RESOLUTION 11-01-2022

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Vehicle Code section 42005, to read as follows:

§ 42005

(a) Except as otherwise provided in this section, after a deposit of the fee under Section 42007 or bail, a plea of guilty or no contest, or a conviction, a court may order or permit a person who holds a noncommercial class C, class M1, or class M2 driver's license who pleads guilty or who pleads no contest or who is convicted of a traffic offense to attend a traffic violator school licensed pursuant to Chapter 1.5 (commencing with Section 11200) of Division 5.

(b) To the extent the court is in conformance with Title 49 of the Code of Federal Regulations, and except as otherwise provided in this section, the court may, after deposit of the fee under Section 42007 or bail, order or permit a person who holds a class A, class B, or commercial class C driver's license, who pleads guilty or no contest or is convicted of a traffic offense, to complete a course of instruction at a licensed traffic violator school if the person was operating a vehicle requiring only a class C license, or a class M license. The court may not order that the record of conviction be kept confidential. However, the conviction shall not be added to a violation point count for purposes of determining whether a driver is presumed to be a negligent operator under Section 12810.5.

(c) The court shall not order that a conviction of an offense be kept confidential according to Section 1808.7, order or permit avoidance of consideration of violation point counts under subdivision (b), or permit a person, regardless of the driver's license class, to complete a program at a licensed traffic violator school in lieu of adjudicating an offense if any of the following applies to the offense:

(1) It occurred in a commercial motor vehicle, as defined in subdivision (b) of Section 15210.

(2) Is a violation of Section 20001, 20002, 23103, 23104, 23105, 23140, 23152, or 23153, or of Section 23103, as specified in Section 23103.5.

(3) It is a violation described in subdivision (d) or (e) of Section 12810.

(d) A person ordered to attend a traffic violator school pursuant to subdivision (a) or (b) may choose the traffic violator school the person will attend. The court shall provide to each person subject to that order or referral the department's current list of licensed traffic violator schools.

~~(e) A person who willfully fails to comply with a court order to attend traffic violator school is guilty of a misdemeanor.~~

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Los Angeles County Bar Association.

STATEMENT OF REASONS

The Problem: The benefit of traffic school is that the traffic violation does not appear on a person's driving record, thus not causing insurance to increase. It is startling that when a person fails to complete traffic school the person can be charged with a misdemeanor! Really, putting a person with a speeding ticket in jail for up to six months for not completing school? Unconscionable.

The Solution: This resolution eliminates the possibility of a misdemeanor prosecution for failing to complete traffic school, which is a ridiculous punishment. The punishment is the impact upon the license (negligent driving points) plus increased insurance costs.

IMPACT STATEMENT
This proposed resolution does not affect any other law, statute or rule.

CURRENT OR PRIOR RELATED LEGISLATION
None known. Similar to 2018 LACBA resolution that also eliminated the need to pay the traffic infraction fine.

AUTHOR AND/OR PERMANENT CONTACT
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RESPONSIBLE FLOOR DELEGATE
Mark Harvis

RESOLUTION 11-02-2022

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 16520, to read as follows:

§ 16520

(a) As used in this part, "firearm" means a device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion.

(b) As used in the following provisions, "firearm" includes the frame or receiver of the weapon:

(1) Section 16550.

(2) Section 16730.

(3) Section 16960.

(4) Section 16990.

(5) Section 17070.

(6) Section 17310.

(7) Sections 25250 to 25275, inclusive

~~(7)~~ (8) Sections 26500 to 26588, inclusive.

~~(8)~~ (9) Sections 26600 to 27140, inclusive.

~~(9)~~ (10) Sections 27400 to 28000, inclusive.

~~(10)~~ (11) Section 28100.

~~(11)~~ (12) Sections 28400 to 28415, inclusive.

~~(12)~~ (13) Sections 29010 to 29150, inclusive.

~~(13)~~ (14) Section 29180

~~(14)~~ (15) Sections 29610 to 29750, inclusive.

~~(15)~~ (16) Sections 29800 to 29905, inclusive.

~~(16)~~ (17) Sections 30150 to 30165, inclusive.

~~(17)~~ (18) Section 31615.

~~(18)~~ (19) Sections 31705 to 31830, inclusive.

~~(19)~~ (20) Sections 34355 to 34370, inclusive.

~~(20)~~ (21) Sections 8100, 8101, and 8103 of the Welfare and Institutions Code.

(c) As used in the following provisions, "firearm" also includes a rocket, rocket propelled projectile launcher, or similar device containing an explosive or incendiary material, whether or not the device is designed for emergency or distress signaling purposes:

(1) Section 16750.

(2) Subdivision (b) of Section 16840.

(3) Section 25400.

(4) Sections 25850 to 26025, inclusive.

(5) Subdivisions (a), (b), and (c) of Section 26030.

(6) Sections 26035 to 26055, inclusive.

(d) As used in the following provisions, "firearm" does not include an unloaded antique firearm:

(1) Section 16730.

(2) Section 16550.
(3) Section 16960.
(4) Section 17310.
(5) *Division 4.5 (commencing with Section 25250) of Title 4.*
~~(5)~~ (6) Chapter 6 (commencing with Section 26350) of Division 5 of Title 4.
~~(6)~~ (7) Chapter 7 (commencing with Section 26400) of Division 5 of Title 4.
~~(7)~~ (8) Sections 26500 to 26588, inclusive.
~~(8)~~ (9) Sections 26700 to 26915, inclusive.
~~(9)~~ (10) Section 27510.
~~(10)~~ (11) Section 27530.
~~(11)~~ (12) Section 27540.
~~(12)~~ (13) Section 27545.
~~(13)~~ (14) Sections 27555 to 27585, inclusive.
~~(14)~~ (15) Sections 29010 to 29150, inclusive.
~~(15)~~ (16) Section 25135.
~~(16)~~ (17) Section 29180
(e) As used in Sections 34005 and 34010, "firearm" does not include a destructive device.
(f) As used in Sections 17280 and 24680, "firearm" has the same meaning as in Section 922 of Title 18 of the United States Code.
(g) As used in Sections 29010 to 29150, inclusive, "firearm" includes the unfinished frame or receiver of a weapon that can be readily converted to the functional condition of a finished frame or receiver.
(h) This section shall become inoperative on July 1, 2022, and, as of January 1, 2023, is repealed.

(Proposed new language underlined; language to be deleted stricken)

PROPNENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: Since passage of Proposition 63 in 2016, reporting a lost or stolen handgun is now required for gun owners. However, Proposition 63 failed to include some housekeeping edits to the Penal Code consistent with its requirements.

The Solution: This resolution implements housekeeping changes to ensure the Penal Code is properly updated regarding the mandatory reporting of stolen guns, by including the sections in the firearms definition.

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
SB 61 (2019), SB 299 (2013), SB 1366 (2012), AB 334 (2007), AB 86 (2006), SB 59 (2006), AB 1203 (2004), AB 131 (1997).

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RESPONSIBLE FLOOR DELEGATE

Ben Rudin

RESOLUTION 11-03-2022

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to add Penal Code section 832.20, to read as follows:

§ 832.20

(a) All state and local peace officer agencies, shall implement the use of body-worn cameras for all peace officers.

(b) All state and local peace officer agencies shall develop policies and procedures for the use of body-worn cameras. The agencies shall promulgate the policies and procedures within sixty (60) days of the effective date of this act.

(Proposed new language underlined; language to be deleted stricken)

PROPNENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: Every dispute has three sides: my side, your side, and the truth. Body cameras worn by peace officers are a means of getting to the truth in any administrative, civil, or criminal dispute. The problem is many peace officers, especially correctional officers, are not wearing body cameras. Without video and auditory evidence, the truth is much harder to discern.

The Solution: This resolution requires all peace officers, without exception, to wear body cameras. These cameras not only serve as a means of realizing the truth, but serve as a deterrent against misconduct by officers and everyone else; by knowing what they do as or to a peace officer will be recorded and not one word against another, they will be less likely to aggress.

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
AB 65 (2015), AB 66 (2015), AB 69 (2015), AB 93 (2015), AB 112 (2015), AB 1246 (2015), AB 1860 (2016), AB 1940 (2016), AB 1957 (2016), SB 175 (2015), SB 424 (2015), SB 85 (2015), SB 195 (2015), AB 1953 (2016), AB 459 (2017), AB 748 (2018), AB 1069 (2019), AB 1215 (2019), AB 17 (2021), SB 2 (2021).

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RESPONSIBLE FLOOR DELEGATE
Ben Rudin

RESOLUTION 11-04-2022

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Health and Safety Code section 11362.7, to read as follows:

§ 11362.7

For purposes of this article, the following definitions shall apply:

(a) "Attending physician" means an individual who possesses a license in good standing to practice medicine, podiatry or osteopathy issued by the Medical Board of California the California Board of Podiatric Medicine, or the Osteopathic Medical Board of California, and who has taken responsibility for an aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient and who has conducted a medical examination of that patient before recording in the patient's medical record the physician's assessment of whether the patient has a serious medical condition and whether the medical use of cannabis is appropriate.

(b) "Department" means the State Department of Public Health.

(c) "Person with an identification card" means an individual who is a qualified patient who has applied for and received a valid identification card pursuant to this article.

(d) "Primary caregiver" means the individual, designated by a qualified patient who has consistently assumed responsibility for the housing, health, or safety of that patient, and may include any of the following:

(1) In a case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2, a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2, a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2, a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2, the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.

(2) An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver <u>or resides 25 miles or fewer from the primary caregiver</u>.

(3) An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver <u>or resides greater than 25 miles from the primary caregiver</u>, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.

(e) A primary caregiver shall be at least 18 years of age, unless the primary caregiver is the parent of a minor child who is a qualified patient or a person with an identification card or the primary caregiver is a person otherwise entitled to make medical decisions under state law pursuant to Section 6922, 7002, 7050, or 7120 of the Family Code.

(f) “Qualified patient” means a person who is entitled to the protections of Section 11362.5, but who does not have an identification card issued pursuant to this article.

(g) “Identification card” means a document issued by the department that identifies a person authorized to engage in the medical use of cannabis and the person’s designated primary caregiver, if any.

(h) “Serious medical condition” means all of the following medical conditions:

(1) Acquired immune deficiency syndrome (AIDS).

(2) Anorexia.

(3) Arthritis.

(4) Cachexia.

(5) Cancer.

(6) Chronic pain.

(7) Glaucoma.

(8) Migraine.

(9) Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis.

(10) Seizures, including, but not limited to, seizures associated with epilepsy.

(11) Severe nausea.

(12) Any other chronic or persistent medical symptom that either:

(A) Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990 (Public Law 101-336).

(B) If not alleviated, may cause serious harm to the patient’s safety or physical or mental health.

(i) “Written documentation” means accurate reproductions of those portions of a patient’s medical records that have been created by the attending physician, that contain the information required by paragraph (2) of subdivision (a) of Section 11362.715, and that the patient may submit as part of an application for an identification card.

(Proposed new language underlined; language to be deleted stricken)

PROPNENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: Current law limits primary caregivers to patients who need medical cannabis to living in the same county as the patient. Someone may live on the outskirts of a county and know someone who lives close by in an adjacent county, but such person is ineligible to be the person’s primary caregiver.

The Solution: This resolution expands the eligibility of primary caregivers by permitting them to live within 25 miles of the patient, rather than just the same county.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION

SB 1494 (2004)

AUTHOR AND/OR PERMANENT CONTACT
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RESPONSIBLE FLOOR DELEGATE
Ben Rudin

RESOLUTION 11-05-2022

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Business and Professions Code section 7583.37 and Penal Code section 25400:

Business and Professions Code, § 7583.37

The director may assess fines as enumerated in Article 7 (commencing with Section 7587). Assessment of administrative fines shall be independent of any other action by the bureau or any local, state, or federal governmental agency that may result from a violation of this article. In addition to other prohibited acts under this chapter, no licensee, qualified manager, or registered security guard shall, during the course and scope of licensed activity, do any of the following:

(a) Carry any inoperable, replica, or other simulated firearm.

(b) Use a firearm in violation of the law, or in knowing violation of the standards for the carrying and usage of firearms as taught in the course of training in the carrying and use of firearms. Unlawful or prohibited uses of firearms shall include, but not be limited to, the following:

(1) Illegally using, carrying, or possessing a dangerous weapon.

(2) Brandishing a weapon.

(3) Drawing a weapon without proper cause.

(4) Provoking a shooting incident without cause.

(5) Carrying or using a firearm while on duty while under the influence of alcohol or dangerous drugs.

(6) Carrying or using a firearm of a caliber for which a firearms permit has not been issued by the bureau.

(7) Carrying or using a firearm while performing duties not related to the qualifying license or registration to which the bureau associated the firearms permit.

(c) Carry or use a baton in the performance of his or her duties, unless he or she has in his or her possession a valid baton certificate issued pursuant to Section 7585.14.

(d) Carry or use tear gas or any other nonlethal chemical agent in the performance of his or her duties unless he or she has in his or her possession proof of completion of a course in the carrying and use of tear gas or any other nonlethal chemical agent.

(e) Carry a concealed pistol, revolver, or other firearm capable of being concealed upon the person unless one of the following circumstances applies:

(1) The person has been issued a permit to carry a pistol, revolver, or other firearm capable of being concealed upon the person in a concealed manner by a local law enforcement agency pursuant to Section 26150, 26155, 26170, or 26215 of the Penal Code.

(2) The person is employed as a guard or messenger of a common carrier, bank, or other financial institution and he or she carries the weapon while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state, as specified in Section 25630 of the Penal Code.

(3) The person is an honorably retired peace officer authorized to carry a concealed firearm pursuant to Section 25650 of the Penal Code or Article 2 (commencing with Section 25450) of Chapter 2 of Division 5 of Title 4 of Part 6 of the Penal Code.

(4) The person is a duly appointed peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, who is authorized to carry a concealed firearm in the course and scope of his or her employment pursuant to Article 2 (commencing with Section 25450) of Chapter 2 of Division 5 of Title 4 of Part 6 of the Penal Code.

(5) A firearm carried openly in a belt holster is not concealed within the meaning of this section. A firearm carried openly in a belt holster is not concealed within the meaning of this section even though it is partially covered by an item of clothing or a body part as long as the nature of the item as a firearm is readily apparent.

Penal Code, § 25400

(a) A person is guilty of carrying a concealed firearm when the person does any of the following:

(1) Carries concealed within any vehicle that is under the person's control or direction any pistol, revolver, or other firearm capable of being concealed upon the person.

(2) Carries concealed upon the person any pistol, revolver, or other firearm capable of being concealed upon the person.

(3) Causes to be carried concealed within any vehicle in which the person is an occupant any pistol, revolver, or other firearm capable of being concealed upon the person.

(b) A firearm carried openly in a belt holster is not concealed within the meaning of this section. A firearm carried openly in a belt holster is not concealed within the meaning of this section even though it is partially covered by an item of clothing or a body part as long as the nature of the item as a firearm is readily apparent.

(c) Carrying a concealed firearm in violation of this section is punishable as follows:

(1) If the person previously has been convicted of any felony, or of any crime made punishable by a provision listed in Section 16580, as a felony.

(2) If the firearm is stolen and the person knew or had reasonable cause to believe that it was stolen, as a felony.

(3) If the person is an active participant in a criminal street gang, as defined in subdivision (a) of Section 186.22, under the Street Terrorism Enforcement and Prevention Act (Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1), as a felony.

(4) If the person is not in lawful possession of the firearm or the person is within a class of persons prohibited from possessing or acquiring a firearm pursuant to Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title, or Section 8100 or 8103 of the Welfare and Institutions Code, as a felony.

(5) If the person has been convicted of a crime against a person or property, or of a narcotics or dangerous drug violation, by imprisonment pursuant to subdivision (h) of Section 1170, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine.

(6) If both of the following conditions are met, by imprisonment pursuant to subdivision (h) of Section 1170, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that fine and imprisonment:

(A) The pistol, revolver, or other firearm capable of being concealed upon the person is loaded, or both it and the unexpended ammunition capable of being discharged from it are in the immediate possession of the person or readily accessible to that person.

(B) The person is not listed with the Department of Justice pursuant to paragraph (1) of subdivision (c) of Section 11106 as the registered owner of that pistol, revolver, or other firearm capable of being concealed upon the person.

(7) In all cases other than those specified in paragraphs (1) to (6), inclusive, by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine.

(d) (1) Every person convicted under this section who previously has been convicted of a misdemeanor offense enumerated in Section 23515 shall be punished by imprisonment in a county jail for at least three months and not exceeding six months, or, if granted probation, or if the execution or imposition of sentence is suspended, it shall be a condition thereof that the person be imprisoned in a county jail for at least three months.

(2) Every person convicted under this section who has previously been convicted of any felony, or of any crime made punishable by a provision listed in Section 16580, if probation is granted, or if the execution or imposition of sentence is suspended, it shall be a condition thereof that the person be imprisoned in a county jail for not less than three months.

(e) The court shall apply the three-month minimum sentence as specified in subdivision (d), except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the minimum imprisonment required in subdivision (d) or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in subdivision (d), in which case, the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(f) A peace officer may arrest a person for a violation of paragraph (6) of subdivision (c) if the peace officer has probable cause to believe that the person is not listed with the Department of Justice pursuant to paragraph (1) of subdivision (c) of Section 11106 as the registered owner of the pistol, revolver, or other firearm capable of being concealed upon the person, and one or more of the conditions in subparagraph (A) of paragraph (6) of subdivision (c) is met.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Los Angeles County Bar Association.

STATEMENT OF REASONS:

The Problem: It is generally unlawful to carry a firearm, loaded or not, in public. Some people such as properly licensed and permitted guards, are allowed to carry an *unconcealed* firearm while working and while going to and from work. Overzealous police officers sometimes arrest properly licensed and permitted guards for carrying a concealed weapon even though the concealment is just a shirt tail or even a body part partially covering a firearm that is openly carried in a belt holster. The arrest is made even though the officer can plainly see that the partially covered firearm is, in fact, a firearm.

The Solution: This resolution clarifies that a firearm that is openly carried in a belt holster is *not* concealed when it is partially covered yet its character as a firearm is readily apparent. This resolution does *not* legalize the possession or carrying of any firearm. All it does is to clarify when a firearm is concealed. It's just common sense that if you can see it's a gun in a holster, and know it's a gun, it's not concealed.

IMPACT STATEMENT
This proposed resolution does not affect any other law, statute or rule.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

AUTHOR AND/OR PERMANENT CONTACT
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RESPONSIBLE FLOOR DELEGATE
Mark Harvis

RESOLUTION 11-06-2022

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Health and Safety Code section 11362.77, to read as follows:

§ 11362.77

(a) A qualified patient, a person with an identification card, or any designated primary caregiver may possess any amount of cannabis consistent with the medical needs of that qualified patient or person with an identification card.

~~(a)~~ (b) (1) A ~~qualified patient or primary caregiver may possess no more than eight ounces of dried cannabis per qualified patient. In addition, a qualified patient or primary caregiver may also maintain no more than six~~ person with an identification card or a primary caregiver with an identification card shall not be subject to arrest for possessing eight ounces or less of dried cannabis per person with an identification card, and maintaining six or fewer mature or 12 or fewer immature cannabis plants per qualified patient.

(2) Nothing in this section is intended to affect any city or county guidelines insofar as the amounts in those guidelines exceed the quantities in paragraph (1).

~~(b)~~ (c) If a ~~qualified patient or primary caregiver has a physician's recommendation that this quantity does~~ physician determines that the quantities specified in subdivision (b) do not meet the ~~qualified patient's medical needs, the qualified patient or primary caregiver~~ medical needs of the person with an identification card, that person or that person's primary caregiver with an identification card may possess an amount of cannabis ~~consistent with the patient's needs~~ consistent with those medical needs and shall not be subject to arrest for possessing that amount.

~~(c) Counties and cities may retain or enact medicinal cannabis guidelines allowing qualified patients or primary caregivers to exceed the state limits set forth in subdivision (a).~~

(d) Only the dried mature processed flowers of female cannabis plant or the plant conversion shall be considered when determining allowable quantities of cannabis under this section.

~~(e) A qualified patient or a person holding a valid identification card, or the designated primary caregiver of that qualified patient or person, may possess amounts of cannabis consistent with this article.~~

(Proposed new language underlined; language to be deleted stricken)

PROPNENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: In the 90's Californians passed the Compassionate Use Act, which allows (as an affirmative defense) patients to have any amount of medical cannabis consistent with their medical needs. In the early 2000's, the legislature passed a law to provide for a medical cannabis ID card, where if someone possesses less than a certain amount of cannabis and has the ID card, he or she will not get arrested. A drafting error, however, provided those limits for the

affirmative defense, in violation of the Compassionate Use Act. That part was invalidated by *People v. Kelly* (2010) 47 Cal.4th 1008, 103 Cal. Rptr. 3d 733.

Additionally, Proposition 64, which legalized possessing a small amount of cannabis for recreational purposes, did not change these provisions.

The Solution: This resolution implements the California Supreme Court's ruling in Kelly, by ensuring medical cannabis patients can have any amount consistent with their medical needs.

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
SB 1494 (2004).

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RESPONSIBLE FLOOR DELEGATE
Ben Rudin

RESOLUTION 11-07-2022

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 2085.80, to read as follows:

§ 2085.8

(a) Compensatory or punitive damages awarded by trial or settlement to any inmate, parolee, person placed on postrelease community supervision pursuant to Section 3451, or defendant on mandatory supervision imposed pursuant to subparagraph (B) of paragraph (5) of subdivision (h) of Section 1170 in connection with a civil action brought against a federal, state, or local jail, prison, or correctional facility, or any official or agent thereof, shall be paid directly, after payment of reasonable attorney's fees and litigation costs approved by the court plus a deduction of $10,000, to satisfy any outstanding restitution orders or restitution fines against that person. The balance of the award shall be forwarded to the payee after full payment of all outstanding restitution orders and restitution fines, subject to subdivision (c).

(b) The department shall make all reasonable efforts to notify the victims of the crime for which that person was convicted concerning the pending payment of any compensatory or punitive damages. For any prisoner punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, the agency may make all reasonable efforts to notify the victims of the crime for which that person was convicted concerning the pending payment of any compensatory or punitive damages.

(c) (1) The secretary shall deduct and retain from any prisoner or parolee settlement or trial award an administrative fee that totals 5 percent of any amount paid from the settlement or award to satisfy an outstanding restitution order or fine, unless prohibited by federal law.

(2) The agency may deduct and retain from any settlement or trial award of a person previously imprisoned in county jail an administrative fee that totals 5 percent of any amount paid from the settlement or award to satisfy an outstanding restitution order or fine, unless prohibited by federal law.

(3) The secretary or the agency shall deposit the administrative fee moneys in a special deposit account for reimbursing administrative and support costs of the department's or agency's restitution program, as applicable. The secretary, at his or her discretion, or the agency may either retain any excess funds in the special deposit account for future reimbursement of the department's or agency's administrative and support costs for the restitution program or may transfer all or part of the excess funds for deposit in the Restitution Fund.

(Proposed new language underlined; language to be deleted stricken)

PROPNENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: Current law makes settlement in any lawsuit brought by an inmate, parolee, etc., against a correctional agency difficult. While difficult in other ways, a huge difficulty concerns that, besides deducting for attorney fees and costs, 100% of the damages go to any restitution the

inmate owes until it's paid off. Sometimes, the damages are less than the owed restitution and inmates don't see a penny in their account. By contrast, if the inmate receives money another way, such as from family, friends, other lawsuits, etc., 55% is deducted for restitution. (Pen. Code § 2085.5 and Cal. Code Regs., tit. 15, § 3097, subds. (c), (f).)

Furthermore, because the jury will not see the restitution an inmate owes, it has no effect on the amount the state is willing to settle for. However, it has a huge effect on what the inmate will accept. Although paying off restitution reduces the debt they owe, that does not have much effect on inmates. That no money will be going in their pocket if they settle incentivizes them not to settle and use valuable judicial resources.

The Solution: This resolution ensures all inmates who settle a civil suit against a prison agency will see some money in their pocket. After deducting attorney fees and costs, the first $10,000 of damages will be exempt from the 100% deduction. It would still be subject to the 55% deduction under Penal Code section 2085.5 and California Code of Regulations, title 15, section 3097, subdivisions (c) and (f). This will remove a disincentive inmates have to settling and free up judicial resources, along with state resources that otherwise would have been spent on trial.

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
SB 1054 (2016).

AUTHOR AND/OR PERMANENT CONTACT
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RESPONSIBLE FLOOR DELEGATE
Ben Rudin

RESOLUTION 11-08-2022

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 637.7, to read as follows:

§ 637.7

(a) No person or entity in this state shall use an electronic tracking device to determine the location or movement of ~~a~~ another person.

~~(b) This section shall not apply when the registered owner, lessor, or lessee of a vehicle has consented to the use of the electronic tracking device with respect to that vehicle.~~

(b) This section shall not apply:

(1) When all registered owners or all lessees of a vehicle have consented to the use of the electronic tracking device with respect to that vehicle; or

(2) When the lessor of a vehicle has consented to the use of the electronic tracking device with respect to that vehicle.

(c) This section shall not apply to the lawful use of an electronic tracking device by a law enforcement agency.

(d) As used in this section, "electronic tracking device" means any device attached to, installed in, manufactured with, placed on, or inserted into a vehicle, wireless telephone, or other movable thing that reveals its location or movement by the transmission of electronic or radio signals, including, but not limited to, a global positioning system.

(e) A violation of this section is a misdemeanor.

(f) A violation of this section by a person, business, firm, company, association, partnership, or corporation licensed under Division 3 (commencing with Section 5000) of the Business and Professions Code shall constitute grounds for revocation of the license issued to that person, business, firm, company, association, partnership, or corporation, pursuant to the provisions that provide for the revocation of the license as set forth in Division 3 (commencing with Section 5000) of the Business and Professions Code.

(Proposed new language underlined; language to be deleted stricken)

PROPNENT: Orange County Bar Association

STATEMENT OF REASONS

The Problem: In 1998, Penal Code section 637.7 was enacted making it a misdemeanor to use an electronic tracking device to determine the location or movement of a person or a vehicle. The Legislature declared that the right to privacy is fundamental and that the electronic tracking of a person's location without that person's knowledge violated that person's reasonable expectation of privacy. Subsequently, in People v. Agnelli (2021) 68 Cal. App. 5th Supp. 1, the appellate superior court found section 637.7 unconstitutionally vague as applied to the defendant as it failed to address the situation where only one of the two coregistered owners of the vehicle on which an electronic tracking device was installed had given consent to employ the device. The court reasoned that the statute as applied to the defendant did not provide laymen, police officers,

prosecutors, or the jury with definite guidelines in order to prevent arbitrary and discriminatory enforcement.

The Solution: The need to protect the individual's right to privacy has only increased with the advent of new technological advances. This resolution would amend section 637.7 by adding new language to subsection (b) to address the constitutional issue raised in Agnelli, supra. making it clear that consent must be given by all registered owners of a vehicle for the exemption to apply. Further the definition of an "electronic tracking device" in subsection (d) has been broadened to include newer tracking technologies.

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

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RESPONSIBLE FLOOR DELEGATE
Alan J. Crivaro

RESOLUTION 11-09-2022

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 187, to read as follows:

§ 187

(a) Murder is the unlawful killing of a human being, or a fetus, with malice aforethought.

(b) This section shall not apply to any person who commits an act that results in the death of a fetus if any of the following apply:

(1) The act complied with the Therapeutic Abortion Act, Article 2 (commencing with Section 123400) of Chapter 2 of Part 2 of Division 106 of the Health and Safety Code.

(2) The act was committed by a holder of a physician's and surgeon's certificate, as defined in the Business and Professions Code, in a case where, to a medical certainty, the result of childbirth would be death of the mother of the fetus or where her death from childbirth, although not medically certain, would be substantially certain or more likely than not.

(3) The act was committed, solicited, aided, abetted, or consented to by the mother of the fetus.

(c) Subdivision (b) shall not be construed to prohibit the prosecution of any person under any other provision of law.

(Proposed new language underlined; language to be deleted stricken)

PROPNENT: Women Lawyers Association of Los Angeles

STATEMENT OF REASONS

The Problem: Current law provides that the mother of a fetus may be charged with murder if her actions contributed to the demise of a fetus even though the statute expressly provides that abortion is legal and is not considered murder. Thus, mothers have been charged with feticide when their actions, such as drug or alcohol use, have contributed to the demise of the fetus.

The Solution: The resolution reconciles the apparent inconsistency in California law where a woman's act that adversely affects the viability of her fetus may be criminally prosecuted. This amendment is aimed at removing this inconsistency and will avoid criminalization of a woman's action as it relates to her body. This resolution amends the law to exempt the mother of the fetus from criminal prosecution.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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RESOLUTION 11-10-2022

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 190.2, to read as follows:

§ 190.2

(a) The penalty for a defendant who is found guilty of murder in the first degree is death or imprisonment in the state prison for life without the possibility of parole if one or more of the following special circumstances has been found under Section 190.4 to be true:

(1) The murder was intentional and carried out for financial gain.

(2) The defendant was convicted previously of murder in the first or second degree. For the purpose of this paragraph, an offense committed in another jurisdiction, which if committed in California would be punishable as first or second degree murder, shall be deemed murder in the first or second degree.

(3) The defendant, in this proceeding, has been convicted of more than one offense of murder in the first or second degree.

(4) The murder was committed by means of a destructive device, bomb, or explosive planted, hidden, or concealed in any place, area, dwelling, building, or structure, and the defendant knew, or reasonably should have known, that his or her act or acts would create a great risk of death to one or more human beings.

(5) The murder was committed for the purpose of avoiding or preventing a lawful arrest, or perfecting or attempting to perfect, an escape from lawful custody.

(6) The murder was committed by means of a destructive device, bomb, or explosive that the defendant mailed or delivered, attempted to mail or deliver, or caused to be mailed or delivered, and the defendant knew, or reasonably should have known, that his or her act or acts would create a great risk of death to one or more human beings.

(7) The victim was a peace officer, as defined in Section 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34, 830.35, 830.36, 830.37, 830.4, 830.5, 830.6, 830.10, 830.11, or 830.12, who, while engaged in the course of the performance of his or her duties, was intentionally killed, and the defendant knew, or reasonably should have known, that the victim was a peace officer engaged in the performance of his or her duties; or the victim was a peace officer, as defined in the above-enumerated sections, or a former peace officer under any of those sections, and was intentionally killed in retaliation for the performance of his or her official duties.

(8) The victim was a federal law enforcement officer or agent who, while engaged in the course of the performance of his or her duties, was intentionally killed, and the defendant knew, or reasonably should have known, that the victim was a federal law enforcement officer or agent engaged in the performance of his or her duties; or the victim was a federal law enforcement officer or agent, and was intentionally killed in retaliation for the performance of his or her official duties.

(9) The victim was a firefighter, as defined in Section 245.1, who, while engaged in the course of the performance of his or her duties, was intentionally killed, and the defendant knew, or reasonably should have known, that the victim was a firefighter engaged in the performance of his or her duties.

(10) The victim was a witness to a crime who was intentionally killed for the purpose of preventing his or her testimony in any criminal or juvenile proceeding, and the killing was not committed during the commission or attempted commission, of the crime to which he or she was a witness; or the victim was a witness to a crime and was intentionally killed in retaliation for his or her testimony in any criminal or juvenile proceeding. As used in this paragraph, "juvenile proceeding" means a proceeding brought pursuant to Section 602 or 707 of the Welfare and Institutions Code.

(11) The victim was a prosecutor or assistant prosecutor or a former prosecutor or assistant prosecutor of any local or state prosecutor's office in this or any other state, or of a federal prosecutor's office, and the murder was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.

(12) The victim was a judge or former judge of any court of record in the local, state, or federal system in this or any other state, and the murder was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.

(13) The victim was an elected or appointed official or former official of the federal government, or of any local or state government of this or any other state, and the killing was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.

(14) The murder was especially heinous, atrocious, or cruel, manifesting exceptional depravity. As used in this section, the phrase "especially heinous, atrocious, or cruel, manifesting exceptional depravity" means a conscienceless or pitiless crime that is unnecessarily torturous to the victim.

(15) The defendant intentionally killed the victim by means of lying in wait.

(16) The victim was intentionally killed because of his or her race, color, religion, nationality, or country of origin.

(17) The murder was committed while the defendant was engaged in, or was an accomplice in, the commission of, attempted commission of, or the immediate flight after committing, or attempting to commit, the following felonies:

(A) Robbery in violation of Section 211 or 212.5.

(B) Kidnapping in violation of Section 207, 209, or 209.5.

(C) Rape in violation of Section 261.

(D) Sodomy in violation of Section 286.

(E) The performance of a lewd or lascivious act upon the person of a child under the age of 14 years in violation of Section 288.

(F) Oral copulation in violation of Section 287 or former Section 288a.

(G) Burglary in the first or second degree in violation of Section 460.

(H) Arson in violation of subdivision (b) of Section 451.

(I) Train wrecking in violation of Section 219.

(J) Mayhem in violation of Section 203.

(K) Rape by instrument in violation of Section 289.

(L) Carjacking, as defined in Section 215.

(M) To prove the special circumstances of kidnapping in subparagraph (B), or arson in subparagraph (H), if there is specific intent to kill, it is only required that there be proof of the elements of those felonies. If so established, those two special circumstances are proven even if the felony of kidnapping or arson is committed primarily or solely for the purpose of facilitating the murder.

(18) The murder was intentional and involved the infliction of torture.

(19) The defendant intentionally killed the victim by the administration of poison.

(20) The victim was a juror in any court of record in the local, state, or federal system in this or any other state, and the murder was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.

(21) The murder was intentional and perpetrated by means of discharging a firearm from a motor vehicle, intentionally at another person or persons outside the vehicle with the intent to inflict death. For purposes of this paragraph, "motor vehicle" means any vehicle as defined in Section 415 of the Vehicle Code.

(22) The defendant intentionally killed the victim while the defendant was an active participant in a criminal street gang, as defined in subdivision (f) of Section 186.22, and the murder was carried out to further the activities of the criminal street gang.

(b) Unless an intent to kill is specifically required under subdivision (a) for a special circumstance enumerated therein, an actual killer, as to whom the special circumstance has been found to be true under Section 190.4, need not have had any intent to kill at the time of the commission of the offense which is the basis of the special circumstance in order to suffer death or confinement in the state prison for life without the possibility of parole.

(c) Every person, not the actual killer, who, with the intent to kill, aids, abets, counsels, commands, induces, solicits, requests, or assists any actor in the commission of murder in the first degree shall be punished by death or imprisonment in the state prison for life without the possibility of parole if one or more of the special circumstances enumerated in subdivision (a) has been found to be true under Section 190.4.

(d) Notwithstanding subdivision (c), every person, not the actual killer, who, with reckless indifference to human life and as a major participant, aids, abets, counsels, commands, induces, solicits, requests, or assists in the commission of a felony enumerated in paragraph (17) of subdivision (a) which results in the death of some person or persons, and who is found guilty of murder in the first degree therefor, shall be punished by death or imprisonment in the state prison for life without the possibility of parole if a special circumstance enumerated in paragraph (17) of subdivision (a) has been found to be true under Section 190.4.

(e) Notwithstanding any other law, a prosecuting attorney that files a charge of murder shall also plead and prove each special circumstance enumerated in paragraphs (7) through (9) of subdivision (a) if there is sufficient evidence to support the special circumstance and to prove that the murder was committed in the first degree. The prosecuting attorney may move to dismiss or strike the special circumstance in the furtherance of justice pursuant to Section 1385, or if there is insufficient evidence to prove the special circumstance. If upon the satisfaction of the court that there is insufficient evidence to prove the special circumstance, the court may dismiss or strike the allegation. This section shall not be read to alter a court's authority under Section 1385. The penalty shall be determined as provided in this section and Sections 190.1, 190.3, 190.4, and 190.5

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: First degree murder carries a penalty of 25 years to life in state prison. (Pen. Code, § 190, subd. (a).) First degree murders that are particularly heinous because of "special circumstances" are punishable by life in prison without the possibility of parole or the death penalty. Special circumstances include murdering a peace officer in the line of duty. Last year, more officers were feloniously killed in the line of duty than in any of the past 26 years, excluding 9/11. (See Tucker & Krishnakumar, *Intentional killings of law enforcement officers reach 20-year high, FBI says* (Jan. 13, 2022) CNN.com, https://www.cnn.com/2022/01/13/us/police-officers-line-of-duty-deaths/index.html.)

Normally, the prosecution of a defendant who murders a police officer is handled with the utmost care and professionalism. But at least one district attorney has vowed not only to oppose the death penalty in any case, but also to refuse the prosecution of a special circumstance under any circumstance. Within a month of taking office, he moved to dismiss special circumstance allegations in at least two cases where officers were murdered in the line of duty, over the objections of the victim's family and his assigned prosecutors. (*DA Drops Bid for Death Penalty in Accused Cop Killer's Case* (Jan. 14, 2021) City News Service, https://kfiam640.iheart.com/content/2021-01-14-da-drops-bid-for-death-penalty-in-accused-cop-killers-case/.) More recently, the Los Angeles County Sheriff's Department and the U.S. Attorney's Office took the unusual step of bypassing the district attorney altogether in filing a federal case for the murder of an off-duty LAPD officer during a gang-related robbery. (See Blankstein, et al., *Four charged federally in killing of LAPD officer who was shot while house-hunting* (Jan. 13, 2022) NBC News, https://www.nbcnews.com/news/us-news/four-charged-federally-killing-lapd-officer-rcna12195.)

The Solution: This resolution would amend Penal Code section 190.2 to require a prosecutor to file the applicable special circumstance for murdering a peace officer, federal agent, or firefighter when sufficient evidence exists to prove both the allegation and murder in the first degree. A court could still dismiss the allegation "in the interest of justice" if truly warranted, and a jury would still need to find that the first-degree murder and special allegation are proven beyond a reasonable doubt. But prosecutorial nullification does not serve the public interest in cases involving first responders who were murdered while upholding the law and protecting public safety. "Prosecutors are also public officials; they too must serve the public interest. In appropriate circumstances the Court has made clear that traditions of prosecutorial discretion do not immunize from judicial scrutiny cases in which the enforcement decisions of an administrator were motivated by improper factors or were otherwise contrary to law." (*Marshall v. Jerrico, Inc.* (1980) 446 U.S. 238, 249 (internal citations removed).) "Ordinarily a district attorney cannot be compelled by mandamus to prosecute a criminal case but here the mandatory duty to prosecute is imposed upon him and the statute leaves him no discretion to exercise." (*Board of Supervisors v. Simpson* (1951) 36 Cal.2d 671 (internal citation removed).)

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

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RESPONSIBLE FLOOR DELEGATE
Michael Fern

RESOLUTION 11-11-2022

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code sections 186.9 and 186.10, to read as follows:

§ 186.9

As used in this chapter:

(a) "Conducts" includes, but is not limited to, initiating, concluding, or participating in conducting, initiating, or concluding a transaction.

(b) "Financial institution" means, when located or doing business in this state, any national bank or banking association, state bank or banking association, commercial bank or trust company organized under the laws of the United States or any state, any private bank, industrial savings bank, savings bank or thrift institution, savings and loan association, or building and loan association organized under the laws of the United States or any state, any insured institution as defined in Section 401 of the National Housing Act (12 U.S.C. Sec. 1724(a)), any credit union organized under the laws of the United States or any state, any national banking association or corporation acting under Chapter 6 (commencing with Section 601) of Title 12 of the United States Code, any agency, agent or branch of a foreign bank, any currency dealer or exchange, any person or business engaged primarily in the cashing of checks, any person or business who regularly engages in the issuing, selling, or redeeming of traveler's checks, money orders, or similar instruments, any broker or dealer in securities registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 or with the Commissioner of Business Oversight under Part 3 (commencing with Section 25200) of Division 1 of Title 4 of the Corporations Code, any licensed transmitter of funds or other person or business regularly engaged in transmitting funds to a foreign nation for others, any investment banker or investment company, any insurer, any dealer in gold, silver, or platinum bullion or coins, diamonds, emeralds, rubies, or sapphires, any pawnbroker, any telegraph company, any person or business regularly engaged in the delivery, transmittal, or holding of mail or packages, any person or business that conducts a transaction involving the transfer of title to any real property, vehicle, vessel, or aircraft, any personal property broker, any person or business acting as a real property securities dealer within the meaning of Section 10237 of the Business and Professions Code, whether licensed to do so or not, any person or business acting within the meaning and scope of subdivisions (d) and (e) of Section 10131 and Section 10131.1 of the

Business and Professions Code, whether licensed to do so or not, any person or business regularly engaged in gaming within the meaning and scope of Section 330, any person or business regularly engaged in pool selling or bookmaking within the meaning and scope of Section 337a, any person or business regularly engaged in horse racing whether licensed to do so or not under the Business and Professions Code, any person or business engaged in the operation of a gambling ship within the meaning and scope of Section 11317, any person or business engaged in controlled gambling within the meaning and scope of subdivision (e) of Section 19805 of the Business and Professions Code, whether registered to do so or not, and any person or business defined as a "bank," "financial agency," or "financial institution" by Section 5312 of Title 31 of the United States Code or Section 103.11 of Title 31 of the Code of Federal Regulations and any successor provisions thereto.

(c) "Transaction" includes the deposit, withdrawal, transfer, bailment, loan, pledge, payment, or exchange of currency, or a monetary instrument, as defined by subdivision (d), or the electronic, wire, magnetic, or manual transfer of funds between accounts by, through, or to, a financial institution as defined by subdivision (b).

(d) "Monetary instrument" means United States currency and coin; the currency, coin, and foreign bank drafts of any foreign country; payment warrants issued by the United States, this state, or any city, county, or city and county of this state or any other political subdivision thereof; any bank check, cashier's check, traveler's check, or money order; any personal check, stock, investment security, or negotiable instrument in bearer form or otherwise in a form in which title thereto passes upon delivery; gold, silver, or platinum bullion or coins; ~~and~~ diamonds, emeralds, rubies, or sapphires; and virtual assets that use blockchain technology, including non-fungible tokens and cryptocurrencies. Except for foreign bank drafts and federal, state, county, or city warrants, "monetary instrument" does not include personal checks made payable to the order of a named party which have not been endorsed or which bear restrictive endorsements, and also does not include personal checks which have been endorsed by the named party and deposited by the named party into the named party's account with a financial institution.

(e) "Criminal activity" means a criminal offense punishable under the laws of this state by death, imprisonment in the state prison, or imprisonment pursuant to subdivision (h) of Section 1170 or from a criminal offense committed in another jurisdiction punishable under the laws of that jurisdiction by death or imprisonment for a term exceeding one year.

(f) "Foreign bank draft" means a bank draft or check issued or made out by a foreign bank, savings and loan, casa de cambio, credit union, currency dealer or

exchanger, check cashing business, money transmitter, insurance company, investment or private bank, or any other foreign financial institution that provides similar financial services, on an account in the name of the foreign bank or foreign financial institution held at a bank or other financial institution located in the United States or a territory of the United States.

(g) "Blockchain technology" means a decentralized data system, in which the data stored is mathematically verifiable, that uses distributed ledgers or databases to store specialized data in the permanent order of transactions recorded.

§ 186.10

(a) Any person who conducts or attempts to conduct a transaction or more than one transaction within a seven-day period involving a monetary instrument or instruments of a total value exceeding five thousand dollars ($5,000), or a total value exceeding twenty-five thousand dollars ($25,000) within a 30-day period, through one or more financial institutions or using blockchain technology (1) with the specific intent to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of any criminal activity, or (2) knowing that the monetary instrument represents the proceeds of, or is derived directly or indirectly from the proceeds of, criminal activity, is guilty of the crime of money laundering. The aggregation periods do not create an obligation for financial institutions to record, report, create, or implement tracking systems or otherwise monitor transactions involving monetary instruments in any time period. In consideration of the constitutional right to counsel afforded by the Sixth Amendment to the United States Constitution and Section 15 of Article I of the California Constitution, when a case involves an attorney who accepts a fee for representing a client in a criminal investigation or proceeding, the prosecution shall additionally be required to prove that the monetary instrument was accepted by the attorney with the intent to disguise or aid in disguising the source of the funds or the nature of the criminal activity.

A violation of this section shall be punished by imprisonment in a county jail for not more than one year or pursuant to subdivision (h) of Section 1170, by a fine of not more than two hundred fifty thousand dollars ($250,000) or twice the value of the property transacted, whichever is greater, or by both that imprisonment and fine. However, for a second or subsequent conviction for a violation of this section, the maximum fine that may be imposed is five hundred thousand dollars ($500,000) or five times the value of the property transacted, whichever is greater.

(b) Notwithstanding any other law, for purposes of this section, each individual transaction conducted in excess of five thousand dollars ($5,000), each series of transactions conducted within a seven-day period that total in excess of five thousand dollars ($5,000), or each series of transactions conducted within a

30-day period that total in excess of twenty-five thousand dollars ($25,000), shall constitute a separate, punishable offense.

(c) (1) Any person who is punished under subdivision (a) by imprisonment pursuant to subdivision (h) of Section 1170 shall also be subject to an additional term of imprisonment pursuant to subdivision (h) of Section 1170 as follows:

(A) If the value of the transaction or transactions exceeds fifty thousand dollars ($50,000) but is less than one hundred fifty thousand dollars ($150,000), the court, in addition to and consecutive to the felony punishment otherwise imposed pursuant to this section, shall impose an additional term of imprisonment of one year.

(B) If the value of the transaction or transactions exceeds one hundred fifty thousand dollars ($150,000) but is less than one million dollars ($1,000,000), the court, in addition to and consecutive to the felony punishment otherwise imposed pursuant to this section, shall impose an additional term of imprisonment of two years.

(C) If the value of the transaction or transactions exceeds one million dollars ($1,000,000), but is less than two million five hundred thousand dollars ($2,500,000), the court, in addition to and consecutive to the felony punishment otherwise imposed pursuant to this section, shall impose an additional term of imprisonment of three years.

(D) If the value of the transaction or transactions exceeds two million five hundred thousand dollars ($2,500,000), the court, in addition to and consecutive to the felony punishment otherwise prescribed by this section, shall impose an additional term of imprisonment of four years.

(2) (A) An additional term of imprisonment as provided for in this subdivision shall not be imposed unless the facts of a transaction or transactions, or attempted transaction or transactions, of a value described in paragraph (1), are charged in the accusatory pleading, and are either admitted to by the defendant or are found to be true by the trier of fact.

(B) An additional term of imprisonment as provided for in this subdivision may be imposed with respect to an accusatory pleading charging multiple violations of this section, regardless of whether any single violation charged in that pleading involves a transaction or attempted transaction of a value covered by paragraph (1), if the violations charged in that pleading arise from a common scheme or plan and the aggregate value of the alleged transactions or attempted transactions is of a value covered by paragraph (1).

(d) All pleadings under this section shall remain subject to the rules of joinder and severance stated in Section 954.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: Money laundering is the means by which persons who commit financial crimes disguise the source or illicit origins of cash or property by moving them through bank accounts or converting them into other forms of transferable value. Under existing law, the criminal offense of money laundering requires a transaction involving "monetary instruments" greater than $5,000 through a "financial institution" over a specified period of time, with either the intent to facilitate criminal activity or the knowledge that the proceeds are derived from criminal activity. (Pen. Code, § 186.10, subd. (a).) A "monetary instrument" includes government-issued currencies, checks, money orders, and certain kinds of liquid assets, such as precious metals, gems, and securities. (Pen. Code, § 186.9, subd. (d).)

However, the current definition of a "monetary instrument" does not account for the emergence of financial transactions involving virtual assets, such as non-fungible tokens (NFTs) and cryptocurrencies. (Hall, *Nations to adopt Bitcoin, crypto users to reach 1B by 2023* (Jan. 21, 2022) Cointelegraph, https://cointelegraph.com/news/nations-to-adopt-bitcoin-crypto-users-to-reach-1b-by-2023-report.) Whereas a transaction in the traditional financial system involves a regulated intermediary, such as a licensed bank or broker, transactions involving NFTs and cryptocurrencies can occur without third party oversight or knowledge of any participant's identity, using blockchain technology. "'Blockchain technology' means a decentralized data system, in which the data stored is mathematically verifiable, that uses distributed ledgers or databases to store specialized data in the permanent order of transactions recorded." (Sen. Bill No. 638 (2021-22 Reg. Session) § 1.) Given their use in conducting near-instant and relatively anonymous cross-border financial transactions of unlimited value, NFTs and cryptocurrencies have become major conduits for money laundering. (See Versprille, *Crypto, NFTs Are Rife With 'Mountains' of Fraud, IRS Says* (Jan. 26, 2022) Bloomberg, https://www.bloomberg.com/news/articles/2022-01-26/irs-seeing-mountains-and-mountains-of-fraud-with-crypto-nfts.)

The Solution: This resolution would close the digital asset loophole in California's anti-money laundering provisions by including blockchain-enabled transactions

involving virtual assets, such as NFTs and cryptocurrencies. It would also adopt the same definition of “blockchain technology” as set forth in SB 638.

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
Not known.

AUTHOR AND/OR PERMANENT CONTACT
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RESPONSIBLE FLOOR DELEGATE:
Michael Fern

RESOLUTION 11-12-2022

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code sections 4900, 4903 and 4904, and to add Penal Code section 4904.1, to read as follows:

§ 4900

(a) Any person who, having been convicted of any crime against the state amounting to a felony ~~and imprisoned in the state prison or incarcerated in county jail pursuant to subdivision (h) of Section 1170 for that conviction~~, is granted a pardon by the Governor for the reason that the crime with which they were charged was either not committed at all or, if committed, was not committed by the person, or who, being innocent of the crime with which they were charged for either of those reasons, ~~shall have~~ and who have served the term or any part thereof for which they were imprisoned in state prison, ~~or~~ incarcerated in county jail, on parole, under supervised release, or on the Sex Offender Registry may, under the conditions provided under this chapter, present a claim against the state to the California Victim Compensation Board ~~for the injury sustained by the person through the erroneous conviction and imprisonment or incarceration~~.

(b) If a state or federal court has granted a writ of habeas corpus or if a state court has granted a motion to vacate pursuant to Section 1473.6 or paragraph (2) of subdivision (a) of Section 1473.7, and the charges were subsequently dismissed, or the person was acquitted of the charges on a retrial, the California Victim Compensation Board shall, upon application by the person, and without a hearing, recommend to the Legislature that an appropriation be made and the claim paid pursuant to Section 4904, unless the Attorney General establishes pursuant to subdivision (d) of Section 4902, that the claimant is not entitled to compensation.

§ 4903

(a) Except as provided in Sections 851.865 and 1485.55, and in subdivision (b) of Section 4900, the board shall fix a time and place for the hearing of the claim. At the hearing the claimant shall introduce evidence in support of the claim, and the Attorney General may introduce evidence in opposition thereto. The claimant shall prove the facts set forth in the statement constituting the claim, including the fact that the crime with which they were charged was either not committed at all, or, if committed, was not committed by the claimant~~, and the injury sustained by them through their erroneous conviction and incarceration~~.

(b) For claims falling within subdivision (b) of Section 4900 in which the Attorney General objects to the claim pursuant to subdivision (d) of Section 4902, the board shall fix a time and place for the hearing of the claim. At the hearing, the Attorney General shall bear the burden of proving by clear and convincing evidence that the claimant committed the acts constituting the offense. The claimant may introduce evidence in support of the claim.

(c) In a hearing before the board, the factual findings and credibility determinations establishing the court's basis for writ of habeas corpus, a motion to vacate pursuant to Section 1473.6 or paragraph (2) of subdivision (a) of Section 1473.7, or an application for a certificate of factual innocence as described in Section 1485.5 shall be binding on the Attorney General, the factfinder, and the board.

(d) A conviction reversed and dismissed is no longer valid, thus the Attorney General may not rely on the fact that the state still maintains that the claimant is guilty of the crime for which they were wrongfully convicted, that the state defended the conviction against the claimant through court litigation, or that there was a conviction to establish that the claimant is not entitled to compensation. The Attorney General may also not rely solely on the trial record to establish that the claimant is not entitled to compensation.

(e) The board shall deny payment of any claim if the board finds by a preponderance of the evidence that a claimant pled guilty with the specific intent to protect another from prosecution for the underlying conviction for which the claimant is seeking compensation.

(f) A presumption does not exist in any other proceeding if the claim for compensation is denied pursuant to this section. No res judicata or collateral estoppel finding shall be made in any other proceeding if the claim for compensation is denied pursuant to this section.

§ 4904

(a) If the evidence shows that the crime with which the claimant was charged was either not committed at all, or, if committed, was not committed by the claimant, or for claims pursuant to subdivision (b) of Section 4900, the Attorney General's office has not met their burden of proving by clear and convincing evidence that the claimant committed the acts constituting the offense, ~~and the California Victim Compensation Board has found that the claimant has sustained injury through their erroneous conviction and imprisonment~~ the California Victim Compensation Board shall report the facts of the case and its conclusions to the next Legislature, with a recommendation that the Legislature make an appropriation for the purpose of compensating ~~indemnifying~~ the claimant ~~for the injury~~. The amount of the appropriation recommended shall ~~be~~ include the following:

(1) a sum equivalent to one hundred forty dollars ($140) per day of incarceration served, and shall include any time spent in custody, including in a county jail, that is considered to be part of the term of incarceration.

(2) a sum equivalent to seventy dollars ($70) per day served on parole pursuant to Section 3000 or 3000.1, on supervised release pursuant to Section 3074, or on the Sex Offender Registry pursuant to Section 290.

(3) reasonable attorney fees and costs incurred by or on behalf of the claimant in overturning the claimant's conviction and/or securing a pardon.

(4) reasonable attorney fees and costs incurred by or on behalf of the claimant in obtaining compensation under this section, and/or in obtaining a finding of factual innocence under Sections 851.8, 851.86, 1485.55, or 1473.7.

(b) The appropriation amounts provided in subdivisions (a)(1) and (a)(2) of this section shall be updated annually to reflect changes in the Bureau of Labor Standards Consumer Price Index—West Region (All) since 2022.

(c) ~~That appropriation~~ Pursuant to Revenue and Tax Code section 17156.1, funds received by the claimant under this section shall not be treated as gross income to the recipient ~~under the Revenue and Taxation Code~~.

§ 4904.1

(a) Any person who spent time on parole pursuant to Section 3000 or 3000.1, on supervised release pursuant to Section 3074, or on the Sex Offender Registry pursuant to Section 290 prior to the effective date of this act may bring a petition for compensation under section 4904, subdivision (a)(2) within three years of the effective date of this act.

(b) Any person who previously brought a petition under section 4900, and who spent time on parole pursuant to Section 3000 or 3000.1, on supervised release pursuant to Section 3074, or on the Sex Offender Registry pursuant to Section 290, may, bring a supplementary petition within three years of the effective date of this act for compensation under section 4904, subdivision (a)(2). If the prior petition was granted, the petitioner on a supplementary petition need only prove the applicability of Section 4904, subdivision (a)(2).

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Joel Douglas, Mark Flory, Robyn Ginney, Victor Herrera, Shaun Jacobs, Sean McCoy, James Mink, Ujvala Singh, Darin Wessel, K. Martin White

STATEMENT OF REASONS

The Problem (including Existing Law): Wrongfully convicted people who have not only been released from prison, but have taken the extra step of establishing that they did not commit the crime at issue, are compensated under current law at a fixed rate of one hundred forty dollars per day of incarceration served. The amount is not adjusted for inflation, and no compensation is given for time an innocent person wrongfully spends on parole, probation, or the sex offender registry. Although the law no longer requires wrongfully convicted claimants to prove (in addition to proving their innocence) that they suffered "injury" by being wrongfully incarcerated, current law still requires the California Victim Compensation Board to find that the claimant has "suffered injury" as a result of their wrongful incarceration before they can be compensated.

The Solution: This resolution would increase the compensation amounts annually, based on changes in the Consumer Price Index. The resolution would also authorize compensation, at seventy dollars per day, for time wrongfully spent on parole, on supervised release, or on the sex offender registry, and would make this relief available retroactively. Finally, the resolution would eliminate the holdover language regarding proof of injury, which is no longer a substantive component of compensation claims.

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
Although Penal Code sections 4900-4904 have been amended several times in recent years, none of the bills have involved indexing compensation amounts to inflation, or providing compensation for time wrongfully spent on parole, probation, or the sex offender registry.

SB 635 (Nielsen, 2015-2016) set the current amount of $140/day, and eliminated the former requirement that the claimant show a pecuniary injury as a result of wrongful incarceration.

AUTHOR AND/OR PERMANENT CONTACT
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RESPONSIBLE FLOOR DELEGATE
James Mink

RESOLUTION 11-13-2022

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 20200:

§20200

(a) A knife carried in a sheath that is worn openly suspended from the waist of the wearer is not concealed within the meaning of Section 16140, 16340, 17350, or 21310.

(b) A knife carried in a sheath that is worn openly suspended from the waist of the wearer is not concealed within the meaning of Section 16140, 16340, 17350, or 21310, even though it is partially covered by an item of clothing or a body part as long as the nature of the item as a knife is readily apparent.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Los Angeles County Bar Association.

STATEMENT OF REASONS

The Problem: People lawfully carry knives in sheaths on their waist – examples are construction, grocery, and warehouse workers. The law has long stated that a knife openly carried is NOT illegal unless the knife is otherwise unlawful, like a switchblade. Over-exuberant (and sometimes bigoted) police officers target individuals who are lawfully carrying a knife in a sheath but the person's shirt is untucked and partially covers the knife. Or the person's arm is hanging down over the knife. (Yes, police officers have claimed this made a knife concealed.) The police report reads that the officer could plainly see it was a knife but an arrest is made and prosecution ensues because the knife is considered to be "concealed." This is nonsense. If the police can see it's a knife, it isn't concealed. Period.

The Solution: This resolution clarifies that if a knife that is openly carried in a sheath suspended from the waist is *not* concealed when it is partially covered yet its character as a knife is readily apparent. This resolution does *not* legalize the possession of any otherwise-illegal knife such as a switchblade. It's just common sense that if you can see it's a knife hanging from a sheath, and know it's a knife, it's not concealed.

IMPACT STATEMENT

CURRENT OR PRIOR RELATED LEGISLATION

None known.

AUTHOR AND/OR PERMANENT CONTACT

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RESPONSIBLE FLOOR DELEGATE
Mark Harvis

RESOLUTION 11-14-2022

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to add Penal Code section 1049.6, to read as follows:

§ 1049.6

a) When a criminal case is ready for trial and there are no available courtrooms in the courthouse where the case is pending, the case may be sent to another courthouse however the sending court must select the nearest available courtroom in the nearest courthouse, subject to Code of Civil Procedure sections 170.1 to 170.6, as well as the parties agreeing to continue the trial.

b) Upon request and before a case is sent to another courthouse, the Superior Court must provide to the prosecution and the defense a list of all currently open courtrooms and the courthouses in which they are located, as well as the names of the bench officers presiding in those courtrooms.

c) If a party disputes whether a closer courtroom is available, the burden of proving the lack of a closer available courtroom is upon the Superior Court by clear and convincing evidence. The parties may controvert that evidence by submitting evidence, including declarations, that closer courtroom(s) in closer courthouse(s) are open and available for trial.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Los Angeles County Bar Association.

STATEMENT OF REASONS:

The Problem: It's called freeway therapy. Criminal defendants have the right to a trial and some judges just don't like it that defendants won't waive time for trial or won't plead. So, these judges punish defendants by sending them to trial in a courthouse many, many miles away. The Metropolitan courthouse (on the edge of downtown Los Angeles) routinely sends misdemeanor cases to Lancaster or San Fernando Courthouses, which are respectively 72 miles and 26 miles away. Indigent clients often do not have a reliable car and no way to get to a courthouse so far away. It's just wrong for a judge to punish a defendant for asserting his or her right to a trial.

The Solution: This resolution does not force the Superior Court to send a case to any particular courthouse or courtroom. All it does is tell courts that they have to send ready criminal cases to the closest available courtroom. That's it.

IMPACT STATEMENT
This proposed resolution does not affect any other law, statute or rule.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

AUTHOR AND/OR PERMANENT CONTACT

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RESPONSIBLE FLOOR DELEGATE

Mark Harvis

RESOLUTION 11-15-2022

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code sections 1381 and 1381.5, to read as follows:

§1381

Whenever a defendant has been convicted, in any court of this state, of the commission of a felony or misdemeanor and has been sentenced to and has entered upon a term of imprisonment in a state prison or has been sentenced to and has entered upon a term of imprisonment in a county jail for a period of more than 90 days or has been committed to and placed in a county jail for more than 90 days as a condition of probation or has been committed to and placed in an institution subject to the jurisdiction of the Department of the Youth Authority or whenever any person has been committed to the custody of the Director of Corrections pursuant to Chapter 1 (commencing with Section 3000) of Division 3 of the Welfare and Institutions Code and has entered upon his or her term of commitment, and at the time of the entry upon the term of imprisonment or commitment there is pending, in any court of this state, any other indictment, information, complaint, or any criminal proceeding wherein the defendant remains to be sentenced, the district attorney of the county in which the matters are pending shall bring the defendant to trial or for sentencing within 90 days after the person or the person's counsel shall have delivered to said district attorney written notice of the place of his or her imprisonment or commitment and his or her desire to be brought to trial or for sentencing unless a continuance beyond the 90 days is requested or consented to by the person, in open court, and the request or consent entered upon the minutes of the court in which event the 90-day period shall commence to run anew from the date to which the consent or request continued the trial or sentencing. In the event that the defendant is not brought to trial or for sentencing within the 90 days the court in which the charge or sentencing is pending shall, on motion or suggestion of the district attorney, or of the defendant or person confined in the county jail or committed to the custody of the Director of Corrections or his or her counsel, or of the Department of Corrections, or of the Department of the Youth Authority, or on its own motion, dismiss the action. If a charge is filed against a person during the time the person is serving a sentence in any state prison or county jail of this state or while detained by the Director of Corrections pursuant to Chapter 1 (commencing with Section 3000) of Division 3 of the Welfare and Institutions Code or while detained in any institution subject to the jurisdiction of the Department of the Youth Authority it is hereby made mandatory upon the district attorney of the county in which the charge is filed to bring it to trial within 90 days after the person or the person's counsel shall have delivered to said district attorney written notice of the place of his or her imprisonment or commitment and his or her desire to be brought to trial upon the charge, unless a continuance is requested or consented to by the person, in open court, and the request or consent entered upon the minutes of the court, in which event the 90-day period shall commence to run anew from the date to which the request or consent continued the trial. In the event the action is not brought to trial within the 90 days the court in which the action is pending shall, on motion or suggestion of the district attorney, or of the defendant or person committed to the custody of the Director of Corrections or to a county jail or his or her counsel, or of the Department of Corrections, or of the Department of the Youth Authority, or on its own motion, dismiss the charge. The sheriff, custodian, or jailer shall endorse

upon the written notice of the defendant's desire to be brought to trial or for sentencing the cause of commitment, the date of commitment, and the date of release.

§1381.5

Whenever a defendant has been convicted of a crime and has entered upon a term of imprisonment therefor in a federal correctional institution located in this state, and at the time of entry upon such term of imprisonment or at any time during such term of imprisonment there is pending in any court of this state any criminal indictment, information, complaint, or any criminal proceeding wherein the defendant remains to be sentenced the district attorney of the county in which such matters are pending, upon receiving from such defendant or the defendant's counsel a request that he be brought to trial or for sentencing, shall promptly inquire of the warden or other head of the federal correctional institution in which such defendant is confined whether and when such defendant can be released for trial or for sentencing. If an assent from authorized federal authorities for release of the defendant for trial or sentencing is received by the district attorney he shall bring him to trial or sentencing within 90 days after receipt of such assent, unless the federal authorities specify a date of release after 90 days, in which event the district attorney shall bring the prisoner to trial or sentencing at such specified time, or unless the defendant requests, in open court, and receives, or, in open court, consents to, a continuance, in which event he may be brought to trial or sentencing within 90 days from such request or consent.

If a defendant is not brought to trial or for sentencing as provided by this section, the court in which the action is pending shall, on motion or suggestion of the district attorney, or representative of the United States, or the defendant or his counsel, dismiss the action.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Los Angeles County Bar Association.

STATEMENT OF REASONS:

The Problem: A person who is serving a sentence has a right to file a demand with the court to resolve pending cases. The statute says "the person" shall deliver the demand to the District Attorney. It does not specifically allow a demand by an inmate's lawyer, nor does it disallow one. Some prosecutors and trial courts interpret this language to only allow the demand to be made by the inmate and any demand made by counsel is ineffective. PC 1381 applies to a person serving a sentence in a California prison or jail; PC 1381.5 applies to a person serving a sentence in a federal prison in California.

The Solution: This resolution allows counsel to make a demand on an inmate's behalf. That's it. It clarifies the law and makes it more probable that inmates will get their pending cases resolved while serving a sentence on something else. This change is consistent with similar language in Penal Code section 1203.2a that allows the demand to be made by counsel.

LEGISLATIVE HISTORY
None known.

IMPACT STATEMENT
This proposed resolution does not affect any other law, statute or rule.

AUTHOR AND/OR PERMANENT CONTACT
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RESPONSIBLE FLOOR DELEGATE
Mark Harvis

RESOLUTION 11-16-2022

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 13300 to read as follows:

§ 13300

(a) As used in this section:

(1) "Local summary criminal history information" means the master record of information compiled by any local criminal justice agency pursuant to Chapter 2 (commencing with Section 13100) of Title 3 of Part 4 pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, dates of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person.

(2) "Local summary criminal history information" does not refer to records and data compiled by criminal justice agencies other than that local agency, nor does it refer to records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the local agency.

(3) "Local agency" means a local criminal justice agency.

(b) A local agency shall furnish local summary criminal history information to any of the following, when needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) The courts of the state.

(2) Peace officers of the state, as defined in Section 830.1, subdivisions (a) and (d) of Section 830.2, subdivisions (a), (b), and (j) of Section 830.3, and subdivisions (a), (b), and (c) of Section 830.5.

(3) District attorneys of the state.

(4) Prosecuting city attorneys of any city within the state.

(5) City attorneys pursuing civil gang injunctions pursuant to Section 186.22a, or drug abatement actions pursuant to Section 3479 or 3480 of the Civil Code, or Section 11571 of the Health and Safety Code.

(6) Probation officers of the state.

(7) Parole officers of the state.

(8) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section 4852.08.

(9) A public defender or attorney of record when representing a person in a criminal case, or a juvenile delinquency proceeding, including all appeals and posconviction motions, or a parole, mandatory supervision pursuant to paragraph (5) of subdivision (h) of Section 1170, or postrelease community supervision revocation or revocation extension proceeding, if the information is requested in the course of representation. ~~hearing, and when authorized access by statutory or decisional law~~.

(10) Any agency, officer, or official of the state when the local summary criminal history information is required to implement a statute, regulation, or ordinance that expressly refers to specific criminal conduct applicable to the subject person of the local summary criminal history

information, and contains requirements or exclusions, or both, expressly based upon the specified criminal conduct.

(11) Any city, county, city and county, or district, or any officer or official thereof, when access is needed in order to assist the agency, officer, or official in fulfilling employment, certification, or licensing duties, and when the access is specifically authorized by the city council, board of supervisors, or governing board of the city, county, or district when the local summary criminal history information is required to implement a statute, regulation, or ordinance that expressly refers to specific criminal conduct applicable to the subject person of the local summary criminal history information, and contains requirements or exclusions, or both, expressly based upon the specified criminal conduct.

(12) The subject of the local summary criminal history information.

(13) Any person or entity when access is expressly authorized by statute when the local summary criminal history information is required to implement a statute, regulation, or ordinance that expressly refers to specific criminal conduct applicable to the subject person of the local summary criminal history information, and contains requirements or exclusions, or both, expressly based upon the specified criminal conduct.

(14) Any managing or supervising correctional officer of a county jail or other county correctional facility.

(15) Local child support agencies established by Section 17304 of the Family Code. When a local child support agency closes a support enforcement case containing summary criminal history information, the agency shall delete or purge from the file and destroy any documents or information concerning or arising from offenses for or of which the parent has been arrested, charged, or convicted, other than for offenses related to the parents having failed to provide support for the minor children, consistent with Section 17531 of the Family Code.

(16) County child welfare agency personnel who have been delegated the authority of county probation officers to access state summary criminal information pursuant to Section 272 of the Welfare and Institutions Code for the purposes specified in Section 16504.5 of the Welfare and Institutions Code.

(17) A humane officer appointed pursuant to Section 14502 of the Corporations Code, for the purposes of performing his or her duties. A local agency may charge a reasonable fee sufficient to cover the costs of providing information pursuant to this paragraph.

(c) The local agency may furnish local summary criminal history information, upon a showing of a compelling need, to any of the following, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) Any public utility, as defined in Section 216 of the Public Utilities Code, which operates a nuclear energy facility when access is needed to assist in employing persons to work at the facility, provided that, if the local agency supplies the information, it shall furnish a copy of this information to the person to whom the information relates.

(2) To a peace officer of the state other than those included in subdivision (b).

(3) An animal control officer, authorized to exercise powers specified in Section 830.9, for the purposes of performing his or her official duties. A local agency may charge a reasonable fee sufficient to cover the costs of providing information pursuant to this paragraph.

(4) To a peace officer of another country.

(5) To public officers, other than peace officers, of the United States, other states, or possessions or territories of the United States, provided that access to records similar to local summary criminal history information is expressly authorized by a statute of the United States, other states, or possessions or territories of the United States when this information is needed for the performance of their official duties.

(6) To any person when disclosure is requested by a probation, parole, or peace officer with the consent of the subject of the local summary criminal history information and for purposes of furthering the rehabilitation of the subject.

(7) The courts of the United States, other states, or territories or possessions of the United States.

(8) Peace officers of the United States, other states, or territories or possessions of the United States.

(9) To any individual who is the subject of the record requested when needed in conjunction with an application to enter the United States or any foreign nation.

(10) Any public utility, as defined in Section 216 of the Public Utilities Code, when access is needed to assist in employing persons who will be seeking entrance to private residences in the course of their employment. The information provided shall be limited to the record of convictions and any arrest for which the person is released on bail or on his or her own recognizance pending trial.

If the local agency supplies the information pursuant to this paragraph, it shall furnish a copy of the information to the person to whom the information relates.

Any information obtained from the local summary criminal history is confidential and the receiving public utility shall not disclose its contents, other than for the purpose for which it was acquired. The local summary criminal history information in the possession of the public utility and all copies made from it shall be destroyed 30 days after employment is denied or granted, including any appeal periods, except for those cases where an employee or applicant is out on bail or on his or her own recognizance pending trial, in which case the state summary criminal history information and all copies shall be destroyed 30 days after the case is resolved, including any appeal periods.

A violation of any of the provisions of this paragraph is a misdemeanor, and shall give the employee or applicant who is injured by the violation a cause of action against the public utility to recover damages proximately caused by the violation.

Nothing in this section shall be construed as imposing any duty upon public utilities to request local summary criminal history information on any current or prospective employee.

Seeking entrance to private residences in the course of employment shall be deemed a "compelling need" as required to be shown in this subdivision.

(11) Any city, county, city and county, or district, or any officer or official thereof, if a written request is made to a local law enforcement agency and the information is needed to assist in the screening of a prospective concessionaire, and any affiliate or associate thereof, as these terms are defined in subdivision (k) of Section 432.7 of the Labor Code, for the purposes of consenting to, or approving of, the prospective concessionaire's application for, or acquisition of, any beneficial interest in a concession, lease, or other property interest.

Any local government's request for local summary criminal history information for purposes of screening a prospective concessionaire and their affiliates or associates before approving or denying an application for, or acquisition of, any beneficial interest in a concession, lease, or other property interest is deemed a "compelling need" as required by this subdivision.

However, only local summary criminal history information pertaining to criminal convictions may be obtained pursuant to this paragraph.

Any information obtained from the local summary criminal history is confidential and the receiving local government shall not disclose its contents, other than for the purpose for which it was acquired. The local summary criminal history information in the possession of the local government and all copies made from it shall be destroyed not more than 30 days after the local government's final decision to grant or deny consent to, or approval of, the prospective concessionaire's application for, or acquisition of, a beneficial interest in a concession, lease, or other property interest. Nothing in this section shall be construed as imposing any duty upon a local government, or any officer or official thereof, to request local summary criminal history information on any current or prospective concessionaire or their affiliates or associates.

(12) A public agency described in subdivision (b) of Section 15975 of the Government Code, for the purpose of oversight and enforcement policies with respect to its contracted providers.

(d) Whenever an authorized request for local summary criminal history information pertains to a person whose fingerprints are on file with the local agency and the local agency has no criminal history of that person, and the information is to be used for employment, licensing, or certification purposes, the fingerprint card accompanying the request for information, if any, may be stamped "no criminal record" and returned to the person or entity making the request.

(e) A local agency taking fingerprints of a person who is an applicant for licensing, employment, or certification may charge a fee to cover the cost of taking the fingerprints and processing the required documents.

(f) Whenever local summary criminal history information furnished pursuant to this section is to be used for employment, licensing, or certification purposes, the local agency shall charge the person or entity making the request a fee which it determines to be sufficient to reimburse the local agency for the cost of furnishing the information, provided that no fee shall be charged to any public law enforcement agency for local summary criminal history information furnished to assist it in employing, licensing, or certifying a person who is applying for employment with the agency as a peace officer or criminal investigator. Any state agency required to pay a fee to the local agency for information received under this section may charge the applicant a fee sufficient to reimburse the agency for the expense.

(g) Whenever there is a conflict, the processing of criminal fingerprints shall take priority over the processing of applicant fingerprints.

(h) It is not a violation of this article to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.

(i) It is not a violation of this article to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record when the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

(j) Notwithstanding any other law, a public prosecutor may, in response to a written request made pursuant to Section 6253 of the Government Code, provide information from a local summary criminal history, if release of the information would enhance public safety, the interest of justice, or the public's understanding of the justice system and the person making the request declares that the request is made for a scholarly or journalistic purpose. If a person in a declaration required by this subdivision willfully states as true any material fact that he or she knows to be false, he or she shall be subject to a civil penalty not exceeding ten thousand dollars

($10,000). The requestor shall be informed in writing of this penalty. An action to impose a civil penalty under this subdivision may be brought by any public prosecutor and shall be enforced as a civil judgment.

(k) Notwithstanding any other law, the Department of Justice or any state or local law enforcement agency may require the submission of fingerprints for the purpose of conducting summary criminal history information record checks which are authorized by law.

(*l*) Any local criminal justice agency may release, within five years of the arrest, information concerning an arrest or detention of a peace officer or applicant for a position as a peace officer, as defined in Section 830, which did not result in conviction, and for which the person did not complete a postarrest diversion program or a deferred entry of judgment program, to a government agency employer of that peace officer or applicant.

(m) Any local criminal justice agency may release information concerning an arrest of a peace officer or applicant for a position as a peace officer, as defined in Section 830, which did not result in conviction but for which the person completed a postarrest diversion program or a deferred entry of judgment program, or information concerning a referral to and participation in any postarrest diversion program or a deferred entry of judgment program to a government agency employer of that peace officer or applicant.

(n) Notwithstanding subdivision (*l*) or (m), a local criminal justice agency shall not release information under the following circumstances:

(1) Information concerning an arrest for which diversion or a deferred entry of judgment program has been ordered without attempting to determine whether diversion or a deferred entry of judgment program has been successfully completed.

(2) Information concerning an arrest or detention followed by a dismissal or release without attempting to determine whether the individual was exonerated.

(3) Information concerning an arrest without a disposition without attempting to determine whether diversion has been successfully completed or the individual was exonerated.

(Proposed new language underlined; language to be deleted in strikeout.)

PROPONENT: Los Angeles County Bar Association.

STATEMENT OF REASONS:

The Problem: Criminal Offender Record Information (CORI) is commonly known as a rap sheet. There is state CORI (PC 11105) and local CORI (PC 13300). In 2018, state CORI law was amended by AB 2133 to give Public Defenders full access to state CORI as long as the information is requested in the course of representation. This was a popular bill, passed 39-0 in the Senate and 77-0 in the Assembly. It appears, though, that through simple oversight the Legislature forgot to make the same change to PC 13300, dealing with local CORI.

The Solution: This resolution conforms local CORI (PC 13300) with state CORI (PC 11105.)

IMPACT STATEMENT
This proposed resolution does not affect any other law, statute or rule.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

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