Crimes

Crimes; anabolic steroids

Civil Code § 1812.97 (new); Health and Safety Code §§ 11056, 11377 (amended).
AB 3724 (Clute); 1986 STAT. Ch. 565
Sponsor: Author
Support: Los Angeles County District Attorney
AB 4029 (Condit); 1986 STAT. Ch. 1033
Sponsor: Author
SB 1960 (Seymour); 1986 STAT. Ch. 1044

Under existing law, certain stimulants, depressants, and narcotic drugs are classified as controlled substances.1 Chapter 1033 adds anabolic steroids to the list of controlled substances.2 Chapter 1044 makes the unlawful possession of any material, compound, mixture, or preparation containing anabolic steroids a misdemeanor.3

Chapter 565 requires that all contracts for the lease or rental of athletic facilities4 contain the following warning: “WARNING: CALIFORNIA LAW PROVIDES THAT IT IS ILLEGAL TO AID OR ABET IN THE UNLAWFUL SALE, USE, OR EXCHANGE OF ANABOLIC STEROIDS, TESTOSTERONE, AND HUMAN GROWTH HORMONE.”5 Furthermore, under Chapter 1033, the same warning must also be posted in all athletic facilities which have locker rooms.6

PLW

1. CAL. HEALTH & SAFETY CODE §§ 11054-11058. Among the other substances included are opium derivatives, hallucinogenic substances, nalorphine, opiates, and fenfluramine. Id.
2. Id. § 11056(f).
3. Id. § 11377(b) (considered a misdemeanor only if the person convicted has not previously been convicted of a violation involving anabolic steroids).
4. CAL. CIV. CODE § 1812.97(c) (definition of athletic facilities).
5. Id. § 1812.97(a). The warning must be in ten-point bold type. Id. See id. § 1812.97(d) (definition of anabolic steroids).
6. Id. § 1812.97(b). At least one warning must be posted in every locker room of the athletic facility, commencing June 1, 1987. Id.
**Crimes; attempted murder**

Penal Code § 21a (new); § 664 (amended).
SB 1668 (Presley); 1986 STAT. Ch. 519
Sponsor: Attorney General
Support: Department of Corrections
Opposition: American Civil Liberties Union; California Attorneys for Criminal Justice; California Public Defenders Association

Existing law provides that any person who attempts to commit an offense punishable by state imprisonment, but fails, is frustrated, or is otherwise prevented from committing the offense, is subject to state imprisonment for one-half the term prescribed for conviction of the offense attempted. In addition, under existing law, the attempt of any offense punishable by a life term or death is punishable by state imprisonment for five, seven, or nine years. Chapter 519 increases the punishment for attempting the crime of willful, deliberate, and premeditated murder to life imprisonment with the possibility of parole. Chapter 519 provides, however, that this increased penalty will only be imposed if attempted willful, deliberate, and premeditated murder is charged in the accusatory pleading, and admitted or found to be true by the trier of fact.

**COMMENT**

Chapter 519 increases the penalty for attempted first degree murder to life imprisonment with the possibility of parole, but does not increase the nine year maximum penalty for the attempt of other similar crimes subject to a life term or death. Both the United States and California Constitutions prohibit the imposition of cruel or
unusual punishment. The court in In re Lynch states that punishment, although not cruel or unusual in method, may violate the California Constitution if the sentence imposed is disproportionate to the crime committed. In determining whether a punishment is disproportionate to the crime, the court in Lynch compared the questioned punishment with the punishments for similar or more serious offenses. Under Chapter 519 an individual convicted for attempting the crime of first degree murder could serve as great a sentence as an individual convicted for the successful commission of a similarly serious offense. By increasing the punishment for attempted murder from a nine-year maximum to a maximum of life imprisonment, while maintaining the punishment for the attempt of other similar crimes punishable by a life term or death at a nine-year maximum, Chapter 519 may be subject to constitutional scrutiny as being disproportionate under the Lynch test.

NJW

8. See U.S. CONST. amend. VIII; CAL. CONST. art. I, § 17 (prohibitions against cruel or unusual punishment). See generally Eisenberg, Cruel or Unusual Punishments in California: New Problems in Fitting Punishments to Crimes, 12 SAN DIEGO L. REV. 359 (1975) (discussion of California's prohibition against cruel or unusual punishment).
10. See In re Lynch, 8 Cal. 3d at 423, 503 P.2d at 927, 105 Cal. Rptr. at 223.
11. Id. at 423, 503 P.2d at 927, 105 Cal. Rptr. at 223. See also In re Foss, 10 Cal. 3d 910, 920, 519 P.2d 1073, 1082, 112 Cal. Rptr. 645, 649 (1974) (applying the test established in Lynch).
12. Compare CAL. PENAL CODE § 664(1) (attempted first degree murder punishable by life imprisonment) with id. §§ 190 (second degree murder is punishable by 15 years to life imprisonment) and 204 (mayhem is punishable by two, four, or six years). See also id. § 203 (definition of mayhem). The minimum term that can be served by any person sentenced to life imprisonment is seven years. Id. § 3046.

Crimes; child abuse reporting—defamation

Penal Code § 11172 (amended).
AB 3258 (Frizzelle); 1986 STAT. Ch. 553

Existing law provides that specified persons who are statutorily
required to report known or suspected instances of child abuse be granted immunity from civil or criminal liability for any authorized or required report. In addition, existing law provides any other person reporting known or suspected cases of child abuse will not be civilly or criminally liable unless the report is proven false, and the person knew the report was false. Under Chapter 553, a person will not be civilly or criminally liable unless the report is proven to have been made with reckless disregard of the truth or falsity of the report. In such case, Chapter 553 provides that the person who made the report is liable for any damages caused by the report.

JER

2. Any person required to report child abuse must do so immediately, or as soon as possible, by telephone; a written report must be sent within 36 hours after discovering the incident. CAL. PENAL CODE § 11166(a).
3. Id. § 11165(a) (child means a person under the age of 18).
4. Id. § 11165(g) (child abuse is physical injury or sexual abuse inflicted on a child by another person, by other than accidental means). Child abuse also includes neglect or abuse in out-of-home care. Id. Sexual abuse means conduct in violation of Penal Code §§ 261 (rape); 264.1 (rape in concert); 285 (incest); 286 (sodomy); 288(a), (b) (lewd or lascivious acts upon a child under the age of 14); 288a (oral copulation); 289 (penetration of a genital or anal opening by a foreign object); or 647(a) (child molestation). Id. § 11165(b)(1). Sexual abuse also includes sexual exploitation, defined as preparing, selling, or distributing obscene matter depicting a minor engaged in obscene acts, or employing minors to perform obscene acts. Id. §§ 311.2, 311.4, 11165(b)(2)(A).
5. Id. § 11172(a).
6. Id.
7. Id.
8. Id.

Crimes; controlled substances

Business and Professions Code § 4350.5 (amended); Health and Safety Code §§ 11153.5, 11209 (new).
AB 1207 (Moore); 1986 STAT. Ch. 384
Sponsor: Los Angeles County District Attorneys Office

Existing law prohibits the furnishing of dangerous drugs except upon the prescription of a physician, dentist, podiatrist, or veteri-

1. CAL. BUS. & PROF. CODE § 4211 (definition of dangerous drugs).
narian. The issuance of prescriptions for controlled substances is authorized in cases of legitimate medical purposes, but certain prohibitions relating to the prescribing and dispensing of controlled substances are placed on the practitioner and the pharmacist.

Chapter 384 includes the previous ordering pattern of the customer, and the amount of controlled substances furnished, as factors to be taken into consideration when determining whether the furnishing of controlled substances by a wholesaler or manufacturer is excessive. Under Chapter 384, a wholesaler or manufacturer who knowingly dispenses an excessive amount of a controlled substance is subject to imprisonment not exceeding one year, a fine not exceeding $20,000, or both. Chapter 384 also requires a signed receipt to be given when controlled substances are delivered to a pharmacy. Any discrepancy between the type or the amount of controlled substance stated on the receipt and the type or amount actually received must be reported to the wholesaler or manufacturer the next business day. Finally, Chapter 384 requires that the delivery receipt and records be maintained by the wholesaler for a period of three years.

PLW

2. Id. § 4227(a).
3. CAL. HEALTH & SAFETY CODE § 11153(a). See also CAL. BUS. & PROF. CODE § 4037 (definition of registered pharmacist).
4. CAL. BUS. & PROF. CODE § 4038 (definition of wholesaler).
5. Id. § 4034 (definition of manufacturer).
6. Id. § 4350.5(e); see CAL. HEALTH & SAFETY CODE § 11153.5(a). Other factors to be considered in determining excessiveness include the type and size of the customer, and where and to whom the customer distributes the product. CAL. BUS. & PROF. CODE § 4350.5(e); CAL. HEALTH & SAFETY CODE § 11153.5(a).
7. CAL. HEALTH & SAFETY CODE § 11153.5(b).
8. Id. § 11209(a).
9. Id.
10. Id. § 11209(b).

Crimes; criminal defendants—sale of assets

Penal Code § 155.5 (new).
SB 1874 (Royce); 1986 STAT. Ch. 650

Existing law provides that a debtor who fraudulently removes from this state, property owned by the debtor, or sells, conveys, assigns, or conceals property with the intent to hinder or delay a creditor's
rights, claims, or demands is punishable by imprisonment, fine, or both.¹ Under Chapter 650, misdemeanor defendants who, after a plea of guilty or nolo contendere, or against whom a judgment of guilty has been entered, dispose of property with the intent to impair their financial ability to pay any fine² or restitution,³ or to avoid forfeiture of assets derived from criminal profiteering,⁴ are guilty of a misdemeanor.⁵ Similarly, Chapter 650 provides that felony defendants⁶ who sell, convey, assign, or conceal property with the intent to impair their financial ability to pay a fine or restitution, or to avoid forfeiture⁷ of property derived from either criminal profiteering or drug trafficking, are guilty of a felony.⁸

JER

1. CAL. PENAL CODE § 154 (punishable by imprisonment in the county jail not exceeding one year, by a fine not exceeding $1000, or both).
2. Id. § 1214(a) (any judgment for a fine will be enforced in the same manner as a money judgment).
3. Id. § 1214(a)-(b) (enforcing orders of restitution). See id. § 1214.5(a) (whenever a defendant is ordered to pay more than $50 in restitution as a condition of probation, the court may, as an additional condition of probation, order the defendant to pay interest on any amount remaining unsatisfied).
4. The legislature intends the California Control of Profits of Organized Crime Act to be used by prosecutors to punish and deter criminal activities of organized crime by requiring all profits acquired through criminal activities to be forfeited. Id. § 186.1. If the defendant is alleged to have been engaged in a pattern of criminal profiteering and convicted, the defendant’s assets will be subject to forfeiture. Id. § 186.3. See generally id. §§ 186-186.8 (California Control of Profits of Organized Crime Act).
5. Id. § 155.5(a). A misdemeanor is punishable by not more than six months in the county jail, or by a fine of not more than $1,000. Id. § 19.
6. Id. § 155.5(b) (any defendant entering a plea of guilty or nolo contendere, or against whom a judgment of guilty is entered, but prior to sentencing for the same felony offense).
7. Id. § 155.5(b) (forfeiture is pursuant to Health & Safety Code §§ 11470-11493 (Uniform Controlled Substances Act)).
8. Id. § 155.5(b). A felony is punishable by fine, state imprisonment, or death. Id. §§ 17, 18.

Crimes; criminal libel

SB 1286 (McCorquodale); 1986 STAT. Ch. 141
Sponsor: Author
Support: California Newspaper Publishers Association
Prior law defined libel as a malicious¹ defamation expressed in

1. CAL. PENAL CODE § 7(4) (definition of malice).
writing, or a similar manner, tending to impeach a person's honesty, integrity, virtue, or reputation, and thereby to expose that person to public hatred, contempt, or ridicule. In addition, prior law provided that an injurious publication was presumed to have been malicious if no justifiable motive for making the injurious publication was shown. This presumption of malice has been held unconstitutional on the grounds that malice is an element of the crime of libel and must be proven separately, not presumed. Additionally, in criminal prosecutions for libel, prior law limited the defense of truthfulness to publications published with good motives and for justifiable ends. Under existing case law, state criminal libel statutes must guarantee that truth is a complete defense. Existing case law further holds that even when the publication is false, knowledge of the falsity, or reckless disregard of the truth or falsity, must be shown to sustain a criminal conviction.

The California Court of Appeal in Eberle v. Municipal Court declared the statutory presumption of malice and the statutory limitation on the defense of truthfulness unconstitutional. The court of appeal further held that when the unconstitutional criminal libel provisions are deleted, the remainder of the California libel laws lack the necessary guidelines to interpret the statute on criminal libel. In apparent response to the holding in Eberle, Chapter 141 repeals the criminal libel laws in California.

3. Id.
7. See Garrison v. Louisiana, 379 U.S. 64, 74 (1964) (court rejected limiting the defense of truth in criminal cases to utterances published with good motives and for justifiable ends).
8. Eberle, 55 Cal. App. 3d at 430, 127 Cal. Rptr. at 598. First amendment principles require that in publications regarding public officials or figures, truth must be a complete defense. When the publication is false, there must be knowledge of, or a disregard for, the truth or falsity of the publication before a conviction can be sustained. Id. See also New York Times, 376 U.S. at 279-80 (libel requires proof of actual malice, meaning with the knowledge that a statement was false or was made with reckless disregard for the falsity of the statement). The New York Times rule absolutely prohibits the punishment of truthful criticism. Eberle, 55 Cal. App. 3d at 430, 127 Cal. Rptr. at 599.
Crimes; dangerous weapons

Penal Code §§ 171b, 626.10 (amended).
AB 2969 (Peace); 1986 STAT. Ch. 1350
Sponsor: San Diego Unified School District

Under existing law, a person possessing specified weapons1 within a courtroom2 is guilty of a misdemeanor.3 Chapter 1350 broadens the scope of weapons prohibited in a courtroom to include tear gas weapons,4 stun guns,5 and tasers.6 In addition, Chapter 1350 repeals a provision of law authorizing certificated or classified school employees to possess stun guns upon public school grounds7 for self-defense purposes.8

1. Unlawfully possessed weapons include any firearm, deadly weapon, or knife with a blade length in excess of four inches. CAL. PENAL CODE § 171b. Persons transporting weapons to be used as evidence in a court of law, peace officers, and persons called to assist a peace officer in making an arrest or preserving the peace may, however, lawfully possess such weapons. Id.
2. Id. (courtroom includes any building designated as a courthouse or court building).
3. Id. See id. § 17(a), (b) (misdemeanor defined).
4. Tear gas weapons include any shell, cartridge, or bomb capable of exploding and releasing tear gases, and any revolvers, pistols, or other devices capable of releasing tear gas. Id. § 12402. Tear gas includes all substances, liquid, gaseous, or solid, capable of producing temporary physical discomfort or permanent injury through vaporization. Id. § 12401.
5. A stun gun is a weapon capable of temporarily immobilizing a person by the infliction of an electrical charge. Id. § 244.5(a).
6. Id. § 171b.
7. Public school is a school providing instruction in kindergarten or any grades one through twelve inclusive. Id. § 626.10(a). See also id. § 626(4) (school defined).

KGM

Crimes; discharge of laser at aircraft

Penal Code § 247.5 (new).
AB 2950 (Klehs); 1986 STAT. Ch. 790
Sponsor: Los Angeles County Deputy Association

Under existing law, any person who willfully1 and maliciously2

1. CAL. PENAL CODE § 7 ("willfully" implies a purpose or willingness to commit an act, but does not require any intent to violate the law, or to injure another).
2. "Maliciously" suggests a desire to vex, annoy, or injure another person, or an intent to do a wrongful act. Id.

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discharges a firearm at an aircraft, whether parked, in motion, or in flight, is guilty of a felony. Chapter 790 provides that any person who willfully and maliciously discharges a laser at an occupied aircraft, while the aircraft is in motion or flight, is guilty of either a misdemeanor or felony.

MGB

3. Id. § 247 (includes occupied and unoccupied aircraft). An aircraft means any contrivance intended for, and capable of, transporting persons through airspace. Id.
4. Id. See also id. §§ 17(a) (definition of felony), 18 (punishments for felonies).
5. "Laser" means a device that uses the natural oscillation of atoms or molecules between energy levels for generating coherent electromagnetic radiation in the ultraviolet, visible, or infrared region of the spectrum, and when discharged exceeds one milliwatt continuous wave. Id. § 247.5.
6. Id. (punishable by imprisonment in a county jail for not more than one year, or by a fine of $1000).
7. Id. (punishable by state imprisonment for a period of 16 months, 2 years, or 3 years, or by a fine of $2000). This section does not apply to laser development activity by, or on behalf of, the United States armed forces. Id.

Crimes; fraudulent documents—application for teaching licenses, certificates, and credentials

Education Code §§ 44360, 44361, 44362, 44439 (new).
SB 2114 (Dills); 1986 STAT. Ch. 632
Sponsor: Author
Support: Attorney General

Under existing law, an application for the issuance or renewal of a teaching credential may be denied if the applicant practices or attempts to practice a material deception or fraud in the application. Chapter 632 expands existing law by providing that persons are guilty of a misdemeanor if they (1) alter or attempt to use an altered document or any other evidence to obtain a teaching credential or certificate; (2) intentionally and falsely represent they have received a degree or title that has not been earned; (3) barter, sell, offer to

1. CAL. EDUC. CODE § 44345(g).
2. Id. § 44360(a) (includes diplomas, certificates, transcripts, and affidavits).
3. Id.
4. Id. § 44360(b).
sell or barter, purchase, or procure, either directly or indirectly, any false document with the intent that the document be fraudulently used in an application for a teaching certificate, license, or credential; (4) perform or attempt to perform teaching services under a false or assumed name; (5) refuse or willfully fail to surrender their license, credential, or teaching certificate upon demand by the Commission on Teacher Credentialing (the Commission) for purposes of revoking, suspending, or voiding fraudulent documents covered under Chapter 632; or (6) file or attempt to file documents for record issued to another person, falsely claiming to be that person. In addition, Chapter 632 authorizes the Commission to deny, suspend, revoke, or restrict the license of an applicant attempting to subvert a licensing examination, or the administration of the examination.

SBH

5. Id. § 44360(c) (includes licenses, credentials, certificates, transcripts, affidavits, and diplomas).
6. Id.
7. Id. § 44361(d) (including any certified services in a public school).
8. Id. (including any name other than the name inscribed by the Commission on any license, credential, or certificate authorizing the performance of the services).
9. Id. § 44360(e).
10. Id. § 44361 (a license, credential, or certificate).
11. Id. § 44361. Further, Chapter 632 provides that all facts necessary to establish the qualifications of the applicant must be verified under penalty of perjury. Id. § 44362.
12. Id. § 44439(a) (subversion of the examination includes removing or duplicating examination material; paying to obtain examination questions from an individual paid to take examinations; using examination questions improperly removed for the purpose of instructing or preparing applicants for examinations; for selling, distributing, buying, receiving, or being in unauthorized possession of portions of past, current, or future examinations; or engaging in conduct that violates the security of the examination materials).
13. Id. § 44439(b) (subversion of administration includes communicating with other examinees during the examination; copying answers from another examinee or permitting answers to be copied; possession of books, notes, equipment, or written material other than the material distributed; impersonating or having another person impersonate the examinee; or engaging in conduct that violates the standard of examination administration).

Crimes; informing jurors

Penal Code § 1046.5 (amended).
SB 1936 (Ellis); 1986 STAT. Ch. 710
Sponsor: Author
Support: Attorney General

Under existing law, jurors in criminal trials are entitled to at least
the same rights and privileges\(^1\) as jurors in civil trials.\(^2\) Chapter 710 expands the rights of jurors in criminal trials by requiring the judge to inform the jurors prior to discharge that they have the absolute right to discuss, or not discuss, the deliberation or verdict with anyone.\(^3\) Following discharge of the jury, Chapter 710 allows the prosecutor\(^4\) or the defendant\(^5\) to discuss the trial with members of the jury who consent to such a discussion.\(^6\) Any unreasonable contact with a juror by the prosecutor or the defendant, without the juror's consent, must be reported to the trial judge.\(^7\) A violation of Chapter 710 is considered a violation of a valid court order, and is subject to monetary sanctions.\(^8\) Peace officers\(^9\) who are investigating allegations of criminal conduct are exempted from the provisions of Chapter 710.\(^10\)

\(\text{CWG}\)

1. CAL. PENAL CODE § 1046.5(a) (including but not limited to those granted in Code of Civil Procedure § 239).
2. Id.
3. Id. § 1046.5(b)(1).
4. Id. § 1046.5(b)(2) (or the prosecutor's representative).
5. Id. (or the defendant's attorney or representative).
6. Id. The discussion must occur at a reasonable time and place. Id.
7. Id. § 1046.5(b)(3).
8. Id. § 1046.5(b)(4) (in accordance with Code of Civil Procedure § 177.5).
9. Id. §§ 830, 830.1, 830.2, 830.3, 830.31, 830.4, 830.5, 830.6 (persons who are peace officers).
10. Id. § 1046.5(b)(5).

Crimes; money laundering and financial transaction reporting

Government Code § 7471 (amended); Health and Safety Code § 11351.5 (new); §§ 11055, 11350, 11352, 11353, 11354, 11355, 11364, 11365, 11366, 11366.6, 11370.2, 11370.4, 11372, 11372.5, 11377, 11378, 11379, 11380, 11380.5, 11470, 11488, 11550, 11590 (amended); Penal Code §§ 186.9, 186.10, 14160, 14161, 14162, 14163, 14164, 14165, 14166, 14167 (new); § 186.2, 999e, 1203,07, 1203.07, 1203.073 (amended).

SB 1470 (McCorquodale); 1986 STAT. Ch. 1039
Sponsor: Attorney General
Opposition: American Civil Liberties Union

SB 1960 (Seymour); 1986 STAT. Ch. 1044
Chapter 1039 provides that any person who intentionally conducts\(^1\)

1. CAL. PENAL CODE § 186.9(a) (definition of conducts).
or attempts to conduct a criminally-related\textsuperscript{2} transaction\textsuperscript{3} in excess of $5,000 through a financial institution\textsuperscript{4} is guilty of money laundering.\textsuperscript{5} Under existing law, profits\textsuperscript{6} acquired through criminal profiteering\textsuperscript{7} are subject to forfeiture upon conviction of a specified underlying offense.\textsuperscript{8} Chapter 1044 expands existing law to include money laundering among those crimes from which profits may be forfeited.\textsuperscript{9}

Existing federal law requires certain financial institutions\textsuperscript{10} to report transactions over $10,000\textsuperscript{11} to the Commissioner of the Internal Revenue Service.\textsuperscript{12} This information may be used in criminal, tax, and regulatory investigation proceedings.\textsuperscript{13} Chapter 1039 requires financial institutions to maintain\textsuperscript{14} records of transactions over $10,000, and to report these transactions to the Department of Justice (the Department).\textsuperscript{15} An exemption from the reporting requirements may be given to a financial institution, upon written request, if the

\begin{itemize}
  \item[2.] \textit{Id.} § 186.10(a) (the person must conduct the transaction with either (1) the intent to promote, facilitate the promotion, or carry on a criminal activity, or (2) the knowledge that the monetary instrument represents the proceeds of a criminal activity).
  \item[3.] \textit{Id.} § 186.9(c) (definition of transaction).
  \item[4.] \textit{Id.} § 186.9(b) (definition of financial institution).
  \item[5.] \textit{Id.} § 186.10(a). \textit{See also}, e.g., People v. Woods, 177 Cal. App. 3d 327, 330, 222 Cal. Rptr. 868, 869 (1986) (example of money laundering). An attorney who accepts a fee for representing a client in a criminal investigation may be convicted, if the prosecution additionally proves that the attorney accepted the fee with the intent to disguise the source of the funds or the nature of the criminal activity. A convicted person may be punished by imprisonment for a period not to exceed one year in the county jail or state prison, a fine not to exceed $250,000 or twice the value of the property transacted, whichever is greater, or both a fine and imprisonment. A person being sentenced for a second conviction may be fined for an amount not over $500,000 or 5 times the value of the property transacted, whichever is greater. \textit{CAL. PENAL CODE} § 186.10(a).
  \item[6.] \textit{CAL. PENAL CODE} § 186.3 (assets subject to forfeiture).
  \item[7.] \textit{Id.} § 186.2(a) (criminal profiteering activity is any act committed or attempted, or any threat made for financial gain or advantage, which may be charged as a specified crime). \textit{See id.} § 186.2(a) (specified crimes).
  \item[8.] \textit{Id.} § 186.3(a). The underlying offenses are those listed in Penal Code § 186.2(a). \textit{Id.} § 186.2(a).
  \item[9.] \textit{Id.} § 186.2(a)(21).
  \item[10.] 31 U.S.C. § 5312(a)(2) (financial institutions that must file a report according to definition of financial institution under federal law); 31 C.F.R. § 103.11(e) (1985) (definition of financial institution under federal law).
  \item[11.] 31 C.F.R. § 103.22(a)(1), (2) (1985).
  \item[12.] \textit{Id.} § 103.26(a). The Commissioner of the Internal Revenue Service was designated to receive the reports by the Secretary of the Treasury. \textit{Id.}
  \item[13.] \textit{Id.} § 103.21.
  \item[14.] \textit{See CAL. PENAL CODE} § 14165(c). Records must be destroyed after 5 years unless the report is known to be a part of a criminal proceeding, or the Department has received subsequent reports on the same person or persons. The records must be destroyed after 10 years unless the information contained in the report is subject to an existing criminal proceeding. \textit{Id.}
  \item[15.] \textit{Id.} § 14162(a). \textit{But cf. id.} § 14162(b) (financial institution that is required to file with the federal government may submit a duplicate copy to the Department). \textit{See also id.} §
institutions have been exempted from reporting under federal law and has not been disapproved by the Department. Chapter 1039 further specifies that a person may be punished for intentionally deceiving the financial institution in order to prevent the filing of the report, or for any other willful violation of this provision.

Chapter 1039 stipulates that the reported information is not a public record. Chapter 1039, however, prohibits the recovery of damages from financial institutions by any customer, state or local agency, or person who suffered injury as a result of the disclosure of such reports.

CLR

14160(a) (legislative purpose is to use such records for criminal prosecution). Chapter 1039 permits the release of such information by amending the Right to Financial Privacy Act. Cal. Gov't Code § 7471(a).

16. Cal. Penal Code § 14166. An exemption may be disapproved by the Department for reasonable cause. The Department may also regulate the maintenance and inspection of exemption records granted under this provision. Id.

17. Id. § 14166. A person may be punished by imprisonment in the county jail or state prison for a period not to exceed one year; by a fine not to exceed $250,000 or twice the monetary value of the transaction, whichever is greater; or by both fine and imprisonment. Notwithstanding any other provision of law, any violation of the financial transaction reporting requirements is a separate and punishable offense. Id.

18. Id. § 14167.

19. Id. § 14164. See also id. § 14160(d) (legislature expressly stated that nothing in this title should be construed to give rise to a private cause of action for relief or damages).

Crimes; petty theft—prior vehicle theft convictions

Penal Code § 666 (amended).

SB 1946 (Russell); 1986 Stat. Ch. 402

Sponsor: California District Attorneys Association
Support: California Highway Patrol

Under existing law, any person convicted of petty theft is subject to a fine not exceeding $1,000, imprisonment in the county jail for a period not exceeding six months, or both. In addition, any person

1. Cal. Penal Code § 488 (definition of petty theft); see also id. §§ 487c, 487f (specific crimes constituting petty theft).
2. Id. § 490.
Crimes

convicted of petty theft who was previously imprisoned for petty theft, grand theft, burglary, or robbery is subject to imprisonment in the county jail for a period not exceeding one year, or to state imprisonment for a period of up to three years. Chapter 402 adds vehicle theft to this list of prior offenses for which a subsequent petty theft conviction may result in increased punishment.

SLP

3. Id. § 487 (definition of grand theft); see also id. §§ 487a, 487b, 487d, 487e, 487f (specific crimes constituting grand theft).
4. Id. § 459 (definition of burglary).
5. Id. § 211 (definition of robbery).
6. A misdemeanor is punishable by imprisonment in the county jail. Id. § 19. A felony is punishable by state imprisonment. Id. § 17(a).
7. Id. § 666. A previous theft offender may be convicted of either a misdemeanor or a felony. Id. See id. §§ 17(a), 19. Unless otherwise provided by law, a felony is punishable by state imprisonment for a period of 16 months, 2 years, or 3 years. Id. § 18. See also In re Rogers, 20 Cal. App. 2d 397, 400, 66 P.2d 1237, 1238 (1937) (a crime which may be punished by imprisonment in state prison is deemed to be a felony). See generally Review of Selected 1977 California Legislation, 9 PAC. L.J. 490 (1978) (analysis of existing law prescribing increased punishments for prior theft convictions).
8. CAL. VEH. CODE § 10851 (definition of vehicle theft).

Crimes; prohibited weapons—ballistic knives

Penal Code § 12020 (amended).
AB 3266 (Margolin); 1986 STAT. Ch. 1421
Sponsor: City of Los Angeles
Support: Attorney General; Department of Corrections

Under existing law, any person who manufactures, imports into the State, offers for sale, or possesses certain specified weapons is

1. CAL. PENAL CODE § 12020(a) (includes causing to be manufactured).
2. Id. (includes keeping for sale or exposing for sale).
3. Id. (includes giving or lending a specified weapon).
4. Id. Specified weapons include: Cane guns, wallet guns, firearms not recognizable as such, ammunition consisting of flechette darts, bullets carrying explosive agents, and weapons commonly known as black-jacks, slingshots, billys, nunchakus, sandclubs, sandbags, sawed-off shotguns, or metal knuckles. In addition, any person who carries concealed explosive substances, other than fixed ammunition, or who carries a concealed dirk or dagger, is guilty of a felony. Id.
guilty of a felony.\(^5\) Chapter 1421 expands existing law by adding ballistic knives\(^6\) to this list of prohibited weapons.\(^7\)

\textit{NJW}

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5. \textit{Id.} (any person convicted of this offense is subject to imprisonment in state prison, or in the county jail for a period not exceeding one year).
6. Ballistic knife is defined as a device that propels a knife-like blade by coil spring, elastic material, or compressed gas. A ballistic knife is not a device which propels an arrow or bolt by means of any common bow, compound bow, crossbow, or underwater spear gun. \textit{Id.} § 12020(d)(7).
7. \textit{Id.} § 12020(a).

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\textbf{Crimes; prostitution}
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Penal Code § 647 (amended).
SB 2169 (Roberti); 1986 STAT. Ch. 1276
Sponsor: City of Los Angeles
Opposition: California National Organization of Women

Existing law provides that any person who solicits or engages in an act of prostitution\(^1\) is guilty of disorderly conduct.\(^2\) Chapter 1276 expands existing law by providing that any person who \textit{agrees} to engage in an act of prostitution is guilty of disorderly conduct.\(^3\) Under Chapter 1276 a person agrees to engage in prostitution if he or she manifests acceptance of an offer or solicitation with the specific intent\(^4\) to actually engage in the act, regardless whether the offer or solicitation was made by a person with the specific intent to engage in prostitution.\(^5\) In addition, Chapter 1276 specifies that an agreement to engage in an act of prostitution alone does not constitute a violation of Chapter 1276, unless some act, other than

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1. \textit{CAL. PENAL CODE} § 647(b) (prostitution includes any lewd act between persons for money or other consideration).
2. \textit{Id.} See \textit{id.} § 647 (definition of disorderly conduct).
3. \textit{Id.} § 647(b).
4. \textit{Id.} § 20 (definition of intent). \textit{See generally} 1 B. \textit{WITKIN, CALIFORNIA CRIMES, Elements of Crimes} § 55(a) (discussion of specific intent).
5. \textit{CAL. PENAL CODE} § 647(b).
the agreement, is done in furtherance of the commission of an act of prostitution by the person agreeing to engage in that act.\textsuperscript{6}

\textit{NJW}

\textsuperscript{6} Id. See generally People v. Barraza, 23 Cal. 3d 675, 688, 591 P.2d 947, 952, 153 Cal. Rptr. 459, 464 (1979) (discussion of police entrapment).

\section*{Crimes; sentencing habitual offenders—attempted murder}

Penal Code § 667.7 (amended).

AB 3250 (Molina); 1986 \textit{STAT.} Ch. 1425

Sponsor: Author

Support: Attorney General

Opposition: American Civil Liberties Union

Under existing law, any person convicted of a felony involving the infliction of great bodily injury,\textsuperscript{1} who has served two or more prior separate prison terms\textsuperscript{2} for specified offenses,\textsuperscript{3} is a habitual offender and subject to life imprisonment without possibility of parole for twenty years.\textsuperscript{4} Chapter 1425 adds attempted murder\textsuperscript{5} to this list of specified offenses for which offenders may receive life imprisonment.\textsuperscript{6}

\textit{JWC}

\begin{itemize}
  \item \textsuperscript{1} \textit{CAL. PENAL CODE} § 12022.7 (definition of great bodily injury).
  \item \textsuperscript{2} See People v. Butler, 104 Cal. App. 3d 868, 882-83, 162 Cal. Rptr. 913, 922 (1980) (a prior separate prison term means a continuous completed period of incarceration imposed for a particular offense alone or in combination with concurrent or consecutive sentences for other crimes, including revocation of parole not accompanied by a new commitment to prison). See also \textit{CAL. PENAL CODE} § 667.5(h) (serving a prison term includes confinement in a state or federal penal institution, confinement in a hospital, or other institutions credited as service of prison time).
  \item \textsuperscript{3} See \textit{CAL. PENAL CODE} § 667.7 (listing of specified offenses).
  \item \textsuperscript{4} Id. § 667.7. See also People v. Kane, 165 Cal. App. 3d 480, 487, 211 Cal. Rptr. 628, 632-33 (1980) (prior offense enhancements go to the nature of the offender, punishing the individual for the habitual commission of crimes to deter recidivism).
  \item \textsuperscript{5} \textit{CAL. PENAL CODE} § 1192.7(c)(9) (definition of attempted murder).
  \item \textsuperscript{6} Id. § 667.7.
\end{itemize}
Crimes; sex crimes

Penal Code §§ 261, 266c, 286, 288, 288a, 289, 290, 667.9, 1192.7, 1203.065, 1203.066, 1203.075, 12022.8 (amended).

AB 3485 (Wright); 1986 STAT. Ch. 1299
(Effective September 29, 1986)
Sponsor: Office of Criminal Justice Planning
Support: Department of Corrections

Existing law prohibits inducing any person to engage in sexual intercourse, oral copulation, or sodomy, when consent is procured by false or fraudulent representations, or by a pretense made with the intent to create fear. Chapter 1299 extends this prohibition to include instances in which a person induces a victim to engage in penetration of the genital or anal openings by a foreign object, substance, instrument, or device. Under existing law, any person who commits an act of sodomy or oral copulation on a victim who is unconscious of the nature of the act, and this unconsciousness is known or should have been known to the perpetrator, is guilty either of a misdemeanor or a felony.

In apparent response to the decision of the California Court of Appeal in People v. Kusumoto, Chapter

1. CAL. PENAL CODE § 266c (not including the spouse of the perpetrator).
2. Id. § 288a(a) (definition of oral copulation).
3. Id. § 286(a) (definition of sodomy).
4. Consent is defined as positive cooperation in act or attitude pursuant to an exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved. Id. § 261.6.
5. See 1 B. WITKIN, CALIFORNIA CRIMES, Crimes Against the Person § 290 (Supp. 1983) (fraud as to the basic nature of the act will not vitiate consent).
6. CAL. PENAL CODE § 266c (fear of unlawful physical injury or death to the person or to any relative of the person or member of the person's family). In addition, the pretense must in fact cause fear, and be such that a reasonable person in such circumstances would be induced to act contrary to their free will. Id.
7. Id. § 289(g) (penetration occurs no matter how slight).
8. Id. § 266c. Foreign object, substance, instrument, or device includes any part of the body, except a sexual organ. Id. § 289(k).
9. See People v. Howard, 117 Cal. App. 3d 53, 55, 172 Cal. Rptr. 539, 540-41 (1981) (the phrase “unconscious of the nature of the act” does not require the victim to be totally unaware the act is being performed, and defendant therefore could be convicted where the nineteen-year-old victim was severely mentally retarded and had the mental capacity of a six to eight-year-old).
10. See CAL. PENAL CODE §§ 286(f), 288a(f) (punishable by imprisonment in the state prison or county jail for a period not to exceed one year).
11. 169 Cal. App. 3d 487, 215 Cal. Rptr. 347 (1985). The Fourth Appellate District of California found that recent legislation covered rape cases in which the defendant engages in sexual intercourse with a victim who is at the time unconscious of the nature of the act, but
Crimes

1299 extends this prohibition to include foreign object penetration, and increases the penalties for these offenses to felonies. In addition, Chapter 1299 creates new crimes by providing that any person who commits an act of sodomy, oral copulation, or foreign object penetration is guilty of a felony if (1) the victim is prevented from resisting by an intoxicating anesthetic or controlled substance administered by the accused; (2) the perpetrator intentionally induces the victim to believe the act is the victim’s spouse; or (3) the victim submits against the victim’s will due to threats to use the authority of a public official to incarcerate, arrest, or deport the victim or another, when the victim has a reasonable belief that the perpetrator is a public official.

Existing law prohibits the penetration of another’s genital or anal openings by any foreign object when the act is accomplished against the victim’s will by means of force, and is for the purpose of sexual arousal, gratification, or abuse. Chapter 1299 extends existing law by including any such act accomplished against the victim’s will by threatening to retaliate in the future against the victim or any other person, when a reasonable possibility exists that the perpetrator will execute the threat. Chapter 1299 provides that any person who participates in an act of foreign object penetration of the vaginal or

ruled that no similar provisions existed in the rape by object statute. The Court, therefore, reversed the defendant’s conviction and held that the act of putting the defendant's fingers into the victim's vagina, while the victim was asleep, was not an act prohibited under the rape by object statute. Although no consent was given, the court held that the requisite force necessary to find the defendant guilty of foreign object rape was not present. Id. at 491-94, 215 Cal. Rptr. at 350-51.

12. CAL. PENAL CODE § 289(d).
13. Id. §§ 286(f), 288a(f), 289(d) (punishable by state imprisonment for a period not to exceed three, six, or eight years).
14. Id. §§ 286(i), 288a(i), 289(e) (administered by or with the privity of the accused).
15. Id. §§ 286(j), 288a(j), 289(f). See generally 1 B. WITKIN, CALIFORNIA CRIMES, Crimes Against the Person § 290 (Supp. 1933) (fraudulent inducement by a person not the spouse of the victim).
16. Public official means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. CAL. PENAL CODE §§ 286(k), 288a(k), 289(g).
17. Id. §§ 286(k), 288a(k), 289(g) (the perpetrator does not actually have to be a public official).
18. Id. § 289(a) (includes violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person).
19. Id.
20. Threatening to retaliate means a threat to kidnap, falsely imprison, or inflict extreme pain, serious bodily injury, or death. Id. § 289(f). See People v. Hunt, 72 Cal. App. 3d 190, 194, 139 Cal. Rptr. 675, 676 (1977) (the prevailing rule in California is that threats may be inferred from conduct as well as from words).
anal opening of any person under eighteen for the purpose of sexual arousal, gratification, or abuse, is either guilty of a misdemeanor or a felony.\textsuperscript{22} Chapter 1299, however, specifies that any person who participates in an act of foreign object penetration of the vaginal or anal opening of any person for the purpose of sexual arousal, gratification, or abuse, is guilty of a felony, if the perpetrator is over twenty-one and the victim is under sixteen,\textsuperscript{23} or if the victim is under fourteen and is more than ten years younger than the perpetrator.\textsuperscript{24}

\textit{SDS}

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\textsuperscript{22} \textit{Id.} § 289(h).
\textsuperscript{23} \textit{Id.} § 289(i) (unless the act committed was a lewd and lascivious act with a child under 14 as provided in Penal Code § 288).
\textsuperscript{24} \textit{Id.} § 289(i).
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\textbf{Crimes; transporting of firearms}

Penal Code § 12026.1 (new).

\textit{SB 1787 (Davis); 1986 Stat. Ch. 998}

Sponsor: Author

Support: National Rifle Association; United Sportsmen; Attorney General

Existing law prohibits any unlicensed person from carrying or transporting a concealed firearm\textsuperscript{1} within a vehicle.\textsuperscript{2} Chapter 998 allows specified persons\textsuperscript{3} to carry a concealable firearm, provided the firearm is within a vehicle and locked in the trunk or in a locked

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\textsuperscript{1} \textit{Cal. Penal Code} § 12001 (definition of firearm).
\textsuperscript{2} \textit{Id.} § 12025(a). Except as provided in Penal Code §§ 12000-12096 (the Dangerous Weapons Control Law), any unlicensed person who carries within any vehicle under the control or direction of that person, any pistol, revolver, or other firearm capable of being concealed upon the person, is guilty of a misdemeanor. \textit{Id.}
\textsuperscript{3} \textit{Id.} § 12026.1(a) (persons must be United States citizens over 18 years of age, residing or temporarily within the State, and not within any class of persons prohibited from transporting concealable weapons). Felons and drug addicts are prohibited from owning or possessing any firearm capable of being concealed. \textit{Id.} § 12021.
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\textit{Selected 1986 California Legislation}
In addition, Chapter 998 permits carrying a concealed firearm directly to or from a motor vehicle for any lawful purpose, provided that the firearm is within a locked container.

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4. *Id.* § 12026.1(a)(1). *Id.* § 12026.1(c) (locked container is defined as a secure container which is fully enclosed and locked by a padlock, key lock, combination lock, or similar locking device). A locked container does not include the utility or glove compartment. *Id.* § 12026.1(a)(1).

5. *Id.* § 12026.1(a)(2).

6. *Id.*

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Crimes; trespass

Penal Code § 602.2 (new).

AB 2276 (Hill); 1986 STAT. Ch. 34
Sponsor: Sportsmen’s Committee on Political Education
Support: California Chamber of Commerce; Office of Local Government Affairs

Existing law provides that entering private land belonging to another that is under cultivation or enclosed by a fence, or entering uncultivated or unenclosed land which is posted with trespass signs, constitutes trespass if the person fails to obtain written permission and does not leave the property immediately upon the owner’s request. Chapter 34 conforms local ordinances to the guidelines of existing state trespass law by providing that any county ordinance requiring written permission to enter vacant or unimproved private property, will not apply unless the land is (1) immediately adjacent

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1. Signs forbidding trespass must be displayed at intervals of not less than three per mile along all exterior boundaries and at all roads and trails entering such land. CAL. PENAL CODE § 602(k).

2. Girard v. Ball, 125 Cal. App. 3d 772, 788, 178 Cal. Rptr. 406, 414, (1981) (definition of trespass). Trespass under this provision is a misdemeanor. CAL. PENAL CODE § 602. This offense is punishable by imprisonment not exceeding 6 months, by a fine not exceeding $1,000, or both. *Id.* § 19.

3. Written permission must come from the owner, the owner’s agent, or the person in lawful possession of the property. CAL. PENAL CODE § 602(k).

4. *Id.* Failure to leave upon the request of the owner’s agent or person in lawful possession of the property also violates this provision. *Id.* § 602(k)(1).

5. Permission must come from the owner, owner’s agent, or the person in lawful possession of the private land. *Id.* § 602.2.
Crimes; victims of crime—restitution

Penal Code § 1203.1d (amended).
SB 2216 (Robbins); 1986 STAT. Ch. 634
Sponsor: State Bar of California
Support: Attorney General; Los Angeles County Municipal Court;
Judge’s Association
Opposition: American Civil Liberties Union

Existing law requires any person convicted of a crime and granted probation1 to make restitution2 to the victim3 as a condition of probation.4 Chapter 634 provides that documentary evidence such as bills, receipts, repair estimates, insurance payment statements, payroll stubs, business records, and similar documents establishing a victim’s

1. Probation means the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer. CAL. PENAL CODE § 1203(a).
2. Restitution means full or partial payment for the value of stolen or damaged property; medical expenses; and wages and profits lost due to injury, to time spent as a witness, or in assisting police or prosecution. Id. § 1203.04(d). In addition to making restitution to the victim, the defendant may be ordered to pay reimbursement for any legal assistance provided by the court, costs of probation or confinement, or any other compensable costs. Id. § 1203.1d. See also People v. Kay, 36 Cal. App. 3d 759, 762-63, 111 Cal. Rptr. 894, 895 (1973) (the defendant is entitled to have the court inquire into and determine the defendant’s ability to pay restitution, as well as his proper proportionate share of responsibility).
3. Victim includes the immediate surviving family of the actual victim in homicide cases. CAL. PENAL CODE § 1293.04(a)(1).
4. Id. § 1203.04. If there is no victim, restitution is paid to the Restitution Fund. Id. § 1203.04(a)(2). See People v. Richards, 17 Cal. 3d 614, 619, 552 P.2d 97, 100, 131 Cal. Rptr. 537, 540 (1976) (trial courts have wide discretion under Penal Code § 1203.1 to prescribe conditions of probation, but any order for restitution must be directly related to the crime). See generally Comment, Victim Reparation Programs; Learning from Experience, 4 B.Y.U. L. REV. 513 (1985) (discussion of eligibility requirements, turnaround time for process, and responsible administrative agencies).

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financial losses cannot be excluded as hearsay evidence if relevant to the value of stolen or damaged property, medical expenses, or lost wages and profits.\textsuperscript{6}

\textbf{MGB}

5. Hearsay evidence is evidence of a statement made by someone other than the witness while testifying, that is offered to prove the truth of the matter stated. \textsc{Cal. Evid. Code} § 1200(a). Except as provided by law, hearsay evidence is inadmissible. \textit{Id.} § 1200(b). \textit{See also id.} § 1220-1340 (exceptions to the hearsay rule).

6. \textsc{Cal. Penal Code} § 1203.1d.

\section*{Crimes; victim testimony—video taping}

Penal Code § 1346 (amended).

\textsc{AB 3229} (Bronzan); 1986 \textsc{Stat. Ch.} 681

Sponsor: Fresno County District Attorney

Existing law provides that a prosecutor may apply for an order authorizing the testimony of a victim of a specified sex crime\textsuperscript{1} to be video taped at the preliminary hearing if the victim is fifteen years of age or less.\textsuperscript{2} Pursuant to Chapter 681, testimony of a victim of a specified sex crime may also be video taped regardless of the victim's age, if the victim is developmentally disabled\textsuperscript{3} as a result of mental retardation.\textsuperscript{4}

\textbf{JER}

1. Specified sex crimes include any violation of Penal Code §§ 243.4 (sexual battery); 261 (rape); 261.5 (unlawful sexual intercourse with a minor female); 264.1 (acting in concert with another in the commission of rape or rape with a foreign object); 273a (child abuse); 273d (inflicting corporal injury upon a child); 285 (incest); 286 (sodomy); 288 (lewd or lascivious acts with a child under age 14); 288a (oral copulation); and 289 (penetration of genital or anal opening by a foreign object). \textsc{Cal. Penal Code} § 1346(a).

2. \textit{Id.} If the court determines that further testimony would cause the victim emotional trauma, rendering the victim unable to testify, the court may admit video taped testimony at trial. \textit{Id.} § 1346(d). \textit{See also Cal. Evid. Code} §§ 240 (unavailability of a witness); 1291 (former testimony offered against a party to a former proceeding). All video tapes made pursuant to California Penal Code § 1346 are subject to protective orders, to protect the privacy of the victim. \textsc{Cal. Penal Code} § 1346(e).

3. "Developmentally disabled" refers to a disability which originates before the age of 18; continues, or can be expected to continue, indefinitely; and constitutes a substantial handicap for the individual. \textsc{Cal. Welf. & Inst. Code} § 4512(a). "Developmental disability" includes the following: Mental retardation, cerebral palsy, autism, epilepsy, and handicapping conditions found to be closely related to mental retardation. The term does not include handicapping conditions that are solely physical in nature. \textit{Id.}

4. \textsc{Cal. Penal Code} § 1346(a). \textit{See also id.} § 1001.20(a) (definition of mentally retarded).