offender is guilty of a felony.¹² If, however, the matter is distributed or intended for distribution to a person over the age of eighteen years, a first conviction under Chapter 1489 is a misdemeanor punishable by up to one year in county jail, a fine of up to \$2,000, or both.¹³ Subsequent convictions are punishable as felonies.¹⁴ The provisions of existing or new law relating to distribution of obscene or other matter are not applicable to (1) activities of law enforcement and prosecuting agencies in the course of criminal investigations or prosecutions; (2) legitimate medical, scientific, or educational activities; or (3) lawful conduct between spouses.¹⁵

Existing law designates as a misdemeanor the employment of a minor for acts related to the distribution of obscene or other sexual matter, by a person who knows or has reason to know that the person employed is a minor.¹⁶ Under prior law, felony penalties of three, four, or five years in state prison were provided for persons who knowingly employed¹⁷ minors who they knew or had reason to know were under sixteen years of age, to pose or model for the preparation of material involving sexual conduct for commercial purposes.¹⁸ The penalty also applied to a parent or guardian of a minor under the

CALIFORNIA CRIMES, *Crimes Against Decency and Morals* §549 (1964). See also *id.* §§545, 549 (1983 Supp.) (nature of lewd and lascivious act).

9. Compare CAL. CIV. CODE §311.4(b) with 1977 Cal. Stat. c. 1043, §4, at 3995 (enacting CAL. PENAL CODE §311.2(b)). Chapter 1489 additionally prohibits developing or duplicating the matter, and includes the intent to exchange the matter with others. CAL. PENAL CODE §311.2(b).

10. See *New York v. Ferber*, 458 U.S. 747, 756-64 (1982) (photographic reproductions of children engaged in lewd sexual conduct need not meet usual standards of obscenity to be excluded from first amendment protection).

11. CAL. PENAL CODE §311.2(c), (d).

12. *Id.* §311.2(d).

13. *Id.* §311.2(c).

14. *Id.*

15. *Id.* §311.2(e). Compare *id.* with *id.* §311.8 (that the act charged was in aid of legitimate scientific or educational purposes is a defense to any prosecution relating to obscene matter).

16. *Id.* §311.4(a).

17. Employment includes promotion, employment, use, persuasion, inducement, or coercion. *Id.* §311.4(b).

18. 1981 Cal. Stat. c. 1043, §4, at 3995 (amending CAL. PENAL CODE §311.4(b)).

age of sixteen who knowingly permitted the minor to engage in the posing or modeling.¹⁹ If the minor involved were under fourteen, prior law imposed a penalty of imprisonment in state prison for three, six, or eight years.²⁰ Chapter 1489 replaces the age distinction under prior law with a single provision applicable to conduct by a minor under the age of seventeen for commercial purposes, subject to the penalty of three, six, or eight years imprisonment.²¹ Chapter 1489 also provides that the same conduct in the absence of a commercial purpose constitutes a felony, subject to unspecified penalties.²² The provisions of Chapter 1489 do not apply to depictions of emancipated minors, including lawful conduct between spouses.²³

19. *Id.* §311.4(c).

20. 1981 Cal. Stat. c. 1043, §4, at 3995 (amending CAL. PENAL CODE §311.4(c)).

21. CAL. PENAL CODE §311.4(b).

22. *Id.* §311.4(c).

23. *Id.* §§311.2(f), 311.4(e). A minor may be emancipated by entrance into a valid marriage or by active service with any of the armed forces of the United States. CAL. CIV. CODE §62(a), (b). In addition, a declaration of emancipation may be issued by a superior court to minors who are 14 years and over, living separate and apart from parents or guardian, and managing their own financial affairs. *Id.* §64. If any provisions of Chapter 1489 are held invalid, other provisions which still can be given effect without the invalid provision will remain in effect. 1984 Cal. Stat. c. 1489, §3, at ____.

Crimes; sexual battery

Penal Code § 243.4 (amended).

SB 1795 (Seymour); STAT. 1984 Ch 1495

Existing law defines the crime of sexual battery as the touching¹ of an intimate part² of another for the purpose of sexual arousal, gratification, or abuse, and which is against the victim's will.³ Existing law limits sexual battery to victims who are unlawfully restrained.⁴ Chapter 1495 deletes the requirement that the victim be unlawfully restrained when the victim is institutionalized⁵ for medical treatment and is seriously disabled⁶ or medically incapacitated.⁷

1. CAL. PENAL CODE §243.4(c) (definition of touching).

2. *Id.* §243.4(c) (definition of intimate part).

3. *Id.* §243.4(a).

4. *Id.*

5. An institutionalized person is defined as a person who is voluntarily or involuntarily in a medical treatment facility, nursing home, acute care facility, or mental hospital. *Id.* §243.4(c).

6. Seriously disabled person is defined as a person with severe physical or sensory disabilities. *Id.* §243.4(c).

7. *Id.* §243.4(b). Medically incapacitated is defined as a person who is incapacitated as a result of prescribed sedatives, anesthesia, or other medication. *Id.* §243.4(c).

Crimes; child abduction

Penal Code §277 (new); §§278, 278.5, 279, 784.5 (amended).
SB 235 (Lockyer); 1984 STAT. Ch. 1207

Under existing law, a person who violates a court order that establishes custody or visitation rights and who takes, detains, conceals, or retains a child¹ with the intent to deprive another of custody or visitation rights is guilty of a crime.² With the enactment of Chapter 1207, a person having a right to custody of a child³ who maliciously takes, detains, conceals, or entices away that child, without good cause and with the intent to deprive another of a custody right, is guilty of a crime even in the absence of a court order establishing custody or visitation rights.⁴

Chapter 1207 provides that any person who abducts a child⁵ is punishable in California if the child were a resident of the state, if the child were present in the state at the time of the abduction, or if the child thereafter is found in the state.⁶ Furthermore, under Chapter 1207, whether the intent to commit the offense was formed within or without the state is irrelevant.⁷

1. CAL. PENAL CODE §11165 (definition of child).

2. *Id.* §278.5(a). Upon conviction, a person may be imprisoned in the state prison for sixteen months, or two or three years, a fine of not more than \$10,000, or both, or by imprisonment in a county jail for a period of not more than one year, a fine of not more than \$1000, or both. *Id.*

3. *Id.* §277 (definition of a person having a right of custody).

4. *Id.* Upon conviction, a person may be imprisoned in the county jail for a period of not more than one year, a fine of not more than \$1,000, or both, or by imprisonment in the state prison for a period of one year and one day, a fine of \$5,000, or both. *Id.*

5. Abduction of the child must be in violation of Penal Code sections 278, 278.5, or 279. *Id.* §279(e).

6. *Id.*

7. *Id.* See *People v. Gerchberg*, 131 Cal. App. 3d 618, 181 Cal. Rptr. 505 (1982). The court held that since the defendant did not form the intent to abduct his children until the children had flown to New York, the defendant had not violated any California statutes. *Id.* at 619, 181 Cal. Rptr. at 506. The court stated that "...California cannot punish for conduct taking place outside of California unless the defendant has, within the state, committed acts which amount to at least an attempt to commit a crime punishable under California law." *Id.* at 620, 181 Cal. Rptr. at 506.

Crimes; homicide

Penal Code §198.5 (new).
SB 1134 (Richardson); 1984 STAT. Ch 1666

Existing law provides for the use of reasonable force to protect one's person, family, or property.¹ Existing law further provides that the commission of a homicide is justifiable when committed in defense of property or person and in circumstances sufficient to excite the fears of a reasonable person.²

Chapter 1666 provides that any person using force intended or likely to cause death or great bodily injury³ within that person's residence is presumed to have held a reasonable fear of imminent peril of death or great bodily harm.⁴ This presumption applies only when force is used against another who is not a member of the family or household, and who unlawfully and forcibly enters the residence.⁵ Finally, Chapter 1666 requires the person using the force to know or have a reasonable belief that an unlawful entry occurred in order for the force to be presumed justified.⁶

1. CAL. PENAL CODE §693.

2. *Id.* §198.

3. *Id.* §198.5 (definition of great bodily injury).

4. *Id.*

5. *Id.*

6. *Id.*

Crimes; excusable homicide

Penal Code §§304, 305, 372a, 400, 402d, 501, 650a (repealed); §195 (amended).

AB 3260 (Brown); 1984 STAT. Ch 438

Under existing law, homicide is excusable when committed in the heat of passion¹ or during a lawful act done in a lawful manner.² Prior law excused a homicide committed by accident or misfortune while lawfully correcting³ a child or servant.⁴ Chapter 438 deletes the specific language excusing homicide when committed in lawfully correcting a child or servant.⁵ Chapter 438 thus provides that homicide

1. CAL. PENAL CODE §195(2); see *People v. Valentine*, 28 Cal. 2d 121, 137-40, 169 P.2d 1, 10-11 (1946) (definition of heat of passion).

2. CAL. PENAL CODE §195(1).

3. See *People v. Stewart*, 188 Cal. App. 2d 88, 91, 10 Cal. Rptr. 217, 219 (1961) (recognizing the right of a parent to inflict upon a child punishment that is reasonable). Cf. CAL. PENAL CODE §273(a) (provision relating to the unjustifiable punishment of a child).

4. 1850 Cal. Stat. c. 99, §34, at 232 (enacting CAL. PENAL CODE §195(1)).

5. Compare CAL. PENAL CODE §195(1) with 1850 Cal. Stat. c. 99, §34, at 232 (enacting CAL. PENAL CODE §195(1)).

is excusable when committed by accident or misfortune⁶ or in doing a lawful act in a lawful manner.⁷

6. *Id.*; Barber v. Superior Court of the State of California for Los Angeles County, 147 Cal. App. 3d 1006, 1012, 195 Cal. Rptr. 484, 487 (1983) (by accident or misfortune means unintentional).

7. CAL. PENAL CODE §195(1).

Crimes; vehicular manslaughter, punishment

Penal Code §192 (amended).

SB 2174 (Roberti); 1984 STAT. CH 742

(Effective August 24, 1984)

Existing law defines vehicular manslaughter as the unlawful killing of a human being without malice while driving a vehicle.¹ Prior law divided penalties for vehicular manslaughter into (1) penalties for vehicular manslaughters not involving drugs or alcohol,² and (2) penalties for vehicular manslaughters in violation of drunk driving statutes (hereinafter referred to as a DUI violation).³ Thus, prior law permitted a person using drugs or alcohol in an amount less than that required for a DUI violation to avoid both penalties.⁴

Chapter 742 revises the vehicular manslaughter statutes by deleting the reference to drugs and alcohol in vehicular homicides not amounting to DUI violations.⁵ Therefore, Chapter 742 establishes the following two areas of penalties:⁶ (1) all non-DUI vehicular manslaughters,⁷ and (2) vehicular manslaughters with a DUI violation.⁸

1. CAL. PENAL CODE §192.

2. 1983 Cal. Stat. c. 937, §1, at ____ (amending CAL. PENAL CODE §192(3)(a),(b)).

3. CAL. PENAL CODE §192(c)(3),(4); *see also Review of Selected 1983 California Legislation*, 15 PAC. L.J. 541 (reviewing 1983 Cal. Stat. c. 937). *See* CAL. VEH. CODE §§23152, 23153 (driving under the influence violation requires a blood-alcohol content of 0.10 percent or more). *See also* CAL. PENAL CODE §193(c) (specifying penalties).

4. *Compare* 1983 Cal. Stat. c. 937, §1, at ____ (amending CAL. PENAL CODE §192(c)) *with* 1984 Cal. Stat. c. 742, §3 at ____; *see* 1984 Cal. Stat. c. 742, §3 at ____ (an unintentional loophole in the law existed which could have resulted in the acquittal or dismissal of charges for persons who have committed vehicular manslaughter, but whose level of intoxication does not result in a driving under the influence conviction).

5. *Compare* 1983 Cal. Stat. c. 937, §1, at ____ (amending CAL. PENAL CODE §192(c)) *with* CAL. PENAL CODE §192(c).

6. CAL. PENAL CODE §192(c).

7. *Id.* §192(c)(3), (4).

8. *Id.* §192(c)(1), (2).

Crimes; burglary

Penal Code §458 (new); §459 (amended).
AB 2236 (Young); 1984 STAT. Ch 854

Existing law specifically lists structures that are subject to the crime of burglary.¹ Prior law did not include cargo containers² in the list of specified structures.³ Chapter 854 expands the scope of burglary to include locked or sealed cargo containers.⁴

1. CAL. PENAL CODE §459.

2. *Id.* §458. A cargo container is defined as a receptacle with all of the following characteristics: (1) a permanent character and accordingly strong enough to be suitable for repeated use; (2) designed to facilitate the carriage of goods, by one or more modes of transport, one of which shall be by vessels, without intermediate reloading; (3) fitted with devices permitting its ready handling, particularly its transfer from one mode of transport to another; (4) designed to be easy to fill and empty; and (5) a cubic displacement of at least 1,000 cubic feet. *Id.* See also CAL. REV. & TAX. CODE §232 (definition of cargo containers).

3. 1978 Cal. Stat. c. 579, §22, at 1985 (amending CAL. PENAL CODE §459).

4. CAL. PENAL CODE §459. See also *People v. Brooks*, 133 Cal. App. 3d 200, 204-06, 183 Cal. Rptr. 773, 775-76 (1982) (legislative intent in California Penal Code section 459 is to extend protection to any structure designed for human habitation or for sheltering property).

Crimes; burglary tools

Penal Code §466.1 (new); §466 (amended).
AB 1895 (Wright); 1984 STAT. Ch 82

Existing law prohibits the possession of picklocks, crows, keybits, or other burglary tools with the felonious intent of breaking or entering any vehicle¹ or building.² Chapter 82 additionally prohibits the possession of a crowbar, screwdriver, vice grip pliers, water-pump pliers, slidehammer, slim jim, tension bar, lock pick gun, tubular lock pick, floor-safe door puller, and master key.³ Furthermore, Chapter 82 requires a person who knowingly⁴ and willfully⁵ sells or provides to another a lock pick, tension bar, lock pick gun, tubular lock pick,

1. CAL. PENAL CODE §466 (a vehicle is a railroad car, aircraft, vessel, trailer coach, or "vehicle" as defined in CAL. VEH. CODE §670).

2. CAL. PENAL CODE §466. *Id.* §459 (definition of building).

3. *Id.* §466.

4. *Id.* §7(5) (definition of knowingly).

5. *Id.* §7(1) (definition of willfully).

or floor-safe door puller, to obtain and retain⁶ identifying information⁷ about the person to whom the device is sold or provided.⁸ A person found to have failed to obtain and retain this identifying information is guilty of a misdemeanor.⁹

6. The information must be retained for a period of one year and must be open to inspection by any peace officer during business hours. *Id.* §466.

7. Identifying information includes the name, address, telephone number, date of birth, and driver's license or identification number. *Id.*

8. *Id.* The identifying information, the date the device was sold or provided, and the signature of the buyer or person provided must be set forth on a bill of sale or receipt, a copy of which must be retained for one year and be open for inspection by any police officer during business hours. *Id.*

9. *Id.*

Crimes; booby traps

Penal Code §12355 (new); §12028 (amended).
AB 2501 (Bronzan); 1984 STAT. Ch 1430

Under existing law, any person possessing a destructive device¹ is guilty of a felony.² Chapter 1430 supplements³ the provisions relating to destructive devices by providing felony punishment⁴ for a person who assembles, maintains, sets, or causes to be set any booby trap device⁵ that is designed to cause great bodily injury to another.⁶ Chapter 1430 further provides that the possession of a booby trap device with the intent to use it as a booby trap is punishable by one year imprisonment, a \$5000 fine, or both.⁷

1. CAL. PENAL CODE §12301(a) (definition of destructive devices).

2. *Id.* §12303.2.

3. Circumstances covered by the Penal Code relating to destructive devices, are specifically excluded from the coverage of Chapter 1430. *Id.* §12355(a). *See, e.g., id.* §§12308, 12309, 12310 (situations involving the exploding of a destructive device which constitute a felony). *See also, e.g.,* CAL. FISH & GAME CODE §§2007, 12000, 12002 (illegal to set any trap gun, violation is a misdemeanor punishable by six months imprisonment or a \$500 fine).

4. CAL. PENAL CODE §12355(a) (provides for a sentence of two, three, or five years in the state prison).

5. *Id.* §12355(c). "Booby trap" is defined as any concealed or camouflaged device designed to cause great bodily injury when triggered by an action of any unsuspecting person coming across the device. *Id.*

6. *Id.* §12355(a).

7. *Id.* §12355(b).

Crimes; loitering and prowling

Penal Code §647 (amended).

AB 3407 (McClintock); 1984 STAT. Ch 1633

Under existing law, people who loiter, prowl,¹ or wander² upon the property of another, or who peek in the door or window of any inhabited building or structure located on that property, are guilty of a misdemeanor if they have no visible or lawful business thereon.³ Prior law required that these activities take place at night.⁴ Under Chapter 1633, these activities are crimes when committed at *any time*.⁵ Chapter 1633 defines loitering as delaying or lingering without a lawful purpose for being on the property and for the purpose of committing a crime.⁶

1. Prowlers include "peeping Toms" and other persons of that type. *People v. Lopez*, 249 Cal. App. 2d. 93, 103, 57 Cal. Rptr. 441, 448 (1967).

2. Wandering is movement for evil purposes. *People v. Caylor*, 6 Cal.App. 3d 51, 56, 85 Cal. Rptr. 497, 501 (1970).

3. CAL. PENAL CODE §647(g), (h).

4. 1977 Cal. Stat. c.426, §1, at 1441 (amending CAL. PENAL CODE §647).

5. CAL. PENAL CODE §647(g), (h).

6. *Id.* §647(g).

Crimes; threats against public officials

Penal Code §76 (amended).

AB 2384 (Bradley); 1984 STAT. Ch 627

Existing law imposes criminal penalties for any person who knowingly¹ and willingly threatens² the life of any elected state official, exempt appointee of the Governor,³ or judge of the Supreme Court or court of appeals.⁴ This offense is punishable by a fine,⁵ imprisonment,⁶ or both.⁷ Chapter 627 extends existing law by prohibiting threatening the life of *any* judge.⁸

1. CAL. PENAL CODE §7(5) (definition of knowingly).

2. The threat must be made with the intent and the apparent ability to carry out that threat. *Id.* §76.

3. CAL. CONST. ART. VII, §4(f) (definition of exempt appointee of the Governor).

4. CAL. PENAL CODE §76.

5. *Id.* §76(1) (fine not to exceed \$5,000).

6. *Id.* (imprisonment in the state prison or county jail is not to exceed one year).

7. *Id.* §76.

8. Compare *id.* with 1982 Cal. Stat. c. 1405, §1, at 5360 (enacting CAL. PENAL CODE §76).

Crimes; religious terrorism

Penal Code §11412 (new).

SB 780 (Royce); 1984 STAT. Ch 1119

Existing law statutorily recognizes that the advocacy of unlawful violent acts against other persons or groups, under circumstances that create a risk of imminent death or great bodily harm, is a threat to public order and safety and is *not* constitutionally protected.¹ Furthermore, existing law specifically prohibits the burning or desecration of religious symbols and the unauthorized placing of terrorizing² symbols³ on the private property of another with the intent to terrorize another person.⁴ Chapter 1119 prohibits, and treats as a felony, any threat, directly communicated, that attempts to cause others to refrain from practicing their religion.⁵ Chapter 1119 also punishes as a felony threats to inflict unlawful injury upon a person or property.⁶ The threat, however, must reasonably appear to the recipient that the threat could be carried out.⁷

1. CAL. PENAL CODE §11410; see *Review of Selected 1982 California Legislation*, 14 PAC. L.J. 491 (1983) (discussion of existing law).

2. "Terrorize" is defined as causing a person of ordinary emotions and sensibilities to fear for personal safety. CAL. PENAL CODE §11411.

3. *Id.* (any sign, mark, symbol, emblem, or other physical impression, including Nazi swastika).

4. *Id.*

5. CAL. PENAL CODE §11412. The California Supreme Court in *People v. Mirmirani* struck down Penal Code sections 422, 422.5 on the grounds of vagueness. 30 Cal. 3d 375, 382, 636 P.2d 1130, 1134, 178 Cal. Rptr. 792, 796 (1981). See CAL. PENAL CODE §§422, 422.5. *Mirmirani* held that statutes that establish as a felony threats, without action or an intent to act, consist of pure speech, and, therefore, strict first amendment standards must be applied. *Id.* at 380, 636 P.2d at 1135, 178 Cal. Rptr. at 797. The law involved in *Mirmirani* was keyed to "social or political goals" while Chapter 1119 concerns threats against religious buildings and the persons who worship therein. Compare CAL. PENAL CODE §11412 with CAL. PENAL CODE §§422, 422.5.

6. CAL. PENAL CODE §11412.

7. *Id.*

Crimes; weapons

Penal Code §12020.1 (new); §12020 (amended).

SB 2248 (Seymour); 1984 STAT. Ch 1414

Chapter 1414 prohibits the possession of any device designed for use as a weapon capable of inflicting an electrical charge of such

magnitude that the victim can be temporarily immobilized.¹ The prohibition does not apply, however, to the possession or the transportation of these electrical devices when the power source is disconnected and separated.² Exempted from the prohibition of Chapter 1414 are (1) people who use electrical devices designed exclusively to move or control livestock,³ (2) peace officers acting in performance of duty,⁴ and (3) the possession of electrical devices within a residence or place of business.⁵

Existing law prohibits the manufacture, importation, sale, or possession of various instruments⁶ normally used as weapons,⁷ including metal knuckles.⁸ Chapter 1414 defines “metal knuckles” to include devices made wholly or partially of metal and that are worn in or on the hand with the effect of either (1) protecting the hand, (2) increasing the harm from the blow, or (3) increasing the force or impact from the blow.⁹

1. CAL. PENAL CODE §12020.1(a). Violations are punishable by imprisonment in the county jail not exceeding one year or in a state prison. *Id.*

2. *Id.* §12020.1(c).

3. *Id.*

4. *Id.* §12020.1(a).

5. *Id.* §12020.1(b).

6. The instruments include items commonly known as a blackjack, slungshot, billy, nunchaka, sandclub, sandbag, or sawed-off shotgun. *See id.* §12020(a).

7. In enacting California Penal Code section 12020, the legislature sought to condemn weapons “common to the criminals’ arsenal.” The convictions under Penal Code section 12020 have been the use of objects whose criminal use appears from the character of the weapon alone. *See People v. Grubb*, 63 Cal. 2d 614, 620, fn. 7, 47 Cal. Rptr. 772, 777, fn. 7 (1965).

8. CAL. PENAL CODE §12020(a). Violations are punishable by imprisonment in the county jail not exceeding one year or in a state prison. *Id.* §12020(a). Prior statutory law contained no definition of “metal knuckles.” The judicial construction of California Penal Code section 12020(a) is “no more helpful” in defining metal knuckles. *People v. Deane* 279 Cal. App. 2d 82, 87-8, 66 Cal. Rptr. 177, 180 (1966).

9. CAL. PENAL CODE §12020(d)(6). The metal contained in the device may help support or protect the hand, or consist of projection or studs that would contact the receiver of a blow. *Id.*

Crimes; firearms

Penal Code §§12071, 12076 (amended); Welfare and Institutions Code §§8101, 8103, 8104 (amended).

SB 2235 (Keene); 1984 STAT. Ch 1562

The Dangerous Weapons Control Law¹ prohibits the ownership or possession of concealable² firearms³ by felons,⁴ narcotic addicts,⁵ persons⁶ adjudicated as mentally disordered,⁷ or persons convicted of offenses involving the violent use of a firearm.⁸ Existing law allows⁹ authorities¹⁰ to issue retail licenses for the sale of concealable weapons.¹¹ Under Chapter 1562, a licensee is prohibited from delivering a pistol or revolver to the purchaser, if the retail licensee is notified by the Department of Justice¹² that the purchaser is a (1) felon, (2) narcotic addict, (3) person adjudicated as mentally disordered, (4) person convicted of offenses involving the violent use of a firearm, or (5) person who has been placed under conservatorship¹³ by a court¹⁴ because the person is gravely disabled as a result of a mental disorder or impairment by chronic alcoholism.¹⁵

Existing law prohibits the possession or control of any firearm¹⁶ by a person who has been adjudicated a danger to others as a result of a mental disorder or mental illness.¹⁷ In addition, any person found

1. See CAL. PENAL CODE §§12000-12550.

2. *Id.* §12001(a) (definition of concealable firearm).

3. *Id.* §12001(b) (definition of firearm).

4. *Id.* §12021. *Id.* §17 (definition of felon).

5. *Id.* §12021.

6. *Id.* §7 (definition of person).

7. See CAL. WELF. & INST. CODE §8103. See *infra* notes 16-31 and accompanying text.

8. CAL. PENAL CODE §12021(a). Offenses involving the violent use of a firearm include one violation of California Penal Code sections 245(a)(2), 246, or 417(b), or two or more violations of California Penal Code section 417(a)(2). *Id.* §12001.6.

9. The purchaser either must be known personally to the seller or present clear evidence of identity. *Id.* §12071(a)(3)(C). "Personally known" is defined as knowledge of a person derived from an extended and continuing association that establishes the individual's identity with reasonable certainty and to give reasonable assurance that the individual is not in a prohibited class. *Id.* §12071(b). Clear evidence of identity includes, but is not limited to, a driver's license, a state identification card, an Armed Forces card, an employment identification card or any similar documentation. *Id.* §12071(c).

10. The authorities must be duly constituted licensing authorities of any city, county, or city and county. *Id.* §12071(a).

11. See *id.* §12071.

12. A court is compelled to notify the Department of Justice of any court order finding that a person is either (1) a danger because of mental illness or disorder, (2) not guilty by reason of insanity, (3) mentally incompetent to stand trial, or (4) gravely disabled as a result of mental disorder or alcoholism. See CAL. WELF. & INST. CODE §§8103(a)(2), 8103(b)(2), 8103(c)(2), 8103(d)(2), 8103(e)(2).

13. *Id.* §8103(e)(1) (pursuant to section 5350 of the Welfare and Institutions Code or the law of any other state or the United States).

14. The court must prohibit the possession of the firearm if, at the time the conservatorship was ordered or thereafter, the court that imposed the conservatorship found the possession of the firearm would present a danger to the safety of the conservatee or to others. *Id.*

15. CAL. PENAL CODE §12071(a)(3)(D).

16. Chapter 1562 applies this prohibition to firearms *and* deadly and dangerous weapons. *Id.* §8101.

17. *Id.* §8103(a)(1). If a person is issued a certificate of competency, then the person is exempted from the prohibition and allowed to possess and control a concealable firearm. The

not guilty by reason of insanity of murder,¹⁸ mayhem,¹⁹ rape,²⁰ burglary,²¹ kidnapping,²² robbery,²³ assault,²⁴ bombing,²⁵ arson²⁶ of a trailer coach²⁷ or dwelling house, or of any felony or act involving death or great bodily harm is prohibited from possessing or controlling any firearm.²⁸ The provisions of Chapter 1562 expand existing law by precluding the possession or control of a firearm by any person found not guilty by reason of insanity of *any* crime.²⁹ Chapter 1562 also prohibits ownership or possession of a firearm by (1) persons found to be mentally incompetent to stand trial,³⁰ and (2) dangerous persons who are placed under conservatorship because of a mental disability or alcoholism.³¹

certificate must state that the person may possess a firearm without endangering others. *Id.* Violations are felonies, punishable by imprisonment in the state prison, or in the county jail for not more than one year. CAL. WELF. & INST. CODE §8103(f).

18. CAL. PENAL CODE §187 (definition of murder).

19. *Id.* §203 (definition of mayhem).

20. *Id.* §261 (definition of rape).

21. *Id.* §459 (definition of burglary).

22. *Id.* §§207, 209 (definition of kidnapping). *See id.* §8103(b)(1) (only cases in which the victim suffers intentionally inflicted great bodily injury).

23. CAL. PENAL CODE §211 (definition of robbery). *See id.* §8103(b)(1) (only cases in which the victim suffers great bodily injury).

24. *Id.* §240 (definition of assault). *See id.* §8103(b)(1) (only assaults with intent to commit murder or where the victim suffers great bodily injury).

25. *See id.* §§12303.1, 12303.2, 12303.3, 12308, 12309, 12310 (definition of bombing).

26. *Id.* §447a (definition of arson).

27. CAL. VEH. CODE §635 (definition of trailer coach).

28. CAL. PENAL CODE §8103(b)(1).

29. *Id.* 8103(c)(1).

30. *Id.* §8103(d)(1).

31. *Id.* §8103(e)(1). All persons who have recovered from their mental illness, except persons found not guilty by reason of insanity of a specific specified crime as listed in *supra* notes 18-27 and accompanying text, are exempted from the prohibition of Chapter 1562. CAL. WELF. & INST. CODE §§8103(c)(1), 8103(d)(1), 8103(e)(1). Restoration of sanity must be achieved pursuant to California Penal Code section 1026.2 or the law of any other state or the United States. CAL. PENAL CODE §8103(c)(1).

Crimes; reimbursement of costs

Penal Code §72.5 (new).

SB 2135 (Boatwright); 1984 STAT. Ch 970

Existing law provides that any person who presents a false or fraudulent claim for reimbursement to any state, county, city, or district board or officer, may be fined, imprisoned, or both.¹ Chapter

1. CAL. PENAL CODE §72. Punishment is to be either (1) up to one year in the county jail or a fine of up to \$1,000 or both; or (2) imprisonment in the state prison for an unspecified

970 expands existing law by making it a crime² for any person to submit for reimbursement a claim for costs incurred in attending a political function organized to support or oppose any political party, candidate,³ or ballot measure.⁴ Under Chapter 970 the person seeking reimbursement must have knowledge that the claim seeks public funds,⁵ but is not required to have an intent to defraud.⁶

period or a fine of up to \$10,000 or both. *Id.* See *People v. Butler*, 35 Cal. App. 357, 362-63, 169 P. 918, 920 (1917) (intent necessary under §72). CAL. PENAL CODE §§424 (embezzlement and falsification of accounts by public officers), 532 (obtaining money through false pretenses). See generally *People v. Best*, 172 Cal. App. 2d 692, 342 P.2d 314 (1959) (application of CAL. PENAL CODE §424).

2. Penalties under California Penal Code section 72.5 are (1) imprisonment in the county jail for not more than one year or a fine not to exceed \$1,000, or both; or (2) imprisonment in the state prison without a specified length of time or a fine not to exceed \$10,000, or both. CAL. PENAL CODE §72.5.

3. *Id.* §72.5(a).

4. *Id.* §72.5(b). California Penal Code section 72.5(b) was introduced as a result of a ruling by the Contra Costa County District Attorney's office that city officials from Pittsburg did not violate the law when they used taxpayer money to attend a local fundraising event. Press release from Senator D. Boatwright, April 4, 1984 (copy on file at *Pacific Law Journal*).

5. CAL. PENAL CODE §72.5.

6. Compare *id.* §72.5 (no intent required) with *id.* §§72, 424 (intent required).

Crimes; telecommunications

Penal Code §593e (amended).

SB 387 (Montoya); 1984 STAT. Ch 336

Existing law protects cable television from unauthorized use.¹ Chapter 336 expands existing law to protect the newer industry of subscription television.²

Existing law prohibits unauthorized connections³ to a cable used by a cable television system, or purchasing, attaching, or maintaining an unauthorized device to a television cable or set for the purpose of receiving any program or service that the cable television system provides.⁴ Furthermore, existing law prohibits the manufacture, sale, or importation of a device, or plan or kit for a device or printed

1. CAL. PENAL CODE §593d. See generally Comment, *Subscription Television Decoders: Can California Prohibit Their Sale and Manufacture?*, 22 SANTA CLARA L. REV. 839 (1982) (discussion of attempt by California to regulate television decoders).

2. Compare CAL. PENAL CODE §593d with *id.* §593e.

3. Connections include those that are physical, electrical and inductive. CAL. PENAL CODE §593d(a).

4. *Id.*; 47 U.S.C. §605 (unauthorized publication or use of communications).

circuit, which is designed in whole or in part to decode a nonstandard signal⁵ without the authorization of a licensed cable system.⁶

Under Chapter 336, the knowing and willful manufacture, distribution, importation, assemblage, sale, offer to sell, advertisement to sell, possession or other providing of any unauthorized device, or kit for a device or printed circuit designed for the unauthorized interception of an over-the-air subscription television system⁷ transmission is a misdemeanor.⁸ Violation of this provision is punishable by a fine not to exceed \$10,000, imprisonment in the county jail for up to ninety days, or both.⁹ A second conviction is punishable by a fine of up to \$20,000, imprisonment in the county jail for up to one year, or both.¹⁰ Persons violating this provision also may be liable to the subscription television system for civil damages.¹¹ At the election of the subscription television system, civil liability is either (1) statutory damages of not less than \$500 nor more than \$10,000 for each violation, or (2) an amount three times greater than the actual damages plus the amount obtained by the defendant through the violation, or an amount three times greater than the value of the services unlawfully obtained, or \$500 for each device unlawfully manufactured, sold, used, or distributed.¹² The television subscription system may choose the greater of all options and also may be awarded punitive damages.¹³ If the court finds that a violation was committed knowingly and willfully and for the purpose of commercial advantage or personal financial gain, the court may increase the award by an amount not more than \$50,000.¹⁴ Receiving a subscription television signal within a single family residence,¹⁵ however, does not constitute

5. CAL. PENAL CODE §593d(b) (definition of nonstandard signal).

6. *Id.*; 47 U.S.C. §605; *Chartwell Communications Group v. Westbrook*, 637 F.2d 459, 464-65 (6th Cir. 1980) (sale of decoders or plans for a decoder is within the strictures of 47 U.S.C. §605).

7. *Id.* §593e(h)(1) (definition of "subscription television system"). *See U.S. v. Westbrook*, 502 F.Supp. 588, 590 (E.D. Mich. 1980) (use of the term "subscription television system" in a statute to apply generally to all methods of delivery of pay television is not unconstitutionally vague).

8. *Id.* §593e(b); *see also* 1980 Cal. Stat. c. 1332, §1, at 4671 (enacting CAL. PENAL CODE §593e); 47 U.S.C. §605.

9. *Id.* §593e(b).

10. *Id.*

11. *Id.* §593e(c).

12. *Id.* §593e(c)(1), (2).

13. *Id.*

14. *Id.*

15. *Id.* §593e(h)(2) (definition of residential unit).

a use for commercial advantage or personal financial gain.¹⁶

Chapter 336 also punishes as a misdemeanor an unauthorized connection¹⁷ to a television set¹⁸ made or maintained knowingly or willingly, for the purpose of intercepting or using any program or service of a subscription television system.¹⁹ Making or maintaining any modification or alteration to any authorized device, or attaching any unauthorized device, to a television set for the purpose of intercepting or using any program or service carried by a subscription system that the user is not authorized to receive or use is also prohibited under Chapter 336.²⁰ A violation of either of these provisions is punishable by a fine of up to \$1,000, imprisonment in the county jail for up to ninety days, or both.²¹ Each unauthorized purchase, connection, attachment or modification constitutes a separate violation.²² In addition, persons convicted of either provision are liable for civil damages in the amount of the cost of the connection and subscription fees actually charged by the subscription television system during the period of the unauthorized use plus full costs and reasonable attorney's fees for the prevailing party.²³

16. *Id.* §593e(c)(2).

17. Connections include those that are physical, electrical and inductive. CAL. PENAL CODE §593e(a).

18. Connection to other equipment designed to receive a television broadcast or transmission also is prohibited. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.* §593e(c), (d).

Crimes; computer crimes

Penal Code §502 (amended).

AB 2551 (Farr); 1984 STAT. Ch 949

Under existing law, *maliciously* accessing¹ or causing to be accessed a computer system² or network³ is a felony.⁴ In an attempt to protect

1. Access means to "instruct, communicate with, store data in, or retrieve data from, a computer system" or network. CAL. PENAL CODE §502(a)(1).

2. *Id.* §502(a)(2)(definition of computer system).

3. *Id.* §502(a)(3)(definition of computer network).

4. *Id.* §502(b)-(c).

further the rights of users of computer systems,⁵ Chapter 949 prohibits the intentional and unauthorized accessing by a person outside the scope of employment of any computer system, computer network, computer program,⁶ or data.⁷ The intentional access must be made with the knowledge that the access is prohibited by the owner or lessee.⁸ Chapter 949 also prohibits the malicious disruption of any computer system, network, program, or data operation.⁹

Chapter 949 provides specific penalties depending upon the monetary injury¹⁰ suffered by the owner or lessee for nonmalicious, unauthorized accessing of computers.¹¹ Any accessing of this type that does not result in monetary injury is punishable as an infraction.¹² If the unlawful access results in an injury, or a second violation with no injury, the penalty is a misdemeanor punishable by a fine¹³ or by imprisonment in the county jail.¹⁴ Additionally, the owner or lessee may bring a civil action against a person convicted under Chapter 949.¹⁵

5. See 1984 Cal. Stat. c. 949, §1, at ____ (statement of legislative intent).

6. *Id.* §502(a)(4)(definition of computer program).

7. *Id.* §502(d). *Id.* §502(a)(5) (definition of data).

8. *Id.* §502(e).

9. *Id.* §502(d). Prior law did not penalize the disruption of a computer system. *Compare id. with* 1983 Cal. Stat. c. 1092, §292, at 5935 (amending CAL. PENAL CODE §502).

10. Injury means any alteration, deletion, damage, or destruction of a computer system, network, program, or data caused by the accessing, or any expenditure reasonably and necessarily incurred by the owner to verify that a computer system, network, program or data was not altered, deleted, damaged, or destroyed by the access. CAL. PENAL CODE §502(g)(3).

11. See *id.* §502(g).

12. *Id.* §502(g)(1). The infraction is punished by a fine not exceeding \$250. *Id.*

13. The fine is not to exceed \$5000. *Id.* §502(g)(2).

14. *Id.* The imprisonment is in the county jail not to exceed one year. *Id.*

15. *Id.* §502(h). The remedy is for compensatory damages, including expenditures incurred by the owner or lessee to verify that a computer system was not altered, damaged, or deleted by the process. *Id.* The conduct of an unemancipated minor is imputed to the parent or guardian, pursuant to California Civil Code section 1714.1. *Id.*

Crimes; music misappropriation

Penal Code §§653h, 653u, 653v, 653w (new); §653s (amended).
AB 3619 (Roos); 1984 STAT. Ch 1078

Existing law prohibits the sale, or transportation for monetary or like consideration within California, of any sound recording¹ of a

1. The sound recording can be made on any article including the original disc, wire, tape, film, phonograph record, or other recording device used to record the sounds of a live performance. CAL. PENAL CODE §653s(a). See also *id.* §653s(b)(2) (definition of article).

live performance² which was made knowingly³ without the owner's⁴ consent.⁵ Chapter 1078 expands this prohibition to include persons who possess these unauthorized sound recordings for sale.⁶ The existing prohibition does not apply to persons employed in radio or television broadcasting who record the sounds of a live performance for (1) educational programs, (2) archival purposes, (3) news programs, or (4) other events when the recording is not commercially distributed.⁷ Chapter 1078 expands this exemption to include cablecastings.⁸

Existing law prohibits the knowing transfer⁹ of any recorded¹⁰ sounds that had been previously recorded for profit.¹¹ No prohibition exists, however, for the unauthorized recording of live performances in either prior statutory law¹² or federal copyright law.¹³ Chapter 1078 forbids the unauthorized recording of sounds from a live performance on any type of recording device.¹⁴ Chapter 1078 forbids only sound recordings that are made for profit.¹⁵ Furthermore, Chapter 1078 mandates that sellers of recording articles clearly display the name and address of the manufacturer and the name of the performer or group.¹⁶

2. *Id.* §653s(b)(1) (definition of live performance).

3. *Id.* §7 (definition of knowingly).

4. *Id.* §653h(d) (definition of owner).

5. *Id.* §653s(a).

6. *Id.*

7. *Id.* §653s(e).

8. Compare CAL. PENAL CODE §653s(e) with 1978 Cal. Stat. c. 1299, §1, at 4252 (enacting CAL. PENAL CODE §653s).

9. The prohibition does not apply to persons engaged in radio or television broadcasting who transfer any sounds, other than from the sound track of a motion picture, intended for a broadcast transmission or for archival purposes. CAL. PENAL CODE §653h(f).

10. The recording can be on a record, disc, wire, tape, film, or other article on which sounds are recorded. *Id.* §653h(1).

11. *Id.* §653h(a)(1). See *id.* §653h(g)(nonprofit activities).

12. See *id.* §653s(a). See also *Review of Selected 1978 Legislation*, 10 PAC. L.J. 395 (1979)(discussion of prior statutory law).

13. Federal copyright law applies only when the live performances are *simultaneously* transmitted and recorded under the authority of the owner of the copyright. See 17 U.S.C. §§101, 102, 201. See also *Review of Selected 1978 Legislation*, 10 PAC. L.J. 395 (1979) (discussion of federal copyright law).

14. CAL. PENAL CODE §653u.

15. *Id.*

16. *Id.* §653w.

Crimes; peace officer secondary employment

Penal Code §§70, 243 (amended).

SB 185 (Beverly); 1984 STAT. Ch 1665

Under existing law, public officials¹ are prohibited from accepting compensation for the performance of official acts unless compensation is specifically provided for by law.² Existing law, however, provides that off-duty peace officers³ may accept secondary employment with *public* entities⁴ as private security guards or patrolmen, and may exercise official powers of a police officer⁵ while so employed.⁶ Under the provisions of Chapter 1665, off-duty peace officers also may accept employment with *private* entities⁷ as security guards or patrolmen, and may retain official powers of a police officer provided that (1) the peace officer is in uniform,⁸ (2) the part-time employment is approved by the county board of supervisors or city council with jurisdiction over the principal employer,⁹ (3) the wearing of uniforms and equipment is approved by the principal employer,¹⁰ and (4) the peace officer is subject to reasonable rules and regulations of the agency for which the peace officer is primarily employed.¹¹

Existing law provides that a battery committed upon a peace officer engaged in the performance of official duties carries with it greater punishment than does a battery committed against a private person.¹² Chapter 1665 extends increased penalties to cases involving a battery committed on an off-duty peace officer¹³ employed by a private entity as a part-time security guard or patrolman who is concurrently performing the duties required of a peace officer.¹⁴

Existing law requires that all civil and criminal liability arising from an off-duty peace officer's employment with a public entity be borne by the secondary employer.¹⁵ Chapter 1665 provides that all liability

1. CAL. PENAL CODE §70(a). Every executive or ministerial officer, employee or appointee of the State of California, county or city therein or political subdivision thereof is a public official for the purposes of Chapter 1665. *Id.*

2. *Id.*

3. *Id.* §§830.1-830.8 (definition of peace officer).

4. CAL. EVID. CODE §200, CAL. CIV. PROC. CODE §481.200, CAL. GOV'T CODE §811.2 (definition of public entity).

5. CAL. PENAL CODE §§243, 245, 836, 11105(c)(2), 12025, 12027(a), 12031(b)(1); CAL. GOV'T CODE §50921; CAL. LAB. CODE §§3600.2, 3600.3 (official powers and privileges of a police officer).

6. CAL. PENAL CODE §70(c).

7. CAL. LAB. CODE §220 (all employees not directly employed by the state or any county, incorporated city or town or other municipal corporation, are private employees).

8. CAL. PENAL CODE §70(d)(1).

9. *Id.* §70(d)(2).

10. *Id.* §70(d)(3).

11. *Id.* §70(d)(4). *Cf.* CAL. LAB. CODE §1112 (provision forbidding employment of a peace officer as a security guard by any private employer during a labor dispute).

12. *Compare* CAL. PENAL CODE §243(a) *with id.* §243(b).

13. CAL. PENAL CODE §243(b) (applies to custodial officers, firefighters, emergency medical technicians, mobile intensive care paramedics, and lifeguards as they are defined by Penal Code section 243(e)).

14. *Id.* §243(b).

15. *Id.* §70(c).

arising from an off-duty peace officer's employment with a private entity is to be borne by the peace officer's primary employer.¹⁶ Under the provisions of Chapter 1665, however, the principal employer may require that the secondary employer enter into an indemnity agreement in favor of the primary employer as a condition of approving the off-duty peace officer's secondary employment.¹⁷ Chapter 1665 further provides that the primary employer's policies regarding approval of secondary employment are not to be subject to collective bargaining.¹⁸

16. *Id.* §70(d)(4).

17. *Id.*

18. *Id.*