

# New Laws for 2011

For criminal law practitioners

California criminal-law statutes,  
and rules, new or revised, in 2010.

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## Table of Contents

|   |           |
|---|-----------|
| <b>HIGHLIGHTS, LOWLIGHTS, AND EARLY WARNINGS.....</b>   | <b>8</b>  |
| <b>ABOUT “NEW LAWS FOR 2011”.....</b>   | <b>9</b>  |
| <b>APPEAL: RULES ON TRANSFER OF SUPERIOR COURT<br/>APPELLATE DIVISION CASES TO THE COURT OF APPEAL.....</b> | <b>10</b> |
| <b>CHILD ABUSE, SENTENCE AND PUNISHMENT<br/>(STATS 2010, CH. 300 [A.B. 1289]).....</b>                      | <b>10</b> |
| <b>DEADLY WEAPONS RECODIFICATION ACT OF 2010.<br/>(STATS. 2010, CH. 711 [S.B. 1080].).....</b>              | <b>11</b> |
| <b>DOMESTIC VIOLENCE .....</b>  | <b>12</b> |
| <b>Probationer: Minimum Payment. (Stats. 2010, Ch 132 [A.B. 2011]).....</b>                                 | <b>12</b> |
| <b>Requests for Lower Bail (Stats. 210, Ch 176 [S.B. 1049]).....</b>  | <b>12</b> |
| <b>DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS,<br/>AND RELATED MATTERS .....</b>                       | <b>13</b> |

**Possible 10–Year License Suspension For 4th –Timers**  
**(Stats. 2010, Ch. 301, A.B. 1601)** ..... 13

**Driver's License--Suspension Or Revocation For Certain Alcohol**  
**Levels By [1] Commercial Drivers and [2] Persons Under 21.**  
**(Stats. Ch. 244 [A.B. 1928])** ..... 14

**EVIDENCE** ..... 15

**Unavailable Witness (Stats. 2010, Ch. 537, Sec. 1 [A.B. 1723])**..... 15

**Hearsay Used Against the Party that Procured the Witness’s Absence.**  
**(Stats. 2010, Ch. 537, Sec. 2 [A.B. 1723])** .... 15

**GANGS: CONTEMPT FOR VIOLATION OF INJUNCTIONS OR**  
**ORDERS PENDING TRIAL (STATS. CH 677 [A.B. NO. 2632])**... 17

**INFRACTIONS: RECORD CLEANSING.**  
**(STATS. 2010, CH. 99 [A.B. 2582]).** ..... 17

**INTERNET—IMPERSONATION (STATS. 2010, CH 335 [S.B.**  
**1411])** ..... 18

**JUDGES: DISQUALIFICATION FOR CAUSE: CAMPAIGN**  
**CONTRIBUTIONS TO (STATS. 2010, CH. 686 [A.B. 2487])**..... 19

|  |           |
|--|-----------|
| <b>JUVENILE LAW: MENTAL COMPETENCY.<br/>(STATS. 2010, CH. 671 [AB 2212]).....</b>  | <b>20</b> |
| <b>MARIJUANA: SIMPLE POSSESSION OF LESS THEN AN<br/>OUNCE MADE AN INFRACTION.(STATS. 2010, CH. 708<br/>[S.B. 1449].).....</b>                  | <b>21</b> |
| <b>MILITARY DECORATION FRAUD<br/>(STATS. 2010, CH. 366 [A.B. 1829]).....</b>   | <b>22</b> |
| <b>PAROLE .....</b>  | <b>23</b> |
| <b>Medical Parole (Stats 2010, Ch. 405 [S.B. 1399]) .....</b>  | <b>23</b> |
| <b>Sex Offender Parolees; Restriction on Entering Parks .<br/>Stats. 2010, Ch. 219, § 22 [AB 1844]. .....</b>                                  | <b>25</b> |
| <b>Length of Parole Increases for Certain Sex Offenders.<br/>(Stats. 2010, Ch. 219, § 19 [AB 1844]). .....</b>                                 | <b>25</b> |
| <b>Treatment for Sex Offender Parolees.<br/>(Stats. 2010, Ch. 291, § 17 [A.B. 1844].) .....</b>  | <b>26</b> |
| <b>Mentally Disordered Prisoners Upon Discharge: Criteria for Requiring<br/>Treatment Eased (Stats. 2010, Ch. 291, § 18 [A.B. 1844].).....</b> | <b>27</b> |

**PRISON: ALTERNATIVE CUSTODY FOR “FEMALE INMATES,  
PREGNANT INMATES, OR INMATES WHO ... [ARE]  
PRIMARY CAREGIVERS OF DEPENDENT CHILDREN”  
(STATS. 2010, CH. 644 [S.B. 1266])..... 27**

**RESTITUTION..... 28**

**Collection of Restitution by Prosecutors Optional in Certain  
Circumstances. (Stats. 2010, Ch. 582 [A.B. 1847])..... 28**

**Identity Theft--Monitoring Credit Reports—Restitutionstats. 2010,  
(Stats 2010, Ch. 107 [S.B. 108]) ..... 29**

**Restitution Centers (Stats. 2010, Ch. 463 [A.B. 2218].)..... 30**

**Taxation—Collections—Restitution or Other Amounts Imposed By a  
Criminal Court. (Stats. 2010 ch 359 [a.b. 1530])..... 30**

**RULES OF COURT..... 31**

**RULES OF PROFESSIONAL CONDUCT FOR LAWYERS..... 31**

**SENTENCES ..... 34**

**Felony Sentencing: Aggravated Sentences**  
(Stats. 2010, Ch. 256 [A.B. 2263]) ..... 34

**Sentence Reduction Credits.** (Stats. 2010, Ch. 426 [S.B. 76].)..... 35

**SEX OFFENSES..... 37**

**“Chelsea’s Law” Sections 2 to 9 and 16 Many new and dramatically  
increased sex offense penalties.** (Stats. 2010, Ch. 219 [AB 1844]) ..... 37

**Communication Prohibitions in Sex Crimes With Minors.**  
(Stats. 2010, Ch. 627 [S.B. 834].) ..... 39

**Probation--Sex Offenders--Children and Minors**  
(Stats. 2010 ch 49 S.B. 1253) ..... 40

**Probation: Required Treatment for Certain Sex Offenses.**  
(Stats. 2010, Ch. 291, § 17 [A.B. 1844].) ..... 41

**State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO)  
Beefed Up.** (Stats. 2010, Ch. 291, §§ 11 – 13 [A.B. 1844].)..... 41

**State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO)  
On the Megan’s Law Web Site.** (Stats. 2010, Ch. 291, § 14 [A.B. 1844].).... 42

**THEFT ..... 43**

**Grand Theft Threshold Increased from \$400 to \$950.**  
(Stats. 2010, Ch. 693 [A.B. 2372]) ..... 43

Petty Theft With Priors Stats. 2010, Ch. 219, § 15 [AB 1844]..... 44

**TRAFFIC VIOLATOR SCHOOLS  
(STATS. 2010, CH. 599 [A.B. 2499])..... 45**

**TRESPASS ..... 46**

Trespass at Zoos, Circuses, and Other Exhibits.  
(Stats. 2010, Ch. 536 [A.B. 1675]) ..... 46

Perpetrator’s Return to Place of Crime as Trespass  
(Stats. 2010 Ch. 531 [A.B. 668]) ..... 46

**UNDERAGE DRINKERS--IMMUNITY FROM PROSECUTION  
WHEN REPORTING CERTAIN EMERGENCIES  
(STATS. CH. 245 [A.B. 1999])..... 47**

**UNLAWFUL RENTAL OF RESIDENTIAL DWELLING  
(STATS. 2010, CH. 580 [A.B. 1800]) ..... 48**

**VETERANS—POSSIBLE TREATMENT FOR CRIMES  
RESULTING FROM CERTAIN MILITARY–RELATED  
DISORDERS (STATS. 2010 CH. 347 [A.B. 674]) ..... 48**

**WIRETAPPING AND ELECTRONIC COMMUNICATION  
INTERCEPTION (STATS. 2010, CH. 707 [S.B. 1428].)..... 49**

## **Highlights, Lowlights, and Early Warnings**

- Sex offenses: many dramatically increased punishments, and harsh related matters; “Chelsea’s Law,” aka SB 1844. See Sex Offenses.
- The threshold for felony grand theft increased from \$400 to \$950.
- “Petty with a prior” is now, unless the defendant has a strike or sex offense prior, “petty with three priors.” For this, and for grand theft, see “Theft.”
- Juvenile “1368”, i.e., mental incompetency to stand trial, gets a statutory procedure. See “Juvenile Law”
- Marijuana possession, less than an ounce, made an infraction. See “Marij.”
- Infractions, non–Vehicle Code, can now be dismissed under PC 1203.4a.
- Hearsay can be admitted against a party who procured the hearsay witness’s absence. A rare sunset clause in the Evidence Code repeals this new section on Jan. 1, 2016, unless that date is extended or deleted. See “Evid.”
- Sentence reduction credits for prison and county jail time had a bumpy ride in 2010, but are now settling down. See “Sentences.”

### **Early warnings.**

A fourth DUI in 10 years may result in a ten–year driver’s license revocation; starting Jan. 1, 2012.

Deadly weapons statutes rearranged into a new Part 6 of the Penal Code, commencing with Section 16000. Effective Jan. 1, 2012, but references may be found in some statutes now.

Revised Rules of Professional Conduct adopted by the State Bar. These are not effective until the Supreme Ct., and the Ct. adopts them.

SB 40, the “*Cunningham* fix”, sunset extended to Jan. 1, 2012. When the U.S. Supreme Ct. held in Calif could not give aggravated sentences without a jury trial, SB 40 was the “temporary” fix. The legislature will probably decide on a permanent fix this year.

## About “New Laws for 2011”

Included are most, but not all, of the legislative bills, that effect California State criminal law and procedure. These new laws are effective and operative on January 1, 2011 unless an earlier or later date is noted.

Also included are (1) the main Calif. Rules of Court additions and amendments affecting criminal law; and (2) the California State Bar’s Proposed Revisions to the Rules of Professional Conduct (RPC) for Lawyers. The revised RPCs will not be effective unless the State Bar refers them to the Calif. Supreme Ct., and the Ct. adopts them.

The titles of bills are mostly taken from the titles given by the Legislative Counsel, but I also take some for the Senate Committee on Public Safety’s annual Bill Summary, and occasionally made my own title.

After the bill titles I list the official Chapter number in the Statutes of 2010, and then list the Senate Bill (S.B.) or Assembly Bill (A.B.) number of the original bill.

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

I describe most bills by using quotes from the Legislative Counsel’s Digest of the bill as it worked its way through the legislative process. The reference in those Digests to “existing law” is to the law before the bill became law. The reference to what the bill “would [do]” means the effect that the bill has now that it is enacted.

When I quote the actual text of a new law or rule, I used this typeface, and I set-off the quote by extra spacing and extra indentation.

Material not listed or designated as described above is my own.

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

## **Appeal: Rules on Transfer of Superior Court Appellate Division Cases to the Court of Appeal.**

Amendments to California Rules of Court 8.1005, 8.1007, and 8.1008, and new Rule 8.1006, make this process easier and more understandable.

## **Child Abuse, Sentence and Punishment (Stats 2010, Ch. 300 [A.B. 1289])**

Amends Pen. Code § 273ab.

“LEGISLATIVE COUNSEL'S DIGEST

“Existing law provides that any person who, having the care or custody of a child ... under 8 years of age, assaults the child by means of force that to a reasonable person would be likely to produce great bodily injury, resulting in the child's death, [gets] imprisonment in the state prison for 25 years to life.

“This bill would, in addition, make it ... punishable by imprisonment in the state prison for life with the possibility of parole, for a person, having the care or custody of a child who is under 8 years of age, to assault the child with force that to a reasonable person would be likely to produce great bodily injury, resulting in the child becoming comatose due to brain injury or suffering paralysis of a permanent nature, as specified.”

## **Deadly Weapons Recodification Act of 2010. (Stats. 2010, Ch. 711 [S.B. 1080].)**

Adds Pen. Code §§ 626.91 and 830.95; repeals Pen. Code § 653k; dramatically amends and shortens Pen. Code Part 4, Title 2 (now commencing with Section 12001; and adds Pen. Code Part 6 (commencing with Section 16000).

### “LEGISLATIVE COUNSEL'S DIGEST

“This bill would reorganize without substantive change the provisions of the Penal Code relating to deadly weapons, to be operative January 1, 2012.”

Here are parts of new Pen. Code § 16000 and new § 16005; these two sections begin the new Pen. Code Part 6.

16000. This act recodifies the provisions of former Title 2 (commencing with Section 12000) of Part 4, which was entitled "Control of Deadly Weapons..."

16005. Nothing in the Deadly Weapons Recodification Act of 2010 is intended to substantively change the law relating to deadly weapons. The act is intended to be entirely nonsubstantive in effect.

See also Stats. 2010, Ch. 178 (S.B. No. 1115), which is “clean-up” legislation, containing updated cross-references

*Avoid confusion:* The 2001 editions of the Penal Code may have several sections, scattered throughout, that will refer to the recodified section numbers.

## **Domestic Violence**

### ***Probationer: Minimum Payment. (Stats. 2010, Ch. 132 [A.B. 2011])***

Amends PC 1203.097. Took effect Aug. 13, 2010.

The effected fine is found in Pen. Code § 1203.097, subdivision (a)(5).

“LEGISLATIVE COUNSEL'S DIGEST....

“Existing law provides that if a person is granted probation for a domestic violence crime, the terms of probation shall include a minimum payment by the defendant of \$200....

“This bill would increase the minimum payment to be paid by a domestic violence probationer to \$400....”

### ***Requests for Lower Bail (Stats. 210, Ch. 176 [S.B. 1049])***

Amends Pen. Code §§ 1269c and 1270.1.

“LEGISLATIVE COUNSEL'S DIGEST....

“Existing law authorizes a magistrate or commissioner, with respect to a defendant who has been arrested for a bailable felony offense or for the misdemeanor offense of violating a domestic violence order, to set bail higher than that provided in the schedule of bail in an amount that he or she deems sufficient to ensure the defendant's appearance or to ensure the protection of a victim, or family member of a victim, of domestic violence. Existing law also provides that the defendant may make application to the magistrate for release on bail lower than that provided in the schedule of bail or on his or her own recognizance.

“This bill would prohibit defendants who have been arrested for specified serious, violent, or other felonies from making an application to the magistrate for release on bail lower than that provided in the schedule of bail or on his or her own recognizance.

“Existing law also provides that before any person who has been arrested for commission of certain specified crimes is released on bail in an amount other than that specified in the schedule of bail for the offense or is released on his or her own recognizance, a hearing shall be held at which the court shall consider certain enumerated factors, including the potential danger the detained person poses to other persons.

“This bill would provide that, notwithstanding this provision, a judge or magistrate may, with respect to an offense specified in the provision described above concerning bailable felonies and misdemeanor domestic violence order violations, increase bail to an amount exceeding that set forth in the bail schedule without a hearing, provided an oral or written declaration of facts justifying the increase is presented under oath by a sworn peace officer.”

[Query if the denial of bail below schedule, and denial of O.R., are constitutional. Bail is found at U.S. Const. Amend. X. Bail and O.R. are found at Calif. Const. Art. I, sec. 12. E.g., the Calif. Const. says bail cannot be “excessive,” and that bail and O.R. are in the court’s “discretion,” and do not mention further legislative restrictions. GB.]

## **Driving Under the Influence of Alcohol or Drugs, and Related Matters**

### ***Possible 10–Year License Suspension for 4<sup>th</sup> –Timers (Stats. 2010, Ch. 301, A.B. 1601J)***

Adds Veh. Code §23597. This section is operative Jan. 1, 2012.

“LEGISLATIVE COUNSEL'S DIGEST....

“(1) Existing law requires, if a person is convicted of a specified driving-under-the-influence (DUI) offense and the offense occurred within 10 years of 2, or 3 or more, prior specified DUI offenses that resulted in a conviction, that the person be punished by enhanced penalties, and that the person's privilege to operate a motor vehicle be revoked by the department for a period of 2, 3, 4, or 5 years, as applicable....

“This bill would, beginning January 1, 2012, authorize the court to order a 10–year revocation of the driver's license of a person who has been convicted of 3 or more specified DUI offenses if the court considers certain factors, including, but not limited to, the period of time that has elapsed since his or her previous DUI convictions.

“The bill would also authorize a person who had his or her driver's license revoked for 10 years to apply to the Department of Motor Vehicles, 5 years from the date of the last DUI conviction, to have his or her privilege to operate a motor vehicle reinstated subject to certain conditions, including, among other things, the condition that the person was not convicted of any other drug- or alcohol-related offenses, under state law, during the driver's license revocation period....”

***Driver's License--Suspension or Revocation for Certain Alcohol Levels by [1] Commercial Drivers and [2] Persons Under 21. (Stats. Ch. 244 [A.B. 1928])***

Amends Veh. Code § 13557.

“LEGISLATIVE COUNSEL'S DIGEST....

“... Existing law requires the Department of Motor Vehicles, in the review of a determination that requires the department to immediately suspend the privilege of a person to operate a motor vehicle for any one of specified reasons, to sustain the order of suspension or revocation, or if the person is under 21 years of age and does not yet have a driver's license, to delay issuance of that license for one year if it determines, by the preponderance of the evidence, all of specified facts, including, that the person was driving a motor vehicle with a certain amount of alcohol in his or her blood under any one of 3 specified circumstances. A violation of the Vehicle Code is a crime.

“This bill would add to those specified circumstances

“(1) the person was driving a vehicle that requires a commercial driver's license and the person had 0.04% or more, by weight, of alcohol in his or her blood, or

“(2) the person was on probation for a violation of certain driving under the influence of alcohol or drug offenses and had a blood-alcohol concentration of 0.01% or more, by weight, of alcohol in his or her blood, as measured by a preliminary alcohol screening test or other chemical test.”

## **Evidence**

### ***Unavailable Witness (Stats. 2010, Ch. 537, Sec. 1 [A.B. 1723])***

Evidence Code §240 defines “unavailable as a witness.” Section 1 of this bill adds to that definition the following Subdivision (a)(6):

(6) Persistent in refusing to testify concerning the subject matter of the declarant’s statement despite having been found in contempt for refusal to testify.

### ***Hearsay Used Against the Party that Procured the Witness’s Absence. (Stats. 2010, Ch. 537, Sec. 2 [A.B. 1723])***

Section 2 of this bill codifies and adds to selected case law on this subject, by enacting Evidence Code §1390.

A rare sunset clause in the Evidence Code automatically repeals this new section January 1, 2016, unless an earlier bill deletes or extends that date.

Here it is in full:

(a) Evidence of a statement is not made inadmissible by the hearsay rule if the statement is offered against a party that has engaged or aided and abetted in the wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.

(b)(1) The party seeking to introduce a statement pursuant to subdivision (a) shall establish, by a preponderance of the evidence, that the elements of subdivision (a) have been met at a foundational hearing.

(2) The hearsay evidence that is the subject of the foundational hearing is admissible at the foundational hearing. However, a finding that the elements of subdivision (a) have been met shall not be based solely on the uncontroverted hearsay statement of the unavailable declarant, and shall be supported by independent corroborative evidence.

(3) The foundational hearing shall be conducted outside the presence of the jury. However, if the hearing is conducted after a jury trial has begun, the judge presiding at the hearing may consider evidence already presented to the jury in deciding whether the elements of subdivision (a) have been met.

(4) In deciding whether or not to admit the statement, the judge may take into account whether it is trustworthy and reliable.

(c) This section shall apply to any civil, criminal, or juvenile case or proceeding initiated or pending as of January 1, 2011.

(d) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date. If this section is repealed, the fact that it is repealed should it occur, shall not be deemed

to give rise to any ground for an appeal or a postverdict challenge based on its use in a criminal or juvenile case or proceeding before January 1, 2016.

**Gangs: Contempt for Violation of Injunctions or Orders Pending Trial. (Stats. Ch. 677 [A.B. No. 2632]).**

Amends Code of Civ. Proc. 166 (Contempt of Court) by adding a new Subdivision (a)(9).

Here is the main text:

Pen. Code § 166, subd. (a): “ ... every person guilty of any contempt of court, of any of the following kinds, is guilty of a misdemeanor: :...

(9) Willful disobedience of the terms of any injunction that restrains the activities of a criminal street gang or any of its members, lawfully issued by any court, including an order pending trial.

**Infractions: Record Cleansing. (Stats. 2010, Ch. 99 [A.B. 2582]).**

Amends Pen. Code § 1203.4a.

“LEGISLATIVE COUNSEL'S DIGEST

“Existing law provides that every defendant convicted [by plea or verdict] of specified misdemeanors and not granted probation shall, under specified

conditions, be permitted by the court to withdraw his or her plea of guilty or nolo contendere [or the court will vacate the verdict] and enter a plea of not guilty and the court shall dismiss the accusatory pleading against the defendant....

“... [E]xisting law [then] releases the defendant, except as specified, from all penalties and disabilities resulting from the offense of which he or she has been convicted.

“This bill .... would provide that defendants convicted of infractions, except motor vehicle ... infractions [falling within ... Veh. Code §42001], shall be permitted to seek dismissal of charges and release from all penalties and disabilities resulting from those offenses, as specified.

“The bill would also provide that a petition for dismissal of an infraction shall generally be by written declaration, and that the dismissal of an infraction shall not be granted unless the prosecuting attorney receives prior notice of the petition for dismissal, as specified.

[Veh. Code §42001 covers almost all Vehicle Code infractions. GB]

## **Internet—Impersonation (Stats. 2010, Ch. 335 [S.B. 1411])**

Adds Pen. Code § 528.5.

“LEGISLATIVE COUNSEL'S DIGEST....

“Existing law makes it a crime to falsely impersonate another in either his or her private or official capacity, as specified. Existing law also makes it a crime to knowingly access and, without permission, alter, damage, delete, destroy, or otherwise use any data, computer, computer system, or computer network in order to devise or execute any scheme or artifice to defraud, deceive, or extort, or wrongfully control or obtain money, property, or data. For a violation thereof, in addition to specified criminal penalties, existing law authorizes an aggrieved party to bring a civil action against the violator, as specified.

“This bill would provide that any person who knowingly and without consent credibly impersonates another actual person through or on an Internet

Web site or by other electronic means, as specified, for purposes of harming, intimidating, threatening, or defrauding another person is guilty of a misdemeanor.

“The bill would, in addition to the specified criminal penalties, authorize a person who suffers damage or loss to bring a civil action against any person who violates that provision, as specified.”

### **Judges: Disqualification for Cause: Campaign Contributions To (Stats. 2010, Ch. 686 [A.B. 2487])**

Amends Code of Civ. Proc. § 170.1, by adding to Subdivision (a) a new paragraph (9).

“LEGISLATIVE COUNSEL'S DIGEST....

“Existing law sets forth the grounds for disqualification of a judge, including, but not limited to, if the judge has a financial interest in the subject matter in a proceeding or in a party to the proceeding.

“This bill would provide for the disqualification of a judge who has received a contribution in excess of \$1,500 from a party or lawyer in the proceeding, and either the contribution was received in support of the judge's last election, if the last election was within the last 6 years, or the contribution was received in anticipation of an upcoming election.

“The bill would further disqualify a judge based on a contribution of a lesser amount under specified circumstances.

“The bill would require the judge to disclose any contribution from a party or lawyer in a matter that is before the court that is required to be reported, as specified, even if the amount would not require disqualification under these provisions.

“The bill would permit the party that did not make the contribution to waive this disqualification, except as specified.”

**Juvenile Law: Mental Competency (Stats. 2010, Ch. 671 [AB 2212])**

The New Law codifies a juvenile “1368”-type proceeding.

Adds Welf. & Inst. Code §709: Here is the full text:

(a) During the pendency of any juvenile proceeding [under Welf. & Inst. Code §§ 601 or 602], the minor's counsel or the court may express a doubt as to the minor's competency. A minor is incompetent to proceed if he or she lacks sufficient present ability to consult with counsel and assist in preparing his or her defense with a reasonable degree of rational understanding, or lacks a rational as well as factual understanding, of the nature of the charges or proceedings against him or her. If the court finds substantial evidence raises a doubt as to the minor's competency, the proceedings shall be suspended.

(b) Upon suspension of proceedings, the court shall order that the question of the minor's competence be determined at a hearing. The court shall appoint an expert to evaluate whether the minor suffers from a mental disorder, developmental disability, developmental immaturity, or other condition and, if so, whether the condition or conditions impair the minor's competency. The expert shall have expertise in child and adolescent development, and training in the forensic evaluation of juveniles, and shall be familiar with competency standards and accepted criteria used in evaluating competence. The Judicial Council shall develop and adopt rules for the implementation of these requirements.

(c) If the minor is found to be incompetent by a preponderance of the evidence, all proceedings shall remain suspended for a period of time that is no longer than reasonably necessary to determine whether there is a

substantial probability that the minor will attain competency in the foreseeable future, or the court no longer retains jurisdiction. During this time, the court may make orders that it deems appropriate for services that may assist the minor in attaining competency. Further, the court may rule on motions that do not require the participation of the minor in the preparation of the motions. These motions include, but are not limited to:

(1) Motions to dismiss. (2) Motions by the defense regarding a change in the placement of the minor.  
(3) Detention hearings. (4) Demurrers.

(d) If the minor is found to be competent, the court may proceed commensurate with the court's jurisdiction....

**Marijuana: Simple Possession of Less than an Ounce Made an Infraction. (Stats. 2010, Ch. 708 [S.B. 1449].)**

Amends Health & Saf. Code § 11357, subd. (b), and Veh. Code § 23222

“LEGISLATIVE COUNSEL'S DIGEST

“Existing law provides that, except as authorized by law, every person who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of a misdemeanor and shall be punished by a fine of not more than \$100.

“This same penalty is imposed for the crime of possessing not more than 28.5 grams of marijuana while driving on a highway or on lands, as specified.

“Existing law provides with respect to these offenses that, under specified conditions, (1) the court shall divert and refer the defendant for education,

treatment, or rehabilitation, as specified, and (2) an arrested person who gives satisfactory evidence of identity and a written promise to appear in court shall not be subjected to booking.

“This bill would provide that any person who commits any of the above offenses is instead guilty of an infraction punishable by a fine [up to] \$100.

“This bill would eliminate the above-described provisions relating to booking and to diversion and referral for education, treatment, or rehabilitation.”

[*Note:* Nothing else is changed concerning marijuana; all the collateral consequences of marijuana possession conviction remain.]

## **Military Decoration Fraud (Stats. 2010, Ch. 366 [A.B. 1829])**

Adds § 1821 and repeals § 648.1 of the Military and Veterans Code, and amends Pen. Code §§ 19.8 and 532b.

### “LEGISLATIVE COUNSEL'S DIGEST

“Existing law provides that any person who, orally, in writing, or by wearing any military decoration, falsely represents himself or herself to have been awarded any military decoration, as specified, with the intent to defraud, is guilty of an infraction.

“This bill would instead provide that the offense is a misdemeanor, or in the case where the person committing the offense is a veteran of the Armed Forces of the United States, an infraction or a misdemeanor, as specified, and would exempt face-to-face solicitations involving less than \$10.”

## **Motorcycles: Ignition Tampering, and Theft Tools** **(Stats. 2010, Ch. 120 [A.B. 1848])**

Adds Pen. Code § 466.65, which reads in full as follows:

(a) Every person who possesses, gives, or lends any device designed to bypass the factory-installed ignition of a motorcycle in order to start the engine of a motorcycle without a manufacturer's key, or who possesses, gives, or lends any motorcycle ignition, or part thereof, with the intent to unlawfully take or drive, or to facilitate the unlawful taking or driving of, a motorcycle without the consent of the owner, is guilty of a misdemeanor.

(b) Every person who possesses, gives, or lends any item of hardware, including, but not limited to, boltcutters, electrical tape, wirecutters, wire strippers, or allen wrenches, with the intent to unlawfully take or drive, or to facilitate the unlawful taking or driving of, a motorcycle without the consent of the owner, is guilty of a misdemeanor.

## **Parole**

### ***Medical Parole (Stats 2010, Ch. 405 [S.B. 1399])***

Adds Pen. Code § 2065, and adds Title 2.3 (commencing with § 3550) to Pen. Code Part 3.

“LEGISLATIVE COUNSEL'S DIGEST....

“Existing law generally regulates the granting and conditioning of parole, and places the duty to monitor parolees on the Division of Adult Parole Operations

“Existing law ... provides that the Board of Parole Hearings or its successor in interest shall be the state's parole authority and shall be responsible for protecting victims' rights in the parole process.

“This bill would provide that, except as specified, any prisoner who the head physician for the institution where the prisoner is located determines, as provided, is permanently medically incapacitated with a medical condition that renders the prisoner permanently unable to perform activities of basic daily living, and results in the prisoner requiring 24-hour care, and that incapacitation did not exist at the time of sentencing, shall be granted medical parole, if the Board of Parole Hearings determines that the conditions under which the prisoner would be released would not reasonably pose a threat to public safety.

“Those provisions would not apply to any prisoner sentenced to death or life in prison without possibility of parole or to any inmate who is serving a sentence for which parole pursuant to this bill is prohibited by any initiative statute.

“The bill would provide that these provisions shall not be construed to alter or diminish the rights conferred [to victims concerning parole hearings] under the Victim's Bill of Rights Act of 2008: Marsy's Law.

“The bill would require a physician employed by the Department of Corrections and Rehabilitation who is the primary care provider for a prisoner to recommend that the prisoner be referred to the Board of Parole Hearings for consideration for medical parole if the physician believes the prisoner meets the medical criteria for medical parole.

“The bill would provide that the Board of Parole Hearings or the Division of Adult Parole Operations shall have the authority to impose any reasonable conditions on prisoners subject to parole pursuant to this bill, including, but not limited to, the requirement that parolees submit to electronic monitoring....”

***Sex Offender Parolees; Restriction on Entering Parks .  
Stats. 2010, Ch. 219, § 22 [AB 1844].***

This is part of Chelsea's law, which became effective September 9, 2010.

For more details about Chelsea's law, see "Sex Offenses."

Adds Pen. Code § 3053:

(a) ... [W]hen a person is released on parole ... for any of the offenses specified in subdivision (b) in which one or more of the victims was under 14 years of age, and for which [Pen. Code § 290] registration [as a sex offender] is required ... a condition of parole [is] that the person may not, during ... parole, enter any park where children regularly gather without the express permission of his or her parole agent.

(b) Subdivision (a) shall apply to persons ... on parole [for] an offense specified in [Pen. Code] Section 261, 262, 264.1, 269, 286, 288a, paragraph (1) of subdivision (b) of Section 288, 288.5, 288.7, 289, subdivision (c) of Section 667.51, subdivision (j), (k), or (l) of Section 667.61, or 667.71.

[The Legislative Counsel's Digest says that violation of the above restriction is a misdemeanor. But no such language appears in the statute itself.]

***Length of Parole Increases for Certain Sex Offenders.  
(Stats. 2010, Ch. 219, § 19 [AB 1844]).***

This is part of Chelsea's law, which became effective September 9, 2010.

For more details about Chelsea’s law, see “Sex Offenses.”

Amends Pen. Code § 3000

“LEGISLATIVE COUNSEL'S DIGEST

“Under existing law, a prisoner is generally released on parole for a period not exceeding 3 years, except that inmates sentenced for certain enumerated violent felonies are released on parole for a period not exceeding 5 years. Under existing law, the period of parole for an inmate who has received a life sentence for certain specified sex offenses is for a period not exceeding 10 years.

“This bill would require lifetime parole for habitual sex offenders, persons convicted of kidnapping a child under 14 years of age with the intent to commit a specified sexual offense, and persons convicted of other specified sex crimes, including, among others, aggravated sexual assault of a child.

“The bill would, unless a longer period of parole applies, impose a 10–year parole period on inmates sentenced for kidnapping with the intent to commit specified sex offenses, specified lewd or lascivious acts, and other specified sexual offenses.

“The bill would impose a 20–year parole period on inmates convicted and required to register as sex offenders for rape, sodomy, lewd or lascivious acts, continuous sexual abuse of a child, and other specified sex crimes, in which one or more of the victims of the offense was a child under 14 years of age, as specified.”

***Treatment for Sex Offender Parolees. (Stats. 2010, Ch. 291, § 17 [A.B. 1844].)***

See Sex Offenses, “Probation: Required Treatment for Certain Sex Offenders.” These Parolees must be treated similarly to sex offender probationers.

***Mentally Disordered Prisoners Upon Discharge: Criteria for Requiring Treatment Eased. (Stats. 2010, Ch. 291, § 18 [A.B. 1844].)***

This is part of Chelsea's law, which became effective September 9, 2010.

For more details about Chelsea's law, see "Sex Offenses."

Amends Pen. C. § 2962

**“LEGISLATIVE COUNSEL’S DIGEST**

“Existing law requires that, as a condition of parole, prisoners who meet specified criteria be treated by the State Department of Mental Health.

“Existing law requires that prior to release on parole, these prisoners be evaluated, as specified.

“Existing law provides that only if both independent professionals who evaluate the prisoner, as required, concur with the chief psychiatrist's certification shall treatment by the department be required.

“This bill would instead make these provisions applicable to the prisoner if at least one of the independent professionals concurs with the chief psychiatrist's certification.”

**Prison: Alternative Custody for “Female inmates, Pregnant inmates, or Inmates Who ... [Are] Primary Caregivers of Dependent Children” (Stats. 2010, Ch. 644 [S.B. 1266])**

Amends Pen. Code §4532, and adds §1170.05.

“LEGISLATIVE COUNSEL'S DIGEST....

“... This bill would authorize the Secretary of the Department of Corrections and Rehabilitation to offer a program under which female inmates, pregnant inmates, or inmates who, immediately prior to incarceration, were primary caregivers of dependent children, as defined, who are committed to state prison may be allowed to participate in a voluntary alternative custody program in lieu of confinement in state prison.

“The bill would define an alternative custody program to include confinement to a residential home, a residential drug or treatment program, or a transitional care facility that offers appropriate services.

“The bill would authorize the department to enter into contracts with county agencies, not-for-profit organizations, for-profit organizations, and others in order to promote alternative custody placements....

“The bill would, among other things, provide inmate eligibility criteria, authorize the secretary to prescribe rules and regulations for the program, including imposing certain inmate participation requirements, and authorize certain inmate compliance verification procedures.

“The bill would make the escape or attempted escape from this program a misdemeanor, thereby creating a state-mandated local program.”

## **Restitution**

### ***Collection of Restitution by Prosecutors Optional in Certain Circumstances. (Stats. 2010, Ch. 582 [A.B. 1847])***

Amends Pen. Code § 1202.42

“LEGISLATIVE COUNSEL’S DIGEST....

“... Existing law authorizes procedures for the entry and application of court orders for income deduction upon entry of an order for a restitution fine or for victim restitution, and gives the agency responsible for the collection of restitution specified powers and duties in regard to these income deduction orders.

“The bill would provide that if there is no agency in the county responsible for the collection of restitution, the county probation office or the prosecuting attorney may carry out the functions and duties of such an agency in regard to the income deduction orders described above, as specified.

“This bill would further provide, if the defendant fails to meet his or her obligations under the restitution order and the defendant has not provided good cause for the failure, that a court shall be authorized, upon the request of the prosecuting attorney, to order the prosecuting attorney be given authority to use lien procedures applicable to the defendant, including, but not limited to, a writ of attachment of property, as specified.

“This bill would provide prosecutorial immunity from liability for these proceedings and deny reimbursement for the costs of the prosecuting attorney from the defendant's income or assets, as specified.”

***Identity Theft--Monitoring Credit Reports—Restitution stats.  
(Stats. 2010, Ch. 107 [S.B. 108])***

Amends Pen. C. § 1202.4, to add a new Paragraph (f)(3)(L) providing that restitution to victims of identity theft can include:

(L) Expenses for a period of time reasonably necessary to make the victim whole, for the costs to monitor the credit report of, and for the costs to repair the credit of, a victim of identity theft, as defined in Section 530.5.

***Restitution Centers (Stats. 2010, Ch. 463 [A.B. 2218].)***

Amends Pen. Code §§ 6221 and 6228

“LEGISLATIVE COUNSEL'S DIGEST

“Existing law establishes restitution centers for inmates to provide a means for those sentenced to prison to be able to pay their victims' financial restitution, as specified.

“This bill would revise what is included by the term “restitution” for these purposes, and provide that inmates who commit crimes involving a direct victim shall receive priority placement in restitution centers.

“Existing law provides criteria for eligibility for placement in a restitution center....

“This bill revises those criteria to provide, among other criteria, that a defendant is eligible for placement in a restitution center if he or she does not have a criminal history of a conviction for the sale of drugs within the last 5 years, or for an offense requiring registration as a sex offender, or for a serious or violent felony, and the defendant did not receive a [current] sentence of more than 60 months ....”

***Taxation—Collections—Restitution or Other Amounts Imposed By a Criminal Court. (Stats. 2010 Ch. 359 [A.B. 1530])***

Amends Rev. & Tax Code § 19533 and adds § 19722

“LEGISLATIVE COUNSEL'S DIGEST....

“This bill would authorize the Franchise Tax Board to collect restitution orders or any other amounts imposed by a court of competent jurisdiction for criminal offenses upon a person or entity that are due and payable to the Franchise Tax Board in any manner provided by law for the collection of delinquent income tax liability....

“This bill would authorize the Franchise Tax Board to retain specified amounts for costs of investigation incurred by the Franchise Tax Board.

“Existing law establishes a priority for application of amounts collected [if] a debtor has more than one debt being collected by the Franchise Tax Board....

“This bill would add to this priority for ..., the amounts authorized to be collected by the Franchise Tax Board ....”

## **Rules of Court**

California Rule of Court 4.530, effective July 1, 2010, implements and standardizes practice under, Pen. Code § 1203.9, Intercounty Probation Case Transfer.

California Rule of Court 4.700, effective July 10, 2010, sets “Firearm relinquishment procedures for criminal protective orders .”

See also Appeals, above, for other Rule of Court changes.

## **Rules of Professional Conduct for Lawyers**

### **From the California State Bar’s Web Site:**

“The Rules of Professional Conduct ... are attorney conduct rules the violation of which will subject an attorney to discipline.

“Pursuant to statute, rule amendment proposals may be formulated by the State Bar for submission to the Supreme Court of California for approval.

“The State Bar has assigned a special commission to conduct a thorough study of the rules and to recommend comprehensive amendments.” [This commission has spent several years working on proposed new rules. GB]

“At its meetings on July 24, 2010 and September 22, 2010, the State Bar Board of Governors received final recommendations from the Commission and the Board adopted a total of 67 proposed new and amended rules.

“Although adopted by the Board, the proposed rules must be submitted to the Supreme Court of California for approval. If the proposed rules are approved by the Supreme Court, they will become operative and binding.

“Until such Supreme Court action occurs, the current rules are controlling.”

### **Discussion by GB.**

These proposed new rules are patterned after, and closely track, the current ABA Model Rules of Professional Conduct. The proposed new rules and their comments are three times as long as the current rules and comments.

The three 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 jurisdiction 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. More controversial, however, is 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.”

Rule 4.2(a) states:

“(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.”

The current rule bars such communication with a “*party*.” The proposed rule expands this to “*person*.”

Among the many other interesting proposed new rules are 1.7, 1.8, and 1.9 dealing with conflicts.

The complete text of the proposed new rules, and much supporting material can be found in the Ethics portion of the State Bar’s web site. [Opinion by GB: I find these proposed revised rules already provide good guidance.]

## Sentences

### ***Felony Sentencing: Aggravated Sentences*** (Stats. 2010, Ch. 256 [A.B. 2263])

Effective Sept. 24, 2010.

Amends Pen. Code § 1170. Also amends Pen. Code §§ 186.22, 186.33, 1170, 1170.1, 1170.3, 12021.5, 12022.2, and 12022.4

#### “LEGISLATIVE COUNSEL'S DIGEST

“Existing law provides that most felonies are punishable by a triad of terms of incarceration in the state prison, comprised of low, middle, and upper terms.

“Previous law that required the court to impose the middle term, unless there were circumstances in aggravation or mitigation of the crime, was [because *Cunningham v. California* (2007) 549 U.S. 270 held unconstitutional Calif.’s permitting judges to find aggravating facts to go above the presumptive midterm.] amended to provide that the choice of the appropriate term rests within the sound discretion of the court.

“Existing provisions related to sentence enhancements involving criminal street gang activity, firearms, and sentencing generally specify that the appropriate term rests within the sound discretion of the court.

“Existing law repeals the provision giving the court this discretionary authority on January 1, 2011, and on that date, makes operative [the former] provisions that require the court to impose the middle term, unless there are circumstances in mitigation or aggravation of the crime.

“This bill would extend to January 1, 2012, the provisions of law that provide that the court shall, in its discretion, impose the term or enhancement that best serves the interests of justice.

“The bill would also make conforming changes in other statutes.

[*Note:* The legislature seems poised to act this year to either make this law permanent, or enact another law instead. GB]

***Sentence Reduction Credits. (Stats. 2010, Ch. 426 [S.B. 76].)***

Amends Pen. Code §§ 2933 and 4019. Effective Sept. 28, 2010.

Last year, Stats. 2009–10,<sup>1</sup> Ch. 28 (3rd Ex. Sess.) (SB 18 3X) §§ 38 and 50, effective Jan. 25, 2010, increased both county jail sentence reduction credits (for those without serious or violent felonies, and not required to register under Pen. Code § 290), for both those who do, and those who do not, go to prison, to half time credits.<sup>2</sup>

An uproar by county sheriffs and many others led the legislature to enact the current bill, changing the county jail credits back to the previous formula of 6 days credit for every 4 days actually served for those who do not go to prison.

For those who do go to prison, and who do not have a disqualifying conviction, county jail sentence reduction credits are recalculated to be half-time credits.

Here is my summary of the current state of the law:

**All Prison commitments, regardless of when the crime was committed.**

If D has no disqualifying present or prior convictions, two days are deemed served for every day actually served in county jail. Pen. Code § 2933, subd. (e)(1). (Note that Subd. (e)(1) has no savings clause that would preserve a lower amount of

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<sup>1</sup> This is also referred to as Stats. 2009.

<sup>2</sup> Whether the Jan. 25 changes were retroactive is pending in the Calif. Supreme Ct.

sentence reduction credit that might otherwise arguably apply to crimes committed before Sept. 28, 2010.)

If D is required to register under PC 290, or is committed for a current serious felony, or has a prior strike, 6 days are deemed served for every 4 actual days served in county jail. Pen. Code § 2933, subd. (e)(3)

If D is committed for a current violent felony, D's county jail credits are all days actually served plus an added 15% of that number. Pen. Code § 2933.1

If D is committed for murder, D gets credit only for actual days served. Pen. Code § 2933.2

### **County Jail Commitments.**

#### **For crimes committed after Sept. 27, 2010**

D is deemed to have served 6 days for every 4 days actually served. Pen. Code § 4019 (current, i.e., Sept. 27, 2010, version) subd. (f).

#### **For crimes committed after Jan. 24, 2010, and before Sept. 28, 2010,**

If D has no disqualifying present or prior convictions, D is deemed to have served 4 days for every 2 days actually served. Pen. Code § 4019 (version eff. From Jan. 25, 2010 to Sept. 27, 2010) subd. (f). (This assumes that the courts will find that sentence reduction credits applicable on the day the crime was committed cannot be altered to defendant's detriment retroactively.)

If D is required to register under PC 290, or is committed to county jail for a serious felony (i.e., on probation), or has a prior strike, D is deemed to have served 6 days for every 4 days actually served. Pen. Code § 4019 (version eff. From Jan. 25, 2010 to Sept. 27, 2010) subd. (f).

#### **For crimes committed before Jan. 25, 2010.**

If the Jan. 25 version of PC 4019 is retroactive, then D's credits are as per "For crimes committed after Jan. 24, 2010, and before Sept. 28, 2010", above.

If the Jan. 25 version of PC 4019 is not retroactive, 6 days are deemed served for every 4 actual days.

## **Sex Offenses.**

***“Chelsea’s Law”<sup>3</sup>, Sections 2 to 9 and 16. Many new and dramatically increased sex offense penalties. (Stats. 2010, Ch. 219 [AB 1844])***

Chelsea’s law became effective September 9, 2010.

Sections 10 to 22 of this bill affect (1) petty theft, (2) the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO), (3) the Megan’s Law website, and (4) parole; those sections are discussed in their respective categories.

Sections 2 to 9 amend Pen. Code §§ 220, 236.1, 264, 264.1, 286, 288, 288a, 289, and 667.61

### **“LEGISLATIVE COUNSEL'S DIGEST**

“Under existing [*Pen Code § 220*], an assault with the intent to commit mayhem, rape, sodomy, oral copulation, or with the intent to commit, by force, rape, spousal rape, or sexual penetration in concert with another, is punishable by imprisonment in the state prison for 2, 4, or 6 years, except as specified.

“This bill would [by *adding new Subdivision (b) to § 220*] provide that an assault of a person under 18 years of age with the intent to commit rape, sodomy, oral copulation, or with the intent to commit, by force, rape, spousal rape, or sexual penetration in concert with another, would be punishable by imprisonment in state prison for 5, 7, or 9 years.

“Under existing [*Pen Code § 236.1*], any person who deprives or violates the personal liberty of another with the intent to effect or maintain a felony violation of specified sex crimes, extortion, or to obtain forced labor or services, is guilty of human trafficking. Existing law provides that a violation of this provision where the victim of the trafficking was under 18 years of age at the time of the commission of the offense is punishable by imprisonment in the state prison for 4, 6, or 8 years.

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<sup>3</sup> The full name specified by the Bill’s § 1, is “The Chelsea King Child Predator Prevention Act of 2010.”

“This bill would [by adding new Subdivision (g)(1) to Pen. Code § 236.1], provide that any person who commits human trafficking involving a commercial sex act where the victim of the human trafficking was under 18 years of age at the time of the commission of the offense shall be punished in addition by a fine of not more than \$100,000, to be used as specified.

“Under existing [Pen. Code §§ 264, 264.1 and 286], rape, sodomy accomplished against the victim's will, oral copulation accomplished against the victim's will, and sexual penetration accomplished against the victim's will is punishable by imprisonment in state prison for 3, 6, or 8 years. Rape, sodomy, and oral copulation committed in concert with another is punishable by imprisonment in the state prison for 5, 7, or 9 years.

“This bill would [by adding new Subdivision (c) to § 264, new Subdivision (b) to § 264.1, and new Paragraphs to § 286, subdivisions (c)(2) and (d)(2)] provide that the punishment for these specified crimes upon a child who is under 14 years of age is punishable by imprisonment in state prison for 9, 11, or 13 years, and if committed upon a minor who is 14 years of age or older is punishable by imprisonment in state prison for 7, 9, or 11 years. This bill would provide that if these crimes are committed in concert with another person upon a child who is under 14 years of age they are punishable in state prison for 10, 12, or 14 years and if committed in concert upon a minor who is 14 years of age or older by imprisonment for 7, 9, or 11 years.....

“Under existing law [Pen. Code § 288, subdivision (a)], a person who commits any lewd or lascivious act upon a child who is under 14 years of age by use of force or fear is guilty of a felony punishable by imprisonment in state prison for 3, 6, or 8 years.

“This bill [by amending Pen. Code § 288, subdivision (b)(1)] would increase the punishment for this crime to imprisonment in the state prison for 5, 8, or 10 years..

“Under existing law [Pen. Code § 288, subdivision (b)(2)] , a person who commits any lewd or lascivious act upon a dependent person, as defined, by use of force or fear is ... punishable by imprisonment in state prison for 3, 6, or 8 years.

This bill [by amending Pen. Code § 288, subdivision (b)(2)] would increase the punishment ... to ... 5, 8, or 10 years....”

“Existing law ... requires a person convicted of certain felonies under specified circumstances to be committed to prison for a term of years to life.

“This bill would [*by amending Pen. Code § 667.61, subd. (j)*] provide that these felonies committed under the above-specified circumstances upon a victim who is a child under 14 years of age shall be punished by imprisonment in state prison for life without the possibility of parole if the offender is 18 years of age or older or 25 years to life if the offender is under 18 years of age.

“This bill would [*by adding new Subd. (i) to Pen. Code § 288*] add as a circumstance the infliction of bodily harm, as defined, on a victim who is a child under 14 years of age to the list of specified circumstances that would result in this imprisonment.

“This bill would [*by amending Pen. Code § 667.61, subs. l and n*] provide that when rape, spousal rape, rape in concert, or sexual penetration, sodomy, or oral copulation committed against the victim's will are committed under 2 of a specified list of circumstances, upon a minor 14 years of age or older, the punishment shall be imprisonment in state prison for life without the possibility of parole if the offender is 18 years of age or older or 25 years to life if the offender is under 18 years of age, or for 25 years to life if committed under one of the specified circumstances.

“Under existing law, a person convicted of certain felony sex offenses shall be committed to prison for a term of 15 years to life if during the commission of the felony the defendant inflicted great bodily injury on the victim.

“This bill would [*by amending Pen. Code § 667.61, subd. (m)*] provide that any person who is convicted of certain sex offenses under specified circumstances, upon a victim who is a child under 14 years of age, shall be punished by imprisonment in the state prison for 25 years to life.”

***Communication Prohibitions in Sex Crimes With Minors.  
(Stats. 2010, Ch. 627 [S.B. 834].)***

Add Pen. Code §1201.3

“LEGISLATIVE COUNSEL'S DIGEST

“This bill would authorize the court, upon the conviction of a defendant for a sexual offense involving a minor victim, or if a juvenile petition involving a sexual offense against a minor victim is admitted or sustained, to issue orders prohibiting the defendant or juvenile, for a period up to 10 years, from harassing, intimidating, or threatening the victim, or the victim's family members or spouse.

“Violation of these orders would be punishable as criminal contempt.”

***Probation--Sex Offenders--Children and Minors (Stats. 2010 Ch. 49 S.B. 1253J)***

Amends Pen. Code § 1203.066: Adds a new Subdivision (d)(1)(D), reletters former Subd. (D) to be (E).

“LEGISLATIVE COUNSEL'S DIGEST....

“Existing law provides that probation shall not be granted to specified defendants who are convicted of lewd or lascivious acts upon or with the body of a child, or defendants convicted of continuous sexual abuse of a child, except as specified.

“Existing law provides that if the defendant is not ineligible for probation, the defendant may be granted probation only if certain terms and conditions are met.

“This bill would include within those terms and conditions that, if the defendant is not a member of the victim's household, the court would be required to prohibit the defendant from being placed or residing within 1/2 mile of the child victim's residence for the duration of the probation term unless the court, on the record, states its reasons for finding that this residency restriction would not serve the best interests of the victim.”

***Probation: Required Treatment for Certain Sex Offenses.  
(Stats. 2010, Ch. 291, § 17 [A.B. 1844].)***

This is part of Chelsea’s law, which became effective September 9, 2010.

For more details about Chelsea’s law, see “Sex Offenses.”

Amends Pen. Code 1203.067.

“LEGISLATIVE COUNSEL’S DIGEST

“Existing law requires that persons convicted of certain sex crimes be evaluated by the county probation department and requires that if a defendant is granted probation, the court shall order the defendant to be placed in an appropriate treatment program designed to deal with child molestation or sexual offenders, if an appropriate program is available in the county.

“This bill would remove the requirement that the defendant be placed in an appropriate treatment program but would instead impose specified conditions, including participation in an approved sex offender management program, on persons released on formal supervised probation for an offense requiring registration as a sex offender, as specified....

The bill would similarly require participation in an approved sex offender management program, as a condition of parole, for persons released on parole for an offense that requires registration as a sex offender, as specified.”

***State-Authorized Risk Assessment Tool for Sex Offenders  
(SARATSO) Beefed Up. (Stats. 2010, Ch. 291, §§ 11 – 13 [A.B.  
1844].)***

This is part of Chelsea’s law, which became effective September 9, 2010.

For more details about Chelsea’s law, see “Sex Offenses.”

Amends Pen. Code §§ 290.04, 290.05, 290.06,

“LEGISLATIVE COUNSEL’S DIGEST

“Existing law provides that the sex offender risk assessment tool for use with selected populations shall be known as the State–Authorized Risk Assessment Tool for Sex Offenders (SARATSO).

“Existing law provides that the SARATSO for adult males required to register as sex offenders shall be the STATIC–99 risk assessment scale.

“Existing law requires the SARATSO Review Committee to determine whether the STATIC–99 should be supplemented with an actuarial instrument that measures dynamic risk factors or whether it should be replaced with a different risk assessment tool.

“This bill would provide that the STATIC–99 shall be the SARATSO static tool for adult males.

“The bill would require the SARATSO Review Committee, on or before January 1, 2012, to select an actuarial instrument that measures dynamic risk factors and an actuarial instrument that measures risk of future sexual violence to be administered as specified.

“The bill would provide that persons who administer the dynamic SARATSO and the future violence SARATSO shall be trained, as specified. The bill would make other conforming changes.”

***State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO) On the Megan’s Law Web Site.. (Stats. 2010, Ch. 291, § 14 [A.B. 1844].)***

This is part of Chelsea’s law, which became effective September 9, 2010.

For more details about Chelsea’s law, see “Sex Offenses.”

Amends Pen. Code 290.46

“LEGISLATIVE COUNSEL’S DIGEST

“Existing law provides that with respect to a person who has been convicted of specified sex crimes, the Department of Justice shall make available to the public via the department's Internet Web site certain identifying and criminal history information.

“This bill would require the department to also make available the person's static SARATSO score and information on an elevated risk level based on the SARATSO future violence tool.

**Theft**

***Grand Theft Threshold Increased from \$400 to \$950. (Stats. 2010, Ch. 693 [A.B. 2372])***

Amends Pen. Code § 487.

“LEGISLATIVE COUNSEL'S DIGEST....

“Existing law generally provides that grand theft is theft when the money, labor, or real or personal property taken is of a value exceeding \$400.

“This bill would increase the value threshold for committing grand theft from \$400 to \$950.”

**Petty Theft With Priors Stats. 2010, Ch. 219, § 15 [AB 1844].**

This is part of Chelsea's law, which became effective September 9, 2010.

For more details about Chelsea's law, see "Sex Offenses."

Amends Pen. Code § 666 to read as follows:

(a) [E]very person who, having been convicted three or more times of petty theft, grand theft, auto theft under Section 10851 of the Vehicle Code, burglary, carjacking, robbery, or a felony violation of Section 496 and having served a term therefor in any penal institution or having been imprisoned therein as a condition of probation for that offense, is subsequently convicted of petty theft, ... is punishable by imprisonment in the county jail not exceeding one year, or in the state prison.

(b) ... [A]ny person described in paragraph (1) [below] who, having been convicted of petty theft, grand theft, auto theft under Section 10851 of the Vehicle Code, burglary, carjacking, robbery, or a felony violation of Section 496, and having served a term of imprisonment therefor in any penal institution or having been imprisoned therein as a condition of probation for that offense, who is subsequently convicted of petty theft, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison.

(1) This subdivision shall apply to any person who is required to register pursuant to the Sex Offender Registration Act, or who has a prior violent or serious felony conviction, as specified in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.

"(2) ...."

**Traffic Violator Schools (Stats. 2010, Ch. 599 [A.B. 2499])**

Certain provisions would not be operative until July 1, 2011.

Amends, Veh. Code §§ 1803.5, 1808.7, 11200, 11202, 1202.5, 11205.1, 11205.2, 11205.4, 11208, 11208.5, 42005.1, 42005.5, 42007.1, 42007.3, and 42007.4 40512.6, 41501, 42005, 42005.2 and 42007.

“LEGISLATIVE COUNSEL'S DIGEST

“(1) .... This bill would revise and recast the [ ] [Veh. Code traffic school] provisions and, instead, would authorize the court, after a deposit of bail and bail forfeiture, a plea of guilty or no contest, or a conviction, to order a continuance ... for completion of [traffic] school ... and order that the conviction be held confidential.

“The bill would prohibit the record of certain convictions from being confidential under these provisions....

“The bill would also require that no violation point count be assessed if the record of conviction is confidential, unless other specified conditions apply. *The bill would require that these provisions become operative on July 1, 2011.*

“....

“(6) Existing law requires the court to make available to persons who choose the traffic violator school, the current list of traffic violator schools, published by the department.

“This bill would require [DMV] to provide a list of ... traffic ... schools on its Internet Web site ..., and to develop a Web-based database accessible by the courts and traffic... schools to allow oversight of traffic ... school ... enrollments and course completions....”

## **Trespass**

### ***Trespass at Zoos, Circuses, and Other Exhibits. (Stats. 2010, Ch. 536 [A.B. 1675])***

Amends Pen. Code § 19.8, and adds § 602.13.

“LEGISLATIVE COUNSEL'S DIGEST

“Under existing law, every person who willfully enters and occupies real property without the consent of the owner, owner's agent, or person in lawful possession, is guilty of a misdemeanor.

“This bill would, with exemptions for employees and public officers, make it an infraction or a misdemeanor to enter an animal enclosure at a zoo, defined to include a public aquarium, or at a circus or traveling animal exhibit, if posted as specified to prohibit entrance, without the consent of the governing authority [or a representative thereof] of the zoo, circus, or traveling animal exhibit....”

### ***Perpetrator's Return to Place of Crime as Trespass (Stats. 2010 Ch. 531 [A.B. 668]).***

Amends Pen. Code § 602.

“LEGISLATIVE COUNSEL'S DIGEST....

“Existing law makes it .... unlawful for a person who has been convicted of a violent felony committed upon a particular private property to enter upon that property after having been informed by a peace officer that the property is not open to the particular person; or to refuse or fail to leave the property upon being asked to leave the property, as specified.

“This bill would expand the scope of this offense by providing that during a specified timeframe it is unlawful for a person who has been convicted of any felony, any misdemeanor, or a specified infraction, committed upon a particular private property, to enter or refuse or fail to leave that property after being informed by a peace officer that the property is not open to the particular person, or to refuse or fail to leave when asked, as specified.

**Underage drinkers--immunity from prosecution When Reporting Certain Emergencies. (Stats. Ch. 245 [A.B. 1999])**

Amends Bus. & Prof. Code §§ 25658 and 25662, and adds § 25667.

“LEGISLATIVE COUNSEL'S DIGEST....

”The Alcoholic Beverage Control Act provides that any person under the age of 21 years who purchases any alcoholic beverage, who consumes any such beverage in any on-sale premises, or who possesses any such beverage on any street or highway or in any public place ... is guilty of a misdemeanor.

“Existing law also provides that any person under the age of 21 years who attempts to purchase any alcoholic beverage from a licensee, or the licensee's agent or employee, is guilty of an infraction.

“This bill would grant limited immunity from criminal prosecution for any person under the age of 21 years who is subject to [the above] prosecution ..., where the person under the age of 21 years called 911 and reported that either himself or herself or another person was in need of medical assistance due to alcohol consumption and conformed to other specified requirements.”

**Unlawful Rental of Residential Dwelling (Stats. 2010,  
Ch. 580 [A.B. 1800])**

Amends Pen. Code § 602.9.

“LEGISLATIVE COUNSEL'S DIGEST

“Existing law makes it a misdemeanor, punishable as specified, for any person to claim ownership or claim or take possession of, or cause another to enter or remain in, a residential dwelling for the purpose of renting or leasing the dwelling to another without the consent of the owner or the owner's lawful agent.

“This bill would increase the misdemeanor penalties for this offense, as specified.”

**Veterans—Possible Treatment for Crimes Resulting from  
Certain Military–Related Disorders (Stats. 2010 Ch.  
347 [A.B. 674])**

Amends Pen. Code § 1170.9.

“LEGISLATIVE COUNSEL'S DIGEST....

“Existing law provides that if a person is convicted of a criminal offense and alleges that he or she committed the offense as a result of post-traumatic stress disorder, substance abuse, or psychological problems stemming from service in combat in the [U.S.] military, the court shall hold a hearing prior to sentencing to make a determination about the allegation.

“If the court finds that the ... crime was ... a result of one of those factors related to serving in combat, and the court places the person on probation, existing law authorizes the court to place the person into a treatment program ....

“This bill would, if the defendant alleges that he or she committed the offense as a result of [1] sexual trauma, [2] traumatic brain injury, [3] post-traumatic stress disorder, [4] substance abuse, or [5] mental health problems stemming from [U.S.] military service ..., require the court to make a determination as to ... whether the defendant may be suffering from any of those disorders, before ... ordering the defendant into a treatment program ....

“The bill would authorize the court to request, through existing resources, an assessment to aid in [that] determination ....

“The bill would eliminate the requirement that the offense be committed as a result of problems stemming from service in a combat theater.”

## **Wiretapping and Electronic Communication Interception** **(Stats. 2010, Ch. 707 [S.B. 1428].)**

Amends Pen. Code §§ 629.50, 629.51, 629.52, 629.53, 629.54, 629.56, 629.58, 629.60, 629.62, 629.64, 629.66, 629.68, 629.70, 629.72, 629.74, 629.76, 629.78, 629.80, 629.82, 629.86, 629.88, 629.89, 629.90, and 629.94

### “LEGISLATIVE COUNSEL'S DIGEST

“(1) Existing law allows for an application authorizing the interception of a wire, electronic pager, or electronic cellular telephone to be made by the Attorney General or a district attorney to a judge of a superior court....

“The bill would define electronic communication as any transfer of signs, signals, writings, images, sounds, data, or intelligence by a wire, radio, electromagnetic, photoelectric, or photo-optical system, with specified exceptions.

“This bill would thereby authorize the above persons to make an application for an order permitting the interception of electronic communications, as defined.

“(2) Under existing law an application for a communications interception may be made informally and granted orally if an emergency situation exists, and other factors are present.... [T]he oral grant of the informal application [must be followed by] the filing of a written application ... within 48 hours....

“This bill would condition the ... oral approval on the filing of a written application by midnight of the second full court day after the oral approval....

“(3) Under existing law an order may not authorize a communications interception for longer than a maximum of 30 days.

“This bill would provide that the 30 days would not commence until the day of the actual initial interception, or 10 days after the issuance of the order, whichever comes first.

“(4) Existing law requires an order for a communications interception to require that written reports be made to the judge authorizing the interception.... [The] report [must] be filed at least every 6 days until the authorization is terminated.

“This bill would require the reports to be made every 10 days, commencing with the date of the signing of the order authorizing the interception.

“(5) ....

“(6) Existing law specifies obligations for parties applying for and carrying out orders to intercept communication, and makes a violation of these provisions a misdemeanor or felony.

“This bill would broaden the types of communication to which these crimes would apply.

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