

## 18-14 - 2019 Legislative Update

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Los Angeles County Sheriff's Department

### NEWSLETTER

Field Operations Support Services

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### 2019 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, 2019, unless otherwise noted. This summary is intended as a quick reference source and is, therefore, limited to major changes. 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 further 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**

**§ 21636** Amended, **21636.1** Enacted; revises the current hold requirement from 30 days to seven days for secondhand dealers and coin dealers (Pawn Shops) to hold tangible personal property prior to selling it (excluding firearms). They can sell property after five days if specified personal information is collected.

**§ 26070.2, 25621.5** Enacted; prohibits an alcoholic beverage licensee from selling, offering, or providing cannabis or cannabis products (including alcoholic beverages that contains cannabis and edibles) and clarifies the existing law banning alcoholic beverages containing tetrahydrocannabinol or cannabinoids, regardless of source.

**§ 26104** Amended; authorizes cannabis testing laboratories to receive and test samples of cannabis or cannabis products from a person 21 years of age or older when the cannabis has been grown by that person and will be used solely for his or her personal use.

**§ 26110** Enacted; authorizes a licensed cannabis distributor to transport cannabis and cannabis products to another licensed distributor.

**§ 26152** Amended; prohibits a cannabis licensee from publishing or disseminating advertising or marketing while their license is suspended.

**§ 26200** Amended; authorizes the Bureau of Cannabis Control to issue temporary state licenses to provide on-site sales and consumption of cannabis at a temporary event location (fair ground, event center, or venue expressly approved by a local jurisdiction).

## **CIVIL PROCEDURE CODE**

**§ 1161.3** Amended; expands protection for survivors of domestic violence (and other types of abuse) so as to not face eviction or other penalties on the basis of having summoned law enforcement or 9-1-1 emergency assistance on their own behalf, or on behalf of another, to respond to incidents of violence or abuse, as provided. (Cross reference Government Code § 53165 and Civil Code § 1946.8)

## **GOVERNMENT CODE**

**§ 6254** Amended; *Effective July 1, 2019*. Law enforcement agencies have 45 days to release department controlled audio or video footage of a critical incident. Release of the footage may be delayed up to one year if it can be proven that release would endanger witnesses or informants, or interfere with an investigation. Delay of release can be extended beyond one year with written justification supplied to the court every 30 days thereafter. Agencies must redact the requested footage of those depicted who would have a reasonable expectation of privacy. The video can be withheld if redaction cannot be achieved and the person's interest on the footage outweighs the public interest in disclosure.

A Critical Incident is defined as:

- An incident where a peace officer or custodial officer discharges a firearm at another person; and/or
- An incident in which the use of force by a peace officer or custodial officer against a person results in death or serious bodily injury.

Note: This includes **personally owned** and utilized body cameras or audio recording devices if used in the course and scope of the peace officer's or custodial officer's duties. **All information on these devices as well as any other devices** used to download, store, disseminate, and/or duplicate the footage are discoverable, are subject to being seized, and entered into evidence.

**§ 27771** Amended, **Penal Code §13206** Enacted, **1320.7 of Title 10** Enacted, **Chapter 1 (commencing with section 1268)** Repealed; *Effective October 1, 2019*. Enacts a risk-based system instead of a money bail system for determining when a person can be released from custody pending trial.

**§ 51036-51039** Enacted; local authority/law enforcement shall not regulate sidewalk vendors except in accordance with local ordinances that are in compliance with this law.

## **HARBORS & NAVIGATION CODE**

**§ 523** Amended; allows the impoundment of a vessel believed to be used in the commission of a crime, and conforms penalties for reckless use of a water craft causing injury, similar to reckless driving.

## **HEALTH & SAFETY CODE**

**§ 11055, 11056** Amended; reschedules hydrocodone combination products from a Schedule III to a Schedule II drug.

**§ 11107.2** Enacted; *Effective July 1, 2019*. Unlawful for manufacturer, wholesaler, reseller, or retailer to sell non-odorized butane to customers. Consumer items (lighters, small refill products) exempt.

**§ 11361.9** Enacted; expedites the identification, review, and notification of individuals who may be eligible for recall and dismissal, dismissal and sealing, or re-designation of specified cannabis-related convictions. Includes, but not limited to, Health & Safety codes 11357, 11358, 11359, 11360, 11362.1, 11362.2, 11362.3, and 11362.4.

*Deadline for completion is July 1, 2019.*

### **LABOR CODE**

**§ 3600.2** Amended; clarifies that certain peace officers injured out of state while performing defined law enforcement duties may be eligible to receive workers' compensation benefits, at the discretion of the employing agency.

**§ 5406.7** Amended; deletes sunset clause on law that provides an extended statute of limitations for workers' compensation death benefits payable to the survivors of public safety officers who die as a result of work related cancer or other specified diseases.

### **PENAL CODE**

**Title 4.7 commencing with § 13650** Enacted; *Effective January 1, 2020.*

All law enforcement agencies (including POST) shall conspicuously post on their websites all current standards, policies, practices, operating procedures, and education/training materials that would otherwise be available through a California Public Records Act.

**§ 188, 189** Amended, **§ 1170.95** Enacted; limits the liability of participants related to the felony murder rule.

A participant is eligible for first degree murder charges (felony murder rule) under the following circumstances:

- The victim is a peace officer engaged in the course of duty, and the suspect reasonably knew the victim was a peace officer;
- The person was the actual killer;
- With intent to kill, the person aided, abetted, counseled, commanded, induced, solicited, requested, or assisted the actual killer in the commission of the murder; and/or
- The person was a major participant in the underlying felony and acted with reckless indifference to human life.

Allows those convicted under the felony murder rule who don't meet the above criterion to petition to have their conviction vacated and resentenced on any remaining charges.

**§ 287** Enacted, **§ 288a** Amended, Repealed; 288a oral copulation will be renumbered to 287 in an effort to consolidate all of the oral copulation statutes. **§ 368.5** Amended; requires local law enforcement and long-term care ombudsman programs to revise their policy manuals by July 1, 2019, to include reference to existing elder and dependent adult abuse laws.

**§ 401** Amended; a person whose actions are compliant with the provisions of the End of Life Option Act

cannot be prosecuted for the crime of assisted suicide.

**§ 463** Amended; expands crime of looting to include theft that occurs while an area is under an evacuation order.

**§ 538h** Enacted; misdemeanor to intentionally impersonate a member of a search and rescue team.

**§ 621** Amended; cross references Military and Veterans Code 1318 as it relates to vandalism of law enforcement and firefighter memorials. Allows for additional prosecution.

**§ 629.52** Amended; adds fentanyl to the list of controlled substances for which interception of wire or electronic communications may be ordered.

**§ 647** Amended; for crimes involving the use of a camera or similar device to photograph or record an identifiable person under or through their clothing, for the purpose of viewing their body or undergarments; or in partial or full state of undress where there is an expectation of privacy for purpose of sexual gratification. Redefines "identifiable" as: someone who could identify or recognize the victim including the victim themselves. Actual identification of the victim is not required. Facts establishing recognition or positive identification must be articulable.

**§ 667, 1385** Amended; allows judges to strike a previous serious felony conviction to avoid the five year prison enhancement when the defendant has been convicted on a current serious felony.

**§ 680.4** Enacted; organizations or facilities in possession of sexual assault evidence kits for processing must conduct an audit and report their findings to the Department of Justice by July 1, 2019.

**§ 817, 1526** Amended; eliminates the requirement a judge take the oath over the telephone when an officer makes an application for a search warrant or arrest warrant by fax, email, or computer server.

**§ 832.7, 832.8** Amended; permits inspection of specified peace officer and custodial officer records pursuant to the California Public Records Act. Public will have access to the following records:

- Reports, investigations, or findings of;
  - Incidents involving the discharge of a firearm at a person by an officer; or
  - Incidents involving use of force by an officer which results in death or serious bodily injury.
- Any record relating to an incident where there was a sustained finding that an officer engaged in sexual assault of a member of the public;
- Any record relating to an incident where there was a sustained finding of dishonesty relating to;
  - The reporting, investigation, or prosecution of a crime; and/or
  - The misconduct of another peace officer including but, not limited to:
    - False statements;
    - Filing false reports;
    - Destruction, falsifying or concealing evidence; or
    - Any other dishonesty that undermines the integrity of the criminal justice system.

Provides these records are limited to the context of an existing allegation. Within that context, it may include investigative reports regarding an investigation, analysis or evidence, analysis of conduct, findings, recommendations, discipline, or corrective action.

Prior investigations of separate incidents are not inclusive unless they are subject to disclosure under a separate California Public Records Act.

Incidents involving multiple officers require sustained findings against each individual officer to be subject to release, unless, it is used as evidence in the investigation related to an officer whose misconduct was deemed founded.

Redaction of information contained in these files is only allowed under the following circumstances:

- To remove personal data of the officer and their family members;
- To preserve anonymity of complainants and witnesses;
- To prevent disclosure of medical, financial, or federally protected information;
- There is a specific, articulable, and particularized reason to believe disclosure of the record would pose a significant danger to the physical safety of the officer or another person; or
- Would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about misconduct by peace officers and custodial officers.

Permits withholding a record if it is part of an active investigation involving the legality and congruence with department policy. This includes the district attorney's findings on the legality of the use of force. Describes the process for continuing to withhold the records.

**§ 851.91** Amended; requires detention facilities to provide information to arrestees about their right to petition for their arrest record to be sealed or expunged.

**§ 859.7** Amended; *Effective January 1, 2020*. Requires all law enforcement agencies and prosecutorial entities to adopt regulations for conducting photo lineups and live lineups with eyewitnesses.

**§ 2644** Enacted; prohibits male correctional officers from conducting pat-down searches on female inmates, and from entering areas of the institution where female inmates may be in a state of undress. Exemptions for exigency as well as announcing of presence prior to entry. Female correctional officers must not be available to conduct routine operations or they must be in need of assistance.

**§ 3003** Amended; an inmate committed to prison for a sex offense requiring registration shall utilize all reasonable efforts to return to their last city of residence or close geographic location where the inmate has social ties.

**§ 3600.2** Amended; provides that local law enforcement agencies must include certain requirements and definitions in their hate crimes policy if the policy is adopted or updated.

**§ 4001.2** Enacted; *Effective January 1, 2020*. During the booking process, law enforcement officers must inquire and document if an arrested person is a Military Veteran.

**§ 4577** Enacted; infraction to knowingly and intentionally operate an unmanned aerial vehicle on or above

state prison or jail facility without permission; includes station jails.

**§ 13519** Amended; requires POST to include procedures and techniques for assessing signs of lethal violence in domestic violence situations in the existing training course for law enforcement officers.

**§ 11106, 18100, 18105, 18120, 18135, 18160, 18180** Amended; makes various changes to existing laws related to gun violence restraining orders. Requires an officer serving a gun violence restraining order to verbally ask the restrained person if he or she has any firearm, firearm part/component, ammunition, or magazine in his/her possession or under their custody or control.

**§ 11108, 11108.3, 11108.5, 11108.10, 25260, 33855** Amended, **11108.2** Enacted; firearms that are reported to law enforcement as lost, stolen, found, recovered, held for safekeeping, or under observation must be entered in to the Automated Firearms System within three days of receiving the report.

**§ 16690** Amended; exempts retired Level I reserve peace officers who meet specified length of service requirements from the ban on possessing high capacity magazines. See statute for list of devices.

**§ 16930** Amended; clarifies definition of a multi-burst trigger to include a bump stock, bump fire stock, or other similar device that when attached, built into, or used in combination with a semi-automatic firearm which increases the rate of fire of that firearm.

**§ 18140, 18145** Amended; makes oral requests for a temporary emergency gun violence restraining order the statutory default and authorizes written request, if time and circumstances permit.

**§ 18255, 18260, 18405, 20155, 228155, 23685, 26045, 26890, 31640, 31700,**

**32010** Amended; receipts required to be issued by a peace officer for confiscated deadly weapons. Extends civil liabilities to parents who authorize a minor to possess tear gas.

**§ 25140** Amended; permits securing of a handgun in a locked tool box or utility box of an unattended vehicle. The locked tool box or utility box must be affixed to the bed of the pick-up truck or vehicle.

**§ 29805** Amended; persons convicted of a misdemeanor domestic violence offense after January 1, 2019, are subject to a life-long prohibition from possessing firearms.

**§ 1001.36** Amended; eliminates certain offenses from consideration for mental disorder diversion (murder, manslaughter, rape, and other sex offenses). Allows for restitution hearing in spite of diversion.

## **PUBLIC UTILITIES CODE**

**§ 1044, 5415.5** Amended; authorizes local sheriff's and California Highway Patrol officers to be contracted by the California Public Utilities Commission to impound a vehicle (with a valid court order) owned and operated by a passenger stage corporation or a charter-party carrier (party bus).

## **VEHICLE CODE**

**§ 10652.5, 22524.5, 22651.07** Amended; requires all fees to be publicly posted by any facility that charges for

towing or storage of vehicles. Ensures fees are reasonable and do not exceed those approved by the California Highway Patrol or local law enforcement's tow service agreements.

**§ 16028** Amended; clarifies that officers should cite drivers for 16028(a) CVC for failure to provide proof of financial responsibility (insurance) at the scene of an accident.

**§ 1656.3** Amended; requires the Department of Motor Vehicles to include information in the California Driver's Handbook, addressing extent and limitations of a peace officer's authority during a traffic stop, and the legal rights of drivers and passengers.

**§ 21200** Amended; extends provisions of 20001 CVC (Hit & Run) to include bicycles operating on Class I bikeways (completely separated from roadways). When a cyclist is involved in a bicycle collision where the other parties are injured, they are required to stop, provide identifying information, and render aid.

**§ 21212, 40305.5** Amended; citations issued to persons under 18 years of age for not wearing a helmet while riding a bicycle, skateboard, scooter, roller skates or in-line skates to be marked correctable. Minor's parents have 120 days to show issuing agency that the minor has a helmet meeting current safety standards, and the minor has completed a local bicycle safety course or related safety course if one is available, and prescribed by authorities in the local jurisdiction.

**§ 21235** Amended; removes bike helmet requirement for riders of motorized scooter who are 18 years of age or older. Motorized scooters may operate on Class II and Class IV bikeways. Class II bikeways provide a striped lane for one-way bike travel on a street or highway. Class IV bikeways are completely separated from the roadway for the exclusive use of bicycles. Motorized scooters not on a bikeway may only operate on highways with speed limits up to 25 MPH. Local ordinances may permit operation on adopted streets up to 35 MPH.

**§ 21761** Enacted; requires drivers overtaking a waste service vehicle to do so safely by slowing and providing a safe distance.

**§ 22650** Amended; clarifies that the protections against unreasonable seizures provided by the Fourth Amendment of the U.S. Constitution apply even when a vehicle is removed pursuant to an authorizing California statute. Removal/storage of a vehicle related to community caretaking is only reasonable when necessary to achieve the community caretaking mission.

**§ 22651** Amended; authorizes law enforcement to impound autonomous vehicles operating without a permit or in violation of an existing permit.

**§ 23577, 23578, 23612** Amended; no longer a criminal penalty for refusing to submit to a blood test. Officer must state administrative suspension of driving privilege by the Department of Motor Vehicles will incur if the driver fails to take or complete a blood, breath, or urine test. (Birchfield vs. North Dakota, 2016)

Updated Complaint/DUI forms are available through the Department of Motor Vehicles.

**§ 35551** Amended; authorizes "zero-emission vehicles" and "near zero-emission vehicles" to exceed axle weights by up to 2,000 pounds total to account for the added weight of additional emissions equipment. Cross reference with Business and Professions code 12725.

**§ 40610** Amended; *Effective June 27, 2018*. 27150 and 27151 CVC (Modified Exhaust) are no longer correctable violations.

### **WELFARE & INSTITUTIONS CODE**

**§ 601, 602** Amended, **§ 602.1** Enacted; establishes 12 years of age as the minimum age for which a juvenile court has jurisdiction and may adjudge a person as a ward of the court. Exceptions for serious felonies.

**§ 625.4** Enacted; law enforcement shall not request a voluntary DNA sample be collected from a minor without first obtaining written consent from the minor, their parent/legal guardian, or attorney representing the juvenile.

**§ 5150** Amended; copy of the completed 5150 WIC application for 72 hour hold (form MH 302) is acceptable at an intake facility as an original. The original signature is no longer required.

**§ 5352, 5352.5** Amended; makes it easier to establish a Lanterman-Petris-Short Act conservatorship of an inmate in a county jail.

**Article 7 (commencing with section 5555) of Chapter 6.2** Amended, Enacted; **Chapter 5 (commencing with section 5450)** Amended, Enacted; Allows San Diego, San Francisco, and Los Angeles Counties to establish, and implement a Conservatorship program for specified individuals that are chronically homeless, and incapable of caring for themselves due to serious mental illness, and substance abuse disorders. The designated status as “chronically homeless” is determined by the frequency of involuntary 72-hour holds. At a minimum, eight, 72-hour holds in the previous 12 months meets this standard.

**§ 8103** Amended, Repealed, Enacted; individuals who are admitted to a designated facility pursuant to a 5150 WIC application more than once in a year are prohibited from owning a firearm for life. Subject to subsequent periodic hearings.

### **CASE LAW**

#### **4<sup>th</sup> Amendment**

##### **Collins vs. Virginia (2018) 138 S.Ct. 1663**

Law enforcement officers may not enter a home’s curtilage and search or examine a parked vehicle unless the officer has lawful right of access in accordance with a 4<sup>th</sup> amendment exception. These exceptions may include but are not limited to, consent, plain view, search incident to lawful arrest, or hot/fresh pursuit.

##### **People vs. Johnson (2018) 21 Cal.App.5th 1026**

The warrantless search of a vehicle, incident to arrest, where the vehicle is not at the same location of the arrestee, is not reasonable. The search of the same vehicle with probable cause to believe it contains evidence of criminal activity is reasonable.

##### **Byrd vs. US (2018) 138 S.Ct. 1518**

A person in lawful possession of a car (including rental car) has a reasonable



expectation of privacy. Does not matter whose name is on the rental agreement.

**People vs. Vanesse (2018) 23 Cal.App.5th 440**

A DUI suspect's consent to a blood test can be valid even if the chemical test admonition was flawed (a portion of the admonition was not recited).

**People vs. Balov (2018) 23 Cal.App.5th 696**

To determine whether consent to a chemical test was voluntary, the court examines the totality of the circumstances including the driver's conduct at the time of arrest and circumstances of the testing.

**People vs. Zabala (2018) 19 Cal.App.5th 335**

Vehicle Inventories are limited by applicable Department policy. Vehicle inventories do not permit a peace officer to enter and search hidden compartments of the vehicle. Fourth amendment vehicle exceptions for searching a vehicle still apply. The search is lawful if the peace officer can articulate their probable cause to believe the car contains evidence of a crime, instrumentalities of a crime, contraband, or the fruits of a crime.

**People vs. Wallace (2017) 15 Cal.App.5th 82**

Officers may not search a car for contraband by virtue of calling it an "inventory" search. Vehicle must actually be in the process of being impounded and complying with standardized departmental policies for vehicle impounds. "Inevitable discovery doctrine" cannot "save" the search.

**People vs. Meza (2018) 23 Cal.App.5th 604**

No exigency exists when an officer has time to telephonically apply for a warrant prior to obtaining a blood sample from a DUI suspect.

**People vs. Buza (2018) 4 Cal.5th 658**

Law enforcement may take DNA Identification Buccal (cheek) Swabs from felony arrestees and analyze them without a warrant.

**People vs. Stanley (2017) 18 Cal.App.5th 398**

Reliable information provided by a citizen informant is sufficient to justify an investigatory detention.

**In re K.J. (2018) 18 Cal.App.5th 1123**

The heightened interest in safety on school campuses can justify detentions and searches that may not be justified elsewhere, as long as the searches are not arbitrary, capricious, or for the purpose of harassment.

**People Vs. Gutierrez (2018) 21 Cal.App.5th 1146**

The prolonged length of a detention must be justified by articulable and individual suspicions.

## **5<sup>th</sup> Amendment**

### **District of Columbia vs. Wesby (2018) 138 S.Ct. 577**

Facts supporting probable cause are based on a totality of circumstances. Seeming innocent explanations for suspicious conduct do not negate the detention/arrest and can be used to further establish probable cause/reasonable suspicion if used in context.

### **Carpenter vs. US (2018) 138 S.Ct. 2206**

Obtaining of historical third party cell site location information for a suspect requires a warrant.

### **People vs. Sandee (2017) 15 Cal.App.5<sup>th</sup> 294**

Currently, the search of electronic devices owned and possessed by certain supervised offenders (parolees, those on post release community supervision or probation) are searchable as “personal effects” or “property.”

*In the future, a clear and unambiguous electronics search condition may need to be included in the terms of probation and parole.*

### **People vs. Torres (2018) 25 Cal.App.5<sup>th</sup> 162**

Custodial interrogation requires a Miranda Admonishment in spite of how the interrogation began. The totality of the circumstances indicating a custodial interrogation may include, but are not limited to:

- Who initiated the contact;
- Whether the suspect voluntarily agreed to the interview;
- Whether the person was initially considered a witness or a suspect;
- Location and duration of interview;
- Whether law enforcement notified the person they were detained or under arrest;
- Whether law enforcement notified the person they were free to terminate the interview at any time;
- How many law enforcement personnel were present during the interview;
- If law enforcement officers dominated and/or controlled the interview;
- Whether law enforcement officers stated the suspect was guilty and they had evidence to prove it;
- Whether law enforcement was aggressive, confrontational, and/or accusatory;
- Law enforcement’s use of interrogation techniques to pressure the suspect; and
- Whether or not the person was actually arrested at the end of the interview.

### **People vs. Saldana (2018) 19 Cal.App.5<sup>th</sup> 432**

In addition to the previous section (People vs. Torres (2018) 25 Cal.App.5<sup>th</sup> 162), the use of a Beheler warning, followed by aggressive, accusatory questioning can create the appearance of custody to a

reasonable person leading to a de facto custodial interrogation requiring a Miranda Admonishment.

Once again, a totality of the circumstances is weighed by the courts to indicate a custodial interrogation requiring a Miranda Admonishment.

**In re I.F. (2018) 20 Cal.App.5th 735**

A juvenile subject's age is also considered as part of the totality of circumstances surrounding a custodial interrogation and the need for a Miranda Waiver. Parents cannot consent to an interview for a subject, nor may they wave Miranda Rights on the juvenile's behalf.

**People vs. Parker (2017) 2 Cal.5th 1184**

An explicit Miranda Waiver not required so long as the complete Miranda Advisement is given and the suspect understands it.

**People vs. Case (2018) 5-Cal.5th 1**

When a suspect unequivocally invokes their right to remain silent, all questioning must cease.

**In re T.F. (2017) 16 Cal.App.5th 202**

Merely reciting Miranda to a juvenile may be insufficient to permit a valid waiver. The voluntariness of a juvenile's statement will be more closely scrutinized.

**People vs. Spencer**

Law enforcement is not required to re-advise a suspect of their Miranda Rights when interviewing about a separate crime as long as the interviews are contemporaneous and the first Miranda Waiver was made knowingly and intelligently.

**Rodriguez vs. McDonald (9th Cir. 2017) 872 F.3rd 908**

Law enforcement may not imply to a suspect their right to remain silent or obtain an attorney will be harmful to their case. Re-initiation of interrogation may be considered coerced.

**In re Charles G. (2017) 14 Cal.App.5th 945**

In order for a violation of Penal Code section 148, law enforcement officers must make their intentions to detain the suspect, clear (such as using verbal commands).

Questions or information regarding the content of this newsletter may be directed to Field Operations Support Services at [REDACTED TEXT]

**REFERENCES**

California Legislative Digest: 2019 Laws, California Peace Officers' Association (2018)

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