



# DEPARTMENT NOTICE

23-019

Published: 2/21/23

Expires: 2/21/26

## 2023 Legislative Updates

*The following legislative updates are meant as a summary of changes to the law. For exact language, please refer to the specific code section referenced. Members who need clarification are encouraged to ask a supervisor or contact the Legal Division of the Risk Management Office.*

### **Penal Code**

**Penal Code § 146e** expands the misdemeanor and felony crimes of disclosing the residence address or telephone number of a peace officer, public safety official, non-sworn police dispatcher, employee of a police department or sheriff's department, to include the "immediate family" residing with these persons, if done so with the intent to obstruct justice or with the intent or threat to "inflict bodily harm."

**Penal Code § 186.2** adds fraud offenses relating to the COVID-19 pandemic to the list of offenses in P.C. 186.2 that are included in the definition of criminal profiteering activity.

**Penal Code § 192 aka "Ryan's Law."** Lists three circumstances that may, based on the totality of the circumstances, constitute gross negligence for purposes of manslaughter: 1. Participating in a sideshow pursuant to 23109(i)(2)(A) VC; or 2. Speeding over 100 miles per hour; or 3. Exhibition of speed pursuant to 23109(a) VC.

**Penal Code § 372.5** adds a new public nuisance crime that the prosecution may offer a defendant as an alternative charge to drug crimes, for the purpose of avoiding the immigration consequences of a drug conviction. This does not create a new crime, instead it is a sentencing guideline for a violation of Penal Code § 370.

**Penal Code § 487** amends P.C. 487 (grand theft) to add a new subdivision (e) in order to allow the aggregation of the value of stolen items in multiple charges to be added together so that a felony may be charged instead of several misdemeanor crimes, if the crimes were committed pursuant to one intent and one plan.

**Penal Code §§ 653.22, 653.20** repeals the misdemeanor crime of loitering with the intent to commit prostitution (653.22 PC) and repeals 653.20 PC, which defined the terms associated with that crime.

**Penal Code § 679.09** requires the law enforcement agency investigating the death of a minor to provide the minor victim's parent or guardian with the following information: 1. Contact information for each law enforcement agency involved in the investigation, including the primary contact; 2. Case number; 3. A list of the personal effects found with the minor and the contact information necessary to permit an immediate family member to collect the effects; and 4. Information about the status of the investigation, at the discretion of the law enforcement agency.

**Penal Code § 679.12** adds protections for the handling of DNA reference samples from crime victims and from individuals who voluntarily provide samples for exclusion purposes, as well as to any profiles developed from those samples.

**Penal Code § 680.2** adds additional information that is required to be on the sexual assault victim rights card to include, a clear statement that under C.C.P. 1219, a court may not imprison, confine, or place in custody a victim of sexual assault or domestic violence for contempt, if the contempt consists of refusing to testify concerning the crime.

**Penal Code § 745** makes a number of changes to the Racial Justice Act of 2020, which prohibits the state from seeking or obtaining a criminal conviction, or imposing a sentence, on the basis of race, ethnicity, or national origin, and provides that a violation is established if the defendant proves bias, or disparity in charging or sentencing based on race, by a preponderance of the evidence. Also adds provisions that phase in retroactivity.

**Penal Code § 819** provides that it is the public policy of California that an out-of-state warrant for a person based on violating another state's law against providing, receiving, or allowing a child to receive "gender-affirming health care" or "gender-affirming mental health care" is the lowest law enforcement priority. Prohibits California law enforcement from making or participating in an arrest, or from participating in the extradition, pursuant to an out-of-state warrant for those crimes, if that conduct or procedure is lawful under California law. PC 819 also prohibits law enforcement from cooperating with another state on lawful "gender-affirming care" that occurs in California.

**Penal Code § 853.6** adds two additional reasons that provide a legal basis to book an individual on a misdemeanor: 1. The person has been cited, arrested, or convicted for misdemeanor or felony theft from a store in the previous six months; 2. There is probable cause to believe the person is guilty of committing organized retail theft (490.4 PC).

**Penal Code § 11411** elevates the crime of hanging a noose on the private property of another person or on the property of a primary school, a junior high school, a high school, college campus, public park, or place of employment, for the purpose of terrorizing another person, from a misdemeanor crime only, to a felony/misdemeanor and expands it to also apply to all schools, public places, places of worship, and cemeteries.

**Penal Code § 13023** adds a subdivision (c) to require local law enforcement agencies to post hate crimes data on their Internet websites on a monthly basis.

**Penal Code § 13681** requires that any background investigation into a candidate for a peace officer position include an inquiry into whether the candidate has engaged in or is engaging in membership in a hate group, participation in any hate group activity, or advocacy of public expressions of hate.

**Penal Code § 13682** requires an agency that employs peace officers to investigate any internal complaint or a complaint from a member of the public that alleges, with sufficient particularity to investigate, that a currently employed peace officer has in the previous seven years and since age

18, engaged in membership in a hate group, participated in a hate group activity, or advocated public expressions of hate.

**Penal Code § 16520** expands the definition of “firearm” for the purposes of numerous firearms provisions to include firearm precursor parts.

**Penal Code § 18005** requires the destruction of weapons surrendered to law enforcement (including firearms), and eliminates provisions that had permitted law enforcement to sell at public auction to specified persons, weapons that had value for sporting, recreational, or collection purposes.

**Penal Code § 23920** adds the new misdemeanor crime of knowingly possessing any firearm, on or after January 1, 2024, that does not have a valid state or federal serial number or mark of identification. *See* § 23920 for a number of exceptions.

**Penal Code § 29010** adds the new misdemeanor crime of using a three-dimensional printer to manufacture a firearm, a frame or receiver of a firearm, or a firearm precursor part, unless the person or business holds a California firearms manufacturing license.

**Penal Code § 29180** creates the misdemeanor crime of a person, corporation, or firm knowingly manufacturing or assembling, or knowingly causing, allowing, facilitating, aiding, or abetting the manufacture or assembly of, a firearm that is not imprinted with a valid state or federal serial number or mark of identification.

**Penal Code § 29185** creates three new misdemeanor crimes relating to the use of a computer numerical control (CNC) milling machine to manufacture firearms.

**Penal Code § 29610** Prohibits a minor from possessing any firearm beginning July 1, 2023.

**Penal Code § 29805** creates a new felony crime to prohibit possessing, owning, purchasing, or receiving a firearm within 10 years of a conviction for 29180(e) PC or 29180(f) PC. This applies to convictions that occur on and after January 1, 2023. PC 29805 further adds a 10-year prohibition on possessing, owning, purchasing, or receiving a firearm after a misdemeanor conviction for child endangerment (273a PC), or a misdemeanor conviction for elder or dependent adult physical abuse (368(b) or (c) PC), or the false imprisonment of an elder or dependent adult by means of violence, menace, fraud, or deceit (368(f) PC).

### **Vehicle Code**

**Vehicle Code § 1808.48** provides that notwithstanding any other law, no law enforcement agency, government agency or department, commercial entity, or other person shall obtain, access, use, or disclose, noncriminal history information maintained by the DMV, for the purpose of immigration enforcement, as defined in Gov’t C. 7284.4(f).

**Vehicle Code § 2806.5** requires a law enforcement officer making a traffic or pedestrian stop to state the reason for the stop before engaging in questioning related to a criminal investigation or traffic violation. This does not apply if the officer has a reasonable belief that withholding the

reason for the stop is necessary to protect life or property from imminent threat. Requires the officer to document the reason for the stop on any citation or police report resulting from the stop. This becomes effective January 1, 2024.

**Vehicle Code § 5204** requires a law enforcement officer to confirm with DMV that a vehicle does not have a current registration, before issuing a citation for the failure to display current registration tabs, an infraction crime. Prohibits the issuance of a citation for failing to display current registration tabs when the vehicle's registration is current.

Note: This does not prohibit a vehicle from being stopped for the failure to display registration tabs or for having registration tabs that have expired.

**Vehicle Code §§ 21451, 21452, 21453, 21456, 21461.5, 21462, 21950, 21953, 21954, 21955, 21956, 21961, 21966** Amends these sections to prohibit a pedestrian from being stopped for violating these sections (i.e., jaywalking) “unless a reasonably careful person would realize there is an immediate danger of a collision with a moving vehicle or other device moving exclusively by human power.”

21451 VC applies to traffic light signals when they are green; 21452 VC applies to traffic light signals when they are yellow and about to turn red; 21453 VC applies to traffic signals that are red; 21456 VC applies to pedestrian “Walk,” “Wait,” and “Don’t Walk” signals; 21461.5 VC makes it unlawful for a pedestrian to fail to obey any sign or signal erected or maintained to carry out the provisions of the Vehicle Code; and 21462 VC requires pedestrians and drivers to obey the instructions of an official traffic signal unless otherwise directed by a police or traffic officer, or when it is necessary to avoid a collision, or in case of an emergency.

21950 VC requires drivers to yield the right-of-way to pedestrians in crosswalks; 21953 VC requires pedestrians crossing a roadway to yield to vehicles when a pedestrian tunnel or overhead crossing is nearby and could be used; 21954 VC requires pedestrians to yield to vehicles when not in a marked or unmarked crosswalk; 21955 VC prohibits pedestrians from crossing a roadway at any place other than in a crosswalk, when they are between intersections that have traffic control devices; 21956 VC requires pedestrians to walk as close as possible to the left side when on a roadway; 21961 VC provides that local authorities are not prevented from adopting ordinances prohibiting pedestrians from crossing roadways at other than crosswalks; and 21966 VC prohibits pedestrians from walking along a bicycle path when there is an adjacent and adequate pedestrian facility.

**Vehicle Code § 23109** expands motor vehicle speed contests to off-street parking facilities.

### **Welfare and Institutions Code**

**W&I Code § 625.7** prohibits a law enforcement officer from using threats, physical harm, deception, or psychologically manipulative interrogation tactics during the custodial interrogation of a minor (age 17 and younger). Applies to both felony and misdemeanor cases. Begins July 1, 2024.

Exception: The law enforcement officer reasonably believed the information sought was necessary to protect life or property from imminent threat, and the questions asked were limited to those that were reasonably necessary to obtain information related to that threat.

### **Health and Safety Code**

**Health and Safety Code §§ 11014.5 and 11364.5** excludes from the definition of “drug paraphernalia” any testing equipment designed, marketed, or used to test a substance for the presence of fentanyl or an analog of fentanyl, or ketamine and gamma hydroxybutyric acid (GHB).

### **Evidence Code**

**Evidence Code § 351.4** prohibits the disclosure of a person’s immigration status in open court unless a judge first determines in an in-camera hearing that immigration status is admissible.

Note: This prohibition does not apply to cases in which a person’s immigration status is necessary to prove an element of an offense or claim, or an affirmative defense; does not limit discovery in a criminal action; and does not prohibit a person or his or her attorney from voluntarily revealing immigration status to the court.

**Evidence Code § 352.2** makes it more difficult to admit rap lyrics into evidence by requiring the court to balance the probative value against the substantial danger of undue prejudice and take into consideration a number of factors.

### **Government Code**

**Government Code § 1031** revises the requirement that a peace officer to be free from any physical, emotional, or mental condition that might adversely affect the exercise of peace officer powers, to also require that the person be free of bias against race, ethnicity, gender, nationality, religion, disability, or sexual orientation. Beginning January 1, 2023, SB 960 amends Government Code section 1031 now requires a person who wants to be a peace officer need only be legally authorized to work in the United States.

**Government Code §§ 7920.00-7931.000** were created through AB 471 to repeal, replace, and reorganize the California Public Records Act.

**Government Code § 7286(b)(4)** was amended to clarify the requirement that law enforcement agencies have a policy that includes a prohibition against retaliation against an officer who reports another officer for violating the law or regulation.

**Government Code § 8594.13** authorizes a law enforcement agency to request that CHP activate a “Feather Alert” for an indigenous person missing under unexplained or suspicious circumstances.

**Government Code § 8594.15** re-authorizes a “Yellow Alert” notification system, in order to issue and coordinate alerts for 20001 VC hit-and-run crimes that result in the death of a person.

**Government Code § 12525.2** expands the types of information that a law enforcement agency is required to report monthly to DOJ about use of force incidents.

**Government Code § 12525.5** Beginning January 1, 2024, local and state law enforcement agencies shall report annually to the Attorney General on all stops including, pedestrian stops, traffic stops, and any other kind of stop. Also adds “the reason given to the person stopped at the time of the stop” must be reported.

**Family Code**

**Family Code § 6307** states that beginning July 1, 2023, a court must permit the electronic filing of petitions for DV restraining orders and temporary restraining orders.


**Education Code**

**Education Code §§ 49390-49395**, requires a school official who is alerted to or observes any threat or perceived threat, to immediately report it to law enforcement. Section 49390 defines “threat or perceived threat” as any writing or action of a pupil that creates a reasonable suspicion that the pupil is preparing to commit a homicidal act related to school or a school activity. Section 49394 requires law enforcement, upon receiving the report, to immediately investigate and the threat.

**Environmental Law**

**Fish and Game § 5517** was expanded to prohibit the following: 1. Using any shark bait, shark lure, or shark chum to attract a white shark; 2. Placing any shark bait, shark lure, or shark chum into the water within one nautical mile of a shoreline, pier, or jetty when a white shark is either visible or known to be present; or 3. Placing any shark bait, shark lure, or shark chum into the water for the purpose of viewing any shark when a white shark is visible or known to be present.

**Fish and Game § 5650** prohibits depositing or placing any specified substance into the waters, such as petroleum, acid, coal, factory refuse, or any substance or material deleterious to fish, plant life, mammals, or bird life.

  
WILLIAM SCOTT  
Chief of Police

*Per DN 20-150, all sworn & non-sworn members shall electronically acknowledge this Department document in PowerDMS. Members whose duties are relevant to this document shall be held responsible for compliance. Any questions regarding this policy should be made to [sfpd.writtendirectives@sfgov.org](mailto:sfpd.writtendirectives@sfgov.org) who will provide additional information about the directive.*