RESOLUTION 06-01-2018

DIGEST
Evidence: Ban Questions Relating to and Admission of Prior Gender Identity as Prejudicial
Amends Evidence Code section 1103 to ban the admission of information regarding a complaining witness' prior gender identity into evidence.

RESOLUTIONS COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE

History:
No similar resolutions found.

Reasons:
This resolution amends Evidence Code section 1103 to ban the admission of information regarding a complaining witness' prior gender identity into evidence. This resolution should be approved in principle because an individual's current or prior gender identity has no bearing on the individual's consent to a criminal act.

Evidence Code section 1103 is commonly called the "Rape Shield" law and it prevents certain information, namely prior sexual conduct, from being presented to the jury regarding the consent of the victim to the alleged criminal acts. Evidence Code section 1103 does not necessarily preclude evidence of prior sexual conduct between the victim and defendant, but it does require that only relevant, pertinent facts are presented to the jury regarding the specific event in question and is intended to help prevent victim blaming or allowing extraneous information (e.g. what the victim was wearing, prior promiscuity) into evidence when the issue of consent is being determined.

Given the social stigma that often plagues the victims of rape or sexual assault, it makes sense to preclude the admission of evidence of the victim's prior sexual conduct. It also makes sense to preclude the admission into evidence of the victim's prior or current gender identity. An individual's prior or current gender identity has no bearing on the consent of the victim to the criminal act and should be excluded. Introduction of this evidence would only confuse the jury and possibly cloud the issue with extraneous and irrelevant information.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend California Evidence Code Section 1103 to read as follows:

§ 1103

(a) In a criminal action, evidence of the character or a trait of character (in the form of an opinion, evidence of reputation, or evidence of specific instances of conduct) of the victim of the crime for which the defendant is being prosecuted is not made inadmissible by Section 1101 if the evidence is:

(1) Offered by the defendant to prove conduct of the victim in conformity with the character or trait of character.

(2) Offered by the prosecution to rebut evidence adduced by the defendant under paragraph (1).

(b) In a criminal action, evidence of the defendant's character for violence or trait of character for violence (in the form of an opinion, evidence of reputation, or evidence of specific instances of conduct) is not made inadmissible by Section 1101 if the evidence is offered by the prosecution to prove conduct of the defendant in conformity with the character or trait of character and is offered after evidence that the victim had a character for violence or a trait of character tending to show violence has been adduced by the defendant under paragraph (1) of subdivision (a).

(c) (1) Notwithstanding any other provision of this code to the contrary, and except as provided in this subdivision, in any prosecution under Section 261, 262, or 264.1 of the Penal Code, or under Section 286, 288a, or 289 of the Penal Code, or for assault with intent to commit, attempt to commit, or conspiracy to commit a crime defined in any of those sections, except where the crime is alleged to have occurred in a local detention facility, as defined in Section 6031.4, or in a state prison, as defined in Section 4504, opinion evidence, reputation evidence, evidence of specific instances of the complaining witness' sexual conduct, or any of that evidence, is not admissible by the defendant in order to prove consent by the complaining witness, and any evidence of the prior gender identity of the complaining witness is not admissible by the defendant in order to prove consent, complicity, or provocation by the complaining witness.

(2) Notwithstanding paragraph (3), evidence of the manner in which the victim was dressed at the time of the commission of the offense shall not be admissible when offered by either party on the issue of consent in any prosecution for an offense specified in paragraph (1), unless the evidence is determined by the court to be relevant and admissible in the interests of justice. The proponent of the evidence shall make an offer of proof outside the hearing of the jury. The court shall then make its determination and at that time, state the reasons for its ruling on the record. For the purposes of this paragraph, "manner of dress" does not include the condition of the victim's clothing before, during, or after the commission of the offense.

(3) Paragraph (1) shall not be applicable to evidence of the complaining witness' sexual conduct with the defendant.

(4) If the prosecutor introduces evidence, including testimony of a witness, or the complaining witness as a witness gives testimony, and that evidence or testimony relates to the complaining witness' sexual conduct, the defendant may cross-examine the witness who gives the testimony and offer relevant evidence limited specifically to the rebuttal of the evidence introduced by the prosecutor or given by the complaining witness.

(5) Nothing in this subdivision shall be construed to make inadmissible any evidence offered to attack the credibility of the complaining witness as provided in Section 782.

(6) As used in this section, "complaining witness" means the alleged victim of the crime charged, the prosecution of which is subject to this subdivision.

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

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

The Problem**:** Questioning and evidence regarding prior gender identity are being used to prejudicial effect in cases involving transgender individuals as complaining witnesses, despite the fact that questions about prior gender identity have little or no probative effect on these cases.

For example, in a case of assault and battery on a transgender woman by a male perpetrator, the line of questioning by the Public Defender or defense attorney can include questions regarding prior gender

identity directed towards the transgender woman / complaining witness, such as: “Isn’t it true you were born a man?”; “Isn’t it true that some studies have shown that individuals can’t change their birth gender, and therefore, you are not a woman (man)?”; “Are you really a woman underneath?”, What kind of genitalia do you really have?; “Aren’t you really a man in a dress?”

These types of irrelevant questions are highly likely to cause the jury to be affected by undue prejudice, and they occur all too frequently in California courtrooms. No protections such as those offered by Evidence Code § 1103 for a complaining witness’s prior sexual history exist for prior gender identity, even though the same type of undue prejudicial effect arises from the questioning. This type of questioning unjustly shifts blame to and insults the dignity of complaining witnesses who are transgender individuals, thus discouraging transgender victims of criminal assault from being able to get relief from crime and injustice in the criminal justice system, even to the point of not seeking prosecution against their perpetrators, and making fair justice in transgender victimization cases brought before the court almost impossible to occur. To allow victim-blaming such as this to occur is contrary to justice and corrosive of our judicial system. These irrelevant and prejudicial questions work to deny transgender victims of criminal assault the protections of the laws.

The Solution: This resolution would prohibit prior gender identity questioning of transgender individuals by expressly prohibiting the introduction of unduly prejudicial evidence of information regarding prior gender identity in California court cases.

As far as a counterargument that a Motion In Limine to bar prior gender identity evidence as a pretrial motion is concerned, the nature of the prior identity questions in the case of transgender complaining witnesses must be considered. Many of the transgender victims of criminal assault in California are on the lower end of the economic scale, and such individuals may have no legal representation other than a day lawyer provided by the court, or pro per representation. Court-appointed counsel in this example may have no idea of the status of the transgender individual they are representing. A pro per transgender victim of assault may not understand what a Motion in Limine is, and how to petition the court about it.

Underneath all of these considerations is that transgender victims of assault don’t want to be “outed” and “trans-shamed” in court any more than victims of any type of sexual assault want to be “slut-shamed”. This resolution is designed to “trap” this demeaning line of prior gender identity questioning before it poisons the court cases of transgender victims with dire prejudicial effect.

IMPACT STATEMENT
This 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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COUNTERARGUMENTS AND STATE BAR SECTION COMMENTS

ORANGE COUNTY BAR ASSOCIATION

This resolution seeks to amend Evidence Code section 1103 by adding to subdivision (c)(1) the bar to introduce any evidence of prior gender identity of the complaining witness "by the defendant in order to prove consent, complicity, or provocation by the complaining witness." This proposed statutory prohibition is simply unnecessary. Proponents suggest that such evidence is not relevant in most criminal prosecutions where a transgender individual is the victim of a crime. Assuming arguendo that this premise is true, Evidence Code section 350 already mandates that only relevant evidence is admissible. Further, even if such evidence had some probative value, Evidence Code section 352 permits a court to exclude such evidence where it is unduly prejudicial or inflammatory. As an additional safeguard from the jury hearing such evidence, the admissibility of this evidence or even mention by way of counsel's argument can be raised outside the presence of the jury through a motion in limine pursuant to Evidence Code section 402.

In support of this resolution, the proponents appear to imply that prosecutors are inept at raising the appropriate objections to this evidence, defense counsel does not conduct cross-examination in good faith and the court is unwilling to exercise its discretion when requested to do so. This is mere speculation on the part of the proponent. Many crime victims are members of a vulnerable class of individuals. All victims of a criminal offense are already entitled to protection and dignity in the criminal justice system. There is need no need to add another blanket statutory prohibition given the ample procedural and evidentiary safeguards already in place.

RESOLUTION 06-02-2018

DIGEST
Withdrawal of Plea: Prosecution May Consent to Extended Time
Amends Penal Code section 1018 to allow the prosecution to extend the time period permitted for withdrawing a plea.

RESOLUTIONS COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE

History:
No similar resolutions found.

Reasons:
This resolution would amend Penal Code section 1018 to allow the prosecution to extend the time period permitted for withdrawing a plea. This resolution should be approved in principle because it will allow greater flexibility for deals between the prosecution and defense.

Currently, Penal Code section 1018 permits a defendant to withdraw a guilty plea "at any time before judgment or within six months after an order granting probation is made if entry of judgment is suspended." However, there are reasonably foreseeable circumstances in which the defendant may wish to ask the court for leave to withdraw a guilty plea after the expiration of the six month deadline. For example, the defendant's innocence may only come to light after this deadline has expired.

The resolution provides criminal defendants with increased opportunities to make a motion to withdraw a plea beyond the six month deadline with the consent of the prosecution. Moreover, the fact that the withdrawal of the plea would require the consent of the prosecution provides some assurance that it would not be abused.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 1018 to read as follows:

§1018

Unless otherwise provided by law, every plea shall be entered or withdrawn by the defendant himself or herself in open court. No plea of guilty of a felony for which the maximum punishment is death, or life imprisonment without the possibility of parole, shall be received from a defendant who does not appear with counsel, nor shall that plea be received without the consent of the defendant s counsel. No plea of guilty of a felony for which the maximum punishment is not death or life imprisonment without the possibility of parole shall be accepted from any defendant who does not appear with counsel unless the court shall first fully inform him or her of the right to counsel and unless the court shall find that the defendant understands the right to counsel and freely waives it, and then only if the defendant has expressly stated in open court, to the court, that he or she does not wish to be represented by counsel. On application

of the defendant at any time before judgment or within six months after an order granting probation is made if entry of judgment is suspended, or at any time thereafter with the consent of the prosecution, the court may, and in case of a defendant who appeared without counsel at the time of the plea the court shall, for a good cause shown, permit the plea of guilty to be withdrawn and a plea of not guilty substituted. Upon indictment or information against a corporation a plea of guilty may be put in by counsel. This section shall be liberally construed to effect these objects and to promote justice.

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

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: Under current law, a defendant only has six months to withdraw a plea, even upon a showing of good cause. This creates problems in cases where, for example, the prosecution wants to offer the defendant a chance to withdraw his plea, but only after the defendant is on probation for a year, or where evidence relating to the defendant's innocence only comes to light after the expiration of the six month deadline.

The Solution: This resolution would extend the period during which a defendant is permitted to withdraw his plea upon a showing of good cause past the current six month deadline, but only with the consent of the prosecution.

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

CURRENT OR PRIOR RELATED LEGISLATION
None known.

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RESOLUTION 06-03-2018

Felonies: Criminal Threats
Amends Penal Code section 1192.7 to remove a felony violation of Penal Code section 422 as a 'serious' felony.

RESOLUTIONS COMMITTEE RECOMMENDATION
DISAPPROVE

History:
Identical to Resolution 06-03-2014, which was approved in principle.

Reasons:
This resolution amends Penal Code section 1192.7 to remove a felony violation of Penal Code section 422 as a 'serious' felony. This resolution should be disapproved because a credible threat of death or great bodily injury that causes another person to be in sustained fear can be a serious offense and the exercise of judicial discretion to reduce the charge or strike the use of a prior conviction is a sufficient safeguard.

The resolution's example of threatening to knock someone out and causing the person to be afraid, does not accurately portray the elements of Penal Code section 422 that must be proven beyond a reasonable doubt. A defendant must specifically intend to threaten to commit a crime that if carried out, would result in death or great bodily injury to a person, with the specific intent that the threat be taken as such, and that under the circumstances in which it is made, the threat is so unequivocal, unconditional, immediate and specific as to convey a gravity of purpose and an immediate prospect of execution, thereby causing the person threatened to be in sustained fear for his or her own safety, when such fear is objectively reasonable. (See CALCRIM No. 1300.)

The resolution suggests that a crime based on words alone should never be considered a 'serious' offense. Yet, there are many offenses based on words alone that the Legislature has deemed sufficiently serious to warrant inclusion in Penal Code section 1192.7. Such felonies include dissuading or intimidating a witness (Pen. Code, § 136.1), offering a bribe to a witness (Pen. Code, § 137), offering to sell a controlled substance to a minor (Health & Saf. Code, § 11353, subd. (c)), extortion for the benefit of a criminal street gang (Pen. Code, §§ 186.11, 520), and communicating with a minor with the intent to commit a sexual offense (Pen. Code, § 288.3). Unlike these serious felonies, a criminal threat requires more than just words and specific intent, but also requires proof that the defendant's words reasonably caused the victim to suffer sustained psychological trauma.

When the circumstances do not warrant treating a prior conviction for a serious felony as a strike, a bench officer has discretion to 'strike the strike' and grant a *Romero* motion. (See *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.) Additionally, a court has discretion to reduce a felony charge of criminal threats to a misdemeanor, which makes it a non-strike for all purposes. (See *People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968.)

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend California Penal Code section 1192.7 to read as follows:

§ 1192.7

(a) (1) It is the intent of the Legislature that district attorneys prosecute violent sex crimes under statutes that provide sentencing under a "one strike," "three strikes" or habitual sex offender statute instead of engaging in plea bargaining over those offenses.

(2) Plea bargaining in any case in which the indictment or information charges any serious felony, any felony in which it is alleged that a firearm was personally used by the defendant, or any offense of driving while under the influence of alcohol, drugs, narcotics, or any other intoxicating substance, or any combination thereof, is prohibited, unless there is insufficient evidence to prove the people's case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence.

(3) If the indictment or information charges the defendant with a violent sex crime, as listed in subdivision (c) of Section 667.61, that could be prosecuted under Sections 269, 288.7, subdivisions (b) through (i) of Section 667, Section 667.61, or 667.71, plea bargaining is prohibited unless there is insufficient evidence to prove the people's case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence. At the time of presenting the agreement to the court, the district attorney shall state on the record why a sentence under one of those sections was not sought.

(b) As used in this section "plea bargaining" means any bargaining, negotiation, or discussion between a criminal defendant, or his or her counsel, and a prosecuting attorney or judge, whereby the defendant agrees to plead guilty or nolo contendere, in exchange for any promises, commitments, concessions, assurances, or consideration by the prosecuting attorney or judge relating to any charge against the defendant or to the sentencing of the defendant.

(c) As used in this section, "serious felony" means any of the following:

(1) Murder or voluntary manslaughter; (2) mayhem; (3) rape; (4) sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (5) oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (6) lewd or lascivious act on a child under 14 years of age; (7) any felony punishable by death or imprisonment in the state prison for life; (8) any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm; (9) attempted murder; (10) assault with intent to commit rape or robbery; (11) assault with a deadly weapon or instrument on a peace officer; (12) assault by a life prisoner on a noninmate; (13) assault with a deadly weapon by an inmate; (14) arson; (15) exploding a destructive device or any explosive with intent to injure; (16) exploding a destructive device or any explosive causing bodily injury, great bodily injury, or mayhem; (17) exploding a destructive device or any explosive with intent to murder; (18) any burglary of the first degree; (19) robbery or bank robbery; (20) kidnapping; (21) holding of a hostage by a person confined in a state prison; (22) attempt to commit a felony punishable by death or imprisonment in the state prison for life; (23) any felony in which the defendant personally used a dangerous or deadly weapon; (24) selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP),

or any methamphetamine-related drug, as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code; (25) any violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; (26) grand theft involving a firearm; (27) carjacking; (28) any felony offense, which would also constitute a felony violation of Section 186.22; (29) assault with the intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220; (30) throwing acid or flammable substances, in violation of Section 244; (31) assault with a deadly weapon, firearm, machinegun, assault weapon, or semiautomatic firearm or assault on a peace officer or firefighter, in violation of Section 245; (32) assault with a deadly weapon against a public transit employee, custodial officer, or school employee, in violation of Section 245.2, 245.3, or 245.5; (33) discharge of a firearm at an inhabited dwelling, vehicle, or aircraft, in violation of Section 246; (34) commission of rape or sexual penetration in concert with another person, in violation of Section 264.1; (35) continuous sexual abuse of a child, in violation of Section 288.5; (36) shooting from a vehicle, in violation of subdivision (c) or (d) of Section 26100; (37) intimidation of victims or witnesses, in violation of Section 136.1; ~~(38) criminal threats, in violation of Section 422;~~ (39~~8~~) any attempt to commit a crime listed in this subdivision other than an assault; (~~40~~39) any violation of Section 12022.53; (4~~1~~0) a violation of subdivision (b) or (c) of Section 11418; and (4~~2~~1) any conspiracy to commit an offense described in this subdivision.

(d) As used in this section, "bank robbery" means to take or attempt to take, by force or violence, or by intimidation from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association.

As used in this subdivision, the following terms have the following meanings:

(1) "Bank" means any member of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized or operating under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

(2) "Savings and loan association" means any federal savings and loan association and any "insured institution" as defined in Section 401 of the National Housing Act, as amended, and any federal credit union as defined in Section 2 of the Federal Credit Union Act.

(3) "Credit union" means any federal credit union and any state-chartered credit union the accounts of which are insured by the Administrator of the National Credit Union administration.

(e) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

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

PROPONENT: Sacramento County Bar Association

STATEMENT OF REASONS

The Problem: Strike offenses are enumerated in Penal Code section 1192.7. The list contains the most serious and violent offenses in the penal code. Among the rape, murder, terrorism, and child-molestation charges hides outlier, criminal threats. In summary, "criminal threats" are any threats to commit a crime resulting in death or great bodily injury made with the intent that the statement is to be taken as a threat, even if there is no intent to carry it out, and which causes the victim to be afraid.

Under current law, if a defendant told her victim, "I'm going to knock you unconscious!" and proceeded to punch her victim square in the jaw, failing to knock the victim out, she could be convicted of two offenses. She could be convicted for the initial threat, a strike offense, with potential *life imprisonment* consequences. She could also be convicted of the assault, for actually punching the person and knocking them to the ground. That offense, *the actual assault*, would not qualify as a strike.

The status of "criminal threats" as a strike offense is an absurdity. Words alone, often made in the context of the above example, should not be enough to sentence someone to prison for life.

The Solution: California's "Three Strikes" scheme imposes increased punishments for criminal defendants suffering from previous convictions for "strike" offenses. If a defendant has a prior conviction for a strike offense, her sentence for any subsequent felony can be doubled. Any term sentence will be served in state prison (as opposed to county jail). She will accrue credits at a rate of 20% instead of 50%. If she suffers from two prior strike offenses and her current charge is a strike offense, she can be sentenced from 25 years to life in prison.

This resolution would amend Penal Code section 1192.7 to remove criminal threats from the list of strike offenses. A violation of Penal Code section 422 would remain a felony, punishable by up to three years in prison.

IMPACT STATEMENT
This 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: Robert Sorokolit

RESOLUTION 06-04-2018

DIGEST
Criminal Procedure: Defense Motion for Dismissal in Interests of Justice
Amends Penal Code section 1385 to allow defense motions to dismiss in the furtherance of justice.

RESOLUTIONS COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE

History:
No similar resolutions found.

Reasons:
This resolution amends Penal Code section 1385 to allow defense motions to dismiss in the furtherance of justice. This resolution should be approved in principle because it would allow defendants in criminal cases to seek such dismissals with the benefit of a full record and briefing, rather than by the informal method currently permitted.

Penal Code section 1385 is California's extension of the common law doctrine of *nolle prosequi*, the state's absolute right to dismiss a criminal prosecution. Like similar statutes in other jurisdictions, section 1385 limits the prosecution's discretion, and grants a court the right to order such a dismissal even over the prosecution's objection. Unlike statutes in some other jurisdictions, however, section 1385 does not allow for a defendant to bring a motion. (See *People v. Andrade* (1978) 86 Cal.App.3d 963, 973; compare, e.g., NY.Crim. Proc. L. §§ 170.30 [defense motion re misdemeanors] 210.40 [same re felonies]; Idaho Criminal Rule 48(a)(2) [same]; Utah R. Crim. Proc. 25(a) [same].) As a result, California courts have created a strange, indirect route to the same result: allowing defendants to "suggest" that courts exercise their own authority. None of the case authority cites any benefit to this informal procedure; rather, it appears to be the best that the courts can do in the face of a statute that does not permit a defense motion. Allowing defendants to bring these motions directly has worked in other jurisdictions and should be permitted in California.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 1385 to read as follows:

§ 1385

(a) The judge or magistrate may, either of his or her own motion or upon the application of the prosecuting attorney or the defendant or the defendant's counsel, and in furtherance of justice, order an action to be dismissed. The reasons for the dismissal shall be stated orally on the record. The court shall also set forth the reasons in an order entered upon the minutes if requested by either party or in any case in which the proceedings are not being recorded electronically or reported by a court reporter. A dismissal shall not be made for any cause that would be ground of demurrer to the accusatory pleading.

(b) This section does not authorize a judge to strike any prior conviction of a serious

felony for purposes of enhancement of a sentence under Section 667.

(c)(1) If the court has the authority pursuant to subdivision (a) to strike or dismiss an enhancement, the court may instead strike the additional punishment for that enhancement in the furtherance of justice in compliance with subdivision (a).

(2) This subdivision does not authorize the court to strike the additional punishment for any enhancement that cannot be stricken or dismissed pursuant to subdivision (a).

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

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: Once a criminal case is filed only a judge or magistrate may dismiss it. The judge may dismiss the case (or individual charges or enhancements) for good cause shown in the interest of justice either upon the court's own motion or upon the motion of the prosecution. The problem is that the statute does not allow the defense to move for a dismissal. But, the defense can ask the court to dismiss on its own motion. (*Boulas v. Superior Court* (1986) 188 Cal.App.3d 422, 428, fn. 6.)

The Solution: Let's be honest and let the defense just move to dismiss, not create this clever workaround. This resolution fixes the problem and lets the defense make a motion to dismiss. It does not require the court to dismiss nor does it change the legal precedent when a dismissal is (or is not) proper. This fix is procedural, not substantive.

IMPACT STATEMENT
This 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: Mark Harvis

RESOLUTION 06-05-2018

DIGEST
Municipal Codes: Making Local Code and Ordinance Violations Infractions
Amends Penal Code section 17 to include violations of city, county, or municipal codes as offenses which may be prosecuted as infractions, rather than misdemeanors.

RESOLUTIONS COMMITTEE RECOMMENDATION
DISAPPROVE

History:
No similar resolutions found.

Reasons:
This resolution amends Penal Code section 17 to include violations of city, county, or municipal codes as offenses which may be prosecuted as infractions, rather than misdemeanors. This resolution should be disapproved because it would make a global change indiscriminatingly encompassing every enforcement provision of local government law, without regard to the seriousness or circumstances of the violation, and would undermine the legitimate authority and discretion of local governments to regulate, manage and enforce their own enacted policies and provisions of law.

Many statutory enactments specifically permit the prosecutor to charge a misdemeanor offense as an infraction. Subdivision (d) of Penal Code section 17 authorizes the prosecutor to charge as an infraction certain listed state law offenses, designated in the Penal Code, which would otherwise be treated as misdemeanor violations. The resolution, however, would automatically make by state edict all city, county, or municipal code violations eligible for treatment as an infraction, regardless of the gravity of the offense, or the purposes and intent of the ordinance as enacted by and for local government concerning matters within its regulatory schemes and province. Local governments are authorized to promulgate their own criminal laws so long as they do not directly conflict with laws passed by the State of California. (Cal. Const., Art. XI, § 7.) Many local laws and ordinances, which treat a violation as a misdemeanor, do not allow for alternative disposition as an infraction. As with certain state law provisions, this may be important when involving significant threats to health or safety, or a needed regulatory agenda, which can be different for each local governmental agency.

The resolution is overbroad in its sweep. It would be unwise to allow a global state rule, or to permit a contracted prosecutor, to summarily interfere with or marginalize local government policy and efforts to effectively resolve local problems, not otherwise of statewide concern. The resolution may offer an economical and efficient way to dispose of a misdemeanor violation of a local ordinance, but it does a disservice to the sovereign rights of that local governmental entity, and issues it seeks, to effectively address within its province. If there are specific local laws that are of concern, they should be individually added to the list of crimes found in subdivision (a) of Penal Code section 19.8, which contains certain state crimes that may be alternatively treated as infractions.

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 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<u>, or enacted by a city, county, or municipality,</u> 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 current law, municipalities are allowed to create their own criminal laws, as long as those laws do not directly conflict with laws passed by the state of California. Some of these laws are common-sense approaches to local issues (like laws regulating billboards, or street vendors). Some are absurd (like laws imposing six months in jail for riding a skateboard on the sidewalk). Under current law, many state-created misdemeanors can be reduced by a judge to an infraction, after a review of the facts and the criminal history of the defendant. However, no such provision exists for even the most obscure of the municipal code violations. The result is increased court congestion with low-grade municipal code violations, and its attendant costs, as well as saddling non-violent Californians with permanent criminal records.

The Solution: This resolution would permit (but not require) judges to reduce non-violent, low level municipal code violations to infractions, after consideration of the facts of the case and the defendant's criminal history.

IMPACT STATEMENT
Reduced court congestion, cost savings, decrease in lifelong criminalization of extremely low level, non-violent offenders.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

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RESPONSIBLE FLOOR DELEGATE: Nick Stewart-Oaten

RESOLUTION 06-06-2018

DIGEST
Discovery: Open File Rule
Amends Penal Code section 1054.1 to allow the defense attorney to review the factual portion of the prosecution's file.

RESOLUTIONS COMMITTEE RECOMMENDATION
DISAPPROVE

History:
Similar to Resolution 08-08-2015, which was approved in principle.

Reasons:
This resolution amends Penal Code section 1054.1 to allow the defense attorney to review the factual portion of the prosecution's file. This resolution should be disapproved because it goes well beyond the requirements of *Brady v. Maryland* (1963) 373 U.S. 83, or *Kyless v. Whitley* (1995) 514 U.S. 419, to encompass work product and evidence not in the possession or not known to the prosecution, and requires the prosecution to act as an advocate for the defense.

Penal Code section 1054.1 already requires prosecutors to timely disclose to the defense all known, non-privileged evidence or information that tends to negate the guilt of the accused or mitigate the offense. As currently construed, section 1054.1 only applies to information in the possession of the prosecuting attorney or known to be in the possession of an investigating agency.

The proposed amendment would require the prosecution to turn over to the defense all evidence without restriction, regardless of whether this evidence was or is in the prosecutor's possession or control. This is a massive burden on the prosecution, requiring the prosecution to investigate all plausible leads in order to identify any evidence which may assist the defendant in their defense or mitigate the crime. In essence, this amendment would force the prosecution to do the job of the defense.

The law currently requires the prosecuting attorney to disclose any information in the prosecuting attorney's possession or known to be in the possession of an investigating agency to the defense. The California Rules of Professional Conduct 5-110 require the prosecution to disclose similar information.

This resolution is related to Resolution 06-07-2018.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code Section 1054.1 to read as follows:

§ 1054.1

The prosecuting attorney shall disclose to the defendant or his or her attorney all of the following materials and information: ~~if it is the possession of the prosecuting attorney or if the prosecuting attorney knows it to be in the possession of the investigating agencies.~~

(a) The names and addresses of persons the prosecutor intends to call as witnesses at trial.

~~(b) Statements of all defendants.~~

(b) The complete file of all law enforcement agencies, investigatory agencies, and prosecutor's offices of the crimes charged against the accused, including but not limited to the following:

The defendant's statements, the codefendant's statements, witness statements, investigating officer's notes, results of tests and examinations, or any other matter or evidence obtained during the investigation of the offenses alleged to have been committed by the defendant.

(c) All relevant real evidence seized or obtained as a part of the investigation of the offenses charged.

(d) The complete criminal record of the defendant and of any witness, including records of convictions, acquittals, charges dismissed, charges not filed and police reports.

~~(e) Any exculpatory evidence.~~

(e) All exculpatory evidence and all evidence of mitigation.

(f) Relevant written or recorded statements of witnesses or reports of the statements of witnesses ~~whom the prosecutor intends to call at the trial~~, including any reports or statements of experts made in conjunction with the case, including the results of physical or mental examinations, scientific tests, experiments, or comparisons which the prosecutor intends to offer in evidence at the trial.

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

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

The Problem: Discovery in criminal cases is governed by two bodies of law, State law enacted by voter initiative in 1990, and Federal Due process law as spelled out in the United States Supreme Court cases of *Brady v. Maryland* (1963) 373 U.S. 83 and *Kyles v Whitley*, (1995) 514 U.S. 419.

But these bodies of law often omit disclosure of evidence which will exculpate the accused. Sometimes the failure to disclose evidence is deliberate on the part of the prosecutor. An example is the case of Benjamin Field, in Santa Clara County. We genuinely hope and believe this is a rare exception.

More often, the prosecutor fails to recognize the exculpatory value of information in his file. This is understandable. The prosecutor looks at his file from the point of view which will help his case.

Many wrongful convictions have been overturned upon the defense learning of exculpatory

evidence after the fact.

The Solution: The amendment provides for an open file rule. An open file rule requires the prosecutor to permit the defense to review the factual portion of the entire prosecutor's file. It comports completely with the prosecution's duties of disclosure to the defendant. It makes the prosecutor's function easier; no longer must the prosecutor decide which evidence is relevant, which evidence is material and which evidence must be disclosed.

Disclose it all.

The system works. Two conservative District Attorneys' offices have had open file rules for at least thirty years. They are San Mateo County and San Diego County.

This amendment is based on a North Carolina Statute: General Statute § 15A - 903 (2011).

IMPACT STATEMENT
This 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: David Michael Bigeleisen

RESOLUTION 06-07-2018

DIGEST
Discovery: Disclosure by Prosecution Begins Upon Arraignment
Amends Penal Code section 1054.7 to provide that the disclosure of discovery by the prosecution to the defense begins upon arraignment of the defendant.

RESOLUTIONS COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE

History:
No similar resolutions found.

Reasons:
This resolution amends Penal Code section 1054.7 to provide that the disclosure of discovery by the prosecution to the defense begins upon arraignment of the defendant. This resolution should be approved in principle because it brings the current statute in line with long established United States constitutional requirements established by *Brady v. Maryland* (1963) 373 U.S. 83.

Under federal law, the prosecution is required to disclose exculpatory evidence to the defense. California places a continuing obligation on the prosecution to disclose exculpatory information to the defense which begins at arraignment and continues until the conclusion of the matter. (*People v. Gutierrez*, (2013) 214 Cal.App.4th 347.) The proposed amendment brings California in line with United States constitutional requirements and current case law.

This resolution is related to Resolution 06-06-2018.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 1054.7 to read as follows:

§ 1054.7

The disclosures required under this chapter shall be made ~~at least 30 days prior to the trial~~ by the prosecution upon arraignment. The duty of disclosure by the prosecution is a continuing one.

The disclosures required under this chapter by defendant shall be made at least 30 days before trial.

~~Unless good cause is shown why a disclosure should be denied restricted, or deferred.~~ If the material and information becomes known to, or comes into the possession of, a party within 30 days before trial, disclosure shall be made immediately, unless good cause is shown why a disclosure should be denied, restricted, or deferred. “Good cause” is limited to threats or possible danger to the safety of a victim or witness, possible loss of destruction of evidence, or possible compromise of other investigations by law enforcement.

Upon the request of any party, the court may permit a showing of good cause for the denial or regulation of disclosures, or any portion of that showing, to be made in camera. A verbatim record shall be made of any such proceeding. If the court enters an order granting relief following a showing in camera, the entire record of the showing shall be sealed and preserved in the records of the court, and shall be made available to an appellate court in the event of an appeal or writ. In its discretion, the trial court may after trial and conviction, unseal any previously sealed matter.

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

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

The Problem: Current Penal Code Section 1054.7 states that disclosures pursuant to Penal Code Section 1054.1 are to be made thirty days before trial. But this just isn't the law. *People v. Gutierrez*, (2013) 214 Cal.App. 4th 347, and many other cases state that the prosecutor's duties to disclose *Brady* material begin at arraignment and are continuing.

The Solution: The resolution is a companion to another resolution submitted this year which amends the discovery requirements of the prosecution under Penal Code section 1054.1. It means that the prosecutor's duties under the new open file rule commence at arraignment. This resolution, in combination with the companion resolution regarding Penal Code section 1054.1 will implement an open file rule and help to insure justice.

IMPACT STATEMENT
This 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: David Michael Bigeleisen

RESOLUTION 06-08-2018

DIGEST
Sentence Deferment: Availability of Judicial Diversion for First Time Misdemeanor Offenders
Adds Penal Code sections 1001.94, 1001.95, 1001.96, 1001.97, 1001.98, and deletes section 1001.99, to reenact and make permanent the Deferral of Sentencing Law.

RESOLUTIONS COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE

History:
No similar resolutions found.

Reasons:
This resolution adds Penal Code sections 1001.94, 1001.95, 1001.96, 1001.97, 1001.98, and deletes section 1001.99, to reenact and make permanent the Deferral of Sentencing Law. This resolution should be approved in principle because it reenacts a statutory scheme which the Legislature allowed to sunset without renewal, even though the pilot program in Los Angeles County for judicial diversion of first time misdemeanor offenders was successful.

In 2014, the Legislature enacted Penal Code section 1001.94 et seq. as a limited pilot project applicable only in Los Angeles County effective until January 1, 2018. It allowed judicial diversion of first time misdemeanor offenders. The court could order eligible offenders to take diversion classes, pay restitution where applicable, follow all of the rules and regulations of the court, and avoid a conviction appearing upon the person's record. If the defendant failed to complete the diversion program, judgment was entered and the defendant was sentenced. Unfortunately, the Legislature did not renew or introduce a similar program before it expired.

The resolution tracks the language of the 2014 Deferral of Sentencing Law, making it permanent and applicable statewide. The California senate legislative analysis for that 2014 Deferral of Sentencing Law explained the need for and benefits of misdemeanor diversion. (see https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201320140AB2124#.) Where a first time misdemeanor offender meets all requirements, and so avoids being sentenced, he/she will not have a criminal record, and therefore will not face the difficulties that persons with criminal records have in obtaining employment and/or professional licensing. This reduces the risk of additional criminal activity. Additionally, if the offender suffers from mental illness or has a substance abuse problem, diversion programs are useful in ensuring participation in treatment plans. Community service helps the person build self esteem, and further reduces recidivism. And, diversion lightens the courts' already overburdened criminal trial dockets, allowing the court to focus its resources on more serious criminal offenders. (*Id*.) Studies in other jurisdictions have also shown such benefits from diversions programs. (See e.g., http://www2.centerforhealthandjustice.org/sites/www2.centerforhealthandjustice.org/files/publications/CHJ%20Diversion%20Report_web.pdf)

The resolution should be approved in principle, to afford these opportunities for improvement to first time misdemeanor offenders throughout the state.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to add Penal Code sections 1001.94, 1001.95, 1001.96, 1001.97, 1001.98, and delete 1001.99 to read as follows:

§ 1001.94

(a) There is hereby established the Deferral of Sentencing Program.

(b) A judge in the superior court may, at his or her discretion and over the objection of a prosecuting attorney, defer sentencing a defendant who has submitted a plea of guilty or nolo contendere to a misdemeanor pursuant to this chapter. Sentencing may be deferred for a period not to exceed 12 months, and the judge may order the defendant to comply with terms, conditions, or programs that the judge deems appropriate based on the defendant's specific situation.

(c) A defendant may make a motion for imposition of diversion pursuant to this section.

(d) This chapter shall apply to first-time misdemeanor defendants, except as provided in Section 1001.98, in order to reduce the stigma that is often associated with a criminal record and to increase the likelihood that a defendant will be able to obtain employment.

(e) This chapter shall not be construed to preempt any current or future diversion programs. Nothing in this chapter is intended to limit the rights of a victim under Section 28 of Article I of the California Constitution.

(f) It is the intent of the Legislature that no new diversion programs are created, and that judges shall order a defendant, for whom judgment is deferred, to complete the same obligations that would have been imposed had judgment been entered. The only difference between this chapter and current practice is that under this chapter judgment will not be entered.

§ 1001.95

A defendant whose sentence is deferred pursuant to this chapter shall be required to complete all of the following in order to have his or her plea stricken:

(a) Complete all conditions ordered by the court.

(b) Make full restitution.

(c) Comply with a court-ordered protective order, stay-away order, or order prohibiting firearm possession, if applicable.

§ 1001.96

(a) If the defendant, during the period of deferral imposed pursuant to subdivision (a) of Section 1001.94, complies with all terms, conditions, and programs required by the court, then, the judge shall, at the end of the period, strike the defendant's plea and dismiss the action against the defendant.

(b) Upon successful completion of the terms, conditions, or programs ordered by the court, the arrest upon which sentencing was deferred shall be deemed to have never occurred. The defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or granted deferred entry of judgment for the offense, except as specified in subdivision (c). A record pertaining to an arrest resulting in successful completion of the terms, conditions, or programs ordered by the court shall not, without the defendant's consent, be used in any way that could result in the denial of any employment,

benefit, license, or certificate.

(c) The defendant shall be advised that, regardless of his or her successful completion of the terms, conditions, or programs ordered by the court pursuant to this chapter, the arrest upon which the judgment was deferred may be disclosed by the Department of Justice in response to a peace officer application request and that, notwithstanding Section 1001.94, this section does not relieve him or her of the obligation to disclose the arrest in response to a direct question contained in a questionnaire or application for a position as a peace officer, as defined in Section 830.

§ 1001.97

If, during the period of deferral imposed pursuant to subdivision (a) of Section 1001.94, the defendant reoffends or fails to comply with the terms, conditions, or programs required by the court, then the court, the probation officer, or the prosecuting attorney shall make a motion for entry of judgment, and the court shall sentence the defendant as if deferral had not occurred.

§1001.98

Deferral of sentencing shall not be offered when any of the following conditions are met:

(a) The defendant has been convicted of any misdemeanor in the previous 10 years, a misdemeanor involving force or violence, or a felony.

(b) The defendant has previously had his or her sentence deferred pursuant to this chapter or any other law.

(c) Incarceration is mandatory upon the defendant's conviction.

(d) The defendant is required to register as a sex offender pursuant to Section 290.

(e) The magistrate determines that the offense will be prosecuted as a misdemeanor pursuant to paragraph (5) of subdivision (b) of Section 17.

(f) The defendant is a partnership, firm, association, corporation, limited liability company, or other legal entity.

(g) The victim is a person identified in Section 6211 of the Family Code, a minor, or an elder or dependent adult pursuant to Section 368.

(h) The charge includes any of the following:

(1) Force or violence against a peace officer.

(2) The unlawful use, possession, sale, or transfer of a dangerous weapon, firearm, or ammunition.

(3) Violation of Section 23152 or 23153 of the Vehicle Code.

(4) Violation of either subdivision (c) of Section 192 or subdivision (b) of Section 191.5.

(5) Violation of Section 186.22.

(6) Violation of Section 273.5 or 273.6.

(7) Violation of an environmental or workplace safety crime, including, but not limited to, subdivision (a) of Section 5650 of the Fish and Game Code, Section 8670.64 of the Government Code, Section 25507 of the Health and Safety Code, Section 6423 or 6425 of the Labor Code, Section 387 of this code, or Section 13387 of the Water Code.

~~§ 1001.99~~

~~This chapter shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.~~

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

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: The legislature enacted Penal Code section 1001.94 et seq. in 2014 as a pilot project applicable to Los Angeles County only. It sunsetted on January 1, 2018. This judicial diversion has worked very well in Los Angeles County allowing first time, minor offenders to take diversion classes, pay restitution where applicable, follow all the rules and regulations of the court, and to avoid a conviction appearing upon the person's record. Of course, if the person fails to complete the diversion program judgment is entered and the person sentenced. Unfortunately, this law expired and legislation to renew it was not introduced.

The Solution: The solution is to make reenact judicial diversion and to make it applicable statewide. That's what this resolution does.

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

CURRENT OR PRIOR RELATED LEGISLATION
Judicial diversion was enacted with the support of the CCBA due to passage of many expansive diversion resolutions.

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RESPONSIBLE FLOOR DELEGATE: Mark Harvis

RESOLUTION 06-09-2018

DIGEST
Bail: Notice of Release on Bail and Scheduled Appearances
Amends Penal Code section 1269b to require the jail to notify relevant law enforcement agencies when the jail releases a defendant on bail.

RESOLUTIONS COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE

History:
No similar resolutions found.

Reasons:
This resolution amends Penal Code section 1269b to require the jail to notify relevant law enforcement agencies when the jail releases a defendant on bail. This resolution should be approved in principle because it will clarify who must receive notice when a person is released on bail from a jail.

Current law requires that a person who is arrested must be brought before a magistrate within two court days of the person's arrest. (Pen. Code, § 825.) Alternatively, if bail is posted before the arrested person appears before a magistrate, a jail can release the person and schedule a court appearance. The current statute provides that the jail must give notice of an arrested person's release on bail, but it does not specify to whom notice must be given. The proposed amendment would require that a jail give notice to relevant law enforcement entities including the court, the arresting agency and the prosecuting agency, and documents that contain details of the person's release on bail along with notification of the scheduled court date. This is a good idea because it would clarify who is entitled to notice of release, and allow for those who receive notice to take action, if necessary.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that legislation be sponsored to amend California Penal Code section 1269b to read as follows:

§ 1269b

(a) The officer in charge of a jail in which an arrested person is held in custody, an officer of a sheriff's department or police department of a city who is in charge of a jail or is employed at a fixed police or sheriff's facility and is acting under an agreement with the agency that keeps the jail in which an arrested person is held in custody, an employee of a sheriff's department or police department of a city who is assigned by the department to collect bail, the clerk of the superior court of the county in which the offense was alleged to have been committed, and the clerk of the superior court in which the case against the defendant is pending may approve and accept bail in the amount fixed by the warrant of arrest, schedule of bail, or order admitting to bail in cash or surety bond executed by a certified, admitted surety insurer as provided in the Insurance Code, to issue and sign an order for the release of the arrested person,

and to set a time and place for the appearance of the arrested person before the appropriate court and give notice thereof to the court, the arresting agency, and any prosecuting agency that obtained a warrant on which the person was held. The notification shall include all documents relating to the acceptance of bail and the time and place set for the appearance.

(b) If a defendant has appeared before a judge of the court on the charge contained in the complaint, indictment, or information, the bail shall be in the amount fixed by the judge at the time of the appearance. If that appearance has not been made, the bail shall be in the amount fixed in the warrant of arrest or, if no warrant of arrest has been issued, the amount of bail shall be pursuant to the uniform countywide schedule of bail for the county in which the defendant is required to appear, previously fixed and approved as provided in subdivisions (c) and (d).

(c) It is the duty of the superior court judges in each county to prepare, adopt, and annually revise a uniform countywide schedule of bail for all bailable felony offenses and for all misdemeanor and infraction offenses except Vehicle Code infractions. The penalty schedule for infraction violations of the Vehicle Code shall be established by the Judicial Council in accordance with Section 40310 of the Vehicle Code.

(d) A court may, by local rule, prescribe the procedure by which the uniform countywide schedule of bail is prepared, adopted, and annually revised by the judges. If a court does not adopt a local rule, the uniform countywide schedule of bail shall be prepared, adopted, and annually revised by a majority of the judges.

(e) In adopting a uniform countywide schedule of bail for all bailable felony offenses the judges shall consider the seriousness of the offense charged. In considering the seriousness of the offense charged the judges shall assign an additional amount of required bail for each aggravating or enhancing factor chargeable in the complaint, including, but not limited to, additional bail for charges alleging facts that would bring a person within any of the following sections: Section 667.5, 667.51, 667.6, 667.8, 667.85, 667.9, 667.10, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.53, 12022.6, 12022.7, 12022.8, or 12022.9 of this code, or Section 11356.5, 11370.2, or 11370.4 of the Health and Safety Code. In considering offenses in which a violation of Chapter 6 (commencing with Section 11350) of Division 10 of the Health and Safety Code is alleged, the judge shall assign an additional amount of required bail for offenses involving large quantities of controlled substances.

(f) The countywide bail schedule shall contain a list of the offenses and the amounts of bail applicable for each as the judges determine to be appropriate. If the schedule does not list all offenses specifically, it shall contain a general clause for designated amounts of bail as the judges of the county determine to be appropriate for all the offenses not specifically listed in the schedule. A copy of the countywide bail schedule shall be sent to the officer in charge of the county jail, to the officer in charge of each city jail within the county, to each superior court judge and commissioner in the county, and to the Judicial Council.

(g) Upon posting bail, the defendant or arrested person shall be discharged from custody as to the offense on which the bail is posted. All money and surety bonds so deposited with an officer authorized to receive bail shall be transmitted immediately to the judge or clerk of the court by which the order was made or warrant issued or bail schedule fixed. If, in the case of felonies, an indictment is filed, the judge or clerk of the court shall transmit all of the money and surety bonds to the clerk of the court.

(h) If a defendant or arrested person so released fails to appear at the time and in the court so ordered upon his or her release from custody, Sections 1305 and 1306 apply.

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

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: A person who is arrested or picked up on an outstanding warrant must be brought before a magistrate within two court days. (Pen. Code, § 825.) But if bail is posted before then, the jail will instead release the person on bail for an appearance that is usually one to three months away. Existing law requires the jail to provide notice of the time and place for the appearance, but does not specify to whom. In practice, the jail will notify the court but neglect to inform either the arresting agency or prosecuting agency, and may even refuse to respond to requests by the latter to disclose this information. This can result in a victim showing up to court on the wrong date, or a case being delayed or trailed due to a missing file or the unavailability of a specially-assigned prosecutor who is familiar with the facts of the case.

The Solution: This resolution would require a jail to provide notice to relevant law enforcement agencies when they release a defendant or arrestee on bail. Providing such notice allows victim notification in accordance with Marsy's Law (see Cal. Const. Art. I, §28(b)), prevents scheduling conflicts in specially-assigned cases, and conserves judicial resources. Requiring the notice to include documentation helps mitigate any mistakes, such as an appearance set on a holiday or in the wrong courtroom, which can sometimes lead to bench warrants being issued in error.

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: Michael Fern

RESOLUTION 06-10-2018

DIGEST
Firearms: No Felony Conviction for Possession if Accused has an Outstanding Warrant
Amends Penal Code sections 29800 and 29805 to prohibit the conviction of an individual in possession of a firearm when the person only has an outstanding warrant.

RESOLUTIONS COMMITTEE RECOMMENDATION
DISAPPROVE

History:
No similar resolutions found.

Reasons:
This resolution amends Penal Code sections 29800 and 29805 to prohibit the conviction of an individual in possession of a firearm when the person only has an outstanding warrant. This resolution should be disapproved because the proposed change is too expansive and allows for abuse and unintended consequences.

Under the current language of Penal Code section 29800, an individual may be arrested and convicted of felony possession of a firearm solely on the basis of having an outstanding warrant regardless of whether the individual has notice of this warrant. Under Penal Code section 29805, an individual may be arrested and convicted of misdemeanor or felony possession of a firearm solely on the basis of having an outstanding warrant regardless of whether the individual has notice of this warrant.

The proposed language would remove the possibility of a person receiving a felony conviction for possession of a firearm when that person lawfully owns, possess, purchases or controls a firearm if there is an outstanding warrant, regardless of the individual's knowledge of the warrant. This is too expansive and allows for abuse in instances where an individual is aware of the warrant, but actively made efforts to avoid addressing the warrant. For example, if an individual appeared at the arraignment but not at the next hearing and the court issued a bench warrant, the individual would have notice of the arraignment and should have actual or reasonable notice of the warrant based on the failure to appear. Under the proposed amendment, this individual had or should have had knowledge of the warrant and would nevertheless be able to legally purchase, use, control, or possess a firearm. This individual should not be able to claim protection from the law and avoid a conviction.

This resolution is similar to Assem. Bill No. 3064 (Baker) now pending in the Assembly and Sen. Bill No. 87 (Committee on Budget and Fiscal Review) now pending in the Assembly.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code sections 29800 and 29805 to read as follows:

§ 29800

(a)(1) Any person who has been convicted of~~, or has an outstanding warrant for,~~ a felony under the laws of the United States, the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 23515, or who is addicted to the use of any narcotic drug, and who owns, purchases, receives, or has in possession or under custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns, purchases, receives, or has in possession or under custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 23515, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, and who owns or has in possession or under custody or control any firearm is guilty of a felony.

(c) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both punishments.

§ 29805

Except as provided in Section 29855 or subdivision (a) of Section 29800, any person who has been convicted of ~~, or has an outstanding warrant for,~~ 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, or if the individual has an outstanding warrant, 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.

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

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: Because of a poorly drafted recent change to criminal law, a person who has been secretly accused of any felony, or numerous misdemeanors, is subject to felony prosecution for owning a legally purchased and properly registered firearm, even if they are never convicted of the underlying charge, never knew that the underlying charge existed, and never knew that they were subject to the firearms ban. Thus, because the recent change to the above-referenced statute allows prosecution wherever a "warrant" is issued, Californians who legally purchased a firearm are subject to felony prosecution for illegal ownership of a firearm if they are ever even accused of a crime and a warrant for their arrest is issued by the court.

The Solution: Prop. 63 has already created an intensive process to ensure that defendant's convicted of qualifying offenses forfeit any firearms in their possession and are barred from ownership in the future. This resolution would clarify that a defendant simply accused of a crime may not be prosecuted for otherwise lawful gun-ownership. Importantly, this resolution would not prevent courts from ordering defendants to surrender any firearms as a condition of release pending resolution of the case.

IMPACT STATEMENT
This 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 06-11-2018

DIGEST
Continuances: Good Cause to Keep Assigned Prosecutor in Human Trafficking Case
Amends Penal Code section 1050 to include human trafficking cases when assigned prosecutor is unavailable due to a trial, preliminary hearing, or motion to suppress in another case.

RESOLUTIONS COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE

History:
No similar resolutions found.

Reasons:
This resolution amends Penal Code section 1050 to include human trafficking cases when the assigned prosecutor is unavailable due to a trial, preliminary hearing, or motion to suppress in another case. This resolution should be approved in principle because it helps ensure that human trafficking cases are vertically-prosecuted by a knowledgeable prosecutor and limits the continuance to a maximum of 10 days.

Currently, Penal Code section 1050, subdivision (g)(2), authorizes a limited continuance to accommodate an assigned prosecutor's handling of a significant hearing in another case, when the charged offense involves murder, domestic violence, stalking, child abuse or neglect, or a hate crime. Human trafficking cases similarly require special handling by a vertically-assigned prosecutor who handles the case from beginning to end. The successful prosecution of a human trafficking case requires an understanding of the special dynamics of the crime and time to develop a rapport with victims and witnesses, who are often fearful of law enforcement and reluctant to testify against the accused.

The primary objection to the resolution would be that any continuance, however brief, necessarily extends a case beyond a statutorily-defined period that would otherwise mandate dismissal. However, the constitutional right to a speedy trial does not mandate a specific timeframe and is not curtailed by a continuance supported by good cause and capped at no more than 10 days. Good cause should include allowing an advocate to effectively seek justice on behalf of vulnerable victims who have been deprived of liberty and/or human dignity, usually for a time period far longer than 10 days. Furthermore, a continuance under this subdivision is only available when the assigned prosecutor is unavailable due to the need to protect another defendant's right to a preliminary hearing, trial, or motion to suppress.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 1050 to read as follows:

§ 1050

(a) The welfare of the people of the State of California requires that all proceedings in

criminal cases shall be set for trial and heard and determined at the earliest possible time. To this end, the Legislature finds that the criminal courts are becoming increasingly congested with resulting adverse consequences to the welfare of the people and the defendant. Excessive continuances contribute substantially to this congestion and cause substantial hardship to victims and other witnesses. Continuances also lead to longer periods of presentence confinement for those defendants in custody and the concomitant overcrowding and increased expenses of local jails. It is therefore recognized that the people, the defendant, and the victims and other witnesses have the right to an expeditious disposition, and to that end it shall be the duty of all courts and judicial officers and of all counsel, both for the prosecution and the defense, to expedite these proceedings to the greatest degree that is consistent with the ends of justice. In accordance with this policy, criminal cases shall be given precedence over, and set for trial and heard without regard to the pendency of, any civil matters or proceedings. In further accordance with this policy, death penalty cases in which both the prosecution and the defense have informed the court that they are prepared to proceed to trial shall be given precedence over, and set for trial and heard without regard to the pendency of, other criminal cases and any civil matters or proceedings, unless the court finds in the interest of justice that it is not appropriate.

(b) To continue any hearing in a criminal proceeding, including the trial, (1) a written notice shall be filed and served on all parties to the proceeding at least two court days before the hearing sought to be continued, together with affidavits or declarations detailing specific facts showing that a continuance is necessary and (2) within two court days of learning that he or she has a conflict in the scheduling of any court hearing, including a trial, an attorney shall notify the calendar clerk of each court involved, in writing, indicating which hearing was set first. A party shall not be deemed to have been served within the meaning of this section until that party actually has received a copy of the documents to be served, unless the party, after receiving actual notice of the request for continuance, waives the right to have the documents served in a timely manner. Regardless of the proponent of the motion, the prosecuting attorney shall notify the people's witnesses and the defense attorney shall notify the defense's witnesses of the notice of motion, the date of the hearing, and the witnesses' right to be heard by the court.

(c) Notwithstanding subdivision (b), a party may make a motion for a continuance without complying with the requirements of that subdivision. However, unless the moving party shows good cause for the failure to comply with those requirements, the court may impose sanctions as provided in Section 1050.5.

(d) When a party makes a motion for a continuance without complying with the requirements of subdivision (b), the court shall hold a hearing on whether there is good cause for the failure to comply with those requirements. At the conclusion of the hearing, the court shall make a finding whether good cause has been shown and, if it finds that there is good cause, shall state on the record the facts proved that justify its finding. A statement of the finding and a statement of facts proved shall be entered in the minutes. If the moving party is unable to show good cause for the failure to give notice, the motion for continuance shall not be granted.

(e) Continuances shall be granted 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.

(f) At the conclusion of the motion for continuance, the court shall make a finding whether good cause has been shown and, if it finds that there is good cause, shall state on the record the facts proved that justify its finding. A statement of facts proved shall be entered in the minutes.

(g)(1) When deciding whether or not good cause for a continuance has been shown, the

court shall consider the general convenience and prior commitments of all witnesses, including peace officers. Both the general convenience and prior commitments of each witness also shall be considered in selecting a continuance date if the motion is granted. The facts as to inconvenience or prior commitments may be offered by the witness or by a party to the case.

(2) For purposes of this section, "good cause" includes, but is not limited to, those cases involving murder~~,~~ as defined in subdivision (a) of Section 187, allegations that involve stalking~~,~~ as defined in Section 646.9, a violation of one or more of the sections specified in subdivision (a) of Section 11165.1 or Section 11165.6, or domestic violence as defined in Section 13700, or a case being handled in the Career Criminal Prosecution Program pursuant to Sections 999b through 999h, or a hate crime, as defined in Title 11.6 (commencing with Section 422.6) of Part 1, or human trafficking as defined in Section 236.1 or a violation of one or more of the sections specified in subdivision (b) of Section 236.1, except violations of Section 311.1, 311.2, and 311.5, has occurred and the prosecuting attorney assigned to the case has another trial, preliminary hearing, or motion to suppress in progress in that court or another court. A continuance under this paragraph shall be limited to a maximum of 10 additional court days.

(3) Only one continuance per case may be granted to the people under this subdivision for cases involving stalking, hate crimes, or cases handled under the Career Criminal Prosecution Program. Any continuance granted to the people in a case involving stalking or handled under the Career Criminal Prosecution Program shall be for the shortest time possible, not to exceed 10 court days.

(h) Upon a showing that the attorney of record at the time of the defendant's first appearance in the superior court on an indictment or information is a Member of the Legislature of this state and that the Legislature is in session or that a legislative interim committee of which the attorney is a duly appointed member is meeting or is to meet within the next seven days, the defendant shall be entitled to a reasonable continuance not to exceed 30 days.

(i) A continuance shall be granted only for that period of time shown to be necessary by the evidence considered at the hearing on the motion. Whenever any continuance is granted, the court shall state on the record the facts proved that justify the length of the continuance, and those facts shall be entered in the minutes.

(j) Whenever it shall appear that any court may be required, because of the condition of its calendar, to dismiss an action pursuant to Section 1382, the court must immediately notify the Chair of the Judicial Council.

(k) This section shall not apply when the preliminary examination is set on a date less than 10 court days from the date of the defendant's arraignment on the complaint, and the prosecution or the defendant moves to continue the preliminary examination to a date not more than 10 court days from the date of the defendant's arraignment on the complaint.

(l) This section is directory only and does not mandate dismissal of an action by its terms.

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

PROPONENT: Orange County Bar Association

STATEMENT OF REASONS

The Problem: Existing law provides that certain types of cases establish good cause for a continuance in a criminal proceeding when the prosecuting attorney assigned to the case has

another trial, preliminary hearing, or motion to suppress. Human trafficking cases are not currently, included in the types of cases that establish good cause for a continuance. Many human trafficking victims lack stable family lives and are/were foster care youth. It is well accepted among those fighting human trafficking that as a society we have failed these victims. Human traffickers recognize this short-coming and capitalize on this. Due to the continued physical and mental trauma often seen in human trafficking cases, victims are extremely fearful, vulnerable, and reluctant to trust others. The prosecuting attorney assigned to the case works extremely hard to establish a relationship with the human trafficking victim and to establish trust so that the victim will testify against the trafficker. The prosecuting attorney assures the victim that they are in this together and the prosecuting attorney will be there to seek justice. Then at trial a new prosecuting attorney is assigned if the former prosecutor is assigned to another matter. This is because prosecuting attorneys are seen as fungible.

The Solution: The Legislature has already recognized that for certain types of cases (including stalking and domestic violence) prosecuting attorneys are not fungible, and that good cause exists for a continuance in those types cases when the prosecuting attorney assigned to the case is unavailable. This current amendment would make the necessary addition of adding human trafficking cases to the enumerated types of cases which provide good cause for a continuance of a criminal proceeding when the prosecuting attorney is unavailable due to having another trial, preliminary hearing, or motion to suppress in progress in that court or another court.

IMPACT STATEMENT
This 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 06-12-2018

DIGEST

Law Enforcement Complaints: Automatic Provision of Complaining Statements and Disposition
Amends Penal Code section 832.7 to require law enforcement agencies to provide a complaining party a copy of her/his own statements and the disposition of the complaint without requiring the complainant to file a request.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:
Similar to Resolutions 03-12-2004, 06-06-2007, 06-10-2009, 03-09-2012, and 07-02-2015, which were approved in principle or as amended, and Resolution 03-08-2012, which was disapproved.

Reasons:
This resolution amends Penal Code section 832.7 to require law enforcement agencies to provide a complaining party a copy of her/his own statements and the disposition of the complaint without requiring the complainant to file a request. This resolution should be approved in principle because it reduces unnecessary bureaucracy and paperwork associated with complaints against law enforcement, and the burden on law enforcement to comply is minimal and outweighed by the benefits to society of a more open and transparent law enforcement system.

Current law states that a law enforcement department or agency shall release to the complaining party a copy of that party's own statements at the time the complaint is filed. However, current law is silent as to whether the complainant must submit a request for her/his own statement. As a result, a law enforcement agency or department that requires a formal request increases barriers to justice in its community. The resolution seeks to clarify that a complaining party should not bear the burden of submitting a request for a document that is already required under the law, which would save resources for law enforcement and ease bureaucratic burdens on community members who filed complaints. The resolution also clarifies that, upon a request subsequent to the time of filing the complaint, the agency or department shall be required to release a copy of the complainant's own statements.

Current law also states that the department or agency shall provide written notification to the complaining party of the disposition of the party's complaint within 30 days of the disposition, but is silent as to the need for the complainant to file a request, and lacking in detail as to what that notification of disposition shall include. The resolution would clarify that the disposition would be provided automatically without the filing of a request within 30 days of the disposition, and upon request thereafter. The resolution further specifies that the notice of disposition shall include an explanation of how and why the disposition was reached. Both of these provisions reduce barriers to justice for parties wishing to learn the outcome of their complaints against law enforcement, and may have the added advantage of increasing trust between communities and law enforcement because of the increased transparency and reduced bureaucracy.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 832.7 to read as follows:

§ 832.7

(a) Peace officer or custodial officer personnel records and records maintained by any state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code. This section shall not apply to investigations or proceedings concerning the conduct of peace officers or custodial officers, or an agency or department that employs those officers, conducted by a grand jury, a district attorney's office, or the Attorney General's office.

(b) Notwithstanding subdivision (a), a department or agency shall release to the complaining party a copy of his or her own statements at the time the complaint is filed, without need for a request, and at any time thereafter upon request.

(c) Notwithstanding subdivision (a), a department or agency that employs peace or custodial officers may disseminate data regarding the number, type, or disposition of complaints (sustained, not sustained, exonerated, or unfounded) made against its officers if that information is in a form which does not identify the individuals involved.

(d) Notwithstanding subdivision (a), a department or agency that employs peace or custodial officers may release factual information concerning a disciplinary investigation if the officer who is the subject of the disciplinary investigation, or the officer's agent or representative, publicly makes a statement he or she knows to be false concerning the investigation or the imposition of disciplinary action. Information may not be disclosed by the peace or custodial officer's employer unless the false statement was published by an established medium of communication, such as television, radio, or a newspaper. Disclosure of factual information by the employing agency pursuant to this subdivision is limited to facts contained in the officer's personnel file concerning the disciplinary investigation or imposition of disciplinary action that specifically refute the false statements made public by the peace or custodial officer or his or her agent or representative.

(e)(1) The department or agency shall provide written notification to the complaining party of the disposition of the complaint within 30 days of the disposition without need for a request and at any time after disposition upon the request of the complaining party notwithstanding the fact that written notification has already been given in compliance with this section. This notification shall include an explanation of how and why the reported disposition was reached.

(2) The notification described in this subdivision shall not be conclusive or binding or admissible as evidence in any separate or subsequent action or proceeding brought before an arbitrator, court, or judge of this state or the United States.

(f) Nothing in this section shall affect the discovery or disclosure of information contained in a peace or custodial officer's personnel file pursuant to Section 1043 of the Evidence Code.

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

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: It's hard enough to make a complaint against a police officer. When a citizen screws up the courage to complain it can take forever to find out what happened. The police don't give the person a copy of their statement unless the person asks. The disposition is usually nothing more than "founded, unfounded, not sustained" or some similar language. It's all very vague and the process does nothing to instill confidence in the police and how they investigate wrongdoing.

The Solution: This resolution makes some simple changes that will enhance the transparency of police personnel complaints. The complainant can get a copy of his or her statement at any time. The disposition notification must have some explanation of how the police reached their conclusion. That's it!

IMPACT STATEMENT
This 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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