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## 2016 Legislative Update

The following is an update on recent significant legal changes and additions.

### Search Warrants:

#### Cal. Penal Code §1526 (amend) **Electronic Submission**

Deletes requirement that the affiant telephonically acknowledge receipt of signed search warrant. Completed search warrant designated as the original.

#### Cal. Penal Code §1524 (amend) **Boating under the Influence (BUI)**

Authorizes issuance of search warrant to compel blood draw for BUI suspect (operator of a boat while under the influence of alcohol or drugs).

#### Cal. Penal Code §1524 **CalECPA**

California Electronic Communications Privacy Act generally requires law enforcement to obtain search warrant before accessing data on an electronic device or from an online provider.

#### Cal. Penal Code §1546 **Electronic Communications Privacy Act**

SB 178, enacted as Cal. Penal Code section 1546, the Electronic Communications Privacy Act, provides additional specific requirements for law enforcement agencies applying for search warrants of electronic communication devices. Members are advised to read the applicable subsections of Cal. Penal Code section 1546, to ensure proper drafting of search warrant applications.

Key features of the new law:

- **Describe with particularity the information to be seized**, e.g., time periods, target individuals, types of information sought;
- **Provide notice to the target of the warrant**, contemporaneously with the execution of the warrant (via registered mail, email, or other effective means) that information has been compelled or requested, and states the specific nature of the investigation. Notice may be provided 3 days after obtaining the electronic information, in specified emergency cases. Exceptions may be granted by a court if notification may have “an adverse result.”
- **Service Provider required, by court order, to verify by affidavit the authenticity of the electronic information it produces.**

Failure to comply with the many requirements of this statute could result in suppression of evidence in a criminal prosecution.

A separate Department Bulletin will be issued containing a thorough guide to changes in California law concerning obtaining search warrants and wiretaps to access electronic device (cell phone) information.

**Cal. Penal Code §§69 and 148 (amend)**

Person photographing or audio-recording a peace officer while the person is in a place s/he has a right to be is not, in and of itself, a violation of specified offenses for obstruction of an officer, nor does it constitute reasonable suspicion to detain or probable cause to arrest.

**Taking Person from Lawful Custody of Peace Officer**

Cal. Penal Code §405a (amend) and 405b (repeal)

The term “lynching” can no longer be used.

The crime is a felony, punishable by imprisonment in county jail for 2, 3 or 4 years.

**Racial Profiling**

Cal. Gov. Code §12525.5 (add)

Cal. Penal Code §13012 and 13519.4 (amend)

Local law enforcement agencies required to report specified information on **all stops** to the Attorney General. (Starting 2019 for agencies of 1,000+)

Establishes the Racial and Identity Profiling Advisory Board (RIPA)

**Gun Violence Restraining Orders (GVRO)**

Cal. Penal Code §§18120, 29830 and 33880 (amend)

Person who is subject to a GVRO is allowed to transfer firearms or ammunition to a licensed firearms dealer for the duration of the prohibition.

**Firearms: Gun free School Zone**

Cal. Penal Code §§626.9 and 30310

Amended to prohibit possession of a firearm in a known school zone. Allows person with a valid CCW to carry within 1,000 feet of, but not on the grounds of, a public or private school providing instruction in Kindergarten or grades 1 to 12.

Deletes exemption that allows person with a valid CCW to possess a firearm on campus of a university or college. (Firearms, including concealed loaded handguns, could still be allowed on school grounds or campuses with the permission of school officials.)

**Peace Officer State issued Handguns: transfer to spouse**

Cal. Penal Code §32000 (amend)

Spouse or domestic partner of a peace officer killed in line of duty may receive their service weapon regardless of whether the DOJ has deemed it “unsafe.”

**Body Worn Cameras**

Cal. Penal Code §832.18 (add)

Specifies best practices for establishing policies and procedures for download and retention of evidentiary and non-evidentiary data. Encourages agencies to work with legal counsel to ensure that policies and practices are in compliance with all relevant laws, and adequately preserve evidentiary chains of custody.

**ALPR Automated License Plate Recognition Systems: Use of Data**

Cal. Civ. Code §§1798.29 and 1798.82

Establishes regulations on privacy and usage of ALPR data. Expands meaning of “personal information” to include data collected via ALPR systems.

**Marijuana Cultivation**

Cal. Bus. & Prof. Code §19331 et seq; Cal. Fish & Game Code §12029; Cal. Health & Safety Code §§11362.769 and 11362.777; Cal. Water Code §13276.

Multi-agency task force established to address environmental impacts of marijuana cultivation. Requires **state license to cultivate marijuana**. (Cal. Dept. of Food & Agriculture required to establish a Medical Cannabis Cultivation Program to license indoor and outdoor cultivation of marijuana.

**Destruction of Seized Marijuana**

Cal. Health & Safety Code §11479

Law enforcement agency may destroy seized marijuana in growing/harvesting case without court order, if the amount is in excess of 2 pounds or the amount the person was authorized to possess (whichever is greater). Must photograph and video controlled substances before destroying, to show the entire amount.

**Peace Officer Training: Mental Health**

Cal. Penal Code §§13515.28, 13515.29 and 13515.295

FTO’s required to have POST training on law enforcement interaction with persons with mental illness or intellectual disability.

**Vehicle Code and Vehicle-related Legal Updates**

**Yellow Alert Notification System**

Cal. Gov. Code §8534.15

For specified hit & run incidents resulting in death or serious bodily injury.

Law Enforcement Agency may request CHP Yellow Alert if certain identifying information about suspect is available and will aid in apprehension.

**Bicycle Safety: Rear Lights**

Cal. Veh. Code §21201

Requires solid or flashing red light with a built-in reflector, on the rear, for nighttime.

**Vehicles: Child Safety Seats**

Cal. Veh. Code §27360

January 1, 2017: Adds: requirement to secure children under age 2 in rear-facing passenger restraint system meeting federal standards.

Exempts: Children under age 2 that weigh 40 + pounds or are 40+ inches tall.

**Vehicles: Tow Truck Assistance**

Cal. Veh. Code § 21719

Peace officer employed by investigating law enforcement agency at scene of obstruction who has determined that a tow truck can expedite restoration of normal traffic flow by removing disabled vehicle may give explicit permission to tow truck driver to use center median or right shoulder of roadway. Note: potential exposure to Department liability for accidents/injuries/damages, because authorizes unlawful activity.

**Slow Moving Vehicles: Highway Lane Use**

Cal. Veh. Code §21656

Any and all slow moving vehicles (including bicycles) must let traffic pass if there is sufficient space to do so.

**Arrests for Vehicle Infractions & Misdemeanors**

Cal. Veh. Code §40302

Allows for arrest of person stopped for infraction or misdemeanor, who fails to present DL or satisfactory identification *and* unobstructed view of full face for examination.

**Electrically Motorized Skateboards**

Cal. Veh. Code §21113, 21967, 21968, 21290 and 313.5

Defines “Electrically Motorized Board.” Requires operator to be at least 16 yrs. of age, and wear bicycle helmet. Max speed limit 15 MPH. Only operated on roads with speed limits of 35 MPH or less.

**Traffic Violations: Diversion Programs**

Cal. Veh. Code §42005.3

Bicyclists of all ages cited for certain traffic offenses may attend bicycle traffic school.

**Vehicles: Electric Bicycles**

Cal. Veh. Code §406, 12804.9, 21113, 21207.5, 24016, 312.5 and 21213

Defines 3 separate classes of electric bicycles, based on max speed and type of assist.

**Tow Trucks**

Cal. Veh. Code §22513, 22513.1

Adds provisions to curb “bandit towing” practices. (Exempts tow operators who are contracted with LEA’s.)

**Vehicles: Parking Violations**

Cal. Veh. Code §40242 and 40243

Authorizes City & County of San Francisco to continue usage of forward-facing cameras on city-owned public transit vehicles to conduct automated enforcement of parking violations in bus lanes.

**DUI: Ignition Interlock Device (IID)**

Cal. Veh. Code §23702

Extends DMV IID pilot project to July 1, 2017.

**Public Safety Omnibus**

Cal. Penal Code §849

Exempts requirement to take a person before a magistrate without unreasonable delay, if person is arrested for DUI and is delivered to hospital for medical treatment.

Per DB 15-141, both sworn and non-sworn members are required to electronically acknowledge this Department Bulletin in HRMS.