New Laws for 2013
For criminal law practitioners

California criminal–law statutes,
Rules of Court, Code of Judicial Ethics, and
Proposed Rules of Professional Conduct,
new or revised in 2012.

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HIGHLIGHTS, LOWLIGHTS, AND EARLY WARNINGS

- **Three Strikes Reform (3KR).** Prop. 36 at the Nov. 2012 Election.  
  (1) Current non-serious, non violent (non-non) felonies cannot get a 3K life term unless the current or prior offenses include specified egregious ones.  
  (2) People presently serving 3K life terms for “current” non-nons, and who don’t have current or prior disqualifying crimes, can petition for resentencing; courts can consider whether their release would risk to public safety.  PC 667, subds. (b) – (j); 1170.12; 1170.126.

- **Background Checks**  
  (1) Information provided to persons affected  
  Previously, when an entity got criminal history info from DOJ, and used it adversely, that of the info must be given.  
  (2) Subsequent information is now also provided  
  Subsequent arrest and dispo info can now also be given to covered entities, who must give copies to the person adversely affected.  PC 11105 and 11105.2

- **Search warrants for tracking devices** are codified. Among the many requirements are that the tracking must be started within 10 days, and cannot last longer than 30 days without court approval.  PC 1524 and 1534.

- **Mandated Child Abuse Reporters** now includes athletic coaches, commercial computer technicians, photograph processors, and others.  PC 11165.7, 11166, and 11172

- **Compassionate Release and Medical Probation** are authorized for county jail inmates  
  GC [not PC] 26605.6, 26605.7, and 26605.8.

- **Early Warning: Realignment.** Likely there will be many legislative attempts to roll this back.  PC 1170 subd. (h), and hundreds of related changes.

- **Early Warning: the “Cunningham Fix” could sunset Jan. 1, 2014.** When the U.S. Supreme Ct. held, in Cunningham v. Calif. (2007), that Calif. could not give aggravated sentences without trials on agg. facts, because the mid term was the presumptive term, the legislature temporarily made the middle term no longer presumptive.  Unless that temp. fix is extended or altered, the mid term again becomes the presumptive, again requiring trials on agg. facts, on Jan. 1, 2014.  PC 1170.

- **Early Warning: Revised Rules of Professional Conduct** written by the State Bar two years ago, are being re-submitted to the Supreme Ct. The process has no set timeline; the new rules will not be effective unless the Supreme Court adopts them.
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New Laws 2013
About “New Laws for 2013”; Table of Abbreviations

Included here are 2012’s most important legislative bills affecting California State criminal law. These are effective Jan. 1, 2013 unless an earlier or later date is noted.

Also included are the main Calif. Rules of Court changes affecting criminal law.

The State Bar’s proposed revisions to the Rules of Professional Conduct are discussed, although they will not be effective unless the Calif. Supreme Court adopts them.

I list, first, each bill’s title, then the official Chapter number in the Statutes of 2012, and then the Senate Bill (SB) or Assembly Bill (AB) number of the original Act.

The bill title bills are mostly taken from those given by the Legislative Counsel, or the Senate Committee on Public Safety’s 2012 Bill Summary; or I made up my own title.

Under the bill title and designation, I list the Code Sections effecting criminal law that the bill adds, amends, or repeals.

I describe most bills by using quotes from various legislative documents. References in those quotes to “existing law” are to the law before that bill. References to what the bill “would” do mean the effect that the bill has now that it is enacted.

When I quote the actual text of a new law or rule, I use this typeface, extra spacing and indentation.

Material not listed or designated as above is my own, unless indicated

Many bills could have been placed under more than one category, but, for brevity, have been limited to one.


Abbreviations:  BP = Business and Professions Code; CCP = Code of Civil Procedure; CDCR = Calif. Dep’t of Corrections and Rehabilitation. D = the defendant; DOJ = Calif. Dep’t. of Justice. EC = Evidence Code  GC = Government Code; HS = Health and Safety Code; P = the prosecution; PC = Penal Code; V = the Victim or Alleged Victim; VC = Vehicle Code
**Animal Fighting**  Stats. 2013, Ch. 133 (SB 1145)

Amends PC 597b, 597c, 597i, and 597j

*From Senate Committee on Public Safety’s “2012 Bill Summary”:*

“Existing law sets the fines for a number of animal abuse related misdemeanors to a maximum fine of 1,000 for some and $5,000 for others.

“This bill increases those fines to $5,000 if the maximum was $1,000 and to $10,000 if the maximum was $5,000.”

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**Arrested custodial parents: extra telephone calls.**  Stats. 2012, Ch. 816 (AB 2015)

Amends PC 851.5

*From the Legislative Counsel’s Digest:*

“Under existing law ... [generally] no later than three hours after arrest, an arrested person has the right to make at least three completed telephone calls, .... [I]f the ... person is identified as a custodial parent with responsibility for a minor ... the arrested person is entitled to ... 2 additional calls [to] arrang[e] for the care of the minor child or children....

This bill would require the arresting or booking officer to inquire [if] the arrested person is a custodial parent with responsibility for a minor ... as soon as practicable .... [generally] no later than 3 hours after arrest. The bill would require the [that] officer to inform the person that he or she is entitled to, and may request to, make 2 additional ... calls ... for care of a ... child..., and ... require a sign... in a conspicuous place informing the arrestee[of this right].... [This applies] ... regardless of the arrestee’s immigration status.

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**Background Checks**  Stats. 2012, Ch. 256 (AB 2343)

Amends PC 11105 and 11105.2
From Senate Committee on Public Safety’s “2012 Bill Summary”:

Existing law requires [DOJ] to maintain state summary criminal history information, including the identification and criminal history of any person....

Existing law requires [DOJ] to furnish this ... [upon] request from certain authorized [entities] or individuals that need [this] to fulfill employment, certification, or licensing duties, such as [inter alia] ... community care facilities.....

This bill ... requires that, when state or federal ... criminal history information is furnished..., the ... [entity] shall furnish a copy of [this] to the person [involved] if [that] is a basis for an adverse employment, licensing, or certification decision.

This bill expands ... the information ... provided to include subsequent state and federal arrest or disposition notification ... upon the arrest or other disposition of any person whose fingerprints are maintained [by DOJ] or the [FBI] as the result of an application for licensing, employment, certification, or approval, except as specified.

The bill requires, when [DOJ] supplies the subsequent ... notification to a receiving entity, the entity [must] expeditiously furnish a copy of [this] to the person [involved] if [it] is a basis for an adverse employment, licensing, or certification decision.

**Bail and Release: Electronic Monitoring** Stats. 2012, Ch. SB 1023

Amends PC 1203.018.

Added by the original Realignment bills, Pen. Code § 1203.018, permits the county board of supervisors to authorize the correction administrator to offer a program of electronic monitoring in lieu of bail. As originally enacted, this program was limited to inmates in custody at least 30 days from arraignment on misdemeanor, or in custody for 60 days pending disposition on any charge.

This authority is now expanded if “The inmate is appropriate for [this] program based on a determination by the correctional administrator that the inmate’s participation would be consistent with public safety interests of the community.”
Bail and Release: see also Realignment.

**Bail Fugitive Recovery Persons Act**  
Stats. 2012, Ch. 747 (AB 2029)

Adds Article 5.5 (§§ 1299 et seq.) to Ch. 1 of Title 10 of Part 2 of the Penal Code

*From the Assembly Committee’s Report for hearing date of March 27, 2012:*

“The Bail Fugitive Recovery Persons Act was established in 1999 in response to ... concerns about some bounty hunters retrieving fugitives in unlawful ways. The Act[ ] ... required bail fugitive recovery persons to [meet specified requirements, abstain from certain actions, and provide certain notices]... [That Act sunsetted] on January 1, 2010....

“[This bill] would reinstate [that] Act requiring individuals to meet specific eligibility requirements ... to be a bail fugitive recovery person and requiring bail fugitive recovery persons to satisfy specified notice and conduct requirements in carrying out their duties."

**California Rehabilitation Center [R.I.P.]**  
Stats. 2012, Chs. 41 and 42 (SB 1021 and 1022).

[R.I.P. = Rest in Peace. GB]

Adds WI 3202. Amends WI 3050, 3051, 3100, 3100.6, 3201. See also the uncodified section in SB 1022, discussed in this section below.

New Subdivisions to WI 3050, 3051, 3100, and 3100.6 each state “Commencing July 1, 2012, no new [CRC] commitments may be made....”

The following changes are made to the main CRC discharge statute, Welfare & Inst. Code § 3201:

- People still on CRC parole on July 1, 2013 must be returned to court for further proceedings.
- People serving a revocation term, or in substance abuse treatment on July 1, 2013, must complete that term; they are then discharged from CRC and returned to court.
Beginning July 1, 2012, no person discharged from CRC shall be placed on parole. Instead they will be discharged from the program, and returned to the court for further proceedings.

Beginning July 1, 2013, any person on CRC parole, not serving a revocation term or in custody of CDCR, must be discharged from parole and returned to the court for further proceedings. [Note by GB: When the person is returned to court, the person is entitled to a new sentencing proceeding, at which the court cannot impose a higher sentence, but can impose a lower one, including granting probation.]

Under new § 3202 of WI, the entire CRC chapter becomes inoperative on April 1, 2014, and is repealed on January 1, 2015, unless those dates are changed by new legislation.

SB 1022, at its uncodified section 15, provides that the CRC facility at Norco shall be closed no later than December 31, 2016.

**Child Abuse Central Index [removal therefrom]**

Stats. 2012, Ch. 848 (AB 1707)

Amends PC 11169 and 11170.

*From Senate Committee on Public Safety’s “2012 Bill Summary”:*

“Existing law requires the [Dept.] Justice to [be] a repository of reports of suspected child abuse and severe neglect to be maintained in the Child Abuse Central Index (CACI)....

“This bill requires that any person listed in the CACI as of Jan[.] 1, 2013, who was listed prior to reaching 18 years of age, and who is listed once ... with no subsequent listings, be removed from the CACI ten years from the date of the incident [involved].”

**Child abuse reporting** see Mandated child abuse reporters.

Adopted by the California Supreme Court on Nov. 14, 2012, effective January 1, 2013.

Changes concerning elections have been widely publicized elsewhere.

Discussed here are changes to Canon 3 of particular interest to criminal-law attorneys.

Canon 3. A judge shall perform the duties of judicial office impartially, competently, and diligently.

B. Adjudicative Responsibilities

ADVISORY COMMITTEE COMMENTARY

Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge’s responsibilities of judicial office… [A]n incorrect legal ruling is not itself a violation….

(7)(a) …. A judge may consult with court personnel or others authorized by law, [if] the communication relates to that person’s duty to aid the judge in carrying out the judge’s adjudicative responsibilities.

In any discussion with judges or court personnel, the judge shall make reasonable efforts to avoid receiving factual information that is not part of the record or an evaluation of that factual information. … [T]he judge shall not abrogate the responsibility personally to decide the matter.

ADVISORY COMMITTEE COMMENTARY

…
... [A] judge may have ex parte discussions with appropriate court personnel, ... only on matters ... within the ... performance of that person’s duties. For example, a bailiff may inform the judge of a threat to the judge or to the ... security of the courtroom, but may not tell the judge ex parte that a [D] was overheard making an incriminating statement .... A clerk may point out ... a technical defect in a ... sentence, but may not suggest to the judge that a [D] deserves a certain sentence.

A sentencing judge may not consult ex parte with a representative of the probation department about a matter pending before the sentencing judge....

(c) A judge may initiate, ... or consider any ex parte communication when expressly authorized by law ... or when authorized ... by stipulation of the parties.

(d) If a judge receives an unauthorized ex parte communication [on] the substance of a matter, the judge shall ... promptly ... notify the parties ... and provide the parties with an opportunity to respond.

**ADVISORY COMMITTEE COMMENTARY**

An exception allowing a judge ... to obtain the advice of a disinterested expert on the law has been eliminated from Canon 3B(7) because [doing that] outside the presence of the parties is inconsistent with ... the adversarial system.

(12) A judge may participate in ... efforts to resolve matters in dispute .... A judge may, with the express consent of the parties or their lawyers, confer separately with the parties and/or their lawyers during such resolution efforts.

**ADVISORY COMMITTEE COMMENTARY**

....
Where [such] ... efforts ... are unsuccessful, the judge should consider whether, due to events ... during the resolution efforts, the judge may be disqualified ... from presiding over the trial. See, e.g., [CCP] 170.1, subdivision (a)(6)(A).

**Compassionate Release** See County Jails: Medical Probation and Sheriff’s Compassionate Release.

**Controlled Substances: overdose [limited immunity from] punishment [when seeking medical attention].** Stats. 2012, Ch. 338 (AB 472)

 Adds HS 11376.5

*From Senate Committee on Public Safety’s “2012 Bill Summary”:

This bill provides that it shall not be a crime for any person who experiences a drug related overdose..., who, in good faith, seeks medical assistance, or any other person who, in good faith, seeks medical assistance for the person experiencing a drug-related overdose, to be under the influence of, or to possess for personal use, a controlled substance [or] analog, or drug paraphernalia, under certain circumstances related to [that] ... overdose ... if that person does not obstruct medical or law enforcement personnel.

**County Jails: Medical Probation and Sheriff’s Compassionate Release** Stats. 2012, Ch. 837 (SB 1462)

 Adds GC 26605.6, 26605.7 and 26605.8.

*From the Legislative Counsel’s Digest:

Existing law requires the sheriff to receive all persons committed to jail and authorizes a sheriff to release a prisoner from a county correctional facility for transfer to a medical
care facility or residential care facility upon the advice of a physician, as specified, provided the sheriff gives specified notice to the superior court.

This bill would additionally authorize the sheriff to release a prisoner from a county correctional facility after conferring with a physician who has oversight for providing medical care at a county jail if the sheriff determines that the prisoner would not reasonably pose a threat to public safety and the prisoner, upon diagnosis by the examining physician, is deemed to have a life expectancy of 6 months or less, provided the sheriff gives specified notice to the superior court.

The bill would also authorize the sheriff to request the court to grant medical probation or to resentence a prisoner to medical probation in lieu of jail time to a prisoner convicted and sentenced to a county jail, if the prisoner is physically incapacitated with a medical condition that renders the prisoner permanently unable to perform activities of basic daily living, which has resulted in the prisoner requiring 24-hour care, and if that incapacitation did not exist at the time of sentencing or if the prisoner would require acute long-term in-patient rehabilitation services.

The bill would authorize the probation officer or the court to request a medical examination of the person released on medical parole at any time, and to return that person to the sheriff’s custody if that person no longer qualifies for release...

**County Jails: Early Release Due to Overcrowding**

Stats. 2012, Ch. 43 (SB 1023)

Amends PC 4024.1

Predating Realignment, Pen. Code § 4024.1 permitted the court to authorize inmates to be released from jail due to overcrowding, up to 5 days early.

SB 1023 now permits the court to authorize early release due to overcrowding, up to 30 days early.
Criminal History Information. See “Background Checks” and “Defense Attorney Access to State and Local Summary Criminal History Information.”

Defense Attorney Access to State and Local Summary Criminal History Information. Stats. 2012, Ch. 43 (SB 1023)

Amends PC 11105, subd. (b)(9) and 13300, subd. (b)(9).

From the Legislative Counsel’s Digest for SB 1023, items (17) and (18):

“Existing law requires [DOJ] to maintain state summary criminal history information and to make it available to a public defender or attorney of record when representing a person in a criminal case or a parole revocation or revocation extension hearing.

“This bill would require [DOJ] to make the state summary criminal history information available to the public defender or attorney of record when representing someone in a postrelease community supervision or mandatory supervision revocation or revocation extension proceeding.

“Existing law requires a local agency to furnish local summary criminal history information to a public defender or attorney of record when representing a person in a criminal case and when authorized access by statutory or decisional law.

“This bill would … require the local agency to furnish the local summary criminal history information to a public defender or attorney of record when representing a person in a parole, postrelease community supervision, or mandatory supervision revocation or revocation extension proceeding.”

[Note by GB: Both of the amended provisions state that they only apply “… when authorized access by statutory or decisional law.” One such case appears to be Millaud v. Superior Court (1986) 182 Cal.App.3d 471 (pointing out that such information is available, and assuming that DOJ will provide it).]
**Domestic Violence and Sexual Assault: Victim refusal to testify.**  Stats. 2012, Ch. 510 (AB 2051)

Amends CCP 1219 and PC 1387

Prior to this bill, CCP 1219, subd. (b), read:

(b)... [N]o court may ... place in custody the victim of a sexual assault or domestic violence crime for contempt when the contempt consists of refusing to testify concerning that sexual assault or domestic violence crime.

This bill adds the following additional language to CCP 1219, subd. (b):

> Before finding a victim of a domestic violence crime in contempt as described in this section, the court may refer the victim for consultation with a domestic violence counselor. All communications between the victim and the domestic violence counselor shall remain confidential under Section 1037.2 of the Evidence Code.

Prior to this bill, PC 1387, subd. (a), provided that in most cases, a felony that is dismissed twice cannot be refilled. There are several exceptions to this “two dismissal rule”.

This bill adds the following additional exception to PC 1387, subd. (a):

(4) That the termination of the action was the result of the complaining witness being found in contempt of court as described in subdivision (b) of Section 1219 of the Code of Civil Procedure. This paragraph shall apply only within six months of the original dismissal of the action, and may be invoked only once in each action.
**Domestic Violence; Probation Fees**  Stats. 2012, AB 2094

Amends PC 1203.097

*From the Legislative Counsel’s Digest:*

Existing law requires, if a [D] is granted probation for a domestic violence crime, that the terms of the probation include ... a minimum payment by [D] of $400 for state and local domestic violence programs.... Existing law specifies that the court may reduce or waive the $400 fee if, after a hearing, the court finds that [D] does not have the ability to pay.

This bill would increase the fee from $400 to $500. The bill would, if the court finds that [D] does not have the ability to pay, require the court to state on the record the reason for reducing or waiving the fee.

**Driving Under the Influence: [Urine tests]**  Stats. 2012, Ch. 196, AB 2020

Amends VC 23612

"*From the Senate Committee on Public Safety’s 2012 Bill Summary:*

.... This bill revises [the provisions on whether and when a person arrested for DUI gets to choose a urine test.]

[It] delete[s] the ... option to choose a chemical test of his or her urine for the purpose of determining the drug content of his or her blood.

[It] provides that if a blood test is unavailable, then the person is deemed to have given his or her consent to a urine test.

[It] also requires that if the person is ... arrested for driving under the influence of a drug or the combined influence of ... alcohol[ ] ... and any drug, person only has the choice a of either a blood or breath test

This bill deletes the option of a urine test, except as required as an additional test.
This bill requires those persons exempt from the blood test [e.g., hemophiliacs] to submit to and complete a urine test.

This bill requires those persons exempted from the blood test [such as hemophiliacs] to submit to, and complete, a urine test.

**Driving under the influence: VC 23152 and 23153 re-arranged, without substantive change.**  
Stats. 2012, Ch. 753 (AB 2552)

Amends VC 23152 and 23153

VC 23152 and 23153 now state the prohibition against driving while drunk and driving while drugged in one sentence. E.g., VC 23152, subd. (a), states “it is unlawful for any person who is under the influence of any alcoholic beverage or drug, or under the combined influence of any alcoholic beverage and drug, to drive a vehicle.”

Beginning Jan. 1, 2014, alcohol and drugs will be separately E.g., for VC 23152, those three, instead of being in one Subdivision, they will now be in three:

Subd. (a) will state: “It is unlawful for a person who is under the influence of any alcoholic beverage to drive a vehicle.”

Subd. (e) will state: “It is unlawful for a person who is under the influence of any drug to drive a vehicle.”

And Subd. (f) will state: “It is unlawful for a person who is under the combined influence of any alcoholic beverage and drug to drive a vehicle.”

**Ethics**  
See Rules of Professional Conduct.
**Evidence Code: Computer-generated information**  
Stats. 2012, Ch. 735 (SB 1303)

Amends EC 1552 and 1553 Existing law, known as the hearsay rule, provides that, at a hearing, evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated is inadmissible, subject to specified exceptions.

*From the Legislative Counsel’s Digest:*

3) ... Existing law provides that a printed representation of computer information, a computer program, or images stored on a video or digital medium is presumed to be an accurate representation of the computer information, computer program, or images that it purports to represent.

This bill would provide that this presumption applies to the printed representation of computer-generated information, video, or photographic images stored by an automated traffic enforcement system. The bill would expressly state that the printed representation of computer-generated information, video, or photographic images stored by an automated traffic enforcement system does not constitute an out-of-court hearsay statement by a declarant.


Amends PC 1202.45, 1214, and 2085, and Rev. & Tax Code 19280.

*From the Legislative Counsel’s Digest*

(1) Under existing law, in every case where a person is convicted of a crime and whose sentence includes parole, the court is required to assess a parole revocation fine ....

This bill would require the court to assess an additional postrelease community supervision revocation restitution fine or mandatory supervision revocation restitution fine in
every case where a person is convicted of a crime and is subject to postrelease community supervision or mandatory supervision [under a split sentence in PC 1170, subd. (h)(5)(B)]....

(2) Existing law generally provides that in any case in which a defendant is ordered to pay restitution, [that] shall be deemed a money judgment ... fully enforceable by [V] as if [it] were a civil judgment, and any ... restitution [as ordered] that remains unsatisfied after [D] is no longer on probation or parole is enforceable by [V]....

This bill would also specify that any portion of a restitution order that remains unsatisfied after a defendant is no longer on postrelease community supervision or mandatory supervision is [likewise] enforceable by [V].

(3) Existing law requires [CDCR] to deduct and retain certain funds from the wages, trust account deposits, or settlement or trial awards of a prisoner for the payment of certain fees and fines, including restitution orders, restitution fines, and specified administrative fees, and also authorizes [CDCR] to collect funds from a parolee for the payment of restitution orders and fines, unless prohibited by federal law....

This bill would specify that, when a prisoner is punished by imprisonment in a county jail for a felony, an agency designated by the county board of supervisors is authorized to deduct and retain those funds, and ... authorize[s] that agency to collect funds from a parolee....

(4) Existing law authorizes delinquent fines, state or local penalties, forfeitures, restitution fines and orders, and any other amounts imposed by a ... court upon [D] ..., to be referred ... to the Franchise Tax Board for collection.

This bill would also authorize the referral of [these] imposed by a juvenile court to the board for collection.

**Fines and Penalties: Time instead of Restitution Fines and Orders Not Permitted:** Stats. 2012, Ch. 49 (SB 1371)

Amends PC 1205.

*From the Senate Committee on Public Safety’s “2012 Bill Summary”*: New Laws 2013
Existing law [provides that] where the judgment includes an order that [D] pay a fine, the court may also order [D] be imprisoned until the fine is satisfied. Those provisions are applicable to restitution fines and restitution orders only if [D] has defaulted on the payment of other fines.

This bill makes the provisions regarding imprisonment until a fine is satisfied inapplicable to restitution fines and restitution orders.

**Firearms: open carrying of unloaded firearms.** Stats. 2012, Ch. 700 (AB 1527)

Amends BP 7574.14 and 7582.2, and PC 626.92, 16520, 16750, 16850, and 17295

Adds PC 16505, 26366.5, 26390, and 26391 and Chapter 7 (commencing with Section 26400) to Division 5 of Title 4 of Part 6.

*From the Legislative Counsel’s Digest:*

Existing law prohibits, with exceptions, a person from possessing a firearm in a place that the person knows or reasonably should know is a school zone.....

This bill would, additionally, exempt a security guard authorized to openly carry an unloaded firearm that is not a handgun and an honorably retired peace officer authorized to openly carry an unloaded firearm that is not a handgun from that prohibition.

Existing law, subject to certain exceptions, makes it an offense for a person to carry an exposed and unloaded handgun on his or her person outside a motor vehicle or inside or on a motor vehicle in public areas and public streets, as specified.

This bill would exempt a person from the crime of openly carrying an unloaded handgun if he or she is in compliance with specified provisions relating to carrying a handgun in an airport or the open carrying of an unloaded handgun by a licensed hunter while actually engaged in training a hunting dog or while transporting the handgun while going to or from that training.

This bill would, subject to exceptions, make it a misdemeanor for a person to carry an unloaded firearm that is not a handgun on his or her person outside a motor vehicle in an incorporated city or city and county and would make it a misdemeanor with specified penalties if a person carries an unloaded firearm that is not a handgun outside a motor vehicle in an incorporated city or city and county and the person at the same time possesses
ammunition [for that] unloaded firearm..., and the person is not in lawful possession of [that] unloaded firearm ....

**Inmates: Involuntary Administration of Psychiatric Medication to Prison and Jail Inmates**

Stats. 2012, Ch. 814 (AB 1907)

Amends PC 2602, and Adds PC 2603

*From the Legislative Counsel’s Digest*

Existing law requires that no inmate be administered psychotropic medication on a nonemergency basis without the inmate’s informed consent, unless after a noticed hearing is conducted in which an administrative law judge determines by clear and convincing evidence that the inmate has a mental illness or disorder, that as a result of that illness the inmate is gravely disabled and lacks the capacity to consent or refuse treatment or is a danger to self or others if not medicated, that there is no less intrusive alternative to involuntary medication, and that the medication is in the inmate’s best interest.

Existing law authorizes [CDCR] to seek to initiate involuntary medication on a nonemergency basis only if specified conditions are met, including that a psychiatrist has determined that the inmate is gravely disabled or is a danger to self or others and does not have the capacity to refuse treatment with psychotropic medication.

Existing law allows a physician to administer psychotropic medication to a prison inmate during an emergency consisting of a sudden and marked change in an inmate’s mental condition so that action is immediately necessary for the preservation of life or the prevention of serious bodily harm. If psychotropic medication is administered during an emergency, existing law authorizes [this] no more than 5 days.

This bill [states that [the Legislature’s] intent ... to terminate the permanent injunction stemming from *Keyhea v. Rushen* [(1986)178 Cal.App.3d 536] providing a process for the involuntary administration of psychotropic medication to prisoners, and to replace those provisions with [these] provisions, as specified.

This bill would revise the provisions authorizing [CDCR] to seek to initiate involuntary medication on a nonemergency basis only if specified conditions are met by instead requiring that the psychiatrist make a determination that the inmate is gravely disabled and
does not have the capacity to refuse treatment with psychiatric medication, or is a danger to self or others. If psychiatric medication is administered on an emergency or interim basis, the bill would require the department to give notice to the inmate of its intention to seek an ex parte order if the situation necessitates the continuation of medication beyond the initial 72 hours pending a full mental health hearing, as provided.

The bill would delete references to psychotropic medications throughout the provisions described above and instead refer to psychiatric medications.

The bill would also enact provisions governing involuntary medication proceedings similar to those described above, as revised, that would be available to counties for inmates in a county jail, and would ... authorize either a psychiatrist or a psychologist to make the determinations described above. The bill would also make clarifying changes.

[In prison, the hearing officer is an Administrative Law Judge. In County Jails, the hearing officer will be “A superior court judge, a court-appointed commissioner or referee, or a court-appointed hearing officer”

[In both prison and jails, counsel can be appointed for certain hearings. The word used is “counsel,” so this is not required to be the county public defender.]

**Human Trafficking  Proposition 35 at the Nov. 2012 General Election**

Title 8 of Part 1 of PC; Amends PC 236.1, 236.2, 236.4, 290; 290.012; 290.014; 290.015; 290.024; and 13519.14.


**Proposition 35 amends and expands the existing laws by:**

(1) adds EC § 1116 limiting the use against victims of human trafficking of commercial sex acts they committed while being victimized;

(2) doubles (approximately) the prison terms for forced-labor [i.e., non-sexual] human trafficking;
(3) increases the list of sexual offenses covered by human trafficking laws, adding a prostitution-related, and several pornography-related crimes;

(4) doubles, or more, the prison terms for human trafficking of adults for specified sex offenses, or extortion;

(5) increases, up to approximately double the prison terms for non-forceful, non-fraudulent human trafficking of minors for specified commercial sex offenses;

(6) requires a 15-to-life term for human trafficking in minors for commercial specified sex offense where force, fear, fraud, or similar acts were involved;

(7) eliminates the requirement that there be a deprivation or violation of personal liberty for human trafficking of minors for commercial sexual purposes.

(8) provides that consent by a minor, and mistake of a minor’s age, are not defenses.

(9) creates additional enhancements for great bodily injury, and for priors;

(10) raises the maximum fines from $10,000 for adult victims, and $100,000 for minor victims, up to $500,000, with a possible $1,000,000;

(11) requires PC 290 registrants to inform law enforcement of their internet service providers and internet identifiers (such as email addresses and chat room monikers), including changes of providers and identifiers;

(12) changes the training-in-human-trafficking requirements of certain law enforcement officers from being completely voluntary, to a mandatory two hours;

(13) mandates that fines be allocated to services for victims, and for prevention;

**Human Trafficking: Forfeiture of instrumentalities and proceeds** Stats. 2012 (SB 1133)

Amends PC 186.8 of, and adds PC 236.7, 236.8, 236.9, 236.10, 236.11, and 236.12.

*From the Legislative Counsel’s Digest*
Existing law makes it a felony ..., to ... violate the personal liberty of another with the intent to effect or maintain a felony violation of, among other crimes, pimping, pandering, and abducting a minor for the purpose of prostitution.

Existing law, the California Control of Profits of Organized Crime Act, defines criminal profiteering as any act committed or attempted, or any threat made for financial gain or advantage, that may be charged as a crime under specified provisions, including murder, money laundering, human trafficking, and crimes in which the perpetrator induces, encourages, persuades, threatens, or forces a person under 18 years of age to engage in a commercial sex act. Under existing law, property and assets acquired or received in exchange for the proceeds immediately derived from the pattern of criminal profiteering ... are subject to forfeiture....

This bill would authorize the forfeiture of vehicles, boats, airplanes, money ... real property, or other things of value used for ...human trafficking involving a commercial sex act where the victim is ... under 18 years of age at the time of the ... crime and property acquired through human trafficking or ... received in exchange for the proceeds of human trafficking of a person under 18 years of age when the crime involved a commercial sex act....

**Human trafficking: seizure of assets.**

**Stats. 2012, Ch. 512 (AB 2466)**

Adds PC 236.6

*From the Legislative Counsel’s Digest:*

Existing law makes it a felony ... to ... violate the personal liberty of another with the intent to effect or maintain a felony violation of, among other crimes, pimping, pandering, and abducting a minor for the purpose of prostitution...

Existing law requires the court to order a person who is convicted of a crime to pay a restitution fine ..., and restitution to the victim or victims for the full amount of economic loss, unless the court finds compelling and extraordinary reasons for not doing so and states them on the record. Additionally, under existing law, real property used to facilitate the commission of human trafficking may be determined to be a nuisance and remedies may be imposed against that property.
This bill would authorize [P], at the same time as the filing of a complaint or indictment charging human trafficking, to file a petition for protective relief necessary to preserve property or assets that could be used to pay for remedies relating to human trafficking, including, but not limited to, restitution and fines....

**Insanity: See “Not Guilty By Reason of Insanity” Plea**

**Judges** See Code of Judicial Ethics

**Juvenile Cases: Joinder of Agencies** Stats. 2012 Ch. 130 (SB 1048)

Amends WI 362 and 727

*From the Senate Committee on Public Safety’s 2012 Bill Summary:*

Existing law authorizes the juvenile court to join in a ... proceeding any governmental agency or [in dependency proceedings only] private service provider that the court determines has failed to meet a legal obligation to provide services to a child who is the subject of a dependency proceeding ... [or] delinquency proceeding.

This bill authorizes joinder in dependency and delinquency cases of specified agencies which have failed to provide legally obligated services to children upon the filing of a petition instead of adjudication....

**Juvenile Delinquency: Division of Juvenile Justice** Stats. 2012 Ch. 7 (AB 324) An “urgency” bill, effective immediately.

Amends WI 731 and 733; adds WI 1752.16
From the Senate Committee on Public Safety’s 2012 Bill Summary

Existing law describes who is eligible for commitment to the Division of Juvenile Justice (DJJ), as specified. 38

This bill clarifies the jurisdiction of DJJ with respect to youthful offenders who have committed sex offenses, as specified, and authorizes DJJ to enter into contracts with counties to continue to provide housing to wards affected by the California Supreme Court's ruling in In re C.H (2011) 53 Cal.4th 94.

Juvenile Fines and Penalties. See “Fines and Penalties.”


The second bill corrected an error in the first bill.

Amends WI 602, 607, 1719, 1769, and 1771. (Both bills were Realignment budget bills.)

From the Legislative Counsel’s Digest for SB 1021:

“Beginning July 1, 2014, existing law eliminates the power of revocation or suspension of parole as a state duty [of] the Juvenile Parole Board, and instead requires the court to establish the conditions of the ward’s supervision and the county of commitment to supervise a ward release on parole.


“The bill would also reduce the jurisdiction of … Division of Juvenile Facilities, to 23 years of age for all wards committed … on or after July 1, 2012 [with exceptions].” [See Welfare & Inst. Code § 607, subd. (f), as amended. GB]
From the Senate Committee on Public Safety’s Bill Summary for 2012:

[This bill] ... exclude[s] ... Division of Juvenile Justice (DJJ) wards committed pursuant to In re C.H [(2011) 53 Cal.4th 94] from [the] recently enacted statute, SB 1021 ..., that changed the maximum age of jurisdiction for DJJ wards from 25 to 23. DJJ wards committed pursuant to C.H have a maximum age of jurisdiction of 21 and should not have been subject to the jurisdictional change made in SB 1021;

Juvenile Delinquency: Record sealing: Prostitution Stats. 2012, Ch. 197 (AB 2040)

Adds PC 1203.47

From the Legislative Counsel’s Digest:

“Existing law authorizes the court, upon petition from a person who has reached 18 years of age, to seal all records relating to the person’s [juvenile court] ... if the person has not been subsequently convicted of a felony or misdemeanor involving moral turpitude, and if rehabilitation has been attained to the satisfaction of the court.

“This bill would provide that a person who was adjudicated a ward ... for the commission of a violation of [PC 647, subd. (b) (prostitution) or PC 653.22 (loitering for prostitution)] may petition a court to have his or her records [of these offenses] sealed ... without showing that he or she has not been subsequently convicted of a felony or misdemeanor involving moral turpitude, or that rehabilitation has been attained, as provided.

... [This] relief ... would not apply to a person who paid money, or attempted to pay money, to any person for the purposes of prostitution....

[This] bill appl[ies] to convictions and adjudications that occurred before and after the [bill’s] effective date....
**Life Without Parole for Crime Done When Under 18: Resentencing Petition**  
Stats. 2012, Ch. 828 (SB 9)

Amends PC 1170

*From the Senate Committee on Public Safety’s “2012 Bill Summary”*

...[A] prisoner who was under 18 years of age [when] committing an offense for which [D] was sentenced to life without parole [can now] submit a petition for recall and resentencing to the sentencing court....

This bill prohibits a prisoner who tortured his or her victim or whose victim was a public safety official ..., from filing [such] a petition.... The bill requires the petition to include a statement from the defendant that includes, among other things, his or her remorse and work towards rehabilitation.

This bill establishes ... criteria, at least one of which shall be asserted in the petition, to be considered when a court decides whether to conduct a hearing on the petition for recall and resentencing and additional criteria to be considered by the court when deciding whether to grant the petition.

This bill requires the court to hold a hearing if the court finds that the statements in the defendant's petition are true....

**Mandated child abuse reporting**  
Stats. 2012, Ch. 521 (AB 1817)

Amends PC 11165.7, 11166, and 11172.

“Existing law requires certain persons to report whenever ..., in his or her professional capacity or ... the scope of ... employment, [he or she] has knowledge of or observed a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. Failure to report ... is a [misdemeanor] punishable by ... county jail ... up to 6 months, a fine of $1,000, or by both.”

“This bill includes as a mandated reporter a "commercial computer technician" ....

“[Also] any commercial computer technician, and any employer of [one] who, pursuant to a warrant ... provides ... law enforcement ... with a computer or ... component which
contains possible evidence of ... known or suspected ... child abuse or neglect, shall not incur civil or criminal liability as a result of providing that computer or ... component ....”

Additional important effects of this bill:

*From the Legislative Counsel’s Digest:*

“This bill ... incorporate[s] [the] changes in [PC] 11165.7 ... [made] by AB 1434, AB 1435, AB 1713, and SB 1264.... [And the] changes in [PC] 11166 ... by AB 1713....

*Here is what those bills did, and therefore what this bill also, does:*

*From the Senate Committee on Public Safety’s “2012 Bill Summary” for AB 1434:*

“This bill ... includes as a mandated reporter an employee or administrator of a public or private postsecondary institution, whose duties [include] contact with children on a regular basis, or who supervises [such people], as to child abuse or neglect occurring on that institution's premises or at an official activity of ... the institution....

*From the Senate Committee on Public Safety’s “2012 Bill Summary” for AB 1435:*

“This bill expressly includes as a mandated reporter an athletic coach, athletic administrator, or athletic director employed by any public or private school that provides any combination of instruction for kindergarten, or grades 1 to 12, inclusive.”

*From the Senate Committee on Public Safety’s “2012 Bill Summary” for AB 1713:*

This bill expands the[ ] [mandated reporter] provisions to ... include commercial film and photographic print or image processors ... and also expands the list of media to which those provisions apply to include ... any ... image, [or information] as specified.

*From the Senate Committee on Public Safety’s “2012 Bill Summary” for SB 1264:*

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New Laws 2013
“This bill expressly includes as a mandated reporter any athletic coach, including but not limited to an assistant coach or a graduate assistant involved in coaching, at public or private postsecondary institutions.”

**Medical Probation:** See County Jails: Medical Probation and Sheriff’s Compassionate Release.

**Minor victims of sex crimes: Refusal to testify.** Stats. 2012, Ch. 223 (SB 1248)

Amends CCP 1219.5

*From the Legislative Counsel’s Digest*

“Existing law requires courts to refer minors under 16 years of age who refuse to testify in a court proceeding to a probation officer, as specified, and to receive a recommendation and report from that probation officer, before imposing a sanction for contempt, except as specified.

“This bill would require the court to require a victim of a sex crime who is subject to the above requirements to meet with a victim advocate, as defined [in PC 679.04], unless the court finds, for good cause, that it is not in the best interest of the victim.”

**“Not Guilty By Reason of Insanity” Plea** Stats. 2012, Ch. 150 (SB 1281)

Amends PC 1027

*From the Legislative Counsel’s Digest:*

Under existing law, when a [D] pleads not guilty by reason of insanity, the court is required to appoint at least 2 psychiatrists or licensed psychologists to examine, investigate, and report on [D’s] mental status. The report is required to include certain information,
including the psychological history of the defendant and the present psychological or psychiatric symptoms of [D].

This bill would require the report to also include [D’s] substance abuse history, [D’s] substance use ... on the day of the ... offense, a review of the police report ..., and any other credible and relevant material ... necessary to describe the facts of the offense.

**Pregnant Inmates and Juvenile Wards and DJF Inmates**

Stats. 2012 (AB 2530)

Adds PC 3407, repeals PC 5007.7, and amends PC 6030.

*From the Legislative Counsel’s Digest*

... [E]xisting law requires pregnant inmates who are transported to a hospital outside the prison for ... childbirth to be transported in the least restrictive way possible and, ... at the hospital, prohibits shackling by the wrists, ankles, or both, unless deemed necessary for safety, when the inmate is in active labor ....

This bill would prohibit a pregnant inmate ... in labor, in recovery, or after delivery, from being restrained by the use of leg irons, waist chains, or handcuffs behind the body.

The bill would prohibit, in these circumstances, restraint by the wrists, ankles, or both, unless deemed necessary for the safety and security of the inmate, the staff, or the public. The bill would require [once regulations are written] ... that pregnant inmates to be advised, orally or in writing, of standards and policies governing pregnant inmates.

(2) Existing law requires the Board of State and Community Corrections to establish minimum standards for local correctional facilities, which include standards governing pregnant inmates.

This bill would require the board, ... to adopt standards regarding the restraint of pregnant women and to review local facilities’ compliance.

(3.... Existing law prohibits a pregnant ward or pregnant juvenile inmate [at DJF] from being shackled by the wrists, ankles, or both, while in labor, requires pregnant inmates who are transported to a hospital ... for ... childbirth to be transported in the least restric-
tive way possible, and prohibits shackling by the wrists, ankles, or both, unless deemed necessary for safety, when the female is in active labor.

This bill would prohibit a ward who is known to be pregnant or in recovery after delivery from being restrained by the use of leg irons, waist chains, or handcuffs behind the body, including while being transported to a hospital outside the facility. The bill would prohibit, in these circumstances, restraint by the wrists, ankles, or both, unless deemed necessary for the safety and security of the inmate, the staff, or the public.

**Protective Orders: Electronic Monitoring**
Stats. 2012, Ch. 513 (AB 2467)

Amends PC 136.2

*From the Legislative Counsel’s Digest:*

Existing law authorizes a court with jurisdiction over a criminal matter, upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is [may] occur, to issue [protective] orders....

This bill would authorize a court, when issuing [such a] protective ... order ..., to require electronic monitoring of [D] if the local government [adopts a policy for this, as specified] The bill would require [D] to pay for the monitoring if [D] is able to pay.... The ... duration of the electronic monitoring [is limited] to one year.

**Realignment: seven different bills.**

Amends: PC 288.2, 417.6, 476a,...647.6, 653, 836.6, 4536, 19100, 19200, 20110, 20310, 20410, 20510, 20610, 20710, 20910, 21110, 21310, 21810, 22010, 22210, 22410, 24310, 24410, 24510, 24610,24710, 30210, 31360 31500, 32310, 32900, 33215, 33500.

And Amends HS 11353.7 VC 2800.4 WI 10980

*For coverage of AB 1481, and part of SB 1021, see “Juvenile Parole Mostly Ends”*
For coverage of SB 1210, see Fines and Penalties”

For coverage of part of SB 1021, see “California Rehabilitation Center, [R.I.P.]”

The other five bills are Stats. 2012, Chs. 40, 41, 42, 43, and 717 (SB 1020 to 1023 and AB 1496). They were urgency bills, the SBs effective last June 29, 2012, and the AB Sept. 28, 2012. They mainly affected Realignment’s budget, which is, mostly, beyond the scope of this paper.

Discussed here are mainly, the major direct effects on criminal law and procedure.

**SB 1023:**

(1) Amends the punishment for several State Prison Felonies, primarily certain weapons offenses, such as concealed dirk or dagger, billy club possession, or short barreled rifle or shotgun, making them County Jail Felonies. For more information see the separate web publication, “Realignment: Supplement to the June 10, 2012 Edition” by Garrick Byers, Statute Decoder. Available from the author and from California Public Defenders Association.

(2) Amends the punishment for some County Jail Felonies, making them into State Prison Felonies, mainly to correct earlier drafter’s errors. For more information, see the publication discussed immediately above.

(3) Amends the out-on-release enhancement, Pen. Code § 12022.1, so that its punishment for a County Jail Felony committed while on release for another County Jail Felony, is now two extra years in County Jail.

(4) Expands county authority to permit electronic monitoring in lieu of bail.

(5) Expands release of jail inmates due to overcrowding from 5 days early to 30 days.

**SB 1022** (Ch. 42, Stats. 2012) consists of 17 sections that primarily change existing prison construction formulas and priorities in light of Realignment. Significantly, it approves money for one or more “adult local criminal justice facilities.”
SB 1021 (Ch. 41, Stats. 2012) has 117 sections, mostly budgetary. Two of its major changes in criminal law and procedure are discussed above, in

“California Rehabilitation Center [R.I.P.]” and “Juvenile Parole Most Ends.”

SB 1021 also Permits intercounty transfer of jail inmates to ease overcrowding.

SB 1020 (Ch. 40, Stats 2012) is a complex budget bill with 34 sections. It rearranges and renames many of the budget items. It adds to the District Attorney and Public Defender fund a new District Attorney and Public Defender Growth Fund

Restitution: Time to Apply to Stat Board  Stats 2012, Ch. 870 (SB 1299)

Amends GC 13952 to 13955, 13957.2, and 13957.7. Repeals GC 13957.9.

Among other changes, this bill increases from one year to three years the time period in which crime victims may file an application for compensation from the Restitution Fund of the California Victim Compensation and Government Claims Boar

The bill also modifies the authorization for the board to extend that time period for good cause.

Restitution: Time instead of Restitution Fines and Orders: (See Fines and Penalties; Time Instead of Restitution Fines and Orders Not Permitted,)
Rule 4.202. Statements to the jury panel

Prior to the examination of prospective jurors, the trial judge may, in his or her discretion, permit brief opening statements by counsel to the panel. 31

Comment

This statement is not a substitute for opening statements. Its purpose is to place voir dire questions in context and to generate interest in the case so that prospective jurors will be less inclined to claim marginal hardships.

Rule 4.530 Intercounty transfer of probation and mandatory supervision cases.

This rule is amended effective November 1, 2012 to make transfer of mandatory supervision under PC 1170, subd. (h)(5)(B), similar to transfer of probation cases.

Rule 4.541 Minimum contents of supervising agency reports.

This rule is amended effective November 1, 2012, to make petitions to revoke mandatory supervision under PC 1170, subd. (h)(5)(B), similar to petitions to revoke postrelease community supervision.

Rule 5.616. Interstate Compact on the Placement of Children

(a) Applicability of rule (Fam. Code, § 7900 et seq.)

This rule implements the purposes and provisions of the Interstate Compact on the Placement of Children (ICPC, or the compact). California juvenile courts must apply this rule when placing children who are dependents or wards of the juvenile court and for whom placement is indicated in any other state, the District of Columbia, or the U.S. Virgin Islands.

[There follows major changes to this Rule]
Rule 8.40. Form of filed documents

(c) Cover information

(1) Except as provided in (2), the cover—or first page if there is no cover—of every document filed by an attorney in a reviewing court must include the name, mailing address, telephone number, fax number (if available), e-mail address (if available), and California State Bar number of each attorney filing or joining in the document, or of the party if he or she is unrepresented....

A similar change is found in Rule 8.816 for covers, or first page, of briefs filed in the Appellate Division of the Superior Court.

Rules of Professional Conduct for Lawyers. Proposed revisions by the California State Bar

For nearly a decade, the State Bar has been working on a massive revision to have these rules track the ABA Model Rules of Professional Conduct for Lawyers.

The Bar finished its proposals in 2010, and submitted them to the California Supreme Court for adoption. They later withdrew that submission.

In the last several months, the Bar began again to submit the proposed revisions to the Supreme Court. There is no set timetable for the submission to be completed, and no timetable for the court to decide, but this could occur sometime in 2013.

The proposed new rules are not effective or operational until the court adopts them.

The two most controversial proposed new rules, from a criminal law practitioner’s viewpoint, are Rule 3.3, titled “Candor Toward the Tribunal”; and” Rule 4.2 “Communication with a Person Represented by Counsel”.

Rule 3.3(a)(2) states that a lawyer shall not knowingly
(2) fail to disclose to the tribunal legal authority in the controlling jurisdic-
tion known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel...."

Many lawyers believe that the above obligation does not exist under the current rules. Many defense lawyers believe that compliance with this proposed rule means they must inform of the court of something that harms their clients.

More controversial still is Rule 3.3’s proposed comment [4]:

“... Legal Authority controlling jurisdiction may include legal authority outside the jurisdiction in which the tribunal sits, such as a federal statute or case that is determinative of an issue in a state court proceeding or a Supreme Court decision that is binding on a lower court. Under this Rule, the lawyer must disclose authorities the court needs to be aware of in order to rule intelligently on the matter.”

The Comment goes on to state, however

“Whether a criminal defense lawyer is required to disclose directly adverse legal authority in the controlling jurisdiction involves constitutional principles that are beyond the scope of these Rules.”

The other, probably even more controversial, rule is Rule 4.2(a):

“(a) In representing a client, a lawyer shall not communicate directly or indirectly about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer.” [emphasis added GB]

The current rule bars such communication with a “party.” The proposed rule expands this to “person.”
The complete text of the proposed new rules, and some supporting material can be found in the Ethics portion of the State Bar’s web site.

[Opinion by GB: Although I do not agree with all of the proposed new rules, I find they do provide good guidance.]

**Search Warrants: Tracking Devices**  
Stats. 2012, Ch. 818 (AB 2055)

Amends PC 1524 and 1534

*From the Assembly Floor Analysis of Aug. 28, 2012*

This bill established procedures for tracking-devices search warrants. Specifically [it]:

1) Allowed a tracking-device search warrant to be issued when the information to be received from [that] [will] tend[ ] to show a felony has been committed or is being committed, tends to show that a particular person has committed ... or is committing [it], or will assist in locating an individual who has committed or is committing a felony.

2) Provided that a tracking-device search warrant shall be executed in a manner meeting the requirements specified in [PC] 1534 [subd.] (b).

3) Required a tracking-device search warrant to identify the person or property to be tracked and to specify a reasonable length of time, not to exceed 30 days, from the date the warrant is issued, that the device may be used.

4) Allowed the court to grant one or more extensions for the time that the device may be used if good cause is established.

5) Provided that each extension may last a reasonable length of time, but may not exceed 30 days.

6) Stated that the search warrant shall command the officer to execute the warrant by installing a tracking device or by serving a warrant on a third-party possessor of the tracking data.

7) Required the officer to perform any installation authorized ...during the daytime, unless the magistrate expressly authorizes installation at another time for good cause.
8) Mandated execution of the warrant to be completed no later than 10 days immediately after the date of issuance.

9) Deemed a warrant executed within this 10-day period to be timely executed.

10) Provided that after 10 days the warrant shall be void, unless it has been executed.

11) Stated that an officer executing a tracking-device search warrant is not required to knock and to announce his or her presence before execution.

12) Required the officer executing the warrant to file a return to the warrant no later than 10 calendar days after the use of the tracking device has ended.

13) Required the officer executing the warrant to serve a copy of the warrant on the person who was tracked or whose property was tracked no later than 10 calendar days after the use of the tracking device has ended.

14) Authorized a judge, for good cause, to delay service of a copy of the warrant if a government agency makes this request.

15) Defined a "tracking device" as any electronic or mechanical device that permits the tracking of the movement of a person or object.

16) Defined "daytime" as the hours between 6:00 a.m. and 10:00 p.m. according to local time.

[On August 29, 2012, the Assembly concurred in the Senate Amendments to this bill, which were, according to this floor analysis:]

1) Expand the grounds to obtain a tracking-device search warrant to include misdemeanor violations of the Fish and Game Code and the Public Resources Code.

2) Specify that the provisions of this bill do not create a cause of action against any foreign or California Corporation, its officers, employees or agents who provide location information to law enforcement.
Sexually Violent Predators: Replacement Evaluators  Stats. 2012, Ch. 790 (SB 760)

Amends WI 6603

From “Senate Committee on Public Safety’s “2012 Bill Summary”:

.... Alleged SVPs are evaluated by two experts [as defined].... If one or more of the original evaluators is no longer available to testify for [P], [P] may request [the State Hospital] to perform replacement evaluations. Existing law defines when an evaluator is no longer available to testify for this purpose.

This bill expands the definition of an unavailable evaluator to include [a new category:] an independent professional or state employee who has resigned or retired and has not entered into a new contract to continue as an evaluator. A new evaluator cannot be appointed to replace a resigned or retired evaluator [who has become unavailable under this new category] who has opined that the person is not an SVP.

Subpoenas: Gated Communities  Stats. 2012 (AB 1720)

Amends CCP 415.21

From the Legislative Counsel’s Digest

Existing law requires a person to be granted access to a gated community for a reasonable period of time for the purpose of performing lawful ... service of a subpoena, upon identifying to the guard the person or persons to be served, and upon displaying a current driver’s license or other identification and specified documentation to show the individual is either ... a representative of a county sheriff or marshal or is a registered process server.

This bill would also require a person to be granted access to a gated community for service of process, under [those] circumstances ..., upon displaying evidence of licensure as a private investigator....

[Note by GB: Although this is in the Code of Civil Procedure, it does specify subpoena; so it may apply to criminal subpoenas.]
**Support Persons**  See Witnesses: Support Persons.

**Three Strikes Reform.** Proposition 36 at the November, 2012 General Election.

Amends PC 667, subds. (b) to (f) and 1170.12. Adds PC 1170.126.

Under **amended** PC 667, subd. (e)(2)(C), and 1170.12, subd. (c)(2)(C), if D’s current felony is not serious or violent D is now facing only a 2nd-strike sentence **unless**:

(i) The current offense involves drugs, with an HS 11370.4 or 11379.8 allegation; or

(ii) The current offense is a felony under PC 261.5, subd. (d); or PC 262; or a PC-290-mandatory-registerable-offense (except PC 266; PC 285; PC 286, subd. (b)(1) or (e); PC 288a, subd. (b)(1), or (e); PC 311.11; or PC 314); or

(iii) In the current offense, D used a firearm, was armed with a firearm or deadly weapon, or intended to cause GBI to another person; or

(iv) D has a prior serious or violent offense-conviction for:

   (I) A “sexually violent offense” as defined in WI 6600, subd. (b), or

   (II) Any of the following with a child under 14 and more than 10 years younger than D: (a) Oral copulation under PC 288a; or (b) sodomy under PC 286; or (c) sexual penetration under PC 289; or

   (III) “A lewd or lascivious act involving a child under 14, under PC 288; or

   (IV) Any homicide or attempted homicide under PC 187 to 191.5, inclusive; or

   (V) Solicitation to commit murder under PC 653f.

   (VI) Assault with a machine gun on a peace officer or firefighter, under PC 245, subd. (d)(3).

   (VII) Possessing a weapon of mass destruction, under PC 11418, subd. (a)(1); or

   (VIII) Any serious or violent felony punishable by life imprisonment or death.
Romero discretion is preserved: Added to PC 667, subd. (f)(2), and PC 1170.12, subd. (d)(2), is: “Nothing in this section shall be read to alter a court’s authority under Section 1385.”

If D is serving a 3rd-strike life-term, and the conviction-felony was not serious or violent:

Under new PC 1170.126, subd. (a), D can petition for resentencing if D would not have gotten a life term under this reform. No 2nd-strikers can apply. PC 1170.126, subd. (c).

The petition must be filed by Nov. 6, 2014 (unless good cause is shown to have waited longer). PC 1170.126, subd. (b).

The petition must set forth all of the currently charged felonies that resulted in the life term, and all prior convictions that were alleged and proved. PC 1170.126, subd. (d).

An inmate is eligible for resentencing if (1) the current felony was not serious or violent, (2) the current felony was not any of the other current offenses that still get a 3rd-strike life term, and (3) D has no prior convictions for any of the offenses that, still cause a 3rd-strike life term. (See p. 1 for a description of those offenses). PC 1170, subd. (e).

If the court determines that petitioner is eligible for resentencing, the court will give a 2nd-strike sentence, unless the court, in its discretion, determines that resentencing the petitioner would pose an “unreasonable risk … to public safety.” PC 1170.126, subd. (f).

In exercising its discretion, the court can consider (1) D’s criminal history, (2) D’s prison record, and (3) any other evidence it finds relevant in deciding if a resentence would result in an “unreasonable risk … to public safety.” PC 1170.126, subd. (g).

D can waive personal presence if the charges are not amended and no new trial or retrial occurs. The new sentence can’t exceed the old one. PC 1170.126, subds. (h) & (i).

If the original judge is not available, a new one presides. PC 1170.126, subd. (j).

The resentencing is a “post-conviction release proceeding” under Cal. Const. art. I, § 28, subd. (b)(7) (Marsy’s Law on victim’s rights). PC 1170.126, subd. (m).

Query if Romero relief is available for the resentencing.

[Note by GB: If the case is on appeal, or judgment is not final, P. v. Conley (C07272, mod. And pub. Dec. 10, 2012) __ Cal.App.4th __, http://www.courts.ca.gov/opinions-slip.htm held that a direct remand for resentencing is not available; instead, the person must petition for resentencing under PC 1170.126. Caution: that case is not final on appeal as of this writing.]
Veterans: Mental Health Issues and [post-granting of probation] Restorative Relief
Stats. 2012, Ch. 403 (AB 2371)

Amends PC 1170.9

From the Legislative Counsel’s Digest:

“Existing law [PC 1170.9] requires a court, in the case of any [D] convicted of a criminal offense ... who alleges that he or she committed the offense as a result of sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems stemming from service in the United States military to make a determination, prior to sentencing, as to whether [D] was, or currently is, a member of the ... military [who] ... may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result .... If the court concludes that [D] ... is such a person, [and] ... [D] [gets] probation, existing law authorizes the court to order [D] into ... treatment program..., provided [D] agrees ....”

This bill adds a new Subdivision (h) to PC 1170.9:

(h) [These] restorative provisions ... shall apply [when the] ... court ... finds at a public hearing, held after ... notice to [P], [D], and [V] ... that all of the following describe [D]:

(A) [D] was granted probation and was at [that] time ... a [qualified veteran as described in PC 1170.9].

(B) [D] is in substantial compliance with ... probation.

(C) [D] has successfully participated in court-ordered treatment and services....

(D) [D] [is] not ... a danger to ... health and safety....
(E) [D] has demonstrated significant benefit from court-ordered education, treatment, or rehabilitation to clearly show that granting [this] restorative relief ... [is justified].

(2) When determining whether [to] grant[ ] [this], the court may consider, among other factors, all of the following:

(A) [D’s] completion and degree of participation in education, treatment, and rehabilitation as ordered ....

(B) [D’s] progress in formal education.

(C) [D’s] development of career potential.

(D) [D’s] leadership and personal responsibility efforts.

(E) [D’s] contribution of service [to] the community.

(3) ... [T]he court may take any of the following actions by a written order setting forth the reasons...:

(A) Deem all conditions of probation ... satisfied, including fines, fees, assessment, and programs, and terminate probation [early] [except] ... victim restitution.

(B) Reduce an eligible [wobbler].

(C) Grant relief in accordance with Section 1203.4.

(4) Notwithstanding anything to the contrary in Section 1203.4, a dismissal ... pursuant to this subdivision has the following effect:

(A) Except as otherwise provided [here], [this] dismissal ... releases [D] from all penalties and disabilities ... [from the case].

(B) [This] dismissal ... does not apply to:

(i) [Convictions pursuant to VC 42002.1 [certain misdemeanors involving car-flight to avoid certain inspections].
[(ii) to (viii) Certain sex offenses, including felony PC 261.5, subd. (d) and failure to register PC 290].

(C) [D] is not obligated to disclose the arrest..., the dismissal, or the conviction ... when [this] information ... is requested to be given under oath, affirmation, or otherwise. [D] may indicate that [D] has not been arrested when [the] only arrest concerns the dismissed action, except when [D] ... for any law enforcement position.

(D) ... [T]he court [may] order the sealing of police records of the arrest and court records of the dismissed action, thereafter viewable by the public only in accordance with a court order.

(E) The dismissal ... shall be a bar to any future action based on the conduct charged in the dismissed action.

(F) In any subsequent prosecution for any other offense, a conviction that was set aside... may be pleaded and proved as a prior conviction and shall have the same effect as if the dismissal ... had not been granted.

(G) [The dismissed] conviction may [still] be considered a conviction for ... administratively revoking or suspending or otherwise limiting [D's] driving privilege on the ground of two or more convictions.

(H) [D's] DNA sample ... in the DNA data bank shall not be removed by [this] dismissal.

[Note by GB: Query if the express permission in (h)(4) “Notwithstanding anything to the contrary in [PC 1203.4], that is included in (h)(4)(C), bolsters or refutes the notion that a person granted PC 1203.4 relief can decline to disclose the arrest and conviction to questions by prior employers. PC 1203.4 is silent on this, so it does not contain “anything to the contrary” of that.]
**Warrants:** See “Search Warrants”

**Witnesses: Support Persons**  Stats. 2012, Ch. 148 (SB 1091)

Amends PC 868.5

*From the Legislative Counsel’s Digest:*

Existing law authorizes a prosecuting witness in cases involving specified crimes, including, among others, murder, kidnapping, robbery, assault, and rape, to have up to 2 persons of his or her own choosing for support at a preliminary hearing and at trial, or at a juvenile court proceeding, during the testimony of the prosecuting witness.

This bill would expand the list of cases in which a prosecuting witness may have support persons to include, among others, cases involving human trafficking, prostitution, child exploitation, and obscenity, as specified.

**Work Release**  Stats. 2012, Ch. 749 (AB 2127)

Amends PC 4024.2

*From the Legislative Counsel’s Digest:*

Existing law authorizes the board of supervisors of any county to authorize the sheriff or other official in charge of county correctional facilities to offer a voluntary program under which any person committed to the facility may participate in a work release program in which one day of participation will be in lieu of one day of confinement.

Existing law requires that ... the hours of labor to be performed be uniform for all persons committed to a facility in a county.

Existing law authorizes the sheriff or other official to permit a participant in a work release program to receive work release credit for participation in education, vocational training, or substance abuse programs in lieu of performing labor in a work release program on an hour-for-hour basis, but limits credit for that participation to $\frac{1}{2}$ of the hours.
established for participation in a work release program, and requires that the remaining hours consist of manual labor, as specified.

This bill would instead authorize a sheriff or other official to permit a participant in a work release program to receive work release credit for documented participation in educational programs, vocational programs, substance abuse programs, life skills programs, or parenting programs.

The bill would require that participation in these programs be considered in lieu of performing labor in a work release program on an hour-for-hour basis, with 8 work-related hours to equal to one day of custody credit, and would not limit the credit received for that participation nor require that the participant perform manual labor.