

## 20-01 - 2020 Legislative Update

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Los Angeles County Sheriff's Department

### NEWSLETTER

Field Operations Support Services

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### 2020 LEGISLATIVE UPDATE

The following is a brief summary of selected law enforcement related legislative changes that may affect some divisions. These changes take effect January 1, 2020, unless otherwise noted. This summary is intended as a reference source only. It does not include every legislative change affecting law enforcement. **The text of the statute and the Department Manual of Policy and Procedures should be reviewed prior to initiating law enforcement activity based on the information in this newsletter.**

For more information, the complete text of statutes and California Codes can be found on the California Legislative Information website at <http://leginfo.legislature.ca.gov>.

#### **BUSINESS & PROFESSIONS CODE**

**Criminal records: automatic relief § 480, 480.2 & 11345.2** (Amended), Labor Code

**§ 432.7** (Amended), Penal Codes **§ 11105** (Amended) and **§ 851.93** (Added) and Vehicle Code **§ 13555** (Amended): Commencing January 1, 2021, requires Department of Justice (DOJ), to review criminal justice databases on a monthly basis to identify persons who are eligible for relief by having either their arrest records or criminal conviction records withheld from disclosure without requiring a petition or motion to be filed on the person's behalf.

**Driving privilege: suspension or delay § 25658, 25658.4, 25658.5, 25661 & 25662** (Amended) and Penal Codes **§ 529.5 & 647** (Amended) and Vehicle Codes

**§ 1808, 13202.5 & 23224** (Amended) and **13201.5, 13202, 13202.4 & 13202.6** (Repealed): Removes the liability of the court to delay, suspend, or revoke, or order DMV to delay, suspend, or revoke a person's driving privilege as a result of a conviction for various offenses. Repeals the license suspension for the following offenses: vandalism, controlled substances or alcohol use, and firearms use. This does not affect any order or determination by courts or DMV before January 1, 2020.

#### **CIVIL PROCEDURE CODE**

**Civil actions: confidentiality § 367.3** (Added): Provides participants in the "Safe at Home Program," which permits victims of domestic violence, stalking, sexual assault, or human trafficking, to utilize confidential mailing addresses, the ability to proceed in legal actions using a pseudonym.

**Discovery: personnel records: peace and custodial officers § 1005** (Amended) and Evidence Codes **§**

**1043, & 1047** (Amended): Shortens the notice requirement in criminal cases when a defendant files a motion to discover police officer misconduct from 16 days to 10 days.

### **EVIDENCE CODE**

**Immunity from arrest § 1162** (Amended), **§ 782.1** (Repealed and Added), and Penal Code **§ 647.3** (Added): Possession of a condom is not admissible in the prosecution of a violation of specified crimes related to prostitution and is not a basis for a probable cause arrest for the same offenses.

### **FISH & GAME CODE**

**Salvage of wildlife struck by vehicles § 2000.5** (Amended), **§ 1023 & 2000.3** (Added), and **§ 2000.6** (Added and Repealed): Provides CalTrans, the Department of Fish and Wildlife, and other state agencies with a mandate to track collisions involving large game animals in order to identify areas where wildlife crossings are needed most. Motorists with a wildlife salvage permit would be allowed to take large game animals for human consumption after a collision in designated pilot areas only.

### **GOVERNMENT CODE**

**Peace officers: peer support Article 22 (commencing with section 8669.1) of Chapter 7 of Division 1 of Title 2** (Added): Enacts the Law Enforcement Peer Support and Crisis Referral Services Program authorizing law enforcement agencies to establish a peer support and crisis referral program for personnel.

**CLETS: immigration § 15160** (Amended): Prohibits subscribers to the California Law Enforcement Telecommunications System (CLETS) from using the information for immigration enforcement purposes, except when the information relates to an individual's criminal history. Commencing July 1, 2021, law enforcement agencies will be required to document the reason for non-criminal inquiries through CLETS.

**Living organ donation § 19991.11** (Amended) and Labor Code **§ 1510** (Amended): Requires a private or public employer to grant an employee an additional unpaid leave of absence, not exceeding 30 business days in a one year period, for the purpose of organ donation, provided that in the case of a public employee, they have exhausted all sick leave, and prohibits life, long term care or disability insurance policies from discriminating against a donor.

**Emergency service: text to 911 § 53112** (Amended): Requires each public safety answering point (PSAP) to deploy a text to 911 service, no later than January 1, 2021, that is capable of accepting Short Message Service (SMS) messages and Real-Time Text (RTT) messages.

### **HARBORS & NAVIGATION CODE**

**Vessels: impoundment § 668.5** (Added): Authorizes the impounding of a vessel if a person is boating under the influence (BUI) and the conduct resulted in the unlawful killing of a person.

### **HEALTH & SAFETY CODE**

**Controlled substances: narcotics registry § 11591 & 11591.5**, (Amended),

**§ 11590, 11592, 11593, & 11595** (Repealed), and **§ 11594** (Repealed and Added): Eliminates drug offender registration for specified drug offenses. Maintains law enforcement duties regarding the reporting of school employees who are arrested for specified controlled substances currently requiring registration upon conviction.

**Firearms § (several codes)** (Added) and Penal Codes **§ 17060, 25100, 25105, 25200, 26835, 29805, & 31700**, (Amended), **§ 27881, 27882, 27883**, and Welfare and Institutions Code **§ 4684.53** (Amended): Enacts a number of provisions related to firearms storage. Establishes firearm storage requirements for Residential Care Facilities.

## **PENAL CODE**

**Posse Comitatus (Assisting a Peace Officer) § 150 & 1550** (Repealed): Citizens are no longer required to assist a peace officer when making an arrest, retaking an escaped person into custody, or preventing the breach of peace, when ordered to do so by a peace officer.

**Criminal profiteering § 186.2** (Amended): Expands the list of specified crimes that fall within the definition of gambling for the purpose of providing a procedure for the forfeiture of property and proceeds acquired through a pattern of criminal profiteering activity.

**Peace Officers: Deadly Force § 196 & 835a** (Amended): Revises the standards for the use of deadly force by peace officers. For more information, see Field Operations Support Services Newsletter “Deadly Force,” Volume 19, Number 19.

**Crimes against minors § 266** (Amended): Expands the crime of persuading or enticing an unmarried female minor of chaste character for sexual purposes to any minor for those purposes. Changes the crime of enticing a female into a house of prostitution to allow the victim to be a person of any gender.

**Senior and disability victimization: law enforcement policies § 368.5** (Amended), and **§ 368.6** (Added), and Welfare and Institutions Code **§ 15650** (Amended): Law enforcement agencies will be required to adopt or amend its policy regarding senior and disability victimization after April 13, 2021, to include information and training on elder and dependent adult abuse as specified.

**Sexual abuse of animals § 597.9** (Amended) and **§ 286.5** (Repealed and Added): Prohibits sexual contact with any animal and authorizes the seizure and forfeiture of animals involved in such violations.

**Criminal procedures: authorization and disclosure § 628.78 & 629.82** (Amended): Authorizes overheard communications to be disclosed if they involve grand theft involving a firearm or maliciously exploding or igniting a destructive device or any explosive that causes bodily injury, mayhem, or death. Authorizes overheard communications involving any crime by a peace officer to be used in administrative or disciplinary hearings.

**Privacy § 647** (Amended): Updates the crime of invasion of privacy to include electronic devices and unmanned aircraft systems.

**Rape kit: testing § 680, 680.3 & §12823.14** (Amended): Requires law enforcement agencies to submit sexual assault forensic evidence to the crime lab within 20 days and requires the crime lab to either process the evidence for DNA profiles and upload them into the Combined DNA Index System (CODIS) no later than

120 days of receipt, or transmit the evidence to another crime lab for the same processing within 30 days.

**Domestic violence § 13519, & 803.7** (Amended and Added): Extends the statute of limitations from three years to five years regarding felony domestic violence. Requires various topics be added to domestic violence training for peace officers.

**Law enforcement: facial recognition and other biometric surveillance § 832.19** (Added and Repealed): Prohibits law enforcement officers or agencies from installing, activating, or using a biometric surveillance (facial recognition) system in connection with a law enforcement agency's body worn camera or any other camera until

January 1, 2023. This does not prohibit the use of a mobile fingerprint scanning device during a detention to identify a person who does not have proof of identification.

**Individuals with mental illness: change of term § 1026, 1367, 2625, 2960, 2962, 2966, 2968, 2970, 2972, 2974, 2978, 4011.6, 4497, 4497.10, & 6102** and Welfare and Institution Codes **4242, 5213 & 5300** (Amended): Amends several other codes used to describe mental health conditions and individuals with mental health conditions. For example, in various sections of California codes, it replaces the terms "insane" and "mental defect" with "mental health disorder."

**Search warrants: vehicle recording devices § 1524** (Amended): Authorizes law enforcement statutory authority to obtain a search warrant in order to access event data recorders (EDR) data in limited cases when a motor vehicle accident results in death or serious bodily injury.

**Youth offender hearings § 3051** (Amended): Requires a person's youth offender parole hearing to occur within 6 months of the first year they become eligible for parole under existing law providing for a youth offender parole hearing.

**Inmates: medical care: fees § 5008.2** (Amended), **§ 4011.3 & 5007.9** (Added), and

**§ 4011.2 & 5008.5** (Repealed and Added): Prohibits state prisons and city and county jails from charging inmates a medical co-pay or charging a fee for durable medical equipment or medical supplies provided to an inmate as medically necessary.

**Criminal justice data § 13150, 13151 & 13202** (Amended, Repealed, and Added): Beginning July 1, 2020, expands the data law enforcement agencies are required to report to the Department of Justice (DOJ) related to every arrest to include the Criminal Investigation and Identification (CII) number and incident report number.

**Firearms § 16170, 18010, 27585 & 30800** (Amended), **§ 16531, 16532, & Chapter 1.5 § 30400 to Division 10 of Title 4 of Part 6**. (Added): Commencing July 1, 2023, the sale of firearms precursor parts will be conducted through a licensed firearms precursor part vendor.

**Firearms § 16960, 16990, 25570, 27920, & 31700** (Amended) **§ 26392, 26406, 26582, 26589 & 27922** (Added): Specifies circumstances that allow a firearm to be transferred from one person to another without the need to go through a firearms dealer. The following individuals may take title or possession of a firearm by operation of law: conservator, guardian, trustee, or special administrator appointed by a court. An individual is exempt from the specified prohibitions on possession and transfer of firearms (including open carry) when the

individual is delivering a firearm to law enforcement when the person gives prior notice to the law enforcement agency that they are transporting the gun, or the person took the gun from someone who was committing a crime against them and notified law enforcement they are transporting it for disposition.

**Gun Violence Restraining Orders (GVRO) § 18108** (Added): Every municipal police department, county sheriff's department, the California Highway Patrol, and the University of California and California State University Police Departments will be required to develop and adopt written policies and standards regarding the use of GVRO on or before January 1, 2021.

**Firearms: gun violence restraining orders § 18109, 18120, 18160, 18170, 18175, 18180, 18185, 18190, & 18197** (Amended, Repealed and Added): Extends duration of Gun Violence Restraining Orders (GVRO) and their renewals to a maximum of five years. (Implementation September 1, 2020)

**Gun Violence Restraining Order (GVRO) § 18150, 18170, & 18190** (Amended, Repealed and Added): Expands the category of persons that may file a petition requesting a court to issue a GVRO to include an employer, coworker, teachers, or school personnel. (Implementation September 1, 2020.)

**Firearms: transfers § 27510, 27540, & 27590** (Amended), and **§ 26835 & 27535**, (Amended, Repealed, and Added): Extends the prohibition on purchasing more than one handgun a month to include semiautomatic centerfire rifles. Firearms dealers may not sell or provide a semiautomatic centerfire rifle to any person under 21, with specified exemptions. There are several exemptions from the one gun a month prohibition, including but not limited to the following: any law enforcement agency, correctional facilities, academies, and security guard companies.

**Firearms: prohibited persons § 29825** (Amended): Prohibits any person subject to a valid restraining order, injunction, or protective order issued out of state from possessing, receiving, purchasing, or attempting to possess, receive or purchase a firearm in this state, if the out-of-state order is equivalent in the prohibition against possessing, receiving, or purchasing a firearm.

## **PUBLIC UTILITIES CODE**

**Telecommunications: privacy protections § 2891.1** (Amended): Authorizes providing unlisted or unpublished telephone numbers to public safety agencies without the subscribers consent for the purpose of testing systems that respond to 911 calls or that communicate threats to life or property.

**Telecommunications: mobile internet providers: first response agencies: emergencies § 2898** (Added): Prohibits a mobile internet provider from impairing or degrading the lawful internet traffic of first responders during an emergency.

## **VEHICLE CODE**

**Vehicles: license plate pilot program § 4853** (Amended): Allows continued authorization to conduct a pilot program until January 1, 2021, evaluating the use of digital license plates, license plate wraps (vinyl alternatives to metal plates), and digital registration cards.

**Leased and rented vehicles: embezzlement and theft § 10500 & 10855** (Amended, Repealed and Added): Decreases the five day period following the expiration of a rental car agreement or lease to 72 hours for the presumption of embezzlement. These provisions expire January 1, 2024.

**Pedicabs (beer bikes, party bikes) § 21215.2** (Amended): Allows cities to permanently authorize the consumption of alcoholic beverages on pedicabs if the passenger is physically on board and within the pedicab.

**Traffic control devices: bicycles § 22101** (Amended): Permits bicycles to travel straight through a right or left hand turn only lane while at an intersection, if an official traffic control device indicates the movement is permitted. CalTrans will be required to develop standards to implement the provisions.

**Muffler citations § 27150.2, 27151 & 40610** (Amended): Authorizes law enforcement to issue correctable citations to those vehicles that have a defective exhaust system, vehicles failing to have an adequate muffler, or having an exhaust system that produces noise that exceeds decibel limit standards. Motorcycle citations for excessive noise would remain non-correctable.

**Vehicles which resemble a law enforcement vehicle: ownership or operation by public historical society or museum § 27604, 27605 & 27606** (Amended): Extends exemptions from the general prohibition against owning or operating a vehicle with law enforcement markings.

**Transportation: omnibus bill § 34261 & 23229** (Amended): Authorizes motor carriers of property operating with a valid permit to continue operating for 30 days past their permit expiration date, under specified circumstances, during delays by DMV in processing permit renewals. These provisions also close a loophole in the law which allowed passengers of limousines and charter-party vehicles to smoke or ingest marijuana while in those vehicles.

## **WELFARE & INSTITUTIONS CODE**

**Conservatorship of mentally ill persons § 5451, 5453, 5453, 5456, 5462, 5463 & § 5555** (Amended), and **§ 5465.5** (Added): This bill amends an existing pilot program that establishes a conservatorship procedure for a person who is incapable of caring for their own health and well-being due to serious mental illness and substance use disorder. Amendments include changes to conservatorship notices to individuals, outreach with voluntary services, and temporary conservatorship process. The bill also defines the standards for admission, renewal, and conclusion of the housing conservatorship.

## **CASE LAW**

### **People v. Chamagua (2019) - Consensual Encounter**

The time of day does not remove the power of free consent. The encounter was ruled consensual because officers simply asked questions and did not use or threaten physical force, give commands, or make any show of authority.

**RULE:** Accusatory questioning does not turn an encounter into a detention and “sundown does not remove the power of free consent.”

### **People v. Kidd (2019) - Detentions**

Circumstances prior to and during the contact of a motorist legally parked on the side of the road may

constitute a de facto detention. In this case, the officer saw the car, made a U-turn, parked behind the suspect's vehicle, and shined both spot lights and his overhead light onto the car, "bathing it" in light. The court ruled a reasonable person would not have felt they were free to leave.

**RULE:** If the circumstances of a contact with a parked vehicle would make the driver expect that if they drove away the officer would respond by following with a red light and sirens, it constitutes a detention.

### **People v. Areballo-Cabrera (2018) - Detentions/Consensual Encounters**

A consensual search of a suspect's vehicle after he was told he was free to leave at the completion of a traffic stop was held as admissible.

**RULE:** While not determinative, an officer's statement that a driver is "free to go" is an important factor in assessing whether, under the totality of the circumstances, a reasonable person would feel free to leave or terminate the encounter.

### **People v. Fews (2018) - Vehicle Search and Pat Search**

Possession of marijuana and driving under the influence of marijuana remain crimes in California. Probable cause existed to search the vehicle to find and determine if there was contraband (source of intoxication) or additional contraband (more marijuana). A pat search of a person requires reasonable suspicion the defendant is connected to criminal activity and is armed. It is not dependent solely on whether there is probable cause for the vehicle search. In this case, there were several factors justifying the pat search of the passenger.

**RULE:** Possession of even a small amount of marijuana may provide probable cause for an automobile search. A pat search requires a separate analysis to determine whether there is reasonable suspicion that the suspect is connected to criminal activity and is armed.

### **People v. Vera (2018) - Detention Related to K-9 Scent Searches**

While an assisting officer wrote the driver a citation during a traffic stop, the primary officer's K-9 alerted and narcotics were subsequently located inside the vehicle. The traffic stop was not unduly prolonged by the K-9 search because it was conducted concurrently as the citation was being written.

**RULE:** A detention is not unduly prolonged if the use of a K-9 to sniff a vehicle did not add any time to the duration of the stop.

### **People v. Fish (2018) - Reasonableness of a Blood Draw**

A blood draw pursuant to a warrant is presumed to be lawful. A blood draw conducted at a hospital is presumed to be in accordance with accepted medical practices. When a blood draw is conducted pursuant to a warrant, the search is presumed lawful, and the burden of demonstrating that it was illegally executed remains with the defendant.

### **People v. Cruz (2019) - Warrantless Blood Draw**

A warrantless blood draw against the suspect's wishes did not violate the Fourth Amendment when the suspect was on DUI probation and, as a condition of his probation, he consented to submit to the chemical tests.

**Mitchell v. Wisconsin (2019) - Warrantless Blood Draw**

The general rule is that a warrant is not needed for a blood draw when the defendant is unconscious. The exigent circumstances exception to the warrant requirement allows blood tests of drunk drivers when there are special conditions.

**People v. Pride (2019) - Social Media Sharing**

There is no expectation of privacy for information shared with a "friend" on social media.

**People v. Oveida (2019) - Community Caretaking Exception to a Warrant**

Community Caretaking exception does not justify the warrantless search of a residence in the absence of exigent circumstances.

**People v. Orozco (2019) - Use of informant/Agent after Miranda Invoked**

Invocation of Miranda by a suspect did not bar law enforcement from orchestrating a meeting, in custody, between the suspect and an informant/undercover agent. Such a conversation is not an "interrogation" so long as the suspect does not know that the person is working with the police.

**People v. Anthony (2019) - Reinitiating an Interrogation**

When a suspect invokes Miranda, but later decides he/she wants to speak with officers after all, officers must re-advise him/her of their Miranda rights anew or limit the second interview to questions that are not likely to elicit an incriminating response.

**In re M.S. (2019) - Miranda and Custody**

Miranda warnings are not required for an out of custody suspect in order to conduct a crime scene reenactment. Physical and mental impairments do not necessarily preclude a suspect from giving a voluntary Miranda waiver.

**People v. Randolph (2018) - Horizontal Gaze Nystagmus**

An officer with adequate training and experience may testify to the significance of a defendant's performance on a Horizontal Gaze Nystagmus test without expert testimony.

**REFERENCES**

California Peace Officers Association (CPOA) [California Legislative Digest 2020 Laws](#).

If you have any questions, please call or email Field Operations Support Services at [REDACTED TEXT]



