

RESOLUTION 04-01-2023

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Unemployment Insurance Code section 2124, to read as follows:

1 § 2124

2 The place of trial for offenses enumerated in this chapter shall be in the county of
3 residence or principal place of business of the defendant or defendants, ~~or~~ in any county where
4 the defendant or defendants were transacting business that resulted in the alleged offenses, or in
5 any county where any money or property from the alleged offenses was obtained; except that if
6 ~~the defendant has no residence or principal place of business in this state,~~ otherwise the trial shall
7 be held in the County of Sacramento.

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

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: Since 2020, state unemployment insurance programs have been turned into a spigot for staggering amounts of fraud, with a conservative estimate of \$20 billion stolen just from California’s Employment Development Department (EDD) alone. (See Westervelt, *Pandemic-related fraud totaled billions. California is trying to get some of it back* (Oct. 18, 2022) NPR, available at <https://www.npr.org/2022/10/18/1128561539/pandemic-fraud-billions-california>.) Much of this largesse has gone to international and interstate fraud rings whose members traveled to California to recruit money mules and obtain EDD debit cards. (See Dilanian, et al., *‘Easy money’: How international scam artists pulled off an epic theft of Covid benefits* (Aug. 15, 2021) NBC News, available at <https://www.nbcnews.com/news/us-news/easy-money-how-international-scam-artists-pulled-epic-theft-covid-n1276789>.)

Unemployment Insurance Code section 2124 sets forth the venue for prosecuting unemployment insurance offenses (see Unemp. Ins. Code, §§ 2101-2121) and states that “if the defendant has no residence or principal place of business in this state, the trial shall be held in the County of Sacramento.” Thus, an out-of-state fraudster who travels to San Diego and is caught committing unemployment insurance fraud technically must be tried in Sacramento instead of San Diego. This creates a logistical nightmare for all parties and witnesses, who ought to be able to have the case presented in the county where the crime occurred.

The Solution: This resolution would modify the venue for prosecuting an unemployment insurance fraud offense to include any county where any money or property from the alleged offense was obtained. Sacramento County would remain the venue of last resort.

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 04-02-2023

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 186.11, to read as follows:

1 § 186.11
2 (a)
3 (1) Any person who commits two or more related felonies, a material element of which is
4 fraud or embezzlement, which involve a pattern of related felony conduct, and the pattern of
5 related felony conduct involves the taking of, or results in the loss by another person or entity of,
6 more than one hundred thousand dollars (\$100,000), shall be punished, upon conviction of two
7 or more felonies in a single criminal proceeding, in addition and consecutive to the punishment
8 prescribed for the felony offenses of which he or she has been convicted, by an additional term
9 of imprisonment in the state prison as specified in paragraph (2) or (3). This enhancement shall
10 be known as the aggravated white collar crime enhancement. The aggravated white collar crime
11 enhancement shall only be imposed once in a single criminal proceeding. For purposes of this
12 section, “pattern of related felony conduct” means engaging in at least two felonies that have the
13 same or similar purpose, result, principals, victims, or methods of commission, or are otherwise
14 interrelated by distinguishing characteristics, and that are not isolated events. For purposes of
15 this section, “two or more related felonies” means felonies committed against two or more
16 separate victims, or against the same victim on two or more separate occasions.
17 (2) If the pattern of related felony conduct involves the taking of, or results in the loss by
18 another person or entity of, more than five hundred thousand dollars (\$500,000), the additional
19 term of punishment shall be two, three, or five years in the state prison.
20 (3) If the pattern of related felony conduct involves the taking of, or results in the loss by
21 another person or entity of, more than one hundred thousand dollars (\$100,000), but not more
22 than five hundred thousand dollars (\$500,000), the additional term of punishment shall be ~~the~~
23 ~~term specified in paragraph (1) or (2) of subdivision (a) of Section 12022.6~~ one year in state
24 prison.
25 [Subdivisions (b) through (k) remain unchanged.]

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

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law): A defendant who commits two or more felonies involving fraud and embezzlement that are part of a pattern of related felony conduct in which the aggregate taking or loss is greater than \$100,000 is eligible for an additional term of punishment pursuant to Penal Code section 186.11, also known as the aggravated white collar crime enhancement. If the amount is greater than \$500,000, subdivision (a)(2) adds two, three, or five years to any prison sentence. If it less, subdivision (a)(3) adds an additional term based on paragraph 1 or 2 of subdivision (a) in Section 12022.6. But Section 12022.6 had a sunset

provision that took effect in 2018, resulting in no additional term and a broken cross-reference to a nonexistent statute. (See *People v. Medeiros* (2020) 46 Cal.App.5th 1142, 1147.)

The Solution: This resolution would fix Section 186.11's cross-reference to a nonexistent statute by replacing it with a statement that 1 year is to be added to any state prison sentence when the taking or loss is greater than \$100,000 but less than \$500,000. Prior to sunseting, Section 12022.6's monetary thresholds were \$65,000 to add 1 year and \$200,000 to add two years.

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

AB 484 (2023-2024) would amend Penal Code section 186.11 to add 2 years in state prison for an aggregate taking or loss greater than \$100,000.

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RESOLUTION 04-03-2023

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 186.11, to read as follows:

1 § 186.11
2 [Subdivisions (a) through (c) remain unchanged.]
3 (d)
4 (1) If a person is alleged to have committed two or more felonies, as specified in
5 subdivision (a), and the aggravated white collar crime enhancement is also charged, or a person
6 is charged in an accusatory pleading with a felony, a material element of which is fraud or
7 embezzlement, that involves the taking or loss of more than one hundred thousand dollars
8 (\$100,000), and an allegation as to the existence of those facts, any asset or property that is in the
9 control of that person, and any asset or property that has been transferred by that person to a third
10 party, subsequent to the commission of any criminal act alleged pursuant to subdivision (a), other
11 than in a bona fide purchase, whether found within or outside the state, may be preserved by the
12 superior court in order to pay restitution and fines. Upon conviction of two or more felonies, as
13 specified in subdivision (a), or a felony, a material element of which is fraud or embezzlement,
14 that involves the taking or loss of more than one hundred thousand dollars (\$100,000), this
15 property may be levied upon by the superior court to pay restitution and fines if the existence of
16 facts that would make the person subject to the aggravated white collar crime enhancement or
17 that demonstrate the taking or loss of more than one hundred thousand dollars (\$100,000) in the
18 commission of a felony, a material element of which is fraud or embezzlement, have been
19 charged in the accusatory pleading and admitted or found to be true by the trier of fact.
20 (2) To prevent dissipation or secreting of assets or property, the prosecuting agency may,
21 at the same time as or subsequent to the filing of a complaint or indictment charging two or more
22 felonies, as specified in subdivision (a), and the enhancement specified in subdivision (a), or a
23 felony, a material element of which is fraud or embezzlement, that involves the taking or loss of
24 more than one hundred thousand dollars (\$100,000), and an allegation as to the existence of
25 those facts, file a petition with the criminal division of the superior court of the county in which
26 the accusatory pleading was filed, seeking a temporary restraining order, preliminary injunction,
27 the appointment of a receiver, or any other protective relief necessary to preserve the property or
28 assets. This petition shall commence a proceeding that shall be pendent to the criminal
29 proceeding and maintained solely to affect the criminal remedies provided for in this section.
30 The proceeding shall not be subject to or governed by the provisions of the Civil Discovery Act
31 as set forth in Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil
32 Procedure. The petition shall allege that the defendant has been charged with two or more
33 felonies, as specified in subdivision (a), and is subject to the aggravated white collar crime
34 enhancement specified in subdivision (a) or that the defendant has been charged with a felony, a
35 material element of which is fraud or embezzlement, that involves the taking or loss of more than
36 one hundred thousand dollars (\$100,000), and an allegation as to the existence of those facts. The
37 petition shall identify that criminal proceeding and the assets and property to be affected by an
38 order issued pursuant to this section.

39 (3) A notice regarding the petition shall be provided, by personal service or registered
40 mail, to every person who may have an interest in the property specified in the petition, or their
41 legal representative. Additionally, the notice shall be published for at least three successive
42 weeks in a newspaper of general circulation in the county where the property affected by an
43 order issued pursuant to this section is located or on the public website of the prosecuting
44 agency. The notice shall state that any interested person may file a verified claim with the
45 superior court stating the nature and amount of their claimed interest. The notice shall set forth
46 the time within which a claim of interest in the protected property is required to be filed.

47 (4) If the property to be preserved is real property, the prosecuting agency shall record, at
48 the time of filing the petition, a lis pendens in each county in which the real property is situated
49 which specifically identifies the property by legal description, the name of the owner of record as
50 shown on the latest equalized assessment roll, and the assessor's parcel number.

51 (5) If the property to be preserved are assets under the control of a banking or financial
52 institution, the prosecuting agency, at the time of the filing of the petition, may obtain an order
53 from the court directing the banking or financial institution to immediately disclose the account
54 numbers and value of the assets of the accused held by the banking or financial institution. The
55 prosecuting agency shall file a supplemental petition, specifically identifying which banking or
56 financial institution accounts shall be subject to a temporary restraining order, preliminary
57 injunction, or other protective remedy.

58 (6) Any person claiming an interest in the protected property may, at any time within 30
59 days from the date of the first publication of the notice of the petition, or within 30 days after
60 receipt of actual notice, file with the superior court of the county in which the action is pending a
61 verified claim stating the nature and amount of his or her interest in the property or assets. A
62 verified copy of the claim shall be served by the claimant on the Attorney General or district
63 attorney, as appropriate.

64 (7) The imposition of fines and restitution pursuant to this section shall be determined by
65 the superior court in which the underlying criminal offense is sentenced. Any judge who is
66 assigned to the criminal division of the superior court in the county where the petition is filed
67 may issue a temporary restraining order in conjunction with, or subsequent to, the filing of an
68 allegation pursuant to this section. Any subsequent hearing on the petition shall also be heard by
69 a judge assigned to the criminal division of the superior court in the county in which the petition
70 is filed. At the time of the filing of an information or indictment in the underlying criminal case,
71 any subsequent hearing on the petition shall be heard by the superior court judge assigned to the
72 underlying criminal case.

73 (e) Concurrent with or subsequent to the filing of the petition, the prosecuting agency
74 may move the superior court for, and the superior court may issue, the following pendente lite
75 orders to preserve the status quo of the property alleged in the petition:

76 (1) An injunction to restrain any person from transferring, encumbering, hypothecating,
77 or otherwise disposing of that property.

78 (2) Appointment of a receiver to take possession of, care for, manage, and operate the
79 assets and properties so that the property may be maintained and preserved. The court may order
80 that a receiver appointed pursuant to this section shall be compensated for all reasonable
81 expenditures made or incurred by him or her in connection with the possession, care,
82 management, and operation of any property or assets that are subject to the provisions of this
83 section.

84 (3) A bond or other undertaking, in lieu of other orders, of a value sufficient to ensure the
85 satisfaction of restitution and fines imposed pursuant to this section.

86 (f)

87 (1) No preliminary injunction may be granted or receiver appointed by the court without
88 notice that meets the requirements of paragraph (3) of subdivision (d) to all known and
89 reasonably ascertainable interested parties and upon a hearing to determine that an order is
90 necessary to preserve the property pending the outcome of the criminal proceedings. A
91 temporary restraining order may be issued by the court, ex parte, pending that hearing in
92 conjunction with or subsequent to the filing of the petition upon the application of the
93 prosecuting attorney. The temporary restraining order may be based upon the sworn declaration
94 of a peace officer with personal knowledge of the criminal investigation that establishes probable
95 cause to believe that aggravated white collar crime or a felony, a material element of which is
96 fraud or embezzlement, that involves the taking or loss of more than one hundred thousand
97 dollars (\$100,000) has taken place and that the amount of restitution and fines exceeds or equals
98 the worth of the assets subject to the temporary restraining order. The declaration may include
99 the hearsay statements of witnesses to establish the necessary facts. The temporary restraining
100 order may be issued without notice upon a showing of good cause to the court.

101 (2) The defendant, or a person who has filed a verified claim as provided in paragraph (6)
102 of subdivision (d), shall have the right to have the court conduct an order to show cause hearing
103 within 10 days of the service of the request for hearing upon the prosecuting agency, in order to
104 determine whether the temporary restraining order should remain in effect, whether relief should
105 be granted from any lis pendens recorded pursuant to paragraph (4) of subdivision (d), or
106 whether any existing order should be modified in the interests of justice. Upon a showing of
107 good cause, the hearing shall be held within two days of the service of the request for hearing
108 upon the prosecuting agency.

109 (3) In determining whether to issue a preliminary injunction or temporary restraining
110 order in a proceeding brought by a prosecuting agency in conjunction with or subsequent to the
111 filing of an allegation pursuant to this section, the court has the discretion to consider any matter
112 that it deems reliable and appropriate, including hearsay statements, in order to reach a just and
113 equitable decision. The court shall weigh the relative degree of certainty of the outcome on the
114 merits and the consequences to each of the parties of granting the interim relief. If the
115 prosecution is likely to prevail on the merits and the risk of the dissipation of assets outweighs
116 the potential harm to the defendants and the interested parties, the court shall grant injunctive
117 relief. The court shall give significant weight to the following factors:

118 (A) The public interest in preserving the property or assets pendente lite.

119 (B) The difficulty of preserving the property or assets pendente lite where the underlying
120 alleged crimes involve issues of fraud and moral turpitude.

121 (C) The fact that the requested relief is being sought by a public prosecutor on behalf of
122 alleged victims of white collar crimes.

123 (D) The likelihood that substantial public harm has occurred where aggravated white
124 collar crime is alleged to have been committed.

125 (E) The significant public interest involved in compensating the victims of white collar
126 crime and paying court-imposed restitution and fines.

127 (4) The court, in making its orders, may consider a defendant's request for the release of
128 a portion of the property affected by this section in order to pay reasonable legal fees in
129 connection with the criminal proceeding, any necessary and appropriate living expenses pending

130 trial and sentencing, and for the purpose of posting bail. The court shall weigh the needs of the
131 public to retain the property against the needs of the defendant to a portion of the property. The
132 court shall consider the factors listed in paragraph (3) prior to making any order releasing
133 property for these purposes.

134 (5) The court, in making its orders, shall seek to protect the interests of any innocent third
135 persons, including an innocent spouse, who were not involved in the commission of any criminal
136 activity.

137 (6) Any petition filed pursuant to this section is part of the criminal proceedings for
138 purposes of appointment of counsel and shall be assigned to the criminal division of the superior
139 court of the county in which the accusatory pleading was filed.

140 (7) Based upon a noticed motion brought by the receiver appointed pursuant to paragraph
141 (2) of subdivision (e), the court may order an interlocutory sale of property named in the petition
142 when the property is liable to perish, to waste, or to be significantly reduced in value, or when
143 the expenses of maintaining the property are disproportionate to the value thereof. The proceeds
144 of the interlocutory sale shall be deposited with the court or as directed by the court pending
145 determination of the proceeding pursuant to this section.

146 (8) The court may make any orders that are necessary to preserve the continuing viability
147 of any lawful business enterprise that is affected by the issuance of a temporary restraining order
148 or preliminary injunction issued pursuant to this action.

149 (9) In making its orders, the court shall seek to prevent any asset subject to a temporary
150 restraining order or preliminary injunction from perishing, spoiling, going to waste, or otherwise
151 being significantly reduced in value. Where the potential for diminution in value exists, the court
152 shall appoint a receiver to dispose of or otherwise protect the value of the property or asset.

153 (10) A preservation order shall not be issued against any assets of a business that are not
154 likely to be dissipated and that may be subject to levy or attachment to meet the purposes of this
155 section.

156 [Subdivisions (g) through (k) remain unchanged.]

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

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law): Upon a probable cause showing that a defendant has committed an aggravated white-collar crime, the prosecuting agency may file a petition requesting the court to issue a temporary restraining order on a defendant's assets to preserve them for the payment victim restitution and fines at the end of a case. (See Pen. Code, § 186.11, subds. (d)(2), (f)(1).) Notice of the petition must be given by means of personal service or registered mail to every person who may have an interest in the property, plus publication for at least three successive weeks in a newspaper of general circulation in the county where the affected property is located. However, these methods of notification are inefficient and ineffective. Since the pandemic, Penal Code section 977 has been amended to expand remote appearances and waivers of appearance by defendants in most criminal proceedings. (See Assem. Bill No. 199 (2021-2022, Reg. Sess.)) In addition, the Internet has long since displaced print newspapers as the public's source for information. (See Grundy, *Internet Crushes Traditional*

Media: From Print to Digital (Jun. 7, 2022) U.S. Census Bureau, available at <https://www.census.gov/library/stories/2022/06/internet-crushes-traditional-media.html>.)

The Solution: This resolution would allow notice of a 186.11 petition to be provided via registered mail or personal service on the legal representative of a person who may have an interest in the property. In addition, in lieu of publication in newspaper of general circulation, which is limited to its subscribers and is unlikely to be seen, a 186.11 petition can be posted on the public website of the prosecuting agency, which is free and accessible to the public and would be indexed by search engines such as Google.

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

Not known.

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RESOLUTION 04-04-2023

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 273.5, to read as follows:

1 § 273.5

2 (a) Any person who willfully inflicts corporal injury resulting in a traumatic condition
3 upon a victim described in subdivision (b) is guilty of a felony, and upon conviction thereof shall
4 be punished by imprisonment in the state prison for two, three, or four years, or in a county jail
5 for not more than one year, or by a fine of up to six thousand dollars (\$6,000), or by both that
6 fine and imprisonment.

7 (b) Subdivision (a) shall apply if the victim is or was one or more of the following:

8 (1) The offender's spouse or former spouse.

9 (2) The offender's cohabitant or former cohabitant.

10 (3) The offender's fiancé or fiancée, or someone with whom the offender has, or
11 previously had, an engagement or dating relationship, as defined in paragraph (10) of subdivision
12 (f) of Section 243.

13 (4) The mother or father of the offender's child.

14 (c) Holding oneself out to be the spouse of the person with whom one is cohabiting is not
15 necessary to constitute cohabitation as the term is used in this section.

16 (d) As used in this section, "traumatic condition" means a condition of the body, such as
17 a wound, or external or internal injury, including, but not limited to, injury as a result of
18 strangulation or suffocation, whether of a minor or serious nature, caused by a physical force.
19 For purposes of this section, "strangulation" and "suffocation" include impeding the normal
20 breathing or circulation of the blood of a person by applying pressure on the throat or neck.

21 (e) For the purpose of this section, a person shall be considered the father or mother of
22 another person's child if the alleged male parent is presumed the natural father under Sections
23 7611 and 7612 of the Family Code.

24 (f) (1) Any person convicted of violating this section for acts occurring within seven
25 years of a previous conviction under subdivision (a), or subdivision (d) of Section 243, or
26 Section 243.4, 244, 244.5, or 245, shall be punished by imprisonment in a county jail for not
27 more than one year, or by imprisonment in the state prison for two, four, or five years, or by both
28 imprisonment and a fine of up to ten thousand dollars (\$10,000).

29 (2) Any person convicted of a violation of this section for acts occurring within seven
30 years of a previous conviction under subdivision (e) of Section 243 shall be punished by
31 imprisonment in the state prison for two, three, or four years, or in a county jail for not more than
32 one year, or by a fine of up to ten thousand dollars (\$10,000), or by both that imprisonment and
33 fine.

34 (g) If probation is granted to any person convicted under subdivision (a), the court shall
35 impose probation consistent with the provisions of Section 1203.097.

36 (h) If probation is granted, or the execution or imposition of a sentence is suspended, for
37 any defendant convicted under subdivision (a) who has been convicted of any prior offense
38 specified in subdivision (f), the court shall impose one of the following conditions of probation:

39 (1) If the defendant has suffered one prior conviction within the previous seven years for
40 a violation of any offense specified in subdivision (f), it shall be a condition of probation, in
41 addition to the provisions contained in Section 1203.097, that the defendant be imprisoned in a
42 county jail for not less than 15 days.

43 (2) If the defendant has suffered two or more prior convictions within the previous seven
44 years for a violation of any offense specified in subdivision (f), it shall be a condition of
45 probation, in addition to the provisions contained in Section 1203.097, that the defendant be
46 imprisoned in a county jail for not less than 60 days.

47 (3) The court, upon a showing of good cause, may find that the mandatory imprisonment
48 required by this subdivision shall not be imposed and shall state on the record its reasons for
49 finding good cause.

50 (i) If probation is granted upon conviction of a violation of subdivision (a), the conditions
51 of probation may include, consistent with the terms of probation imposed pursuant to Section
52 1203.097, in lieu of a fine, one or both of the following requirements:

53 (1) That the defendant make payments to a domestic violence shelter-based program, up
54 to a maximum of five thousand dollars (\$5,000), pursuant to Section 1203.097.

55 (2) (A) That the defendant reimburse the victim for reasonable costs of counseling and
56 other reasonable expenses that the court finds are the direct result of the defendant's offense.

57 (B) For any order to pay a fine, make payments to a domestic violence shelter-based
58 program, or pay restitution as a condition of probation under this subdivision, the court shall
59 make a determination of the defendant's ability to pay. An order to make payments to a domestic
60 violence shelter-based program shall not be made if it would impair the ability of the defendant
61 to pay direct restitution to the victim or court-ordered child support. If the injury to a person who
62 is married or in a registered domestic partnership is caused in whole or in part by the criminal
63 acts of their spouse or domestic partner in violation of this section, the community property may
64 not be used to discharge the liability of the offending spouse or domestic partner for restitution to
65 the injured spouse or domestic partner, required by Section 1203.04, as operative on or before
66 August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse or
67 domestic partner and dependents, required by this section, until all separate property of the
68 offending spouse or domestic partner is exhausted.

69 (j) Upon conviction under subdivision (a), the sentencing court shall also consider issuing
70 an order restraining the defendant from any contact with the victim, which may be valid for up to
71 10 years or, upon the victim's request, permanently, as determined by the court. It is the intent of
72 the Legislature that the length of any restraining order be based upon the seriousness of the facts
73 before the court, the probability of future violations, and the safety of the victim and their
74 immediate family. This protective order may be issued by the court whether the defendant is
75 sentenced to state prison or county jail, or if imposition of sentence is suspended and the
76 defendant is placed on probation.

77 (k) If a peace officer makes an arrest for a violation of this section, the peace officer is
78 not required to inform the victim of their right to make a citizen's arrest pursuant to subdivision
79 (b) of Section 836.

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

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: Following a defendant's conviction for domestic violence under Penal Code section 273.5, the sentencing court can issue a criminal protective order prohibiting the defendant from having any contact with the victim for up to 10 years, in lieu of the victim having to pursue a separate civil action for injunctive relief. However, in family court, where evidentiary standards and burdens of proof are less stringent, a party can obtain a domestic violence restraining order that can be made permanent. (See Fam. Code, § 6345; *Priscila N. v. Leonardo G.* (2017) 17 Cal.App.5th 1208.) At the request of the victim and if warranted by the factual circumstances, a criminal court should have the ability to issue a permanent 'no-contact' order following a defendant's felony domestic violence conviction.

The Solution: This resolution would allow a sentencing court to issue a permanent order that prohibits a defendant convicted for domestic violence under Section 273.5 from having any future contact with the victim, at the victim's request. This would resolve the discrepancy that exists between the maximum duration of a criminal protective order that a sentencing court can issue compared to a protective order issued by a family court under the Domestic Violence Prevention Act.

IMPACT STATEMENT

This 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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RESOLUTION 04-05-2023

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 530.55, to read as follows:

- 1 § 530.55
- 2 (a) For purposes of this chapter, “person” means a natural person, living or deceased,
- 3 firm, association, organization, partnership, business trust, company, corporation, limited
- 4 liability company, or public entity, or any other legal entity.
- 5 (b) For purposes of this chapter, “personal identifying information” means any name,
- 6 address, telephone number, health insurance number, taxpayer identification number, school
- 7 identification number, state or federal driver’s license, or identification number, social security
- 8 number, place of employment, employee identification number, professional or occupational
- 9 number, mother’s maiden name, demand deposit account number, savings account number,
- 10 checking account number, PIN (personal identification number) or password, United States
- 11 Citizenship and Immigration Services-assigned number, government passport number, date of
- 12 birth, unique biometric data including fingerprint, facial scan identifiers, voiceprint, retina or iris
- 13 image, or other unique physical representation, unique electronic data including information
- 14 identification number assigned to the person, address or routing code, telecommunication
- 15 identifying information or access device, information contained in a birth or death certificate, or
- 16 credit card number of an individual person, computer-generated audio or visual likeness that is
- 17 virtually indistinguishable from the speech or appearance of a natural person, or an equivalent
- 18 form of identification.

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

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: Identity theft is one of the most prevalent and insidious forms of white-collar crime, impacting millions of Americans and resulting in billions of dollars stolen each year. (See Terrell, *Identity Fraud Hit 42 Million People in 2021* (Apr. 7, 2022) AARP, available at <https://www.aarp.org/money/scams-fraud/info-2022/javelin-report.html>.) The nonconsensual use of another’s identity to commit crime is a violation of privacy, puts innocent persons in legal and financial jeopardy, and can result in irreparable harm to one’s reputation and creditworthiness. Under existing law, identity theft is prosecuted as a felony wobbler pursuant to Penal Code section 530.5, and references Section 530.55 for what constitutes protected “personal identifying information.” But the list of items does not include the most recognizable aspect of one’s identity – what a person looks and sounds like. With technological advances in artificial intelligence, it no longer takes a Hollywood studio to churn out a convincing “deepfake” that can make it appear as though you did or said something that never actually happened. Online tools are now available that can be trained with a single audio or video recording to replicate your speech patterns and visual appearance and generate realistic deepfakes. (See Cox, *AI-Generated Voice Firm Clamps*

Down After Achan Makes Celebrity Voices for Abuse (Jan. 31, 2023) Vice, available at <https://www.vice.com/en/article/dy7mww/ai-voice-firm-4chan-celebrity-voices-emma-watson-joe-rogan-elevenlabs>; Pashaeva, *Scammers Are Using Deepfake Videos Now* (Sep. 13, 2021) Slate, available at <https://slate.com/technology/2021/09/deepfake-video-scams.html>.) As the technology continues to improve and become more accessible, we can expect a significant uptick in the use of audiovisual deepfakes by malicious actors to defraud businesses, manipulate markets, and spread disinformation. (See Somers, *Deepfakes, explained* (Jul. 21, 2020) MIT, available at <https://mitsloan.mit.edu/ideas-made-to-matter/deepfakes-explained>; Gow, *The Scary Truth Behind The FBI Warning: Deepfake Fraud Is Here And It's Serious—We Are Not Prepared For An Attack* (May 2, 2021) Forbes, available at <https://www.forbes.com/sites/glenngow/2021/05/02/the-scary-truth-behind-the-fbi-warning-deepfake-fraud-is-here-and-its-serious-we-are-not-prepared>.)

The Solution: This resolution would add “computer-generated audio or visual likeness that is virtually indistinguishable from the image or speech of a natural person” to the list of protected categories of personal identifying information under subdivision (b) of Penal Code section 530.55.

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

AB 602 (2019-2020) added a civil cause of action against a person who knowingly discloses sexually explicit material involving an altered depiction of another without their consent. AB 730 (2019-2020) added a civil cause of action for knowingly producing or distributing superimposed images involving a political candidate with actual malice and without a disclaimer that it is not authentic.

AUTHOR AND/OR PERMANENT CONTACT:

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RESOLUTION 04-06-2023

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 1201.3, to read as follows:

1 § 1201.3

2 (a) Upon the conviction of a defendant for a sexual offense involving a minor victim or,
3 in the case of a minor appearing in juvenile court, if a petition is admitted or sustained for a
4 sexual offense involving a minor victim, the court is authorized to issue orders that would
5 prohibit the defendant or juvenile, for a period up to 10 years or, when requested by the victim or
6 the victim’s legal representative, permanently, from contacting, harassing, intimidating, or
7 threatening the victim or the victim’s family members or spouse.

8 (b) No order issued pursuant to this section shall be interpreted to apply to counsel acting
9 on behalf of the defendant or juvenile, or to investigators working on behalf of counsel, in an
10 action relating to a conviction, petition in juvenile court, or any civil action arising therefrom,
11 provided, however, that no counsel or investigator shall harass or threaten any person protected
12 by an order issued pursuant to subdivision (a).

13 (c) Notice of the intent to request an order pursuant to this section shall be given to
14 counsel for the defendant or juvenile by the prosecutor or the court at the time of conviction, or
15 disposition of the petition in juvenile court, and counsel shall have adequate time in which to
16 respond to the request before the order is made.

17 (d) A violation of an order issued pursuant to subdivision (a) is punishable as provided in
18 Section 166.

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

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: Following a defendant’s conviction for a sexual offense against a minor victim, the sentencing court can issue an order prohibiting the defendant from harassing, intimidating, or threatening the victim or the victim’s family members for up to 10 years, in lieu of the victim having to file a separate civil action for injunctive relief. However, this does not include a ‘no-contact’ order. (See *People v. Scott* (2012) 203 Cal.App.4th 1303, 1325.) By contrast, family courts can make ‘no contact’ protective orders permanent in cases involving domestic violence. (See Fam. Code, § 6345; *Priscila N. v. Leonardo G.* (2017) 17 Cal.App.5th 1208.) Given the lasting trauma that can result from a sexual assault, particularly during one’s childhood, there is no reason for there to be an arbitrary limit of 10 years or to disallow the issuance of a straightforward ‘no-contact’ order.

The Solution: This resolution would permit a sentencing court to issue an order that prohibits a defendant convicted of a sexual offense involving a minor from contacting the victim or the

victim's family. If requested by the victim or their legal representative, the court could also issue a permanent order that does not expire, providing peace of mind.

IMPACT STATEMENT

This 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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RESOLUTION 04-07-2023

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 1270, to read as follows:

1 § 1270

2 (a) Any person who has been arrested for, or charged with, an offense other than a capital
3 offense may be released on his or her own recognizance by a court or magistrate who could
4 release a defendant from custody upon the defendant giving bail, including a defendant arrested
5 upon an out-of-county warrant. A defendant who is in custody and is arraigned on a complaint
6 alleging an offense which is a misdemeanor, and a defendant who appears before a court or
7 magistrate upon an out-of-county warrant arising out of a case involving only misdemeanors,
8 shall be entitled to an own recognizance release unless the court makes a finding on the record,
9 in accordance with Section 1275, that an own recognizance release will compromise public
10 safety or will not reasonably assure the appearance of the defendant as required. Public safety
11 shall be the primary consideration. If the court makes one of those findings, the court shall then
12 set bail and specify the conditions, if any, whereunder the defendant shall be released.

13 (b) Article 9 (commencing with Section 1318) shall apply to any person who is released
14 pursuant to this section.

15 (c) As used in this chapter, “safety” includes protection from physical or economic
16 injury.

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

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: When setting bail, the primary consideration for the court is the impact that the defendant’s release would have on “safety.” “Public safety shall be the primary consideration.” (Pen. Code, §§ 1270, subd. (a); 1275, subd. (a)(1).) But judges in the same building can have different views as to what “safety” means – whether it is limited to physical acts of violence, or whether it can also be imperiled by a significant amount of fraud and theft. For example, in *In re Kowalczyk* (2022) 85 Cal.App.5th 667, “[t]he court denied bail altogether and ordered petitioner detained. Although the court indicated it was not worried for the safety of the victims of the charged offenses, it emphasized protection of the public as the primary concern and viewed petitioner’s property crimes as a significant public safety issue. The court observed that petitioner was a chronic reoffender whose rap sheet documented 64 prior convictions and was over 100 pages long. ... In mid-June 2021, petitioner again moved to reduce bail or for OR release, contending that he posed no risk to specific victims or the public and that nonfinancial terms could be used to secure his appearance. ... [T]he court (a different judicial officer than those before) indicated she did not see a public safety issue in the case. Ultimately, the court denied the motion and declined to disturb the no bail order due to the absence of changed circumstances.” (*Id.* at 673-674.)

The Solution: This resolution would clarify that “safety” includes protection from physical or economic injury. Thus, a court could find that the release of a serial fraudster who goes after the life savings of elderly retirees could have an impact on public safety.

IMPACT STATEMENT

This 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: Michael Fern, Los Angeles, sclawyer@gmail.com

RESOLUTION 04-08-2023

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 1524, to read as follows:

1 § 1524

2 (a) A search warrant may be issued upon any of the following grounds:

3 (1) When the property was stolen or embezzled.

4 (2) When the property or things were used as the means of committing a felony.

5 (3) When the property or things are in the possession of any person with the intent to use
6 them as a means of committing a public offense, or in the possession of another to whom that
7 person may have delivered them for the purpose of concealing them or preventing them from
8 being discovered.

9 (4) When the property or things to be seized consist of an item or constitute evidence that
10 tends to show a felony has been committed, or tends to show that a particular person has
11 committed a felony.

12 (5) When the property or things to be seized consist of evidence that tends to show that
13 sexual exploitation of a child, in violation of Section 311.3, or possession of matter depicting
14 sexual conduct of a person under 18 years of age, in violation of Section 311.11, has occurred or
15 is occurring.

16 (6) When there is a warrant to arrest a person.

17 (7) When a provider of electronic communication service or remote computing service
18 has records or evidence, as specified in Section 1524.3, showing that property was stolen or
19 embezzled constituting a misdemeanor, or that property or things are in the possession of any
20 person with the intent to use them as a means of committing a misdemeanor public offense, or in
21 the possession of another to whom that person may have delivered them for the purpose of
22 concealing them or preventing their discovery.

23 (8) When the property or things to be seized include an item or evidence that tends to
24 show a violation of Section 3700.5 of the Labor Code, or tends to show that a particular person
25 has violated Section 3700.5 of the Labor Code.

26 (9) When the property or things to be seized include a firearm or other deadly weapon at
27 the scene of, or at the premises occupied or under the control of the person arrested in connection
28 with, a domestic violence incident involving a threat to human life or a physical assault as
29 provided in Section 18250. This section does not affect warrantless seizures otherwise authorized
30 by Section 18250.

31 (10) When the property or things to be seized include a firearm or other deadly weapon
32 that is owned by, or in the possession of, or in the custody or control of, a person described in
33 subdivision (a) of Section 8102 of the Welfare and Institutions Code.

34 (11) When the property or things to be seized include a firearm that is owned by, or in the
35 possession of, or in the custody or control of, a person who is subject to the prohibitions
36 regarding firearms pursuant to Section 6389 of the Family Code, if a prohibited firearm is
37 possessed, owned, in the custody of, or controlled by a person against whom a protective order
38 has been issued pursuant to Section 6218 of the Family Code, the person has been lawfully
39 served with that order, and the person has failed to relinquish the firearm as required by law.

40 (12) When the information to be received from the use of a tracking device constitutes
41 evidence that tends to show that either a felony, a misdemeanor violation of the Fish and Game
42 Code, or a misdemeanor violation of the Public Resources Code has been committed or is being
43 committed, tends to show that a particular person has committed a felony, a misdemeanor
44 violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code,
45 or is committing a felony, a misdemeanor violation of the Fish and Game Code, or a
46 misdemeanor violation of the Public Resources Code, or will assist in locating an individual who
47 has committed or is committing a felony, a misdemeanor violation of the Fish and Game Code,
48 or a misdemeanor violation of the Public Resources Code. A tracking device search warrant
49 issued pursuant to this paragraph shall be executed in a manner meeting the requirements
50 specified in subdivision (b) of Section 1534.

51 (13) When a sample of the blood of a person constitutes evidence that tends to show a
52 violation of Section 23140, 23152, or 23153 of the Vehicle Code and the person from whom the
53 sample is being sought has refused an officer's request to submit to, or has failed to complete, a
54 blood test as required by Section 23612 of the Vehicle Code, and the sample will be drawn from
55 the person in a reasonable, medically approved manner. This paragraph is not intended to
56 abrogate a court's mandate to determine the propriety of the issuance of a search warrant on a
57 case-by-case basis.

58 (14) Beginning January 1, 2016, the property or things to be seized are firearms or
59 ammunition or both that are owned by, in the possession of, or in the custody or control of a
60 person who is the subject of a gun violence restraining order that has been issued pursuant to
61 Division 3.2 (commencing with Section 18100) of Title 2 of Part 6, if a prohibited firearm or
62 ammunition or both is possessed, owned, in the custody of, or controlled by a person against
63 whom a gun violence restraining order has been issued, the person has been lawfully served with
64 that order, and the person has failed to relinquish the firearm as required by law.

65 (15) Beginning January 1, 2018, the property or things to be seized include a firearm that
66 is owned by, or in the possession of, or in the custody or control of, a person who is subject to
67 the prohibitions regarding firearms pursuant to Section 29800 or 29805, and the court has made a
68 finding pursuant to subdivision (c) of Section 29810 that the person has failed to relinquish the
69 firearm as required by law.

70 (16) When the property or things to be seized are controlled substances or a device,
71 contrivance, instrument, or paraphernalia used for unlawfully using or administering a controlled
72 substance pursuant to the authority described in Section 11472 of the Health and Safety Code.

73 (17) (A) When all of the following apply:

74 (i) A sample of the blood of a person constitutes evidence that tends to show a violation
75 of subdivision (b), (c), (d), (e), or (f) of Section 655 of the Harbors and Navigation Code.

76 (ii) The person from whom the sample is being sought has refused an officer's request to
77 submit to, or has failed to complete, a blood test as required by Section 655.1 of the Harbors and
78 Navigation Code.

79 (iii) The sample will be drawn from the person in a reasonable, medically approved
80 manner.

81 (B) This paragraph is not intended to abrogate a court's mandate to determine the
82 propriety of the issuance of a search warrant on a case-by-case basis.

83 (18) When the property or things to be seized consists of evidence that tends to show that
84 a violation of paragraph (1), (2), or (3) of subdivision (j) of Section 647 has occurred or is
85 occurring.

86 (19) (A) When the property or things to be seized are data, from a recording device
87 installed by the manufacturer of a motor vehicle, that constitutes evidence that tends to show the
88 commission of a felony or misdemeanor offense involving a motor vehicle, resulting in death or
89 serious bodily injury to any person. The data accessed by a warrant pursuant to this paragraph
90 shall not exceed the scope of the data that is directly related to the offense for which the warrant
91 is issued.

92 (B) For the purposes of this paragraph, “recording device” has the same meaning as
93 defined in subdivision (b) of Section 9951 of the Vehicle Code. The scope of the data accessible
94 by a warrant issued pursuant to this paragraph shall be limited to the information described in
95 subdivision (b) of Section 9951 of the Vehicle Code.

96 (C) For the purposes of this paragraph, “serious bodily injury” has the same meaning as
97 defined in paragraph (4) of subdivision (f) of Section 243 of the Penal Code.

98 (20) When the property or things to be seized consists of evidence that tends to show that
99 a violation of Section 647.9 has occurred or is occurring. Evidence to be seized pursuant to this
100 paragraph shall be limited to evidence of a violation of Section 647.9 and shall not include
101 evidence of a violation of a departmental rule or guideline that is not a public offense under
102 California law.

103 (b) The property, things, person, or persons described in subdivision (a) may be taken on
104 the warrant from any place, or from any person in whose possession the property or things may
105 be.

106 (c) Notwithstanding subdivision (a) or (b), a search warrant shall not be issued for any
107 documentary evidence in the possession or under the control of any person who is a lawyer as
108 defined in Section 950 of the Evidence Code, a physician as defined in Section 990 of the
109 Evidence Code, a psychotherapist as defined in Section 1010 of the Evidence Code, or a member
110 of the clergy as defined in Section 1030 of the Evidence Code, and who is not reasonably
111 suspected of engaging or having engaged in criminal activity related to the documentary
112 evidence for which a warrant is requested unless the following procedure has been complied
113 with:

114 (1) At the time of the issuance of the warrant, the court shall appoint a special master in
115 accordance with subdivision (d) to accompany the person who will serve the warrant. Upon
116 service of the warrant, the special master shall inform the party served of the specific items being
117 sought and that the party shall have the opportunity to provide the items requested. If the party,
118 in the judgment of the special master, fails to provide the items requested, the special master
119 shall conduct a search for the items in the areas indicated in the search warrant.

120 (2) (A) If the party who has been served states that an item or items should not be
121 disclosed, they shall be sealed by the special master and taken to court for a hearing.

122 (B) At the hearing, the party searched shall be entitled to raise any issues that may be
123 raised pursuant to Section 1538.5 as well as a claim that the item or items are privileged, as
124 provided by law. The hearing shall be held in the superior court. The court shall provide
125 sufficient time for the parties to obtain counsel and make motions or present evidence. The
126 hearing shall be held within three days of the service of the warrant unless the court makes a
127 finding that the expedited hearing is impracticable. In that case, the matter shall be heard at the
128 earliest possible time.

129 (C) If an item or items are taken to court for a hearing, any limitations of time prescribed
130 in Chapter 2 (commencing with Section 799) of Title 3 of Part 2 shall be tolled from the time of

131 the seizure until the final conclusion of the hearing, including any associated writ or appellate
132 proceedings.

133 (3) The warrant shall, whenever practicable, be served during normal business hours. In
134 addition, the warrant shall be served upon a party who appears to have possession or control of
135 the items sought. If, after reasonable efforts, the party serving the warrant is unable to locate the
136 person, the special master shall seal and return to the court, for determination by the court, any
137 item that appears to be privileged as provided by law.

138 (d) (1) As used in this section, a “special master” is an attorney who is a member in good
139 standing of the California State Bar and who has been selected from a list of qualified attorneys
140 that is maintained by the State Bar particularly for the purposes of conducting the searches
141 described in this section. These attorneys shall serve without compensation. A special master
142 shall be considered a public employee, and the governmental entity that caused the search
143 warrant to be issued shall be considered the employer of the special master and the applicable
144 public entity, for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the
145 Government Code, relating to claims and actions against public entities and public employees. In
146 selecting the special master, the court shall make every reasonable effort to ensure that the
147 person selected has no relationship with any of the parties involved in the pending matter.
148 Information obtained by the special master shall be confidential and may not be divulged except
149 in direct response to inquiry by the court.

150 (2) In any case in which the magistrate determines that, after reasonable efforts have been
151 made to obtain a special master, a special master is not available and would not be available
152 within a reasonable period of time, the magistrate may direct the party seeking the order to
153 conduct the search in the manner described in this section in lieu of the special master.

154 (e) Any search conducted pursuant to this section by a special master may be conducted
155 in a manner that permits the party serving the warrant or that party’s designee to accompany the
156 special master as the special master conducts the search. However, that party or that party’s
157 designee may not participate in the search nor shall they examine any of the items being searched
158 by the special master except upon agreement of the party upon whom the warrant has been
159 served.

160 (f) As used in this section, “documentary evidence” includes, but is not limited to,
161 writings, documents, blueprints, drawings, photographs, computer printouts, microfilms, x-rays,
162 files, diagrams, ledgers, books, tapes, audio and video recordings, films, and papers of any type
163 or description.

164 (g) No warrant shall issue for any item or items described in Section 1070 of the
165 Evidence Code.

166 (h) No warrant shall issue for any item or items that pertain to an investigation into a
167 prohibited violation, as defined in Section 629.51.

168 (i) Notwithstanding any other law, no claim of attorney work product as described in
169 Chapter 4 (commencing with Section 2018.010) of Title 4 of Part 4 of the Code of Civil
170 Procedure shall be sustained where there is probable cause to believe that the lawyer is engaging
171 or has engaged in criminal activity related to the documentary evidence for which a warrant is
172 requested unless it is established at the hearing with respect to the documentary evidence seized
173 under the warrant that the services of the lawyer were not sought or obtained to enable or aid
174 anyone to commit or plan to commit a crime or a fraud.

175 (j) Nothing in this section is intended to limit an attorney’s ability to request an in-camera
176 hearing pursuant to the holding of the Supreme Court of California in *People v. Superior Court*
177 (*Laff*) (2001) 25 Cal.4th 703.

178 (k) In addition to any other circumstance permitting a magistrate to issue a warrant for a
179 person or property in another county, when the property or things to be seized consist of any item
180 or constitute evidence that tends to show a violation of Section 530.5, the magistrate may issue a
181 warrant to search a person or property located in another county if the person whose identifying
182 information was taken or used resides in the same county as the issuing court.

183 (l) This section shall not be construed to create a cause of action against any foreign or
184 California corporation, its officers, employees, agents, or other specified persons for providing
185 location information.

186 (m) If directed to a business, the warrant shall be accompanied by an order requiring the
187 business to verify the authenticity of the information that it produces by providing an affidavit
188 that complies with the requirements set forth in Section 1561 of the Evidence Code. Admission
189 of that information into evidence shall be subject to Section 1562 of the Evidence Code.

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

PROPONENT: Michael Fern, Eunice Kim, Stephen Wright, H. Thomas Watson, Carolin Shining, Vicki Greene, Joanna Darvish, Natasha Khamashta, Kim Tran, Faith Nouri

STATEMENT OF REASONS

The Problem: Under existing law, a CalECPA search warrant on an electronic communications service provider requires the service provider to include a custodial affidavit with the production of responsive records. (See Pen. Code, §§ 1546, subd. (d), (e), (j); 1546.1, subd. (d)(3).) This allows the responsive records to be introduced as evidence, similar to a subpoena duces tecum. (See *Melendez-Diaz v. Massachusetts* (2009) 557 U.S. 305, 322-333; *People v. Perez* (2011) 195 Cal.App.4th 801, 804.) But there is no provision for a regular business to include a custodial affidavit for a regular search warrant under Penal Code section 1524. This means that the prosecution, having served a business with a search warrant, must serve the business again with an SDT for the exact same records, in order to obtain a custodial affidavit. This is wasteful and duplicative.

The Solution: Instead of following up a search warrant on a business with a subpoena duces tecum for the same exact records just to get a custodial affidavit, this resolution would amend Section 1524 to require a custodial affidavit to be produced when a search warrant is directed at a business, applying the same rule that exists for CalECPA warrants and SDTs.

IMPACT STATEMENT

This 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: Michael Fern, Los Angeles, sclawyer@gmail.com

RESOLUTION 04-09-2023

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to add Penal Code section 4033, to read as follows:

1 § 4033

2 (a) The facility shall approve an attorney’s request to have a confidential call with the
3 inmate that they represent. The approved confidential call shall be at least 30 minutes once per
4 month, per inmate, per case, unless the inmate or attorney requests less time.

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

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

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: Unlike many other people, inmates cannot just pick up the phone, send an email, or text message to reach their attorney confidentially. Only two main options exist at every jail, and unless inmates want to waive confidentiality and privilege by calling their attorney on a recorded line, they amount to sending attorney-client communication back to before Antonio Meucci and Alexander Graham Bell created the telephone: (1) Attorney arranges a day and time to visit, and (2) attorney and client write letters, mark them legal mail, and send them off through our postal service, which works if the matters discussed are not urgent. Some jails provide a third option, which is for the attorney to arrange a day and time with the jail to call and talk to the inmate on an unrecorded line with nobody else within earshot. That is known as a “confidential call,” and it works when the matter is urgent, and the attorney cannot make it to the jail.

The problem is many jails routinely deny confidential calls, refusing to factor in that the attorney is far away, that the matter is urgent, or anything else. That takes away the ability of inmate clients and their attorney to exercise their right and need to confidentially communicate in a way that can be done quickly and without huge time and travel expenses. Not only does this make representation by an attorney much harder, but the added cost makes finding representation even harder; they already have trouble finding representation from anyone who lives or works near them, let alone from someone further away, and this adds to that problem.

Although AB 3043 (2020-2021 Reg. Sess.) added a requirement identical to this for state prisons, it does not apply to county jails.

The Solution: This resolution requires jails to allow for confidential calls between attorneys and inmates when the attorney works greater than 75 radius miles from the prison, for at least 30 minutes once a month, unless the request is for less. This will enable inmates to exercise their rights to confidential attorney-client communications better and remove an obstacle to finding representation for inmates. This will hold county jails to the same requirement as state prisons.

IMPACT STATEMENT

The impact of this resolution is uncertain.

CURRENT OR PRIOR RELATED LEGISLATION

AB 3043 (2020-2021 Reg. Sess.)

AUTHOR AND/OR PERMANENT CONTACT:

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ben_rudin@hotmail.com.

RESPONSIBLE FLOOR DELEGATE: Ben Rudin

RESOLUTION 04-10-2023

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to delete Health and Safety Code section 11351.5, and amend Health and Safety Code sections 11351, 11353.6, 11370.2, 11370.4, 11372, 11372.5, 11380.7, 11470, 11470.4, 11488, 11591, 11591.5, and 11703, Penal Code sections 629.52, 999e, 1174.4, 6243, 12022, and 29820, Welfare and Institutions Code section 676, and Civil Code section 3486:

1 ~~§ 11351.5~~

2 ~~Except as otherwise provided in this division, every person who possesses for sale or~~
3 ~~purchases for purposes of sale cocaine base, which is specified in paragraph (1) of subdivision (f)~~
4 ~~of Section 11054, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170~~
5 ~~of the Penal Code for a period of two, three, or four years.~~

6
7 § 11351

8 Except as otherwise provided in this division, every person who possesses for sale or
9 purchases for purposes of sale (1) any controlled substance specified in subdivision (b), (c), or
10 (e) of Section 11054, specified in paragraph (1) of subdivision (f) of Section 11054, specified in
11 paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b)
12 or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled
13 substance classified in Schedule III, IV, or V which is a narcotic drug, shall be punished by
14 imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, three, or
15 four years.

16
17 § 11353.6

18 (a) This section shall be known, and may be cited, as the Juvenile Drug Trafficking and
19 Schoolyard Act of 1988.

20 (b) Any person 18 years of age or over who is convicted of a violation of Section
21 ~~11351.5~~, 11352, or 11379.6, as those sections apply to paragraph (1) of subdivision (f) of Section
22 11054, or of Section 11351, 11352, or 11379.6, as those sections apply to paragraph (11) of
23 subdivision (c) of Section 11054, or of Section 11378, 11379, or 11379.6, as those sections apply
24 to paragraph (2) of subdivision (d) of Section 11055, or of a conspiracy to commit one of those
25 offenses, where the violation takes place upon the grounds of, or within 1,000 feet of, a public or
26 private elementary, vocational, junior high, or high school during hours that the school is open
27 for classes or school-related programs, or at any time when minors are using the facility where
28 the offense occurs, shall receive an additional punishment of three, four, or five years at the
29 court's discretion.

30 (c) Any person 18 years of age or older who is convicted of a violation pursuant to
31 subdivision (b) which involves a minor who is at least four years younger than that person, as a
32 full and separately served enhancement to that provided in subdivision (b), shall be punished by
33 imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for three, four, or
34 five years at the court's discretion.

35 (d) The additional terms provided in this section shall not be imposed unless the
36 allegation is charged in the accusatory pleading and admitted or found to be true by the trier of
37 fact.

38 (e) The additional terms provided in this section shall be in addition to any other
39 punishment provided by law and shall not be limited by any other provision of law.

40 (f) Notwithstanding any other provision of law, the court may strike the additional
41 punishment for the enhancements provided in this section if it determines that there are
42 circumstances in mitigation of the additional punishment and states on the record its reasons for
43 striking the additional punishment.

44 (g) "Within 1,000 feet of a public or private elementary, vocational, junior high, or high
45 school" means any public area or business establishment where minors are legally permitted to
46 conduct business which is located within 1,000 feet of any public or private elementary,
47 vocational, junior high, or high school.

48
49 § 11370.2

50 (a) Any person convicted of a violation of, or of a conspiracy to violate, Section 11351,
51 ~~11351.5~~, or 11352 shall receive, in addition to any other punishment authorized by law,
52 including Section 667.5 of the Penal Code, a full, separate, and consecutive three-year term for
53 each prior felony conviction of, or for each prior felony conviction of conspiracy to violate,
54 Section 11380, whether or not the prior conviction resulted in a term of imprisonment.

55 (b) Any person convicted of a violation of, or of a conspiracy to violate, Section
56 11378.5, 11379.5, 11379.6, or 11383 shall receive, in addition to any other punishment
57 authorized by law, including Section 667.5 of the Penal Code, a full, separate, and consecutive
58 three-year term for each prior felony conviction of, or for each prior felony conviction of
59 conspiracy to violate, Section 11380, whether or not the prior conviction resulted in a term of
60 imprisonment.

61 (c) Any person convicted of a violation of, or of a conspiracy to violate, Section 11378
62 or 11379 with respect to any substance containing a controlled substance specified in paragraph
63 (1) or (2) of subdivision (d) of Section 11055 shall receive, in addition to any other punishment
64 authorized by law, including Section 667.5 of the Penal Code, a full, separate, and consecutive
65 three-year term for each prior felony conviction of, or for each prior felony conviction of
66 conspiracy to violate, Section 11380, whether or not the prior conviction resulted in a term of
67 imprisonment.

68 (d) The enhancements provided for in this section shall be pleaded and proven as
69 provided by law.

70 (e) The conspiracy enhancements provided for in this section shall not be imposed unless
71 the trier of fact finds that the defendant conspirator was substantially involved in the planning,
72 direction, execution, or financing of the underlying offense.

73 (f) Prior convictions from another jurisdiction qualify for use under this section pursuant
74 to Section 668.

75
76 § 11370.4

77 (a) Any person convicted of a violation of, or of a conspiracy to violate, Section 11351,
78 ~~11351.5~~, or 11352 with respect to a substance containing heroin, cocaine base as specified in
79 paragraph (1) of subdivision (f) of Section 11054, or cocaine as specified in paragraph (6) of
80 subdivision (b) of Section 11055 shall receive an additional term as follows:

81 (1) Where the substance exceeds one kilogram by weight, the person shall receive an
82 additional term of three years.

83 (2) Where the substance exceeds four kilograms by weight, the person shall receive an
84 additional term of five years.

85 (3) Where the substance exceeds 10 kilograms by weight, the person shall receive an
86 additional term of 10 years.

87 (4) Where the substance exceeds 20 kilograms by weight, the person shall receive an
88 additional term of 15 years.

89 (5) Where the substance exceeds 40 kilograms by weight, the person shall receive an
90 additional term of 20 years.

91 (6) Where the substance exceeds 80 kilograms by weight, the person shall receive an
92 additional term of 25 years.

93 The conspiracy enhancements provided for in this subdivision shall not be imposed unless the
94 trier of fact finds that the defendant conspirator was substantially involved in the planning,
95 direction, execution, or financing of the underlying offense.

96 (b) Any person convicted of a violation of, or of conspiracy to violate, Section 11378,
97 11378.5, 11379, or 11379.5 with respect to a substance containing methamphetamine,
98 amphetamine, phencyclidine (PCP) and its analogs shall receive an additional term as follows:

99 (1) Where the substance exceeds one kilogram by weight, or 30 liters by liquid volume,
100 the person shall receive an additional term of three years.

101 (2) Where the substance exceeds four kilograms by weight, or 100 liters by liquid
102 volume, the person shall receive an additional term of five years.

103 (3) Where the substance exceeds 10 kilograms by weight, or 200 liters by liquid volume,
104 the person shall receive an additional term of 10 years.

105 (4) Where the substance exceeds 20 kilograms by weight, or 400 liters by liquid volume,
106 the person shall receive an additional term of 15 years.

107 In computing the quantities involved in this subdivision, plant or vegetable material seized shall
108 not be included.

109 The conspiracy enhancements provided for in this subdivision shall not be imposed unless the
110 trier of fact finds that the defendant conspirator was substantially involved in the planning,
111 direction, execution, or financing of the underlying offense.

112 (c) The additional terms provided in this section shall not be imposed unless the
113 allegation that the weight of the substance containing heroin, cocaine base as specified in
114 paragraph (1) of subdivision (f) of Section 11054, cocaine as specified in paragraph (6) of
115 subdivision (b) of Section 11055, methamphetamine, amphetamine, or phencyclidine (PCP) and
116 its analogs exceeds the amounts provided in this section is charged in the accusatory pleading
117 and admitted or found to be true by the trier of fact.

118 (d) The additional terms provided in this section shall be in addition to any other
119 punishment provided by law.

120 (e) Notwithstanding any other provision of law, the court may strike the additional
121 punishment for the enhancements provided in this section if it determines that there are
122 circumstances in mitigation of the additional punishment and states on the record its reasons for
123 striking the additional punishment.

124 § 11372
125

126 (a) In addition to the term of imprisonment provided by law for persons convicted of
127 violating Section 11350, 11351, ~~11351.5~~, 11352, 11353, 11355, 11359, 11360, or 11361, the trial
128 court may impose a fine not exceeding twenty thousand dollars (\$20,000) for each offense. In no
129 event shall a fine be levied in lieu of or in substitution for the term of imprisonment provided by
130 law for any of these offenses.

131 (b) Any person receiving an additional term pursuant to paragraph (1) of subdivision (a)
132 of Section 11370.4, may, in addition, be fined by an amount not exceeding one million dollars
133 (\$1,000,000) for each offense.

134 (c) Any person receiving an additional term pursuant to paragraph (2) of subdivision (a)
135 of Section 11370.4, may, in addition, be fined by an amount not to exceed four million dollars
136 (\$4,000,000) for each offense.

137 (d) Any person receiving an additional term pursuant to paragraph (3) of subdivision (a)
138 of Section 11370.4, may, in addition, be fined by an amount not to exceed eight million dollars
139 (\$8,000,000) for each offense.

140 (e) The court shall make a finding, prior to the imposition of the fines authorized by
141 subdivisions (b) to (e), inclusive, that there is a reasonable expectation that the fine, or a
142 substantial portion thereof, could be collected within a reasonable period of time, taking into
143 consideration the defendant's income, earning capacity, and financial resources.

144
145 § 11372.5

146 (a) Every person who is convicted of a violation of Section 11350, 11351, ~~11351.5~~,
147 11352, 11355, 11358, 11359, 11361, 11363, 11364, 11368, 11375, 11377, 11378, 11378.5,
148 11379, 11379.5, 11379.6, 11380, 11380.5, 11382, 11383, 11390, 11391, or 11550 or subdivision
149 (a) or (c) of Section 11357, or subdivision (a) of Section 11360 of this code, or Section 4230 of
150 the Business and Professions Code shall pay a criminal laboratory analysis fee in the amount of
151 fifty dollars (\$50) for each separate offense. The court shall increase the total fine necessary to
152 include this increment.

153 With respect to those offenses specified in this subdivision for which a fine is not authorized by
154 other provisions of law, the court shall, upon conviction, impose a fine in an amount not to
155 exceed fifty dollars (\$50), which shall constitute the increment prescribed by this section and
156 which shall be in addition to any other penalty prescribed by law.

157 (b) The county treasurer shall maintain a criminalistics laboratories fund. The sum of fifty
158 dollars (\$50) shall be deposited into the fund for every conviction under Section 11350, 11351,
159 ~~11351.5~~, 11352, 11355, 11358, 11359, 11361, 11363, 11364, 11368, 11375, 11377, 11378,
160 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, 11382, 11383, 11390, 11391, or 11550,
161 subdivision (a) or (c) of Section 11357, or subdivision (a) of Section 11360 of this code, or
162 Section 4230 of the Business and Professions Code, in addition to fines, forfeitures, and other
163 moneys which are transmitted by the courts to the county treasurer pursuant to Section 11502.
164 The deposits shall be made prior to any transfer pursuant to Section 11502. The county may
165 retain an amount of this money equal to its administrative cost incurred pursuant to this section.
166 Moneys in the criminalistics laboratories fund shall, except as otherwise provided in this section,
167 be used exclusively to fund (1) costs incurred by criminalistics laboratories providing
168 microscopic and chemical analyses for controlled substances, in connection with criminal
169 investigations conducted within both the incorporated or unincorporated portions of the county,
170 (2) the purchase and maintenance of equipment for use by these laboratories in performing the
171 analyses, and (3) for continuing education, training, and scientific development of forensic

172 scientists regularly employed by these laboratories. Moneys in the criminalistics laboratory fund
173 shall be in addition to any allocations pursuant to existing law. As used in this section,
174 “criminalistics laboratory” means a laboratory operated by, or under contract with, a city, county,
175 or other public agency, including a criminalistics laboratory of the Department of Justice, (1)
176 which has not less than one regularly employed forensic scientist engaged in the analysis of
177 solid-dose controlled substances, and (2) which is registered as an analytical laboratory with the
178 Drug Enforcement Administration of the United States Department of Justice for the possession
179 of all scheduled controlled substances. In counties served by criminalistics laboratories of the
180 Department of Justice, amounts deposited in the criminalistics laboratories fund, after deduction
181 of appropriate and reasonable county overhead charges not to exceed 5 percent attributable to the
182 collection thereof, shall be paid by the county treasurer once a month to the Controller for
183 deposit into the state General Fund, and shall be excepted from the expenditure requirements
184 otherwise prescribed by this subdivision.

185 (c) The county treasurer shall, at the conclusion of each fiscal year, determine the amount
186 of any funds remaining in the special fund established pursuant to this section after expenditures
187 for that fiscal year have been made for the purposes herein specified. The board of supervisors
188 may, by resolution, assign the treasurer’s duty to determine the amount of remaining funds to the
189 auditor or another county officer. The county treasurer shall annually distribute those surplus
190 funds in accordance with the allocation scheme for distribution of fines and forfeitures set forth
191 in Section 11502.

192
193 § 11380.7

194 (a) Notwithstanding any other provision of law, any person who is convicted of
195 trafficking in heroin, cocaine, cocaine base, methamphetamine, or phencyclidine (PCP), or of a
196 conspiracy to commit trafficking in heroin, cocaine, cocaine base, methamphetamine, or
197 phencyclidine (PCP), in addition to the punishment imposed for the conviction, shall be
198 imprisoned pursuant to subdivision (h) of Section 1170 of the Penal Code for an additional one
199 year if the violation occurred upon the grounds of, or within 1,000 feet of, a drug treatment
200 center, detoxification facility, or homeless shelter.

201 (b) (1) The additional punishment provided in this section shall not be imposed unless the
202 allegation is charged in the accusatory pleading and admitted by the defendant or found to be
203 true by the trier of fact.

204 (2) The additional punishment provided in this section shall not be imposed if any other
205 additional punishment is imposed pursuant to Section 11353.1, 11353.5, 11353.6, 11353.7, or
206 11380.1.

207 (c) Notwithstanding any other provision of law, the court may strike the additional
208 punishment provided for in this section if it determines that there are circumstances in mitigation
209 of the additional punishment and states on the record its reasons for striking the additional
210 punishment. In determining whether or not to strike the additional punishment, the court shall
211 consider the following factors and any relevant factors in aggravation or mitigation in Rules
212 4.421 and 4.423 of the California Rules of Court.

213 (1) The following factors indicate that the court should exercise its discretion to strike the
214 additional punishment unless these factors are outweighed by factors in aggravation:

215 (A) The defendant is homeless, or is in a homeless shelter or transitional housing.

216 (B) The defendant lacks resources for the necessities of life.

217 (C) The defendant is addicted to or dependent on controlled substances.

218 (D) The defendant’s motive was merely to maintain a steady supply of drugs for personal
219 use.

220 (E) The defendant was recruited or exploited by a more culpable person to commit the
221 crime.

222 (2) The following factors indicate that the court should not exercise discretion to strike
223 the additional punishment unless these factors are outweighed by factors in mitigation:

224 (A) The defendant, in committing the crime, preyed on homeless persons, drug addicts or
225 substance abusers who were seeking treatment, shelter or transitional services.

226 (B) The defendant’s primary motive was monetary compensation.

227 (C) The defendant induced others, particularly homeless persons, drug addicts and
228 substance abusers, to become involved in trafficking.

229 (d) For the purposes of this section, the following terms have the following meanings:

230 (1) “Detoxification facility” means any premises, place, or building in which 24-hour
231 residential nonmedical services are provided to adults who are recovering from problems related
232 to alcohol, drug, or alcohol and drug misuse or abuse, and who need alcohol, drug, or alcohol
233 and drug recovery treatment or detoxification services.

234 (2) “Drug treatment program” or “drug treatment” has the same meaning set forth in
235 subdivision (b) of Section 1210 of the Penal Code.

236 (3) “Homeless shelter” includes, but is not limited to, emergency shelter housing, as well
237 as transitional housing, but does not include domestic violence shelters. “Emergency shelter
238 housing” is housing with minimal support services for homeless persons in which residency is
239 limited to six months or less and is not related to the person’s ability to pay. “Transitional
240 housing” means housing with supportive services, including self-sufficiency development
241 services, which is exclusively designed and targeted to help recently homeless persons find
242 permanent housing as soon as reasonably possible, limits residency to 24 months, and in which
243 rent and service fees are based on ability to pay.

244 (4) “Trafficking” means any of the unlawful activities specified in Sections 11351, ~~11351.5~~,
245 11352, 11353, 11354, 11378, 11379, 11379.6, and 11380. It does not include simple possession
246 or drug use.

247

248 § 11470

249 The following are subject to forfeiture:

250 (a) All controlled substances which have been manufactured, distributed, dispensed, or
251 acquired in violation of this division.

252 (b) All raw materials, products, and equipment of any kind which are used, or intended
253 for use, in manufacturing, compounding, processing, delivering, importing, or exporting any
254 controlled substance in violation of this division.

255 (c) All property except real property or a boat, airplane, or any vehicle which is used, or
256 intended for use, as a container for property described in subdivision (a) or (b).

257 (d) All books, records, and research products and materials, including formulas,
258 microfilm, tapes, and data which are used, or intended for use, in violation of this division.

259 (e) The interest of any registered owner of a boat, airplane, or any vehicle other than an
260 implement of husbandry, as defined in Section 36000 of the Vehicle Code, which has been used
261 as an instrument to facilitate the manufacture of, or possession for sale or sale of 14.25 grams or
262 more of heroin, or a substance containing 14.25 grams or more of heroin, or 14.25 grams or more
263 of a substance containing heroin, or 28.5 grams or more of Schedule I controlled substances

264 except cannabis, peyote, or psilocybin; 10 pounds dry weight or more of cannabis, peyote, or
265 psilocybin; or 28.5 grams or more of cocaine, as specified in paragraph (6) of subdivision (b) of
266 Section 11055, cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054, or
267 methamphetamine; or a substance containing 28.5 grams or more of cocaine, as specified in
268 paragraph (6) of subdivision (b) of Section 11055, cocaine base as specified in paragraph (1) of
269 subdivision (f) of Section 11054, or methamphetamine; or 57 grams or more of a substance
270 containing cocaine, as specified in paragraph (6) of subdivision (b) of Section 11055, cocaine
271 base as specified in paragraph (1) of subdivision (f) of Section 11054, or methamphetamine; or
272 28.5 grams or more of Schedule II controlled substances. An interest in a vehicle which may be
273 lawfully driven on the highway with a class C, class M1, or class M2 license, as prescribed in
274 Section 12804.9 of the Vehicle Code, shall not be forfeited under this subdivision if there is a
275 community property interest in the vehicle by a person other than the defendant and the vehicle
276 is the sole class C, class M1, or class M2 vehicle available to the defendant's immediate family.

277 (f) All moneys, negotiable instruments, securities, or other things of value furnished or
278 intended to be furnished by any person in exchange for a controlled substance, all proceeds
279 traceable to such an exchange, and all moneys, negotiable instruments, or securities used or
280 intended to be used to facilitate any violation of Section 11351, ~~11351.5~~, 11352, 11355, 11359,
281 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11382, or 11383 of this code, or
282 Section 182 of the Penal Code, or a felony violation of Section 11366.8 of this code, insofar as
283 the offense involves manufacture, sale, possession for sale, offer for sale, or offer to
284 manufacture, or conspiracy to commit at least one of those offenses, if the exchange, violation,
285 or other conduct which is the basis for the forfeiture occurred within five years of the seizure of
286 the property, or the filing of a petition under this chapter, or the issuance of an order of forfeiture
287 of the property, whichever comes first.

288 (g) The real property of any property owner who is convicted of violating Section 11366,
289 11366.5, or 11366.6 with respect to that property. However, property which is used as a family
290 residence or for other lawful purposes, or which is owned by two or more persons, one of whom
291 had no knowledge of its unlawful use, shall not be subject to forfeiture.

292 (h) (1) Subject to the requirements of Section 11488.5 and except as further limited by
293 this subdivision to protect innocent parties who claim a property interest acquired from a
294 defendant, all right, title, and interest in any personal property described in this section shall vest
295 in the state upon commission of the act giving rise to forfeiture under this chapter, if the state or
296 local governmental entity proves a violation of Section 11351, ~~11351.5~~, 11352, 11355, 11359,
297 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11382, or 11383 of this code, or
298 Section 182 of the Penal Code, or a felony violation of Section 11366.8 of this code, insofar as
299 the offense involves the manufacture, sale, possession for sale, offer for sale, offer to
300 manufacture, or conspiracy to commit at least one of those offenses, in accordance with the
301 burden of proof set forth in paragraph (1) of subdivision (i) of Section 11488.4 or, in the case of
302 cash or negotiable instruments in excess of twenty-five thousand dollars (\$25,000), paragraph (4)
303 of subdivision (i) of Section 11488.4.

304 (2) The operation of the special vesting rule established by this subdivision shall be
305 limited to circumstances where its application will not defeat the claim of any person, including a
306 bona fide purchaser or encumbrancer who, pursuant to Section 11488.5, 11488.6, or 11489,
307 claims an interest in the property seized, notwithstanding that the interest in the property being
308 claimed was acquired from a defendant whose property interest would otherwise have been
309 subject to divestment pursuant to this subdivision.

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§ 11470.4

The provisions of this chapter apply to any minor who has been found to be a person described in Section 602 of the Welfare and Institutions Code because of a violation of Section 11351, ~~11351.5~~, 11352, 11355, 11366, 11366.5, 11366.6, 11378.5, 11379, 11379.5, 11379.6, or 11382.

§ 11488

(a) Any peace officer of this state, subsequent to making or attempting to make an arrest for a violation of Section 11351, ~~11351.5~~, 11352, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, or 11382 of this code, or Section 182 of the Penal Code insofar as the offense involves manufacture, sale, purchase for the purpose of sale, possession for sale or offer to manufacture or sell, or conspiracy to commit one of those offenses, may seize any item subject to forfeiture under subdivisions (a) to (f), inclusive, of Section 11470. The peace officer shall also notify the Franchise Tax Board of a seizure where there is reasonable cause to believe that the value of the seized property exceeds five thousand dollars (\$5,000).

(b) Receipts for property seized pursuant to this section shall be delivered to any person out of whose possession such property was seized, in accordance with Section 1412 of the Penal Code. In the event property seized was not seized out of anyone's possession, receipt for the property shall be delivered to the individual in possession of the premises at which the property was seized.

(c) There shall be a presumption affecting the burden of proof that the person to whom a receipt for property was issued is the owner thereof. This presumption may, however, be rebutted at the forfeiture hearing specified in Section 11488.5.

§ 11591

Every sheriff, chief of police, or the Commissioner of the California Highway Patrol, upon the arrest for any of the controlled substance offenses described in Section 11350, 11351, ~~11351.5~~, 11352, 11353, 11353.5, 11353.7, 11354, 11355, 11358, 11359, 11360, 11361, 11363, 11366, 11366.5, 11366.6, 11368, 11370.1, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11383, or 11550, or subdivision (a) of Section 11377, or Section 11364, insofar as that section relates to paragraph (12) of subdivision (d) of Section 11054, of any school employee, shall, provided that the sheriff, chief of police, or Commissioner of the California Highway Patrol knows that the arrestee is a school employee, do one of the following:

(a) If the school employee is a teacher in any of the public schools of this state, the sheriff, chief of police, or Commissioner of the California Highway Patrol shall immediately notify by telephone the superintendent of schools of the school district employing the teacher and shall immediately give written notice of the arrest to the Commission on Teacher Credentialing and to the superintendent of schools in the county where the person is employed. Upon receipt of the notice, the county superintendent of schools and the Commission on Teacher Credentialing shall immediately notify the governing board of the school district employing the person.

(b) If the school employee is a nonteacher in any of the public schools of this state, the sheriff, chief of police, or Commissioner of the California Highway Patrol shall immediately notify by telephone the superintendent of schools of the school district employing the nonteacher and shall immediately give written notice of the arrest to the governing board of the school district employing the person.

356 (c) If the school employee is a teacher in any private school of this state, the sheriff, chief
357 of police, or Commissioner of the California Highway Patrol shall immediately notify by
358 telephone the private school authority employing the teacher and shall immediately give written
359 notice of the arrest to the private school authority employing the teacher.

360 (d) If a person described in subdivision (a) was arrested for an offense defined in Section
361 11378, 11379, or 11380, this section shall only apply to offenses involving controlled substances
362 specified in paragraph (12) of subdivision (d) of Section 11054 and paragraph (2) of subdivision
363 (d) of Section 11055, and to analogs of these substances, as defined in Section 11401. If a person
364 described in subdivision (a) was arrested for an offense defined in Section 11379 or 11379.5, this
365 section does not apply if the arrest was for transporting, offering to transport, or attempting to
366 transport a controlled substance. This section does not apply to a person who was arrested for a
367 misdemeanor under Section 11360.

368
369 § 11591.5

370 (a) Every sheriff or chief of police, upon the arrest for any of the controlled substance
371 offenses described in Section 11350, 11351, ~~11351.5~~, 11352, 11353, 11353.5, 11353.7, 11354,
372 11355, 11358, 11359, 11360, 11361, 11363, 11366, 11366.5, 11366.6, 11368, 11370.1, 11378,
373 11378.5, 11379, 11379.5, 11379.6, 11380, 11383, or 11550, or subdivision (a) of Section 11377,
374 or Section 11364, insofar as that section relates to paragraph (9) of subdivision (d) of Section
375 11054, of any teacher or instructor employed in any community college district shall
376 immediately notify by telephone the superintendent of the community college district employing
377 the teacher or instructor and shall immediately give written notice of the arrest to the Office of
378 the Chancellor of the California Community Colleges. Upon receipt of that notice, the district
379 superintendent shall immediately notify the governing board of the community college district
380 employing the person.

381 (b) If a person described in subdivision (a) was arrested for an offense defined in Section
382 11378, 11379, or 11380, this section shall only apply to offenses involving controlled substances
383 specified in paragraph (12) of subdivision (d) of Section 11054 and paragraph (2) of subdivision
384 (d) of Section 11055, and to analogs of these substances, as defined in Section 11401. If a person
385 described in subdivision (a) was arrested for an offense defined in Section 11379 or 11379.5, this
386 section does not apply if the arrest was for transporting, offering to transport, or attempting to
387 transport a controlled substance. This section does not apply to a person who was arrested for a
388 misdemeanor under Section 11360.

389
390 § 11703

391 As used in this division:

392 (a) "Marketing of illegal controlled substances" means the possession for sale, sale, or
393 distribution of a specified illegal controlled substance, and shall include all aspects of making
394 such a controlled substance available, including, but not limited to, its manufacture.

395 (b) "Individual user of an illegal controlled substance" means the individual whose use of
396 a specified illegal controlled substance is the basis of an action brought under this division.

397 (c) "Level 1 offense" means the possession for sale of less than four ounces or the sale or
398 furnishing of less than one ounce of a specified illegal controlled substance, or the cultivation of
399 at least 25 plants but less than 50 plants, the furnishing of more than 28.5 grams, or the
400 possession for sale or sale of up to four pounds, of marijuana.

401 (d) “Level 2 offense” means the possession for sale of four ounces or more but less than
402 eight ounces of, or the sale or furnishing of one ounce or more but less than two ounces of, a
403 specified illegal controlled substance, or the cultivation of at least 50 but less than 75 plants, the
404 possession for sale of four pounds or more but less than eight pounds, or the sale or furnishing of
405 more than one pound but less than five pounds, of marijuana.

406 (e) “Level 3 offense” means the possession for sale of eight ounces or more but less than
407 16 ounces of, or the sale or furnishing of two ounces or more but less than four ounces of, a
408 specified illegal controlled substance, or the cultivation of at least 75 but less than 100 plants, the
409 possession for sale of eight pounds or more but less than 16 pounds, or the sale or furnishing of
410 more than five pounds but less than 10 pounds, of marijuana.

411 (f) “Level 4 offense” means the possession for sale of 16 ounces or more of, or the sale or
412 furnishing of four ounces or more of, a specified illegal controlled substance, or the cultivation
413 of 100 plants or more of, the possession for sale of 16 pounds of, or the sale or furnishing of
414 more than 10 pounds of, marijuana.

415 (g) “Participate in the marketing of illegal controlled substances” means to transport,
416 import into this state, sell, possess with intent to sell, furnish, administer, or give away, or offer
417 to transport, import into this state, sell, furnish, administer, or give away a specified illegal
418 controlled substance. “Participate in the marketing of illegal controlled substances” shall include
419 the manufacturing of an illegal controlled substance, but shall not include the purchase or receipt
420 of an illegal controlled substance for personal use only.

421 (h) “Person” means an individual, governmental entity, corporation, firm, trust,
422 partnership, or incorporated or unincorporated association, existing under or authorized by the
423 laws of this state, another state, or a foreign country.

424 (i) “Period of illegal use” means, in relation to the individual user of an illegal controlled
425 substance, the time of the individual’s first illegal use of an illegal controlled substance to the
426 accrual of the cause of action.

427 (j) “Place of illegal activity” means, in relation to the individual user of an illegal
428 controlled substance, each county in which the individual illegally possesses or uses an illegal
429 controlled substance during the period of the individual’s use of an illegal controlled substance.

430 (k) “Place of participation” means, in relation to a defendant in an action brought under
431 this division, each county in which the person participates in the marketing of illegal controlled
432 substances during the period of the person’s participation in the marketing of illegal controlled
433 substances.

434 (l) “Specified illegal controlled substance” means cocaine, phencyclidine, heroin, or
435 methamphetamine and any other illegal controlled substance the manufacture, cultivation,
436 importation into this state, transportation, possession for sale, sale, furnishing, administering, or
437 giving away of which is a violation of Section 11351, ~~11351.5~~, 11352, 11358, 11359, 11360,
438 11378.5, 11379.5, or 11383.

439
440 § 629.52

441 (a) This section shall be known, and may be cited, as the Juvenile Drug Trafficking and
442 Schoolyard Act of 1988.

443 (b) Any person 18 years of age or over who is convicted of a violation of Section
444 ~~11351.5~~, 11352, or 11379.6, as those sections apply to paragraph (1) of subdivision (f) of Section
445 11054, or of Section 11351, 11352, or 11379.6, as those sections apply to paragraph (11) of
446 subdivision (c) of Section 11054, or of Section 11378, 11379, or 11379.6, as those sections apply

447 to paragraph (2) of subdivision (d) of Section 11055, or of a conspiracy to commit one of those
448 offenses, where the violation takes place upon the grounds of, or within 1,000 feet of, a public or
449 private elementary, vocational, junior high, or high school during hours that the school is open
450 for classes or school-related programs, or at any time when minors are using the facility where
451 the offense occurs, shall receive an additional punishment of three, four, or five years at the
452 court's discretion.

453 (c) Any person 18 years of age or older who is convicted of a violation pursuant to
454 subdivision (b) which involves a minor who is at least four years younger than that person, as a
455 full and separately served enhancement to that provided in subdivision (b), shall be punished by
456 imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for three, four, or
457 five years at the court's discretion.

458 (d) The additional terms provided in this section shall not be imposed unless the
459 allegation is charged in the accusatory pleading and admitted or found to be true by the trier of
460 fact.

461 (e) The additional terms provided in this section shall be in addition to any other
462 punishment provided by law and shall not be limited by any other provision of law.

463 (f) Notwithstanding any other provision of law, the court may strike the additional
464 punishment for the enhancements provided in this section if it determines that there are
465 circumstances in mitigation of the additional punishment and states on the record its reasons for
466 striking the additional punishment.

467 (g) "Within 1,000 feet of a public or private elementary, vocational, junior high, or high
468 school" means any public area or business establishment where minors are legally permitted to
469 conduct business which is located within 1,000 feet of any public or private elementary,
470 vocational, junior high, or high school.

471
472 § 999e

473 (a) An individual who is under arrest for the commission or attempted commission of one
474 or more of the felonies listed in paragraph (1) and who is either being prosecuted for three or
475 more separate offenses not arising out of the same transaction involving one or more of those
476 felonies, or has been convicted during the preceding 10 years for any felony listed in paragraph
477 (2) of this subdivision, or at least two convictions during the preceding 10 years for any felony
478 listed in paragraph (3) of this subdivision shall be the subject of career criminal prosecution
479 efforts.

480 (1) Murder, manslaughter, rape, sexual assault, child molestation, robbery, carjacking,
481 burglary, arson, receiving stolen property, grand theft, grand theft auto, lewd and lascivious
482 conduct upon a child, assault with a firearm, discharging a firearm into an inhabited structure or
483 vehicle, owning, possessing, or having custody or control of a firearm, as specified in
484 subdivision (a) or (b) of Section 29800, or any unlawful act relating to controlled substances in
485 violation of Section 11351, ~~11351.5~~, 11352, or 11378 of the Health and Safety Code.

486 (2) Robbery of the first degree, carjacking, burglary of the first degree, arson as defined
487 in Section 451, unlawfully causing a fire as defined in Section 452, forcible rape, sodomy or oral
488 copulation committed with force, lewd or lascivious conduct committed upon a child, kidnapping
489 as defined in Section 209 or 209.5, murder, or manslaughter.

490 (3) Grand theft, grand theft auto, receiving stolen property, robbery of the second degree,
491 burglary of the second degree, kidnapping as defined in Section 207, assault with a deadly

492 weapon or instrument, or any unlawful act relating to controlled substances in violation of
493 Section 11351 or 11352 of the Health and Safety Code.

494 For purposes of this chapter, the 10-year periods specified in this section shall be exclusive of
495 any time which the arrested person has served in state prison.

496 (b) In applying the career criminal selection criteria set forth above, a district attorney
497 may elect to limit career criminal prosecution efforts to persons arrested for any one or more of
498 the felonies listed in subdivision (a) of this section if crime statistics demonstrate that the
499 incidence of one or more of these felonies presents a particularly serious problem in the county.

500 (c) In exercising the prosecutorial discretion granted by Section 999g, the district attorney
501 shall consider the character, background, and prior criminal background of the defendant, and the
502 number and the seriousness of the offenses currently charged against the defendant.

503

504 § 1174.4

505 (a) Persons eligible for participation in this alternative sentencing program shall meet all
506 of the following criteria:

507 (1) Pregnant women with an established history of substance abuse, or pregnant or
508 parenting women with an established history of substance abuse who have one or more children
509 under six years old at the time of entry into the program. For women with children, at least one
510 eligible child shall reside with the mother in the facility.

511 (2) Never served a prior prison term for, nor been convicted in the present proceeding of,
512 committing or attempting to commit, any of the following offenses:

513 (A) Murder or voluntary manslaughter.

514 (B) Mayhem.

515 (C) Rape

516 (D) Kidnapping.

517 (E) Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily
518 injury on the victim or another person.

519 (F) Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful
520 bodily injury on the victim or another person.

521 (G) Lewd acts on a child under 14 years of age, as defined in Section 288.

522 (H) Any felony punishable by death or imprisonment in the state prison for life.

523 (I) Any felony in which the defendant inflicts great bodily injury on any person, other
524 than an accomplice, that has been charged and proved as provided for in Section 12022.53,
525 12022.7, or 12022.9, or any felony in which the defendant uses a firearm, as provided in Section
526 12022.5, 12022.53, or 12022.55, in which the use has been charged and proved.

527 (J) Robbery.

528 (K) Any robbery perpetrated in an inhabited dwelling house or trailer coach as defined in
529 the Vehicle Code, or in the inhabited portion of any other building, wherein it is charged and
530 proved that the defendant personally used a deadly or dangerous weapon, as provided in
531 subdivision (b) of Section 12022, in the commission of that robbery.

532 (L) Arson in violation of subdivision (a) of Section 451.

533 (M) Sexual penetration in violation of subdivision (a) of Section 289 if the act is
534 accomplished against the victim's will by force, violence, duress, menace, or fear of immediate
535 and unlawful bodily injury on the victim or another person.

536 (N) Rape or sexual penetration in concert, in violation of Section 264.1.

537 (O) Continual sexual abuse of a child in violation of Section 288.5.

538 (P) Assault with intent to commit mayhem, rape, sodomy, oral copulation, rape in concert
539 with another, lascivious acts upon a child, or sexual penetration.

540 (Q) Assault with a deadly weapon or with force likely to produce great bodily injury in
541 violation of subdivision (a) of Section 245.

542 (R) Any violent felony defined in Section 667.5.

543 (S) A violation of Section 12022.

544 (T) A violation of Section 18745.

545 (U) Burglary of the first degree.

546 (V) A violation of Section 11351, ~~11351.5~~, 11352, 11353, 11358, 11359, 11360, 11370.1,
547 11370.6, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, or 11383 of the Health and Safety
548 Code.

549 (3) Has not been sentenced to state prison for a term exceeding 36 months.

550 (b) Prior to sentencing, if the court proposes to give consideration to a placement, the
551 court shall consider a written evaluation by the probation department, which shall include the
552 following:

553 (1) Whether the defendant is eligible for participation pursuant to this section.

554 (2) Whether participation by the defendant and her eligible children is deemed to be in
555 the best interests of the children.

556 (3) Whether the defendant is amenable to treatment for substance abuse and would
557 benefit from participation in the program.

558 (4) Whether the program is deemed to be in the best interests of an eligible child of the
559 defendant, as determined by a representative of the appropriate child welfare services agency of
560 the county if the child is a dependent child of the juvenile court pursuant to Section 300 of the
561 Welfare and Institutions Code.

562 (c) The district attorney shall make a recommendation to the court as to whether or not
563 the defendant would benefit from the program, which the court shall consider in making its
564 decision. If the court's decision is without the concurrence of the district attorney, the court shall
565 specify its reasons in writing and enter them into the record.

566 (d) If the court determines that the defendant may benefit from participation in this
567 program, the court may impose a sentence of imprisonment pursuant to subdivision (h) of
568 Section 1170 with the recommendation that the defendant participate in the program pursuant to
569 this chapter. The court shall notify the department within 48 hours of imposition of this sentence.

570 (e) The Director of Corrections shall consider the court's recommendation in making a
571 determination on the inmate's placement in the program.

572 (f) Women accepted for the program by the Director of Corrections shall be delivered by
573 the county, pursuant to Section 1202a, to the facility selected by the department. Before the
574 director accepts a woman for the program, the county shall provide to the director the necessary
575 information to determine her eligibility and appropriate placement status. Priority for services
576 and aftercare shall be given to inmates who are incarcerated in a county, or adjacent to a county,
577 in which a program facility is located.

578 (g) Prior to being admitted to the program, each participant shall voluntarily sign an
579 agreement specifying the terms and conditions of participation in the program.

580 (h) The department may refer inmates back to the sentencing court if the department
581 determines that an eligible inmate has not been recommended for the program. The department
582 shall refer the inmate to the court by an evaluative report so stating the department's assessment
583 of eligibility, and requesting a recommendation by the court.

584 (i) Women who successfully complete the program, including the minimum of one year
585 of transition services under intensive parole supervision, shall be discharged from parole.
586 Women who do not successfully complete the program shall be returned to imprisonment
587 pursuant to subdivision (h) of Section 1170 where they shall serve their original sentences. These
588 persons shall receive full credit against their original sentences for the time served in the
589 program, pursuant to Section 2933.

590
591 § 6243

592 Primary offender groups to be dealt with in the programs established by this chapter shall
593 be probation or parole violators who would otherwise be returned to jail or prison.

594 The following standards for selection shall apply:

595 (a) The Director of Corrections, or his or her designee, together with local parole
596 officials, shall select offenders committed to state prison for placement in not less than 50
597 percent of the program beds established by this chapter. Eligible offenders shall be parole
598 violators and felons committed to state prison who, after credit deduction for presentence
599 incarceration and pursuant to Section 2933, would otherwise have served an actual term of six
600 months or less in state prison. Offenders selected shall have a demonstrated history of alcohol or
601 controlled substances abuse, or both, but shall not include any of the following:

602 (1) Offenders convicted at anytime of a violent felony, as defined in subdivision (c) of
603 Section 667.5 whether in California or any other jurisdiction for an offense with the same
604 elements.

605 (2) Offenders who have lost work credits while currently in prison for an offense listed in
606 paragraph (1) of subdivision (a) of Section 2932, except for assault with a deadly weapon or a
607 caustic substance.

608 (3) Offenders currently convicted of burglary of an inhabited dwelling.

609 (4) Offenders convicted on two or more separate occasions of violations of Section
610 11351, ~~11351.5~~, 11352, 11353, 11370.1, 11370.6, 11378.5, 11379, 11379.5, or 11379.6 of the
611 Health and Safety Code for selling or transporting for sale, manufacturing for sale, processing for
612 sale, importing for sale, or administering any controlled substance listed in these sections, or for
613 attempting to commit any of these offenses for those purposes and who has served at least one
614 term in prison for violating one of these sections.

615 (b) The maximum period of participation in a center program shall not exceed the
616 maximum period for which the offender could have been incarcerated in county jail or state
617 prison. Upon release from a center, a state offender shall be subject to the parole provisions of
618 Section 3000. Local offenders shall be subject to all conditions of probation, if probation was
619 imposed at the time of sentencing.

620 (c) The parole of an offender placed in a center following revocation of parole shall
621 remain revoked during the period of participation in a center.

622 (d) Individuals eligible for this program who are deemed unfit for participation by either
623 custodial or program staff at any time shall be transferred to a state prison or county facility to
624 which they would otherwise have been committed and shall serve their remaining sentence
625 minus the time served at the center.

626 (e) Except upon agreement between the county and the department, placement of state
627 offenders in a center is limited to parolees on parole in that county and new commitments
628 sentenced from that county.

629 (f) The county shall select local offenders for placement in up to 50 percent of the
630 program beds established by this chapter. These offenders shall be persons convicted and
631 sentenced to county jail, whether or not as a condition of probation, and who have a
632 demonstrated history of abuse of alcohol or controlled substances, or both.

633 (g) State prisoners participating in these programs shall be eligible for work credit time
634 reductions under provisions applicable to state prisoners committed to state prison.

635 (h) Primary emphasis in this program shall be toward parole violators and persons
636 sentenced to prison or jail for short terms and for whom rehabilitation efforts should be provided.

637 (i) The department shall regularly notify the sheriff's department and the probation
638 department of a participating county of offenders placed into the program or released from the
639 program established by this chapter. The county shall likewise regularly notify local parole
640 officials of persons placed into or released from its programs set up by this chapter.
641 The sheriff's department, probation and parole officials, and the Board of Prison Terms shall be
642 permitted to recommend for or against placement of persons into these programs, as shall the
643 judiciary of the county.

644 (j) Facilities may not serve as housing or parole or probation offices for offenders not a
645 part of programs set up by this chapter.

646 § 12022

647 (a) (1) Except as provided in subdivisions (c) and (d), a person who is armed with a
648 firearm in the commission of a felony or attempted felony shall be punished by an additional and
649 consecutive term of imprisonment pursuant to subdivision (h) of Section 1170 for one year,
650 unless the arming is an element of that offense. This additional term shall apply to a person who
651 is a principal in the commission of a felony or attempted felony if one or more of the principals
652 is armed with a firearm, whether or not the person is personally armed with a firearm.

653 (2) Except as provided in subdivision (c), and notwithstanding subdivision (d), if the
654 firearm is an assault weapon, as defined in Section 30510 or 30515, or a machinegun, as defined
655 in Section 16880, or a .50 BMG rifle, as defined in Section 30530, the additional and consecutive
656 term described in this subdivision shall be three years imprisonment pursuant to subdivision (h)
657 of Section 1170 whether or not the arming is an element of the offense of which the person was
658 convicted. The additional term provided in this paragraph shall apply to any person who is a
659 principal in the commission of a felony or attempted felony if one or more of the principals is
660 armed with an assault weapon, machinegun, or a .50 BMG rifle, whether or not the person is
661 personally armed with an assault weapon, machinegun, or a .50 BMG rifle.

662 (b) (1) A person who personally uses a deadly or dangerous weapon in the commission of
663 a felony or attempted felony shall be punished by an additional and consecutive term of
664 imprisonment in the state prison for one year, unless use of a deadly or dangerous weapon is an
665 element of that offense.

666 (2) If the person described in paragraph (1) has been convicted of carjacking or attempted
667 carjacking, the additional term shall be in the state prison for one, two, or three years.

668 (3) When a person is found to have personally used a deadly or dangerous weapon in the
669 commission of a felony or attempted felony as provided in this subdivision and the weapon is
670 owned by that person, the court shall order that the weapon be deemed a nuisance and disposed
671 of in the manner provided in Sections 18000 and 18005.

672 (c) Notwithstanding the enhancement set forth in subdivision (a), a person who is
673 personally armed with a firearm in the commission of a violation or attempted violation of
674

675 Section 11351, ~~11351.5~~, 11352, 11366.5, 11366.6, 11378, 11378.5, 11379, 11379.5, or 11379.6
676 of the Health and Safety Code shall be punished by an additional and consecutive term of
677 imprisonment pursuant to subdivision (h) of Section 1170 for three, four, or five years.

678 (d) Notwithstanding the enhancement set forth in subdivision (a), a person who is not
679 personally armed with a firearm who, knowing that another principal is personally armed with a
680 firearm, is a principal in the commission of an offense or attempted offense specified in
681 subdivision (c), shall be punished by an additional and consecutive term of imprisonment
682 pursuant to subdivision (h) of Section 1170 for one, two, or three years.

683 (e) For purposes of imposing an enhancement under Section 1170.1, the enhancements
684 under this section shall count as a single enhancement.

685 (f) Notwithstanding any other provision of law, the court may strike the additional
686 punishment for the enhancements provided in subdivision (c) or (d) in an unusual case where the
687 interests of justice would best be served, if the court specifies on the record and enters into the
688 minutes the circumstances indicating that the interests of justice would best be served by that
689 disposition.

690
691 § 29820

692 (a) This section applies to a person who satisfies both of the following requirements:

693 (1) The person meets one of the following:

694 (A) The person is alleged to have committed an offense listed in subdivision (b) of
695 Section 707 of the Welfare and Institutions Code.

696 (B) The person was convicted of violating Section 11351 ~~or 11351.5~~ of the Health and
697 Safety Code by possessing for sale, or Section 11352 of the Health and Safety Code by selling, a
698 substance containing 28.5 grams or more of cocaine as specified in paragraph (6) of subdivision
699 (b) of Section 11055 of, or cocaine base as specified in paragraph (1) of subdivision (f) of
700 Section 11054 of, the Health and Safety Code, or 57 grams or more of a substance containing at
701 least 5 grams of cocaine as specified in paragraph (6) of subdivision (b) of Section 11055 of, or
702 cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054 of, the Health and
703 Safety Code.

704 (C) The person was convicted of violating Section 11378 of the Health and Safety Code
705 by possessing for sale, or Section 11379 of the Health and Safety Code by selling, a substance
706 containing 28.5 grams or more of methamphetamine or 57 grams or more of a substance
707 containing methamphetamine.

708 (D) The person was convicted of violating subdivision (a) of Section 11379.6 of the
709 Health and Safety Code, except those who manufacture phencyclidine, or who is convicted of an
710 act that is punishable under subdivision (b) of Section 11379.6 of the Health and Safety Code,
711 except those who offer to perform an act that aids in the manufacture of phencyclidine.

712 (E) Except as otherwise provided in Section 1203.07, the person was convicted of
713 violating Section 11353 or 11380 of the Health and Safety Code by using, soliciting, inducing,
714 encouraging, or intimidating a minor to manufacture, compound, or sell heroin, cocaine base as
715 specified in paragraph (1) of subdivision (f) of Section 11054 of the Health and Safety Code,
716 cocaine as specified in paragraph (6) of subdivision (b) of Section 11055 of the Health and
717 Safety Code, or methamphetamine.

718 (F) The person was convicted of violating Section 11379.6, 11382, or 11383 of the
719 Health and Safety Code with respect to methamphetamine, if the person has one or more prior

720 convictions for a violation of Section 11378, 11379, 11379.6, 11380, 11382, or 11383 of the
721 Health and Safety Code with respect to methamphetamine.

722 (G) The person was alleged to have committed an offense enumerated in Section 29805
723 or an offense described in Section 25850, subdivision (a) of Section 25400, or subdivision (a) of
724 Section 26100.

725 (2) The person is subsequently adjudged a ward of the juvenile court within the meaning
726 of Section 602 of the Welfare and Institutions Code because the person committed an offense
727 listed in paragraph (1).

728 (b) A person described in subdivision (a) shall not own, or have in possession or under
729 custody or control, a firearm until the person is 30 years of age or older.

730 (c) A violation of this section shall be punishable by imprisonment in a county jail not
731 exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000),
732 or by both that imprisonment and fine.

733 (d) The juvenile court, on forms prescribed by the Department of Justice, shall notify the
734 department of persons subject to this section. Notwithstanding any other law, the forms required
735 to be submitted to the department pursuant to this section may be used to determine eligibility to
736 acquire a firearm.

737
738 § 676

739 (a) Unless requested by the minor concerning whom the petition has been filed and any
740 parent or guardian present, the public shall not be admitted to a juvenile court hearing. Nothing
741 in this section shall preclude the attendance of up to two family members of a prosecuting
742 witness for the support of that witness, as authorized by Section 868.5 of the Penal Code. The
743 judge or referee may nevertheless admit those persons he or she deems to have a direct and
744 legitimate interest in the particular case or the work of the court. However, except as provided in
745 subdivision (b), members of the public shall be admitted, on the same basis as they may be
746 admitted to trials in a court of criminal jurisdiction, to hearings concerning petitions filed
747 pursuant to Section 602 alleging that a minor is a person described in Section 602 by reason of
748 the violation of any one of the following offenses:

749 (1) Murder.

750 (2) Arson of an inhabited building.

751 (3) Robbery while armed with a dangerous or deadly weapon.

752 (4) Rape with force or violence, threat of great bodily harm, or when the person is
753 prevented from resisting due to being rendered unconscious by any intoxicating, anesthetizing, or
754 controlled substance, or when the victim is at the time incapable, because of a disability, of
755 giving consent, and this is known or reasonably should be known to the person committing the
756 offense.

757 (5) Sodomy by force, violence, duress, menace, threat of great bodily harm, or when the
758 person is prevented from resisting due to being rendered unconscious by any intoxicating,
759 anesthetizing, or controlled substance, or when the victim is at the time incapable, because of a
760 disability, of giving consent, and this is known or reasonably should be known to the person
761 committing the offense.

762 (6) Oral copulation by force, violence, duress, menace, threat of great bodily harm, or
763 when the person is prevented from resisting due to being rendered unconscious by any
764 intoxicating, anesthetizing, or controlled substance, or when the victim is at the time incapable,

765 because of a disability, of giving consent, and this is known or reasonably should be known to
766 the person committing the offense.

767 (7) Any offense specified in subdivision (a) or (e) of Section 289 of the Penal Code.
768 (8) Kidnapping for ransom.
769 (9) Kidnapping for purpose of robbery.
770 (10) Kidnapping with bodily harm.
771 (11) Assault with intent to murder or attempted murder.
772 (12) Assault with a firearm or destructive device.
773 (13) Assault by any means of force likely to produce great bodily injury.
774 (14) Discharge of a firearm into an inhabited dwelling or occupied building.
775 (15) Any offense described in Section 1203.09 of the Penal Code.
776 (16) Any offense described in Section 12022.5 or 12022.53 of the Penal Code.
777 (17) Any felony offense in which a minor personally used a weapon described in any
778 provision listed in Section 16590 of the Penal Code.

779 (18) Burglary of an inhabited dwelling house or trailer coach, as defined in Section 635
780 of the Vehicle Code, or the inhabited portion of any other building, if the minor previously has
781 been adjudged a ward of the court by reason of the commission of any offense listed in this
782 section, including an offense listed in this paragraph.

783 (19) Any felony offense described in Section 136.1 or 137 of the Penal Code.
784 (20) Any offense as specified in Sections 11351, ~~11351.5~~, 11352, 11378, 11378.5, 11379,
785 and 11379.5 of the Health and Safety Code.
786 (21) Criminal street gang activity which constitutes a felony pursuant to Section 186.22
787 of the Penal Code.
788 (22) Manslaughter as specified in Section 192 of the Penal Code.
789 (23) Driveby shooting or discharge of a weapon from or at a motor vehicle as specified in
790 Sections 246, 247, and 26100 of the Penal Code.
791 (24) Any crime committed with an assault weapon, as defined in Section 30510 of the
792 Penal Code, including possession of an assault weapon as specified in Section 30605 of the Penal
793 Code.

794 (25) Carjacking, while armed with a dangerous or deadly weapon.
795 (26) Kidnapping, in violation of Section 209.5 of the Penal Code.
796 (27) Torture, as described in Sections 206 and 206.1 of the Penal Code.
797 (28) Aggravated mayhem, in violation of Section 205 of the Penal Code.

798 (b) Where the petition filed alleges that the minor is a person described in Section 602 by
799 reason of the commission of rape with force or violence or great bodily harm; sodomy by force,
800 violence, duress, menace, threat of great bodily harm, or when the person is prevented from
801 resisting by any intoxicating, anesthetizing, or controlled substance, or when the victim is at the
802 time incapable, because of mental disorder or developmental or physical disability, of giving
803 consent, and this is known or reasonably should be known to the person committing the offense;
804 oral copulation by force, violence, duress, menace, threat of great bodily harm, or when the
805 person is prevented from resisting by any intoxicating, anesthetizing, or controlled substance, or
806 when the victim is at the time incapable, because of mental disorder or developmental or
807 physical disability, of giving consent, and this is known or reasonably should be known to the
808 person committing the offense; any offense specified in Section 289 of the Penal Code, members
809 of the public shall not be admitted to the hearing in either of the following instances:

810 (1) Upon a motion for a closed hearing by the district attorney, who shall make the
811 motion if so requested by the victim.

812 (2) During the victim’s testimony, if, at the time of the offense the victim was under 16
813 years of age.

814 (c) The name of a minor found to have committed one of the offenses listed in
815 subdivision (a) shall not be confidential, unless the court, for good cause, so orders. As used in
816 this subdivision, “good cause” shall be limited to protecting the personal safety of the minor, a
817 victim, or a member of the public. The court shall make a written finding, on the record,
818 explaining why good cause exists to make the name of the minor confidential.

819 (d) Notwithstanding Sections 827 and 828 and subject to subdivisions (e) and (f), when a
820 petition is sustained for any offense listed in subdivision (a), the charging petition, the minutes of
821 the proceeding, and the orders of adjudication and disposition of the court that are contained in
822 the court file shall be available for public inspection. Nothing in this subdivision shall be
823 construed to authorize public access to any other documents in the court file.

824 (e) The probation officer or any party may petition the juvenile court to prohibit
825 disclosure to the public of any file or record. The juvenile court shall prohibit the disclosure if it
826 appears that the harm to the minor, victims, witnesses, or public from the public disclosure
827 outweighs the benefit of public knowledge. However, the court shall not prohibit disclosure for
828 the benefit of the minor unless the court makes a written finding that the reason for the
829 prohibition is to protect the safety of the minor.

830 (f) Nothing in this section shall be applied to limit the disclosure of information as
831 otherwise provided for by law.

832 (g) The juvenile court shall for each day that the court is in session, post in a conspicuous
833 place which is accessible to the general public, a written list of hearings that are open to the
834 general public pursuant to this section, the location of those hearings, and the time when the
835 hearings will be held.

836
837 § 3486

838 (a) To abate the nuisance caused by illegal conduct involving a controlled substance
839 purpose on real property, the city prosecutor or city attorney may file, in the name of the people,
840 an action for unlawful detainer against any person who is in violation of the nuisance or illegal
841 purpose provisions of subdivision 4 of Section 1161 of the Code of Civil Procedure, with respect
842 to that controlled substance purpose. In filing this action, which shall be based upon an arrest
843 report by a law enforcement agency, reporting an offense committed on the property and
844 documented by the observations of a police officer, the city prosecutor or city attorney shall use
845 the procedures set forth in Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the
846 Code of Civil Procedure, except that in cases filed under this section, the following also shall
847 apply:

848 (1) (A) Prior to filing an action pursuant to this section, the city prosecutor or city
849 attorney shall give 30 calendar days’ written notice to the owner, requiring the owner to file an
850 action for the removal of the person who is in violation of the nuisance or illegal purpose
851 provisions of subdivision 4 of Section 1161 of the Code of Civil Procedure with respect to a
852 controlled substance purpose.

853 (B) This notice shall include sufficient documentation establishing a violation of the
854 nuisance or illegal purpose provisions of subdivision 4 of Section 1161 of the Code of Civil
855 Procedure and an advisement to the owner of the assignment provision contained in

856 subparagraph (D). The notice shall be served upon the owner and the tenant in accordance with
857 subdivision (e).

858 (C) The notice to the tenant shall, in at least 14-point bold type, meet the following
859 requirements:

860 (i) The notice shall contain the following language:

861 “(Date)

862 (Name of tenant)

863 (Address of tenant)

864 Re: Civil Code Section 3486

865 Dear (name of tenant):

866 This letter is to inform you that an eviction action may soon be filed in court against you for
867 suspected drug activity. According to state law, Civil Code Section 3486 provides for eviction of
868 persons engaging in such conduct, as described below.

869 (Name of police department) records indicate that you, (name of arrestee), were arrested on
870 (date) for violations of (list violations) on (address of property).

871 A letter has been sent to the property owner(s) advising of your arrest and the requirements of
872 state law, as well as the landlord’s option to assign the unlawful detainer action to the (name of
873 city attorney or prosecutor’s office).

874 A list of legal assistance providers is provided below. Please note, this list is not exclusive and is
875 provided for your information only; the (name of city attorney or prosecutor’s office) does not
876 endorse or recommend any of the listed agencies.

877 Sincerely,

878 (Name of deputy city attorney or city prosecutor)

879 Deputy City (Attorney or Prosecutor)

880 Notice to Tenant: This notice is not a notice of eviction. You should call (name of the city
881 attorney or prosecutor pursuing the action) at (telephone number) or a legal assistance provider
882 to stop the eviction action if any of the following is applicable:

883 (1) You are not the person named in this notice.

884 (2) The person named in the notice does not live with you.

885 (3) The person named in the notice has permanently moved.

886 (4) You do not know the person named in the notice.

887 (5) You want to request that only the person involved in the nuisance be evicted, allowing
888 the other residents to stay.

889 (6) You have any other legal defense or legal reason to stop the eviction action.

890 A list of legal assistance providers is attached to this notice. Some provide free legal assistance if
891 you are eligible.”

892 (ii) The notice shall be provided to the tenant in English and, as translated, in all of the
893 languages identified in subdivision (a) of Section 1632 of the Civil Code.

894 (D) The owner shall, within 30 calendar days of the mailing of the written notice, either
895 provide the city prosecutor or city attorney with all relevant information pertaining to the
896 unlawful detainer case, or provide a written explanation setting forth any safety-related reasons
897 for noncompliance, and an assignment to the city prosecutor or city attorney of the right to bring
898 an unlawful detainer action against the tenant.

899 (E) The assignment shall be on a form provided by the city prosecutor or city attorney
900 and may contain a provision for costs of investigation, discovery, and reasonable attorney’s fees,
901 in an amount not to exceed six hundred dollars (\$600). An owner shall only be required to pay

902 the costs or fees upon acceptance of the assignment and the filing of the action for unlawful
903 detainer by the city prosecutor or city attorney.

904 (F) If the city prosecutor or city attorney accepts the assignment of the right of the owner
905 to bring the unlawful detainer action, the owner shall retain all other rights and duties, including
906 the handling of the tenant's personal property, following issuance of the writ of possession and
907 its delivery to and execution by the appropriate agency.

908 (2) Upon the failure of the owner to file an action pursuant to this section, or to respond
909 to the city prosecutor or city attorney as provided in paragraph (1), or having filed an action, if
910 the owner fails to prosecute it diligently and in good faith, the city prosecutor or city attorney
911 may file and prosecute the action, and join the owner as a defendant in the action. This action
912 shall have precedence over any similar proceeding thereafter brought by the owner, or to one
913 previously brought by the owner and not prosecuted diligently and in good faith. Service of the
914 summons and complaint upon the defendant owner shall be in accordance with Sections 415.10,
915 415.20, 415.30, 415.40, and 415.50 of the Code of Civil Procedure.

916 (3) If a jury or court finds the defendant tenant guilty of unlawful detainer in a case filed
917 pursuant to paragraph (2), the city prosecutor or city attorney may be awarded costs, including
918 the costs of investigation and discovery and reasonable attorney's fees. These costs shall be
919 assessed against the defendant owner, to whom notice was directed pursuant to paragraph (1),
920 and once an abstract of judgment is recorded, it shall constitute a lien on the subject real
921 property.

922 (4) This section does not prevent a local governing body from adopting and enforcing
923 laws, consistent with this article, relating to drug abatement. If local laws duplicate or
924 supplement this section, this section shall be construed as providing alternative remedies and not
925 preempting the field.

926 (5) This section does not prevent a tenant from receiving relief against a forfeiture of a
927 lease pursuant to Section 1179 of the Code of Civil Procedure.

928 (b) In any proceeding brought under this section, the court may, upon a showing of good
929 cause, issue a partial eviction ordering the removal of any person, including, but not limited to,
930 members of the tenant's household if the court finds that the person has engaged in the activities
931 described in subdivision (a). Persons removed pursuant to this section may be permanently
932 barred from returning to or reentering any portion of the entire premises. The court may further
933 order as an express condition of the tenancy that the remaining tenants shall not give permission
934 to or invite any person who has been removed pursuant to this subdivision to return to or reenter
935 any portion of the entire premises.

936 (c) For the purposes of this section, "controlled substance purpose" means the
937 manufacture, cultivation, importation into the state, transportation, possession, possession for
938 sale, sale, furnishing, administering, or giving away, or providing a place to use or fortification
939 of a place involving, cocaine, phencyclidine, heroin, methamphetamine, or any other controlled
940 substance, in a violation of subdivision (a) of Section 11350, Section 11351, ~~41351.5~~, 11352, or
941 11359, subdivision (a) of Section 11360, or Section 11366, 11366.6, 11377, 11378, 11378.5,
942 11379, 11379.5, 11379.6, or 11383 of the Health and Safety Code.

943 (d) Notwithstanding subdivision (b) of Section 68097.2 of the Government Code, a
944 public entity may waive all or part of the costs incurred in furnishing the testimony of a peace
945 officer in an unlawful detainer action brought pursuant to this section.

946 (e) The notice and documentation described in paragraph (1) of subdivision (a) shall be
947 given in writing and may be given either by personal delivery or by deposit in the United States

948 mail in a sealed envelope, postage prepaid, addressed to the owner at the address known to the
949 public entity giving the notice, or as shown on the last equalized assessment roll, if not known.
950 Separate notice of not less than 30 calendar days and documentation shall be provided to the
951 tenant in accordance with this subdivision. Service by mail shall be deemed to be completed at
952 the time of deposit in the United States mail. Proof of giving the notice may be made by a
953 declaration signed under penalty of perjury by any employee of the public entity which shows
954 service in conformity with this section.

955 (f) In an unlawful detainer action filed pursuant to this section, the court shall make one
956 of the following orders:

957 (1) If the grounds for an eviction have not been established pursuant to this section, the
958 court shall dismiss, without prejudice, the unlawful detainer action.

959 (2) If the grounds for an eviction have been established pursuant to this section, the court
960 shall do either of the following:

961 (A) Order that the tenant and all occupants be immediately evicted from the property.

962 (B) Dismiss the unlawful detainer action with or without prejudice or stay execution of an
963 eviction order for a reasonable length of time if the tenant establishes by clear and convincing
964 evidence that the immediate eviction would pose an extreme hardship to the tenant and that this
965 hardship outweighs the health, safety, or welfare of the neighbors or surrounding community.
966 However, the court shall not find an extreme hardship solely on the basis of an economic
967 hardship or the financial inability of the tenant to pay for and secure other housing or lodging
968 accommodations.

969 (3) If the grounds for a partial eviction have been established pursuant to subdivision (b),
970 the court shall order that those persons be immediately removed and barred from the property,
971 but the court shall not order the tenancy be terminated.

972 (g) This section applies only in the County of Los Angeles to a court having jurisdiction
973 over unlawful detainer cases involving real property situated in the City of Los Angeles.

974 (h) This section shall become operative on January 1, 2014, only if the City of Los
975 Angeles has regularly reported to the California Research Bureau as required by this section as it
976 read during the period from January 1, 2010, to January 1, 2014, inclusive. For purposes of this
977 section, the City of Los Angeles shall be deemed to have complied with this reporting
978 requirement if the 2013 report to the Legislature by the California Research Bureau indicates that
979 the City of Los Angeles has regularly reported to the bureau.

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

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: Our statutes take up enough ink, space, and paper that we should do without redundancies. Section 11351.5 provides the same statutory scheme and punishment as 11351, it just lists one different drug while 11351 lists a few. 11351.5 can easily be combined with 11351 with no change in meaning.

The Solution: By listing the drug in 11351.5 in 11351, it removes an unnecessary section and lines from our statutes. This also deletes every reference to 11351.5 in other statutes (which all

mention 11351 already), which is not only good for consistency, but could free up a line here and there. This should be eligible for the omnibus.

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

Much prior legislation on a substantive change, no prior legislation specifically to make the statutes simpler.

AUTHOR AND/OR PERMANENT CONTACT:

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RESPONSIBLE FLOOR DELEGATE: Ben Rudin

RESOLUTION 04-11-2023

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 12022.7, to read as follows:

- 1 § 12022.7
- 2 (a) Any person who personally inflicts great bodily injury on any person other than an
- 3 accomplice in the commission of a felony or attempted felony shall be punished by an additional
- 4 and consecutive term of imprisonment in the state prison for three years.
- 5 (b) Any person who personally inflicts great bodily injury on any person other than an
- 6 accomplice in the commission of a felony or attempted felony which causes the victim to
- 7 become comatose due to brain injury or to suffer paralysis of a permanent nature shall be
- 8 punished by an additional and consecutive term of imprisonment in the state prison for five
- 9 years. As used in this subdivision, “paralysis” means a major or complete loss of motor function
- 10 resulting from injury to the nervous system or to a muscular mechanism.
- 11 (c) Any person who personally inflicts great bodily injury on a person who is 70 years of
- 12 age or older, other than an accomplice, in the commission of a felony or attempted felony shall
- 13 be punished by an additional and consecutive term of imprisonment in the state prison for five
- 14 years.
- 15 (d) Any person who personally inflicts great bodily injury on a child under the age of five
- 16 years in the commission of a felony or attempted felony shall be punished by an additional and
- 17 consecutive term of imprisonment in the state prison for four, five, or six years.
- 18 (e) Any person who personally inflicts great bodily injury under circumstances involving
- 19 domestic violence in the commission of a felony or attempted felony shall be punished by an
- 20 additional and consecutive term of imprisonment in the state prison for three, four, or five years.
- 21 As used in this subdivision, “domestic violence” has the meaning provided in subdivision (b) of
- 22 Section 13700.
- 23 (f) As used in this section, “great bodily injury” means a significant or substantial
- 24 physical injury, including but not limited to impregnation as a result of a felony or attempted
- 25 felony offense requiring registration as a sex offender pursuant to Section 290.
- 26 (g) This section shall not apply to murder or manslaughter or a violation of Section 451
- 27 or 452. Subdivisions (a), (b), (c), and (d) shall not apply if infliction of great bodily injury is an
- 28 element of the offense.
- 29 (h) The court shall impose the additional terms of imprisonment under either subdivision
- 30 (a), (b), (c), or (d), but may not impose more than one of those terms for the same offense.

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

PROPONENT: Women Lawyers Association of Los Angeles

STATEMENT OF REASONS

The Problem: Existing law recognizes that pregnancy caused by rape may sustain a finding that the defendant personally inflicted great bodily injury. “Pregnancy can have one of three results --

childbirth, abortion or miscarriage. Childbirth is an agonizing experience. An abortion by whatever method used constitutes a severe intrusion into a woman's body. A miscarriage speaks for itself.” (*People v. Sargent* (1978) 86 Cal.App.3d 148, 152.) However, *Sargent* left open the argument that pregnancy is not a “great” bodily injury if the experience did not fall outside the norm, or that the victim’s choice to have an abortion carried out by her doctor was not “personally” inflicted by the defendant. (See *People v. Cross* (2008) 45 Cal.4th 58, 68-69.) Arguing for a bright-line rule, Justice Corrigan stated, “Pregnancy is categorically different. By its nature it will always impose on the victim a sufficient impact to meet the great bodily injury standard. Pregnancy as an injury, a physical impact imposed by a crime, cannot be parsed out along a continuum. A woman is either pregnant or she is not. ... Because the impact of any pregnancy is so great, it is illogical to treat some pregnancies as trivial, or to suggest that juries could, somehow, determine that any criminally imposed pregnancy can be considered minor.” (*Id.* at 73 (conc. opn. of Corrigan, J).)

Until then, “[t]he present state of the law will require 13 year olds to continue to take the stand and tearfully relive the end of their pregnancies. It will require defense attorneys to cross-examine on the point, and judges and juries to try to decide how much pain is enough and just how to go about trying to separate physical pain from emotional torment. It will make us all accessories after the fact. ... To my mind, there is no adequate explanation for the continued existence of a rule that requires a teenager to sit on the witness stand and convince us her miscarriage was painful enough to qualify as great bodily injury. But as long as we keep writing opinions that base a finding of great bodily injury upon the relative size of the victim vis-à-vis the baby she delivered, or testimony about how painful the miscarriage was, or how her 19th hour of labor felt, that is what we will have. We will perpetuate a heartless spectacle that is both unseemly and unnecessary. Someone—be it the Legislature or our Supreme Court—has to address the unutterable cruelty of forcing the revictimization of these women. And the longer we delay, the more suffering we force upon them.” (*People v. Meneses* (2011) 193 Cal.App.4th 1087, 1094-1095 (conc. opn. of Bedsworth, J.)

The Solution: This resolution would put an end to the heartless spectacle of re-traumatizing rape victims who became pregnant as a result of sexual assault, by amending subdivision (f) of Penal Code section 12022.7 to clarify that “great bodily injury” includes impregnation as a result of a felony or an attempted felony offense requiring registration as a sex offender pursuant to Section 290.

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

An early version of SB 459 (2019-2020) would have amended Penal Code section 12022.7 to define “great bodily injury” to include impregnation as a result of sexual intercourse in violation of any law.

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