

San Diego District Attorney

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Remember 9/11/01—Support our Troops

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THIS EDITION’S WORDS OF WISDOM:

“You know your children have grown up when they stop asking you where they came from and refuse to tell you where they are going.” (Unknown)

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ADMINISTRATIVE NOTES:

New and Amended Statutes; Disclaimer: The statutes listed here are not intended to cover the entire body of the Legislature’s work for 2007. Only those statutes believed to be of interest to most law enforcement officers, with the concerns of prosecutors in mind, are included. Sentencing rules, typically covered better in other publications, have been avoided except when important to a new or amended offense. The statutes that are covered have been severely paraphrased, the degree of detail being dependent upon the newness, importance, and/or complexity of the statute. Although I have made a sincere effort to avoid taking any part of a statute out of context, it is *strongly* recommended that the unedited statute be consulted before attempting to use it either in the field or the courtroom. The effective date of each new or amended statute is January 1, 2008, unless otherwise indicated.

NEW AND AMENDED STATUTES:

Animals:

P.C. § 398 (New): *Animal Bites:*

It is an infraction (\$100 fine) for a person who owns or has custody or control of an animal, who knows or has reason to know that the animal bit another person, to fail to provide information (i.e., the owner’s name, address, and telephone number, and the name and license tag number of the biting animal) to the victim as soon as practicable, but no later than 48 hours after the biting incident.

If the person who has custody or control of the biting animal is a minor, the minor must provide identification or contact information for an adult owner or responsible party.

If the biting animal is required by law to be vaccinated against rabies, the owner or person in control of the animal must, within 48 hours of the bite,

provide the victim with information regarding the status of the animal's vaccinations.

The skin of the victim must be broken or punctured in order to constitute a bite.

P.C. § 596.7 (Amended): *Rodeos*:

The definition of a “*rodeo*” is expanded to a performance (previously a “*public performance*”) featuring competition between persons that includes three (previously four) or more of six specified events (i.e., bareback bronc riding, saddle bronc riding, bull riding, calf roping, steer wrestling, or team roping) (**subd. (a)**). A veterinarian must be present or on-call and able to arrive within one hour of an injury that requires treatment (**subd. (b) & (c)**). It is also required that a conveyance be available for the removal of an injured animal (**subd. (d)**). The use of an electric prod or similar device once an animal is in the holding chute is prohibited (**subd. (e)**) A rodeo performed on private property for which admission is charged, or that sells or accepts sponsorships, or is open to the public, constitutes a performance for the purpose of this section.

A violation of this section is an infraction and is punishable as follows: \$500 to \$2,000 for a first offense; \$1,500 to \$5,000 for second and subsequent offense. (**Subd. (f)**)

Note: The purpose of these changes is to expand the requirements of **P.C. § 596.7** to apply to a “*charreada*” (i.e., a Mexican rodeo).

Assault:

P.C. § 241 (Amended): *Assault on a Parking Control Officer*:

Subd. (b): It is a misdemeanor (6 months, \$2,000) to assault a parking control officer engaged in the performance of his or her duties, where the assaulter knows or reasonably should know that the victim is a parking control officer.

A “*parking control officer*” is defined as any person employed by a city, county, or city and county, to monitor and enforce state laws and local ordinances related to parking.

Note: Former **subd. (b)** of **section 241** is moved to **(c)** and former **(c)** is moved to **(d)**.

Child Abuse:

P.C. §§ 288.3, 288.4 (Amended): *Unlawful Contact with Minor:*

Former **P.C. § 288.3**, referring to the misdemeanor (1 year, \$5,000 fine) crime of arranging a meeting with a minor or a person believed to be a minor for the purpose of exposing his or her genitals, pubic or rectal area or having the child expose his or her genitals, public or rectal area, or engaging in lewd or lascivious behavior, has been renumbered to **P.C. § 288.4(a)(1)**.

The offense is a felony if (1) the defendant has a prior conviction for any offense listed in **P.C. § 290(c)** (16 months, 2 or 3 years; **subd. (a)(2)**), or (2) the defendant goes to the arranged meeting place and or about the arranged time (2, 3 or 4 years; **subd. (b)**).

P.C. § 288.3, referring to the felony (16 months, 2 or 3 years) crime of contacting or communicating with a minor with the intent to commit kidnapping, child endangerment, specified sexual assault, or a crime involving obscene matter, remains as **P.C. § 288.3**.

A second offense subjects the defendant to a 5 year enhancement (**subd. (c)**).

Note: In 2006, two different new crimes were created, one by the Legislature (SB 1128) and one by initiative (Jessica's Law; Proposition 83), but both were given the same section number; 288.3. Moving the one to P.C. § 288.4 corrects this confusion.

P.C. § 11165.5 (Amended): *Abuse or Neglect in Out-Of-Home Care:*

The section is amended to clarify that the phrase "*abuse or neglect in out-of-home care*" includes both (1) *the death* of a child other than by accidental means and (2) *physical injury* by other than accidental means.

P.C. § 11165.6 (Amended): *Child Abuse or Neglect:*

The section is amended to clarify that the phrase "*child abuse or neglect*" includes both (1) *the death* of a child other than by accidental means in addition to (2) *physical injury* by other than accidental means.

P.C. § 11166 (Amended): *Mandated Reporters; Discretion to Report Abuse or Neglect Discovered in the Reporter's Private Capacity:*

The amended section provides that a mandated reporter of child abuse or neglect qualifies as a person who *may* (but is *not required to*) report abuse

or neglect if the abuse or neglect is learned of or observed in the reporter's private capacity, i.e., outside his or her professional capacity or scope of employment.

Wel. & Inst. Code § 10850.4 (New): *Release of Victim Information in Fatal Abuse or Neglect Case:*

An administrative procedure is created by this new section for the release of information by a county welfare agency when a child has died and there is a reasonable suspicion that the fatality was caused by abuse or neglect.

The section requires a county welfare agency to release, upon request, the age and gender of the child, the date of death, whether the child was in foster care or in the home of his or her parent at the time of death, and whether an investigation is being conducted by a law enforcement agency or the county child welfare agency.

The section also requires that upon the completion of the investigation into the child's death, the following additional information must be released upon request: Previous referrals of abuse or neglect; the emergency response referral information form; the emergency response notice of referral disposition form; any cross reports completed by a county welfare agency to law enforcement; risk and safety assessments completed by the county child welfare agency; health records related to the child's death and previous injuries reflective of a pattern of abuse or neglect; and copies of police reports about the person against whom the child abuse or neglect was substantiated.

If the child's death occurred while the child was in foster care, the following additional documents must be released: Records pertaining to the foster parents' initial licensing and renewals; all reported licensing violations; and records of the training completed by the foster parents.

The section applies only to deaths that occur on or after January 1, 2008.

The county welfare agency must redact identifying information (names, addresses, telephone numbers, etc.); and information that would, after consultation with the district attorney, jeopardize a criminal investigation or proceeding, as well as any information that is privileged, confidential, or not subject to disclosure pursuant to any other state or federal law.

Defendants:

P.C. § 26 (Amended): *Mentally Incapacitated Suspects; “Idiots:”*

The word “*idiots*,” in describing persons who are legally incapable of committing crimes, is changed to “*persons who are mentally incapacitated*.”

P.C. § 31 (Amended): *Mentally Incapacitated Suspects; “Lunatics or Idiots:”*

The phrase “*lunatics or idiots*” in describing persons who are principals in the commission of a crime, is changed to “*persons who are mentally incapacitated*,” i.e.; “(C)ounseling, advising, or encouraging persons who are mentally incapacitated (instead of “*lunatics or idiots*”) to commit any crime.”

P.C. § 851.8 (Amended): *Court Findings of Factual Innocence; Petition to be Served on Law Enforcement Agency:*

A person seeking a court finding of factual innocence and an order for the sealing and destruction of arrest records must serve a copy of his or her petition on the law enforcement agency having jurisdiction over the offense as well as on the prosecuting attorney. The law enforcement agency is then entitled to present evidence to the court through the prosecuting attorney.

Disorderly Conduct:

P.C. § 647(e) (Repealed): *Loitering:*

The misdemeanor crime of loitering or wandering upon the streets or from place to place without apparent reason or business and refusing to identify one’s self and to account for one’s presence when requested by a peace officer, if the surrounding circumstances would indicate to a reasonable person that the public safety demands this identification, is repealed.

Note: This subdivision was found unconstitutional in ***Kolender v. Lawson*** (1983) 461 U.S. 352, and hasn’t been enforced since then.

The misdemeanor crime of lodging in a building, structure, or vehicle without permission is moved from **subd. (j)** to **subd. (e)**.

The misdemeanor crimes in **subd. (k)** are moved to **subd. (j)**.

P.C. § 647(j)(1) is now the crime of looking through a hole or opening, or viewing by any instrumentality, the interior of an area where the occupant has an expectation of privacy.

P.C. § 647(j)(2) is now the crime of using a concealed camera to photograph or record another person under or through the clothing worn for the purpose of viewing the body or undergarments of the other person, under circumstances in which the other person has a reasonable expectation of privacy.

P.C. § 647(j)(3) is now the crime of using a concealed camera to photograph or record a person who may be in a state of full or partial undress, for the purpose of viewing the body or undergarments worn by that person, in an area in which the other person has a reasonable expectation of privacy.

Domestic Violence:

Evid. Code § 1037.1 (Amended): *Domestic Violence Counselors and Government Employees:*

This amendment revises the definition of “*domestic violence counselor*” for the purposes of the “*Domestic Violence Counselor-Victim Privilege*” (E.C. §§ 1037–1037.8) to exclude government agency employees.

Note: The purpose of this amendment is to eliminate the use of the privilege when the counselor is a government employee, making him or her available to cooperate in an investigation and prosecution.

Evid. Code § 1037.2 (Amended): *Domestic Violence Counselor-Victim Privileged Communications:*

This amendment provides that a confidential communication within the context of the “*Domestic Violence Counselor-Victim Privilege*” includes both written and oral communications.

Evid. Code § 1037.4 (Amended): *Domestic Violence Counselor-Victim Privilege; Holder of the Privilege:*

This amendment provides that the “*holder of the privilege*” (i.e., the person authorized to claim he privilege) for purposes of the “*Domestic Violence Counselor-Victim Privilege*” cannot be the guardian or conservator of a victim where that guardian or conservator is accused of perpetrating the domestic violence against the victim.

Evid. Code § 1037.5 (Amended): *Domestic Violence Counselor-Victim Privilege*:

Amended section provides that the “*Domestic Violence Counselor-Victim Privilege*” applies in any proceeding specified in **Evid. C. § 901**.

Evid. C. § 901 defines “*proceeding*” as any action, hearing, investigation, inquest, or inquiry (whether conducted by a court, administrative agency, hearing officer, arbitrator, legislative body, or any other person authorized by law) in which testimony can be compelled.

P.C. § 273.5 (Amended): *Domestic Violence Restraining Orders*:

A sentencing court in a domestic violence case is vested with the power to consider issuing an order restraining the defendant from any contact with the victim for up to *10 years*. It is not relevant that the defendant is sentenced to prison or jail, or is placed on probation. In deciding the length of the restraining order, the court is to consider the seriousness of the case, the probability of future violations, and the safety of the victim and his or her immediate family.

P.C. § 679.05 (Amended): *Domestic Violence Advocates*:

A “*domestic violence advocate*” who, under the terms of this statute, may be present during a law enforcement interview at the option of the domestic violence victim, must advise the victim of any limitations on the confidentiality of communications between the victim and the advocate.

This amendment changes references to a “*domestic violence counselor*” to “*domestic violence advocate*” and “*district attorney*” to “*prosecutor*.”

A “*domestic violence advocate*” is defined as either a person employed by a program specified in **P.C. § 13835.2** (local assistance centers for victims and witnesses) for the purpose of rendering advice or assistance to victims of domestic violence, or a domestic violence counselor as defined in **Evid. Code § 1037.1**.

Firearms:

Gov’t. Code § 8571.5 (New): *Prohibition on the Seizure of Firearms by Law Enforcement*:

A police officer may not seize or confiscate any firearm or ammunition from an individual who is lawfully carrying or possessing the firearm or ammunition. However, the officer may temporarily disarm an individual

if the officer reasonably believes it is immediately necessary for the protection of the officer or another individual. An officer who disarms an individual is to return the firearm before discharging the individual unless the officer arrests the individual or seizes the firearm as evidence of the commission of a crime.

Note: This new section is in the part of the Government Code entitled the “*California Emergency Services Act.*” This new section is intended to prohibit an executive order disarming individuals who are in lawful possession of firearms during a state of emergency or crisis, and will conform California law to a new federal law, **Public Law 109-295**, which prohibits the confiscation of otherwise legal firearms from law-abiding citizens during a state of emergency by any agent of the Federal Government or by anyone receiving federal funds. However, it appears to be written broad enough to affect a police officer’s contacts with individuals on the street.

P.C. § 12001 (Amended): *Consultant-Evaluator:*

The title of “*consultant-evaluator*” is established, and defined as a consultant or evaluator who in the course of his or her profession is loaned firearms from a licensed firearms manufacturer for his or her research or evaluation, and has a current certificate of eligibility issued pursuant to **P.C. § 12071** (i.e., a background check by the California Department of Justice).

Note: This section is part of a bill that permits a firearms manufacturer to make a short-term loan of a firearm for the purposes of evaluating, studying, or testing the firearm without having the transaction processed through the California Department of Justice. The amendment also changes references to “*pistol, revolver, or other firearm capable of being concealed on the person*” to “*handgun.*”

See also amendments to **P.C. §§ 12073, 12078, and 12132**, below.

P.C. § 12073 (Amended): *Register or Record of the Delivery, Sale or Transfer to a “Consultant-Evaluator.”*

A firearms dealer is not required to keep a register or record of the delivery, sale, or transfer of a firearm when the loan of an unloaded firearm by the dealer is to a “*consultant-evaluator,*” so long as the loan does not exceed 45 days.

See **P.C. § 12001**, above.

P.C. § 12078 (Amended): *Transfer of a Firearm to a Consultant-Evaluator:*

Provides that specified restrictions on the transfer of a firearm do not apply to the loan of an unloaded firearm to a consultant-evaluator by a licensed firearms dealer if the loan does not exceed 45 days and the consultant-evaluator provides the following information, which the firearms dealer must keep for two years: (1) a photocopy of a valid, current, government-issued identification; (2) a photocopy of the consultant-evaluator's valid, current certificate of eligibility; (3) a letter from a person licensed as a firearms importer, manufacturer, or dealer pursuant to federal law with whom the consultant-evaluator has a bona fide business relationship, detailing the bona fide business purpose for which the firearm is being loaned; and (4) the signature of the consultant-evaluator on a form indicating the loan date and the last day the firearm may be returned.

See **P.C. § 12001**, above.

P.C. § 12132 (Amended): *Unsafe Handgun Statutes Not Applicable to Loans to a Consultant-Evaluator:*

The delivery of a pistol, revolver, or other firearm capable of being concealed upon the person is not subject to laws relating to unsafe handguns (**P.C. §§ 12125–12133**) where the firearm is being loaned to a consultant-evaluator.

See **P.C. § 12001**, above.

Fireworks:

H&S § 12700 (Amended): *Control of Fireworks:*

Possession of a gross weight, including packaging, of *less* than 25 pounds of unaltered dangerous fireworks is a misdemeanor (one year in county jail and/or \$500 to \$1,000; and a minimum fine of \$1,000 with a prior conviction for same).

Note: The purpose of these new subdivisions is to make the contraband's weight in pounds the relevant issue as opposed to the "grains," thus eliminating the dangerous and time-consuming need to dismantle the fireworks and weigh the grains. The corresponding provisions (couched in terms of "grains") previously contained in **H&S § 12702(c)** have been deleted.

Possession of a gross weight, including packaging, of *at least* 25 pounds but not more than 100 pounds of unaltered dangerous fireworks is a misdemeanor, punishable by up to one year in jail and/or by a fine of between \$1,000 and \$5,000. **(Subd. (b)(2))**

Possession of a gross weight, including packaging, of at least 100 pounds but not more than 5,000 pounds of unaltered dangerous fireworks is a felony (wobbler) punishable by 16 months or two or three years in state prison, or up to one year in jail, and/or by a fine of between \$5,000 and \$10,000. **(Subd. (b)(3))**

Possessing a gross weight, including packaging, of more than 5,000 pounds of unaltered dangerous fireworks is a felony (wobbler) punishable by 16 months or two or three years in state prison or up to one year in jail, and/or by a fine of between \$10,000 and \$50,000. **(Subd. (b)(4))**

V.C. § 15301 (New): *Transporting Fireworks:*

The Department of Motor Vehicles, in conjunction with the State Fire Marshal, is required to develop regulations and procedures to temporarily suspend the commercial motor vehicle license of a person who transports unaltered dangerous fireworks having a gross weight, including packaging, of 10,000 pounds or more. A driver of a commercial motor vehicle who is convicted of transporting fireworks of this weight is prohibited from driving a commercial motor vehicle for three years.

Fish and Game:

Fish & Game Code § 2301 (New): *Control of “Dreissenid Mussels.”*

The possession, importation, shipping, or transportation in California, or the placement or planting in any California waters, “*dreissenid mussels*,” subjects the violator to a penalty of up to \$1,000, as imposed by the Department of Fish & Game (DFG).

“*Dreissenid mussels*” are harmful to aquatic ecosystems because they devour plankton and other nutrients, reproduce rapidly, and in large numbers, clog pipes, pumps, and water delivery systems.

The section also authorizes the DFG to stop and conduct inspections of vehicles and boats that may carry dreissenid mussels and impound or quarantine conveyances for up to five days or the period of time necessary to ensure that dreissenid mussels can no longer live on or in the conveyance.

Fish & Game Code § 3001 (Amended): *Shooting Birds or Mammals While Intoxicated:*

The misdemeanor (6 months, \$1,000) crime (**F&G § 12000(a)**) of taking a bird or mammal with a *firearm* or with a *bow and arrow* when intoxicated has been expanded to also apply to a taking by a *BB device* (as defined in **P.C. § 12001(g)**) or *crossbow* when intoxicated.

Fish & Game Code § 3004 (Amended): *Shooting Across a Highway:*

New **sub. (b)** creates a new misdemeanor (6 months, \$1,000) crime (**F&G § 12000(a)**) of intentionally discharging a firearm or releasing an arrow or crossbow bolt over or across any public road or way open to the public, in an unsafe manner.

Fish & Game Code § 3004.5 (New): *The “Ridley-Tree Condor Preservation Act;” Hunting with Lead Ammunition:*

It is an infraction (\$500 for first offense; \$1,000 to \$5,000 for second or subsequent offense) to use other than nonlead centerfire rifle and pistol ammunition when taking big game or coyotes with a rifle or pistol, in specified zones.

Note: The purpose of this section is to protect California condors from eating dead animals which have been killed by hunters using lead ammunition. Lead poisoning has caused the death of several California condors.

Fish & Game Code § 5652 (Amended): *Littering:*

The misdemeanor crime (6 months, \$1,000) of depositing specified waste (i.e., “cans, bottles, garbage, motor vehicles or motor vehicle parts, rubbish, dead mammals, and dead birds”) into California waters or throwing it away within 150 feet of the high water mark is expanded by adding “*litter, refuse, waste, and debris.*”

Fish & Game Code § 6301 (Amended): *Search Authority for Fish & Game Officers:*

Amendment to the section expands the authority of the Department of Fish & Game to enter specified places at any time where fish or aquatic plants are stored to determine if they are diseased, adding; (1) “*containers*” to the list of places that may be entered, (2) “*amphibians*” to the list of things that may be inspected, and (3) the determination of whether the products have been illegally imported, transported, or possessed, to the valid reasons for the inspection.

Fish & Game Code § 10500 (Amended): *Possession of, or Discharging Weapons in a Game or Waterfowl Refuge:*

Amendment expands the misdemeanor crime (6 months, \$1,000) of possessing a firearm, bow and arrow, or trap in a game refuge, or discharging a firearm or releasing an arrow into a game refuge, by adding the possession or discharging of a BB device (as defined in **P.C. § 12001(g)**) or crossbow in a game refuge.

The misdemeanor crime of discharging a firearm or releasing an arrow in a waterfowl refuge is also expanded by adding the discharging of a BB device (as defined in **P.C. § 12001(g)**) or crossbow in a waterfowl refuge.

Gangs:

P.C. § 186.2 (Amended): *Forfeiture of Criminal Profits:*

“Offenses involving the theft of a motor vehicle, as specified in **Section 10851 of the Vehicle Code**” are added to the list of crimes that may constitute “criminal profiteering activity,” thus subjecting any profits from these offenses to forfeiture under the “California Control of Profits of Organized Crime Act” (**P.C. §§ 186-186.8**).

P.C. § 186.22a (Amended): *Money Damages for Gang Activity:*

District attorneys and prosecuting city attorneys are added to the list of those (i.e., the California Attorney General) who may bring a civil action for money damages on behalf of a community or neighborhood injured by gang activity that constitutes a nuisance.

P.C. § 13300 (Amended): *Release of Gang Criminal History Information:*

City attorneys pursuing civil gang injunctions or drug abatement actions are added to the list of agencies and persons to whom a local criminal justice agency must provide local summary criminal history information.

A public prosecutor, in response to a written request made pursuant to **Gov’t. Code § 6253** (part of the “California Public Records Act”) may provide local summary criminal history information if (1) the release would enhance public safety, the interest of justice, or the public’s understanding of the justice system; and (2) the person making the request declares that the request is made for a scholarly or journalistic purpose.

A person who willfully states as true any material fact he or she knows to be false is subject to a civil penalty of up to \$10,000. A public prosecutor is authorized to bring an action to impose this civil penalty.

Note: This amendment permitting public prosecutors to release criminal history information is in response to, and in apparent contradiction of, an Attorney General Opinion (#06-203, 9/20/06) that provided an opinion severely restricting a prosecutor's right to release such information.

Identity Theft:

Elect. Code § 2138.5 (Amended):

It is an infraction (\$500 fine; **Elect. Code § 18111** (New)) for a person entrusted with a voter registration card to disclose the voter's driver's license number, identification card number, or social security number, contained on the card.

Impersonating a Peace Officer:

P.C. § 538d (Amended); *Impersonating a Peace Officer:*

Subd. (d) (New): It is illegal (No jail, \$1,000 fine) for a uniform vendor to fail to verify that a uniform buyer is an employee of the law enforcement agency identified on the uniform. A valid identification card with a picture of the buyer and a letter from the law enforcement agency stating the buyer is an employee of the agency, constitute sufficient verification.

This section does not apply to a uniform to be used solely as a prop for a motion picture, television, video production, or theatrical event where "prior written permission has been obtained by the identified law enforcement agency."

Landlord-Tenant:

Civil Code § 3485 (New): *Pilot Program; Filing of Unlawful Detainer Actions by City Attorney for Specified Weapons Offenses:*

Provides for a pilot program in specified cities in four counties (Los Angeles County: City of Los Angeles and City of Long Beach; San Diego County: City of San Diego; Alameda County: City of Oakland; Sacramento County: City of Sacramento) permitting the city prosecutor or city attorney to file an unlawful detainer action to evict a tenant who commits a specified weapons or ammunition offense (i.e., the illegal use,

manufacture, importation, possession, possession for sale, sale, furnishing, or giving away of a firearm, ammunition, an assault weapon, a .50 BMG rifle, or a tear gas weapon), committed on the property and documented by the observations of a police officer. The section provides for written notice to the owner, giving the owner the opportunity to file an eviction action. If the owner fails to proceed, the city prosecutor or city attorney may then file an unlawful detainer action joining the owner as a defendant in the action. Authorizes the court to order that any remaining tenants not give permission to or invite any person who has been removed pursuant to this section to return or reenter any portion of the premises.

Code of Civ. Proc. § 1161 (Amended): *Nuisances for Purposes of Evicting Tenants:*

The definition of “*nuisance*” is expanded for purposes of bringing an unlawful detainer action to evict a tenant, adding (1) weapons and ammunition crimes specified in new **Civil Code § 3485(c)**; and (2) specified drug crimes (**H&S § 11571.1(c)**).

H&S § 11571.1(c) specifies the manufacture, cultivation, importation, transportation, possession, possession for sale, sale, or furnishing of a controlled substance in violation of **H&S §§ 11350(a), 11351, 11351.5, 11352, 11359, 11360(a), 11366, 11366.6, 11377, 11378, 11378.5, 11379, 11379.5, or 11383**, if the offense occurs on the property and is documented by the observations of a peace officer.

Also added as nuisances are the weapons and ammunition crimes specified in new **Civil Code § 3485(c)**. (See above.)

Manslaughter; Vehicular and Vessel:

P.C. § 192.5 (Amended): *Vehicular and Vessel Manslaughter Enhancement:*

The vessel portion of the five-year enhancement for fleeing a vehicular or vessel manslaughter (**V.C. § 20001(c)**) is moved to **subd. (e)** of **P.C. § 192.5**.

Note: Now, the five-year enhancement in **V.C. § 20001(c)** applies only to fleeing the scene of a vehicular manslaughter.

Military and Veterans:

Mil. & Vet. Code § 648.1 (New): *Use of Military Decoration with the Intent to Defraud:*

It is an infraction to orally, or in writing, or by wearing a military decoration, and with the intent to defraud, falsely representing one's self to have been awarded a military decoration.

A "*military decoration*" is defined as any decoration or medal from the Armed Forces of the United States, the California National Guard, State Military Reserve, or Naval Militia, or any service medals or badges awarded to the members of such forces, or the ribbon, button, or rosette of any such badge, decoration, or medal, or any colorable imitation of such item.

Minors:

B&P §§ 22950.5 et seq (New and Amended): *The "Stop Tobacco Access to Kids Enforcement" Act* (i.e., "*STAKE*"):

Adds district attorneys, county counsels, city attorneys, and the office of the Attorney General to the list of entities (i.e., the State Department of Public Health [formerly the State Department of Health Services] and any local law enforcement agency operating under an "*enforcement delegation contract*" with the Health Department) that are permitted to investigate illegal tobacco sales to minors and assess civil penalties for violations.

The civil penalties for a first and second violation (within 5 years) of selling, giving, or furnishing to a minor, any tobacco, cigarette, cigarette papers, or instrument for smoking or ingesting tobacco or a controlled substance are increased to \$600 and \$1,000, respectively.

The section is expanded to include the "*nonsale distribution*" of tobacco products directly or indirectly to a person under age 18. "*Nonsale distribution*" is defined as giving smokeless tobacco or cigarettes at no cost or a nominal cost, or giving coupons, coupon offers, gift certificates, gift cards, or rebate offers for smokeless tobacco or cigarettes at no cost or at a nominal cost.

Civil Code § 56.103 (New): *Medical Information of an Arrested or Charged Minor:*

Permits a health care provider to disclose medical information (as defined in the section) to a probation officer, county social worker, or any other person who is legally authorized to have custody or care of a minor, for

the purpose of coordinating health care services and medical treatment provided to the minor. Prohibits medical information disclosed pursuant to this section (unless obtained by other lawful means) from being admitted into evidence in any criminal or delinquency proceeding against the minor. A “minor” is defined for purposes of this section as a minor taken into temporary custody or as to whom a petition has been filed with the court, or who has been adjudged a dependent child or ward of the juvenile court.

H&S §§ 118947 et seq. (New & Amended): *The Marco Firebaugh Memorial Children’s Health & Safety Act of 2007*:

H&S § 118948 (New): It is an infraction (\$100 fine) to smoke a pipe, cigar, or cigarette in a moving or stationary motor vehicle, in which there is a minor. “*To smoke*” is defined as having in one’s immediate possession a lighted pipe, cigar, or cigarette containing tobacco or any other plant.

H&S § 118949 (New): A law enforcement officer is prohibited from stopping a vehicle for the sole purpose of determining whether the driver is in violation of this new law.

See also **V.C. § 12814.6(d)** (Amended), which prohibits a law enforcement officer from stopping a vehicle for the sole purpose of determining whether a driver is subject to a provisional a driver’s license restriction, noting that such a stop is in violation of new **H&S § 118948**.

H&S § 118950 (Amended): This section adds tobacco gift certificates, gift cards, and other similar offers to the list of items (i.e., tobacco product samples and tobacco coupons) a seller or distributor of cigarettes or smokeless tobacco is prohibited from giving away to any person in a public building, public park, public playground, public sidewalk or street, or on any private property open to the general public.

Note: A person who violates this section is subject to a civil penalty of at least \$200 for one act, \$500 for two acts, and \$1,000 for each subsequent act.

Wel. & Inst. Code §§ 224.70 et seq. (New): The “*Youth Bill of Rights*:”

This new Article sets out the rights that youths have when confined in a facility of the “*Division of Juvenile Facilities*” (DJF), including, but not limited to:

- The right to live in a safe, healthy, and clean environment;

- To be free from abuse or corporal punishment;
- To receive adequate food and water;
- To receive adequate medical, dental, vision, and mental health services;
- To not be searched for the purpose of harassment or humiliation or as a form of discipline or punishment;
- To maintain frequent contact with family members;
- To make and receive confidential telephone calls;
- To send and receive confidential mail;
- To have confidential visits with attorneys;
- To have regular opportunity for physical exercise and recreation;
- To participate in religious services;
- To not be discriminated against or harassed on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status;
- To receive a quality education;
- To make at least two free telephone calls within an hour after initially being placed in a DJF facility; *and*
- To not be deprived of any of the following as a disciplinary measure; food, contact with parents or attorneys, sleep, exercise, education, bedding, access to religious services, a daily shower, a drinking fountain, a toilet, medical services, reading material, or the right to send and receive mail.

Every youth incarcerated by DJF is to be given a copy of these rights. The Office of the Ombudspersons of DJF is to investigate and resolve alleged violations.

Notary Publics:

Gov't. Code § 8201.1 (Amended): *Notary Publics; Applications to the Secretary of State; Fingerprints:*

Requires a person applying to the Secretary of State for appointment as a notary public to submit fingerprints and other information to the Department of Justice for the purpose of searching for state and federal conviction and arrest information.

Gov't. Code § 8201.5 (Amended): *Notary Publics; Applications to the Secretary of State; Photograph:*

Requires an applicant for appointment as a notary public to submit a photograph to the Secretary of State.

Gov't. Code § 8202 (Amended): *Notary Publics; Personal Knowledge:*

Eliminates references to a notary's personal knowledge about a person executing a document.

Civil Code § 1185 has also been amended to eliminate the “*personal knowledge*” standard that a notary public could use when executing a written instrument. Now, “*satisfactory evidence of identification*” is required in all cases.

Gov't. Code § 8206 (Amended): *Notary Publics; Need for a Search Warrant to Seize a Notary's Journal:*

Eliminates the requirement that a peace officer have a search warrant in order to seize a notary's journal of notarial acts. (**Subd. (d)**) Now, a notary must “*surrender*” his or her journal immediately upon request, or, if the journal is not present, then as soon as possible, when a peace officer investigating a criminal offense has “*reasonable suspicion*” to believe the journal contains evidence of a criminal offense. The section further provides that in order to “*seize*” a notary journal, a peace officer must have “*probable cause* as required by the laws of this state and the United States.” The peace officer who seizes a notary journal must notify the Secretary of State within 24 hours of the name of the notary.

Note: It appears from the conflicting language in this section that a notary is required to “*surrender*” for inspection his or her journal to a law enforcement officer who is investigating a crime, based upon a mere “*reasonable suspicion*” to believe that the journal contains evidence of that crime. However, full “*probable cause*” is required if the officer is to “*seize*” the journal, taking it for evidence.

Gov't. Code § 8213.5 (Amended): *Notary Publics; Use of a Post Office Box; Change of Address:*

Prohibits a notary from using a commercial mail receiving agency or post office box as his or her principal place of business or residence, unless the notary also provides the Secretary of State with a physical street address as the principal place of residence.

Provides that the willful failure of a notary to notify the Secretary of State of a change of address is punishable as an infraction (\$500).

Gov't. Code § 8213.6 (Amended): *Notary Publics; Change of Name:*

The willful failure of a notary to notify the Secretary of State of a name change is punishable as an infraction (\$500).

Gov't. Code § 8214.1 (Amended): *Notary Publics; Grounds for Refusal or Revocation of Notary's Commission:*

Adds the following to the list of grounds for which the Secretary of State is authorized to refuse to appoint a person as a notary public or to revoke or suspend a notary's commission: (1) The willful failure to report the theft or loss of the sequential journal pursuant to **Gov't. Code § 8206**; (2) the willful failure to provide access to the sequential journal of official acts upon request by a peace officer; or (3) the commission of an act in violation of **Gov't. Code §§ 6203, 8214.2, 8225, or 8227.3**, or **P.C. §§ 115, 470, 487, or 530.5**.

Gov't. Code § 8214.21 (New): *Notary Publics; Failure to Provide Journal; Civil Penalty:*

New section provides that a notary who willfully fails to provide access to the sequential journal of notarial acts when requested by a peace officer is subject to a civil penalty of up to \$2,500, per a civil action brought by a public prosecutor or the Secretary of State.

Gov't. Code § 8214.23 (New): *Notary Publics; Failure to Obtain a Thumbprint:*

A notary who fails to obtain a thumbprint from a party signing a document is subject to a civil penalty of up to \$2,500, per a civil action brought by a public prosecutor or the Secretary of State.

The section also makes provisions for a statute of limitations of four years from the time of discovery of various listed offenses.

Gov't. Code § 8228 (Amended): *Notary Publics; Peace Officer Authority to Examine a Notary Public's Books, etc.:*

Adds peace officers with reasonable suspicion to those who are authorized to enforce the provisions of **Gov't. Code §§ 8200–8230** (relating to notaries public) by examining a notary public's books, records, letters, contracts, and other documents relating to the official acts of a notary public.

Prisoners:

P.C. § 4575(a) (New): *Wireless Communication Devices in Jail:*

It is a misdemeanor (6 months, \$1,000 fine) to possess an unauthorized wireless communication device (e.g., cell phone, pager, wireless Internet device) in a local correctional facility.

P.C. § 4575(b) (New):

It is an infraction (\$250 fine) for a person housed in a local correctional facility to possess tobacco products in any form, or any device intended to be used for ingesting or consuming tobacco, or any container or dispenser used for any tobacco product. This offense only applies in a county in which the board of supervisors has adopted an ordinance or passed a resolution banning tobacco in its correctional facilities.

Public Employees:

B&P § 17510.25 (New): *Charitable Solicitation Activities:*

Creates procedures for law enforcement, firefighters, and other public service employees for engaging in charitable solicitation activities while standing in a public roadway soliciting contributions from passing motorists, including the filing of an application 10 business days before and providing proof of liability insurance.

Note: This new section is intended to preempt local ordinances prohibiting such activity; e.g., “*fill the boot*” campaigns.

P.C. § 146g (New): *Unlawful Disclosure of Criminal Investigation Information:*

Subd. (a)(1): It is a misdemeanor (6 months, \$1,000 fine) for a peace officer, law enforcement employee, attorney employed by a government agency, or trial court employee, to disclose, for financial gain, information, photographs, or videos obtained in the course of a criminal investigation, the disclosure of which is prohibited by law.

Subd. (a)(2): It is a misdemeanor (6 months, \$1,000 fine) for a peace officer, law enforcement employee, attorney employed by a government agency, or trial court employee to solicit, for financial gain, the exchange of information obtained in the course of a criminal investigation, the disclosure of which is prohibited by law.

Subd. (b): It is a misdemeanor (6 months, \$1,000 fine) for any person to solicit a peace officer, law enforcement employee, attorney employed by a

government agency, or trial court employee, for the officer's, attorney's, or employee's financial gain, to disclose information obtained in the course of a criminal investigation, with the knowledge that the disclosure is prohibited by law.

Subd. (c)(1): It is a misdemeanor (6 months, \$1,000 fine) for any person, for financial gain, to solicit or sell any photograph or video taken inside a secure area of a law enforcement or court facility, the taking of which was not authorized by the law enforcement or court facility administrator.

Subd. (c)(2): It is a misdemeanor (6 months, \$1,000) for any person to solicit a peace officer, law enforcement employee, attorney employed by a government agency, or trial court employee, for the officer's, attorney's, or employee's financial gain, to disclose a photograph, or video taken inside a secure area of a law enforcement or court facility, the taking of which was not authorized by the law enforcement or court facility administrator.

Upon conviction, the defendant must forfeit any monetary compensation received with the money being deposited in the Victim Restitution Fund.

This section does not apply to officially sanctioned information, photographs, or video, or to information, photographs, or video obtained or distributed pursuant to the California Whistleblower Protection Act or the Local Government Disclosure of Information Act.

P.C. § 12027 (Amended): *Retired Officer's Certificate to Carry a Concealed Firearm:*

The requirement that a retired peace officer's address appear on the certificate he or she is required to have in order to lawfully carry a concealed firearm is deleted. The amendment also provides that this certificate is not valid as identification for the sale, purchase, or transfer of a firearm.

Sexual Offenses:

Gov't. Code § 6254 (Amended): *The "California Public Records Act:" Protecting Sexual Assault Victims:*

The exemptions under the "*Public Records Act*" are expanded to include law enforcement records in sexual assault cases.

Also added to the section are a number of sex crimes for which a local or state law enforcement agency may withhold the name of the victim at the

victim's request, or at the request of the victim's parent or guardian if the victim is a minor.

Adds the same sex crimes to the list of those for which a local or state law enforcement agency must keep the victim's address confidential.

Note: The sex crimes that are added to this list include **P.C. §§ 265, 266, 267, 269r, 285, 288.2, 288.3, 288.5, 288.7, and 647.6.**

Note: **P.C. § 293** (Amended), providing for the confidentiality of a sex offense victim's identity upon his or her request, is similarly amended to include these new sections. (See below)

Gov't. Code § 6254.29 (New): *The "California Public Records Act:" Social Security Numbers:*

Local agencies are required to redact social security numbers from records before disclosing them to the public pursuant to the "*California Public Records Act.*"

P.C. §§ 288.3, 288.4 (Amended): *Unlawful Contact with Minor:*

See "*Child Abuse,*" above.

P.C. §§ 290 to 290.023 (Repealed and Reenacted, effective 10/13/07): *Sex Offender Registration:*

P.C. § 290, involving the registration requirements for convicted sex offenders, has been repealed and reenacted into **P.C. §§ 290 to 290.023**, with no substantive changes to its contents.

Note: Other Penal Code sections have been amended to update cross-references to the new sex offender registration sections.

P.C. § 290(a) (New): *The "Sex Offender Registration Act."*

P.C. § 290(b) (New): A lifetime registration requirement, to register within 5 days of coming into a jurisdiction or changing a residence. (formerly **P.C. § 290(a)(1)(A)**)

P.C. § 290(c) (New): Lists which offenders must register and the registerable offenses. (formerly **P.C. § 290(a)(2)(A)**).

P.C. § 290.001 (New): Sexually Violent predators (SVP) must register. (formerly **P.C. § 290(a)(1)(E)**)

P.C. § 290.002 (New): Out-of-state registrants working or going to school in California must register. (formerly **P.C. § 290(a)(1)(G)**)

P.C. § 290.003 (New): Persons released from confinement after July 1, 1944 must register. (formerly **P.C. § 290(a)(2)(B)**)

P.C. § 290.004 (New): Mentally disordered sex offenders must register. (formerly **P.C. § 290(a)(2)(C)**)

P.C. § 290.005 (New): Persons convicted in another state or in a federal or military court must register. (formerly **P.C. § 290(a)(2)(D)**)

P.C. § 290.006 (New) Authorizes court to order registration if it is found the offense was committed as a result of sexual compulsion or for the purposes of sexual gratification. (formerly **P.C. § 290(a)(2)(E)**)

P.C. § 290.007 (New): Dismissal pursuant to **P.C. § 1203.4** does not terminate duty to register. (formerly **P.C. § 290(a)(2)(F)**)

P.C. § 290.008 (New) Specified juvenile offenders must register. (formerly **P.C. § 290(d)**)

P.C. § 290.009 (New): Persons required to register where they live must also register with campus police if working, volunteering, or going to school at a university, college, or community college. (Also in **P.C. § 290.01**, which was not repealed)

P.C. § 290.010 (New): Requires sex offenders with more than one residence to register in every jurisdiction in which they regularly reside. (formerly **P.C. § 290(a)(1)(B)**)

P.C. § 290.011 (New): Transient registration provisions. (formerly **P.C. § 290(a)(1)(C)**)

P.C. § 290.012 (New): Registration updates; SVP registration; no fee may be charged for registration. (formerly **P.C. §§ 290(a)(1)(C), 290(a)(1)(D), 290(a)(1)(E), 290(a)(1)(F), and 290(1)(2)**)

P.C. § 290.013 (New): Change of residence address; notice by CDCR to DOJ of incarcerated registrants. (formerly **P.C. §§ 290(f)(1) and 290(f)(2)**)

P.C. § 290.014 (New): Name change by registrant. (formerly **P.C. § 290(f)(3)**)

P.C. § 290.015 (New): Registration upon release from incarceration or

release on probation. (formerly **P.C. §§ 290(e)(2) and 290(e)(3)**)

P.C. § 290.016 (New): Pre-registration of incarcerated persons. (formerly **P.C. §§ 290(e)(1) and 290(e)(3)**)

P.C. § 290.017 (New): Notification of duty to register prior to release from custody or release on probation or parole. (formerly **P.C. §§ 290(b) and 290(c)**)

P.C. § 290.018 (New): Penalties for violation of sex registration provisions. (formerly **P.C. §§ 290(g) and 290(h)**)

P.C. § 290.019 (New): Procedure for obtaining relief from duty to register for conduct between consenting adults that has been decriminalized. (formerly **P.C. § 290(a)(2)(G)**)

P.C. § 290.020 (New): Notice to local law enforcement of the temporary release of registrant for firefighting or disaster control assignment. (formerly **P.C. § 290(j)**)

P.C. § 290.021 (New) Statements, fingerprints, and photographs of registrants are open to inspection only by law enforcement and not by the public. (formerly **P.C. § 290(i)**)

P.C. § 290.022 (New): Requires DOJ to renovate the sex offender registration database by July 10, 2010. (formerly **P.C. § 290(n)**)

P.C. § 290.023 (New): Sex registration provisions are retroactive. (formerly **P.C. 290(m)**)

P.C. § 293 (Amended): *Confidentiality of Sex Offense Victim's Identity*:

The requirement that law enforcement inform the victim of a specified sex offense that his or her name will become a matter of public record unless he or she requests otherwise, pursuant to **Gov't. C. § 6254**, has been expanded to include the following: **P.C. §§ 265, 266, 267, 269r, 285, 288.2, 288.3, 288.5, 288.7, and 647.6**.

The section also prohibits law enforcement from disclosing (except to other law enforcement agencies) the address of a specified sexual assault victim.

Note: The list of sex crimes in both **P.C. § 293** and **Gov't. C. § 6254(f)(2)** are now identical. (See above.)

Sexually Violent Predators:

Wel. & Inst. Code § 6603 (Amended): *DNA Testing for Sexually Violent Predators:*

The following sentence is added to **subd. (a)**: “Any right that may exist under this section to request DNA testing on prior cases shall be made in conformity with **Section 1405 of the Penal Code.**”

The following sentence is added as a new **subd. (h)**: “Nothing in this section shall limit any legal or equitable right that a person may have to request DNA testing.”

Note: P.C. § 1405 provides detailed procedures for a felon who is currently “*serving a term of imprisonment*” to bring a motion to request post-conviction DNA testing. Sexually Violent Predators (i.e., “SVPs”) are not serving a term of imprisonment. Instead, they are confined pursuant to a civil commitment. Therefore, **P.C. § 1405**, on its face, does not apply to SVPs. The purpose of this bill is to provide that if **W&I § 6603** is ever construed to provide a right to DNA testing to an SVP, then the procedures that must be followed in order to obtain an order for DNA testing are those set forth in **P.C. § 1405**, which includes notice to the prosecutor and other procedural requirements.

Wel. & Inst. Code § 6608 (Amended): *Petition for Release or Discharge of a Sexually Violent Predator:*

A Sexually Violent Predator (SVP) who petitions the court for a conditional release or an unconditional discharge must serve a copy of the petition on the State Department of Mental Health at the time the petition is filed with the court.

The amendment also increases the number of days, from 21 to 30, that a community program director has to make the necessary community placement arrangements after a court determines that an SVP should be transferred to a state-operated forensic conditional release program.

Wel. & Inst. Code § 6609.1 (Amended): *Conditional Release of a Sexually Violent Predator:*

The number of days of notice the State Department of Mental Health (DMH) must give to the district attorney and to the sheriff or police chief in advance of a hearing to conditionally release a Sexually Violent Predator (SVP) is increased from 15 to 30. Also, any written comment filed by a law enforcement agency or a district attorney regarding the

release of an SVP must be filed with the court at the time the comment is provided to DMH. The submission of a suggested alternative placement location, if there is one, must be filed with the court at the time that the suggested placement location is provided to DMH.

Stalking:

P.C. § 646.9 (Amended): *Stalking; Ten-Year Restraining Order:*

Amendment provides that the 10-year restraining order that a sentencing court may order in a stalking case may be issued regardless of whether the defendant is sentenced to prison or jail, or is placed on probation.

Theft and Stolen Property:

B&P § 21609.5 (New): *Junk Dealers and Recyclers, and Beer Kegs:*

Junk dealers and recyclers are prohibited from purchasing or receiving a refillable stainless steel or aluminum beer kegs with indicia of ownership from any person other than the indicated owner unless the seller provides a receipt from the owner verifying the seller's current ownership or a document stating that the seller is authorized by the owner to sell the keg.

“Indicia of ownership” is defined as words, symbols, or registered trademarks printed, stamped, etched, attached, or displayed on the exterior surface of the beer keg that reasonably identify the owner.

Note: No punishment is indicated.

Vehicle Code Violations:

V.C. § 313 (Amended): *Segway; Defined:*

The definition of an *“electric assistive mobility device”* (*“EPAMD;”* or *Segway*) is expanded to include that it cannot be greater than 20 inches deep and 25 inches wide.

Note: The January 1, 2008 sunset date on this section has been deleted, making it effective indefinitely.

See **V.C. § 21281.5**, below.

V.C. § 5201 (Amended): *Obstructing or Impairing the Reading or Recognition of License Plates:*

A casing, shield, frame, border, product, or other device that obstructs or impairs the reading or recognition of a license plate by an electronic device operated by state or local law enforcement, an electronic device operated in connection with a toll road, high-occupancy toll lane, toll bridge, or other toll facility, or a remote emission sensing device, as specified in **H&S §§ 44081** and **44081.6** shall not be installed on, or affixed to, a vehicle. (**Subd. (g)**; an infraction)

Note: The purpose of this amendment is to combat the use of spray-on products or devices that are used by vehicle owners to block the visibility of license plates so that automated cameras typically used by toll facility operators are unable to read the license plate of a vehicle using the facility without having paid the toll. These sprays and devices are also used to foil red light cameras and the photo enforcement of speed laws. Red light, speed, and toll facility cameras use a strong flash to photograph license plates. Manufacturers claim that when sprayed on a license plate, their special formula produces a high-powered gloss that reflects the flash back towards the camera. This overexposes the image of the license plate, rendering the picture unreadable.

V.C. § 5201.1 (New): *Selling License Plate Obscuring Products or Devices:*

It is an infraction (\$250 fine for each item sold.) to sell a product or device that obscures, or is intended to obscure, the reading or recognition of a license plate.

V.C. § 9853.8 (New): *Operating an Unnumbered Vessel:*

It is an infraction (\$250 fine) to operate a vessel that requires numbering (through the Department of Motor Vehicles) but is not currently numbered, and that does not comply with specified emissions standards. This section applies only to vessels that contain a specified spark-ignition marine engine.

V.C. § 12814.6 (Amended): *Provisional Driver's Licenses for Minors:*

Amended **subd. (d)** prohibits a law enforcement officer from stopping a vehicle for the sole purpose of determining whether a driver is subject to a provisional driver's license restriction, and is in violation of new **H&S § 118948**. (see "*Minors*," above.)

V.C. § 20001(c) (Amended): *Vessel Manslaughter Enhancement:*

The vessel portion of the five-year enhancement for fleeing a vehicular or vessel manslaughter is moved to **subd. (e)** of **P.C. § 192.5**, leaving only the vehicle portion.

V.C. § 13353.2 (Amended): *Driver's License Suspension Requirement for DUI Probationers:*

The list of circumstances in which the Department of Motor Vehicles is required to immediately suspend a driver's license is expanded to include when the person was driving a motor vehicle while on probation for **V.C. § 23152** (DUI) or **V.C. § 23153** (DUI with injury) and had a blood-alcohol concentration of 0.01 percent or more as measured by a preliminary alcohol screening test or other chemical test.

V.C. § 13385 (New; Effective 7/1/08): *The Steve Ambriz Act.*

Beginning July 1, 2008, all application forms for a driver's license and driver's license renewal notices will be required to include the following declaration regarding driving under the influence and murder, which must be signed by all applicants as a condition of licensure:

"I am hereby advised that being under the influence of alcohol or drugs, or both, impairs the ability to safely operate a motor vehicle. Therefore, it is extremely dangerous to human life to drive while under the influence of alcohol or drugs, or both. If I drive under the influence of alcohol or drugs, or both, and as a result, a person is killed, I can be charged with murder."

Note: The purpose of this requirement is to provide a prosecutor with evidence of a DUI defendant's awareness that driving while under the influence is dangerous to human life, adding to the evidence in a prosecution for second degree murder.

V.C. § 13389 (New; Effective 1/1/09): *PAS Test Requirement for DUI Probationers:*

Effective January 1, 2009, a peace officer who lawfully detains a person on probation for **V.C. § 23152** (DUI) or **V.C. § 23153** (DUI with injury) and reasonably believes the person is in violation of new **V.C. § 23154**, is required to request that the person take a preliminary alcohol screening (PAS) test to determine the presence of alcohol. If a PAS test is not immediately available, the officer may request the person to submit to the testing of blood, breath, or urine pursuant to **V.C. § 23612** (implied consent law).

See **V.C. § 23154**, below.

If the person refuses to take or complete a PAS or other test, or takes a test that reveals a blood-alcohol concentration of 0.01 percent or greater, the officer must (1) serve the person with a notice of driver's license suspension; (2) take possession of the person's driver's license and issue a temporary license; and (3) immediately forward the driver's license and a copy of the notice of license suspension to the Department of Motor Vehicles.

V.C. § 21201 (Amended): *Bicycles Without Lights*:

Operating a bicycle during darkness without proper lighting on a highway (**subd. (d)**; an infraction) is expanded to bicycles operated on a sidewalk or on a bikeway.

Note: "Bikeway" is defined in **S&H Code § 890.4** as any place that is primarily for bicycle travel. This includes bike lanes, bike paths, and bike routes.

This amendment also permits the white or yellow reflector required on each pedal to be worn instead on each shoe or ankle.

V.C. § 21281.5 (New): *Segway Rules of the Road*:

The operation of an "electric personal assistive mobility device" ("EPAMD;" or Segway), is now subject to the following restrictions (infractions):

- Operating an EPAMD at a speed that endangers the safety of persons or property.
- Operating an EPAMD on a sidewalk, bike path, pathway, trail, bike lane, street, road, or highway at a speed greater than is reasonable and prudent based on the weather, visibility, pedestrians, traffic, and surface conditions.
- Operating an EPAMD on a sidewalk, bike path, pathway, trail, bike lane, street, road, or highway with willful or wanton disregard for the safety of persons or property.
- Operating an EPAMD on a sidewalk, bike path, pathway, trail, bike lane, street, road, or highway and failing to yield the right-of-way to all pedestrians on foot and persons with disabilities using assistive devices and service animals that are close enough to constitute a hazard.

Repeals the January 1, 2008 sunset date on **V.C. §§ 21280–21282**, so

that electric personal assistive mobility devices may continue to be operated and regulated in California.

See **V.C. § 313** (Amended): *Segway; Defined*, above

V.C. § 22450 (Amended): *Stop Signs and Railroad Crossings*:

The infraction of failing to stop at a stop sign is divided into two subdivisions, clarifying the duties of a driver who approaches a stop sign and at a railroad crossing:

Subd. (a): A driver approaching a stop sign at an intersection and failing to stop at a limit line if marked, or failing to stop before entering the crosswalk on the near side of the intersection.

Subd. (b): A driver approaching a stop sign at a railroad crossing and failing to stop at a limit line if marked, or failing to stop before crossing the first track or entrance to the railroad crossing.

V.C. § 22511.85 (Amended): *Disabled Persons Parking*:

A vehicle with a disabled person license plate or placard that is equipped with a lift, ramp, or assistive equipment for loading or unloading a disabled person may park in two adjacent stalls or spaces on a street, highway, or public or private off-street parking facility (expanded from “*a public off-street parking facility*,” only) if the equipment has been or will be used for loading or unloading a disabled person (expanded from “*only when loading or unloading a disabled person*”).

V.C. § 22651 (Amended): *Towing Vehicles*:

Two additional situations are added to **subd. (o)** in which a peace officer or a public employee engaged in directing traffic or enforcing parking laws may remove (tow) a vehicle:

Subd. (o)(1)(B): When the vehicle is displaying a registration card, identification card, temporary receipt, license plate, or registration sticker that was not issued for that vehicle; *and*

Subd. (o)(1)(C): When the vehicle is displaying an altered, forged, counterfeit, or falsified registration card, identification card, temporary receipt, license plate, or registration sticker.

Note: Effective 1/1/09, A peace officer may also impound a vehicle upon serving notice of a driver’s license suspension

pursuant to new **V.C. § 13389** (*PAS Test Requirement for DUI Probationers*), above.

V.C. § 23109.2 (Repealed and Added): *Towing Vehicles Incident to Arrest:*

A peace officer who determines that a person has engaged in a specified motor vehicle offense (i.e., reckless driving on a highway (**V.C. § 23103(a)**), reckless driving in an off-street parking facility (**V.C. § 23103(b)**), and exhibition of speed (**V.C. § 23109(c)**), and a motor vehicle speed contest (**V.C. § 23109(a)**) is authorized to immediately arrest and take into custody that person, and to remove and seize the vehicle used in the offense. A seized vehicle may be impounded for up to 30 days.

Note: This reenacts the version of **V.C. § 23109.2** that was inadvertently allowed to sunset on December 31, 2006.

V.C. § 23123 (Enacted 2006, Effective 7/1/08): *Use of a “Wireless Telephone” While Driving:*

Effective July 1, 2008, a person shall not drive a motor vehicle while using a wireless telephone unless that telephone is specifically designed and configured to allow hands-free listening and talking, and is used in that manner while driving (**Subd. (a)**) except when using a wireless telephone for emergency purposes, including, but not limited to, an emergency call to a law enforcement agency, health care provider, fire department, or other emergency services agency or entity. (**Subd. (c)**)

An infraction; \$20 fine for the first offense, \$50 fine for each subsequent offense. (**subd. (b)**)

This section does *not* apply to an emergency services professional using a wireless telephone while operating an authorized emergency vehicle (per **V.C. § 165**) in the course and scope of his or her duties. (**subd. (d)**)

The section also does *not* apply to the use of a digital two-way radio that utilizes a wireless telephone that operates by depressing a push-to-talk feature and does not require immediate proximity to the ear of the user, while the person is driving one of the types of vehicles (e.g., commercial trucks, farm vehicles or tow trucks) as listed in the section (**subd. (e)**). It also does not apply when driving a school bus or transit vehicle (per **V.C. § 23125**) (**subd. (f)**) or while driving on private property (**subd. (g)**).

V.C. § 23124 (New; Effective 7/1/08): *Use by a Minor of a “Mobile Service Device” While Driving:*

Effective July 1, 2008, it is an infraction for a person under the age of 18 years of age to drive while using a mobile service device or a wireless telephone even if the telephone is equipped with a hands-free device.

A “*mobile service device*” is defined as including, but not being limited to, a broadband personal communication device, a specialized mobile radio device, a handheld device or laptop computer with mobile data access, a pager, or a two-way messaging device. It does *not* include devices used for emergency purposes, including an emergency call to law enforcement, a health care provider, or a fire department.

An infraction; \$20 fine for the first offense, \$50 fine for each subsequent offense.

The section specifically prohibits a law enforcement officer from stopping a vehicle for the sole purpose of determining whether the driver is violating this new section. (E.g., a law enforcement officer is prohibited from stopping the vehicle solely to check the age of a driver who is using a hands-free cell phone while driving.) But a law enforcement officer *may* stop a vehicle for a suspected violation of **V.C. § 23123** (see above) by a driver of any age, which also becomes effective on July 1, 2008.

V.C. § 23154 (New; Effective 1/1/09): *Driving With 0.01% B/A While on Probation for DUI or DUI with Injury:*

Effective January 1, 2009, it will be an infraction to operate a motor vehicle with a blood-alcohol concentration of 0.01 percent or greater as measured by a preliminary alcohol screening (PAS) test or other chemical test while on probation for a violation of **V.C. § 23152** (DUI) or **V.C. § 23153** (DUI with injury).

The section provides that a person who is on probation for **V.C. § 23152** (DUI) or **V.C. § 23153** (DUI with injury) and drives a motor vehicle is deemed to have given his or her consent to a preliminary alcohol screening (PAS) test or other chemical test if lawfully detained for a violation of this new section. The PAS or chemical test may be administered pursuant to a lawful detention. The person is to be told that the failure to submit to or complete a preliminary alcohol screening test or other chemical test as requested will result in the suspension or revocation of his or her driver’s license for one to three years.

V.C. § 38301 (Amended): *Operating a Vehicle on Closed Public Lands:*

It is an infraction to operate a vehicle on public lands in an area closed to that vehicle (**subd. (b)**). \$50 for a first offense. \$75 for a second offense within seven years. \$150 for a third or subsequent offense within seven years.

V.C. §§ 40800, 40804 (Amended): *Investigations of Engaging in a Speed Contest:*

Amendment adds violations of **V.C. § 23109.1** (the felony/misdemeanor crime of engaging in a motor vehicle speed contest and causing specified bodily injury) to the list of offenses an officer can investigate without having to wear a distinctive uniform or use a marked motor vehicle.