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Crimes

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Crimes

Crimes; vehicular manslaughter

Penal Code §§192, 193 (amended); Vehicle Code §§13350.5, 23156 (new); §23153 (amended).
SB 456 (Roberti); 1983 STAT. Ch 937
AB 236 (Sher); 1983 STAT. Ch 941

Existing law recognizes three forms of manslaughter—voluntary, involuntary, and vehicular. Chapter 937 redefines vehicular manslaughter to distinguish between killings that occur while a person is driving under the influence of drugs or alcohol, and killings in which neither drugs nor alcohol were used while driving. Additionally, Chapter 941 increases the penalties for both vehicular and voluntary manslaughter.

Existing law defines vehicular manslaughter as the unlawful killing of a human being without malice while driving a vehicle. Prior to the enactment of Chapter 937, vehicular manslaughter was classified as either the commission of an unlawful act not amounting to a felony, or the commission of a lawful act that might produce death in an unlawful manner (hereinafter referred to as vehicular manslaughter). Both forms of vehicular manslaughter could be committed with and without gross negligence.

In an apparent attempt to impose stricter penalties for drunk driving, Chapters 937 and 941 create a comprehensive drunk driving scheme by

1. CAL. PENAL CODE §192(1).
2. Id. §192(2).
3. Id. §192(3).
4. Id. (definition of vehicular manslaughter).
5. See CAL. VEH. CODE §§23152, 23153 (drunk driving statutes).
10. 1945 Cal. Stat. c. 1006, §1, at 1942 (enacting CAL. PENAL CODE §192(a)). This offense was punishable by imprisonment of up to one year in the county jail or state prison. 1981 Cal. Stat. c. 110, §1, at 842 (amending CAL. PENAL CODE §192(c)).
11. 1945 Cal. Stat. c. 1006, §1, at 1942 (enacting CAL. PENAL CODE §192(3)(b)). This offense was punishable by imprisonment for not more than one year in the county jail. 1981 Cal. Stat. c. 110, §1, at 842 (amending CAL. PENAL CODE §193(c)). Gross negligence is not to be interpreted under Chapter 941 to preclude a charge of murder if the requisite malice can be established. CAL. PENAL CODE §192(3)(d). This is consistent with existing case law. See People v. Watson, 30 Cal. 3d 290, 296, 637 P.2d 279, 283, 179 Cal. Rptr. 43, 47 (1981) (definition of gross negligence).
12. See Telephone conversation with Terry Terauchi, Legislative Aide to Senator David Roberti (July 27, 1983) (notes on file at the Pacific Law Journal); see also Review of

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specifying the following degrees of manslaughter and the corresponding punishment: 13 (1) vehicular manslaughter with gross negligence and not involving the use of drugs or alcohol, 14 is punishable by imprisonment in the county jail for not more than one year, or in state prison, 15 (2) vehicular manslaughter without gross negligence and not involving drugs or alcohol, 16 is punishable by imprisonment in the county jail for not more than one year, 17 (3) vehicular manslaughter with gross negligence while driving under the influence of drugs or alcohol, 18 is punishable by imprisonment in the state prison for four, six, or eight years, 19 (4) vehicular manslaughter without gross negligence while driving under the influence of drugs or alcohol, 20 is punishable by imprisonment in either the county jail for not more than one year or state prison for sixteen months, two or four years. 21

Under prior law, a person who was found driving under the influence of drugs or alcohol in appropriate cases could be convicted under both the Penal Code provisions relating to vehicular manslaughter 22 and the Vehicle Code provisions relating to driving under the influence of drugs or alcohol. 23 Chapter 937 provides that persons who drive under the influence of drugs or alcohol and cause the death of another may only be charged with vehicular manslaughter. 24

Pursuant to existing law, persons convicted of driving under the influence of drugs or alcohol may have their driving privileges suspended or revoked. 25 Chapter 937 provides that for purposes of license suspension or revocation, a conviction of vehicular manslaughter is deemed a convic-


15. Id. §193(c)(l).
16. Id. §192(3)(b).
17. Id. §193(c)(2).
18. Id. §192(3)(c).
19. Id. §193(c)(3).
20. Id. §192(3)(d).
21. Id. §193(c)(4).
23. See 1982 Cal. Stat. c. 1337, §2, at 7137 (amending CAL. VEH. CODE §23153); see also People v. Rocha, 80 Cal. App. 3d 972, 976, 146 Cal. Rptr. 81, 83 (1978) (although a person could be convicted of both crimes, only one punishment may be imposed).
25. See CAL. VEH. CODE §13350.
tion of driving under the influence.\textsuperscript{26} In addition, a vehicular manslaughter conviction is deemed a prior conviction of driving under the influence for purposes of sentence enhancement.\textsuperscript{27} Finally, in an apparent response to a perceived disparity between murder and voluntary manslaughter sentences,\textsuperscript{28} Chapter 941 increases the punishment for voluntary manslaughter from imprisonment in the state prison for two, four, or six years to imprisonment for three, six, or eleven years.\textsuperscript{29}

\textsuperscript{26} Id. §13350.5; \textit{see also} CAL. VEH. CODE §§13350, 23180 (grounds for revocation or suspension include convictions for driving under the influence).

\textsuperscript{27} Id. §23156; \textit{see also} §23185 (grounds for sentence enhancement include prior conviction of driving under the influence).

\textsuperscript{28} \textit{See} Assemblyman Byron Sher, Press Release, January 19, 1983 (copy on file at the Pacific Law Journal) (referring to the conviction of Dan White for the killing of San Francisco Mayor George Moscone and Supervisor Harvey Milk); \textit{see also} Telephone conversation with Terry Terauchi, Legislative Aide to Senator David Roberti (July 27, 1983) (notes on file at the Pacific Law Journal).


\section*{Crimes; poisoning of products or water supplies}

Health and Safety Code §§26519, 26625, 26720, 26741 (new); Penal Code §347 (repealed); §347 (new).

SB 40 (Torres); 1983 STAT. Ch 1172

\textit{(Effective September 29, 1983)}

Support: Department of Finance; Department of Health Services; Johnson & Johnson; The Proprietary Association

Prior to the enactment of Chapter 1172, provisions prohibiting food poisoning forbade only the willful\textsuperscript{1} mixing of a harmful substance with food, drink, or medicine.\textsuperscript{2} With the enactment of Chapter 1172,\textsuperscript{3} it is now unlawful to willfully mingle any poison\textsuperscript{4} or other harmful substance with a pharmaceutical product, food, drink, or medicine (hereinafter referred to as products).\textsuperscript{5} Prior provisions forbidding the poisoning of drinking water prohibited only the willful poisoning of any spring, well, or reservoir.\textsuperscript{6} Chapter 1172 prohibits the willful placing of any poison or other harmful substance in public water supplies, springs, wells, or reservoirs (hereinafter referred to as reservoirs).

\textsuperscript{1} CAL. PENAL CODE §7(f) (definition of willfully).


\textsuperscript{3} Chapter 1172 originally was introduced as a response to the Tylenol poisonings in Chicago in the Fall of 1982. Phone conversation with Senator Art Torres, August 4, 1983 (notes on file at the Pacific Law Journal).

\textsuperscript{4} CAL. BUS. & PROF. CODE §4160(c) (definition of poison).

\textsuperscript{5} CAL. PENAL CODE §347(a).

Chapter 1172 provides an enhanced penalty of three years for each violation of this provision that causes great bodily injury, or each violation that involves a poison or harmful substance which may cause death if ingested.

Prior law stipulated that the willful addition of harmful substances to products must have been made with the specific intent to injure another. Chapter 1172 instead applies an objective standard of intent by requiring that defendants either know or should know that their act will cause injury to a human being at the time the harmful substance or poison is added to the product or water supply.

In addition, Chapter 1172 punishes the malicious reporting of actual or potential poisoning or mingling of a harmful substance in a product or water supply when the defendant knows the report is false. This crime is punishable by imprisonment in the county jail or state prison for a term not to exceed one year. Finally, Chapter 1172 adopts federal regulations relating to tamper-resistant packaging, and declares that any drug, device, or cosmetic is adulterated or misbranded if it fails to comply with federal standards.

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7. CAL. PENAL CODE §347(a).
11. CAL. PENAL CODE §347(b).
12. Id.
13. See CAL. HEALTH & SAFETY CODE §§26625, 26720 (adopts federal standards relating to adulteration of drugs, devices, and cosmetics), 26655, 26741 (adopts federal standards dealing with the misbranding of drugs, devices, and cosmetics). Chapter 1172 also requires that the Department of Health Services conduct a study of feasible methods for the packaging and sale of food. The department must determine which methods will best protect the public from adulteration, and present these findings to the legislature. Id. §26519
14. Id. §26010 (definition of drug).
15. Id. §26009 (definition of device).
16. Id. §26005 (definition of cosmetic).
17. See id. §§26625 (presumption of adulterated drug or device), 26720 (presumption of adulterated cosmetic).
18. See id. §§26655 (presumption of misbranded drug or device), 26741 (presumption of misbranded cosmetic).

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Crimes; spousal rape

Penal Code §262 (amended).
Spousal rape is an act of sexual intercourse by one spouse accomplished against the will of the other spouse by (1) means of force, (2) instilling fear of bodily injury in the victim or another person, or (3) threatening future retaliation against the victim or another person. Under prior law, an arrest or prosecution for spousal rape was prohibited unless the violation was reported to a peace officer or district attorney within thirty days after the violation. Chapter 1193 extends the time limit for reporting spousal rape to ninety days after the violation.

1. CAL. PENAL CODE §262(a) (definition of spousal rape). A reasonable possibility must exist that the perpetrator will execute the threat. Id. Spousal rape is punishable by imprisonment in the county jail for not more than one year or in the state prison for three, six, or eight years. Id. §264. See Comment, Marital Rape in California: For Better or Worse, SAN. FERN. V. L. REV. 239 (1980).

2. CAL. PENAL CODE §§830-.8 (definition of peace officer). The peace officer acting on the report must have the power to arrest persons for spousal rape charges. Id. §262(b).

3. The report must be made to the district attorney for the county in which the violation occurred. Id.


5. Compare CAL. PENAL CODE §262(b) with 1982 Cal. Stat. c. 1113,§1, at___(amending CAL. PENAL CODE §262). An indictment must be found, an information filed, or the case certified in the superior court within three years after commission of the rape. CAL. PENAL CODE §800(a).
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rape, sodomy, or oral copulation. Under prior law, persons lacked capacity to give consent in these specified situations if they suffered temporary or permanent lunacy or other unsoundness of mind. Chapter 949 instead provides that incapacity to give legal consent is established if the victim suffers a physical disability or a mental disease, defect, or disorder. Existing law also requires that in cases of oral copulation and sodomy, the alleged victim’s incapacity must be known or reasonably should be known to the defendant. Chapter 949 extends this standard of reasonable knowledge to the defendant in rape cases.

1. CAL. PENAL CODE §261 (definition of rape).
2. Id. §286(a) (definition of sodomy).
3. Id. §288a(a) (definition of oral copulation).
6. CAL. PENAL CODE §§286(g) (sodomy), 288a(g) (oral copulation).

Crimes; pimping and pandering

Penal Code §§266h, 266i, 1203.065 (amended).
AB 491 (Hughes); 1983 STAT. Ch 79
(Effective June 14, 1983)
Support: California Peace Officers Association; Department of Corrections; Peace Officers Research Association of California

The intent behind pimping and pandering laws is to discourage prostitution by punishing those who promote it. Under prior law, a person convicted of pimping or pandering was eligible for probation or suspension of the execution of the sentence unless the prostitute was under fourteen years of age. Prior law specified, however, that as a condition of the probation or suspended sentence, the person was required to serve three

1. CAL. PENAL CODE §266h (definition of pimping).
2. Id. §266i (definition of pandering).
years in a state prison. In an apparent attempt to further the underlying intent of pimping and pandering laws, Chapter 79 provides that probation or suspension of the execution of sentence will be denied all persons convicted of pimping or pandering.

5. 1982 Cal. Stat. c. 1119, §§1, 2, at ___ (amending CAL. PENAL CODE §§266h, 266i).

Crimes; furnishing controlled substances to minors

Health & Safety Code §11353.5(new).
AB 1964 (Connelly); 1983 STAT. Ch 951
Support: Department of Alcohol and Drug Abuse; Department of Finance

The California Uniform Controlled Substances Act provides that any person, eighteen years of age or older who either offers to or does unlawfully sell, furnish, administer, or give any controlled substance to a minor, is subject to three, four, or five years in the state prison. Chapter 951 creates a related separate offense by proscribing persons eighteen years or older from preparing for sale, selling, or giving away controlled substances to minors under fourteen years of age upon the grounds of or within any school or public playground. The penalty for a violation of these provisions is imprisonment in the state prison for five, six, or seven years.

1. CAL. HEALTH & SAFETY CODE §11000 (short title). See generally id. §§11000-11993 (California Uniform Controlled Substances Act).
2. Id. §11022 (definition of person).
3. Id. §11016 (definition of furnish).
4. Id. §11007 (definition of controlled substance); see id. §§11054-11058 (schedules of controlled substances).
5. CAL. CIV. CODE §25 (definition of minor).
6. CAL. HEALTH & SAFETY CODE §11353.
7. Chapter 951 is to be known as the School Safety Act of 1983. Id. §11353.5.
8. Provisions of Chapter 951 pertain to schools providing instruction for any grades between kindergarten and twelfth grade, inclusive. CAL. HEALTH & SAFETY CODE §11353.5. These activities must not occur while a school is open for classes or school-related programs, or during the time classes or programs are being conducted. Id.
9. Id. The proscribed activities must occur on public playgrounds during the hours when school related programs for minors are being conducted. Id.
10. Id.

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Chapter 1314 specifies criminal penalties for the possession or use of nitrous oxide in a non-medicinal setting. An individual is guilty of a misdemeanor for possessing with the intent to breathe, inhale, or ingest nitrous oxide or any substance containing nitrous oxide for the purpose of causing an altered physical or mental condition, or for knowingly and intentionally being under the influence of nitrous oxide. The provisions of Chapter 1314 do not apply, however, to any person under the influence of either nitrous oxide or material containing nitrous oxide pursuant to administration by a licensed dentist or physician and surgeon.

Existing law provides that under specified conditions, defendants are eligible for a pretrial diversionary program for certain drug-related violations. Chapter 1314 permits participation in these programs by persons who use a forged or altered prescription to obtain narcotic drugs. These drugs, however, must have been obtained for the personal use of the defendant and must not have been sold or furnished to another. Chapter 1314 further provides that successful completion of a diversion program for the use of a forged prescription will not prohibit an administrative agency from taking disciplinary action against a licensee or from denying a license.

1. See CAL. PENAL CODE §381b.
2. Id.
3. See id. (prohibited conditions are intoxication, elation, euphoria, dizziness, stupefaction, or dulling of the senses, or for the purpose of changing, distorting or disturbing the audio, visual or mental processes).
4. Id.
5. CAL. BUS. & PROF. CODE§1646.1 (licensing requirements for dentists to administer general anesthesia).
6. CAL. PENAL CODE §381b.
7. Id. §1000(a) (conditions listed).
8. Id.; see also Comment, Diversion and The Judicial Function, 5 PAC. L.J. 764, 764 (1974) (defendants may avoid stigma of criminal conviction by choosing a rehabilitation program).
9. CAL. PENAL CODE §1000(a) (violations listed).
10. Compare id. with 1975 Cal. Stat. c. 1267, §1, at 3328 (amending CAL. PENAL CODE§1000(a)).
11. Compare CAL. PENAL CODE §1000(a) with 1975 Cal. Stat. c.1267, §1, at 3328 (amending CAL. PENAL CODE§1000(a)).
12. CAL. PENAL CODE §1000(c); CAL. HEALTH & SAFETY CODE §11368.
14. Id. §1000(c). The provisions of this section do not expand or restrict California Penal Code section 1000.3. Id.
Crimes; possession of marijuana

Health and Safety Code §§11352.5, 11357, 11360, 11361.5 (amended); Penal Code §§1203.04, 1203.07 (amended).

SB 94 (Presley); 1983 STAT. Ch 434
Support: City of Los Angeles; Department of Finance; Department of Youth Authority; State Bar Committee on Juvenile Justice
Opposition: American Civil Liberties Union; San Francisco Delinquency Prevention Commission

AB 1242 (Davis); 1983 STAT. Ch 223
Support: Attorney General; California District Attorney's Association; California Peace Officers Association; Department of Finance
(Section 1 effective Sept. 1, 1983).

Existing law provides that possession of any amount of marijuana upon the grounds of, or within, designated schools is a misdemeanor.

Minors guilty of a first offense are punished by a fine of up to $250. The penalty for adults, and for minors guilty of a second or subsequent offense, is a fine of up to $500, imprisonment in the county jail, or both a fine and imprisonment.

Chapter 434 clarifies existing law by providing that a person eighteen years of age or older who possesses not more than 28.5 grams of marijuana upon the grounds of, or within, designated schools is guilty of a misdemeanor. These persons may be punished by a fine up to $500, imprisonment in the county jail for up to 10 days, or both a fine and imprisonment. Persons under the age of eighteen who possess not more than 28.5 grams of marijuana upon the grounds of, or within, designated schools also are guilty of a misdemeanor. The punishment for these individuals is (1) for a first offense, by a fine of not more than $250, and (2) for a second or subse-

1. CAL. HEALTH & SAFETY CODE §11357(d) (any school providing instruction in kindergarten or grades one through twelve, during hours that the school is open for classes or school related programs).
2. Id. §11357(d),(e).
3. Id. §11357(d).
5. Chapter 434 applies to all marijuana other than concentrated cannibus. CAL. HEALTH & SAFETY CODE §11357(d),(e).
7. CAL. HEALTH & SAFETY CODE §11357(d).
8. Id. §11357(e).
Crimes frequent offense, by a fine of not more than $500, or commitment to a juvenile hall, ranch, camp, forestry camp, or secure juvenile home for a period of not more than ten days, or both a fine and commitment. Finally, the provisions of Chapter 434 and Chapter 223 provide a uniform statutory standard of weight for specific controlled substance statutes by substituting the amount of 28.5 grams for the previous measure of one avoirdupois ounce, and 14.25 grams for the measure of one-half ounce.

10. See CAL. HEALTH & SAFETY CODE §§11352.5, 11357, 11360; CAL. PENAL CODE §§1203.04, 1203.07.

Crimes; nuisance—firearms and weapons

Penal Code §12028 (amended).
SB 93 (Presley); 1983 STAT. Ch 397
Support: California Peace Officers Association; Department of Youth Authority; Riverside Police Department
Opposition: California Public Defenders Association

The Dangerous Weapons Control Act prohibits any person convicted of a felony from owning or possessing a concealable firearm. Under existing law, the unlawful concealed carrying of specified weapons upon the person or within a vehicle constitutes a nuisance. In addition, any firearm used in the commission or attempted commission of a felony or a

1. See CAL. PENAL CODE §§12000-12550; see id. §12000 (short title).
2. Id. §7 (definition of person).
3. Id. §17 (definition of felony).
4. Id. §12021; see id. §12001(a) (definition of firearm capable of being concealed).
5. See id. §12028(a); see also id. §§653k, 12020, 12025 (weapons include concealable firearms, switchblade knives, blackjacks, slingshots, nunchakus, sawed-off shotguns, and metal knuckles).
6. Id. §12028(a); see CAL. CIV. CODE §3479 (definition of nuisance); see also CAL. CIV. CODE §3494 (a public nuisance may be abated by any authorized public body or officer).
7. See Opinion of the Legislative Counsel, 1971 Senate Journal 1906, 1908 (the words “used in the commission of any misdemeanor or felony” include uses of firearms that do not involve actual physical use, e.g. bringing loaded firearms into certain public property, burglary, and possession of deadly weapons with intent to assault).
misdemeanor\(^8\) is a nuisance.\(^9\) With the enactment of Chapter 397,\(^10\) a firearm is also a nuisance if used by a juvenile in the commission or attempted commission of an offense that the juvenile court determines would be a felony or misdemeanor if committed by an adult.\(^11\)

\[^8\] CAL. PENAL CODE § 17(a) (definition of misdemeanor).
\[^9\] Id. §12028(b). Upon the conviction of the defendant, the weapon must be surrendered to the head of the local law enforcement agency and may be destroyed or offered for sale at public auction. Id. §12028(o), (d).
\[^11\] CAL. PENAL CODE §12028(b).

**Crimes; nuisance—red light districts**

Penal Code §§11225,11230 (amended).

AB 1497 (Roos); 1983 STAT. Ch 421

Support: Attorney General; League of California Cities; Office of Local Government Affairs; Peace Officers Research Association of California

The Red Light Abatement Law\(^1\) declares that every building\(^2\) or place used for illegal gambling,\(^3\) lewdness,\(^4\) or prostitution\(^5\) is a nuisance.\(^6\) Under existing law, a nuisance may be enjoined, abated, or prevented.\(^7\) The California Supreme Court, in *People ex rel. Van De Kamp v. American Art Enterprises, Inc.*,\(^8\) an action to abate publication of sexually explicit material, overturned an order imposing damages against the owners of premises where sexually explicit materials were published.\(^9\) The court declared that damages were not sanctioned by existing statutory law,\(^10\) the

\[^1\] See generally CAL. PENAL CODE §§11225-11235.
\[^2\] Id. §11225 (definition of building).
\[^3\] Id. §330 (definition of gambling).
\[^4\] Id. §314 (definition of lewd or obscene conduct).
\[^5\] Id. §647(b) (definition of prostitution).
\[^6\] Id. §11225; CAL. CIV. CODE §3479 (definition of nuisance); see also CAL. CIV. CODE §3481 (definition of private nuisance); CAL. PENAL CODE §370 (definition of public nuisance).
\[^7\] See CAL. CIV. CODE §3491 (remedies against a public nuisance, see also id. §3501 (remedies for private nuisance).
\[^8\] 33 Cal. 3d 328, 656 P.2d 1170, 188 Cal. Rptr. 740 (1983).
\[^9\] Id. at 333, 656 P.2d at 1171, 188 Cal. Rptr. at 742. The trial court concluded injunctive relief was inappropriate because the building subsequently had been leased to an innocent third party. Id. at 333, 656 P.2d at 1171, 188 Cal. Rptr. at 742. On remand, however, the trial court imposed an award of damages to penalize the property owners. Id. at 333, 656 P.2d at 1171, 188 Cal. Rptr. at 742.
\[^10\] See CAL. PENAL CODE §§11226-11227 (provides for temporary and perpetual injunctive relief against the maintainance of a nuisance), 11230 (fixtures used in maintainance a nuisance may be removed from the premises and sold, and the premises closed for a period of one year).
primary purpose of which was to reform the property, rather than to punish the property owner.  

Chapter 421 authorizes the recovery of damages under the Red Light Abatement Law by allowing the trial court to order the person responsible for maintaining the nuisance to pay damages. The amount of damages is not to exceed the fair market rental value of the building for one year. Damages collected pursuant to Chapter 421 will be available to compensate victims of crime who suffer pecuniary loss.

1. 33 Cal. 3d at 332, 656 P.2d at 1171, 188 Cal. Rptr. at 742.
3. CAL. PENAL CODE §11230.
4. Chapter 421 stipulates that the actual rent being paid for the building, any vacancies therein, and expert testimony may all be considered in determining the fair market rental value. Id.
5. Id.
6. Id.
7. CAL. GOV'T CODE §13960(a) (definition of victim). Damages collected will be deposited in the Restitution Fund of the State Treasury. CAL. PENAL CODE §11230.
8. Id.
9. Id. See CAL. GOV'T CODE §13960(c) (definition of pecuniary loss).

**Crimes; welfare fraud**

Welfare & Institutions Code §§11482.5, 11483.5 (new); §11482 (amended).

SB 227 (Green); 1983 STAT. Ch1235

Support: Department of Finance; Department of Social Services; Los Angeles County

Existing law punishes as a misdemeanor the knowing, willful, and fraudulent attempt to obtain benefits under the Aid to Families with Dependent Children program. In addition, existing law contains a graduated penalty provision for the actual receipt of this aid by means of a false statement, false representation, impersonation, or other fraudulent device. With the enactment of Chapter 1235, the penalty for attempted and actual welfare fraud is increased in certain situations. Specifically, a person commits a felony by (1) knowingly filing multiple applications for aid with an intent to receive multiple payments during one benefit period, (2) applying for aid claiming a false identity, or (3) filing an application for a

1. CAL. WELF. & INST. CODE §§11482, 11200-11492 (Aid to Families with Dependent Children program).
2. Id. §11483.
3. Id. §§11482.5, 11483.5. Compare id. §11482.5 with id. §11482; id. §11483.5 with id. §11483.
fictitious person. A person who obtains aid through one of these enumerated methods also is guilty of a felony. Under Chapter 1235, the fraudulent application for and the wrongful receipt of aid is punishable by sixteen months, two, or three years in the state prison, or imprisonment in the county jail.

4. Id. §§11482.5.
5. Id. §§11483.5.
6. Id. §§11482.5, 11483.5.

Crimes; trespass

Penal Code §602 (amended).
AB 115 (Costa); 1983 STAT. Ch 199
Support: California Cattlemen’s Association; California Farm Bureau;
Peace Officers Research Association of California; State Chamber of Commerce

Under existing law, a person is guilty of trespass if, upon a request from the owner, owner’s agent, or person in lawful possession (hereinafter referred to as “owner”), the person refuses or fails to leave land, real property, or structures belonging to or lawfully occupied by another and not open to the general public. Prior to the enactment of Chapter 199, a refusal to obey a peace officer’s request to leave property constituted a trespass only if the peace officer was accompanied by the owner. Chapter 199 provides that a person is guilty of trespass for refusing to obey a peace officer’s instructions to leave property after being informed that the peace officer is acting at the request of the owner. Separate requests must be made by the property owner on each occasion that a peace officer’s assistance is necessary. A single request, however, may cover a time period of up to thirty days if a fire hazard exists, or if the owner is absent from the property. Furthermore, a single request for a peace officer’s assistance will remain in effect for six months if notice is posted that the property will

1. CAL. CIV. CODE §659 (definition of land).
2. Id. §658 (definition of real property).
3. Girard v. Ball, 125 Cal. App. 3d 772, 788, 178 Cal. Rptr. 406, 414 (1981) (definition of trespass); see also CAL. PENAL CODE §602 (enumerating examples of trespass). Failure to obey the owner’s request to leave the property is a misdemeanor. An exception is made, however, for persons engaged in specified labor union activities. Id. §602(n).
4. CAL. PENAL CODE §§830-.8 (definition of peace officer).
6. CAL. PENAL CODE §602(n).
7. Id.
8. Id.
be closed to the public. 9

9. Id.

Crimes; vandalism motivated by religious prejudice

Penal Code §594.3 (amended).  AB 1890 (Davis); 1983 STAT. Ch 726  
Support: Attorney General; County of Los Angeles; Department of Corrections; Department of Finance  
Opposition: American Civil Liberties Union; California Attorneys for Criminal Justice; Friends Committee for Legislation

Under existing law, a person convicted of knowingly1 committing an act of vandalism2 upon a church, synagogue, or other specified building used for religious purposes3 is subject to either misdemeanor4 or felony5 punishment.6 Chapter 726 is an attempt to further deter vandalism motivated by racial and religious prejudice.7 Pursuant to Chapter 726, a person who commits vandalism motivated by the race, color, religion, or national origin of another individual or group of individuals is guilty of a felony when that vandalism is meant to intimidate and deter the individuals from freely exercising their religious beliefs.8

1. See CAL. PENAL CODE §7(5) (definition of knowingly).
2. See id. §594(a) (definition of vandalism).
3. Id. §594.3(a)(other buildings include those owned and occupied by a religious educational institution, or a building primarily used as a place of worship where religious services are regularly conducted).
4. See id. §17(a) (definition of a misdemeanor).
5. See id. (definition of a felony).
6. Id. §594.3(a). Under existing law, violaters of this provision may be imprisoned in the county jail for up to one year or in the state prison. Id.
7. See 1983 Cal. Stat. c. 726, §2, at—.
8. CAL. PENAL CODE §594.3(b). Violating the provisions of Chapter 726 is punished with imprisonment in the state prison. Id.

Crimes; crimes against the elderly

Penal Code §1203.09 (amended).  AB 1843 (Baker); 1983 STAT. Ch 993  
(Effective September 22, 1983)  
Support: Commission on Aging; Seniors Round Table; Youth and Adult Correctional Agency  
Opposition: American Civil Liberties Union; Department of Correc-
Existing law provides that a person must be denied probation\(^1\) or a suspended sentence\(^2\) if the person commits or attempts to commit certain unlawful acts\(^3\) against certain disabled persons sixty years of age or older,\(^4\) and inflicts great bodily injury\(^5\) upon the victim in the course of committing the offense.\(^6\) Chapter 993 expands these provisions to prohibit the granting of probation or a suspended sentence to any person who commits the following offenses against a person sixty years of age or older: (1) assault with a deadly weapon or instrument,\(^7\) (2) battery that results in physical injury requiring professional medical treatment,\(^8\) (3) robbery,\(^9\) or (4) mayhem.\(^10\) The provisions of Chapter 993 apply except in unusual cases in which the interests of justice would best be served by granting probation.\(^11\)

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1. CAL. PENAL CODE §1203(a) (definition of probation).
2. Id. §1203.1 (definition of suspended sentence).
3. Id. §1203.09(b) (unlawful acts include murder, assault with intent to commit murder, robbery, kidnapping for ransom, extortion, or robbery, burglary of the first degree, rape by force or violence, and assault with intent to commit rape, sodomy, or robbery).
4. Id. §1203.09(a) (disabled persons include blind persons, paraplegics, and quadriplegics).
5. Id. §12022.7 (definition of great bodily injury).
6. Id. §1203.09(a). The existence of these facts must be alleged in the information or indictment, and either admitted by the defendant or found to be true. Id. §1203.09(c).
7. Id. §245 (definition of assault with a deadly weapon).
8. Id. §242 (definition of battery).
9. Id. §211 (definition of robbery).
11. CAL. PENAL CODE §1203.09(f).

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**Crimes; assaults on public officials**

Penal Code §217.1 (amended).

SB 65 (Davis); 1983 STAT. Ch 683

Support: Attorney General; California Peace Officers Association; Department of Corporations; Department of Finance; Peace Officers Research Association of California

Existing law contains distinct penalties for an assault\(^1\) on the President or Vice President of the United States, the Governor of any state or territory, any United States justice or judge, or the secretary of an executive

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1. CAL. PENAL CODE §240 (definition of assault).
Chapter 683 increases this specific category of public officials to include any (1) justice or judge, (2) director of an executive agency or department of the United States, a state, or territory, (3) elected official of the United States, a state, or territory, (4) mayor, (5) city council member, (6) county supervisor, (7) sheriff, (8) district attorney, or (9) chief of police of a municipal police department.

Under prior law, an assault on any of the specified public officials was punishable as a felony. With the enactment of Chapter 683, an assault on a public official is punishable by imprisonment in the county jail for a period not exceeding one year or incarceration in the state prison. These penalties apply, however, only if the assault is to prevent the performance of the official's duties, or is in retaliation for the performance of those duties. In addition, a person who attempts to murder any of the specified public officials is subject to confinement in the state prison for a term of fifteen years to life. Finally, Chapter 683 provides that existing statutory provisions for term reduction or time credits are available to reduce the minimum prison term imposed.

Penal Code §243.6 (new).
AB 1724 (Filante); 1983 STAT. Ch 850

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6. Id.
8. People v. Adami, 36 Cal. App. 3d 452, 455, 111 Cal. Rptr. 544, 546 (1973) (elements of attempted murder are the intent to murder a human being and a direct but ineffective act in furtherance of that intent).
10. See id. §§2931 (reduction of term for good behavior and participation), 2935 (sentence reduction for heroic acts or exceptional assistance).
11. See id. §2933 (worktime credits on sentences).
12. Id. §217.1(b).
Crimes

Support: California Association of Professional Process Servers

Under existing law, an assault\(^1\) or battery\(^2\) committed against a person engaged in a specified profession,\(^3\) when the offender knows that the person is engaged in that profession, is punished by a fine of up to $1000, imprisonment in the county jail for up to one year, or both.\(^4\) Chapter 850 imposes these same penalties on a person who commits an assault or battery against a process server\(^5\) when the offender knows that the victim is a process server engaged in the performance of official duties.\(^6\)

1. **CAL. PENAL CODE §240** (definition of assault). An assault is punishable under existing law by a fine of up to $500, imprisonment for up to six months, or both. **Id. §241(a).**
2. **Id. §242** (definition of battery). A battery currently is punishable by a fine of up to $1000, imprisonment for up to six months or both. **Id. §243(a).**
3. Specified professions protected by an increased penalty for assault include those of peace officer, fireman, emergency medical technician, mobile intensive care paramedic, physician, nurse, teacher, school administrator, school security officer, public transportation personnel, and custodial officer. See **id. §§241, 241.3, 243.**
4. **Id. §§241-4, 243-2.**
5. **CAL. BUS. & PROF. CODE §§22350** (definition of process server), 22351 (requirements for a process server).
6. **CAL. PENAL CODE §243.6.**

**Crimes; unauthorized use or taking of emergency vehicles**

Vehicle Code §10851 (amended).

AB 279 (Hauser); 1983 STAT. Ch 889

Support: California Ambulance Association; California Highway Patrol; Department of Finance

Under existing law, driving or taking a vehicle\(^1\) is a public offense\(^2\) when done without the owner’s consent and with the intent to permanently or temporarily deprive the owner of possession\(^3\) of or title to the vehicle.\(^4\) This offense is punishable by (1) imprisonment in the county jail for not more than one year, (2) imprisonment in the state prison, (3) a fine not exceeding $5000, or (4) both a fine and imprisonment.\(^5\)

Chapter 889 states that if the stolen vehicle is an ambulance\(^6\) or a dis-

1. **CAL. VEH. CODE §670** (definition of vehicle).
3. See **People v. Hernandez,** 115 Cal. App. 2d 435, 438, 252 P.2d 75, 77 (1953) (Possession of chattel is established when it is shown that a person has physical control with the intent to exercise this control, has not abandoned physical control, and no other person has that control).
4. **CAL. VEH. CODE §10851(a).**
5. **Id.** The punishment is applicable to any party, accessory, or accomplice to the crime. **Id.** The owner’s consent to taking or driving a vehicle is not presumed or implied because of consent on a previous occasion. **Id. §10851(c).**
6. **Id. §165(a)** (ambulance as an emergency vehicle).
tinctly marked vehicle of a law enforcement agency or fire department on an emergency call, the offense is a felony. 7 Violations are punishable by imprisonment in the state prison for two, three, or four years, a fine of not more than $10,000, or both. 8 These enhanced penalties apply to any party, accessory, 9 or accomplice 10 with knowledge that the vehicle is an emergency vehicle on an emergency call. 11 Finally, Chapter 889 requires that in an accusatory pleading, 12 a specific allegation must be made that the vehicle was an emergency vehicle on an emergency call, and that this fact was known to the accused. 13

7. CAL. PENAL CODE §17(a) (definition of a felony).
8. CAL. VEH. CODE §10851(b).
10. Id. §1111 (definition of accomplice).
11. CAL. VEH. CODE §10851(b).
12. CAL. PENAL CODE §691(4) (definition of accusatory pleading).
13. CAL. VEH. CODE §10851(d). Guilt may be established by (1) an admission of the defendant in open court, (2) a jury determination, (3) the court when a plea of guilty or nolo contendere is entered, or (4) a trial by the court sitting without a jury. Id.