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Criminal Procedure

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Criminal Procedure

Criminal Procedure; child witnesses—special precaution

Penal Code §868.8 (new).

AB 32 (Mojonnier); 1985 STAT. Ch 1174

SB 301 (Lockyer); 1985 STAT. Ch 1772

Support: Task Force on Child Abuse and the Judicial System; Office of Criminal Justice Planning; Department of Finance

Chapter 1174 states that the intent of the California Legislature is to provide minors under the age of eleven who are alleged sexual offense victims additional rights and protections during their involvement with criminal proceedings.¹ Furthermore, the legislature finds and declares that the alleged child molestation victim who is required to testify in court may experience psychological stress, and that traditional court proceedings may exacerbate any damage already done to the child.² Chapter 1174 specifically provides that the court may grant the child witness reasonable periods of relief from examination and cross-examination;³ and re-position in the courtroom the judge, parties, witnesses, support persons,⁴ or court personnel.⁵ Under existing law every judge is required at all times to wear a robe in open court.⁶ Chapter 1174 allows an exception to this rule by providing that a

1. 1985 Cal. Stat. Ch. 1772, §1, at ____.

2. *Id.* See generally *Hochheiser v. Superior Court*, 161 Cal. App. 3d 777, 793-94, 208 Cal. Rptr. 273, 283 (1984) (listing literature discussing the damaging psychological effect of court procedures on children); *State v. Sheppard*, 197 N.J. Super. 411, 484 A.2d 1330, 1333 (N.J. Super. Ct. Law Div. 1984) (legal proceedings may put child victim under prolonged mental stress); Libai, *The Protection of the Child Victim of a Sexual Offense in the Criminal Justice System*, 15 WAYNE L. REV. 977 (1969) (legal proceedings may be traumatic to victim required to testify).

3. CAL. PENAL CODE §868.8. The provisions of Chapter 1174 apply only to criminal proceedings in which the defendant is charged with a violation of Penal Code §§243.4, 261, 273(a), 273(d), 285, 286, 288, 288(a), 289, 314(1), or 647(a), committed upon a minor under the age of eleven. *Id.* §868.8.

4. See CAL. PENAL CODE §868.5 (definition of support person).

5. *Id.* §868.8(c). The court is empowered to exercise control over the interrogation of a witness. CAL. EVID. CODE §765. The court, however, may not move the witness out of the sight of the defendant. *Herbert v. Superior Court*, 177 Cal. App. 3d 661, 172 Cal. Rptr. 850 (1981) *But see* CAL. PENAL CODE §1347 (the court may use two-way closed-circuit television if the case satisfies the statutory requirements of the Penal Code.) See also *Review of Selected 1985 California Legislation*, 17 PAC. L.J. ____ (1986) (summary of CAL. PENAL CODE §1347).

6. CAL. GOV'T CODE §68110.

judge may elect not to wear a robe if the judge believes that the formal attire may intimidate the child witness.⁷ Under existing law, the statute of limitations for a misdemeanor offense is one year.⁸ Chapter 1172 extends the statute of limitations for the misdemeanor offense of vagrancy⁹ to two years if the minor involved is under the age of eleven.¹⁰

7. CAL. PENAL CODE §868.8(b).

8. *Id.* §802(a). *Id.* §17 (definition of misdemeanor).

9. *Id.* §647a (vagrancy is defined as annoying or molesting a child under the age of eighteen).

10. *Id.* §802(b).

Criminal Procedure; child witnesses—preliminary examination

Cal. Penal Code §861.5 (new).

AB 31 (Mojonnier); 1985 STAT. Ch 308

Support: Task Force on Child Abuse and the Judicial System; Attorney General; Commission on the Status of Women; California District Attorneys Association; California Peace Officers Association; State Coalition of Probation Organizations; California Parent, Teacher Association; California Chamber of Commerce; Los Angeles County Board of Supervisors; Adults Molested as Children

Existing law requires a preliminary examination to be completed in one session,¹ without major interruption or postponement.² If the examination is not completed, the complaint must be dismissed unless the magistrate postpones it for good cause shown by affidavit.³ Chapter 308⁴ authorizes a magistrate to postpone a preliminary examination for one court day to accommodate the physical, mental, or emotional needs of a child witness under age ten.⁴ Further, Chapter 308 requires

1. *In re Karpf*, 10 Cal. App. 3d 355, 365, 88 Cal. Rptr. 895, 900 (1970) (definition of session).

2. CAL. PENAL CODE §861. The policy behind the one-session rule is to secure the right of the accused to personal liberty by precluding the possibility of detention in custody for a long period of time before the prosecution has developed a case strong enough to justify a trial. *People v. Castagnola*, 28 Cal. App. 3d 882, 886, 105 Cal. Rptr. 62, 65 (1972).

3. CAL. PENAL CODE §861.

4. *Id.* §861.5. See Parker, *The Rights of Child Witnesses: Is the Court a Protector or*

the magistrate to admonish the prosecution and defense against coaching a child witness prior to the witness' next appearance in the preliminary examination.⁵

Perpetrator? 17 NEW ENG. L. REV. 643, 644-5 (1982) (the child who is required to testify in court often experiences severe psychological distress in reliving the witnessed event).

5. CAL. PENAL CODE §861.5.

Criminal Procedure; child abuse

Penal Code §11171.5 (new).

AB 388 (Hauser); 1985 STAT. Ch 317

Support: Department of Finance; California Peace Officers Association; California Parent, Teacher Association; State Coroners Association

Existing law authorizes physicians, surgeons, dentists, and the agents thereof to take skeletal X-rays of a child¹ without parental consent to determine whether the child is a victim of child abuse,² and to determine the extent of that abuse.³ Chapter 317 authorizes a police officer who, in the course of an investigation of child abuse, has reasonable cause to believe that a child is a victim of physical abuse, to obtain an order from a magistrate directing that the child be X-rayed with or without parental consent.⁴ Any such X-rays taken must be administered by a physician, dentist, or an agent thereof.⁵ Furthermore, Chapter 317 provides that, in suspected child abuse cases, if a county coroner takes X-rays or requests that X-rays be taken, the county may charge the parent⁶ or legal guardian of the child for any costs incurred by the county for the X-rays.⁷

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

2. *Id.* §11165(g) (definition of child abuse).

3. *Id.* §11171(a). *See generally* Comment, *Reporting Child Abuse: When Moral Obligations Fail*, 15 PAC. L. J. 189 (1983).

4. CAL. PENAL CODE §11171.5. *See generally* CAL. WELF. & INST. CODE §305(a) (permits a police officer to take a child into protective custody if the child may be a victim of child abuse); *id.* §396(a), (b) (when an officer takes a child into protective custody, parental permission or a court order must be obtained before medical, surgical, dental or other remedial care is administered).

5. CAL. PENAL CODE §11171.5(a).

6. CAL. WELF. & INST. CODE §18951(f) (definition of parent).

7. CAL. PENAL CODE §11171.5(b).

Criminal Procedure; child pornography—forfeiture of profits

Penal Code §§186.2, 186.8, 311.2 (amended).

SB 272 (Presley); 1985 STAT. Ch 1099

Support: Office of Criminal Justice Planning; Attorney General
AB 595 (La Follette); 1985 STAT. Ch 1205

Existing law provides for the forfeiture of profits¹ acquired through organized criminal activity,² and defines the crimes to which forfeiture applies.³ Chapter 1205 expands existing law by including child pornography⁴ and felonies relating to obscene or harmful matter⁵ among those crimes from which profits are forfeited.⁶ Additionally, Chapter 1099 enhances the penalties for distributing⁶ obscene matter⁷ with knowledge that the matter depicts a minor⁸ engaging in or simulating sexual conduct.⁹

1. CAL. PENAL CODE §186.3 (property subject to forfeiture). Profits include money and proceeds from the sale of forfeited property. *Id.* §186.8.

2. *See id.* §186.2(d) (definition of organized crime).

3. *Id.* §§186.3-186.7 (forfeiture provisions of the California Control of Profits of Organized Crime Act); *id.* §186.2(a) (definitions of the crimes to which the forfeiture provisions apply).

4. Child pornography is defined pursuant to Penal Code §§311.2(b) (distribution and exhibition), 311.3 (reproduction of pictures), or 311.4 (employing a minor for sale or distribution of obscene matter or production of pornography). *Id.*

5. Felonies relating to obscene matter are defined pursuant to Chapter 7.5 of Title 9 of the Penal Code. *Id.* §§311-312.5. Felonies relating to harmful matter are defined pursuant to Chapter 7.6 of Title 9 of the Penal Code. *Id.* §§313-313.5. *Id.* §186.2(a)(3).

6. Chapter 1099 penalties apply to anyone who sends, brings, possesses, prepares, publishes, prints, develops, duplicates with intent to distribute or to exhibit to others, or who offers to distribute, distributes, or exhibits to others, any obscene matter. *Id.* §311.2. Additionally, Chapter 1099 provides that a first conviction for any of these offenses is a misdemeanor. For subsequent convictions of any of these offenses the court may impose, in addition to other authorized punishment, a fine not exceeding \$50,000. *Id.* §311.2(a); *see id.* §311.9 (authorized punishment).

7. *Id.* §311 (definition of obscene matter). *See* *Zeitlin v. Arnebergh*, 59 Cal. 2d 901, 920, 383 P.2d 152, 165, 31 Cal. Rptr. 800, 813 (1963) (only hard core pornography may be obscene). *See generally* 5 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Constitutional Law* §§185-196B (8th ed. 1974 & Supp. 1984) (discussion of California obscenity law); Annot., 5 A.L.R. 3d 1158 (1966) (discussion of obscenity).

8. CAL. PEN. CODE §311.2 (any person under 18 years of age).

9. *Id.* (enhanced to two, three, or six years, and a maximum fine of \$100,000).

Criminal Procedure; search warrants

Penal Code §1539 (amended).

AB 1917 (Stirling); 1985 STAT. Ch 866

Support: American Civil Liberties Union

Existing law provides that, on specified grounds,¹ a defendant may

1. CAL. PENAL CODE §1538.5(a) (grounds include the following: the warrantless search

move for the return of property, or to suppress as evidence matter² obtained as a result of a search or seizure.³ Chapter 866 entitles a defendant, on such a motion, to discover any previous application for a search warrant⁴ which was refused for lack of probable cause.⁵

or seizure was unreasonable; or the search or seizure with a warrant was unreasonable because (1) the warrant was insufficient on its face, (2) the matter obtained was not that described in the warrant, (3) no probable cause existed, (4) the method of execution of the warrant violated constitutional standards, or (5) there was any other violation of constitutional standards). See *People v. Cahan*, 44 Cal. 2d 434, 445, 282 P.2d 905, 911 (1955) (evidence obtained in violation of constitutional guarantees is inadmissible). See also *Katz v. United States*, 389 U.S. 347, 356-57 (1967) (warrantless searches are *per se* unreasonable subject only to a few specifically established exceptions). See generally *1984 California Courts of Appeal Survey—Criminal Law & Procedure*, 7 WHITTIER L. REV. 67, 78 (1985) (discussion of exceptions to the warrant requirements).

2. See CAL. PENAL CODE §1539 (no distinction is made between tangible and intangible matter).

3. *Id.* See U.S. CONST. amend. IV (right to be secure from unreasonable searches and seizures); see *People v. Bellici*, 24 Cal. 3d 879, 888, 157 Cal. Rptr. 503, 509, 598 P.2d 473, 479 (1979) (defendant has the right to move for suppression or return of evidence he believes was obtained by unlawful search or seizure). See also *People v. Butler*, 64 Cal. 2d 842, 845, 52 Cal. Rptr. 4, 6, 415 P.2d 819, 821 (1966) (“[T]he Legislature’s purpose in enacting [Penal Code section 1539 was] . . . to afford the person from whom property was wrongfully seized an expeditious remedy for its recovery.”); 52 Op. Att’y Gen. 197, 198 (Penal Code sections 1539 and 1540 satisfy due process by allowing a claimant an opportunity to move for the return of property and obtain review of an unfavorable ruling). *But cf.* *United States v. Leon*, 104 S. Ct. 3405, 3420 (1984) (exclusionary rule does not apply to an officer acting with objective good faith on an invalid warrant); *People v. Johnson*, 153 Cal. App. 2d 870, 873, 315 P.2d 468, 469 (1957) (exclusionary rule does not apply to evidence obtained by a private person). See generally Annot., 50 A.L.R.2d 531 (1956) (discussion of the rule governing admissibility of evidence obtained by unlawful search and seizure); *People v. Peterson*, 233 Cal. App. 2d 481, 486, 43 Cal. Rptr. 457, 459 (1965) (search warrant may issue only upon probable cause).

4. CAL. PENAL CODE §1523 (definition of search warrant).

5. *Id.* §1539(c).

Criminal Procedure; access to police, arrest, and crime reports

Penal Code §§859, 1430 (amended).

AB 1143 (Stirling); 1985 STAT. Ch 877

Support: California Public Defenders Association; California Attorneys for Criminal Justice; Department of Finance

Under prior law, a prosecuting attorney¹ was required to deliver

1. CAL. PENAL CODE §691(5) (definition of prosecuting attorney).

or make available to a defendant, or the defendant's counsel, copies of all police, arrest, and crime reports within two calendar days of the first court appearance by the defendant's counsel or of the determination by the court that the defendant could proceed *pro se*.² Chapter 877 requires these reports to be delivered or made available³ to the defendant, or counsel, immediately upon the first court appearance by the counsel, or at the time the court determines that the defendant can proceed *pro se*.⁴ If the reports are not available to the prosecuting attorney, Chapter 877 provides that they are to be delivered within two calendar days of the counsel's first appearance in court or the determination by the court that the defendant can proceed *pro se*.⁵ Chapter 877 further provides that a prosecutor's failure to deliver copies of these reports in a timely manner, or failure to make them accessible for inspection and copying, will not result in a dismissal of the case.⁶

2. 1981 Cal. Stat. c. 714, §327, at 2726 (amending CAL. PENAL CODE §859) (governing criminal cases brought in a superior court); 1975 Cal. Stat. c. 799, §2, at 1825 (enacting CAL. PENAL CODE §1430) (governing criminal cases brought in a municipal or a justice court).

3. The prosecuting attorney must deliver the reports, or copies thereof, or make them accessible for inspection and copying. CAL. PENAL CODE §§859 (governing criminal cases brought in a superior court), 1430 (governing criminal cases brought in a municipal or a justice court).

4. CAL. PENAL CODE §§859, 1430.

5. *Id.*

6. *Id.*

Criminal Procedure; continuances

Penal Code §1050.5 (repealed and new); §1050 (amended).

AB 2327 (Stirling); 1985 STAT. Ch 949

Support: Los Angeles County Sheriff; Department of Finance

Existing law mandates that all proceedings in criminal cases be set for trial, heard, and determined at the earliest possible time.¹ With the enactment of Chapter 949, the Legislature recognizes that excessive continuances contribute substantially to congestion in criminal courts, causing substantial hardship to victims and witnesses.² Additionally,

1. CAL. PENAL CODE §1050(a). All courts, judicial officers, and counsel have a legal duty to expedite proceedings in criminal cases to the greatest degree that is consistent with the ends of justice. Additionally, criminal cases are given precedence over civil matters. *Id.* See also U.S. CONST. amend. VI (right to a speedy trial for the accused in a criminal proceeding).

2. CAL. PENAL CODE §1050(a).

the Legislature finds that continuances lead to longer periods of presentence confinement, resulting in deleterious effects on local jails.³ Under Chapter 949, victims and other witnesses are included among those who have the right to a quick disposition of the proceedings.⁴

Under existing law, continuances may be granted only after following specified procedures.⁵ These procedures include the filing of a written notice at least two court days before the hearing sought to be continued.⁶ Chapter 949 adds to these procedures the requirement that the written notice be served on *all* parties to the proceeding at least two court days before the hearing.⁷ Additionally, Chapter 949 provides that counsel on both sides must notify their respective witnesses of the notice of the motion, the date of the hearing, and the witnesses' right to be heard by the court.⁸ Chapter 949 provides that adherence to these procedures is not necessary, however, if good cause can be shown for failure to comply.⁹ In this event, the court must hold a hearing to determine whether good cause exists.¹⁰ If good cause does exist, the finding, along with the facts proved which justify the finding, must be stated on the record and entered in the minutes.¹¹ If the moving party is unable to show good cause for failure to comply with the procedures, the motion for continuance will not be granted,¹² and counsel for the moving party may be subject to either a fine of up to \$1000, the filing of a report with an appropriate disciplinary committee,¹³ or both.¹⁴

Existing law provides that the continuance of a trial may be granted only upon a showing of good cause.¹⁵ In making the determination,

3. *Id.* Longer periods of presentence confinement cause overcrowding and increased expenses at local jails. *Id.*

4. *Id.* Existing law also recognizes that the public and the defendant have the right to an "expeditious disposition" of the proceedings. *Id.*

5. *Id.* §1050(b). See generally *id.* §738 (there must be a preliminary examination before an information is filed); 7 B. WITKIN, CALIFORNIA CRIMINAL PROCEDURE §§132-47 (1963 & Supp. 1985) (discussing preliminary examinations).

6. CAL. PENAL CODE §1050(b). Affidavits and declarations that detail the specific facts showing that a continuance is necessary also must be filed. *Id.*

7. *Id.* Under Penal Code §1050, a party is not served until that party actually receives a copy of the documents to be served. After receiving actual notice of the request for continuance, a party may waive the right to be served in a timely manner. *Id.* Under Chapter 949, the provisions in Penal Code §1050 do not apply when a preliminary examination is set for a date less than ten court days from the defendant's arraignment, and the requested continuance is to a date not more than ten court days from the defendant's arraignment. *Id.* §1050(k).

8. *Id.* §1050(b).

9. *Id.* §1050(c).

10. *Id.* §1050(d).

11. *Id.*

12. *Id.*

13. See CAL. BUS. & PROF. CODE §6086.5 (authorizing the board of governors of the State Bar to establish disciplinary committees).

14. CAL. PENAL CODE §§1050(c), 1050.5(a).

15. *Id.* §1050(e). Good cause has been found to exist in several areas. See, e.g., People

the court must consider the prior commitments of the witnesses and peace officers involved.¹⁶ Upon a finding of good cause, Chapter 949 requires the court to state, on the record, the facts proved that justify the finding, as well as the facts that justify the length of the continuance.¹⁷ Moreover, Chapter 949 requires the court to consider the general convenience of all the witnesses, including peace officers, in determining the existence of good cause.¹⁸ Additionally, the prior commitments of individual witnesses must be considered in selecting a continuance date,¹⁹ and facts relating to inconvenience and prior commitments may be offered by any witness or a party to the case.²⁰

v. Logan, 4 Cal. 188, 189-90 (1854) (attorney illness); People v. Maddox, 67 Cal. 2d 647, 652-53, 63 Cal. Rptr. 371, 374-75, 433 P.2d 163, 166-67 (1967) (need for preparation); Martinez v. Superior Court, 29 Cal. 3d 574, 577-78, 174 Cal. Rptr. 701, 702, 629 P.2d 502, 503 (1981) (local prejudice); People v. Trapps, 158 Cal. App. 3d 265, 270-71, 204 Cal. Rptr. 541, 544-45 (1984) (absence of counsel); People v. Kirkpatrick, 7 Cal. 3d 480, 486, 102 Cal. Rptr. 744, 748, 498 P.2d 992, 996 (1972) (absence of a material witness or other material evidence). See generally B. WITKIN, CALIFORNIA CRIMINAL PROCEDURE §278 (1963) (grounds for continuance). The granting or refusing of a continuance, however, is in the discretion of the trial court. People v. Laursen, 8 Cal. 3d 192, 204, 104 Cal. Rptr. 425, 433, 501 P.2d 1145, 1153 (1972), *appeal dismissed, cert. denied*, 412 U.S. 915 (1973).

16. CAL. PENAL CODE §1050(g).

17. *Id.* §1050(i). These facts must be entered in the minutes. *Id.* §1050(f).

18. *Id.*

19. *Id.* §1050(g).

20. *Id.*

Criminal Procedure; failure to appear—bail

Penal Code §1320.5 (amended).

SB 1393 (Deddeh); 1985 STAT. Ch 780.

Support: Los Angeles County District Attorney; Department of Corrections; Department of Finance

Prior law provided that any person charged with a felony and released on bail who willfully failed to appear as required was guilty of a misdemeanor.¹ Existing law provides that any person charged with a felony and released on his or her own recognizance² who willfully fails to appear as required is guilty of a felony.³ Willful failure to appear within fourteen days of the date set for hearing creates an inference⁴ of the intent to evade process.⁵

1. 1983 Cal. Stat. c. 403, §1, at 2667 (enacting CAL. PENAL CODE §1320.5).

2. CAL. PENAL CODE §1320(b).

3. *Id.* §17(a) (definition of a felony).

4. CAL. EVID. CODE §600(b) (definition of inference).

5. CAL. PENAL CODE §1320.5. See *Review of Selected 1983 California Legislation*, 15

Chapter 780 increases the grade of the crime from a misdemeanor to a felony for any person charged with a felony and released on bail who willfully fails to appear as required.⁶ Such an act is punishable by a fine not to exceed \$10,000, imprisonment in the county jail for not more than one year, imprisonment in the state prison for sixteen months, two years or three years, or by both a fine and imprisonment.⁷

Pac. L.J. 579 (analysis of CAL. PENAL CODE §1320.5).

6. CAL. PENAL CODE §1320.5. Chapter 780 was enacted to eliminate the widespread practice of persons charged with a felony failing to appear for the scheduled hearing in order to increase the likelihood that witnesses would become impossible to locate or would be unable to recollect facts of the crime. Insofar as failure to appear was punishable merely as a misdemeanor, an accused felon could realize a decreased sentence if only the misdemeanor were ultimately prosecuted. Telephone conversation with Senator Wadie Deddeh, September 24, 1985 (notes on file at the Pacific Law Journal).

7. CAL. PENAL CODE §1320.5. See also *id.* §18 (punishment for commission of a felony).

Criminal Procedure; failure to appear—civil assessment

Penal Code §1214.1 (new).

AB 1258 (Campbell); 1985 STAT. Ch 979

Support: Judge Samuel H. Mesnick; Attorney General; California Peace Officers Association

Under existing law, the consequences of a defendant's failure to appear pursuant to a court order may include forfeiture of bail,¹ issuance of a bench warrant,² proceeding without the defendant,³ imposition of a misdemeanor violation,⁴ imposition of a fine against the defense attorney,⁵ and imposition of a criminal contempt citation.⁶ Chapter 979 provides that in addition to other remedies, a court may authorize the imposition of a civil assessment of up to \$250 against any defendant that fails to appear for any criminal proceeding after receiving notice.⁷ The assessment is subject to all procedural requirements governing notice, defense, and collection of civil money judgments.⁸

1. CAL. PENAL CODE §1305.

2. *Id.* §1043(b)(4).

3. *Id.* §§1043(b)(1).

4. *Id.* §1320 (covers failure to appear after release on own recognizance or on a personal appearance bond). *Id.* §1320.5 (covers failure to appear while on bail for felony charge).

5. *Id.* §1050.5 (authorizes a \$100 fine if the attorney knew of the defendant's imminent nonappearance and did not request a continuance at least two days in advance).

6. *Id.* §166.5 (authorizes a finding of misdemeanor criminal contempt for willful disobedience of any court order or process).

7. *Id.* §1214.1(a).

8. *Id.* §1214.1(b).

Criminal Procedure; withdrawal of plea

Penal Code §1203.4 (amended).

SB 518 (Davis); 1985 STAT. Ch 1472

Support: Attorney General; Department of Finance; California District Attorneys Association

Existing law provides that a defendant may petition the court to withdraw a plea of guilty or nolo contendere, or to have a conviction set aside when the defendant has fulfilled, or been discharged from, the terms of probation.¹ Subject to specified exceptions,² a defendant whose petition is granted will thereby be released from the penalties and disabilities that result from the offense.³ Chapter 1472 expands existing law by requiring that the probation officer must notify the prosecuting attorney when a petition to set aside a conviction is filed.⁴ Chapter 1472 further requires that fifteen days' notice be provided to the prosecuting attorney before relief may be granted by the court.⁵ Finally, Chapter 1472 provides that a prosecuting attorney who fails to appear and object to a petition for relief may not move to set aside or otherwise appeal a grant of dismissal.⁶

1. CAL. PENAL CODE §1203.4(a). A defendant who is on probation, charged with the commission of any offense, or serving a sentence may not seek the relief provided in this section. The court is also given discretion, in the interests of justice, to provide the relief available under this section in cases in which the stated requirements have not been met. *Id.*

2. The provisions of CAL. PENAL CODE §1203.4 do not apply to the enforcement of CAL. VEH. CODE §13555 (suspensions or revocations of drivers' licenses), CAL. VEH. CODE §42001 (infractions or special misdemeanors), or CAL. PENAL CODE §12021 (possession of certain firearms by felons and narcotic addicts). *Id.* §1203.4(a), (b). Prior convictions of a defendant may be proven in subsequent hearings, and have the same effect as if the conviction had not been set aside. *Id.* §1203.4(a).

3. *Id.*

4. *Id.* §1203.4(d).

5. *Id.* A presumption arises that the prosecuting attorney has received proper notice if proof of service is filed with the court. *Id.*

6. *Id.* §1203.4(e).

Criminal Procedure; parole

Penal Code §§3041.5, 3063.6 (amended).

SB 445 (Presley); 1985 STAT. Ch 1511

Support: Board of Prison Terms; Department of Finance

Existing law requires the Board of Prison Terms,¹ when rescinding

1. CAL. PENAL CODE §5075 (definition of Board of Prison Terms).

a previously granted parole date, to provide the prisoner with a written declaration describing the reasons for the rescission within ten days of the decision to rescind the parole date.² Prior law required the Board to schedule a new parole release date within six months of the rescission.³ Chapter 1511 deletes this requirement, and instead specifies that the Board must schedule a new parole hearing⁴ within twelve months of the rescission.⁵

2. *Id.* §3041.5(b)(4). See generally *In re Powell*, 162 Cal. App. 3d 472, 480, modified 162 Cal. App. 3d 1181, 208 Cal. Rptr. 641, 646 (1984) (the discretion of the Board is subject to the procedural due process rights of the prisoner).

3. 1982 Cal. Stat. c. 1435, §1, at 5474 (amending CAL. PENAL CODE §3041.5).

4. CAL. PENAL CODE §3041.5(a) (procedural requirements for parole hearing).

5. *Id.* §3041.5(b)(4). See generally *In re Jackson*, 163 Cal. App. 3d 53, 209 Cal. Rptr. 421 hrg. granted Feb. 27, 1985 (No. 85-24) (postponement of inmates parole suitability hearing constitutes an ex post facto law when applied to inmates convicted of crimes committed prior to the effective date of the amended statute). But see *Morris v. Castro*, 166 Cal. App. 3d 33, 35, 212 Cal. Rptr. 299, 300 (1985) (postponement of inmate's parole suitability hearing is procedural in nature and does not constitute an ex post facto law when applied to prisoners convicted of crimes committed prior to the effective date of the amended statute).

Criminal Procedure; controlled substances—abandonment of property

Health and Safety Code §§11361.8, 11485 (new).

SB 1139 (Keene); 1985 STAT. Ch 1563

(Effective October 2, 1985)

Support: Office of Local Government Affairs

Under existing law, any personal property seized in connection with a violation of a controlled substance offense in which a conviction subsequently occurs is subject to forfeiture.¹ With the enactment of Chapter 1563, any personal property seized² which is suspected of being used in the planting, cultivation, harvesting, drying, processing, or transporting of marijuana, but in which no prosecution follows, will be considered abandoned if the owner of the property is unknown or has not claimed the property within ninety days of posting of

1. CAL. HEALTH & SAFETY CODE §11470. See generally California Uniform Controlled Substance Act, *Id.* §§11000-11651.

2. The seizure must have occurred under a search warrant for a violation of Health and Safety Code §11358. CAL. HEALTH & SAFETY CODE §11485.

notice.³ Notice must be provided to the owner or tenant of the real property upon which the personal property was seized regarding the seizure and the manner of reclaiming the property.⁴ Additionally, such notice must be posted on the land where the personal property was seized and published at least once in a newspaper of general circulation in the county.⁵ If no person appears and proves ownership of the personal property within ninety days of the first publication of the notice, the property may be disposed of by sale at a public auction or by transfer to a government agency or community service organization.⁶

3. *Id.* §11485. This section applies only if the property is not being held for evidence or destroyed as contraband. *Id.*

4. *Id.*

5. *Id.*

6. *Id.* The public auction must meet the requirements set forth in Article 1 (commencing with §2080) of Chapter 4 of Title 6 of Part 4 of Division 3 of the Civil Code. *Id.*

Criminal Procedure; nonresident victim compensation

Government Code §13960.5 (new); 13961.1 (amended).

AB 590 (La Follette); 1985 STAT. Ch 713

Support: Office of Criminal Justice Planning; Department of General Services; Department of Finance

Under existing law, victims¹ of crime² who are residents of the State of California can obtain restitution³ from the state Restitution Fund.⁴ Chapter 713 expands existing law by allowing nonresidents⁵ of the state who suffer a pecuniary loss⁶ as a result of crime to obtain restitution, so long as federal funds are available to the state for that purpose.⁷

1. CAL. GOVT. CODE §13960(a) (definition of victim).

2. CAL. GOVT. CODE §13960(c) (crime defined).

3. Restitution is a money award of up to \$23,000 for medical losses, lost wages, and/or job retraining. CAL. GOVT. CODE §13965(a). The maximum award is \$46,000 when federal funds are available to the Restitution Fund. *Id.* §13965(f).

4. *Id.* §13959.

5. *Id.* §13690.5(a) (definition of victim includes nonresidents).

6. CAL. GOVT. CODE §13960(d) (pecuniary loss defined).

7. *Id.* §13690.5(b). The Victims of Crime Act of 1984 mandates that states must compensate nonresidents in order to qualify for federal victims' assistance funds. 42 U.S.C. §10602(b)(4).