AB 200: Effective Immediately. What To Do Right Now

Part of a Mid-Year Update for

California Criminal Law Practitioners

By Garrick Byers, Statute Decoder, July 5, 2022

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Introduction to this "Public Safety Omnibus.

AB 200 (Stats. 2022, Ch. 58) was signed into law on June 30, 2022, and became effective immediately.

This paper concentrates on those of its 47 sections that have more than minimal effect on the practice of criminal law.

Those sections that have only minimal effect on criminal law practice, are in the Appendix. Those sections are 1 to 5, 14, 16, 27, and 28.

Also in the Appendix are technical budget and other non-substantive sections, 45, 46, and 47.

The remaining 34 sections have a wide variety of effects.

When an amended statute is directly quoted, ~~deleted text is in red, with a line through it,~~ *and new text is in italics and blue.*

PC = Penal Code; WI = Welfare and Institutions Code; GC = Government Code; DOJ = Department of Justice.

Sections 1 to 5 have only minimal effect on criminal law practice. See the Appendix.

Section 6 adds to the list of misdemeanor Domestic Violence (DV) offense charges for which the court cannot offer diversion.

PC 1001.95, subd. (a) says, "A judge [for] . . . a misdemeanor [case] may, at the judge's discretion, and over the objection of a prosecuting attorney, offer diversion to a defendant pursuant to [PC 1001.95, subds. (b) to (e).]

PC 1001.95, subd. (e) says, "A defendant may not be offered diversion pursuant to this section for any of the following current charged offenses:"

There follows a list of three offenses or types of offenses. Categories (1), PC 290 offenses, and (3), PC 646.9, are unchanged.

The second listed offense, however, was "a violation of [PC] 273.5." This is amended to be "(2) Any offense involving domestic violence, as defined in [Fam. Code] 62112 . . . or [PC 13700, subd. (b).]

Sections 7 to 12 renumber and moves five sections on recall and resentencing to a new Article titled "Recall and Resentencing.

Renumbered and moved are:

1170.01 = 1172

1170.03 = 1172.1

1170.95 = 1172.6

1171 = 1172.7

1171.1 = 1172.75

Article 1.5, Recall and Resentencing (commencing with PC1172) is in PC Part 2, Title 7, Chapter 45.

Not renumbered and not moved, but still operative is PC 1170.02, making ineligible for resentence or recall persons convicted of first-degree murder of a peace officer.

This legislative history suggests that the movement of the other sections may make people convicted of first degree murder of a peace officer, and perhaps others with death or life sentences, eligible for relief from certain repealed crimes or enhancements

Section 13 further delays implementation of the program at PC 1203.425 for automatic conviction record relief.

This program, enacted in 2019, was originally to be implemented beginning in February 2021 (PC 1203.425, former subd. (c)), but has been delayed several times. Now implementation is delayed until January 1, 2023.

The Legislative Counsel's Digest explains:

> Existing law, commencing January 1, 2022, and subject to appropriation, requires the Department of Justice, on a monthly basis, to review the records in the statewide criminal justice databases and identify persons who are eligible for automatic conviction record relief. Existing law makes a person eligible for automatic conviction record relief if, on or after January 1, 1973, they were sentenced to probation, and completed it without revocation, or if they were convicted of an infraction or a misdemeanor, and other criteria are met, as specified. Existing law, commencing August 1, 2022, prohibits a court from disclosing information concerning a conviction for which automatic conviction relief was granted, except to the person whose conviction was granted relief or a criminal justice agency, as defined.
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> This bill would delay the August 1, 2022, implementation date until January 1, 2023.

Section 14 has only minimal effect on criminal law practice. See the Appendix.

Section 15: Makes non-substantive amendments to PC 1385 that are important to notice.

The most important such amendment moves an important sentence.

The sentence ~~While the court may exercise its discretion at sentencing, nothing in this subdivision shall prevent a court from exercising its discretion before, during, or after trial or entry of plea.~~ is deleted from where it had been, directly following subd. (c)(2) and before subd. (c)(2)(A).

But don't freak out! It is added back, after subd. (c)(2)(I), as Subd. (c)(3). It had been misplaced by the prior codification; it is moved to the correct place.

A non-substantive may avoid a restrictive reading of subd. (c)(2)(G):

> (G) The defendant was a juvenile when they committed the current offense or any prior ~~juvenile adjudication that triggers~~ *offenses, including criminal convictions and juvenile adjudications, that trigger* the enhancement or enhancements applied in ~~this case.~~ *the current case.*

The Legislative Counsel's Digest says this is non-substantive. It clarifies that the court, when considering a PC 1385 dismissal of an enhancement, must give great weight to the fact that the enhancement was due to an adjudication, or a criminal conviction, of a crime that occurred when the defendant was a juvenile.

Section 16 has only minimal effect on criminal law practice. See the Appendix.

Sections 17 to 22 amend or add PC sections of the PC's Chapter on "Indemnity for Persons Erroneously Convicted and Pardoned."

That is PC Part 3, Title 6, Chapter 5, commencing with PC 4900.

The most important of these is in Section 17, which amends PC 4900, subd. (b), as follows:

> If a state or federal court has granted a writ of habeas corpus or if a state court has granted a motion to vacate pursuant to [PC]1473.6 or [PC 1473.7, subd. (a)(2)], and the charges were subsequently dismissed, or the person was acquitted . . . on a retrial, the California Victim Compensation Board shall, upon application by the person, and without a hearing, ~~recommend to the Legislature that an appropriation be made and the claim paid~~ *approve payment to the claimant if sufficient funds are available, upon appropriation by the Legislature,* pursuant to [PC] 4904, unless the Attorney General establishes pursuant to [PC 4902, subd. (d)], that the claimant is not entitled to compensation.

The effect of PC 4902 and 4904 is that compensation can only be given when the crime was either not committed, or was not committed by the defendant.

The amendment will probably make payment of compensation quicker and easier.

Other sections amended (or repealed and added back), or added, are PC 4902 (amended by § 18); PC 4904 (amended by § 19); PC 4904.5 (added by § 20); PC 4905 is repealed and then added back in different form (by §§ 21 and 22).

Sections 23 and 24 provide for the closure of the prison at Susanville by June 30, 2023.

This is done by repealing, and adding back a re-written PC 5003.7.

Section 25 establishes the Delancey Street Restaurant Management Program.

It does this by adding PC 5007.4.

The Legislative Counsel's Digest explains the program this way:

> This bill . . . establish[es] the Delancey Street Restaurant Management Program to teach marketable skills useful to incarcerated persons for reemployment opportunities upon their release from state prison, including restaurant operation, service, and hospitality. The bill . . . exempt[s] the program from specified statutes and regulations, including the Public Contract Code and the State Contracting Manual.

Section 26 expands the types of organizations eligible for grants for specified prison programs.

This bill does that by amending PC 5027.

The Legislative Counsel's Digest explains this as follows:

> [E]xisting law requires [CDCR] to award [grants] to not-for-profit organizations to replicate their programs at institutions that are underserved by volunteer and not-for-profit organizations . . . [Programs should] have demonstrated success and focus on offender responsibility and restorative justice principles. . . . [T]hese programs [must] demonstrate that they will become self-sufficient or will be funded in the long term by donations or another source of ongoing funding.
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> This bill . . . expand[s] the types of eligible organizations to include not-for-profit organizations with experience in providing programming in a correctional setting. The bill would also remove the requirement that a program demonstrate it will become self-sufficient or funded in the long term.

Sections 27 and 28 have only minimal effect on criminal law practice. See the Appendix.

Sections 29 and 30 appears to temporarily allow DOJ to provide to authorized recipients formerly restricted information on convictions for which relief (e.g., PC 1203,4) was granted; the restriction on reporting on those convictions resumes of January 1, 2023.

The statute involved is the main "State Summary Criminal History Information" statute, PC 11105, at subdivision (p) on State Summary Criminal History Information.

Here is how the Legislative Counsel's Digest explains this (paragraph breaks have been added for ease of understanding).

> [DOJ] maintain[s] state summary criminal history information,. . . and . . . furnish[es] this information to various state and local government officers, officials, and other prescribed entities, if needed in the course of their duties. [Before this Bill, DOJ was required to] disseminate every conviction rendered against an applicant [to authorized agencies and entities requesting it], except for a conviction for which relief has been granted [pursuant to PC 1203.4, 1203.4a, 1203.41, 1203.42, 1203.425, or 1203.49].
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> [Before this bill, the] law require[d] [DOJ] to provide the Commission on Teacher Credentialing with every conviction rendered against an applicant, retroactive to January 1, 2020, regardless of whether relief was granted. . . . .
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> The bill . . . until January 1, 2023, require[s] [DOJ] to disseminate every conviction rendered against any applicant under these provisions without regard to whether relief was granted for the conviction.
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> The bill . . . beginning January 1, 2023, again require[s] the dissemination of convictions for which relief was granted only to the Commission on Teacher Credentialing.

[Note by GB: The legislative history suggests this was done to properly implement the provisions on teacher credential applicants. Perhaps this change is non-substantive in practical effect, but applicants (other than for teaching credential) may want to delay the background check until after Jan. 1, 2023.]

Section 31 Expands the information the Attorney General must collect relating to crimes against reproductive rights; but also delays a report to the Legislature.

This amends PC 13777, a section in the "Reproductive Rights Law Enforcement Act, PC Part 4, Title 5.7, commencing with PC 13775.

The Legislative Counsel's Digest explains this as follows:

[T]he Attorney General [AG] [must] collect and analyze information relating to anti-reproductive-rights crimes, as defined . . . . [T]he [AG] [must] collect this information from local law enforcement agencies and produce an annual report for the Legislature beginning January 1, 2023.

This bill . . . additionally require[s] the [AG] to collect information relating to anti-reproductive-rights crimes from local district attorneys and elected city attorneys. The bill would change the due date for the first report to January 1, 2025. . . .

Sections 32, 33, and 34 change some of the reasons for, and change some of the recipients of, grants for training on enforcement of environmental laws.

The bill amends PC 14306, 14307, and 14308, which make up Chapter 3, titled "Environmental Training and Enforcement," of Title 13, titled "Local Environmental Enforcement and Training Programs.

The Legislative Counsel's Digest explains this as follows:

> [T]he Secretary for Environmental Protection [must] award grants for the development and implementation of a course for the training of community-based nonprofit organizations or public prosecutors and investigators in specified public agencies in the investigation and enforcement of environmental laws. . . .
>
> This bill . . . instead require[s] the courses to be for the training of community-based nonprofit organizations or public prosecutors, or community-based nonprofit organizations and staff of other specified public agencies. The bill . . . authorize[s] the secretary to award grants for the purpose of training community-based nonprofit organizations, in addition to the above-described entities.
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> The bill . . . authorize[s] the secretary to also award local assistance grants to community-based nonprofit organizations to address environmental violations that occur in or disproportionately impact disadvantaged communities and to support inclusion of residents of disadvantaged communities in environmental enforcement efforts, among other things. . . .

Sections 35 to 37 require that guns surrendered to law enforcement cannot be sold, but must be destroyed.

Section 35 amends PC 18005 (which is part of Division 3 ("Surrender, Disposal, and Enjoining of Weapons Constituting a Nuisance") of Title 2 of Part 6 of the PC.

Section 36 amends PC 18275. Section 37 amends PC 34010

The Legislative Counsel's Digest explains this as follows:

> [Before this bill,] a law enforcement agency that has seized or received custody of a deadly weapon under specified circumstances [could] sell or destroy that weapon.

This bill . . . instead no longer authorize[s] the sale of that weapon and . . . require[s] the weapon to be destroyed [with exceptions]. The bill . . . also require[s] the law enforcement agency to make specified notifications.

Section 38 permits the jurisdiction of the juvenile court to continue past age 23 or 25 in limited situations.

Here is amended WI 607, subds. (b) and (c).

(b) The court may retain jurisdiction over a person who [committed a WI 707, subd. (b) offense], until that person attains 23 years of age, *or two years from the date of commitment to a secure youth treatment facility pursuant to Section 875, whichever occurs later,* [if the person, in criminal court, would have faced an aggregate sentence of less than six years. For a sentence of more seven years or more, see] subdivision (c)].

(c) The court may retain jurisdiction over a person who [committed a WI 707, subd. (b), offense] until that person attains 25 years of ~~age~~ *age, or two years from the date of commitment to a secure youth treatment facility pursuant to Section 875, whichever occurs later,* if the person, at the time of adjudication of a crime or crimes, would, in criminal court, have faced an aggregate sentence of seven years or more.

Section 39 adds to the definition of "Physical confinement," when the Juvenile Court is authorized to order that under WI 726, the phrase "or in a security youth treatment facility."

Here is amended WI 726, subd. (d)(5):

> "Physical confinement" means placement in a juvenile hall, ranch, camp, forestry camp or secure juvenile home pursuant to Section 730, or in *a secure youth treatment facility pursuant to [WI] 875, or in* any institution operated by the Department of Corrections and Rehabilitation, Division of Juvenile Justice.

Section 40 provides the Juvenile Court continued authority to order placement at the Pine Grove Youth Conservation Camp after closure of DJJ.

This is done primarily by amending WI 730, subdivision (a)(1)(D), to strike the words "Division of Juvenile Justice," and replace them with the words "Department of Corrections and Rehabilitation."

Section 41 amends WI 875 concerning Juvenile Court sentencing.

Here is from the Legislative Counsel's Digest (paragraph breaks added)

> [Before this bill,] a court [could] order a ward who is 14 years of age or older to be committed to a secure youth treatment facility, operated by the county of commitment, . . . if the ward is adjudicated . . . a ward based on the commitment of a specified serious offense, that adjudication is the most recent offense [involved], and the court has [found] that a less restrictive, alternative disposition . . . is unsuitable. . . . [T]he court . . . set[s] a maximum term of confinement . . . .
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> This bill . . . provide[s] . . . that the . . . maximum term of confinement . . . be based upon the facts and circumstances of the matter . . . that brought or continued the ward under the jurisdiction of the court . . .
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> [Before this bill,] the court [was required to] hold a progress review hearing for the ward in a secure youth treatment facility

[at least] once every 6 months . . . and authorize[d] the court. . . to order that the ward's baseline term be modified downward by [up to] 6 months. [The court, at the 6-month review hearing, or at other times, could] order a ward . . . transferred from a secure youth treatment facility to a less restrictive program . . . .

This bill . . . instead authorize[s] the court, at the conclusion of each review hearing . . . , to order that the ward's baseline term or previously modified baseline term be modified downward by [up to] 6 months for each review hearing.

The bill . . . require[s] the ward's baseline or modified baseline term to be adjusted to include credit for any time served . . . in a less restrictive program if they are returned to a secure youth treatment facility pursuant to those provisions.

Sections 42 and 43 add WI 1732.9 and 1732.10 concerning the closing of DJJ.

From the Legislative Counsel's Digest:

This bill, immediately prior to the closure of the division, . . . authorize[s] specified persons 18 years of age or older who are subject to the custody, control, and discipline of the division to consent to voluntarily remain in institution under the jurisdiction of [CDCR]. The bill . . . provide[s] a process for the person making that decision and place[s] requirements for continued services on [CDCR]. [This is WI 1732.9 GB]

The bill would also, unless the committing court orders an alternative placement, upon closure of the division, require the State Department of State Hospitals to continue to provide evaluation, care, and treatment of state hospital patients referred to the division and would specify additional service and notifications required for those patients. [This is WI 1732.10. GB]

Section 44. Provides for transfer of the Pine Grove Conservation Camp from DJJ to CDCR.

This is done by amending WI 1760.45. DJJ is removed from that statute except to say that placement at Pine Grove shall not be considered a commitment to DJJ. (WI 1760.45, subd. (c).

Pine Grove remains a facility for person 18 and over. (WI 1760.45, subd. (a).

Appendix. Sections with minimal impact on criminal law.

Section 1 establishes the Flexible Assistance for Survivors (FAS), a pilot program to provide assistance to survivors and loved ones of persons violently killed or injured.

The FAS is established by added Government Code (GC) sections 8699 to 8699.03, and is administered by the Office of Emergency Services.

The program's goal is to improve safety, healing, and financial stability for survivors and loved ones of persons violently injured or killed. (GC 8699.01, subd. (a).

Grants go to qualifying community-based organizations to establish funds to distribute direct assistance to survivors. (GC 8699, subd. (b).

If you are representing such a survivor who needs emergency financial or other assistance, I recommend finding out more about the FAS.

Sections 2 and 3 transfers residual functions of DJJ to CDCR. Government Code 12838.65 and 12838.95 are added.

"During the closure of the [DJJ], [its] powers, functions, duties, responsibilities, obligations, liabilities, and jurisdiction [are transferred] to CDCR." (GC 1238.65.)

In the daily practice of juvenile delinquency law, this might cause some nomenclature and related bureaucratic changes

Section 4 amends PC 830.7, by adding a small group of non-peace officers who have peace-officer powers of arrest.

Added are certain "Museum Security Officers and [their] Supervising . . . Security Officers" in the "Exposition Park," who "have not yet completed [peace officer] training . . . ."

Section 5 cuts back one part of the recent expansion of the list of officials who can, under PC 832.7, examine peace officer personnel records and information from those records.

Personnel records of peace officers, and custodial officers, are established and defined by PC 832.5 and 832.8. These records and information from them are generally confidential. (PC 832.7, subd. (a).) Before 2020, the main way criminal law practitioners could get limited access to those records was by a *Pitchess* motion, pursuant to EC 1043 et seq.

Amendments since then have permitted access through the California Public Records Act to certain personnel records, such as those concerning shots fired at a person, instances of force resulting in death, sustained findings of failure to intervene when another officer is using excessive force, and others (PC 832.7, subd. (b)). That access is unchanged (except release of

four types of records that occurred before Jan. 1, 2022, as specified in PC 832.7, subd. (b)(2), can be further delayed by several months).

An exception to the confidentiality of peace officer and custodial officer personnel records has long been for "investigations or proceedings concerning the conduct of such officers, or agencies that employ them, conducted by a grand jury, a district attorney's office, or the Attorney General's Office." (PC 832.7, subd. (a), last sentence.)

Effective January 1, 2022, added to that list was the Commission on Peace Officer Standards and Training (POST).

This bill eliminates POST from that list. (This deletion is not discussed in the Legislative Counsel's Digest to AB 200.) The effect, if any, this may have on the practice of criminal law is speculative.

Section 14, through the addition of PC 1233.12 divvies up $122,829,397 (from the State's General Fund), among all California counties, as part of the State Community Corrections Performance Incentives Fund, established by PC 1233.6.

Section 16 amends PC 2067, which provides guidance to CDCR in reducing additional capacity as the prison population declines. A new subdivision (c) is added providing protection for CDCR from many types of lawsuits.

Section 27 provides that certain provisions of the Public Resources Code do not apply to closure of a prison or juvenile facility operated or leased by CDCR, or to related activities. "This section is declaratory of existing law."

Section 28 is a conforming, non-substantive, change to PC 5076.1, concerning meetings of the Parole Board,

Section 45 is a standard severability clause. Sections 4

Sections 46 is a budgetary provision.

Section 47 provides this bill "shall take effect immediately."