

CCAP's Chart of Selected 2021 Criminal Bills¹

[Assembly Bill No. 333—Gang Evidence and Proceedings \(Amending Pen. Code, § 186.22, Adding Pen. Code, § 1109\)](#)

[Assembly Bill No. 518—Selecting Punishment \(Amending Pen. Code, § 654\)](#)

[Senate Bill No. 73—Probation Eligibility for Drug Offenses \(Amending Health and Safety Code, § 11370; Repealing and adding Pen. Code, § 1203.07; Repealing Pen. Code, § 1203.073; Amending Pen. Code, § 29820\)](#)

[Senate Bill No. 81—Dismissal of Enhancements \(Amending Pen. Code, § 1385\)](#) **Update Note:** Assembly Bill No. 200 (signed by the Governor on 6/30/2022 / effective immediately) amended Pen. Code, § 1385 to make technical, nonsubstantive changes

[Senate Bill No. 483—Retroactive Application of SB 180 and SB 136 for People Who are Currently Incarcerated \(Adding Pen. Code, §§ 1171, 1171.1\)](#) **Update Note:** AB 200 also renumbered §§ 1171 and 1171.1 to Pen. Code, §§ 1172.7 and 1172.75

[Senate Bill No. 775—Clarifying SB 1437's Application and Procedural Requirements \(Amending Pen. Code, § 1170.95\)](#)

Update Note: AB 200 also renumbered § 1170.95 to Pen. Code, § 1172.6

Effective Dates

The effective date for all the bills listed in this chart is 1/1/2022.

¹ This chart contains information about bills we believe will affect a significant number of CCAP cases that are currently pending. For a summary of all the important new criminal laws for 2022, see [Garrick Byers New Laws for 2022](#). See also CCAP's separate [Chart for Assembly Bill No. 124, Assembly Bill No. 1540, and Senate Bill No. 567](#). These three bills are all related and make numerous, very significant changes to criminal sentencing and resentencing procedures.

Retroactivity

Most of the bills in this chart have at least one or more sections that may have retroactive application under *In re Estrada* (1965) 63 Cal.2d 740. As a result, counsel should consider whether arguing retroactivity under *Estrada* and its progeny would benefit the appellant in a given case. Some recent favorable cases interpreting *Estrada* include:

- *People v. Esquivel* (2021) 11 Cal.5th 671 (legislation ameliorating punishment presumptively applies in a case where defendant is placed on probation with execution of an imposed sentence suspended if the defendant may still timely obtain direct review of an order revoking probation and causing the sentence to take effect);
- *People v. McKenzie* (2020) 9 Cal.5th 40 (a defendant who is placed on probation after imposition of sentence is suspended, and who does not timely appeal from the order granting probation, may take advantage of ameliorative statutory amendments that take effect during a later appeal from a judgment revoking probation and imposing sentence);
- *People v. Frahs* (2020) 9 Cal.5th 618 (mental health pretrial diversion statute for defendants with qualifying mental disorders (Pen. Code, § 1001.36) is retroactive to cases that were not final when the statute became effective);
- *People v. Stamps* (2020) 9 Cal.5th 685 (Senate Bill No. 1393 applies retroactively to cases that were not final when the legislation became effective; this opinion also addresses applying ameliorative legislation on appeal from a guilty plea); and
- *People v. Superior Court (Lara)* (2018) 4 Cal.5th 299 (the part of Proposition 57 that prohibits prosecutors from charging juveniles with crimes directly in adult court reduces the possible punishment for a class of persons (juveniles) and the rationale of *In re Estrada* (1965) 63 Cal.2d 740 requires retroactive application of the law to all cases not final when the law was enacted)
- *People v. Greeley* (2021) 70 Cal.App.5th 609, 627 and the cases cited therein (concluding that Assembly Bill No. 1950 (2019–2020 Reg. Sess.), which amended Pen. Code, § 1203.1 to limit to two years the length of a probationary period for a felony conviction, is retroactive to all nonfinal cases)

Bill	Statute(s) Amended / Added	Important Highlights
<p>Assembly Bill No. 333—Gang Evidence and Proceedings (Pen. Code, § 186.22)</p> <p>Link to AB 333 on California Legislative Information website.</p>	<p>Pen. Code, § 186.22 / Pen. Code, § 1109</p> <p>Link to text of Pen. Code, § 186.22 / Pen. Code, § 1109 showing amendments.</p>	<p><i>Gang Evidence and Proceedings</i></p> <ul style="list-style-type: none"> • This bill contains findings and declarations related to the racial disparities and unfairness of gang allegations. • Pen. Code, § 186.22, subd. (a) (the substantive gang offense) was amended to remove the word “any” before “felonious criminal conduct by members of that gang.” • Previously, Pen. Code, § 186.22, subd. (a) provided that a person who actively participates in a criminal street gang with specified knowledge and “who willfully promotes, furthers, or assists in <i>any</i> felonious criminal conduct by members of that gang” shall be punished as specified in the statute (emphasis added). • Pen. Code, § 186.22, subd. (b) (the gang enhancement) was amended to remove the word “any” before “criminal conduct by gang members.” • Previously, Pen. Code, § 186.22, subd. (b) required the defendant to have the “specific intent to promote, further, or assist in <i>any</i> criminal conduct by gang members” (emphasis added). • This bill clarifies the meaning of “pattern of criminal gang activity” (i.e., predicate offenses) and adds the following requirements: <ul style="list-style-type: none"> ○ The last predicate offense must have occurred within three years of the date the current offense is alleged to have been committed ○ The offenses commonly benefited a criminal street gang ○ The common benefit of the offense is more than reputational (Pen. Code, § 186.22, subd. (e)(1).)

Bill	Statute(s) Amended / Added	Important Highlights
		<ul style="list-style-type: none"> • The following offenses were removed from the predicate offense list: <ul style="list-style-type: none"> ○ Looting (Pen. Code, § 463) ○ Felony vandalism (Pen. Code, § 594, subd. (b)(1)) ○ Felony theft of an access card or account information (Pen. Code, § 484e) ○ Counterfeiting, designing, using, or attempting to use an access card (Pen. Code, § 484f) ○ Felony fraudulent use of an access card or account information (Pen. Code, § 484g) ○ Unlawful use of personal identifying information to obtain credit, goods, services, or medical information (Pen. Code, § 530.5) ○ Wrongfully obtaining Department of Motor Vehicles documentation (Pen. Code, § 529.7) (See Pen. Code, § 186.22, subd. (e).) • “The currently charged offense shall not be used to establish the pattern of criminal gang activity.” (Pen. Code, § 186.22, subd. (e)(2).) • Pen. Code, § 186.22, subd. (f), defining “criminal street gang,” was also amended to state “‘criminal street gang’ means an ongoing, organized association” <i>Previously, this subdivision stated “‘criminal street gang’ means any ongoing organization, association” (Emphasis added.) Additionally, the definition previously provided “whose members individually or collectively engage in, or have engaged in, a pattern of criminal gang activity.” (Emphasis added.) “Individually or” was stricken from this sentence.</i>

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		<ul style="list-style-type: none"> • Pen. Code, § 186.22 was amended to provide that “[a]s used in this chapter, to benefit, promote, further, or assist means to provide a common benefit to members of a gang where the common benefit is more than reputational. Examples of a common benefit that are more than reputational may include, but are not limited to, financial gain or motivation, retaliation, targeting a perceived or actual gang rival, or intimidation or silencing of a potential current or previous witness or informant.” (Pen. Code, § 186.22, subd. (g).) • When a gang enhancement is charged under Pen. Code, § 186.22, subds. (b) or (d), the defense may request that the defendant’s guilt of the underlying offense and the truth of the enhancement be bifurcated. (Pen. Code, § 1109, subd. (a).) • If a defendant is charged with a violation of Pen. Code, § 186.22, subd. (a), this count shall be tried separately from all other counts that do not otherwise require gang evidence as an element of the crime. This charge may be tried in the same proceeding with an allegation of an enhancement under Pen. Code, § 186.22, subds. (b) or (d). (Pen. Code, § 1109, subd. (b).) • <u>Retroactivity Note:</u> The Second District has already applied AB 333 retroactively, see <i>People v. Lopez</i> (Dec. 29, 2021, No. B301050) ___ Cal.App.5th ___, https://www.courts.ca.gov/opinions/documents/B301050.PDF.

Bill	Statute(s) Amended / Added	Important Highlights
<p>Assembly Bill No. 518— Selecting Punishment (Pen. Code, § 654)</p> <p>Link to AB 518 on California Legislative Information website.</p>	<p>Pen. Code, § 654</p> <p>Link to text of Pen. Code, § 654 showing amendments.</p>	<p>Selecting Punishment</p> <p>This bill amends Pen. Code, § 654, subd. (a) to provide that an act or omission that is punishable in different ways by different provisions of law may be punished under either of the provisions (the trial court is no longer required to impose punishment under the provision that provides for the longest potential term of imprisonment).</p>

Bill	Statute(s) Amended / Added	Important Highlights
<p>Senate Bill No. 73—Probation Eligibility for Drug Offenses</p> <p>Link to SB 73 on California Legislative Information website.</p>	<p>Health and Safety Code, § 11370; Pen. Code, § 29820 / Repealing and adding Pen. Code, § 1203.07 / Repealing Pen. Code, § 1203.073</p> <p>Link to text of statutes showing SB 73’s changes.</p>	<p><i>Probation Eligibility for Drug Offenses</i></p> <ul style="list-style-type: none"> • Amends Health & Saf. Code, § 11370 to limit the drug offenses that render a person ineligible for probation. <ul style="list-style-type: none"> ○ Health & Saf. Code, § 11370, subd. (a) now provides that a person convicted of the following offenses is not eligible for probation if they have a prior conviction for specified controlled substance offenses described in Health & Saf. Code, § 11370, subd. (c): <ul style="list-style-type: none"> ▪ § 11353—<i>person 18 years of age or over inducing minor to commit controlled substance offense</i> ▪ § 11361—<i>using a minor to unlawfully transport, sell, or distribute cannabis</i> ○ However, there is still an opportunity for a person convicted under § 11353 or § 11361 to be granted probation. Health & Saf. Code, § 11370, subd. (e) was added and provides that “[a] person who is made ineligible for probation pursuant to this section may be granted probation only in an unusual case where the interests of justice would best be served. When probation is granted pursuant to this subdivision, the court shall specify on the record the circumstances supporting the finding.” ○ Previously, the list of offenses in Health & Saf. Code, § 11370, subd. (a) included the following offenses: <ul style="list-style-type: none"> ▪ Health & Saf. Code, § 11350—<i>unlawful possession</i> ▪ § 11351—<i>unlawful possession for sale</i>

Bill	Statute(s) Amended / Added	Important Highlights
		<ul style="list-style-type: none"> ▪ § 11351.5—<i>possession of cocaine base for sale</i> ▪ § 11352—<i>unlawful transport, import, sale, administration, or gift of controlled substance</i> ▪ § 11353—<i>person 18 years of age or over inducing minor to commit controlled substance offense</i> ▪ § 11355—<i>unlawful sale or transportation pursuant to agreement</i> ▪ § 11357—<i>unlawful possession of cannabis</i> ▪ § 11359—<i>unlawful possession of cannabis for sale</i> ▪ § 11360—<i>unlawful transportation, importation, sale, or gift of cannabis</i> ▪ § 11361—<i>using a minor to unlawfully transport, sell, or distribute cannabis</i> ▪ § 11363—<i>unlawful planting, harvesting, or processing of peyote</i> ▪ § 11366—<i>opening or maintaining place for trafficking in controlled substances</i> ▪ § 11368—<i>illegal prescription for narcotic drug</i> • Repeals and then adds Pen. Code, § 1203.07 <ul style="list-style-type: none"> ○ Pen. Code, § 1203.07 now provides that probation shall not be granted to the following defendants (except as provided in subd. (c), see below): <ul style="list-style-type: none"> ▪ A person who is convicted of violating Health & Saf. Code, § 11380 by using, soliciting, inducing, encouraging, or intimidating a minor to act as an agent to manufacture,

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		<p>compound, or sell a controlled substance specified in Health & Saf. Code, § 11054, subd. (d) (except paragraphs (13), (14), (15), (20), (21), (22), and (23)) or specified in Health & Saf. Code, § 11055, subds. (d), (e), or (f) (except subd. (e)(3) and subd. (f)(2)(A)-(B)). (Pen. Code, § 1203.07, subd. (a)(1).)</p> <ul style="list-style-type: none"> ▪ A person who is convicted of violating Health & Saf. Code, § 11380 by using a minor as an agent or who solicits, induces, encourages, or intimidates a minor with the intent that the minor shall violate the provisions of Health & Saf. Code, §§ 11378.5, 11379.5, or 11379.6 insofar as the violation relates to phencyclidine or any of its analogs or precursors. (Pen. Code, § 1203.07, subd. (a)(2).) <p>○ Previously Pen. Code, § 1203.07 provided that probation would not be granted to the following defendants:</p> <ul style="list-style-type: none"> ▪ Any person who was convicted of violating Health & Saf. Code, § 11351 by possessing for sale 14.25 grams or more of a substance containing heroin. ▪ Any person who was convicted of violating Health & Saf. Code, § 11352 by selling or offering to sell 14.25 grams or more of a substance containing heroin. ▪ Any person convicted of violating Health & Saf. Code, § 11351 by possessing heroin for sale or convicted of violating Health & Saf. Code, § 11352 by selling or offering to sell heroin, and who

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		<p>has one or more prior convictions for violating Health & Saf. Code, § 11351 or Health & Saf. Code, § 11352.</p> <ul style="list-style-type: none"> ▪ Any person who was convicted of violating Health & Saf. Code, § 11378.5 by possessing for sale 14.25 grams or more of any salt or solution of phencyclidine or any of its analogs as specified in Health & Saf. Code, § 11054, subd. (d)(21)-(23) or Health & Saf. Code, § 11055, subd. (e)(3), or any of the precursors of phencyclidine as specified in Health & Saf. Code, § 11055, subd. (f)(2). ▪ Any person who was convicted of violating Health & Saf. Code, § 11379.5 by transporting for sale, importing for sale, or administering, or offering to transport for sale, import for sale, or administer, or by attempting to import for sale or transport for sale, phencyclidine or any of its analogs or precursors. ▪ Any person who was convicted of violating Health & Saf. Code, § 11379.5 by selling or offering to sell phencyclidine or any of its analogs or precursors. ▪ Any person who was convicted of violating Health & Saf. Code, § 11379.6 by manufacturing or offering to perform an act involving the manufacture of phencyclidine or any of its analogs or precursors. ▪ Any person who was convicted of violating Health & Saf. Code, § 11380 by using, soliciting, inducing, encouraging, or intimidating a minor to act as an agent to manufacture,

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		<p>compound, or sell any controlled substance specified in Health & Saf. Code, § 11054, subd. (d) (except paragraphs (13), (14), (15), (20), (21), (22), and (23)), or specified in Health & Saf. Code, § 11055, subds. (d), (e), or (f) (except (e)(3) and subdivision (f)(2)(A)-(B))</p> <ul style="list-style-type: none"> ▪ Any person who was convicted of violating Health & Saf. Code, § 11380.5 by the use of a minor as an agent or who solicits, induces, encourages, or intimidates a minor with the intent that the minor shall violate the provisions of Health & Saf. Code, §§ 11378.5, 11379.5, or 11379.6 insofar as the violation relates to phencyclidine or any of its analogs or precursors. ▪ Any person who was convicted of violating Health & Saf. Code, § 11383, subd. (b) by possessing piperidine, pyrrolidine, or morpholine, and cyclohexanone, with intent to manufacture phencyclidine or any of its analogs. ▪ Any person convicted of violating Health & Saf. Code, §§ 11351, 11351.5, or 11378 by possessing for sale cocaine base, cocaine, or methamphetamine, or convicted of violating Health & Saf. Code, §§ 11352 or 11379 by selling or offering to sell cocaine base, cocaine, or methamphetamine and who has one or more convictions for violating Health & Saf. Code, §§ 11351, 11351.5, 11352, 11378, 11378.5, 11379, or 11379.5. For purposes of prior convictions under Health & Saf. Code, §§ 11352, 11379, and 11379.5, this subdivision shall not apply to the

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		<p style="text-align: center;">transportation, offering to transport, or attempting to transport a controlled substance.</p> <ul style="list-style-type: none"> ○ The statute still provides that “[t]he existence of a fact that would make a person ineligible for probation under subdivision (a) shall be alleged in the information or indictment, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.” (Pen. Code, § 1203.07, subd. (b).) ○ The statute now provides that “[a] person who is made ineligible for probation pursuant to this section may be granted probation only in an unusual case where the interests of justice would best be served. When probation is granted pursuant to this subdivision, the court shall specify on the record and shall enter into the minutes the circumstances supporting the finding.” (Pen. Code, § 1203.07, subd. (c).) ● Repeals Pen. Code, § 1203.073, which restricted probation for defendants convicted of possession of specified controlled substances or for inducing a minor to violate controlled substance laws. Pen. Code, § 1203.073 restricted probation for the following offenses: <ul style="list-style-type: none"> ○ Any person who was convicted of violating Health & Saf. Code, § 11351 or 11351.5 by possessing for sale, or Health & Saf. Code, § 11352 by selling, a substance containing 28.5 grams or more of cocaine as specified in Health & Saf. Code, § 11055, subd. (b)(6), or

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		<p>cocaine base as specified in Health & Saf. Code, § 11054, subd. (f)(1) or 57 grams or more of a substance containing at least five grams of cocaine as specified in Health & Saf. Code, § 11055, subd. (b)(6), or cocaine base as specified in Health & Saf. Code, § 11054, subd. (f)(1).</p> <ul style="list-style-type: none"> ○ Any person who was convicted of violating Health & Saf. Code, § 11378 by possessing for sale, or Health & Saf. Code, § 11379 by selling a substance containing 28.5 grams or more of methamphetamine or 57 grams or more of a substance containing methamphetamine. ○ Any person who was convicted of violating Health & Saf. Code, § 11379.6, subd. (a) except those who manufacture phencyclidine, or who was convicted of an act which is punishable under Health & Saf. Code, § 11379.6, subd. (b), except those who offer to perform an act which aids in the manufacture of phencyclidine. ○ Except as otherwise provided in Pen. Code, § 1203.07, any person who was convicted of violating Health & Saf. Code, §§ 11353 or 11380 by using, soliciting, inducing, encouraging, or intimidating a minor to manufacture, compound, or sell heroin, cocaine base as specified in Health & Saf. Code, § 11054, subd. (f)(1), cocaine as specified in Health & Saf. Code, § 11055, subd. (b)(6), or methamphetamine. ○ Any person convicted of violating Health & Saf. Code, §§ 11379.6, 11382, or 11383 with respect to methamphetamine, if he or she had one or more prior convictions for a violation of Health & Saf. Code, §§ 11378, 11379, 11379.6, 11380, 11382, or 11383 with respect to methamphetamine.

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		<ul style="list-style-type: none"> Amends Pen. Code, § 29820, which prohibits a person adjudged a juvenile delinquent who meets specified criteria from owning or possessing a firearm until the person is 30 years of age or older. The amendment specifies the drug offenses that will lead to the prohibition and removes references to Pen. Code, § 1203.073 (which has been repealed).

Bill	Statute(s) Amended / Added	Important Highlights
<p>Senate Bill No. 81—Dismissal of Enhancements (Pen. Code, § 1385)</p> <p>Link to SB 81 on California Legislative Information website.</p> <p>Update Note: AB 200 amended Pen. Code, § 1385 to make technical, nonsubstantive changes</p>	<p>Pen. Code, § 1385</p> <p>Link to text of Pen. Code, § 1385 showing amendments.</p> <p>Update Note: Link to text of Pen. Code, § 1385 showing amendments after AB 200.</p>	<p><i>Dismissal of Enhancements</i></p> <ul style="list-style-type: none"> • This bill amends Pen. Code, § 1385 to provide that “Notwithstanding any other law, the court shall dismiss an enhancement if it is in the furtherance of justice to do so, except if dismissal of that enhancement is prohibited by any initiative statute.” (Pen. Code, § 1385, subd. (c)(1).) • The bill provides that the court shall give great weight to defendant’s evidence of specified mitigating circumstances. (Pen. Code, § 1385, subd. (c)(2).) The following mitigating circumstances are specified in subdivision (c)(3) [now (c)(2) after AB 200]: <ul style="list-style-type: none"> ○ Application of the enhancement would result in a discriminatory racial impact as described in Pen. Code, § 745, subd. (a)(4). ○ Multiple enhancements are alleged in a single case. In this instance, all enhancements beyond a single enhancement shall be dismissed. ○ The application of an enhancement could result in a sentence of over 20 years. In this instance, the enhancement shall be dismissed. ○ The current offense is connected to mental illness. This circumstance is further explained in Pen. Code, § 1385, subd. (c)(5). A mental illness is a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, but excludes antisocial personality disorder, borderline personality disorder, and pedophilia. A court may conclude that a defendant’s mental illness was connected to the offense if, after reviewing any relevant and credible evidence, the court concludes that the defendant’s mental

Bill	Statute(s) Amended / Added	Important Highlights
		<p>illness substantially contributed to the defendant’s involvement in the commission of the offense.</p> <ul style="list-style-type: none"> ○ The current offense is connected to prior childhood trauma. This circumstance is further explained in Pen. Code, § 1385, subd. (c)(6)(A). “Childhood trauma” means that as a minor the person experienced physical, emotional, or sexual abuse, physical or emotional neglect. A court may conclude that a defendant’s childhood trauma was connected to the offense if, after reviewing any relevant and credible evidence, the court concludes that the defendant’s childhood trauma substantially contributed to the defendant’s involvement in the commission of the offense. ○ The current offense is connected to prior victimization. This circumstance is further explained in Pen. Code, § 1385, subd. (c)(6)(B). “Prior victimization” means the person was a victim of intimate partner violence, sexual violence, or human trafficking, or the person has experienced psychological or physical trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence. A court may conclude that a defendant’s prior victimization was connected to the offense if, after reviewing any relevant and credible evidence, the court concludes that the defendant’s prior victimization substantially contributed to the defendant’s involvement in the commission of the offense. ○ The current offense is not a violent felony as defined in Pen. Code, § 667.5, subd. (c).

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		<ul style="list-style-type: none"> ○ The defendant was a juvenile when they committed the current offense or any prior juvenile adjudication that triggers the enhancement or enhancements applied in this case. After AB 200: The defendant was a juvenile when they committed the current offense or any <i>prior offenses, including criminal convictions and juvenile adjudications</i>, that trigger the enhancement or enhancements applied in <i>the current case</i>. ○ The enhancement is based on a prior conviction that is over five years old. ○ Though a firearm was used in the current offense, it was inoperable or unloaded. ● The specified mitigating circumstances are not exclusive and the court maintains authority to dismiss or strike an enhancement. (Pen. Code, § 1385, subd. (c)(4).) ● Proof of one or more of the specified mitigating “circumstances weighs greatly in favor of dismissing the enhancement, unless the court finds that dismissal of the enhancement would endanger public safety. ‘Endanger public safety’ means there is a likelihood that the dismissal of the enhancement would result in physical injury or other serious danger to others.” (Pen. Code, § 1385, subd. (c)(2).) ● Retroactivity Note: Amended Pen. Code, § 1385, subd. (c)(7) states: “This subdivision shall apply to sentencings occurring after the effective date of the act that added this subdivision.” This subdivision was added by SB 81, which goes into effect on 1/1/2022.

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		<p>After AB 200: Subdivision (c)(7) now provides: This subdivision shall apply to all sentencings occurring after January 1, 2022.</p>
<p>Senate Bill No. 483— Retroactive Application of SB 180 and SB 136 for People Who are Currently Incarcerated</p> <p>Link to SB 483 on California Legislative Information website.</p> <p>Update Note: Assembly Bill No. 200 (signed by the Governor on 6/30/2022 /</p>	<p>Adds Pen. Code, §§ 1171, 1171.1</p> <p>Link to text of Pen. Code, §§ 1171, 1171.1.</p>	<p><i>Retroactive Application of SB 180 and SB 136 to all persons currently serving a jail or prison term for these repealed sentence enhancements</i></p> <ul style="list-style-type: none"> • This bill adds Pen. Code, § 1171, which provides that any sentence enhancement that was imposed prior to January 1, 2018, pursuant to Health & Saf. Code, § 11370.2 (except for any enhancement imposed for a prior conviction of violating or conspiring to violate Health and Safety Code, § 11380) is legally invalid. • This bill adds Pen. Code, § 1171.1, which provides that any sentence enhancement that was imposed prior to January 1, 2020, pursuant to Pen. Code, § 667.5, subd. (b) (except for any enhancement imposed for a prior conviction for a sexually violent offense as defined in Welf. & Inst. Code, § 6600, subd. (b)) is legally invalid. • Both Pen. Code, §§ 1171 and 1171.1 provide that CDCR and the county correctional administrator of each county shall identify people in their custody currently serving a term that includes the specified enhancement and inform the sentencing court that imposed the enhancement. (Pen. Code, §§ 1171, subd. (b); 1171.1, subd. (b).) • The new statues set deadlines for CDCR to identify the individuals: <ul style="list-style-type: none"> ○ By March 1, 2022, for individuals who have served their base term and any other enhancements and are currently serving a sentence based

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<p>effective immediately) renumbered §§ 1171, 1171.1 to Pen. Code, §§ 1172.7 and 1172.75</p>		<p>on the enhancement (all other enhancements shall be considered to have been served first).</p> <ul style="list-style-type: none"> ○ By July 1, 2022, for all other individuals. (Pen. Code, §§ 1171, subd. (b); 1171.1, subd. (b).) ● Upon receiving the information from CDCR/county correctional administrator, the court must review the judgment and verify that the current judgment includes the specified sentence enhancement. If the court determines that the current judgment includes the specified enhancement, the court shall recall the sentence and resentence the defendant. (Pen. Code, §§ 1171, subd. (c); 1171.1, subd. (c).) ● The new statutes set deadlines for the review and resentencing: <ul style="list-style-type: none"> ○ By October 1, 2022, for individuals who have served their base term and any other enhancement and are currently serving a sentence based on the enhancement. ○ By December 31, 2023, for all other individuals. (Pen. Code, §§ 1171, subd. (c); 1171.1, subd. (c).) ● Resentencing shall result in a lesser sentence than the one originally imposed as a result of the elimination of the repealed enhancement, unless the court finds by clear and convincing evidence that imposing a lesser sentence would endanger public safety. Resentencing shall not result in a longer sentence than the one originally imposed. (Pen. Code, §§ 1171, subd. (d)(1); 1171.1, subd. (d)(1).) ● “The court shall apply the sentencing rules of the Judicial Council and apply any other changes in law that reduce sentences or provide for judicial

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		<p>discretion so as to eliminate disparity of sentences and to promote uniformity of sentencing.” (Pen. Code, §§ 1171, subd. (d)(2); 1171.1, subd. (d)(2).)</p> <ul style="list-style-type: none"> • “The court may consider postconviction factors, including, but not limited to, the disciplinary record and record of rehabilitation of the defendant while incarcerated, evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the defendant’s risk for future violence, and evidence that reflects that circumstances have changed since the original sentencing so that continued incarceration is no longer in the interest of justice.” (Pen. Code, §§ 1171, subd. (d)(3); 1171.1, subd. (d)(3).) • “Unless the court originally imposed the upper term, the court may not impose a sentence exceeding the middle term unless there are circumstances in aggravation that justify the imposition of a term of imprisonment exceeding the middle term, and those facts have been stipulated to by the defendant, or have been found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial.” (Pen. Code, §§ 1171, subd. (d)(4); 1171.1, subd. (d)(4).) • The court shall appoint counsel. (Pen. Code, §§ 1171, subd. (d)(5); 1171.1, subd. (d)(5).) • The parties may waive a resentencing hearing. If not waived, the resentencing hearing may be conducted remotely if the defendant agrees. (Pen. Code, §§ 1171, subd. (e); 1171.1, subd. (e).)

Bill	Statute(s) Amended / Added	Important Highlights
<p>Senate Bill No. 775—Clarifying SB 1437’s Application and Procedural Requirements (Pen. Code, § 1170.95)</p> <p>Update Note: Assembly Bill No. 200 (signed by the Governor on 6/30/2022 / effective immediately) renumbered § 1170.95 to Pen. Code, § 1172.6</p>	<p>Pen. Code, § 1170.95</p>	<p><i>Clarifying SB 1437’s Application and Procedural Requirements</i></p> <ul style="list-style-type: none"> • The bill provides that defendants convicted of the following crimes may be eligible for resentencing (provided other criteria in the statute are met, see amended Pen. Code, § 1170.95, subd. (a)(1)-(3)): (1) attempted murder under the natural and probable consequences doctrine, (2) manslaughter, or (3) murder under an implied malice theory where malice is imputed to a person based solely on that person’s participation in a crime. (<i>Id.</i>, subd. (a).) • The bill clarifies that the trial court must determine whether the petitioner could <i>presently</i> be convicted of murder or attempted murder. (<i>Id.</i>, subd. (a)(3).) • It codifies the holdings of <i>People v. Lewis</i> (2021) 11 Cal.5th 952, 961-970, regarding a petitioner’s right to appointment of counsel and the standard for determining the existence of a prima facie case. (Amended Pen. Code, § 1170.95, subds. (b)(3), (c).) • It provides that if the trial court declines to issue an order to show cause at the prima facie stage, the trial court must provide a statement of reasons fully setting forth the basis for its decision. (<i>Id.</i>, subd. (c).) • The bill clarifies procedural requirements for a subdivision (d)(3) hearing. “The admission of evidence in the hearing shall be governed by the Evidence Code, except that the court may consider evidence previously admitted at any prior hearing or trial that is admissible under current law, including witness testimony, stipulated evidence, and matters judicially noticed. The court may also consider the <i>procedural history of the case recited in any prior</i>

Bill	Statute(s) Amended / Added	Important Highlights
		<p><i>appellate opinion.</i>” (Emphasis added; note that the bill does not state that the factual summary in an appellate opinion may be considered.) Hearsay evidence that was admitted in a preliminary hearing pursuant to Penal Code section 872, subdivision (b) (sworn testimony of a current or retired law enforcement officer relating the statements of declarants made out of court and offered for the truth of the matter asserted) “shall be excluded from the hearing, unless the evidence is admissible pursuant to another exception to the hearsay rule.” (<i>Id.</i>, subd. (d)(3).)</p> <ul style="list-style-type: none"> • The legislation amends section 1170.95 to provide that “[a] finding that there is substantial evidence to support a conviction for murder, attempted murder, or manslaughter is insufficient to prove, beyond a reasonable doubt, that the petitioner is ineligible for resentencing.” (<i>Ibid.</i>) • A person who is resentenced may be subject to parole supervision for up to two years (formerly up to three years). (<i>Id.</i>, subd. (h).) • It clarifies that a person who is currently appealing the judgment in their case may seek relief under SB 1437 on direct appeal: “A person convicted of murder, attempted murder, or manslaughter whose conviction is not final may challenge on direct appeal the validity of that conviction based on the changes made to [Penal Code] Sections 188 and 189 by Senate Bill 1437 (Chapter 1015 of the Statutes of 2018).” (<i>Id.</i>, subd. (g).) <p>CCAP’s compilation of legislative information on SB 775 from the California Legislative Information website.</p>