



October 2020 Legislative Update

Statutes effective January 1, 2021 unless otherwise indicated.

CDCR Prison Conditions

AB 732 (Bonta) (Penal 3405, 3406, 3408, 3409, 4023.5, 4023.6, 4023.8, 4028)

Pregnant incarcerated people: County jails and state prisons must:

- offer pregnancy test whenever an incarcerated person is identified as possibly pregnant or capable of becoming pregnant and within 72 hours of jail arrival
- if pregnancy confirmed, provide exam by physician, NP, midwife, PA within 7 days; prenatal care visits and services; referral to social worker; access to community-based programs serving pregnant, birthing, or lactating inmates.
- allow pregnant women to have a support person present during childbirth.
- provide postpartum examination one week, and as needed up to 12 weeks postpartum.
- prohibit the use of tasers, pepper spray, or other chemical weapons against incarcerated pregnant persons.

AB 3043 (Jones Sawyer) **Right to confidential legal calls**

New Penal Code 5058.7: "(a) The department shall approve an attorney's request to have a confidential call with the inmate that they represent. The approved confidential call shall be at least 30 minutes once per month, per inmate, per case, unless the inmate or attorney requests less time.

(b) For purposes of this section, 'confidential call' means a telephone call between an inmate and their attorney that both the inmate and attorney intend to be private."

SB 118, §19 (Penal 5003.7) **Prison closures:** CDCR must identify specific prison to close by 1/10/21 and second specific prison to close by 1/10/22. Must consider relatively high operational costs or infrastructure needs compared to inmate capacity, flexible housing assignment capacity, and long-term operational value, and cost of rebuilding past capital investments in the prison if needs to be recreated.

SB 132 (Wiener) (Penal 2605-06) **The Transgender Respect, Agency, and Dignity Act.** During initial intake and later at request of incarcerated person, CDCR shall privately ask for gender identity (female, male, or nonbinary), transgender, nonbinary, or intersex, and gender pronoun and honorific. May decline to answer. Right to be addressed per gender identity, and (unless written explanation): housed in men's or women's facility (including residential programs) per person's preference, searched per gender of facility or person's preference, assigned bed in light of health and safety concerns.

Jail Conditions

AB 732 (Bonta) **Pregnant incarcerated people:** see CDCR Prison Conditions

Immigration Detention Conditions

AB 3228 (Bonta) (Gov. 7320 et seq.) **Private immigration detention facilities:** Creates civil cause of action for tortious act injuring plaintiff that violates conditions of confinement in state's contract or agreement with private immigration detention facility.

Release from Prison

AB 3234 (Ting) (Penal 3055) **Elderly parole:** Eligibility changed to 50 years old and served 20 years of sentence (previously 60 years old and served 25 years of sentence). Must hold elderly parole hearings by December 31, 2022 for all incarcerated people eligible by that date.

SB 118, §14 (Penal 1170(e)) **Compassionate release:** court may resentence or recall the sentence of a terminally ill prisoner if the prisoner has less than 12 months to live (previously 6 months). No longer requires BPH recommendation. (Effective August 6, 2020)

SB 118, §18 (Penal 3000.01) **Parole period** for determinate sentence is 2 years and for life sentence is 3 years. Must consider discharge from parole after 12 months. Exceptions: sex offense convictions and people whose parole term at time crime was committed was less than these terms. Applies to persons released on parole on or after July 1, 2020. (Effective August 6, 2020)

Reentry Issues

ACA 6 and AB 646 (McCarty) (Cal. Const. art. II, §§ 2, 4; Elec. Code): ACA 6 put Proposition 17 on the ballot. Prop 17 would grant **voting rights to people on parole**. AB 646 amends the Election Code to implement Prop 17 if it passes in November.

AB 1304 (Waldron) (Penal 3000.02): **California MAT Re-Entry Incentive Program:** Contingent on federal funding, reduces parole for successful multifaceted substance abuse treatment including MAT (medically assisted treatment): 30 days off for 6 months of treatment to max 90 days off.

AB 3073 (Wicks) (W&I 18901.35) State Department of Social Services, no later than September 1, 2022, must issue **recommendations** for counties to partner with CDCR and county jails **to enroll otherwise eligible applicants for the CalFresh program to ensure that an applicant's benefits may begin as soon as possible upon reentry.**

SB 118, §4 (Educ. 66024.5) **Ban the Box in Education:** except for professional degree and law enforcement training, postsecondary educational institution shall not inquire into applicant's criminal history until final decision on applicant. Applications for Fall 2021 must reflect this change.

SB 118, §11 (Penal 290.5) **Petition to terminate sex offender registration:** Modifies three-tier sex offender registration system going into effect July 1, 2021 by allowing petition to be filed on or after birthday following termination of mandatory minimum registration period.

SB 118, §17 (Penal 2985 et seq.) **Repeal of ISMIP** (Integrated Services for Mentally Ill Parolees) program, which provided wraparound services to mentally ill parolees at risk of homelessness. (Effective August 6, 2020.)

SB 118, §20 (Penal 11105) **Teacher credentialing:** requires Attorney General to provide information to the Commission on Teacher Credentialing on every conviction rendered against an applicant, retroactive to January 1, 2020, regardless of relief granted. (Effective August 6, 2020)

SB 145 (Wiener) (Penal 290, 290.006) **Sex offender registration:** Exempts a person convicted of certain offenses involving minors if the person is not more than 10 years older than the minor and if that offense is the only one requiring the person to register.

SB 905 (Archuleta) (Penal 11105, 11105.3) Establishes procedures for individuals, organizations, and agencies to request a fingerprint-based **criminal history information check** from the Department of Justice.

Family Law

AB 79, §2 (Family 17504): **The family will receive the first \$100 of monthly child support** paid for a family with one child, or the first **\$200 for a family with two or more children** (remainder can be paid to government to refund public assistance), and these funds shall not be considered income or resources of the recipient family or deducted from aid the family would otherwise receive. (Operative 1/1/22 or earlier if it can be implemented earlier.)

AB 2325 (Carillo) (Family 4007.5) For child support orders issued or modified on or after Sept. 28, 2020, **child support obligation is suspended by operation of law during incarceration after 90 days** unless incarcerated person has means to pay, is incarcerated for domestic violence or failure to pay child support. Agency may automatically adjust child support order accordingly. Law expires January 1, 2023.

AB 2338 (Weber) (Civ. Pro. 1218) Authorizes **probation or conditional sentence in lieu of imprisonment or community service for contempt of court for failure to pay child support.**

Criminal Law, Sentencing, and Challenges to Convictions

AB 1869 (Mitchell) **Repeal of 23 criminal fees and elimination of prior debt for those fees:** costs of representation (Gov. 27712; Penal 987.4, 987.5, 987.8); costs of arrest (Gov 29550(c)-(d), 29550.1-29550.3); fee if cited and released or released on OR (Gov 29550(f)); costs of probation supervision, investigation and report, transfer processing, and interstate compact supervision (Penal 1000.3(e), 1203.1b, 1203.1e, 1203(i), 1203.1bb); home detention fees (Penal 1203.016(b)(4), (g), 1203.018(d)(4), (j)); electronic monitoring fees (Penal 1208.2(b)-(i), 1210.15, 3010.8); parole supervision and DNA collection fees (Penal 1203.1e, 295); work release and work furlough fees (Penal 4024.2(e), Penal 6266). For elimination of past debts see Penal 1465.9 and Gov. 6111.

AB 1950 (Kamlager) (Penal 1203a, 1203.1) **Maximum term of probation for a misdemeanor is one year** unless otherwise specified by statute. Maximum **three years** for Penal 487(b)(3), 503, or 532a convictions if total value of the property taken exceeds \$25,000. In other cases, maximum **two years** of probation unless otherwise specified by statute or convicted of violent felony (Penal 667.5(c)).

AB 2077 (Ting) (B&P 4145.5, 4142, 4326; H&S 11364, 121285) **Decriminalizes possession of hypodermic needle or syringe** and extends to January 1, 2026 the authority of pharmacists to distribute needles and syringes to adults without prescription.

AB 2147 (Reyes) (Penal 1203.4b) If successfully participated as “**incarcerated individual hand crew member**” **firefighter** (in CA Conservation Camp or through county) and released from custody, **eligible for dismissal of conviction** and termination of probation, parole or PRCS in court’s discretion (some convictions excluded and some collateral consequences of conviction continue).

AB 2542 (Kalra) (Penal 745, 1473, 1473.7) **California Racial Justice Act. Prohibits state from seeking or obtaining conviction or sentence on basis of race, ethnicity or national origin**, which can be shown by evidence a judge, attorney, officer, expert witness or juror exhibited bias or animus, whether or not purposeful, including more severe sentencing based on race, ethnicity or national origin of defendant or victim (in the defendant’s case and generally), and selective or more severe prosecution based on race, ethnicity or national origin of defendant (in the defendant’s case and generally).

--Procedure in pending case: Defendant may file motion for discovery and hearing. If court finds violation it must impose an appropriate remedy: declare a mistrial if requested by defendant; empanel a new jury; or dismiss enhancements, special circumstances, or special allegations, or reduce one or more charges, in interest of justice.

--Procedure for convicted people: Convicted and sentenced people may raise the issue in a habeas petition even after release. If court finds violation it must vacate conviction and sentence and order new proceedings, or the court may modify the sentence (not to exceed prior sentence) if violation is limited to selective or more severe prosecution or sentencing.

--In all cases, death penalty prohibited if a violation is found. Law also applies to juvenile delinquency adjudications. **Applies only to cases in which judgment was not entered before January 1, 2021.**

AB 3070 (Weber) (Civ. Proc. 231.7) **Peremptory challenges in jury selection.** Peremptory challenges may not be based on juror’s actual or perceived race, ethnicity, gender, gender identity, sexual orientation, national origin, or religious affiliation (protected status) even if not purposeful. Lists factors to be considered including differences in questions posed to jurors, whether reasons correlate with a protected status, and whether prosecutor’s office has pattern of challenging people with a protected status. Cannot rely on certain reasons unless clear and convincing evidence the reason is unrelated to protected status and relevant to impartiality, including negative view of law enforcement, criminal system; close relationships with system-impacted people; neighborhood; bilingualism; receipt of public benefits; and any reason also applicable to another questioned prospective juror without same protected status. Certain reasons are presumptively invalid unless confirmed by judge or objecting counsel based on personal observation and challenging attorney explains why reason is relevant to case, including inattentiveness, lack of eye contact, demeanor, and unintelligent or confused answers. If objection to peremptory challenge is sustained, court must dismiss jury venire (whole group of prospective jurors) if requested by objecting counsel; otherwise, court may declare mistrial if jury already impaneled, seat the juror, grant the objector additional challenges, or other appropriate remedy. Appellate review is de novo, except for substantial evidence review of express factual findings. **Applies to non-civil jury trials in which jury selection begins on or after January 1, 2022, and expands to civil jury trials as of January 1, 2026.**

AB 3234 (Ting) (Penal 1001.95 et seq.) **Court-initiated misdemeanor diversion:** court may offer diversion for a misdemeanor prosecution over the prosecutor’s objection unless the misdemeanor is a registrable sex offense or a violation of Penal 273.5 (domestic violence willful infliction of corporal injury), 243(e) (domestic violence battery), or 646.9 (stalking).

SB 118, §12, 16 (Penal 851.93, 1203.425) **Automatic clearing of DOJ arrest and conviction records:** implementation delayed to July 1, 2022.

Juvenile Justice

AB 901 (Gipson) **Stops referrals of truant youth to juvenile delinquency court.**

AB 2321 (Jones Sawyer) (W&I 781, 786) **Allows access specified sealed juvenile records** to process the request of a victim or victim's family member **to certify victim helpfulness** on specified United States Department of Homeland Security forms.

AB 2425 (Stone) (W&I 786.5, 827, 827.95, 828) **Sealing of juvenile records.** Probation, arresting agency and diversion program shall seal arrest and other records on satisfactory completion of diversion or supervision. May be accessed to assess for supervision in later case or to disclose *Brady* evidence. Juvenile police records shall not be released if diversion, counseled and released, or not within juvenile delinquency jurisdiction. Minor must be notified of sealing and ability to petition court to seal.

AB 2542 (Kalra) (Penal 745, 1473, 1473.7) **California Racial Justice Act.** *See Criminal Law above.*

AB 2606 (Cervantes) (Penal 14216) Counties must update Department of Justice supervised release files every 10 days with names of people on parole, mandatory supervision, and post-release community supervision (PRCS).

SB 203 (Bradford) (W&I 625.6) **Police Interrogation of minors:** Requires minors 17 or younger (previously 15 or younger) to consult with counsel before waiving *Miranda* rights during a custodial interrogation. Eliminates sunset provision.

SB 823 **Juvenile justice realignment:** Prohibits committing juveniles to DJJ as of 7/1/21, with shift to county-based custody and supervision. DJJ replaced by Office of Youth and Community Restoration. Juvenile court jurisdiction ends at age 23 (25 if adult sentence would be 7 years or more). Juveniles must be held in juvenile facility until 25 except as specified.

SB 1126 (Jones) (W&I 786) **Allows access to sealed juvenile court records to assess minor's competence** in subsequent juvenile proceeding.

SB 1290 (Durazo) (W&I 223.2) Eliminates **past debt for juvenile fees** that were repealed in 2017 (SB 190).

Death Penalty

AB 2512 (Stone) (Penal 1376) **Death penalty for intellectually disabled.** Changes definition of intellectual disability. Allows people with death penalty to raise issue in habeas petition. Prohibits test measuring intellectual functioning from being changed or adjusted based on race, ethnicity, national origin, or socioeconomic status.

AB 2542 (Kalra) **California Racial Justice Act:** death penalty prohibited if violation. *See Criminal Law.*

SB 118, §5-9 (Gov. 15402-03, 15420-22) **State Public Defender's office:** modification of duties for this office, which primarily handles death penalty appeals. (Effective August 6, 2020)

Policing

AB 846 (Burke) (Gov. 1301, 1301.3; Penal 13561): Evaluation of peace officers must include **explicit and implicit bias** against race or ethnicity, gender, nationality, religion, disability, or sexual orientation, and job descriptions must **deemphasize the paramilitary aspects** of the job and place more emphasis on community interaction and collaborative problem solving.

AB 1185 (McCarty) (Gov. 25303.7) Authorizes county, by vote of board of supervisors or vote of residents, to establish a **sheriff oversight board** and office of the inspector general with subpoena power.

AB 1196 (Gipson) (Gov. 7286.5) **Prohibits chokeholds** (carotid restraints)

AB 1506 (McCarty) (Gov. 12525.3) Require state prosecutor (AG unless otherwise designated) to investigate **police killings of unarmed civilians**; authorizes AG to issue report, which must be made public; creates Police Practices Division of AG as of 7/1/23 to review use of deadly force policies on request of local law enforcement. Also, DOJ must review use of force policies on request of local law enforcement.

AB 1775 (Jones Sawyer) (Civil 47, 50.7, Penal 653y) Knowingly **false or reckless report of crime** to law enforcement is exempt from litigation privilege, and actionable as civil rights violation if based on protected status. Increased punishment for misuse of 911 to harass someone.

SB 480 (Archuleta) (Penal 13655) Prohibits camouflage or military-style **law enforcement uniforms** with certain exceptions.

Other

AB 3121 (Weber) (Gov. 8301 et seq.) **Task force on reparations for African Americans.**