RESOLUTION 16-01-2017

DIGEST
Wobblers: Reducing Offense to Misdemeanor Following Successful Probation
Amends Penal Code section 17 to grant courts the ability to reduce wobblers to misdemeanors if the defendant complies with the terms of probation.

RESOLUTIONS COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE

History:
No similar resolutions found.

Reasons:
This resolution amends Penal Code section 17 to grant courts the ability to reduce wobblers to misdemeanors if the defendant complies with the terms of probation. This resolution should be approved in principle because it provides that in cases of probation with a suspended sentence, the wobbler is deemed a misdemeanor rather than a felony conviction.

Subdivision (b) of Penal Code section 17 is the mechanism by which defendants can get certain felonies reduced to a misdemeanor. Subdivision (b)(3) allows the judge to declare the offense a misdemeanor when putting the convicted defendant on probation, rather than imposing sentence, or upon a subsequent application by the defendant or probation officer. Penal Code section 1203.4 provides a mechanism, on application to the court following successful completion or discharge from probation, for a convicted defendant to withdraw or change a plea, or set aside a guilty conviction.

This resolution would provide for this same result in cases where the sentence has been executed, but then suspended and probation imposed. This additional circumstance is a reasonable ground for relief, and consistent with the intent of the statute. It provides a defendant with a similar procedural history, (i.e. a suspended sentence and order for probation as opposed to simple probation), the additional incentive to successfully complete probation and earn a misdemeanor, and an opportunity to move forward in life as a rehabilitated individual.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 17 to read as follows:

§ 17

(a) A felony is a crime that is punishable with death, by imprisonment in the state prison, or notwithstanding any other provision of law, by imprisonment in a county jail under the provisions of subdivision (h) of Section 1170. Every other crime or public offense is a misdemeanor except those offenses that are classified as infractions.

(b) When a crime is punishable, in the discretion of the court, either by imprisonment in the state prison or imprisonment in a county jail under the provisions of subdivision (h) of

Section 1170, or by fine or imprisonment in the county jail, it is a misdemeanor for all purposes under the following circumstances:

(1) After a judgment imposing a punishment other than imprisonment in the state prison or imprisonment in a county jail under the provisions of subdivision (h) of Section 1170.

(2) When the court, upon committing the defendant to the Division of Juvenile Justice, designates the offense to be a misdemeanor.

(3) When the court grants probation to a defendant without imposition of sentence or grants probation after first executing but suspending a sentence and at the time of granting probation, or on application of the defendant or probation officer thereafter, the court declares the offense to be a misdemeanor.

(4) When the prosecuting attorney files in a court having jurisdiction over misdemeanor offenses a complaint specifying that the offense is a misdemeanor, unless the defendant at the time of his or her arraignment or plea objects to the offense being made a misdemeanor, in which event the complaint shall be amended to charge the felony and the case shall proceed on the felony complaint.

(5) When, at or before the preliminary examination or prior to filing an order pursuant to Section 872, the magistrate determines that the offense is a misdemeanor, in which event the case shall proceed as if the defendant had been arraigned on a misdemeanor complaint.

(c) When a defendant is committed to the Division of Juvenile Justice for a crime punishable, in the discretion of the court, either by imprisonment in the state prison or imprisonment in a county jail under the provisions of subdivision (h) of Section 1170, or by fine or imprisonment in the county jail not exceeding one year, the offense shall, upon the discharge of the defendant from the Division of Juvenile Justice, thereafter be deemed a misdemeanor for all purposes.

(d) A violation of any code section listed in Section 19.8 is an infraction subject to the procedures described in Sections 19.6 and 19.7 when:

(1) The prosecutor files a complaint charging the offense as an infraction unless the defendant, at the time he or she is arraigned, after being informed of his or her rights, elects to have the case proceed as a misdemeanor, or;

(2) The court, with the consent of the defendant, determines that the offense is an infraction in which event the case shall proceed as if the defendant had been arraigned on an infraction complaint.

(e) Nothing in this section authorizes a judge to relieve a defendant of the duty to register as a sex offender pursuant to Section 290 if the defendant is charged with an offense for which registration as a sex offender is required pursuant to Section 290, and for which the trier of fact has found the defendant guilty.

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

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: Under existing criminal law, a court has the discretion to sentence a defendant charged with a "wobbler" (an offense that can be charged as either a felony or a misdemeanor) to supervised felony probation and then, if the defendant successfully completes probation, to

reduce the offense to a misdemeanor. The possibility of such a reduction (which may thereby remove some of the stigma and harm to employment and housing prospects) motivates defendants to perform well on probation.

The problem is that under current law, if a judge wishes to motivate a defendant to perform well on probation by also suspending a prison sentence over their head as a condition of probation, the use of such a suspended sentence bars the defendant from ever requesting a reduction in the future, regardless of how well the defendant performs on probation. For example, a defendant who was convicted of a wobbler offense twenty years ago and has no further criminal record is currently unable to ask for a reduction if the court ever suspended prison time over the defendant's head, regardless of how well the defendant performed on probation.

The Solution: The proposed resolution would give courts the ability to reduce deserving defendant's wobbler convictions to misdemeanors upon successful completion of probation, while still allowing courts to motivate defendant's by imposing suspended sentences as a condition of probation.

IMPACT STATEMENT
The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

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RESPONSIBLE FLOOR DELEGATE: Nick Stewart-Oaten

RESOLUTION 16-02-2017

DIGEST
Juveniles: Expands Limits and Use on Juvenile Reentry Funds
Amends Welfare and Institutions Code section 1981 to make available Juvenile Reentry Fund allocations for reentry services that may be used up to two years after the youth is released from court supervision.

RESOLUTIONS COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE

History:
No similar resolutions found.

Reasons:
This resolution amends Welfare and Institutions Code section 1981 to make available Juvenile Reentry Fund allocations for reentry services that may be used up to two years after a youth is released from court supervision. This resolution should be approved in principle because there is an ever-increasing number of juveniles needing to transition back into communities, schools, and families, whose needs do not disappear when supervision by the juvenile court ends.

One of the goals of the California juvenile justice system is the rehabilitation of juvenile offenders. Youths released from custody have high rates of school dropout, substance abuse, mental illness, and other problems. Services to assist adolescents re-enroll in school, access physical and mental health care, develop job skills, and avoid the lure of gangs are in high demand and short supply, yet the need for them is increasing as juvenile incarcerations increase. By permitting the use of the Juvenile Reentry Funds for reentry services up to two years after the juvenile has been released from the jurisdiction of the juvenile court, this resolution strengthens the efficacy of county-run and county-supported services for at-risk youth. It also better facilitates innovative programs such as the Juvenile Reentry Court, a project of the San Francisco Superior Court, which provides comprehensive reentry case planning and services through the joint efforts of the court, the Juvenile Probation Department, the Offices of the District Attorney and Public Defender, and the Center on Juvenile and Criminal Justice. (*See* http://sfsuperiorcourt.org/divisions/collaborative/jrc.)

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Welfare and Institutions Code section 1981 to read as follows:

§ 1981

(a) There is hereby established a Juvenile Reentry Fund. Moneys allocated for local supervision and reentry services of persons discharged from the custody of the Division of Juvenile Facilities authorized in Sections 1983 and 1984 shall be deposited into this fund from the General Fund. Any moneys deposited into this fund shall be administered by the Controller and the share calculated for each county probation department shall be transferred to its Juvenile

Reentry Fund authorized in subdivision (b).

(b) Each county is hereby authorized to establish in each county treasury a Juvenile Reentry Fund to receive all amounts allocated to that county probation department for purposes of implementing this chapter.

(c) Allocations from the Juvenile Reentry Fund shall be expended exclusively to address local program needs for persons discharged from the custody of the Division of Juvenile Facilities. County probation departments, in expending the Juvenile Reentry Grant allocation, shall provide evidence-based supervision and detention practices and rehabilitative services to persons who are subject to the jurisdiction of the juvenile court or within two years of juvenile court jurisdiction who were committed to and discharged from the Department of Corrections and Rehabilitation, Division of Juvenile Facilities. "Evidence-based" refers to supervision and detention policies, procedures, programs, and practices demonstrated by scientific research to reduce recidivism among individuals on probation or under postrelease supervision.

(d) Funds allocated pursuant to subdivision (c) shall supplement existing services and shall not be used to supplant any existing funding by local agencies for existing services provided by that entity.

(e) The funding provided under this chapter is intended to provide payment in full for all local government costs of the supervision, programming, education, incarceration or any other cost resulting from persons discharged from custody or held in local facilities pursuant to the provisions of this act.

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

PROPONENT: Pamela Villanueva, Natasha Khamashta, Michael Fern, Mark Harvis, Nick Stewart-Oaten, John Van De Kamp, Joel Douglas, Robin Bernstein-Lev, Vivian McPayah-Obiamalu, Jeanmarie Klingenbeck

STATEMENT OF REASONS

The Problem: Youth are unable to access Juvenile Reentry Fund when they are no longer under court supervision but who still require reentry services to establish stable housing and employment.

The Solution: This resolution would allow probation departments utilizing and paying for the services of Community Based Organizations (CBO's) for youth under the court's jurisdiction to continue to do so after the youth is discharged from probation but within two years of court's jurisdiction.

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

AUTHOR AND/OR PERMANENT CONTACT: Pamela Villanueva, Los Angeles County Public Defender's Office, 1 Regent Street, Ste 304, Inglewood, CA 90301, (310) 419-6738, pvillanueva@pubdef.lacounty.gov.

RESPONSIBLE FLOOR DELEGATE: Pamela Villanueva

RESOLUTION 16-03-2017

DIGEST
Division of Juvenile Facilities: Retaining Jurisdiction Upon Release
Amends Welfare and Institution Code section 731 to modify the maximum confinement time at the juvenile facility to reflect the realignment to local supervision.

RESOLUTION COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE

History:
No similar resolutions found.

Reasons:
This resolution amends Welfare and Institution Code section 731 to modify the maximum confinement time at the juvenile facility to reflect the realignment to local supervision. This resolution should be approved in principle to address the inconsistency between the language of the statute and the law as it was supposed to be after realignment.

For the past decade, there has been a concerted effort to clean up, modernize and professionalize the juvenile justice system in California. In 2007, Senate Bill 81 was signed into law making changes to Government Code sections 15819.40, 15819.401, 15819.41, 15819.411, and 15820.907, Penal Code sections 1557, 4016.5, 4750, 4758, 6005, 6051, 6126, 7000, 7003.5, 2063, 3007, and 7050, and Welfare and Institutions Code sections 208.5, 731, 736, 1731.5, 1766, 1767.3, 1776, 731.1, and 1767.35.

The 2007 changes were important in that they moved thousands of juveniles out of violent and under-performing state institutions into local institutions that could better address their needs. State institutions were failing to perform in their stated task of helping juveniles as well as providing for their welfare and health. Realignment and the changes from 2007 helped clean up a system that brutalized juveniles. Additionally, part of the legislation allowed the courts that handled juvenile matters to oversee and retain jurisdiction over the ward's supervision during the period of time allowed by law (as controlled by Welf. & Inst. Code §1769). The proposed language would add clarifying language to Welfare and Institutions Code section 731 to reflect the language and stated purpose of Senate Bill 81. Additionally, the Board of Parole Hearings no longer controls or supervises juveniles; juveniles are supervised by the Board of Juvenile Hearings. As such, the proposed language cleans up section 731.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Welfare and Institutions Code section 731 to read as follows:

§ 731

(a) If a minor is adjudged a ward of the court on the ground that he or she is a person described by Section 602, the court may order any of the types of treatment referred to in

Sections 727 and 730 and, in addition, may do any of the following:

(1) Order the ward to make restitution, to pay a fine up to two hundred fifty dollars ($250) for deposit in the county treasury if the court finds that the minor has the financial ability to pay the fine, or to participate in uncompensated work programs.

(2) Commit the ward to a sheltered-care facility.

(3) Order that the ward and his or her family or guardian participate in a program of professional counseling as arranged and directed by the probation officer as a condition of continued custody of the ward.

(4) Commit the ward to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, if the ward has committed an offense described in subdivision (b) of Section 707 or subdivision (c) of *Section 290.008 of the Penal Code,* and is not otherwise ineligible for commitment to the division under Section 733.

(b) The Division of Juvenile Facilities shall notify the Department of Finance when a county recalls a ward pursuant to Section 731.1. The division shall provide the department with the date the ward was recalled and the number of months the ward has served in a state facility. The division shall provide this information in the format prescribed by the department and within the timeframes established by the department.

(c) A ward committed to the Division of Juvenile Facilities may not be held in physical confinement for a period of time in excess of the maximum period of mprisonment that could be imposed upon an adult convicted of the offense or offenses that brought or continued the minor under the jurisdiction of the juvenile court. A ward committed to the Division of Juvenile Facilities also may not be held in physical confinement for a period of time in excess of the maximum term of physical confinement set by the court based upon the facts and circumstances of the matter or matters that brought or continued the ward under the jurisdiction of the juvenile court, which may not exceed the maximum period of adult confinement as determined pursuant to this section. This section does not limit the power of the Board of ~~Parole~~ Juvenile Hearings to retain the ward on parole status for the period permitted by Section 1769 ~~.~~ or for the committing court to retain jurisdiction and establish conditions of the ward's supervision pursuant to Section 1766 (b) for the period permitted by Section 1769.

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

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: Currently 731(c) does not reflect the realignment of youth to the counties for supervision and is resulting in fewer judges utilizing their discretion to limit the time youth spend at Division of Juvenile Facilities.

The Solution: Amend the resolution to reflect the realignment of youth to the counties for supervision. More courts will utilize their discretion to limit the time youth spend on their initial commitment to Division of Juvenile Facilities without limiting the court's jurisdiction to retain the youth on probation supervision.

IMPACT STATEMENT
The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

AUTHOR AND/OR PERMANENT CONTACT: Pamela Villanueva, Los Angeles County Public Defender's Office, 1 Regent Street Ste 304, Inglewood, CA 90301, phone (310) 419-6738, e-mail pvillanueva@pubdef.lacounty.gov

RESPONSIBLE FLOOR DELEGATE: Pamela Villanueva

RESOLUTION 16-04-2017

DIGEST
Offender Registry: Elimination of Narcotic Offender Registration
Deletes Health and Safety Code Sections 11590, 11592, 11593 and 11595, and amends sections 11591, 11591.5 and 11594 relating to narcotic offender registration and reporting requirements.

RESOLUTIONS COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE

History:
No similar resolutions found.

Reasons:
This resolution deletes Health and Safety Code sections 11590, 11592, 11593 and 11595, and amends sections 11591, 11591.5 and 11594 relating to narcotic offender registration and reporting requirements. This resolution should be approved in principle because the narcotics offender registration requirement is archaic, counterproductive, and rarely enforced.

Health and Safety Code sections 11590 et seq. requires a person convicted of certain drug offenses to register with their local police department as a "narcotics offender." Local law enforcement is required to notify the superintendent of a school district or community college district if one of its employees has been arrested for certain drug offenses.

This resolution would eliminate the narcotics offender registration requirement and require law enforcement agencies to destroy registration records it has on narcotic offenders. The report to the school superintendents would be required only upon an employee's conviction, rather than arrest, for certain drug offenses.

Unlike sex offender registration, which arguably serves some purpose by tracking the location of people convicted of sex offenses, registration of narcotic offenders accomplishes nothing. These registrations are simply recorded on the same criminal history printout that already lists the person's underlying drug conviction. There is no "Megan's Law" website for narcotics offenders, no statutory scheme to create one, and no reason to do so. Law enforcement officers already have access to a person's criminal history; they have no need for an additional "narcotics offender" entry on the rap sheet.

In addition, California's drug policies have shifted dramatically. The current narcotics offender registration requirement does not comport with the new focus on treatment instead of punishment. Eliminating the registration requirement would free up some of these resources, refocus priorities and end unnecessary records keeping.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to repeal Health and Safety Code sections 11590, 11592, 11593, 11595 and amend sections 11591, 11591.5 and 11594 as follows:

~~§ 11590~~

~~(a) Except as provided in subdivisions (c) and (d), any person who is convicted in the State of California of any offense defined in Section 11350, 11351, 11351.5, 11352, 11353, 11353.5, 11353.7, 11354, 11355, 11357, 11358, 11359, 11360, 11361, 11363, 11366, 11366.5, 11366.6, 11368, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, 11383, or 11550, or subdivision (a) of Section 11377, or any person who is discharged or paroled from a penal institution where he or she was confined because of the commission of any such offense, or any person who is convicted in any other state of any offense which, if committed or attempted in this state, would have been punishable as one or more of the above-mentioned offenses, shall within 30 days of his or her coming into any county or city, or city and county in which he or she resides or is temporarily domiciled for that length of time, register with the chief of police of the city in which he or she resides or the sheriff of the county if he or she resides in an unincorporated area. For persons convicted of an offense defined in Section 11377, 11378, 11379, or 11380, this subdivision shall apply only to offenses involving controlled substances specified in paragraph (12) of subdivision (d) of Section 11054 and paragraph (2) of subdivision (d) of Section 11055, and to analogs of these substances, as defined in Section 11401. For persons convicted of an offense defined in Section 11379 or 11379.5, this subdivision shall not apply if the conviction was for transporting, offering to transport, or attempting to transport a controlled substance.~~

~~(b) Any person who is convicted in any federal court of any offense which, if committed or attempted in this state would have been punishable as one or more of the offenses enumerated in subdivision (a) shall within 30 days of his or her coming into any county or city, or city and county in which he or she resides or is temporarily domiciled for that length of time, register with the chief of police of the city in which he or she resides or the sheriff of the county if he or she resides in an unincorporated area.~~

~~(c) This section does not apply to a conviction of a misdemeanor under Section 11357, 11360, or 11377.~~

~~(d) The registration requirements imposed by this section for the conviction of offenses defined in Section 11353.7, 11366.5, 11366.6, 11377, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, or 11383, shall apply to any person who commits any of those offenses on and after January 1, 1990.~~

§ 11591

Every sheriff, chief of police, or the Commissioner of the California Highway Patrol, upon the ~~arrest~~ conviction for any of the following controlled substance offenses ~~enumerated in Section 11590~~, 11350, 11351, 11351.5, 11352, 11353, 11353.5, 11353.7, 11354, 11355, 11357, 11358, 11359, 11360, 11361, 11363, 11366, 11366.5, 11366.6, 11368, 11370.1, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, 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 he or she 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~~ conviction to the governing board of the school district employing the person.

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

§ 11591.5

Every sheriff or chief of police, upon the ~~arrest~~ conviction for any of the following controlled substance offenses ~~enumerated in Section 11590,~~ 11350, 11351, 11351.5, 11352, 11353, 11353.5, 11353.7, 11354, 11355, 11357, 11358, 11359, 11360, 11361, 11363, 11366, 11366.5, 11366.6, 11368, 11370.1, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, 11383, or 11550, or subdivision (a) of Section 11377 or Section 11364, insofar as that section relates to paragraph (9) of subdivision (d) of Section 11054, of any teacher or instructor employed in any community college district shall immediately notify by telephone the superintendent of the community college district employing the teacher or instructor and shall immediately give written notice of the conviction ~~arrest~~ to the Office of the Chancellor of the California Community Colleges. Upon receipt of such notice, the district superintendent shall immediately notify the governing board of the community college district employing the person.

~~§ 11592~~

~~Any person who, on or after the effective date of this section is discharged or paroled from a jail, prison, school, road camp, or other institution where he or she was confined because of the commission or attempt to commit one of the offenses described in Section 11590 shall, prior to such discharge, parole, or release, be informed of his or her duty to register under that section by the official in charge of the place of confinement and the official shall require the person to read and sign such form as may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The official in charge of the place of confinement shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report that address to the Department of Justice. The official in charge of the place of confinement shall give one copy of the form to the person, and shall send two copies to the Department of Justice, which, in turn, shall forward one copy to the appropriate law enforcement agency having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.~~

~~§ 11593~~

~~Any person who, on or after the effective date of this section is convicted in the State of California of the commission or attempt to commit any of the above-mentioned offenses and who is released on probation or discharged upon payment of a fine shall, prior to such release or~~

~~discharge, be informed of his duty to register under Section 11590 by the court in which he has been convicted and the court shall require the person to read and sign such form as may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him. The court shall obtain the address where the person expects to reside upon his release or discharge and shall report within three days such address to the Department of Justice. The court shall give one copy of the form to the person, and shall send two copies to the Department of Justice, which, in turn, shall forward one copy to the appropriate law enforcement agency having local jurisdiction where the person expects to reside upon his discharge, parole, or release.~~

§ 11594

~~The registration required by Section 11590 shall consist of (a) a statement in writing signed by such person, giving such information as may be required by the Department of Justice, and (b) the fingerprints and photograph of such person. Within three days thereafter the registering law enforcement agency shall forward such statement, fingerprints and photograph to the Department of Justice. If any person required to register hereunder changes his residence address he shall inform, in writing within 10 days, the law enforcement agency with whom he last registered of his new address. The law enforcement agency shall, within three days after receipt of such information, forward it to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency having local jurisdiction of the new place of residence.~~ All registration requirements set forth in this article shall <u>are terminated immediately upon the effective date of the repeal of the registration requirement</u>. ~~terminate five years after the discharge from prison, release from jail or termination of probation or parole of the person convicted. Nothing in this section shall be construed to conflict with the provisions of Section 1203.4 of the Penal Code concerning termination of probation and release from penalties and disabilities of probation. Any person required to register under the provisions of this section who shall knowingly violate any of the provisions thereof is guilty of a misdemeanor.~~ The statements, photographs and fingerprints herein required shall not be open to inspection by the public or by any person other than a regularly employed peace or other law enforcement officer. <u>The statements, photographs and fingerprints herein required shall be destroyed not later than two years after the effective date of the repeal of the registration requirement.</u>

~~§ 11595~~

~~The provisions of former Article 6 (commencing with Section 11850) of Chapter 7 of Division 10 of this code, which is repealed by the act that adds this article, including Section 11850 as amended by Chapter 796 of the Statutes of 1972, shall remain in effect as to any person who comes within such provisions. Notwithstanding Section 9605 of the Government Code, the changes which are made in former Section 11850 by Chapter 796 of the Statutes of 1972 shall be effective and operative for the purposes of this section.~~

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

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: Section 11590 is an antiquated statute which serves no useful purpose. Under current law, people convicted of drug-related offenses are required to register as "narcotics offenders" with the police. Unlike sex-offender registration (which arguably serves some purpose by tracking the location of people convicted of sex-offenses) narcotics registration accomplishes nothing, since the narcotics registration is simply recorded on the same RAP sheet that already reflects the person's underlying drug conviction and people who register are not subsequently tracked. Worse, the current requirement wastes police resources by requiring officers to spend time and money "registering" people with drug problems instead of preventing new crime. In reality, Section 11590 is a relic of a time when the political approach to drug addiction was to demonize drug users. Fortunately, this is no longer the case. The electorate recently approved two ballot measures, Proposition 47 and 64, both of which reflect society's recognition that drug use is the result of an illness, and recidivism is prevented with treatment rather than a revolving door of incarceration. Penal Code section 11590 is simply inconsistent with this wave of reform and is long overdue for repeal.

The Solution: Repeal of this section and let police spend their time, effort and taxpayer money preventing crime, while letting those convicted of drug offenses spend their time seeking treatment.

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

CURRENT OR PRIOR RELATED LEGISLATION
None known.

AUTHOR AND/OR PERMANENT CONTACT: Robin Bernstein-Lev, Los Angeles County Public Defender, 320 W. Temple Street, Suite 590, Los Angeles CA 90012, phone 213-893-2545, e-mail rbernstein-lev@pubdef.lacounty.gov

RESPONSIBLE FLOOR DELEGATE: Robin Bernstein-Lev

RESOLUTION 16-05-2017

DIGEST
Criminal Law: Eliminate References to Gender
Amends Penal Code sections 266, 315 and 11160, and deletes section 1108, to remove sexist, gender-biased, discriminatory, and outdated language.

RESOLUTIONS COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE

History:
No similar resolutions found.

Reasons:
This resolution amends Penal Code sections 266, 315 and 11160, and deletes section 1108, to remove sexist, gender-biased, discriminatory, and outdated language. This resolution should be approved in principle because society now recognizes a broad range of sexual crimes against persons of all genders and gender identities, and all sexual orientations.

Many of California's Penal Code sections were written at a time when women were presumed to be the only victims of sexual crimes. Since then, society has not only recognized that any person can be the target of improper sexual aggression, but also that sex can be used as a commodity. This resolution seeks to update the language of some of these statutes to reflect this new awareness.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code sections 266, 315, and 11160 and repeal section 1108 to read as follows:

§ 266

Every person who inveigles or entices any ~~unmarried~~ ~~female~~ minor~~, of previous chaste character, under the age of 18 years~~, into any house of ill fame, or of assignation, or elsewhere, for the purpose of ~~prostitution~~ commercial sexual exploitation~~, or to have illicit carnal connection with any man~~; and every person who aids or assists in such inveiglement or enticement; and every person who, by any false pretenses, false representation, or other fraudulent means, procures any ~~female~~ person to have illicit carnal connection with ~~any man~~ another person, is punishable by imprisonment in the state prison, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars ($2,000), or by both such fine and imprisonment.

§ 315

Every person who keeps a house of ill-fame in this state, resorted to for the purposes of prostitution or lewdness, or who willfully resides in such house, is guilty of a misdemeanor; and in all prosecutions for keeping or resorting to such a house common repute may be received as

competent evidence of the character of the house, the purpose for which it is kept or used, and the character of the persons ~~women~~ inhabiting or resorting to it.

~~§ 1108~~

~~Upon a trial for procuring or attempting to procure an abortion, or aiding or assisting therein, or for inveigling, enticing, or taking away an unmarried female of previous chaste character, under the age of eighteen years, for the purpose of prostitution, or aiding or assisting therein, the defendant cannot be convicted upon the testimony of the woman upon or with whom the offense was committed, unless she is corroborated by other evidence.~~

§ 11160

(a) Any health practitioner employed in a health facility, clinic, physician's office, local or state public health department, or a clinic or other type of facility operated by a local or state public health department who, in his or her professional capacity or within the scope of his or her employment, provides medical services for a physical condition to a patient whom he or she knows or reasonably suspects is a person described as follows, shall immediately make a report in accordance with subdivision (b):

(1) Any person suffering from any wound or other physical injury inflicted by his or her own act or inflicted by another where the injury is by means of a firearm.

(2) Any person suffering from any wound or other physical injury inflicted upon the person where the injury is the result of assaultive or abusive conduct.

(b) Any health practitioner employed in a health facility, clinic, physician's office, local or state public health department, or a clinic or other type of facility operated by a local or state public health department shall make a report regarding persons described in subdivision (a) to a local law enforcement agency as follows:

(1) A report by telephone shall be made immediately or as soon as practically possible.

(2) A written report shall be prepared on the standard form developed in compliance with paragraph (4) of this subdivision, and Section 11160.2, and adopted by the Office of Emergency Services, or on a form developed and adopted by another state agency that otherwise fulfills the requirements of the standard form. The completed form shall be sent to a local law enforcement agency within two working days of receiving the information regarding the person.

(3) A local law enforcement agency shall be notified and a written report shall be prepared and sent pursuant to paragraphs (1) and (2) even if the person who suffered the wound, other injury, or assaultive or abusive conduct has expired, regardless of whether or not the wound, other injury, or assaultive or abusive conduct was a factor contributing to the death, and even if the evidence of the conduct of the perpetrator of the wound, other injury, or assaultive or abusive conduct was discovered during an autopsy.

(4) The report shall include, but shall not be limited to, the following:

(A) The name of the injured person, if known.

(B) The injured person's whereabouts.

(C) The character and extent of the person's injuries.

(D) The identity of any person the injured person alleges inflicted the wound, other injury, or assaultive or abusive conduct upon the injured person.

(c) For the purposes of this section, "injury" shall not include any psychological or physical condition brought about solely through the voluntary administration of a narcotic or restricted dangerous drug.

(d) For the purposes of this section, “assaultive or abusive conduct” shall include any of the following offenses:

(1) Murder, in violation of Section 187.

(2) Manslaughter, in violation of Section 192 or 192.5.

(3) Mayhem, in violation of Section 203.

(4) Aggravated mayhem, in violation of Section 205.

(5) Torture, in violation of Section 206.

(6) Assault with intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220.

(7) Administering controlled substances or anesthetic to aid in commission of a felony, in violation of Section 222.

(8) Battery, in violation of Section 242.

(9) Sexual battery, in violation of Section 243.4.

(10) Incest, in violation of Section 285.

(11) Throwing any vitriol, corrosive acid, or caustic chemical with intent to injure or disfigure, in violation of Section 244.

(12) Assault with a stun gun or taser, in violation of Section 244.5.

(13) Assault with a deadly weapon, firearm, assault weapon, or machinegun, or by means likely to produce great bodily injury, in violation of Section 245.

(14) Rape, in violation of Section 261.

(15) Spousal rape, in violation of Section 262.

(16) Procuring any ~~female~~ person to have sex with another ~~man~~, in violation of Section 266, 266a, 266b, or 266c.

(17) Child abuse or endangerment, in violation of Section 273a or 273d.

(18) Abuse of spouse or cohabitant, in violation of Section 273.5.

(19) Sodomy, in violation of Section 286.

(20) Lewd and lascivious acts with a child, in violation of Section 288.

(21) Oral copulation, in violation of Section 288a.

(22) Sexual penetration, in violation of Section 289.

(23) Elder abuse, in violation of Section 368.

(24) An attempt to commit any crime specified in paragraphs (1) to (23), inclusive.

(e) When two or more persons who are required to report are present and jointly have knowledge of a known or suspected instance of violence that is required to be reported pursuant to this section, and when there is an agreement among these persons to report as a team, the team may select by mutual agreement a member of the team to make a report by telephone and a single written report, as required by subdivision (b). The written report shall be signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(f) The reporting duties under this section are individual, except as provided in subdivision (e).

(g) No supervisor or administrator shall impede or inhibit the reporting duties required under this section and no person making a report pursuant to this section shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established, except that these procedures shall not be inconsistent with this article. The internal procedures shall not require any employee required to make a report under this article to disclose his or her identity to the employer.

(h) For the purposes of this section, it is the Legislature's intent to avoid duplication of information.

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

PROPONENT: Queen's Bench Bar Association

STATEMENT OF REASONS

The Problem: The Penal Code includes language that is sexist, gender biased, discriminatory and outdated. The Code needs to be updated to reflect modern norms and to remove sexist, biased, and discriminatory language.

The Solution: This resolution would solve the problem by removing references to female or male where the code is intended to apply to those of any sex equally and to remove outdated language that is inapplicable to today's world.

Section 1108 exhibits so many flaws that it cannot be cured with amendment but should be repealed in full. First, section 1108 purports to address "a trial for procuring or attempting to procure an abortion, or aiding or assisting therein." As written, this section assumes that it is a crime to procure or attempt to procure an abortion. This is in conflict with the right to a legal abortion pursuant to the Reproductive Privacy Act. Second, section 1108 describes "an unmarried female of previous chaste character, under the age of eighteen years." This is clearly an antiquated reference that is no longer applicable to present day. Finally, this section prohibits the conviction of a perpetrator for kidnapping a child for the purposes of commercial sexual exploitation upon the testimony of the child "unless she is corroborated by other evidence." This clearly does not serve any legitimate, non-discriminatory purpose and may interfere with prosecution of kidnappers and rapists.

Please note that this resolution and QB-01-2017 propose complementary amendments to Penal Code sections 266 and 315. The amendments proposed in this resolution and in QB-01-2017 are intended to work together to eliminate use of outdated and discriminatory language.

IMPACT STATEMENT
The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

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RESOLUTION 16-06-2017

DIGEST
Lost and Stolen Guns: Technical Amendments Regarding Mandatory Reporting
Amends Penal Code sections 16520 and 27535 to make technical changes to implement the new provisions requiring mandatory reporting of lost and stolen guns.

RESOLUTION COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE

History:
No similar resolutions found.

Reasons:
This resolution amends Penal Code sections 16520 and 27535 to make technical changes to implement the new provisions requiring mandatory reporting of lost and stolen guns. This resolution should be approved in principle because it will properly align the Penal Code with the changes enacted by the passage of Proposition 63.

The current language of Penal Code sections 16520 and 27535 make no reference to the newly created sections 25250 to 25275. Proposition 63 created sections 25250 to 27275 and went into effect on January 1, 2017. However, Proposition 63 failed to make the appropriate changes to sections 16520 and 27535. This proposed amendment would address that failure.

Penal Code section 16520, subdivision (a) reads as follows: "As used in this part, 'firearm' means a device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion." Subdivision (b) states: "As used in the following provisions, 'firearm' includes the frame or receiver of the weapon…" which is followed by a list of Penal Code sections to apply the above stated definition. However, section 25250 to 25275, are not included and should be listed for completeness.

Penal Code section 27535, subdivision (b)(11) states: "The replacement of a handgun when the person's handgun was lost or stolen, and the person reported that firearm lost or stolen prior to the completion of the application to purchase to any local enforcement agency of the city, county, or city and county in which the person resides." The language of this section needs to reflect the changes to the Penal Code under the new sections 25250 to 25275. This resolution does so.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code sections 16520 and 27535 to read as follows:

§ 16520

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

of combustion.

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

(1) Section 16550.

(2) Section 16730.

(3) Section 16960.

(4) Section 16990.

(5) Section 17070.

(6) Section 17310.

(7) Sections 25250 to 25275, inclusive

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Section 16750.

(2) Subdivision (b) of Section 16840.

(3) Section 25400.

(4) Sections 25850 to 26025, inclusive.

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

(6) Sections 26035 to 26055, inclusive.

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

(1) Subdivisions (a) and (c) of Section 16730.

(2) Section 16550.

(3) Section 16960.

(4) Section 17310.

(5) Division 4.5 (commencing with Section 25250) of Title 4.

~~(5)~~ (6) Chapter 6 (commencing with Section 26350) of Division 5 of Title 4.

~~(6)~~ (7) Chapter 7 (commencing with Section 26400) of Division 5 of Title 4.

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

~~(8)~~ (9) Sections 26700 to 26915, inclusive.

~~(9)~~ (10) Section 27510.

~~(10)~~ (11) Section 27530.

~~(11)~~ (12) Section 27540.
~~(12)~~ (13) Section 27545.
~~(13)~~ (14) Sections 27555 to 27585, inclusive.
~~(14)~~ (15) Sections 29010 to 29150, inclusive.
~~(15)~~ (16) Section 25135.

(e) As used in Sections 34005 and 34010, "firearm" does not include a destructive device.

(f) As used in Sections 17280 and 24680, "firearm" has the same meaning as in Section 922 of Title 18 of the United States Code.

(g) As used in Sections 29010 to 29150, inclusive, "firearm" includes the unfinished frame or receiver of a weapon that can be readily converted to the functional condition of a finished frame or receiver.

§ 27535

(a) No person shall make an application to purchase more than one handgun within any 30-day period.

(b) Subdivision (a) shall not apply to any of the following:

(1) Any law enforcement agency.

(2) Any agency duly authorized to perform law enforcement duties.

(3) Any state or local correctional facility.

(4) Any private security company licensed to do business in California.

(5) Any person who is properly identified as a full-time paid peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, and who is authorized to, and does carry a firearm during the course and scope of employment as a peace officer.

(6) Any motion picture, television, or video production company or entertainment or theatrical company whose production by its nature involves the use of a firearm.

(7) Any person who may, pursuant to Article 2 (commencing with Section 27600), Article 3 (commencing with Section 27650), or Article 4 (commencing with Section 27700), claim an exemption from the waiting period set forth in Section 27540.

(8) Any transaction conducted through a licensed firearms dealer pursuant to Chapter 5 (commencing with Section 28050).

(9) Any person who is licensed as a collector pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, and has a current certificate of eligibility issued by the Department of Justice pursuant to Article 1 (commencing with Section 26700) of Chapter 2.

(10) The exchange of a handgun where the dealer purchased that firearm from the person seeking the exchange within the 30-day period immediately preceding the date of exchange or replacement.

(11) The replacement of a handgun when the person's handgun was lost or stolen, and the person reported that firearm lost or stolen under Section 25250 prior to the completion of the application to purchase the replacement handgun ~~to any local law enforcement agency of the city, county, or city and county in which the person resides~~.

(12) The return of any handgun to its owner.

(13) A community college that is certified by the Commission on Peace Officer Standards and Training to present the law enforcement academy basic course or other commission-certified law enforcement training.

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

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: After the approval of Proposition 63 in 2016, reporting a lost or stolen handgun is now required for gun owners. However, Prop 63 failed to include some housekeeping edits to the Penal Code to go with that requirement.

The Solution: This resolution implements housekeeping changes to ensure the penal code is fluid regarding the mandatory reporting of stolen guns, by including the sections in the firearms definition.

IMPACT STATEMENT
The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

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RESOLUTION 16-07-2017

DIGEST
Bail Reform: Establish County Pretrial Services Agencies
Adds Penal Code section 1267 and amends sections 1270, 1270.1 and 1275 to augment California's monetary bail system with county pretrial services agencies.

RESOLUTIONS COMMITTEE RECOMMENDATION
DISAPPROVE

History:
No similar resolutions found.

Reasons:
This resolution adds Penal Code section 1267 and amends sections 1270, 1270.1 and 1275 to augment California's monetary bail system with county pretrial services agencies. This resolution should be disapproved because it requires each county to create a pretrial service agency without any consideration for how it will be funded.

California's system of pretrial release is primarily based on the setting and posting of monetary bail. Currently, each county maintains a bail schedule that assigns a monetary value to the charges and allegations against a defendant. At arraignment, the court may modify the bail amount or release a defendant on his or her own recognizance, after taking into consideration any risk to public safety, the defendant's prior criminal history, and the likelihood of nonappearance. First-time defendants who are charged with non-violent misdemeanors or low-grade felonies are often released with a promise to appear without having to post bail. Defendants often use bail bonds companies, which will post bail on the defendant's behalf after charging a premium, usually 10 percent. At the end of the case, any posted bail is exonerated (returned) to whomever posted it. However, it may be forfeited to the court if a defendant who is out on bond fails to appear and remains a fugitive. Thus, bail bonds companies help ensure that defendants appear in court by having bounty hunters track down those who abscond.

This resolution does not actually eliminate the monetary bail system, but instead calls for each county to create a pretrial services agency, which would largely take over the responsibility of determining whether a defendant should be released. However, it is unclear where the funds would come from to establish these agencies, let alone continue to staff and operate them going forward.

This resolution is similar to S.B. No. 10 (Hertzberg), which is currently in the Committee on Appropriations and A.B. No. 42 (Bonta) which failed in the Assembly, both of which would accomplish the same objective sought by this resolution.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to add Penal Code section 1267 and amend sections 1270, 1270.1 and 1275 to read as follows:

§ 1267

a) Each county shall establish a Pretrial Services Agency. For the purposes of this section, two or more counties can form a Regional Pretrial Services Agency. Each Pretrial Services Agencies shall follow the Standards and Procedures developed by the California Association of Pretrial Services.

b) Each Pretrial Services Agency shall:

i) supervise all persons released on non-surety release, including release on personal recognizance, personal bond, non-financial conditions, or cash deposit with the court ii) make reasonable effort to provide notice for each required court appearance to each person released by the court

ii) serve as a coordinator for other agencies and organizations, which serve or may be eligible to serve as custodians for persons released under supervision and advise the judicial officer as to the eligibility, availability, and capacity of such agencies and organizations

iii) assist persons released in securing employment or necessary medical or social services

iv) inform the Judicial Officer and the District Attorney of any failure to comply with pretrial release conditions or the arrest of persons released under its supervision and recommend modifications of release conditions when appropriate

v) prepare pretrial detention reports, in cooperation with jurisdictional law enforcement agencies and the District Attorney.

c) Each Pretrial Services Agency Defendant Supervision Program shall provide services for: general supervision, high-risk supervision, and supervision for special populations.

i) "High-Risk Supervision" may include, but is not limited to: weekly contact, drug testing, and/or location monitoring, complying with a curfew, home confinement, and residing in a community-based halfway house.

ii) "Supervision for Special Populations" may include, but is not limited to: specialized services for defendants with mental illness, mild mental retardation, and/or co-occurring substance use and mental illness.

d) Each Pretrial Services Agency shall use a standardized risk assessment instrument that examines relevant defendant data in order to identify the most appropriate supervision levels for released defendants.

i) The Pretrial Services Agency shall recommend the least restrictive non-financial release conditions needed to protect the community and reasonably assure the defendant's return to court.

ii) After receiving representations of the prosecutor, representations of the defense attorney, and considering the Pretrial Services Agency's release recommendation, a Judicial Officer shall decide whether to release the defendant prior to trial. If the defendant is to be released, the Judicial Officer shall decide which level of supervision is appropriate.

§ 1270

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

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

§ 1270.1

(a) Except as provided in subdivision (e), before any person who is arrested for any of the following crimes may be released on bail in an amount that is either more or less than the amount contained in the schedule of bail for the offense, or may be released on his or her own recognizance, a hearing shall be held in open court before the magistrate or judge:

(1) A serious felony, as defined in subdivision (c) of Section 1192.7, or a violent felony, as defined in subdivision (c) of Section 667.5, but not including a violation of subdivision (a) of Section 460 (residential burglary).

(2) A violation of Section 136.1 where punishment is imposed pursuant to subdivision (c) of Section 136.1, Section 262, 273.5, or 422 where the offense is punished as a felony, or Section 646.9.

(3) A violation of paragraph (1) of subdivision (e) of Section 243.

(4) A violation of Section 273.6 if the detained person made threats to kill or harm, has engaged in violence against, or has gone to the residence or workplace of, the protected party.

(b) The prosecuting attorney and defense attorney shall be given a two-court-day written notice and an opportunity to be heard on the matter. If the detained person does not have counsel, the court shall appoint counsel for purposes of this section only. The hearing required by this section shall be held within the time period prescribed in Section 825.

(c) At the hearing, the court shall consider evidence of past court appearances of the detained person, the maximum potential sentence that could be imposed, and the danger that may be posed to other persons if the detained person is released. In making the determination whether to release the detained person on his or her own recognizance, the court shall consider the potential danger to other persons, including threats that have been made by the detained person and any past acts of violence. The court shall also consider any evidence offered by the detained person regarding his or her ties to the community ~~and his or her ability to post bond~~.

(d) If the judge or magistrate sets the bail in an amount that is either more or less than the amount contained in the schedule of bail for the offense, the judge or magistrate shall state the reasons for that decision and shall address the issue of threats made against the victim or witness, if they were made, in the record. This statement shall be included in the record.

(e) Notwithstanding subdivision (a), a judge or magistrate, pursuant to Section 1269c,

may, with respect to a bailable felony offense or a misdemeanor offense of violating a domestic violence order, increase bail to an amount exceeding that set forth in the bail schedule without a hearing, provided an oral or written declaration of facts justifying the increase is presented under penalty of perjury by a sworn peace officer.

§ 1275

(a) (1) In setting, reducing, or denying bail, a judge or magistrate shall take into consideration the protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at trial or at a hearing of the case. The public safety shall be the primary consideration. In setting bail, a judge or magistrate may consider factors such as the information included in a report prepared in accordance with Section 1318.1.

(2) In considering the seriousness of the offense charged, a judge or magistrate shall include consideration of the alleged injury to the victim, and alleged threats to the victim or a witness to the crime charged, and the alleged use of a firearm or other deadly weapon in the commission of the crime charged~~, and the alleged use or possession of controlled substances by the defendant~~.

(b) In considering offenses wherein a violation of Chapter 6 (commencing with Section 11350) of Division 10 of the Health and Safety Code is alleged, a judge or magistrate shall refer the defendant to the country or regional pretrial services agency, "High-Risk Supervision" program or "Supervision for Special Populations" program ~~consider the following: (1) the alleged amounts of controlled substances involved in the commission of the offense, and (2) whether the defendant is currently released on bail for an alleged violation of Chapter 6 (commencing with Section 11350) of Division 10 of the Health and Safety Code.~~

(c) Before a court reduces bail to below the amount established by the bail schedule approved for the county, in accordance with subdivisions (b) and (c) of Section 1269b, for a person charged with a serious felony, as defined in subdivision (c) of Section 1192.7, or a violent felony, as defined in subdivision (c) of Section 667.5, the court shall make a finding of unusual circumstances and shall set forth those facts on the record. For purposes of this subdivision, "unusual circumstances" does not include the fact that the defendant has made all prior court appearances or has not committed any new offenses.

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

PROPONENTS: Bar Association of San Francisco

STATEMENT OF REASONS

The Problem: Currently, before trial, if a court finds a person to be a danger to public safety or is considered a flight risk, then the court will set a bail amount. If the person can pay 10 percent of the bail amount, then the person can be released until the next court date. If the person cannot pay the 10 percent, then the person remains in jail. For example, the median bail in California is $50,000, and the amount required for release is $5,000. According to the U.S. Federal Reserve, 46 percent of Americans don't have $400 to pay for an emergency expense and they would have to sell something or borrow money to cover the cost.

From Senator Robert Hertzberg's Press Release about SB 10 (2017):

The presumption of innocence is one of the foundations of the American justice system, but every day thousands of Californians who are awaiting trial are forced to be in jail because they don't have the money to post bail... The current cash bail system is the modern equivalent of debtor's prison.

In California, sixty-three percent of the people in county jails are awaiting trial or sentencing, amounting to 46,000 people per day.

The Solution: Because Washington, D.C.'s Pretrial Services Agency (PSA) provides defendant supervision according to each non-violent defendant's needs, then it has a highly-successful no-money bail system. For example, in Washington, D.C., 85 percent of defendants are released without bail, 90 percent of them show up for their court dates, and 91 percent of them are "law-abiding" while free. As a result, Washington, D.C. saves $398 million a year in incarceration costs.

See http://www.cleveland.com/metro/index.ssf/2016/05/how_dc_court_reforms_save_398.html. As a result, Washington D.C.'s system is a model that should be followed by the fifty states.

SB 10 (Hertzberg) and AB 42 (Bonta), with identical language, attempt to provide Bail Reform for misdemeanor offenses only. The bills would require the court to consider whether there is any "condition or combination of conditions" for the defendant to meet that would "reasonably ensure public safety and the appearance of the defendant as required." This places the burden on the defendant to promise to supervise himself or herself, if released. SB 10 and AB 42 are not sufficient because they do not include felony offenses and because successful release programs, such as Washington, D.C.'s program, include a formal "defendant supervision" program. This resolution copies Washington, D.C.'s three-tiered structure for providing general supervision, high-risk supervision, and supervision for special populations.

According to the Board of State and Community Corrections, the average daily cost for pretrial detention runs over $100 per inmate: http://www.bscc.ca.gov/downloads/Avg_Cost_II_III_12.pdf. And according to the Pretrial Justice Institute, it costs ninety percent less to supervise a defendant in the community than it costs to keep the defendant in jail. Bail reform is not about creating an experiment by releasing more defendants and simply hoping that they will return for trial. Instead, successful bail reform will require each California county to administer a pretrial services agency, as Washington, D.C. has already demonstrated.

IMPACT STATEMENT
The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION
SB 10 (Hertzberg, 2017), Bail: Pretrial Release (identical language to AB 42).

AB 42 (Bonta, 2017), Bail Reform (identical language to SB 10).

See SB 163 (Hertzberg, 2015) Bail Reform (died in Committee).

California Association of Pretrial Services, Release Standards and Recommended Procedures (Feb. 2007).

ABA Standards for Criminal Justice, Third Edition, Pretrial Release, 2007.

Code of the District of Columbia, § 23-1321, Release Prior to Trial; § 23-1322, Detention Prior to Trial, and § 23-1323, Detention of Addict.

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RESOLUTION 16-08-2017

DIGEST
Pretrial Release: Grounds for Pretrial Detention
Amends Penal Code section 1272.12 to adopt the American Bar Association's Pretrial Release Standards for "Grounds for Pretrial Detention."

RESOLUTIONS COMMITTEE RECOMMENDATION
DISAPPROVE

History:
No similar resolutions found.

Reasons:
This resolution amends Penal Code section 1272.12 to adopt the American Bar Association's Pretrial Release Standards for "Grounds for Pretrial Detention." This resolution should be disapproved because it addresses only one code section of a complex statutory scheme, would cause confusion, and would not accomplish the goal of bail reform.

Although this resolution correctly identifies a problem in the way pretrial release ("bail") is administered in California, its proposed revisions will not solve that problem. Currently, there is a presumption that a defendant remains in custody pending trial. However, the current bail scheme favors wealthy defendants and punishes defendants with more modest means, before the issue of guilt or innocence is ever decided, because wealthy defendants have the means to post bail and secure their pretrial release while defendants of more modest means remain in custody for the sole reason that they do not have sufficient funds to post bail.

While this resolution is modeled after the language in ABA standard 10-5.8, that standard is much more detailed and comprehensive than the resolution's proposed language. The full text of the American Bar Association's *Standards for Criminal Justice: Pretrial Release* (Third Edition, 2007) can be found at http://bit.ly/2rKdtCV. This document consists of 160 pages, and has 37 proposed sections.

Similarly, the Legislature is currently working to overhaul California's pretrial release system through Senate Bill No. 10 (Hertzberg). This bill would significantly change the Penal Code chapter relating to pretrial release, by amending multiple statutes.

Changing the pretrial release system in California requires a comprehensive overhaul. Revisions cannot be done in a piecemeal fashion, as proposed by this resolution. A change in only Penal Code section 1272.12 would likely result in a misapplication of this section, and create conflict with the rest of the chapter.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 1272.1 to read as follows:

§ 1272.1

~~Release on bail pending appeal under subdivision (3) of Section 1272 shall be ordered by the court if the defendant demonstrates all the following:~~

~~(a) By clear and convincing evidence, the defendant is not likely to flee. Under this subdivision the court shall consider the following criteria:~~

~~(1) The ties of the defendant to the community, including his or her employment, the duration of his or her residence, the defendant's family attachments and his or her property holdings.~~

~~(2) The defendant's record of appearance at past court hearings or of flight to avoid prosecution.~~

~~(3) The severity of the sentence the defendant faces.~~

~~(b) By clear and convincing evidence, the defendant does not pose a danger to the safety of any other person or to the community.~~

~~Under this subdivision the court shall consider, among other factors, whether the crime for which the defendant was convicted is a violent felony, as defined in subdivision (c) of Section 667.5.~~

a) If, after a hearing and the presentment of an indictment or a showing of probable cause in the charged offense, the government proves by clear and convincing evidence that no condition or combination of conditions of release will reasonably ensure the defendant's appearance in court or protect the safety of the community or any person, the judicial officer should order the detention of the defendant before trial.

b) In considering whether there are any conditions or combination of conditions that would reasonably ensure the defendant's appearance in court and protect the safety of the community and of any person, the judicial officer should consider factors from the government and/or parole department, from the defense and/or from a pretrial services agency, and from the court records, such as:

1) Information provided by the government and/or parole department:

i) the nature and circumstances of the offense charged;

ii) the nature and seriousness of the danger to any person or the community, if any, that would be posed by the defendant's release;

iii) the weight of the evidence;

iv) history relating to drug or alcohol abuse, criminal history;

v) whether at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense;

vi) any facts justifying a concern that a defendant will present a serious risk of flight or of obstruction, or of danger to the community or the safety of any person.

2) Information provided by the defense and/or a pretrial services agency:

i) the person's character, physical and mental condition, family ties, employment status and history, financial resources, length of residence in the community, including the likelihood that the defendant would leave the jurisdiction, and community ties;

ii) the availability of appropriate third party custodians who agree to assist the defendant

in attending court at the proper time and other information relevant to successful supervision in the community.

3) Information provided by the court: record of appearance at court proceedings.

c) In cases charging capital crimes or offenses punishable by life imprisonment without parole, where probable cause has been found, there should be a rebuttable presumption that the defendant should be detained on the ground that no condition or combination of conditions of release will reasonably ensure the safety of the community or any person or the defendant's appearance in court. In the event the defendant presents information by proffer or otherwise to rebut the presumption, the grounds for detention must be found to exist by clear and convincing evidence.

d) The appeal is not for the purpose of delay and, based upon the record in the case, raises a substantial legal question which, if decided in favor of the defendant, is likely to result in reversal.

For purposes of this subdivision, a "substantial legal question" means a close question, one of more substance than would be necessary to a finding that it was not frivolous. In assessing whether a substantial legal question has been raised on appeal by the defendant, the court shall not be required to determine whether it committed error.

In making its decision on whether to grant defendants' motions for bail under subdivision (3) of Section 1272, the court shall include a brief statement of reasons in support of an order granting or denying a motion for bail on appeal. The statement need only include the basis for the order with sufficient specificity to permit meaningful review.

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

PROPONENTS: Bar Association of San Francisco

STATEMENT OF REASONS

The Problem: Penal Code § 1272.1 presumes that, if released prior to trial, the defendant will flee. In order to favor pretrial release over detention, the presumption should be switched to the releasing the defendant prior to trial, unless the government can prove, by clear and convincing evidence, that the defendant should remain in detention. And this is the approach for the ABA Standards for Criminal Justice, Pretrial Release.

Penal Code § 1272.1 also lists some factors for the defense to present in order for the court to decide whether to detain the defendant or not. However, the more balanced approach is for the court to consider information presented by the prosecution and/or parole department, by the by the defense and/or a pretrial services agency, and from the court records. In addition, § 1272.1 does not address the issue of "obstruction," where there is a risk that if the defendant is released, then the defendant will destroy evidence or dissuade witnesses.

The Solution: This resolution follows the ABA's Criminal Justice, Pretrial Release Standard for "Grounds for Pretrial Detention." *See* ABA Standard Standards for Criminal Justice, Pretrial Release, Standard 10-5.8, Grounds for Pretrial Detention (2007). And the ABA Standard is derived from the Federal Bail Reform Act and Washington, D.C. Code §§ 23-1321 to 23-1323.

Although the ABA Standard lists several factors, this resolution categorizes the factors according to whether the information is to be presented by the government and/or probation department, by the defense and/or a pretrial services agency, or from the court records. In addition, the resolution includes the ABA factor for "obstruction."

SB 10 (Hertzberg) and AB 42 (Bonta), with identical language, attempt to provide bail reform. The bills would amend Penal Code section 1270 by requiring the court to consider whether there is any "condition or combination of conditions" for the defendant to meet that would "reasonably ensure public safety and the appearance of the defendant as required." In addition, the bills are limited to misdemeanor offenses only.

Like SB 10 and AB 42, this resolution would require the court to consider "any conditions or combination of conditions that would reasonably ensure the defendant's appearance in court and protect the safety of the community and of any person." In addition, this resolution would specify which entity would provide the background information to the court, either the government, the defense, or the court. And although SB 10 and AB 42 would be limited to misdemeanors, this resolution would include both misdemeanor and felony offenses.

Establishing "conditions" for each defendant to be released is just a part of bail reform. In order to have comprehensive bail reform, each released defendant must also be properly supervised by a pretrial services agency.

IMPACT STATEMENT
The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION
ABA Standards for Criminal Justice, Pretrial Release, Standard 10-5.8, Grounds for Pretrial Detention (2007). *See* Commentary.

SB 10 (Hertzberg, 2017), Bail: Pretrial Release (identical language to AB 42).

AB 42 (Bonta, 2017), Bail Reform (identical language to SB 10).

See SB 163 (Hertzberg, 2015) Bail Reform (died in Committee).

Federal Bail Reform Act, 18 U.S.C. § 3142 (f) Detention Hearing, and (g) Factors to be Considered.

Code of the District of Columbia, § 23-132, Release Prior to Trial; § 23-1322, Detention Prior to Trial, and § 23-1323, Detention of Addict.

California Association of Pretrial Services, Release Standards and Recommended Procedures (Feb. 2007).

See California Courts, Pretrial Program, available at: http://www.courts.ca.gov/pretrial.htm

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RESPONSIBLE FLOOR DELEGATE: Catherine Rucker

RESOLUTION 16-09-2017

DIGEST
Convictions: Advisement of Ten-Year Firearms Ban
Amends Penal Code section 29805 to require courts to notify a person that they are subject to a 10-year firearms ban.

RESOLUTION COMMITTEE RECOMMENDATION
APPROVED IN PRINCIPLE

History:
No similar resolutions found.

Reasons:
This resolution amends Penal Code section 29805 to require courts to notify a person that they are subject to a 10-year firearms ban. This resolution should be approved in principle because it incentivizes courts to properly advise a defendant who was not previously notified of the requirement that firearms be relinquished, and it protects those defendants from punishment who unknowingly violated the firearms ban pursuant to Penal Code section 29805.

The proposed language provides a proper balance between requiring the court to advise a defendant about the firearms ban pursuant to Penal Code section 29810 on the one hand, and protecting the rights of the defendant who was not aware of the ban on the other. A defendant should not be held liable for violation of Penal Code section 29805 when he/she was not properly provided notice about the ban by the court at the time the court took the defendant's plea and/or entered the defendant's conviction. Additionally, the resolution correctly places the burden on the court to ensure that the defendant is properly advised of his/her obligations originating from the judgment. The result of this resolution is that if the court failed to properly advise the defendant of the firearms ban, then the defendant will still have any firearms in his/her possession confiscated, but he/she would not be subject to charges for violating this section.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 29805 to read as follows:

§ 29805

(a) Except as provided in Section 29855 or subdivision (a) of Section 29800, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, paragraph (1) of subdivision (a) of Section 171c, 171d, 186.28, 240, 241, 242, 243, 243.4, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.6, 422, 626.9, 646.9, or 830.95, subdivision (a) of former Section 12100, as that section read at any time from when it was enacted by Section 3 of Chapter 1386 of the Statutes of 1988 to when it was repealed by Section 18 of Chapter 23 of the Statutes of 1994, Section 17500, 17510, 25300, 25800, 30315, or 32625, subdivision (b) or (d) of Section 26100, or Section 27510, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant

to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, Section 490.2 if the property taken was a firearm, or of the conduct punished in subdivision (c) of Section 27590, and who, within 10 years of the conviction, owns, purchases, receives, or has in possession or under custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this section. However, the prohibition in this section may be reduced, eliminated, or conditioned as provided in Section 29855 or 29860.

(b) Except as stated below, failure to provide notice of the firearms ban as described in Penal Code Section 29810 is not a defense to a violation of this chapter.

(c) Where a defendant charged with a violation of section 29805 was not previously notified of the firearms ban as required by Penal Code section 29810, the court must notify the defendant of the firearms ban as required in section 29810, update the defendant's original record of conviction to note the advisement, order any firearms in the defendant's possession confiscated and destroyed, and then dismiss the new charge. A defendant so notified is subject to prosecution for any future violation of section 29805.

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

PROPONENT: Katherine DeGovia, Mark Harvis, Robin Bernstein-Lev, Arwen Johnson, Dylan Ford, Rourke Stacy, Tom Moore, Graciela Martinez, Albert Camacho, Nick Stewart-Oaten.

STATEMENT OF REASONS

The Problem: Under existing criminal law, some (but not all) misdemeanor defendants are subject to a ten year firearms ban. For example, a security guard who gets into a bar fight and pleads to a single misdemeanor count of battery with six months of probation is not permitted to own a gun for ten years. The problem is that although courts are technically required to advise such defendants that they are subject to such bans, in practice, given the sheer number of misdemeanors which are subject to the ban, they often do not. As a result, people who legally purchased a firearm (including going through a DOJ background check) *before* they pled on a qualifying misdemeanor are never informed that their continued possession of their lawfully purchased weapon is now unlawful. Such a result is both unfair (because it criminalizes people who tried to comply with gun laws but are never informed that their legal status has changed) and impractical (because those who are unaware that they are no longer allowed to own a gun have no reason to get rid of their gun). Further, the recent passage of Proposition 63 does not alleviate this problem because, while the court's obligation to notify the defendant of the restriction of section 29810 has been reiterated, there is still no consequence if a court fails to advise the defendant of the ban as required.

The Solution: The proposed resolution would strengthen section 29810's requirement that courts advise people newly subject to a firearm ban of the existence of the ban. Where a person who legally purchased a firearm *before* he was convicted of a qualifying misdemeanor but was never told that his continued possession of the legally purchased firearm is now illegal, the resolution

would require courts to advise that person of the existence of the ban, confiscate and destroy the firearm, and then dismiss the case. *Importantly, subsequent possession of a firearm after advisement of the ban will still subject a defendant to prosecution*. By enforcing the requirement that courts tell people who are no longer allowed to have their legally purchased firearm that they are no longer allowed to have it, this resolution will increase the number of voluntarily surrendered firearms, while also preventing the unfair prosecutions of those who would happily comply with the ban but simply were never informed of its existence.

IMPACT STATEMENT
The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

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RESPONSIBLE FLOOR DELEGATE: Nick Stewart-Oaten

RESOLUTION 16-10-2017

DIGEST
Police Discovery: Expansion of *Pitchess* Motion Disclosures
Amends Evidence Code section 1045 to expand *Pitchess/Brady* discovery in criminal cases.

RESOLUTIONS COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE

History:
No similar resolutions found.

Reasons:
This resolution amends Evidence Code section 1045 to expand *Pitchess/Brady* discovery in criminal cases. This resolution should be approved in principle because it streamlines both prosecution and defense access to pertinent information.

A police officer's discipline history is contained within his or her personnel file. This history consists of citizen complaints, investigation of complaints, or discipline imposed as a result of the investigations. Generally, the personnel file is confidential. However, it can be accessed through a *Pitchess* motion if the information is determined relevant to litigation. (Evid. Code, §§ 1040, 1043, 1045.) This usually occurs in the criminal context, when a defendant wants to demonstrate an officer's malfeasance in the defendant's case. But even where a *Pitchess* motion is granted, the defendant gets only the contact information of the complainants, instead of the actual complaint or relevant statements. This judicially-created rule hobbles the criminal defendant, and is not applied to *Pitchess* motions filed in civil litigation. Denying criminal defendants access to civilian witness statements impedes the search for the truth and causes delay while the defense tries to discover the relevant information.

Judicial interpretation of Evidence Code section 1045 hamstrings the prosecution as well. Pursuant to *People v. Superior Court (Johnson)* (2015) 61 Cal.4th 696, the prosecution must file a *Pitchess* motion in tandem with the defense in order to obtain the same information. The resolution ensures that the prosecution receives a copy of any *Pitchess* disclosures provided to the defense. This would help the prosecution comply with its *Brady* obligations, and obviate the need to file duplicate *Pitchess* motions. The prosecution has a duty under *Brady* to disclose information that tends to help the defense; relevant police misconduct often falls in that category. This amendment simplifies the *Pitchess* process for the prosecution and the defense and promotes judicial efficiency by not having to file and have the trial court hear a duplicate *Pitchess* motion. Defense resources are conserved as well by not having to find potential witnesses and obtain their statements.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Evidence Code section 1045 to read as follows:

§ 1045

(a) Nothing in this article shall be construed to affect the right of access to records of complaints, or investigations of complaints, or discipline imposed as a result of those investigations, concerning an event or transaction in which the peace officer or custodial officer, as defined in Section 831.5 of the Penal Code, participated, or which he or she perceived, and pertaining to the manner in which he or she performed his or her duties, provided that information is relevant to the subject matter involved in the pending litigation.

(1) If the court permits the disclosure or discovery of any peace or custodial officer records, and the relevant information involves one or more civilian witnesses, the disclosure or discovery shall include the name, contact information, and all relevant statements of such persons, subject to any protective order.

(2) In any criminal proceeding where the court has permitted the disclosure or discovery of peace or custodial officer records, the prosecuting agency shall receive a copy of any relevant information provided, subject to any protective order.

(b) In determining relevance, the court shall examine the information in chambers in conformity with Section 915, and shall exclude from disclosure:

(1) Information consisting of complaints concerning conduct occurring more than five years before the event or transaction that is the subject of the litigation in aid of which discovery or disclosure is sought.

(2) In any criminal proceeding the conclusions of any officer investigating a complaint filed pursuant to Section 832.5 of the Penal Code.

(3) Facts sought to be disclosed that are so remote as to make disclosure of little or no practical benefit.

(c) In determining relevance where the issue in litigation concerns the policies or pattern of conduct of the employing agency, the court shall consider whether the information sought may be obtained from other records maintained by the employing agency in the regular course of agency business which would not necessitate the disclosure of individual personnel records.

(d) Upon motion seasonably made by the governmental agency which has custody or control of the records to be examined or by the officer whose records are sought, and upon good cause showing the necessity thereof, the court may make any order which justice requires to protect the officer or agency from unnecessary annoyance, embarrassment or oppression.

(e) The court shall, in any case or proceeding permitting the disclosure or discovery of any peace or custodial officer records requested pursuant to Section 1043, order that the records disclosed or discovered may not be used for any purpose other than a court proceeding pursuant to applicable law.

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

PROPONENT: Nick Stewart-Oaten, David Bigeleisen, Jodi Taksar, Vivian McPayah-Obiamalu, Johnny O'Kane, Nicholas Daum, Richard Zitrin, James Brosnahan, Mary Vail, Alan Crivaro

STATEMENT OF REASONS

The Problem: Under existing law, an officer's personnel records are protected from disclosure or discovery, except as permitted after a *Pitchess* motion. (*See* Cal. Pen. Code, §§ 832.5, 832.7, 832.8; Cal. Evid. Code, §§ 1043-1047.) "'Personnel records' is broadly defined and includes an officer's personal data and employment history, as well as the officer's record of discipline and investigations of complaints." (*Rosales v. City of L.A.* (2000) 82 Cal.App.4th 419, 424.)

A party seeking such evidence "must file a motion supported by affidavits showing 'good cause for the discovery,' first by demonstrating the materiality of the information to the pending litigation, and second by 'stating upon reasonable belief' that the police agency has the records or information at issue. … If the trial court finds good cause for the discovery, it reviews the pertinent documents in chambers and discloses only that information falling within the statutorily defined standards of relevance." (*Warrick v. Superior Court* (2005) 35 Cal.4th 1011, 1019.)

In criminal cases, "courts have generally refused to disclose verbatim reports or records of any kind from peace officer personnel files, ordering instead … that the agency reveal only the name, address and phone number of any prior complainants and witnesses and the dates of the incidents in question." (*City of Santa Cruz v. Municipal Court* (1989) 49 Cal.3d 74, 84.) "On those occasions when that information proves insufficient, either because a witness does not remember the earlier events or the witness cannot be located, a supplemental *Pitchess* motion may be filed and the statements of the witnesses may be disclosed to the defendant." (*People v. Ghebretensae* (2013) 222 Cal.App.4th 741, 757.) "This judicially created rule seeks to ensure a defendant will not rely solely on prosecution investigation efforts and imposes a further safeguard to protect officer privacy where the relevance of the information sought is minimal and the officer's privacy concerns are substantial." (*Haggerty v. Superior Court* (2004) 117 Cal.App.4th 1079, 1090 (holding that this rule is inapplicable in civil cases).)

However, the statutory scheme does not limit a litigant's access to relevant information. (Cal. Evid. Code, § 1045(a).) Second, this judicially-created rule applies only to criminal defendants, even though their rights and interests should outweigh those of civil plaintiffs. Third, an officer's privacy concerns regarding civilian witness statements is minimal, since no reasonable expectation of privacy exists for acts performed in public or in plain view of a third party. Additionally, denying access to civilian witness statements impedes the search for truth, risks a *Brady* violation, and causes delay while the defense tries to discover the relevant information, which, if unsuccessful, permits disclosure of the statements anyway.

The Solution: This resolution (1) invalidates a judicially-created rule that denies criminal defendants access to civilian witness statements in an officer's personnel records when good cause exists for disclosure, (2) ensures reciprocal discovery (Cal. Pen. Code, § 1054.3(a)), and (3) facilitates the prosecuting agency's duty to disclose the existence of *Pitchess/Brady* material in other cases (*see People v. Superior Court (Johnson)* (2015) 61 Cal.4th 696).

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

AUTHOR AND/OR PERMANENT CONTACT: Michael Fern, Los Angeles County District Attorney's Office, 211 W. Temple St., Ste. 1000, Los Angeles, CA 90012, (213) 537-4529, sclawyer@gmail.com.

RESPONSIBLE FLOOR DELEGATE: Michael Fern

RESOLUTION 16-11-2017

DIGEST
Continuances: Childbirth as Good Cause
Adds Penal Code section 1050.2 to include childbirth as "good cause" for a continuance in criminal proceedings.

RESOLUTIONS COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE

History:
No similar resolutions found.

Reasons:
This resolution adds Penal Code section 1050.2 to include childbirth as "good cause" for a continuance in criminal proceedings. This resolution should be approved principle because it is reasonable to grant a short continuance for such a significant event.

Defendants in criminal cases have a constitutional right to a speedy trial. Because of this right, continuances are strictly regulated, with "good cause" required to be shown by the party seeking the delay. The current language of the statute is unclear whether the birth of a child of an assigned prosecutor or defense attorney constitutes "good cause" for a continuance, especially if the attorney's partner is the one giving birth. Thus, whether an accommodation will be granted for an assigned attorney to either give birth or be present for support depends on the generosity of the court and opposing counsel.

This resolution proposes permitting a five-day continuance for the birth of a child. A new mother or father who is forced out to trial is not an effective advocate. Designating childbirth as "good cause" will prevent an attorney from having to choose between their career and their family and will allow a short delay in the proceedings where the event comes earlier than anticipated because of an unanticipated medical complication.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to add California Penal Code section 1050.2 to read as follows:

§ 1050.2

For purposes of Section 1050, "good cause" to continue a criminal proceeding includes, but is not limited to, the birth of a child of a defense attorney or prosecutor assigned to the case. Except as stipulated by the parties, a continuance under this section shall be limited to a single continuance with a maximum of 5 additional calendar days.

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

PROPONENT: Women Lawyers Association of Los Angeles

STATEMENT OF REASONS

The Problem: "Continuances shall be granted [in criminal cases] only upon a showing of good cause. Neither the convenience of the parties nor a stipulation of the parties is in and of itself good cause." (Cal. Pen. Code, § 1050(e).) "What constitutes good cause for the delay of a criminal trial is a matter that lies within the discretion of the trial court." (*People v. Johnson* (1980) 26 Cal.3d 557, 570.) If good cause exists, a continuance should usually be granted, absent a lack of diligence or other abusive circumstances. (*See Hernandez v. Superior Court* (2004) 115 Cal.App.4th 1242, 1246-1247.)

Specified circumstances constituting "good cause" include (1) when it is necessary to maintain joinder (Cal. Pen. Code, § 1050.1), (2) when an assigned prosecutor in certain cases is engaged elsewhere (Cal. Pen. Code, §§ 859b(b), 1050(g)(2)), and (3) when the defense presents testimony on matters about which a reasonably diligent prosecutor would not have known (Cal. Pen. Code, § 1051). It is also well-settled that "delay arising from unforeseen circumstances, such as the unexpected illness or unavailability of counsel or witnesses constitutes good cause to avoid dismissal." (*Johnson, supra*, 26 Cal.3d at 570.)

However, it is unclear whether the birth of a child of an assigned attorney constitutes "good cause" for a continuance, especially if the attorney's partner is the one giving birth. Thus, whether an accommodation will be granted for an assigned attorney to either give birth or be present for support depends on the generosity of the court and opposing counsel. (*See, e.g.*, Berry, *Public Defender, Judge at Odds Over Conduct* (Aug. 4, 2001) Los Angeles Times http://articles.latimes.com/print/2001/aug/04/local/me-30504; Schwartz, *Judge Rules for Counsel, Saying Baby Comes First* (Apr. 13, 2011) New York Times http://www.nytimes.com/2011/04/14/us/14judge.html; Weiser, *Pregnant Lawyer Fails in Bid to Delay Trial* (Nov. 20, 2014) New York Times https://www.nytimes.com/2014/11/21/nyregion/pregnant-lawyer-fails-in-bid-to-delay-trial.html.)

The Solution: This resolution recognizes the uncertainty and stigma in our profession whenever an attorney requests a continuance to attend to a family matter of great personal significance. It permits a brief continuance due to the birth of a child of an assigned attorney, so that she can give birth, or be there for a partner, without putting one's client, case, or career at risk. Limiting a 'childbirth' continuance to a maximum of five days allows for hospital discharge, and for the attorney to either return to work, or take parental leave and arrange for a substitution, while protecting the right to speedy trial possessed by both the prosecution and the defense. (*See* Cal. Const., Art. I, §§ 15, 29.) Clearly stating that childbirth is "good cause" gives guidance to both courts and counsel on this issue, reduces ill-advised advocacy, and promotes work-life balance in the legal profession.

The Florida Bar is considering a similar rule to permit a 'parental leave' continuance. (*See* Zaretsky, *Should Judges Delay Trials for Pregnant Lawyers?* (Jul. 21, 2016) Above the Law http://abovethelaw.com/2016/07/should-judges-delay-trials-for-pregnant-lawyers.)

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

AUTHOR AND/OR PERMANENT CONTACT: Michael Fern, Los Angeles County District Attorney's Office, 211 W. Temple St., Ste. 1000, Los Angeles, CA 90012, (213) 537-4529, sclawyer@gmail.com.

RESPONSIBLE FLOOR DELEGATE: Michael Fern

COUNTERARGUMENTS AND STATE BAR SECTION COMMENTS

SACRAMENTO COUNTY BAR ASSOCIATION

The appropriate manner in which a court should handle a request for a continuance in the event of childbirth is already clearly established within the law, and it has been achieved in a manner that protects the accused's right to a speedy trial. Both the federal and state constitutions grant an individual accused of a crime the right to a speedy trial. (U.S. Const. amend. VI; Cal. Const., art. I, § 15). As such Resolution 16-11-2017 is neither necessary nor helpful.

The courts have requirements for what constitutes good cause for a continuance in a criminal proceeding. It is good cause for a continuance if defense counsel is physically unavailable to participate in the criminal proceedings. (See *People v. Crovedi* (1966) 65 Cal.2d 199, 207.) Childbirth necessarily falls under this category. It is also important to remember that, in the case of a deputy DA or Attorney General, it is established law that prosecutors are fungible. In the event that a prosecutor is unable to start trial within Penal Code section 1382 time limits, then the prosecutor must seek a stipulated continuance from defense counsel or find another prosecutor to cover the case. (*Batey v. Superior Court* (1977) 71 CalApp.3d 667.) Contrary to established law, carving out a good cause exception for the birth of counsel's child places the personal interests of counsel above the accused's right to a speedy trial.

Additionally, the language in this resolution is ambiguous. It states that good cause to continue a criminal proceeding "includes, but is not limited to, the birth of a child." This language implies that there are other reasons for a good cause continuance that are delineated in a list, but no such list actually exists. This in turn raises the question of why childbirth needs to be defined in its own category. Along these lines, by expressly articulating that childbirth constitutes a good cause continuance, it invites additional good cause exceptions to be defined in the law. This sets a dangerous precedent, suggesting that judges should turn to a list of specified circumstances when considering a request for a good cause continuance. This will likely lead to a court limiting the use of its discretion when faced with a request for a good cause continuance for circumstances that have not been expressly stated in the law.

There is also a notable ambiguity as to when an attorney can exercise this good cause continuance. It is unclear whether only the individual giving birth can exercise this cause for a continuance, or if any parent, grandparent, aunt, uncle, etc., is able to request a good cause continuance for the birth of a child.

Finally, the resolution as articulated is unclear as to who should request the continuance. It appears to necessitate that someone other than the person giving birth must place the request for a five-day continuance so that the individual assigned to the case can return or find a different attorney to handle the court proceeding. (We think the resolution probably doesn't intend to suggest that a person giving birth should be back in trial within five days, although the resolutions as written could be interpreted thusly.)

RESOLUTION 16-12-2017

DIGEST
Juvenile Dependency: Periodic Report for Dependent Minor Parents
Amends Welfare and Institutions Code section 366.1 to require that supplemental court reports include services provided to dependent teen parents.

RESOLUTIONS COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE

History:
No similar resolutions found.

Reasons:
This resolution amends Welfare and Institutions Code section 366.1 to require that supplemental court reports include services provided to dependent teen parents. This resolution should be approved in principle because it updates Welfare and Institutions Code section 366.1 to be consistent with Welfare and Intuitions Code section 16002.5 et. seq., (the "Teen Parents in Foster Care Act"), which became effective July 1, 2015.

Social workers are already tasked with informing the court about pertinent details of children in foster care regarding the child's health, development and well-being. Establishing reporting requirements for social workers noting reunification or other services needed by, or being provided for, a dependent teen parent and his or her child would fall in line with these existing requirements. In addition, this requirement would forward the legislative intent behind the Teen Parents in Foster Care Act to provide dependent teen parents access to services and support necessary for successfully parenting their children by informing the court of the existing needs of the dependent teen parent so that assistance can be provided.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Welfare and Institutions Code section 366.1 to read as follows:

§ 366.1

Each supplemental report required to be filed pursuant to Section 366 shall include, but not be limited to, a factual discussion of each of the following subjects:

a. Whether the county welfare department social worker has considered either of the following:

A. Child protective services, as defined in Chapter 5 (commencing with Section 16500) of Part 4 of Division 9, as a possible solution to the problems at hand, and has offered those services to qualified parents, if appropriate under the circumstances.

B. Whether the child can be returned to the custody of his or her parent who is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with his or her parent.

a. What plan, if any, for the return and maintenance of the child in a safe home is recommended to the court by the county welfare department social worker.

b. Whether the subject child appears to be a person who is eligible to be considered for further court action to free the child from parental custody and control.

c. What actions, if any, have been taken by the parent to correct the problems that caused the child to be made a dependent child of the court.

d. If the parent or guardian is unwilling or unable to participate in making an educational decision for his or her child, or if other circumstances exist that compromise the ability of the parent or guardian to make educational decisions for the child, the county welfare department or social worker shall consider whether the right of the parent or guardian to make educational decisions for the child should be limited. If the supplemental report makes that recommendation, the report shall identify whether there is a responsible adult available to make educational decisions for the child pursuant to Section 361.

e. 1. Whether the child has any siblings under the court's jurisdiction, and, if any siblings exist, all of the following:

A. The nature of the relationship between the child and his or her siblings.

B. The appropriateness of developing or maintaining the sibling relationships pursuant to Section 16002.

C. If the siblings are not placed together in the same home, why the siblings are not placed together and what efforts are being made to place the siblings together, or why those efforts are not appropriate.

D. If the siblings are not placed together, all of the following:

i. The frequency and nature of the visits between the siblings.

ii. If there are visits between the siblings, whether the visits are supervised or unsupervised. If the visits are supervised, a discussion of the reasons why the visits are supervised, and what needs to be accomplished in order for the visits to be unsupervised.

iii. If there are visits between the siblings, a description of the location and length of the visits.

iv. Any plan to increase visitation between the siblings.

A. The impact of the sibling relationships on the child's placement and planning for legal permanence.

2. The factual discussion shall include a discussion of indicators of the nature of the child's sibling relationships, including, but not limited to, whether the siblings were raised together in the same home, whether the siblings have shared significant common 40 experiences or have existing close and strong bonds, whether either sibling expresses a desire to visit or live with his or her sibling, as applicable, and whether ongoing contact is in the child's best emotional interests.

a. Whether a child who is 10 years of age or older and who has been in an out-of home placement for six months or longer has relationships with individuals other than the child's siblings that are important to the child, consistent with the child's best interests, and actions taken to maintain those relationships. The social worker shall ask every child who is 10 years of age or older and who has been in an out-of-home placement for six months or longer to identify any individuals other than the child's siblings who are important to the child, consistent with the child's best interest. The social worker may ask any other child to provide that information, as appropriate.

h. If the dependent child in foster care is a minor parent, as defined in subdivision (f) of Section 16002.5, the supplemental report shall specifically set forth the age of the child and describe the developmentally appropriate services that were provided to the minor parent to support him or her in providing a safe home for the child, consistent with Section 16002.5. Additionally, where the minor parent and child are separated, the report shall provide an update and description of visitation and/or reunification efforts as appropriate.

i. The implementation and operation of the amendments to subdivision (g) enacted at the 2005-06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

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

PROPONENT: Women Lawyers of Sacramento.

STATEMENT OF REASONS

The Problem: In 2004, the Legislature added section 16002.5 to the Welfare and Institutions Code, enacting the "Teen Parents in Foster Care Act," (Senate Bill 1178, chapter 841). In Section 1 of the Act, the Legislature found and declared that "[t]een parents in foster care have less access to traditional support systems than are typically available to minor and first time parents. Additionally, expectations placed on dependent teen parents are frequently unrealistic and inconsistent with their age and developmental level. However, dependent minor parents, given opportunities, adequate resources, support, and guidance, are able to successfully parent their children." (Chapter 841 of 2004, page 2.)

Under Welfare and Institutions Code section 366.1, social workers are already required to provide the court reports regarding certain services provided to and subjects concerning minor dependent teen parents. These reports, however, are not required to include any information regarding services intended to enhance a teen parent's parenting skills or position a teen parent for reunification with his or her child, where reunification is in the best interests of the child. There is currently no effective way for parties to monitor and ensure that a teen parent is given adequate resources to successfully parent his or her child.

The Solution: On July 1, 2015, Welfare and Institutions Code section 16501.26 became effective, providing the mechanism to create parenting support plans for nonminor dependent parents not currently within the jurisdiction of the dependency court. The purpose of these plans is to "to preserve and strengthen the nonminor dependent parent family unit, as described in Section 16002.5, to assist the nonminor dependent parent in meeting the goals outlined in Section 16002.5, to assist the nonminor dependent parent in maintaining a safe, stable, and permanent home for the child, and to support the nonminor dependent parent's educational and employment goals."

This resolution would require the minor dependent parent's social worker to inform the court and all parties of the services that the social worker has provided to the minor dependent parent to allow for successful parenting, similar to the mechanism created in Welfare and Institutions

Code section 16501.26 for nonminor dependent parents, and consistent with Welfare and Institutions Code section 16002.5.

IMPACT STATEMENT
The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION
AB-1147 Dependent children: status reports. (2011-2012).

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