TRIAL COURT REVENUE DISTRIBUTION AND COLLECTIONS RESOURCES
SPRING 2022

State Controller's Office (SCO) Trial Court Revenue Distribution:

- Trial Court Revenue Distribution Guidelines (Revision 32)
- Past Guidelines Revisions (29, 30, 31)
- Frequently Asked Questions April 2019
- TC-31 Remittance Form and Guidelines for Revised TC-31 Forms
- Audit Reports

Judicial Council Revenue Distribution and Collections:

- Uniform Bail and Penalty Schedules
- Revenue Distribution Worksheets
- Crosswalk (2022)
- Materials for Previous Revenue Distribution Trainings by year
- Audit Reports
- Collections Reporting Template 2021-22, Instructions, and Glossary (to be posted in June)
- Cost Recovery Guidelines and Standards, Distribution Template, and Report Template
- Memorandum of Understanding (MOU) template
- Report to Legislature: Statewide Collection of Court-Ordered Debt for 2020–21
- Intercounty Probation Case Transfer Fiscal Procedures
- Performance Measures
- Collections Best Practices
- Discharge from Accountability Information Sheet
  - Discharge from Accountability Application Sample
  - Discharge from Accountability Sample Report
- Court-Related Legislation
- Statewide Master Agreements for Collections Services

Other Resources:

California State Assembly
California State Senate
California Legislative Information (Leg Info)
JCC Resources Network
SCO Listserv Notification Signup

Franchise Tax Board Court-Ordered Debt Collections Program (FTB-COD)
Franchise Tax Board Interagency Intercept Collections Program (FTB-IIC)

Assembly Bill 177 and 1869 memos (below)

Public Email Inboxes for Questions:

JC Funds and Revenues Unit— Collections@jud.ca.gov ♦ RevenueDistribution@jud.ca.gov
SCO Local Government Policy Division— LocalGovPolicy@sco.ca.gov
FTB-COD— CODClientServices@ftb.ca.gov
FTB-IIC (aka TIP) — iicgroup@ftb.ca.gov

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MEMORANDUM

Date
November 15, 2021

To
Presiding Judges of the Superior Courts
Court Executive Officers of the Superior Courts

From
Shelley Curran, Director
Criminal Justice Services

Subject
Recently Enacted Criminal Justice Legislation

Action Requested
For Your Information

Deadline
N/A

Contact
Kara Portnow, Supervising Attorney
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kara.portnow@jud.ca.gov

The California Legislature recently enacted several new laws that will affect criminal courts. To help with implementation, this memo summarizes some of that new legislation. As noted at the end of this memorandum, a detailed memorandum about changes to felony sentencing law, written by Judge J. Richard Couzens, will be distributed to presiding judges and court executive officers at a later date.

Assembly Bill 177 (Stats. 2021, Ch. 257)

This legislation is a public safety trailer bill related to courts and includes provisions necessary to implement the Budget Act of 2021. It also expands on Assembly Bill 1869 (Stats. 2020, ch. 92) by eliminating 18 criminal fees and outstanding debt incurred as a result of those fees.

Effective September 23, 2021,[1] Penal Code section 1463.07 is repealed. Like Government Code section 29550(f), which was previously repealed by AB 1869, this statute mandated a $10 administrative screening fee and a $25 citation processing fee. Courts must cease collecting this fee and vacate any portion of a judgment that previously imposed this fee.

Beginning January 1, 2022, courts will no longer have authority to collect the following fees and must vacate any portion of a judgment that imposed those fees:

- Pen. Code, § 1001.15 (diversion program laboratory analysis fee)
- Pen. Code, § 1001.16 (misdemeanor drug diversion program laboratory analysis fee)
- Pen. Code, § 1001.90(g)–(h) (county fee for collecting diversion restitution)
- Pen. Code, § 1202.4(*l*) (county fee for collecting restitution fines)
- Pen. Code, § 1203.1(*l*) (county fee for collecting restitution orders)
- Pen. Code, § 1203.1ab (drug testing fee)
- Pen. Code, § 1203.1c (local incarceration fee)
- Pen. Code, § 1203.1m (state prison incarceration fee)
- Pen. Code, § 1203.4a(e) (fee for processing dismissal request)
- Pen. Code, § 1203.9 (local fees for courts receiving probation transfer cases)
- Pen. Code, § 1205(e) (installment payment plan and accounts receivable processing fee)
- Pen. Code, § 1214.5 (interest on restitution orders)[2]
- Pen. Code, § 2085.5(e)–(f), (i) (restitution fines/orders collection fee for prisoners or parolees)
- Pen. Code, § 2085.6(d) (restitution fines/orders collection fee for persons on postrelease community supervision or mandatory supervision)
- Pen. Code, § 2085.7(d) (restitution fines/orders collection fee for persons released from custody)
- Veh. Code, § 40508.5 (failure to appear / failure to comply assessment)
- Veh. Code, § 40510.5(g) (installment account processing fee)

For the 2021–22 fiscal year, $25 million is appropriated from the General Fund to backfill revenue to counties because of local fees repealed by AB 177. And in the 2022–23 fiscal year, and for each year thereafter, $50 million will be appropriated from the General Fund to backfill revenue to counties. We are currently working with the Department of Finance to address the fiscal impact changes to Penal Code section 1205(e) made in AB 177.

[1] Based on the urgency clause in the legislation, the effective date for the repeal of this particular fee is the date the Governor signed AB 177.

[2] Penal Code section 1202.4(f)(3)(G), authorizing interest accrual on victim restitution orders, remains in effect.

Assembly Bill 333 (Stats. 2021, Ch. 699)—The STEP Forward Act of 2021

This legislation amends Penal Code section 186.22 on gang-related sentencing and definitions, and adds a new statute, Penal Code section 1109, on bifurcation of gang-related offenses and enhancements. For section 186.22, the legislation enacted two versions that contain different sentencing requirements in subdivision (b). The version that is operative from January 1 through December 31, 2022, allows the court discretion to choose the sentence enhancement term. The version that becomes operative on January 1, 2023, requires the court to order the middle term of the sentence enhancement unless there are circumstances in aggravation or mitigation.

Both versions of section 186.22 include revised definitions of "criminal street gang" and of "pattern of criminal gang activity." Among these changes, looting, felony vandalism, and identity fraud no longer qualify as predicate offenses that can be used to prove the existence of a "criminal street gang." (See Pen. Code, § 186.22(e)(1) & (f).) "Pattern of criminal gang activity" now requires that one of the predicate offenses was committed within three years of the charged offense and specifies that members must have committed the predicate offenses. Further, the predicate offenses must have been committed to benefit the gang in a manner that was more than reputational. (*Id.*, § 186.22(e)(1).) Finally, the currently charged offense may no longer be used to establish the pattern of criminal gang activity. (*Id.*, § 186.22(e)(2).)

Penal Code section 1109 requires bifurcation of gang-related offenses and enhancements. Under section 1109(a), a gang enhancement must be tried separately from the underlying offense, if the defense requests it. Further, only direct or circumstantial evidence may be used to prove the gang enhancement. Section 1109(b) requires the court to try a violation of Penal Code section 186.22(a) "separately from all other counts that do not otherwise require gang evidence as an element of the crime." The court may try a charge under section 186.22(a) in the same proceeding with an allegation of an enhancement under section 186.22(b) or (d).

Assembly Bill 898 (Stats. 2021, Ch. 202)—Criminal Records: Automatic Conviction Record Relief

This legislation requires notification between receiving courts and transferring courts of reductions of felonies to misdemeanors and dismissals of convictions in probation transfer cases. Specifically, the legislation amends Penal Code sections 1203.9 and 13151 to require a transferring court to report a probation transfer to the Department of Justice (DOJ) as a subsequent action to a case. The disposition update will occur once the case was accepted by the receiving court and will identify the receiving court and new case number, if any. The legislation also amends section 1203.9 to require the receipt of records from the receiving court to the transferring court to include the receiving court's new case number, if any. This requirement will give DOJ the court and case information it needs to notify all involved courts of any future

reduction or disposition change in a transferred case, whether petition-based or automated. Finally, the legislation amends Penal Code section 1203.425 to require electronic notice of a reduction or dismissal from DOJ to all involved courts and to require courts to update records to reflect a reduction or dismissal. The legislation also further clarifies how existing provisions of section 1203.425 apply to probation transfer cases, including that a petition in opposition to automated record cleaning may be filed by the prosecuting agency or probation department in either the transferring court or the receiving court, in the county of current jurisdiction.

Assembly Bill 1228 (Stats. 2021, Ch. 533)—Supervised Persons: Release

This legislation requires the court to release persons on their own recognizance who are pending a hearing on a probation violation unless the court finds, by clear and convincing evidence, that the particular circumstances of the case require imposition of conditions of release in order to provide reasonable protection of the public and reasonable assurance of the person's future appearance in court. A detailed memorandum on AB 1228 written by Judge J. Richard Couzens will be distributed to presiding judges and court executive officers and made available on the Judicial Resources Network.

Senate Bill 317 (Stats. 2021, Ch. 599)—Competence to Stand Trial

This legislation authorizes good-conduct credits for a person who is found incompetent to stand trial and is receiving treatment in a treatment facility. (Pen. Code, § 4019(a)(8).) The legislation also repeals provisions regarding the restoration of competency for misdemeanor defendants, including provisions regarding administration of antipsychotic medication. Instead, if a misdemeanor defendant is found mentally incompetent, the court may either dismiss the charges or conduct a hearing to determine if the defendant is eligible for mental health diversion. (*Id.*, § 1370.01(b).)

A hearing to determine eligibility for mental health diversion must be held no later than 30 days after the finding of incompetence; otherwise, the defendant must be released on their own recognizance pending the hearing. (*Id.*, § 1370.01(b)(1)(B).) A grant of diversion may not exceed one year or the maximum term of imprisonment provided by law for the most serious offense charged, whichever is shorter. (*Id.*, § 1370.01(b)(1)(A).) The court must dismiss the criminal charges at the end of the diversion period if the defendant has performed satisfactorily. (*Id.*, § 1370.01(b)(1)(C).)

If the court finds the defendant ineligible for mental health diversion, the court may hold a hearing to determine whether to order modification of the treatment plan in accordance with a recommendation from the treatment provider; refer the defendant to assisted outpatient treatment under Laura's Law, if available; or refer the defendant to the county conservatorship investigator

in the county of commitment for possible Lanterman-Petris-Short (LPS) conservatorship proceedings.[3] (*Id.*, § 1370.01(b)(1)(D).)

If the court decides to dismiss the charges under Penal Code section 1385, the court must transmit a copy of the order of dismissal to the county mental health director (or designee). (*Id.*, § 1370.01(b)(2).) If the defendant is on misdemeanor probation and is found mentally incompetent, the court must dismiss the pending revocation matter and may return the defendant to supervision. Before dismissal, the court may modify the terms and conditions of supervision to include appropriate mental health treatment. (*Id.*, § 1370.01(c).)

Senate Bill 483 (Stats. 2021, Ch. 728)—Sentencing: Resentencing to Remove Sentence Enhancements

This legislation retroactively applies the changes enacted by Senate Bill 180 (Stats. 2017, ch. 677) and Senate Bill 136 (Stats. 2019, ch. 590) to persons currently serving a term of incarceration for the repealed sentence enhancements.[4] Penal Code section 1171(a) provides that a sentence enhancement imposed before January 1, 2018, and under Health and Safety Code section 11370.2 is legally invalid, except as specified. Penal Code section 1171.1(a) provides that a sentence enhancement imposed before January 1, 2020, and under Penal Code section 667.5(b) is also legally invalid, except as specified. These new statutes also establish procedures for recalling and resentencing cases that include these invalid sentencing enhancements.

The secretary of the Department of Corrections and Rehabilitation (CDCR) and each county correctional administrator must identify individuals in custody currently serving a term for a judgment that includes these enhancements and provide their names, dates of birth, and case or docket numbers to the sentencing courts that imposed the enhancements.[5] For defendants currently serving time solely for the invalid enhancement (having already served their base term and any other enhancements), this information must be provided to the court by March 1, 2022. For all other defendants in custody who have a sentence that includes an invalid enhancement, the information must be provided by July 1, 2022. (Pen. Code, §§ 1171(b), 1171.1(b).)

The court, on receipt of that information, must review the judgment and verify that it includes one of the sentence enhancements addressed by this legislation. If the court determines that the

[3] See Penal Code section 1370.01(b)(1)(D) for further details related to eligibility and procedures.

[4] SB 180 repealed the three-year sentence enhancement for prior drug offenses; SB 136 limited the one-year prison prior sentence enhancement to apply only to convictions of sexually violent offenses.

[5] According to estimates from CDCR, approximately 10,000 inmates are currently serving time on a judgment that contains a Penal Code section 667.5(b) enhancement, and approximately 200 inmates are currently serving time on a judgment that contains a Health and Safety Code section 11370.2 enhancement.

judgment includes such an enhancement, the court must appoint counsel, recall the sentence, and resentence the defendant. (*Id.*, §§ 1171(c)–(d), 1171.1(c)–(d).) The parties may waive a resentencing hearing. If not waived, the resentencing hearing may be conducted through the use of remote technology, on agreement of the defendant. (*Id.*, §§ 1171(e), 1171.1(e).)

The resentencing must result in a lesser sentence than the one originally imposed unless the court finds by clear and convincing evidence that imposing a lesser sentence would endanger public safety.[6] Unless the court originally imposed the upper term, the court may not impose a sentence exceeding the middle term except in specified circumstances. (*Id.*, §§ 1171(d), 1171.1(d).) For individuals who are serving time solely on an invalid enhancement, the court is required to grant resentencing relief by October 1, 2022. For all other defendants serving time on a judgment that includes an invalid enhancement, the court is required to grant this relief by December 31, 2023. (*Id.*, §§ 1171(c), 1171.1(c).)

Senate Bill 775 (Stats. 2021, Ch. 551)—Felony Murder: Resentencing

This legislation amends Penal Code section 1170.95 by providing that persons convicted of attempted murder or manslaughter under a theory of felony murder or the natural probable consequences doctrine are permitted the same relief as persons convicted of murder under the same theories. In so doing, the legislation addresses a perceived inequity in Senate Bill 1437 (Stats. 2018, ch. 1015), which added section 1170.95 and permitted persons convicted of murder (but not lesser offenses) under a felony murder or natural and probable consequences theory to petition to have their convictions vacated and to be resentenced. The legislation also codifies the holding in *People v. Lewis* (2021) 11 Cal.5th 952, at pages 961–970, regarding petitioners' right to counsel and the standard for determining the existence of a prima facie case. Specifically, the legislation amends section 1170.95 to clarify that counsel must be appointed, if requested, upon the filing of a facially sufficient petition and that only after the appointment of counsel and the opportunity for briefing may the court determine whether the petitioner has established a prima facie case for relief. Also based on *People v. Lewis, supra,* at pages 970–972, the legislation amends section 1170.95 to address what evidence a court may consider at a resentencing hearing. Lastly, the legislation adds a retroactivity clause to section 1170.95, specifying that persons who are convicted of murder, attempted murder, or manslaughter and whose conviction is not final may challenge on direct appeal the validity of their convictions based on changes made by Senate Bill 1437.

[6] In addition, the legislative findings in section 1 of SB 483 state that changes to a sentence as a result of this legislation cannot be a basis for a prosecutor or court to rescind a plea agreement.

Changes to Felony Sentencing Law

A detailed memorandum about changes to felony sentencing law, written by Judge J. Richard Couzens, will also be distributed to presiding judges and court executive officers and made available on the Judicial Resources Network. The memo will include discussion of several new laws.

Assembly Bill 124 **(Stats. 2021, Ch. 695)—Criminal Procedure**
AB 124 requires courts to consider whether specified trauma to a defendant and other factors contributed to the commission of an offense when making sentencing and resentencing determinations. It expands the affirmative defense of coercion to victims of intimate partner violence and sexual violence and extends vacatur relief.

Assembly Bill 1540 **(Stats. 2021, Ch. 719)—Criminal Procedure: Resentencing**
This bill requires courts to provide counsel for a defendant when the secretary of the Department of Corrections and Rehabilitation, Board of Parole Hearings, sheriff, or prosecuting agency makes a recommendation to recall an inmate's sentence and resentence that inmate to a lesser sentence. It also creates a presumption favoring recall and resentencing, as specified, when a recommendation has been made by one of these agencies.

Senate Bill 81 **(Stats. 2021, Ch. 721)—Sentencing: Dismissal of Enhancements**
SB 81 amends Penal Code section 1385 by specifying circumstances for a court to consider when determining whether to apply an enhancement.

Senate Bill 567 **(Stats. 2021, Ch. 731)—Criminal Procedure: Sentencing**
Any aggravating factors relied on by the court to impose a sentence exceeding the statutory middle term must be submitted to the fact finder and found to be true, except as provided.

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MEMORANDUM

Date
November 2, 2020

To
Presiding Judges of the Superior Courts
Court Executive Officers of the Superior Courts

From
Shelley Curran, Director
Criminal Justice Services

Subject
Recently Enacted Criminal Justice Legislation

Action Requested
For Your Information

Deadline
N/A

Contact
Kara Portnow, Supervising Attorney
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415-865-4961 phone
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The California Legislature recently enacted several new laws that will impact criminal courts. To help with implementation, this memo summarizes the following new legislation:

- California Racial Justice Act of 2020 (Assembly Bill 2542)
- Court initiated misdemeanor diversion (Assembly Bill 3234)
- Criminal fees (Assembly Bill 1869)
- Juries: peremptory challenges (Assembly Bill 3070)
- Probation: length of terms (Assembly Bill 1950)

Also included, at the end of the memo, are brief descriptions of two additional pieces of legislation:

- Death penalty: person with an intellectual disability (Assembly Bill 2512)
- Conviction: expungement: incarcerated individual hand crews (Assembly Bill 2147)

California Racial Justice Act of 2020

Assembly Bill 2542 (Stats. 2020, ch. 317). This legislation aims to eliminate racial bias from California's criminal justice system and to provide remedies that will eliminate racially discriminatory practices. It also seeks to ensure that individuals have access to all relevant evidence, including statistical evidence, regarding potential discrimination related to convictions or sentences. (Stats. 2020, ch. 317, § 1.) The legislation adds Penal Code section 745 and amends Penal Code sections 1437 and 1437.7.

Penal Code section 745

This statute prohibits the state from seeking or obtaining a criminal conviction or imposing a sentence on the basis of race, ethnicity, or national origin. (Pen. Code, § 745(a).) This prohibition also covers juvenile adjudications and dispositions. (Pen. Code, § 745(f).) The statute applies "only prospectively in cases in which judgment has not been entered prior to January 1, 2021." (Pen. Code, § 745(j).)

Four grounds exist for a violation of this statute:

(1) The judge, an attorney in the case, a law enforcement officer involved in the case, an expert witness, or a juror exhibited bias or animus toward the defendant because of the defendant's race, ethnicity, or national origin;

(2) During the trial, one of the persons listed in (1) used racially discriminatory language about the defendant's race, ethnicity, or national origin (with certain exceptions);

(3) The defendant was charged or convicted of a more serious offense than defendants of other races, ethnicities, or national origins who commit similar offenses and who are similarly situated **and** the evidence establishes that the prosecution more frequently sought or obtained these convictions against people who share the defendant's race, ethnicity, or national origin in the county;

(4) The defendant received a longer or more severe sentence than what other similarly situated individuals convicted of the same offense received; **and**

  (a) Longer or more severe sentences were more frequently imposed on people that share the defendant's race, ethnicity, or national origin than on defendants of other races, ethnicities, or national origins, in the county; **or**

  (b) Longer or more severe sentences were more frequently imposed for the same offense on defendants in cases with victims of one race, ethnicity, or national origin than in cases with victims of other races, ethnicities, or national origins, in the county.

A defendant may file a motion in the trial court alleging a violation of subdivision (a). (Pen. Code, § 745(b).) If the defendant makes a prima facie showing of a violation, the trial court must hold a hearing. (Pen. Code, § 745(c).)

At the hearing, either party may present evidence including but not limited to statistical evidence, aggregate data, expert testimony, and the sworn testimony of witnesses. The court may also appoint an independent expert. The court is required to make findings on the record at the conclusion of the hearing. (Pen. Code, § 745(c).)

A defendant may also file a motion requesting disclosure to the defense of all evidence relevant to a potential violation in the possession or control of the state. Upon a showing of good cause, and if the records are not privileged, the court must order the records to be released. The court may allow the prosecution to redact information prior to disclosure. (Pen. Code, § 745(d).)

The defendant must prove the violation by a preponderance of the evidence. (Pen. Code, § 745(c)(2).) If the court finds a violation of subdivision (a), the court must impose a remedy. (Pen. Code, § 745(e).) The type of remedy depends on the type of violation and whether the court violation is established before or after judgment has been entered. The specified remedies include declaring a mistrial, empaneling a new jury, dismissing enhancements and/or special allegations, reducing charges, vacating the conviction and sentence, and modifying the judgment. (Pen. Code, § 745(e).) A violation also renders the defendant ineligible for the death penalty. (Pen. Code, § 745(e)(3).)

Penal Code section 1473

The legislation amended Penal Code section 1473 by adding subdivision (f). This subdivision authorizes a writ of habeas corpus, in cases where a judgment was entered on or after January 1, 2021, based on evidence that a criminal conviction or sentence was sought, obtained, or imposed in violation of Penal Code section 745(a).

A petition raising a claim of this nature for the first time, or on the basis of new discovery provided by the state or other new evidence that could not have been previously known by the petitioner with due diligence, shall not be deemed a successive or abusive petition. If the petitioner has a habeas corpus petition pending in state court that has not yet been decided, the petitioner may amend the existing petition with a claim that the petitioner's conviction or sentence was sought, obtained, or imposed in violation of Penal Code section 745(a).

The petition must state if the petitioner requests appointment of counsel. The court must appoint counsel if the petitioner cannot afford counsel and (1) the petition alleges facts that would establish a violation of section 745(a) or (2) the State Public Defender requests that counsel be appointed. Newly appointed counsel may amend a petition that was filed prior to their appointment.

The court is required to review a petition raising a claim pursuant to section 745 and determine if the petitioner has made a prima facie showing. If the petitioner makes a prima facie showing, the court is required to issue an order to show cause and hold an evidentiary hearing, unless the state declines to show cause. The defendant's appearance at the hearing will be by video unless counsel indicates that the defendant's physical presence in court is needed.

If the court determines that the petitioner has not established a prima facie showing of entitlement to relief, the court is required to state the factual and legal basis for its conclusion on the record or issue a written order detailing the factual and legal basis for its conclusion.

Penal Code section 1473.7

The legislation amends Penal Code section 1473.7 by authorizing a motion to vacate a conviction or sentence that was sought, obtained, or imposed on the basis of race, ethnicity, or national origin in violation of Penal Code section 745(a). (Pen. Code, § 1473.7(a)(3).) A motion on this basis must be filed "without undue delay" from the date the moving party discovered, or could have discovered with the exercise of due diligence, the evidence that provides a basis for relief. (Pen. Code, § 1473.7(c).)

Unlike the amendment to Penal Code section 1473, the amendments to Penal Code section 1473.7 do not explicitly state that vacatur relief based on a violation of Penal Code section 745(a) apply only prospectively to cases in which judgment occurs on or after January 1, 2021. As a result, there could be litigation to determine whether this vacatur relief applies to convictions that predate January 1, 2021. However, legislative history indicates that the Legislature intended that the provisions of the entire bill apply prospectively only.[1]

Court Initiated Misdemeanor Diversion

Assembly Bill 3234 (Stats. 2020, ch. 334). This legislation adds sections 1001.95, 1001.96, and 1001.97 to the Penal Code. It authorizes a judge to offer pre-plea misdemeanor diversion over the objection of the prosecution, for a period of up to 24 months. (Pen. Code, § 1001.95(a), (b).)

Violations of Penal Code sections 273.5, 243(e), and 646.9, as well as offenses that require registration under Penal Code section 290, are ineligible for this diversion program.[2] (Pen. Code, § 1001.95(e).) Other than the aforementioned exclusions, there are no other statutory requirements for a defendant to be eligible. A defendant's inability to pay restitution due to

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[1] See Legis. Counsel's Dig., Assem. Bill 2542 (2019–2020 Reg. Sess.); Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill 2542 (2019–2020 Reg. Sess.), amended Aug. 25, 2020, p. 4.

[2] Note that Vehicle Code section 23640 bars diversion in DUI cases. Further, Governor Newsom, in his signing message, available at *www.gov.ca.gov/wp-content/uploads/2020/09/AB-3234.pdf*, stated that he was concerned that driving under the influence offenses are not excluded and that he would seek to remedy this omission in the next legislative session.

indigence may not be grounds to deny diversion or to allow a finding that the defendant failed to comply with the terms of diversion. (Pen. Code, § 1001.96(b).)

A judge may order the defendant to comply with appropriate terms, conditions, or programs during the diverted period. If it appears to the court that the defendant is not complying with the terms and conditions of diversion, the court must hold a hearing, after notifying the defendant, to determine whether criminal proceedings should be reinstated. (Pen. Code, § 1001.95(d).) Upon successful completion of diversion, "the defendant shall be advised" that the arrest on which diversion was based may be disclosed by the Department of Justice in response to a peace officer application and a defendant is not relieved 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. (Pen. Code, § 1001.97(b).)

Criminal Fees

Assembly Bill 1869 (Stats. 2020, ch. 92). This legislation repeals several administrative fees related to the processing of criminal cases and eliminates outstanding debt incurred as a result of those fees. Specifically, it repeals statutes associated with public defender fees, costs of arrest (booking and screening fees), and alternative custody fees (work furlough, home detention, and electronic monitoring). It also repeals the probation department investigation/progress report fee, the interstate compact supervision fee, and the requirement that a probationer pay the reasonable costs of processing their request to move prior to their transfer to another state.

Effective July 1, 2021, courts will no longer have authority to collect the following fees:

- Government Code:
  - § 27712 (public defense fee)
  - § 27753 (cost of counsel)
  - § 29550(c) (criminal justice administration fee)
  - § 29550(f) (administrative screening fee and citation processing fee)
  - § 29550.1 (criminal justice administration fee)
  - § 29550.2 (county booking fee)
  - § 29550.3 (city booking fee)
- Penal Code:
  - § 987.4 (minor public defense fee)
  - § 987.5 (public defense registration fee)
  - § 987.8 (public defense fee)
  - § 1203 (interstate compact supervision)
  - § 1203.016(g) (adult home detention administrative fee)
  - § 1203.018(j) (electronic monitoring administrative fee)
  - § 1203.1b (probation department investigation/progress report fee)

§ 1203.1e (parole supervision fee)
§ 1208.2(b) (program administrative fee)
§ 1210.15 (continuous electronic monitoring fee)
§ 3010.8 (parole continuous electronic monitoring fee)
§ 4024.2(e) (work furlough administrative fee)
§ 6266 (work furlough program fee)

The legislation also adds Government Code section 6111. This statute, effective July 1, 2021, provides that the unpaid balance of any court-imposed costs (pursuant to section 27712, section 29550(c) or (f), and sections 29550.1, 29550.2, and 29550.3) is unenforceable and uncollectible. Further, the court must vacate any portion of a judgment that imposes those costs.

Finally, the legislation contains a budget appropriation of $50,000 from the General Fund, effective immediately, for the 2020–21 fiscal year. For the 2021–22 fiscal year through the 2025–26 fiscal year, it also appropriates $65 million annually from the General Fund to backfill revenues lost from the repeal of these fees. Local agencies may apply for reimbursement of costs. The Legislature intends to pursue legislation with the Budget Act of 2021 to finalize the funding allocation methodology for distribution to counties. (Stats. 2020, ch. 92, § 67.)

Juries: Peremptory Challenges

Assembly Bill 3070 (Stats. 2020, ch. 318). This legislation adds section 231.7 to the Code of Civil Procedure. The statute creates a new procedural framework for the exercise of peremptory challenges in jury selection. It is intended to help eliminate the use of group stereotypes and discrimination, whether based on conscious or unconscious bias, in the exercise of peremptory challenges. (Stats. 2020, ch. 318, § 1.)

Under Civil Code of Procedure section 231.7(a), a party is prohibited from exercising a peremptory challenge to remove a prospective juror on the basis of race, ethnicity, gender, gender identity, sexual orientation, national origin, or religion, or perceived membership in any of those groups. An objection to a peremptory challenge follows a three-step process: (1) a party, or the trial court on its own motion, objects to the improper use of a peremptory challenge; (2) the party exercising the peremptory challenge states the reasons for exercising the peremptory challenge; and (3) the court evaluates the reasons given in light of the totality of the circumstances. The court must sustain the objection if there is a substantial likelihood that an objectively reasonable person would view the peremptory challenge as having been improperly exercised. (Code Civ. Proc., § 231.7(b)–(d).)

Once an objection is made, the court must conduct further discussion outside the presence of the panel. (Code Civ. Proc., § 231.7(b).) If the objection is granted, the court may do one or more of the following: start a new jury selection, if requested by the objecting party; declare a mistrial and select a new jury, if requested by the defendant; seat the challenged juror; provide the

objecting party additional challenges; or provide another remedy as the court deems appropriate. (Code Civ. Proc., § 231.7(h).)

The procedure set forth in section 231.7 modifies the existing *Batson-Wheeler* framework for the exercise of a peremptory challenge in at least five respects. First, the new procedure dispenses with the requirement that the court must first expressly rule on whether the objecting party has established a prima facie case of purposeful discrimination before the party exercising the challenge is required to justify their reason for the challenge. Second, the court is no longer required to find purposeful discrimination to sustain an objection; unconscious bias is sufficient. (Code Civ. Proc., § 231.7(d).)

Third, peremptory challenges for reasons specified in the statute are subject to a rebuttable presumption of invalidity, which can be overcome by clear and convincing evidence that an objectively reasonable person would view the rationale for the challenge as unrelated to the prospective juror's cognizable group membership. (Code Civ. Proc., § 231.7(e), (f).) Similarly, peremptory challenges based on behavior specified in the statute as historically associated with improper discrimination in jury selection are also presumptively invalid, unless the court confirms that the asserted behavior occurred and the counsel offering the reason adequately explains why the asserted behavior matters to the case; these presumptively invalid reasons include inattentiveness, problematic attitude or body language, and providing confused answers. (Code Civ. Proc., § 231.7(g).)

Fourth, trial courts must use the "objectively reasonable person" standards described above in evaluating and adjudicating an objection to the exercise of a peremptory challenge; for purposes of the statute, an objectively reasonable person is defined as one who is aware that both unconscious bias and purposeful discrimination have resulted in the unfair exclusion of potential jurors in California. (Code Civ. Proc., § 231.7(d)(2)(A).) Lastly, appellate courts are directed to review de novo the denial of an objection to a peremptory challenge, with express factual findings reviewed for substantial evidence. (Code Civ. Proc., § 231.7(j).)

Although the effective date of this statute is January 1, 2021, it becomes operative for criminal jury trials in cases where jury selection begins on or after January 1, 2022. (Code Civ. Proc., § 231.7(i), (k).) It becomes operative for all jury trials, including civil cases, on January 1, 2026. (Stats. 2020, ch. 318, § 3.)

Probation: Length of Terms

Assembly Bill 1950 (Stats. 2020, ch. 328). This legislation amends Penal Code section 1203a to restrict misdemeanor probation to no longer than one year, unless the offense includes specific probation lengths within its provisions. It also amends Penal Code section 1203.1 to restrict felony probation to no longer than two years, with exceptions for (1) violent felonies under Penal Code section 667.5(c); (2) an offense that includes specific probation lengths within its

provisions; and (3) specific grand theft, embezzlement, and false financial statement offenses where the total value of the property taken exceeds $25,000.

A detailed memorandum on AB 1950 written by Judge J. Richard Couzens will be distributed to presiding judges and court executive officers and made available on the Judicial Resources Network.

Death Penalty: Person With an Intellectual Disability

Assembly Bill 2512 (Stats. 2020, ch. 331). This legislation amends Penal Code section 1376, which addresses intellectual disability in death penalty proceedings. The definition of "intellectual disability" for purposes of death penalty proceedings is amended to include conditions that manifest before the end of the developmental period, as defined by clinical standards. When the defendant applies for an order directing that a hearing to determine intellectual disability be conducted, the statute now requires the court to hold the hearing if there is a prima facie showing that the defendant is a person with an intellectual disability. The legislation also authorizes a person who is in custody pursuant to a judgment of death to apply for an order directing that a hearing to determine intellectual disability be conducted as part of a petition for writ of habeas corpus, and for related procedures. Finally, this legislation prohibits changing the results of an intellectual functioning test based on race, ethnicity, national origin, or socioeconomic status.

Convictions: Expungement: Incarcerated Individual Hand Crews

Assembly Bill 2147 (Stats. 2020, ch. 60). This legislation adds Penal Code section 1203.4b, authorizing conviction relief for a defendant who successfully participated in the California Conservation Camp program as an incarcerated individual hand crew member, or successfully participated in a county incarcerated individual hand crew. A court may, in its discretion and in the interest of justice, permit a qualifying defendant to withdraw a guilty or no contest plea or the court may set aside a verdict of guilt and dismiss a case against the defendant. The defendant would be released from all penalties and disabilities resulting from the offense, with specified exceptions. The relief applies to all convictions for which the defendant served a sentence at the time the defendant successfully participated in a qualifying program.