



1-1-1980

## Crimes

University of the Pacific; McGeorge School of Law

Follow this and additional works at: <https://scholarlycommons.pacific.edu/mlr>



Part of the [Legislation Commons](#)

---

### Recommended Citation

University of the Pacific; McGeorge School of Law, *Crimes*, 12 PAC. L. J. (1981).

Available at: <https://scholarlycommons.pacific.edu/mlr/vol12/iss2/13>

This Greensheet is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in McGeorge Law Review by an authorized editor of Scholarly Commons. For more information, please contact [mgibney@pacific.edu](mailto:mgibney@pacific.edu).

# Crimes

## Crimes; sexual assault

Penal Code §§261, 262, 286, 288a, 289, 667.5, 1203.06, 1203.065, 1203.075, 1203.09 (amended).

AB 2899 (Levine); STATS 1980, Ch 587

Support: Attorney General of California; California District Attorneys Association; Department of Corrections; Office of the Governor, Legal Affairs Unit

SB 1930 (Watson); STATS 1980, Ch 915

Support: Department of Finance; Office of the Governor, Legal Affairs Unit

Prior to the enactment of Chapter 587, rape<sup>1</sup> and spousal rape<sup>2</sup> were defined to include acts of sexual intercourse met with resistance by the victim when the victim's resistance was overcome by force, violence, or threats of great and immediate bodily harm accompanied by the apparent power of execution.<sup>3</sup> Chapter 587 eliminates the resistance requirement and instead provides that rape or spousal rape occurs when sexual intercourse is accomplished against a person's will by means of force or fear of immediate and unlawful bodily injury<sup>4</sup> to the victim or another person.<sup>5</sup>

Apparently, Chapter 587 will alleviate the evidentiary difficulties that impeded rape convictions under prior law when the attack or threats coercing the victim to submit to the sexual intercourse were directed toward another or when there was little or no evidence outside the victim's own testimony to show that the victim resisted the attack and that the attack was overcome by the perpetrator of the rape.<sup>6</sup> Moreover, the changes in the rape statute appear to be in accord with

---

1. See CAL. PENAL CODE §261.

2. See *id.* §262. See generally 11 PAC. L.J., REVIEW OF SELECTED 1979 CALIFORNIA LEGISLATION 409 (1980) (rape-spousal rape).

3. See CAL. STATS. 1979, c. 994, §1, at —, §2 at — (amending CAL. PENAL CODE §261; enacting *id.* §262). See generally 1 B. WITKIN, CALIFORNIA CRIMES, *Crimes Against the Person* §§284, 285 (8th ed. 1974), (Supp. 1978).

4. See CAL. PENAL CODE §12022.7 (definition of bodily injury).

5. Compare *id.* §261 with CAL. STATS. 1979, c. 994, §1, at — (amending CAL. PENAL CODE §261); compare CAL. PENAL CODE §262 with CAL. STATS. 1979, c. 994, §2, at — (enacting CAL. PENAL CODE §262).

6. See generally Comment, *Rape and Rape Laws: Sexism in Society and Law*, 61 CALIF. L. REV. 919 (1973); Comment, *The Resistance Standard in Rape Legislation*, 18 STAN. L. REV. 680 (1965).

the legislature's previous declaration that the essential guilt of rape lies in the outrage to the person and the feelings of the victim of the rape, so that any sexual penetration, however slight, that occurs against the victim's will by means of force or fear is sufficient to complete the crime.<sup>7</sup> Further, this amended definition of rape will be applied in determining prison terms<sup>8</sup> and probation eligibility.<sup>9</sup>

Under prior law, sodomy,<sup>10</sup> oral copulation,<sup>11</sup> or penetration of the genital or anal openings by a foreign object<sup>12</sup> could be committed when a person was compelled to participate in these acts by threats of great bodily harm.<sup>13</sup> Chapter 915 expands the scope of a threat of great bodily injury to include those situations where the act is accomplished against the victim's will by fear of immediate and unlawful bodily injury on the victim or another person.<sup>14</sup> Existing law states that it is a crime to commit an act of sodomy or oral copulation by force or violence against the victim and against the will of the victim when voluntarily acting in concert with another person either by perpetrating the act or by aiding and abetting the other person to commit the act.<sup>15</sup> With the enactment of Chapter 915, the crime also may be committed by force or violence against a person other than the victim.<sup>16</sup> Finally, under prior law, penetration of the genital or anal openings by a foreign object was punishable by three, four, or five years in the state prison;<sup>17</sup> Chapter 915 increases these terms to three, six, or eight years.<sup>18</sup>

7. See CAL. PENAL CODE §263. See generally *id.* §§261, 262; 11 PAC. L.J., REVIEW OF SELECTED 1979 CALIFORNIA LEGISLATION 409, 410 (1980) (rape-spousal rape).

8. See CAL. PENAL CODE §667.5(a), (b), (c)(3).

9. See *id.* §§1203.06(a)(vii), (viii), 1203.065(a), 1203.075(a)(7), (8), 1203.09(a)(vii), (viii).

10. See *id.* §286(c)(3).

11. See *id.* §288(b).

12. See *id.* §289(a) (definition of penetration of the genital or anal opening by a foreign object).

13. See CAL. STATS. 1979, c. 944, §§6, 7, at —; CAL. STATS. 1978, c. 1313, §1, at 4300 (enacting CAL. PENAL CODE §§286, 288a, 289).

14. See CAL. PENAL CODE §§286(c), 288a(c), 289(a).

15. Compare *id.* §286 with CAL. STATS. 1979, c. 994, §6, at —; compare CAL. PENAL CODE §288a with CAL. STATS. 1979, c. 994, §7, at —.

16. See CAL. PENAL CODE §§286(d), 288a(d).

17. See CAL. STATS. 1978, c. 1313, §1, at 4300.

18. See CAL. PENAL CODE §289(a).

## Crimes; drug paraphernalia

Health and Safety Code §11364.5 (new); Penal Code §308 (amended).

AB 2442 (Levine); STATS 1980, Ch 542

Support: Department of Finance; Office of the Governor, Legal Affairs Unit

SB 1660 (Presley); STATS 1980, Ch 505

Support: Attorney General of California; California Parent Teachers Association; California Peace Officers Association; Department of Finance; District Attorneys Association; Office of the Governor, Legal Affairs Unit

Under prior law it was a misdemeanor to sell, give, or in any way furnish to a person under the age of 18 any tobacco, cigarette papers, or tobacco product.<sup>1</sup> Chapter 542 additionally prohibits and makes it a misdemeanor for any person to knowingly<sup>2</sup> supply minors with any instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, tobacco products, or any controlled substance.<sup>3</sup> Prior law also provided penalties ranging from a minimum of a \$25 fine or not more than 60 days imprisonment for a first offense to a \$300 fine and six months imprisonment for a third or subsequent violation.<sup>4</sup> Chapter 542 deletes these provisions, specifically penalizing only the failure to properly display a copy of the prohibition, assessing a five dollar fine for a first offense and a \$25 fine for additional violations, or imprisonment for up to 30 days.<sup>5</sup>

Chapter 505 requires that, in any place of business that maintains, displays, or furnishes drug paraphernalia,<sup>6</sup> the paraphernalia must be confined to a separate room or enclosure from which persons under the age of 18 are excluded unless accompanied by a parent or legal guardian.<sup>7</sup> In addition, at each entrance to the room or enclosure, a sign that legibly communicates the prohibition must be posted.<sup>8</sup> Violation of these provisions is not a criminal offense, but does constitute grounds for revocation or nonrenewal by the authorizing city or county<sup>9</sup> of any license or other entitlement permitting the operation of the business. Chapter 505 does not apply to authorized pharmacists, physicians, dentists, podiatrists, veterinarians, or distributors licensed by the California State Board of Pharmacy to sell or transfer drug paraphernalia.<sup>10</sup>

1. See CAL. STATS. 1972, c. 618, §115, at 1138 (enacting CAL. PENAL CODE §308).

2. See generally CAL. PENAL CODE §21; CALJIC No. 3.34 (4th ed. 1979); 1 B. WITKIN, CALIFORNIA CRIMES, *Criminal Intent* §53 (1963).

3. See CAL. PENAL CODE §308(a). See also CAL. HEALTH & SAFETY CODE §11007.

4. See CAL. STATS. 1972, c. 618, §115, at 1138.

5. See CAL. PENAL CODE §308(b).

6. See CAL. HEALTH & SAFETY CODE §11364.5(d) (definition of drug paraphernalia).

7. See *id.* §11364.5(a), (b), (c).

8. See *id.* §11364.5(a).

9. See *id.* §11364.5(g).

10. See *id.* §11364.5(f).

Statutes restricting the supply of drug paraphernalia have traditionally been challenged on grounds of vagueness under the due process clauses of the fifth and fourteenth amendments of the United States Constitution because of the failure to provide an ordinary person with fair notice or warning of the prohibited use of paraphernalia, thereby infringing on that person's legitimate use of paraphernalia.<sup>11</sup> Chapters 542 and 505 seem to meet this due process objection because they only restrict the availability of drug paraphernalia to minors,<sup>12</sup> who apparently do not have a legitimate alternative use for the paraphernalia since they are legally denied access to tobacco and tobacco products.<sup>13</sup> Moreover, the conduct of minors is subject to reasonable regulation by the state to an extent beyond the scope of state authority over adults.<sup>14</sup> In addition, the definition of drug paraphernalia used in Chapter 505<sup>15</sup> closely parallels the judicially sanctioned<sup>16</sup> definition proposed by the Federal Drug Enforcement Administration in the Model Drug Paraphernalia Act.<sup>17</sup> Both Chapter 505 and the Model Drug Paraphernalia Act define drug paraphernalia to include all equipment and materials intended or designed for use in the development of controlled substances or for their introduction into the human body.<sup>18</sup> In order to determine whether an object is drug paraphernalia, Chapter 505 permits a court or other authority to consider the owner's intended use of the object, the owner's prior convictions under any law relating to controlled substances, the existence and scope of legitimate uses of the object, and expert testimony concerning its use.<sup>19</sup> Whether an object qualifies as drug paraphernalia is a question of fact.<sup>20</sup>

Finally, no provisions of Chapter 542 or 505, nor any other provisions of law, may be construed to supersede any city or county ordinance regulating the sale or display to minors of drug paraphernalia or

11. See *Geiger v. Eagan*, 618 F.2d 26, 28, 29 (8th Cir. 1980). Accord, *Connally v. General Const. Co.*, 269 U.S. 385, 391 (1926); *People v. Barksdale*, 8 Cal. 3d 320, 327, 503 P.2d 257, 262, 105 Cal. Rptr. 1, 6 (1972). Cf. *Bowland v. Municipal Court*, 18 Cal. 3d 479, 492, 556 P.2d 1081, 1087, 134 Cal. Rptr. 630, 636 (1976).

12. See CAL. HEALTH & SAFETY CODE §11364.5(a), (b), (c), (g); CAL. PENAL CODE §308(a).

13. See CAL. PENAL CODE §308(a).

14. See *Bellotti v. Baird*, 443 U.S. 622, 635-37 (1979); *Prince v. Massachusetts*, 321 U.S. 158, 170 (1944); *In re Eric J.*, 25 Cal. 3d 522, 530, 601 P.2d 549, 553, 159 Cal. Rptr. 317, 321 (1979).

15. See CAL. HEALTH & SAFETY CODE §11364.5(d).

16. See *Geiger v. Eagan*, 618 F.2d 26, 28 (8th Cir. 1980).

17. Compare CAL. HEALTH & SAFETY CODE §11364.5(d) with *Bensinger, Proposal for the Control of Drug Paraphernalia*, 7 DRUG ENFORCEMENT 26, 29, 30 (1980).

18. See note 17 *supra*.

19. See CAL. HEALTH & SAFETY CODE §11364.5(e). See also *People v. Jenkins*, 13 Cal. 3d 749, 755, 532 P.2d 857, 860, 119 Cal. Rptr. 705, 708 (1975) (concerning appropriateness of expert testimony).

20. See *People v. Nickles*, 9 Cal. App. 3d 986, 993, 88 Cal. Rptr. 763, 767 (1970); *Fraher v. Superior Court*, 272 Cal. App. 2d 155, 160, 77 Cal. Rptr. 366, 370 (1969), *overruled on other grounds*, *People v. Fein*, 4 Cal. 3d 747, 484 P.2d 583, 94 Cal. Rptr. 607 (1971).

of any instrument designed for the smoking or ingestion of tobacco, tobacco products, or any controlled substance.<sup>21</sup> Also, the right of a city or county to enact legislation regulating these activities is not impeded by Chapters 542 or 505.<sup>22</sup>

---

21. See CAL. PENAL CODE §308(c); CAL. STATS. 1980, c. 505, §2, at —.

22. See CAL. PENAL CODE §308(c); CAL. STATS. 1980, c. 505, §2, at —.

## Crimes; assaults, attempted crimes

Penal Code §§216, 217, 221 (repealed); §217.1 (amended).

SB 1982 (Presley); STATS 1980, Ch 300

Support: Attorney General of California; Department of Corrections; Office of the Governor, Legal Affairs Unit

Under existing law, a person who attempts to commit a felony not otherwise excluded from the general attempt statute may be imprisoned for one-half the term of imprisonment prescribed for the substantive crime.<sup>1</sup> When the attempted crime, if completed, would have a maximum sentence of life imprisonment or death,<sup>2</sup> the punishment is imprisonment for five, seven, or nine years.<sup>3</sup> Chapter 300 repeals the separate penalties set for administration of poison or of any destructive substance with intent to kill when death does not result,<sup>4</sup> assault with intent to commit murder,<sup>5</sup> and assault with intent to commit any felony other than murder,<sup>6</sup> and consequently makes these offenses punishable solely under the existing general attempt statute.<sup>7</sup> Chapter 300 also makes the general attempt statute applicable to persons who commit any assault upon the President or Vice-President of the United States, the Governor of any state or territory, any United States justice or judge, or a secretary of any of the United States executive departments.<sup>8</sup>

Chapter 300 is an apparent response to the appellate court holding in *People v. Montano*.<sup>9</sup> In *Montano*, the court stated that the general at-

---

1. See CAL. PENAL CODE §664. See generally *id.* §220.

2. See *id.* §664.

3. See *id.*

4. Compare CAL. STATS. 1980, c. 300, §1, at — with CAL. STATS. 1978, c. 579, §8, at 1982 (amending CAL. PENAL CODE §216).

5. Compare CAL. STATS. 1980, c. 300, §2, at — with CAL. STATS. 1978, c. 579, §9, at 1982 (amending CAL. PENAL CODE §217).

6. Compare CAL. STATS. 1980, c. 300, §2, at — with CAL. STATS. 1976, c. 1125, §15, at 5037 (amending CAL. PENAL CODE §221).

7. See CAL. PENAL CODE §664. See generally 10 PAC. L.J., REVIEW OF SELECTED 1978 CALIFORNIA LEGISLATION 401 (1979) (increased determinate sentences).

8. Compare CAL. PENAL CODE §217.1 with CAL. STATS. 1978, c. 579, §10, at 1982.

9. 96 Cal. App. 3d 221, 158 Cal. Rptr. 47 (1979).

tempt statute operates only when no specific provision for punishment exists.<sup>10</sup> Therefore, if the Penal Code provides for specific punishments for attempted crimes,<sup>11</sup> a defendant must be sentenced accordingly.<sup>12</sup> For example, under this interpretation of the general attempt statute, a person convicted of assaulting another with the intent to kill would be sentenced under the prior specific attempt statute.<sup>13</sup> The defendant therefore receives a lesser punishment than if the attempt to kill had not included an assault, which would have come within the provisions of the general attempt statute.<sup>14</sup> Chapter 300 eliminates this disparity by repealing the before mentioned duplicative statutes.<sup>15</sup> This makes the general attempt statute with its more severe penalties applicable.<sup>16</sup>

10. See *id.* at 229, 158 Cal. Rptr. at 51-52. See generally *People v. Meriweather*, 263 Cal. App. 2d 559, 563, 69 Cal. Rptr. 880, 882-83 (1968).

11. See, e.g., CAL. STATS. 1978, c. 579, §§8, 9, at 1982; CAL. STATS. 1976, c. 1125, §15, at 5037.

12. See 96 Cal. App. 3d at 231-32, 158 Cal. Rptr. at 53-54.

13. See *id.*; CAL. STATS. 1978, c. 579, §9, at 1982.

14. See 96 Cal. App. 3d at 231-32, 158 Cal. Rptr. at 53-54. Compare CAL. PENAL CODE §664 with CAL. STATS. 1978, c. 579, §9, at 1982.

15. Compare CAL. STATS. 1980, c. 300, §2, at — with CAL. STATS. 1978, c. 579, §§8, 9, at 1982 and CAL. STATS. 1976, c. 1125, §15, at 5037.

16. See CAL. PENAL CODE §664. Compare CAL. STATS. 1980, c. 300, §§1, 2, 4, at — with CAL. STATS. 1978, c. 579, §§8, 9, at 1982 and CAL. STATS. 1976, c. 1125, §15, at 5037.

## Crimes; perjury—unsworn statements

Code of Civil Procedure §2015.5 (amended); Penal Code §777b (new); §§27, 118 (amended).

SB 1615 (Sieroty); STATS 1980, Ch 889

Code of Civil Procedure §2015.5 (amended).

(Operative July 1, 1981).

Support: Department of Finance; Office of the Governor, Legal Affairs Unit

Under existing law, unsworn statements, declarations, verifications, or certificates signed under penalty of perjury<sup>1</sup> may be used when a sworn statement would be used to support, establish, or prove any matter under California law.<sup>2</sup> However, prior to the enactment of Chapter 889, California law did not provide criminal penalties for perjury<sup>3</sup> committed by persons who signed documents under penalty of perjury *outside* of the state.<sup>4</sup> Chapter 889 gives California courts the jurisdic-

1. See CAL. PENAL CODE §118 (definition of perjury).

2. See CAL. CIV. PROC. CODE §2015.5. See generally 7 PAC. L.J., REVIEW OF SELECTED 1975 CALIFORNIA LEGISLATION 332 (1976) (declarations under penalty of perjury).

3. See CAL. PENAL CODE §126 (penalties for perjury).

4. See CAL. STATS. 1975, c. 666, §1, at 1456 (amending CAL. CIV. PROC. CODE §2015.5);

tion<sup>5</sup> to impose criminal penalties for perjury committed outside of the state in connection with documents subscribed to regarding matters in question in California proceedings<sup>6</sup> if the document is signed out of state pursuant to California law.<sup>7</sup> Chapter 889 also supplements existing law by requiring that unsworn statements be certified and declared under penalty of perjury and (1) if signed in California, specify the place and date of execution, or (2) if signed at any place, inside or outside of the state, indicate that it was signed under penalty of perjury pursuant to California law.<sup>8</sup>

Chapter 889 is similar to federal law<sup>9</sup> that allows the use of unsworn statements under penalty of perjury in all federal proceedings and the punishment of those who commit perjury, regardless of whether their declaration was executed inside of the territorial limits of the United States.<sup>10</sup> However, in California the courts have previously construed statutes according to the general proposition that a state ordinarily may not impose punishment for acts done outside of its territory,<sup>11</sup> and the California Penal Code provided very limited extraterritorial jurisdiction for acts committed outside of the state.<sup>12</sup> Chapter 889 apparently avoids these limitations because it only extends California jurisdiction to persons who commit perjury in other states when it is necessary to (1) insure truthfulness in the execution of unsworn statements made outside of the state for use in California proceedings and (2) to protect the function and interest of California in upholding the integrity of its judicial proceedings.<sup>13</sup>

CAL. STATS. 1957, c. 1612, §2, at 2959 (amending CAL. PENAL CODE §118); CAL. STATS. 1905, c. 478, §1, at 638 (amending CAL. PENAL CODE §27). See generally CALIFORNIA STATE BAR, 1978 CONFERENCE RESOLUTION 12-1.

5. See CAL. PENAL CODE §777b (perjury punishable in court where act, transaction, matter, action, or proceeding occurred).

6. See *id.* §§27(b), 118, 777b. See generally CALIFORNIA STATE BAR, 1978 CONFERENCE RESOLUTION 12-1.

7. See CAL. CIV. PROC. CODE §2015.5; CAL. PENAL CODE §§27(b), 118.

8. See CAL. CIV. PROC. CODE §2015.5.

9. Compare *id.* and CAL. PENAL CODE §777b with 28 U.S.C. §1746 (1976).

10. Compare CAL. CIV. PROC. CODE §2015.5 and CAL. PENAL CODE §777b with 18 U.S.C. §1621 (1976).

11. See *People v. Buffum*, 40 Cal. 2d 709, 716, 256 P.2d 317, 320 (1953). See generally CALIFORNIA STATE BAR, 1978 CONFERENCE RESOLUTION 12-1.

12. See CAL. STATS. 1951, c. 1674, §8, at 3831 (amending CAL. PENAL CODE §777); CAL. STATS. 1905, c. 478, §1, at 638.

13. See CAL. PENAL CODE §§27(b), 118; CALIFORNIA STATE BAR, 1978 CONFERENCE RESOLUTION 12-1.

## Crimes; witness intimidation

Penal Code §136 (repealed); §§136, 136.1, 136.2 (new); §137 (amended).



AB 2909 (Torres); STATS 1980, Ch 686

Support: Attorney General of California; California District Attorneys Association; Office of the Governor, Legal Affairs Unit

SB 1659 (Presley); STATS 1980, Ch 1120

Support: Attorney General of California; California Peace Officers Association; Office of the Governor, Legal Affairs Unit

Opposition: State Public Defender

Prior to the enactment of Chapter 686, a person who *willfully*<sup>1</sup> and *unlawfully*<sup>2</sup> prevented or dissuaded a witness<sup>3</sup> from attending a trial or other proceeding was guilty of a misdemeanor.<sup>4</sup> Under Chapter 686, it is now a misdemeanor (1) to *knowingly*<sup>5</sup> and *maliciously*<sup>6</sup> prevent or dissuade, or attempt to prevent or dissuade, a witness<sup>7</sup> or victim<sup>8</sup> from attending or giving testimony at a proceeding<sup>9</sup> and (2) to attempt to prevent or dissuade a witness or victim from making a police report, thereby causing an accusatory pleading or a probation or parole violation not to be sought or prosecuted or causing an arrest not to be made.<sup>10</sup> When force or an express or implied<sup>11</sup> threat of force<sup>12</sup> is used upon the person or property of a victim, witness, or any third person to knowingly and maliciously accomplish any of these acts, a felony punishable by imprisonment in the state prison for two, three, or four years has been committed.<sup>13</sup> In addition, Chapter 686 states that an act is a felony if knowingly and maliciously perpetrated in furtherance of a conspiracy, or perpetrated by a previous offender, or for pecuniary gain.<sup>14</sup> Further, any successful or unsuccessful attempt to intimidate a

1. See CAL. PENAL CODE §7(1) (definition of willfully). See generally *In re Smith*, 7 Cal. 3d 362, 364, 497 P.2d 807, 809, 102 Cal. Rptr. 335, 337 (1972); CALJIC No. 1.20 (4th ed. 1979).

2. See *Sultan Turkish Bath, Inc. v. Board of Police Comm'rs*, 169 Cal. App. 2d 188, 200, 337 P.2d 203, 210 (1959) (definition of unlawfully).

3. See *People v. Broce*, 76 Cal. App. 3d 71, 76, 142 Cal. Rptr. 628, 630 (1977). See also *Evans v. Superior Court*, 96 Cal. App. 2d 187, 189-90, 214 P.2d 579, 580-81 (1950); *People v. Martin*, 114 Cal. App. 392, 394-95, 300 P. 130, 132-33 (1931); *People v. McAllister*, 99 Cal. App. 37, 40-41, 277 P. 1082, 1084 (1929); CALJIC No. 1.03 (4th ed. 1979).

4. See CAL. STATS. 1979, c. 944, §1, at — (amending CAL. PENAL CODE §136).

5. See *People v. Calban*, 65 Cal. App. 3d 578, 584, 135 Cal. Rptr. 441, 444 (1976); CAL. PENAL CODE §7(5) (definition of knowingly). See generally 1 B. WITKIN, CALIFORNIA CRIMES, *Knowledge* §§58, 62 (1963).

6. See CAL. PENAL CODE §136(1) (definition of malice).

7. See *id.* §136(2) (definition of witness).

8. See *id.* §136(3) (definition of victim).

9. See *id.* §136.1(a).

10. See *id.* §136.1(b).

11. Compare *id.* §136.1(c) with CAL. STATS. 1979, c. 944, §1, at —.

12. See CAL. PENAL CODE §137(b) (definition of threat of force). See generally 2 PAC. L.J., REVIEW OF SELECTED 1970 CALIFORNIA LEGISLATION 369 (1971).

13. See CAL. PENAL CODE §136.1(c).

14. See *id.*

witness or victim is now punishable under the law.<sup>15</sup>

Chapter 686 provides that a court with criminal jurisdiction, upon a good cause belief that intimidation or dissuasion of a victim or witness is reasonably likely to occur or has occurred, may issue appropriate orders,<sup>16</sup> including the following: (1) that the defendant or other person before the court may not attempt to unlawfully influence a victim or witness;<sup>17</sup> (2) that the defendant or other person may not communicate with a specified witness or victim except as authorized through an attorney;<sup>18</sup> (3) for a hearing to be held to determine if one of the above-listed orders should issue;<sup>19</sup> or (4) that a consenting law enforcement agency under the court's jurisdiction will furnish protection for the witness or victim upon the court's finding of a clear and present danger of harm to the victim or witness.<sup>20</sup> The court may punish violation of any order under the misdemeanor or felony provisions of Chapter 686, if applicable, or by holding the violator in contempt of court.<sup>21</sup> A punishment for contempt of court will be credited against any sentence later imposed if the person in contempt is subsequently convicted of a crime under the witness and victim intimidation statute.<sup>22</sup>

With the enactment of Chapter 1120, misdemeanor sanctions for unlawfully influencing another person also apply to every person who induces another person to give false material information<sup>23</sup> pertaining to a crime to, or to withhold true material information pertaining to a crime from, a law enforcement official.<sup>24</sup> These sanctions, however, are not applicable to an attorney advising a client or to a person advising a member of his or her family.<sup>25</sup> In addition, the attempted or successful use of bribery,<sup>26</sup> fraud, or force or a threat of force<sup>27</sup> to influence the giving of material information pertaining to a crime to a law enforcement official is a felony punishable by imprisonment in the state prison

15. *See id.* §136.1(d).

16. *See id.* §136.2.

17. *See id.* §136.2(a), (b).

18. *See id.* §136.2(c).

19. *See id.* §136.2(d).

20. *See id.* §136.2(e).

21. *See id.* §136.2.

22. *See id.*

23. *See id.* §137(c). *See generally* MCCORMICK'S HANDBOOK OF THE LAW OF EVIDENCE, *The Meaning of Relevancy* §185 (2d ed. 1972); B. WITKIN, CALIFORNIA EVIDENCE, *Circumstantial Evidence* §§301, 302 (1966) (definition of relevancy and materiality). *See also* *People v. Broce*, 76 Cal. App. 3d 71, 76, 142 Cal. Rptr. 628, 630 (1977).

24. *See* CAL. PENAL CODE §137(e) (definition of law enforcement official). *Compare id.* §137 with CAL. STATS. 1979, c. 944, §2, at — (amending CAL. PENAL CODE §137).

25. *See* CAL. PENAL CODE §137(f).

26. *See id.* §137(a).

27. *See id.* §137(b).

for two, three, or four years.<sup>28</sup>

Since unsuccessful attempts at witness intimidation are generally the only attempts reported,<sup>29</sup> Chapters 686 and 1120 are designed to facilitate prosecution of witness intimidation by making any attempt punishable as part of the substantive crime.<sup>30</sup> Additionally, Chapter 1120 is apparently intended to provide further protection<sup>31</sup> for witnesses from intimidation by members of increasingly active juvenile gangs<sup>32</sup> that may try to interfere with a law enforcement official's acquisition of material information pertaining to a crime.<sup>33</sup>

---

28. *See id.* §137(a), (b).

29. *See* AMERICAN BAR ASSOCIATION SECTION OF CRIMINAL JUSTICE COMMITTEE ON VICTIMS, REDUCING VICTIM/WITNESS INTIMIDATION; A PACKAGE, 1, 9 (June, 1979).

30. *See* CAL. PENAL CODE §§136.1(d), 137(a), (b); 9 PAC. L.J., REVIEW OF SELECTED 1977 CALIFORNIA LEGISLATION 427, 428 (1978). *But see* *People v. Broce*, 76 Cal. App. 3d 71, 76, 142 Cal. Rptr. 628, 630 (1977).

31. *See* CALIFORNIA LEGISLATURE, SENATE SELECT COMMITTEE ON CHILDREN AND YOUTH, JUVENILE GANGS, 1, 6 (Nov. 5, 1979) (statement of Mr. Bascue, Deputy District Attorney for the City of Los Angeles).

32. *See id.* at 1 (statement of California State Senator Presley), 12 (statement of Mr. Bascue, Deputy District Attorney for the City of Los Angeles).

33. *See* CAL. PENAL CODE §137; CALIFORNIA LEGISLATURE, SENATE SELECT COMMITTEE ON CHILDREN AND YOUTH, JUVENILE GANGS, 171 (Nov. 5, 1979) (statement of Mr. Wright, Orange County Probation Department).