

CHAPTER FIFTEEN

CRIMES AGAINST PUBLIC ORDER AND MORALITY

This chapter discusses crimes that threaten individuals' sense of safety and security in their personal life and community. Examples are vagrancy and prostitution, but there are a host of related subjects that are included in the chapter.

Crimes against public order and morality encompass offenses that create public inconvenience and annoyance, disturb, and threaten the peace and tranquility of neighborhoods and offend public morality. Crimes against morality raise the issue of victimless crimes and the overreach of criminal law.

DISORDERLY CONDUCT

Individual disorderly conduct is the (mens rea) purposeful causing of public inconvenience, annoyance, or alarm. This includes (actus reus) fights, noise, utterances, and hazardous conditions.

PC 647. Disorderly Conduct Defined

Every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor:

(a) Who solicits anyone to engage in or who engages in lewd or dissolute conduct in any public place or in any place open to the public or exposed to public view.

(b) Who solicits or who agrees to engage in or who engages in any act of prostitution. A person agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in prostitution. No agreement to engage in an act of prostitution shall constitute a violation of this subdivision unless some act, in addition to the agreement, is done within this state in furtherance of the commission of an act of prostitution by the person agreeing to engage in that act. As used in this subdivision, "prostitution" includes any lewd act between persons for money or other consideration.

(c) Who accosts other persons in any public place or in any place open to the public for the purpose of begging or soliciting alms.

(d) Who loiters in or about any toilet open to the public for the purpose of engaging in or soliciting any lewd or lascivious or any unlawful act.

(e) Who loiters or wanders upon the streets or from place to place without apparent reason or business and who refuses to identify himself or herself and to account for his or her presence when requested by any peace officer so to do, if the surrounding circumstances would indicate.

Note: Due to a Supreme Court Case of *Kolender v. Lawson*, (1983) 461 U.S. 352 (1983), this section is unusual in that the court ruled that the law was declared unconstitutional as there was an issue of "void for vagueness," yet it still remains on the books.

No police officer in California will enforce this section. If it is used, it will undoubtedly lead to another costly court battle. Frankly, this author wonders why the legislature or District Attorneys in California do not amend the section.

PC 415. Fighting, Causing Loud Noise, or Using Offensive Words in Public Place

Any of the following persons shall be punished by imprisonment in the county jail for a period of not more than 90 days, a fine of not more than four hundred dollars (\$400), or both such imprisonment and fine:

(1) Any person who unlawfully fights in a public place or challenges another person in a public place to fight.

(2) Any person who maliciously and willfully disturbs another person by loud and unreasonable noise.

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(3) Any person who uses offensive words in a public place which are inherently likely to provoke an immediate violent reaction.

PC 171f. Entering State Capitol Without Authorization - Disorderly Conduct Within

No person or group of persons shall willfully and knowingly:

- 1. Enter or remain within or upon any part of the chamber of either house of the Legislature unless authorized, pursuant to rules adopted or permission granted by either such house, to enter or remain within or upon a part of the chamber of either such house;*
- 2. Engage in any conduct within the State Capitol which disrupts the orderly conduct of official business.*

PC 415.5. Unlawful Acts Committed in Buildings or Grounds of College or University

(a) Any person who

- (1) unlawfully fights within any building or upon the grounds of any school, community college, university, or state university or challenges another person within any building or upon the grounds to fight, or*
- (2) maliciously and willfully disturbs another person within any of these buildings or upon the grounds by loud and unreasonable noise, or*
- (3) uses offensive words within any of these buildings or upon the grounds which are inherently likely to provoke an immediate violent reaction*

RIOT

A riot is participation with others in a course of disorderly conduct with the purpose of committing an illegal act. Normally, this occurs with acts related to civil disorder. The main difference between riots and demonstrations, is that in riots there is either damage to property or injuries to the public. Civil disobedience or demonstrations tend to have an educative purpose, rather than a destructive one.

PC 403. Disturbing an Assembly

Every person who, without authority of law, willfully disturbs or breaks up any assembly or meeting that is not unlawful in its character, other than an assembly or meeting referred to in Section 302 of the Penal Code or Section 18340 of the Elections Code, is guilty of a misdemeanor.

PC 404. Riot - Defined

- (a) Any use of force or violence, disturbing the public peace, or any threat to use force or violence, if accompanied by immediate power of execution, by two or more persons acting together, and without authority of law, is a riot.*
- (b) As used in this section, disturbing the public peace may occur in any place of confinement.*

PC 404.6. Incitement to Riot, Arson or Vandalism

(a) Every person who with the intent to cause a riot does an act or engages in conduct that urges a riot, or urges others to commit acts of force or violence, or the burning or destroying of property, and at a time and place and under circumstances that produce a clear and present and immediate danger of acts of force or violence or the burning or destroying of property, is guilty of incitement to riot.

PC 405a. Lynching Defined

The taking by means of a riot of any person from the lawful custody of any peace officer is a lynching.

PC 406. Rout Defined

Whenever two or more persons, assembled and acting together, make any attempt or advance toward the commission of an act which would be a riot if actually committed, such assembly is a rout.

PC 407. Unlawful Assembly

Whenever two or more persons assemble together to do an unlawful act, or do a lawful act in a violent, boisterous, or tumultuous manner, such assembly is an unlawful assembly.

PC 408. Participating in Rout or Unlawful Assembly

Every person who participates in any rout or unlawful assembly is guilty of a misdemeanor.

PC 409. Refusal to Disperse When Ordered

Every person remaining present at the place of any riot, rout, or unlawful assembly, after the same has been lawfully warned to disperse, except public officers and persons assisting them in attempting to disperse the same, is guilty of a misdemeanor.

PC 410. Duty to Suppress Riot or Rout

If a magistrate or officer, having notice of an unlawful or riotous assembly, mentioned in this Chapter, neglects to proceed to the place of assembly, or as near thereto as he can with safety, and to exercise the authority with which he is invested for suppressing the same and arresting the offenders, he is guilty of a misdemeanor.

PC 416. Duty of Crowds to Disperse When Ordered; Restitution for Property Damage

(a) If two or more persons assemble for the purpose of disturbing the public peace, or committing any unlawful act, and do not disperse on being desired or commanded so to do by a public officer, the persons so offending are severally guilty of a misdemeanor.

PUBLIC INDECENCIES – QUALITY OF LIFE CRIMES

There are distinct differences between Public Indecency” and Quality of Life crimes, although there are also similarities. “Indecency” crimes are more commonly related to sexually related offenses rather than crimes such as panhandling, begging, or vagrancy, but they both have a contributory and often detrimental effect on the quality of life in a particular neighborhood or area. This is discussed in the section on homelessness in some detail, but the core issue is this: if the police, the city or county government, and the community themselves do not take proactive steps to at least mitigate the effects of these offenses, the potential for the expansion of crime and resulting deterioration of the area is imminent. If neighborhood residents live in fear of crime and the criminal element is allowed to flourish, the police are forced into a reactive rather than a proactive mode. The virtual revitalization of policing efforts now known as Community Oriented Policing and Problem Oriented Policing, have been well established and are used nationally to fight the deteriorative effects of crime, drugs, and quality of life crimes.

PC 314. Indecent Exposure

Every person who willfully and lewdly, either:

- 1. Exposes his person, or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby; or,*
- 2. Procures, counsels, or assists any person so to expose himself or take part in any model artist exhibition, or to make any other exhibition of himself to public view, or the view of any number of persons, such as is offensive to decency, or is adapted to excite to vicious or lewd thoughts or acts - is guilty of a misdemeanor.*

However, there is a felony section which includes:

Every person who violates subdivision 1 of this section after having entered, without consent, an inhabited dwelling house, or trailer coach as defined in Section 635 of the Vehicle Code, or the inhabited portion of any other building, is a ...felony...

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Upon the second and each subsequent conviction under subdivision 1 of this section, or upon a first conviction under subdivision 1 of this section after a previous conviction under Section 288, every person so convicted is guilty of a felony

Miscellaneous Sections related to Quality of Life Crimes

PC 647 (c) Who accosts other persons in any public place or in any place open to the public for the purpose of begging or soliciting alms.

PC 374. Littering and Waste Matter Defined

(a) Littering means the willful or negligent throwing, dropping, placing, depositing, or sweeping, or causing any such acts, of any waste matter on land or water in other than appropriate storage containers or areas designated for such purposes.

PC 374.3. Dumping Refuse on Public or Private Roads or Property

PC 374.2. Unlawful Discharge of Materials Into Public Sewers

PC 374.4. Littering on Public or Private Property

PC 374.7. Littering Waters or Shore

PC 374.8. Dumping Hazardous Material

PC 374a. Littering, Shooting or Dumping on Highway; Rewards

PC 375. Use of Offensive Substance in Place of Public Assembly; Manufacture of Offensive Substance

(a) It shall be unlawful to throw, drop, pour, deposit, release, discharge or expose, or to attempt to throw, drop, pour, deposit, release, discharge or expose in, upon or about any theater, restaurant, place of business, place of amusement or any place of public assemblage, any liquid, gaseous or solid substance or matter of any kind which is injurious to person or property, or is nauseous, sickening, irritating or offensive to any of the senses.

VAGRANCY AND LOITERING

Vagrancy is wandering the streets with no apparent purpose. Loitering is standing in public with no apparent purpose. These broad vagrancy and loitering statutes historically have been employed to detain and keep “undesirables,” off the streets. The Supreme Court in recent years, however, has consistently found in recent years that these laws are *void-for-vagueness* and thus, unconstitutional. The same constitutional arguments are now being used to challenge ordinances directed against the homeless and gangs.

California’s Penal Code, Chapter 15 includes Crimes Against Public Order and Morality

PC 653g. Loitering About Place Where Children Congregate Punishable as Vagrancy

PC 370. Public Nuisance Defined

Anything which is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a public nuisance.

PC 372. Maintaining Public Nuisance

Every person who maintains or commits any public nuisance, the punishment for which is not otherwise prescribed, or who willfully omits to perform any legal duty relating to the removal of a public nuisance, is guilty of a misdemeanor.

PC 373a. Maintaining or Permitting Nuisance After Notice

Every person who maintains, permits, or allows a public nuisance to exist upon his or her property or premises, and every person occupying or leasing the property or premises of another who maintains, permits or allows a public nuisance to exist thereon, after reasonable notice in writing from a health officer or district attorney or city attorney or prosecuting attorney to remove, discontinue or abate the same has been served upon such person, is guilty of a misdemeanor

HOMELESSNESS

Is Homelessness a crime? No, it is a state of being, or a status, such as being an alcoholic or an addict, but it in and of itself, is not a crime. In many cases, it may be temporary and situational. In other cases, it may be due to mental illness or the effects of drugs or alcohol. Whatever the cause, being homeless, and without resources, often leads a person to commit acts that do violate certain statutes. These could include begging, sleeping in public areas that are prohibited by statute, public drunkenness, urinating, or defecating in public areas. This in turn, causes a cycle of behaviors that not only offends the public at large, but draws the attention of the police.

Of course the police themselves cannot “fix” homelessness” but can only issue citations, arrest or in a altruistic sense, transport or refer the homeless to local homeless shelters or local missions, etc. for food and shelter. Part of the irony of issuing citations or arresting the homeless or transients, is that they literally are penniless in some cases, and couldn’t pay a fine even if they wanted to. As a result, they may find themselves facing a stiff fine, which they cannot pay, perhaps an arrest or bench warrant, since they are afraid and do not show up for court, or they are arrested and sentenced for the original violation, and do manage to get some food and shelter in the local jail or honor camp. However, once they are out on the streets, the cycle repeats. The other major issue with homelessness is the cruel paradox of mental illness, poverty, coupled with alcoholism or drugs that can lead to despair and desperation. To make matters worse, the homeless are often victims of crime since they are also often vulnerable targets.

In recent years, municipal ordinances have been directed against the homeless and panhandlers. Why is this issue current? After all, this is not really a new problem. But with the advent of Community Oriented Policing and Problem Oriented Policing, (COP and POP- See Web Resources)minor offenses such as vagrancy, loitering, public drunkenness, begging, panhandling, to name the most common, have been targeted by police theorists who maintain that public order crimes were a gateway to more serious crimes. This led to a virtual revolution in policing in the last decade, and the police now have specialized units just to deal with these quality of life crimes.

The former police Chief of New York Police Department, William Bratton, wrote a book called, **“Turnaround,”**¹ which demonstrated that the combination of aggressive and innovative tactics by the police, including computer based crime analysis and command accountability, in addition to the support of the community, toward quality of life crimes, led to dramatic reductions in crime. This had been the result of the earlier work on the **“Broken Windows”**² theory that postulated that if crime, particularly quality of life crimes, are allowed to fester they will ultimately lead to a societal, at least at the

¹ Bratton, William and Knobler, Peter, (1998) *The Turnaround: How America's Top Cop Reversed the Crime Epidemic*, Random House, NY

² Kelling, George L., and Wilson, James Q., (1982) *Broken Windows*, The Atlantic Monthly; March 1982; Volume 249, No. 3; 29-38

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neighborhood level, and crime will eventually flourish (See Web Resources) As a result, the police today take quality of life crimes much more seriously than perhaps in the past.

The dilemma of course, is that just who is more likely to be targeted by the police for aggressive attention? The poor and minority neighborhoods. As a negative side affect, this can cause tensions and undue emphasis on a specific population, and can also result in increased complaints and lead to charges of “racial profiling.”

PC 647 ...

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(d) Who loiters in or about any toilet open to the public for the purpose of engaging in or soliciting any lewd or lascivious or any unlawful act.

(e) Who loiters or wanders upon the streets or from place to place without apparent reason or business and who refuses to identify himself or herself and to account for his or her presence when requested by any peace officer so to do, if the surrounding circumstances would indicate.(However, note previous caveat regarding this section with the Lawson v. Kolender case.)

PC 647a. Homeless Shelter; Officer May Transport Person

(a) Any peace officer, as defined in subdivision (a) of Section 830.1 or Section 830.31, 830.32, or 830.33, may transport any person, as quickly as is feasible, to the nearest homeless shelter, or any runaway youth or youth in crisis to the nearest runaway shelter, if the officer inquires whether the person desires the transportation, and the person does not object to the transportation. Any officer exercising due care and precaution shall not be liable for any damages or injury incurred during transportation.

Community Policing (COP)

Community policing focuses on crime and social disorder through the delivery of police services that includes aspects of traditional law enforcement, as well as prevention, problem-solving, community engagement, and partnerships. The community policing model balances reactive responses to calls for service with proactive problem-solving centered on the causes of crime and disorder. Community policing requires police and citizens to join together as partners in the course of both identifying and effectively addressing these issues.¹

In 1997, COPS funded the creation of the only national training network of Regional Community Policing Institutes (RCPIs) to provide comprehensive and innovative community policing education, training and technical assistance to COPS grantees throughout the nation. RCPIs develop innovative cutting edge curricula on emerging law enforcement issues to challenge and improve traditional training curricula. Topics include but are not limited to escalating school violence, cultural diversity, domestic violence, partnership building, domestic-preparedness, and terrorism. Training focuses on collaborative partnerships and problem-solving strategies for criminal justice practitioners, local government officials, business leaders and community leaders-including youth, volunteers, city employees, elected officials, and social service agencies. As a requirement, training is delivered using adult-learning principles via interactive classroom instruction, CD-ROMS, community forums, teleconferences and the Internet and strives to provide a forum in which law enforcement and community members can discuss sensitive issues.

COPS' national network of RCPI's has trained more than 210,000 officers, community members, and government leaders in innovative approaches to community policing. These approaches include:

- Community Mobilization

- Community Partnerships
- Conflict Resolution
- Crime Analysis and Mapping
- Ethics and Integrity
- Problem Solving
- Rural Community Policing
- Strategic Implementation
- Violence Prevention

*The Regional Community Policing Institute – California*¹ specializes in violence-prevention training and technical assistance. Its series on community policing to reduce domestic violence, along with training programs on school violence, workplace violence, and hate crimes have found wide audiences within law enforcement agencies, local governments, school districts, and communities. The RCPI-CA also produces and distributes community policing videos in multiple languages to reach underserved populations.

- *Specialty: Violence Prevention and Early Identification and Intervention Systems*
- *Primary Partners: Los Angeles County Sheriff's Department, the Violence Prevention Coalition of Greater Los Angeles, and Rio Hondo College*

Problem Oriented Policing (POP)

Initiated by Herman Goldstein,³ problem-oriented policing concept is a comprehensive prescription for improving the way in which the police do business. It calls for the police to understand their work in a new light, to recognize that what they are called upon to do is to address a wide range of problems that threaten the safety and security of communities, including, but not limited to what is commonly viewed as serious crime. The concept calls for the police to improve their understanding of the underlying conditions that give rise to community problems and to respond to these problems through a much wider range of methods than they have conventionally used. Behind the seemingly common-sense simplicity of the basic elements of problem-oriented policing lie real challenges for the police, communities and the rest of government to fully understand and implement them.⁴

PC 303a. Soliciting Purchase of Alcoholic Beverages

It shall be unlawful, in any place of business where alcoholic beverages are sold to be consumed upon the premises, for any person to loiter in or about said premises for the purpose of begging or soliciting any patron or customer of, or visitor in, such premises to purchase any alcoholic beverage for the one begging or soliciting. Violation of this section shall be a misdemeanor

GANGS

A variety of legal strategies have been adopted to control the criminal activity of gangs, ranging from special antigang statutes to civil injunctions.

³ Goldstein, Herman,(1990) Problem-Oriented Policing, McGraw-Hill, and Temple University Press

⁴ Scott, Michael (2000) Problem-Oriented Policing: Reflections on the First 20 Years, Office of Community-Oriented Policing Services, U.S. Department of Justice, Grant #98CKWXX052.
http://www.popcenter.org/library-recommended_readings.htm#

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Note that since homicides are often related to gang activity with “drive by” shootings, the law now includes this component into both first degree murder and murder with special circumstances, which unfortunately for gang members, puts them in the running for a lethal injection. Perhaps gang member should occasionally read the Penal Code!

For example

PC 189. Murder; Degrees

All murder which is perpetrated by means of a destructive device or explosive, a weapon of mass destruction, knowing use of ammunition designed primarily to penetrate metal or armor, poison, lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing, or which is committed in the perpetration of, or attempt to perpetrate, arson, rape, carjacking, robbery, burglary, mayhem, kidnapping, train wrecking, or any act punishable under Section 206, 286, 288, 288a, or 289, or any murder which is perpetrated by means of discharging a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict death, is murder of the first degree. All other kinds of murders are of the second degree.

PC 190.2. Special Circumstances for Imposition of Death Penalty or Life Without Parole

The penalty for a defendant who is found guilty of murder in the first degree is death or imprisonment in the state prison for life without the possibility of parole if one or more of the following special circumstances has been found under Section 190.4 to be true:

PC 190.2 (subsection – 21 *The murder was intentional and perpetrated by means of discharging a firearm from a motor vehicle, intentionally at another person or persons outside the vehicle with the intent to inflict death.*

CHAPTER 3.5. GANG VIOLENCE SUPPRESSION

PC 13826. Legislative Findings and Declaration

The Legislature finds and declares all of the following:

- (a) *That violent activity by gangs is a serious and growing problem in the State of California.*
- (b) *There is an increasing percentage of school age pupils involved in gang activity.*
- (c) *There are many schools that serve a disproportionate number of youth involved in gang activity which are unable to effectively implement programs designed to prevent youth from becoming involved in gang activity. There is no statewide funded educational program developed for this purpose.*
- (d) *There is evidence that gang involvement among youth begins at an early age.*
- (e) *There is evidence that the parents of gang members lack appropriate parenting skills.*
- (f) *There is evidence that drug activity is increasing among youth involved in gang activity*
- (g) *There is evidence that gang members have no contact with positive role models.*
- (h) *There is evidence that most gang members lack basic educational skills.*

In enacting this chapter, the Legislature intends to support increased efforts by district attorneys' offices to prosecute the perpetrators of gang violence, support increased efforts by local law enforcement agencies to identify, investigate, and apprehend perpetrators of gang violence, support increased efforts by county probation departments to intensively supervise gang members who are on court-ordered probation, support gang violence prevention and intervention efforts by school districts and county offices of education, and support gang violence suppression efforts by community-based organizations.

PC 13826.2. Gang Violence - Enhanced Prosecution Efforts

Gang violence prosecution units receiving funds under this chapter shall concentrate enhanced prosecution efforts and resources upon cases identified under criteria set forth in Section 13826.3. Enhanced prosecution efforts shall include, but not be limited to:

- (a) "Vertical" prosecutorial representation, whereby the prosecutor who makes the initial filing or appearance in a gang-related case will perform all subsequent court appearances on that particular case through its conclusion, including the sentencing phase.
- (b) Assignment of highly qualified investigators and prosecutors to gang-related cases.
- (c) Significant reduction of caseloads for investigators and prosecutors assigned to gang-related cases.
- (d) Measures taken in coordination with law enforcement agencies to protect cooperating witnesses from intimidation or retribution at the hands of gang members or associates.

PC 13826.3. Individuals Subject to Gang Violence Prosecution - Guidelines

- (a) An individual shall be subject to gang violence prosecution efforts who is under arrest for the commission or the attempted commission of any gang-related violent crime where the individual is (1) a known member of a gang, and (2) has exhibited a prior criminal background.
- (b) For purposes of this chapter, gang-related means that the suspect or victim of the crime is a known member of a gang.
- (c) For purposes of this chapter, gang violence prosecution includes both criminal prosecutions and proceedings in Juvenile Court in which a petition is filed pursuant to Section 602 of the Welfare and Institutions Code.

CHAPTER 11. STREET TERRORISM ENFORCEMENT AND PREVENTION ACT

PC 186.20. Chapter Title

This chapter shall be known and may be cited as the "California Street Terrorism Enforcement and Prevention Act."

PC 186.21. Legislative Finding and Declaration

The Legislature hereby finds and declares that it is the right of every person, regardless of race, color, creed, religion, national origin, gender, age, sexual orientation, or handicap, to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals. It is not the intent of this chapter to interfere with the exercise of the constitutionally protected rights of freedom of expression and association. The Legislature hereby recognizes the constitutional right of every citizen to harbor and express beliefs on any lawful subject whatsoever, to lawfully associate with others who share similar beliefs, to petition lawfully constituted authority for a redress of perceived grievances, and to participate in the electoral process.

The Legislature, however, further finds that the State of California is in a state of crisis which has been caused by violent street gangs whose members threaten, terrorize, and commit a multitude of crimes against the peaceful citizens of their neighborhoods. These activities, both individually and collectively, present a clear and present danger to public order and safety and are not constitutionally protected. Legislature finds that there are nearly 600 criminal street gangs operating in California, and that the number of gang-related murders is increasing. The Legislature also finds that in Los Angeles County alone there were 328 gang-related murders in 1986, and that gang homicides in 1987 have increased 80 percent over 1986. It is the intent of the Legislature in enacting this chapter to seek the eradication of criminal activity by street gangs by focusing upon patterns of criminal gang activity and upon the organized nature of street gangs, which together, are the chief source of terror created by street gangs. The Legislature further finds that an effective means of punishing and deterring the criminal activities of street gangs is through forfeiture of the profits, proceeds, and instrumentalities acquired, accumulated, or used by street gangs.

PC 186.22. Criminal Street Gang Activity

- (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or

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assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or two or three years.

PC 186.22a. Building or Place Used by Street Gangs Declared a Nuisance

(a) Every building or place used by members of a criminal street gang for the purpose of the commission of the offenses listed in subdivision (e) of Section 186.22 or any offense involving dangerous or deadly weapons, burglary, or rape, and every building or place wherein or upon which that criminal conduct by gang members takes place, is a nuisance which shall be enjoined, abated, and prevented, and for which damages may be recovered, whether it is a public or private nuisance.

PC 186.26. Solicit or Recruit Another to Actively Participate in Criminal Street Gang; Same, Threaten or Use Physical Violence [Added by Prop. 21, March, 2000 General Election]

(a) Any person who solicits or recruits another to actively participate in a criminal street gang, as defined in subdivision (f) of Section 186.22, with the intent that the person solicited or recruited participate in a pattern of criminal street gang activity, as defined in subdivision (e) of Section 186.22, or with the intent that the person solicited or recruited promote, further, or assist in any felonious conduct by members of the criminal street gang, shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(b) Any person who threatens another person with physical violence on two or more separate occasions within any 30-day period with the intent to coerce, induce, or solicit any person to actively participate in a criminal street gang, as defined in subdivision (f) of Section 186.22, shall be punished by imprisonment in the state prison for two, three, or four years.

(c) Any person who uses physical violence to coerce, induce, or solicit another person to actively participate in any criminal street gang, as defined in subdivision (f) of Section 186.22, or to prevent the person from leaving a criminal street gang, shall be punished by imprisonment in the state prison for three, four, or five years.

(d) If the person solicited, recruited, coerced, or threatened pursuant to subdivision (a), (b), or (c) is a minor, an additional term of three years shall be imposed in addition and consecutive to the penalty prescribed for a violation of any of these subdivisions.

PC 186.30. Criminal Street Gang - Registration Required [Added by Prop. 21, March, 2000 General Election]

(a) Any person described in subdivision (b) shall register with the chief of police of the city in which he or she resides, or the sheriff of the county if he or she resides in an unincorporated area, within 10 days of release from custody or within 10 days of his or her arrival in any city, county, or city and county to reside there, whichever occurs first.

(b) Subdivision (a) shall apply to any person convicted in a criminal court or who has had a petition sustained in a juvenile court in this state for any of the following offenses:

(1) Subdivision (a) of Section 186.22.

(2) Any crime where the enhancement specified in subdivision (b) of Section 186.22 is found to be true.

(3) Any crime that the court finds is gang related at the time of sentencing or disposition.

C 186.33. Criminal Street Gang Registration - Violation of Provisions [Added by Prop. 21, March, 2000 General Election]

(a) Any person required to register pursuant to Section 186.30 who knowingly violates any of its provisions is guilty of a misdemeanor.

(b)(1) Any person who knowingly fails to register pursuant to Section 186.30 and is subsequently convicted of, or any person for whom a petition is subsequently sustained for a violation of, any of the

offenses specified in Section 186.30, shall be punished by an additional term of imprisonment in the state prison for 16 months, or 2, or 3 years.

THE OVERREACH OF CRIMINAL LAW

There is an ongoing debate over whether the criminal law should punish what are considered victimless crimes. Is there really such a thing as a true victimless crime? Or should we consider the damages to the family, the community, the individual's loss of productivity? What about such crimes as drugs, gambling or even viewing pornography, even child pornography?

Prostitution and Solicitation

Prostitution involves exchanging sex for money or for some item of value.

PC 653.20. Loiter for Prostitution - Definitions

For purposes of this chapter, the following definitions apply:

- (a) "Commit prostitution" means to engage in sexual conduct for money or other consideration, but does not include sexual conduct engaged in as a part of any stage performance, play, or other entertainment open to the public.*
- (b) "Public place" means an area open to the public, or an alley, plaza, park, driveway, or parking lot, or an automobile, whether moving or not, or a building open to the general public, including one which serves food or drink, or provides entertainment, or the doorways and entrances to a building or dwelling, or the grounds enclosing a building or dwelling.*
- (c) "Loiter" means to delay or linger without a lawful purpose for being on the property and for the purpose of committing a crime as opportunity may be discovered.*

PC 653.22. Loitering for the Purpose of Engaging in a Prostitution Offense

- (a) It is unlawful for any person to loiter in any public place with the intent to commit prostitution. This intent is evidenced by acting in a manner and under circumstances which openly demonstrate the purpose of inducing, enticing, or soliciting prostitution, or procuring another to commit prostitution.*
- (b) Among the circumstances that may be considered in determining whether a person loiters with the intent to commit prostitution are that the person:*
 - (1) Repeatedly beckons to, stops, engages in conversations with, or attempts to stop or engage in conversations with passersby, indicative of soliciting for prostitution.*
 - (2) Repeatedly stops or attempts to stop motor vehicles by hailing the drivers, waving arms, or making any other bodily gestures, or engages or attempts to engage the drivers or passengers of the motor vehicles in conversation, indicative of soliciting for prostitution.*
 - (3) Has been convicted of violating this section, subdivision (a) or (b) of Section 647, or any other offense relating to or involving prostitution, within five years of the arrest under this section.*
 - (4) Circles an area in a motor vehicle and repeatedly beckons to, contacts, or attempts to contact or stop pedestrians or other motorists, indicative of soliciting for prostitution.*
 - (5) Has engaged, within six months prior to the arrest under this section, in any behavior described in this subdivision, with the exception of paragraph (3), or in any other behavior indicative of prostitution activity.*
- (c) The list of circumstances set forth in subdivision (b) is not exclusive. The circumstances set forth in subdivision (b) should be considered particularly salient if they occur in an area that is known for prostitution activity. Any other relevant circumstances may be considered in determining whether a person has the requisite intent. Moreover, no one circumstance or combination of circumstances is in itself determinative of intent. Intent must be determined based on an evaluation of the particular circumstances of each case.*

PC 653.23. Prostitution - Direct, Supervise, Recruit, or Otherwise Aid Another or Collect or Receive Proceeds Earned from Prostitution Committed by Another (See also PC 266h. Pimping)

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- (a) *It is unlawful for any person to do either of the following:*
- (1) *Direct, supervise, recruit, or otherwise aid another person in the commission of a violation of subdivision (b) of Section 647 or subdivision (a) of Section 653.22.*
 - (2) *Collect or receive all or part of the proceeds earned from an act or acts of prostitution committed by another person in violation of subdivision (b) of Section 647.*
- (b) *Among the circumstances that may be considered in determining whether a person is in violation of subdivision (a) are that the person does the following:*
- (1) *Repeatedly speaks or communicates with another person who is acting in violation of subdivision (a) of Section 653.22.*
 - (2) *Repeatedly or continuously monitors or watches another person who is acting in violation of subdivision (a) of Section 653.22.*
 - (3) *Repeatedly engages or attempts to engage in conversation with pedestrians or motorists to solicit, arrange, or facilitate an act of prostitution between the pedestrians or motorists and another person who is acting in violation of subdivision (a) of Section 653.22.*
 - (4) *Repeatedly stops or attempts to stop pedestrians or motorists to solicit, arrange, or facilitate an act of prostitution between pedestrians or motorists and another person who is acting in violation of subdivision (a) of Section 653.22.*
 - (5) *Circles an area in a motor vehicle and repeatedly beckons to, contacts, or attempts to contact or stop pedestrians or other motorists to solicit, arrange, or facilitate an act of prostitution between the pedestrians or motorists and another person who is acting in violation of subdivision (a) of Section 653.22.*
 - (6) *Receives or appears to receive money from another person who is acting in violation of subdivision (a) of Section 653.22.*
 - (7) *Engages in any of the behavior described in paragraphs (1) to (6), inclusive, in regard to or on behalf of two or more persons who are in violation of subdivision (a) of Section 653.22.*
 - (8) *Has been convicted of violating this section, subdivision (a) or (b) of Section 647, subdivision (a) of Section 653.22, Section 266h, or 266i, or any other offense relating to or involving prostitution within five years of the arrest under this section.*
 - (9) *Has engaged, within six months prior to the arrest under subdivision (a), in any behavior described in this subdivision, with the exception of paragraph (8), or in any other behavior indicative of prostitution activity.*
- (c) *The list of circumstances set forth in subdivision (b) is not exclusive. The circumstances set forth in subdivision (b) should be considered particularly salient if they occur in an area that is known for prostitution activity. Any other relevant circumstances may be considered. Moreover, no one circumstance or combination of circumstances is in itself determinative. A violation of subdivision (a) shall be determined based on an evaluation of the particular circumstances of each case.*
- (d) *Nothing in this section shall preclude the prosecution of a suspect for a violation of Section 266h or 266i or for any other offense, or for a violation of this section in conjunction with a violation of Section 266h or 266i or any other offense.*

Continuing with other related sections:

PC 266. Procuring, Assignment and Seduction

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

PC 266a Procuring Person by Force or False Inducement

Every person who, within this state, takes any person against his or her will and without his or her consent, or with his or her consent procured by fraudulent inducement or misrepresentation, for the purpose of prostitution, as defined in subdivision (b) of Section 647, is punishable by imprisonment in the state prison, and a fine not exceeding two thousand dollars (\$2,000).

PC 266b. Compelling Illicit Relation by Menace

Every person who takes any other person unlawfully, and against his or her will, and by force, menace, or duress, compels him or her to live with such person in an illicit relation, against his or her consent, or to so live with any other person, is punishable by imprisonment in the state prison.

PC 266c. Inducing Commission of Sexual Act Through False Representation Creating Fear

Every person who induces any other person to engage in sexual intercourse, sexual penetration, oral copulation, or sodomy when his or her consent is procured by false or fraudulent representation or pretense that is made with the intent to create fear, and which does induce fear, and that would cause a reasonable person in like circumstances to act contrary to the person's free will, and does cause the victim to so act, is punishable by imprisonment in a county jail for not more than one year or in the state prison for two, three, or four years.

As used in this section, "fear" means the fear of physical injury or death to the person or to any relative of the person or member of the person's family.

PC 266d. Receiving Money for Placing Person in Custody for Cohabitation

Any person who receives any money or other valuable thing for or on account of placing in custody any other person for the purpose of causing the other person to cohabit with any person to whom the other person is not married, is guilty of a felony.

PC 266e. Hiring Panderer

Every person who purchases, or pays any money or other valuable thing for, any person for the purpose of prostitution as defined in subdivision (b) of Section 647, or for the purpose of placing such person, for immoral purposes, in any house or place against his or her will, is guilty of a felony.

PC 266f. Selling Person for Illicit Use

Every person who sells any person or receives any money or other valuable thing for or on account of his or her placing in custody, for immoral purposes, any person, whether with or without his or her consent, is guilty of a felony.

PC 266g. Prostituting Wife

Every man who, by force, intimidation, threats, persuasion, promises, or any other means, places or leaves, or procures any other person or persons to place or leave, his wife in a house of prostitution, or connives at or consents to, or permits, the placing or leaving of his wife in a house of prostitution, or allows or permits her to remain therein, is guilty of a felony and punishable by imprisonment in the state prison for two, three or four years; and in all prosecutions under this section a wife is a competent witness against her husband.

PC 266h. Pimping

(a) Except as provided in subdivision (b), any person who, knowing another person is a prostitute, lives or derives support or maintenance in whole or in part from the earnings or proceeds of the person's prostitution, or from money loaned or advanced to or charged against that person by any keeper or manager or inmate of a house or other place where prostitution is practiced or allowed, or who solicits

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or receives compensation for soliciting for the person, is guilty of pimping, a felony, and shall be punishable by imprisonment in the state prison for three, four, or six years.

(b) Any person who, knowing another person is a prostitute, lives or derives support or maintenance in whole or in part from the earnings or proceeds of the person's prostitution, or from money loaned or advanced to or charged against that person by any keeper or manager or inmate of a house or other place where prostitution is practiced or allowed, or who solicits or receives compensation for soliciting for the person, when the prostitute is a minor, is guilty of pimping a minor, a felony, and shall be punishable as follows:

(1) If the person engaged in prostitution is a minor over the age of 16 years, the offense is punishable by imprisonment in the state prison for three, four, or six years.

(2) If the person engaged in prostitution is under 16 years of age, the offense is punishable by imprisonment in the state prison for three, six, or eight years.

PC 266i. Pandering

(a) Except as provided in subdivision (b), any person who does any of the following is guilty of pandering, a felony, and shall be punishable by imprisonment in the state prison for three, four, or six years:

(1) Procures another person for the purpose of prostitution.

(2) By promises, threats, violence, or by any device or scheme, causes, induces, persuades or encourages another person to become a prostitute.

(3) Procures for another person a place as an inmate in a house of prostitution or as an inmate of any place in which prostitution is encouraged or allowed within this state.

(4) By promises, threats, violence or by any device or scheme, causes, induces, persuades or encourages an inmate of a house of prostitution, or any other place in which prostitution is encouraged or allowed, to remain therein as an inmate.

(5) By fraud or artifice, or by duress of person or goods, or by abuse of any position of confidence or authority, procures another person for the purpose of prostitution, or to enter any place in which prostitution is encouraged or allowed within this state, or to come into this state or leave this state for the purpose of prostitution.

(6) Receives or gives, or agrees to receive or give, any money or thing of value for procuring, or attempting to procure, another person for the purpose of prostitution, or to come into this state or leave this state for the purpose of prostitution.

(b) Any person who does any of the acts described in subdivision (a) with another person who is a minor is guilty of pandering, a felony, and shall be punishable as follows:

(1) If the other person is a minor over the age of 16 years, the offense is punishable by imprisonment in the state prison for three, four, or six years.

(2) If the other person is under 16 years of age, the offense is punishable by imprisonment in the state prison for three, six, or eight years.

PC 266j. Providing or Transporting Child Under 16 for Purpose of Lewd or Lascivious Act

Any person who intentionally gives, transports, provides, or makes available, or who offers to give, transport, provide, or make available to another person, a child under the age of 16 for the purpose of any lewd or lascivious act as defined in Section 288, or who causes, induces, or persuades a child under the age of 16 to engage in such an act with another person, is guilty of a felony ...

PC 267. Abduction for Prostitution

Every person who takes away any other person under the age of 18 years from the father, mother, guardian, or other person having the legal charge of the other person, without their consent, for the purpose of prostitution, is punishable by imprisonment in the state prison

PC 315. Keeping or Living in House of Prostitution

Every person who keeps a house of ill-fame in this state, resorted to for the purposes of prostitution or lewdness, or who willfully resides in such house, is guilty of a misdemeanor; and in all prosecutions for keeping or resorting to such a house common repute may be received as competent evidence of the character of the house, the purpose for which it is kept or used, and the character of the women inhabiting or resorting to it.

PC 316. Keeping Disorderly or Assignment House

Every person who keeps any disorderly house, or any house for the purpose of assignment or prostitution, or any house of public resort, by which the peace, comfort, or decency of the immediate neighborhood is habitually disturbed, or who keeps any inn in a disorderly manner; and every person who lets any apartment or tenement, knowing that it is to be used for the purpose of assignment or prostitution, is guilty of a misdemeanor.

PC 318. Pimping, Capping or Soliciting Patrons for Gambling or Prostitution

Whoever, through invitation or device, prevails upon any person to visit any room, building, or other places kept for the purpose of illegal gambling or prostitution, is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail not exceeding six months, or fined not exceeding five hundred dollars (\$500), or be punished by both that fine and imprisonment

Loitering and Drugs

“Loitering” has also been added to the legal arsenal against drugs, in that the law now targets those who are out on the street helping to direct traffic into the “drug zone.”

H&S 11530. Definitions

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

(a) "Loiter" means to delay or linger without a lawful purpose for being on the property and for the purpose of committing a crime as opportunity may be discovered.

(b) "Public place" means an area open to the public or exposed to public view and includes streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots, automobiles, whether moving or not, and buildings open to the general public, including those which serve food or drink, or provide entertainment, and the doorways and entrances to buildings or dwellings and the grounds enclosing them.

H&S 11532. Loiter - Drug-Related Activities

(a) It is unlawful for any person to loiter in any public place in a manner and under circumstances manifesting the purpose and with the intent to commit an offense specified in Chapter 6 (commencing with Section 11350) and Chapter 6.5 (commencing with Section 11400).

(b) Among circumstances that may be considered in determining whether a person has the requisite intent to engage in drug-related activity are that the person:

(1) Acts as a "look-out."

(2) Transfers small objects or packages for currency in a furtive fashion.

(3) Tries to conceal himself or herself or any object that reasonably could be involved in an unlawful drug-related activity.

4) Uses signals or language indicative of summoning purchasers of illegal drugs.

(5) Repeatedly beckons to, stops, attempts to stop, or engages in conversations with passersby, whether on foot or in a motor vehicle, indicative of summoning purchasers of illegal drugs.

(6) Repeatedly passes to or receives from passersby, whether on foot or in a motor vehicle, money or small objects.

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(7) Is under the influence of a controlled substance or possesses narcotic or drug paraphernalia. For the purposes of this paragraph, "narcotic or drug paraphernalia" means any device, contrivance, instrument, or apparatus designed or marketed for the use of smoking, injecting, ingesting, or consuming marijuana, hashish, PCP, or any controlled substance, including, but not limited to, roach clips, cigarette papers, and rollers designed or marketed for use in smoking a controlled substance...

Interestingly, the legislature threw in a provision, "just in case," this section is declared unconstitutional, most likely for "void for vagueness" attacks by the defense.

H&S 11534. Constitutional Validity

If any section, subdivision, sentence, clause, phrase, or portion of this chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct, and independent provision, and that holding shall not affect the validity of the remaining portion thereof.

OBSCENITY

Obscenity is not protected under the First Amendment. Child pornography is entitled to even less protection. In California law, there is a difference between "obscenity" and "harmful matter."

PC 311. Obscene Matter - Definitions

As used in this chapter, the following definitions apply:

(a) "Obscene matter" means matter, taken as a whole, that to the average person, applying contemporary statewide standards, appeals to the prurient interest, that, taken as a whole, depicts or describes sexual conduct in a patently offensive way, and that, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(1) If it appears from the nature of the matter or the circumstances of its dissemination, distribution, or exhibition that it is designed for clearly defined deviant sexual groups, the appeal of the matter shall be judged with reference to its intended recipient group.

(b) "Matter" means any book, magazine, newspaper, or other printed or written material, or any picture, drawing, photograph, motion picture, or other pictorial representation, or any statue or other figure, or any recording, transcription, or mechanical, chemical, or electrical reproduction, or any other article, equipment, machine, or material. "Matter" also means live or recorded telephone messages if transmitted, disseminated, or distributed as part of a commercial transaction.

PC 311.1. Import Matter Depicting Person Under 18 years Engaging In Sexual Conduct

(a) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, with intent to distribute or to exhibit to, or to exchange with, others, or who offers to distribute, distributes, or exhibits to, or exchanges with, others, any obscene matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4,...

PC 311.2. Bringing Obscene Matter Into or Distributing Within State

(a) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, or prints, with intent to distribute or to exhibit to others, or who offers to distribute, distributes, or exhibits to others, any

obscene matter is for a first offense, guilty of a misdemeanor. If the person has previously been convicted of any violation of this section, the court may, in addition to the punishment authorized in Section 311.9, impose a fine not exceeding fifty thousand dollars (\$50,000).

(b) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, with intent to distribute or to exhibit to, or to exchange with, others for commercial consideration, or who offers to distribute, distributes, or exhibits to, or exchanges with, others for commercial consideration, any obscene matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, is guilty of a felony and shall be punished by imprisonment in the state prison for two, three, or six years, or by a fine not exceeding one hundred thousand dollars (\$100,000), in the absence of a finding that the defendant would be incapable of paying such a fine, or by both that fine and imprisonment.

*(c) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, with intent to distribute or exhibit to, or to exchange with, a person 18 years of age or older, or who offers to distribute, distributes, or exhibits to, or exchanges with, a person 18 years of age or older any matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, is guilty of a misdemeanor and shall be punished by imprisonment in the county jail for up to one year, or by a fine not exceeding two thousand dollars (\$2,000), or by both that fine and imprisonment. It is not necessary to prove commercial consideration or that the matter is obscene in order to establish a violation of this subdivision. If a person has been previously convicted of a violation of this subdivision, he or she is guilty of a **felony**.*

(d) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, with intent to distribute or exhibit to, or to exchange with, a person under 18 years of age, or who offers to distribute, distributes, or exhibits to, or exchanges with, a person under 18 years of age any matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, is guilty of a felony. It is not necessary to prove commercial consideration or that the matter is obscene in order to establish a violation of this subdivision.

PC 311.3. Development and Duplication of Obscene Matter

(a) A person is guilty of sexual exploitation of a child if he or she knowingly develops, duplicates, prints, or exchanges any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip that depicts a person under the age of 18 years engaged in an act of sexual conduct.

(b) As used in this section, "sexual conduct" means any of the following:

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- (1) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals.*
- (2) Penetration of the vagina or rectum by any object.*
- (3) Masturbation for the purpose of sexual stimulation of the viewer.*
- (4) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.*
- (5) Exhibition of the genitals or the pubic or rectal area of any person for the purpose of sexual stimulation of the viewer.*
- (6) Defecation or urination for the purpose of sexual stimulation of the viewer.*

PC 311.4. Using Minor to Assist in Distribution of Obscene Matter; Posing or Modeling Involving Sexual Conduct

(a) Every person who, with knowledge that a person is a minor, or who, while in possession of any facts on the basis of which he or she should reasonably know that the person is a minor, hires, employs, or uses the minor to do or assist in doing any of the acts described in Section 311.2, is, for a first offense, guilty of a misdemeanor. If the person has previously been convicted of any violation of this section, the court may, in addition to the punishment authorized in Section 311.9, impose a fine not exceeding fifty thousand dollars (\$50,000).

(b) Every person who, with knowledge that a person is a minor under the age of 18 years, or who, while in possession of any facts on the basis of which he or she should reasonably know that the person is a minor under the age of 18 years, knowingly promotes, employs, uses, persuades, induces, or coerces a minor under the age of 18 years, or any parent or guardian of a minor under the age of 18 years under his or her control who knowingly permits the minor, to engage in or assist others to engage in either posing or modeling alone or with others for purposes of preparing any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film, filmstrip, or a live performance involving, sexual conduct by a minor under the age of 18 years alone or with other persons or animals, for commercial purposes...

(c) Similar language, except... It is not necessary to prove commercial purposes in order to establish a violation of this subdivision.

d)(1) As used in subdivisions (b) and (c), "sexual conduct" means any of the following, whether actual or simulated: sexual intercourse, oral copulation, anal intercourse, anal oral copulation, masturbation, bestiality, sexual sadism, sexual masochism, penetration of the vagina or rectum by any object in a lewd or lascivious manner, exhibition of the genitals or pubic or rectal area for the purpose of sexual stimulation of the viewer, any lewd or lascivious sexual act as defined in Section 288, or excretory functions performed in a lewd or lascivious manner, whether or not any of the above conduct is performed alone or between members of the same or opposite sex or between humans and animals. An act is simulated when it gives the appearance of being sexual conduct.

(2) As used in subdivisions (b) and (c), "matter" means any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, or any other computer-related equipment or computer-generated image that contains or incorporates in any manner, any film, filmstrip, photograph, negative, slide, photocopy, videotape, or video laser disc.

PC 311.5. Advertising Obscene Matter

Every person who writes, creates, or solicits the publication or distribution of advertising or other promotional material, or who in any manner promotes, the sale, distribution, or exhibition of matter represented or held out by him to be obscene, is guilty of a misdemeanor.

PC 311.6. Engaging in Obscene Live Conduct

Every person who knowingly engages or participates in, manages, produces, sponsors, presents or exhibits obscene live conduct to or before an assembly or audience consisting of at least one person or spectator in any public place or in any place exposed to public view, or in any place open to the public or to a segment thereof, whether or not an admission fee is charged, or whether or not attendance is conditioned upon the presentation of a membership card or other token, is guilty of a misdemeanor.

PC 311.10. Distributors of Obscene Matter Depicting Person Under Age 18

(a) Any person who advertises for sale or distribution any obscene matter knowing that it depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, is guilty of a felony and is punishable by imprisonment in the state prison for two, three, or four years, or in a county jail not exceeding one year, or by a fine not exceeding fifty thousand dollars (\$50,000), or by both such fine and imprisonment

PC 311.11. Possession or Control of Matter Depicting Sexual Conduct of Person Under Age 18

(a) Every person who knowingly possesses or controls any matter, representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, the production of which involves the use of a person under the age of 18 years, knowing that the matter depicts a person under the age of 18 years personally engaging in or simulating sexual conduct, as defined in subdivision (d) of Section 311.4, is guilty of a public offense and shall be punished by imprisonment in the county jail for up to one year, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both the fine and imprisonment.

PC 313. Harmful Matter - Definitions

As used in this chapter:

(a) "Harmful matter" means matter, taken as a whole, which to the average person, applying contemporary statewide standards, appeals to the prurient interest, and is matter which, taken as a whole, depicts or describes in a patently offensive way sexual conduct and which, taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.

(1) When it appears from the nature of the matter or the circumstances of its dissemination, distribution or exhibition that it is designed for clearly defined deviant sexual groups, the appeal of the matter shall be judged with reference to its intended recipient group.

PC 313.4. Distribution of Harmful Matter to Minors

Every person who violates Section 313.1, other than subdivision (e), is punishable by fine of not more than two thousand dollars (\$2,000), by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment. However, if the person has been previously convicted of a violation of Section 313.1, other than subdivision (e), or of any section of Chapter 7.5 (commencing with Section 311) of Title 9 of Part 1 of this code, the person shall be punished by imprisonment in the state prison.

CRUELTY TO ANIMALS

There is a growing movement to protect the rights of animals and to punish cruelty to animals. California's statutes clearly imply a desire to protect animals and punish those who would harm, injure, or otherwise mistreat animals.

This compilation of statutes related to the abuse or mistreatment of animals is quite extensive, but is offered here:

PC 11199. Reports of Animal Cruelty, Abuse, or Neglect

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(a) Any employee of a county child or adult protective services agency, while acting in his or her professional capacity or within the scope of his or her employment, who has knowledge of or observes an animal whom he or she knows or reasonably suspects has been the victim of cruelty, abuse, or neglect, may report the known or reasonably suspected animal cruelty, abuse, or neglect to the entity or entities that investigate reports of animal cruelty, abuse, and neglect in that county.

(b) The report may be made within two working days of receiving the information concerning the animal by facsimile transmission of a written report presented in the form described in subdivision (e) or by telephone if all of the information that is required to be provided pursuant to subdivision (e) is furnished. In cases where an immediate response may be necessary in order to protect the health and safety of the animal or others, the report may be made by telephone as soon as possible.

(c) Nothing in this section shall be construed to impose a duty to investigate known or reasonably suspected animal cruelty, abuse, or neglect.

(d) As used in this section, the terms "animal," "cruelty," "abuse," "neglect," "reasonable suspicion," and "owner" are defined as follows:

(1) "Animal" includes every dumb creature.

(2) "Cruelty," "abuse," and "neglect" include every act, omission, or neglect whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted.

(3) "Reasonable suspicion" means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect animal cruelty, abuse, or neglect.

(4) "Owner" means any person who is the legal owner, keeper, harbinger, possessor, or the actual custodian of an animal. "Owner" includes corporations as well as individuals.

(e) Reports made pursuant to this section may be made on a preprinted form prepared by the entity or entities that investigate reports of animal cruelty, abuse, and neglect in that county that includes the definitions contained in subdivision (d), and a space for the reporter to include each of the following:

(1) His or her name and title.

(2) His or her business address and telephone number.

(3) The name, if known, of the animal owner or custodian.

(4) The location of the animal and the premises on which the known or reasonably suspected animal cruelty, abuse, or neglect took place.

(5) A description of the location of the animal and the premises.

(6) Type and numbers of animals involved.

(7) A description of the animal and its condition.

(8) The date, time, and a description of the observation or incident which led the reporter to suspect animal cruelty, abuse, or neglect and any other information the reporter believes may be relevant.

(f) When two or more employees of a county child or adult protective services agency are present and jointly have knowledge of known or reasonably suspected animal cruelty, abuse, or neglect, and where there is agreement among them, a report may be made by one person by mutual agreement. Any reporter who has knowledge that the person designated to report has failed to do so may thereafter make the report.

PC 596. Poisoning Animals

Every person who, without the consent of the owner, willfully administers poison to any animal, the property of another, or exposes any poisonous substance, with the intent that the same shall be taken or swallowed by any such animal, is guilty of a misdemeanor.

PC 596.5. Abuse of Elephant

It shall be a misdemeanor for any owner or manager of an elephant to engage in abusive behavior towards the elephant, which behavior shall include the discipline of the elephant by any of the following methods:

- (a) Deprivation of food, water, or rest.
- (b) Use of electricity.
- (c) Physical punishment resulting in damage, scarring, or breakage of skin.
- (d) Insertion of any instrument into any bodily orifice.
- (e) Use of **Martingales**.*
- (f) Use of block and tackle.

**Martingales: Due to the enormous size and strength of both African and Asian elephants, it is a fact that most trainers rely on chains and fear to make them obey. Unfortunately, there is a sad history of elephants being beaten into submission at a very young age. Sadly, some elephants will spend a great deal of their lives in chains. The well-known Dumbo lived 20 years in "martingales," chains that ran from his tusks to his feet. In the wild, the life expectancy of elephants is generally the same as that of humans. In the circus, many elephants die prematurely from disease and the stress of confinement.*
http://elephant.elehost.com/News/General_News/About_Circuses/about_circuses.html
 (last accessed 7/13/06)

PC 596.7. Inhumane Treatment of Rodeo Animals

- (a) For purposes of this section, "rodeo" means a public performance featuring competition between persons, which includes four or more of the following events: bareback bronc riding, saddle bronc riding, bull riding, calf roping, steer wrestling, or team roping.
- (b) The management of any professionally sanctioned or amateur rodeo that intends to perform in any city, county, or city and county shall ensure that there is a veterinarian licensed to practice in this state present at all times during the performances of the rodeo, or a veterinarian licensed to practice in the state who is on-call and able to arrive at the rodeo within one hour after a determination has been made that there is an injury which requires treatment to be provided by a veterinarian.
- c) (1) The attending or on-call veterinarian shall have complete access to the site of any event in the rodeo that uses animals.
 - (2) The attending or on-call veterinarian may, for good cause, declare any animal unfit for use in any rodeo event.
- (d) (1) Any animal that is injured during the course of, or as a result of, any rodeo event shall receive immediate examination and appropriate treatment by the attending veterinarian or shall begin receiving examination and appropriate treatment by a veterinarian licensed to practice in this state within one hour of the determination of the injury requiring veterinary treatment.
 - (2) The attending or on-call veterinarian shall submit a brief written listing of any animal injury requiring veterinary treatment to the Veterinary Medical Board within 48 hours of the conclusion of the rodeo.
 - (3) The rodeo management shall ensure that there is a conveyance available at all times for the immediate and humane removal of any injured animal.
- (e) The rodeo management shall ensure that no electric prod or similar device is used on any animal once the animal is in the holding chute, unless necessary to protect the participants and spectators of the rodeo.
- (f) A violation of this section is an infraction and shall be punishable as follows:
 - (1) A fine of not less than five hundred dollars (\$500) and not more than two thousand dollars (\$2,000) for a first violation.
 - (2) A fine of not less than one thousand five hundred dollars (\$1,500) and not more than five thousand dollars (\$5,000) for a second or subsequent violation.

PC 597. Killing, Maiming, or Abusing Animals

- (a) Except as provided in subdivision (c) of this section or Section 599c, every person who maliciously and intentionally maims, mutilates, tortures, or wounds a living animal, or maliciously and intentionally kills an animal, - felony.

Crimes Against Public Order and Morality

(b) Except as otherwise provided in subdivision (a) or (c), every person who overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink, shelter, or to be cruelly beaten, mutilated, or cruelly killed; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the animal, or in any manner abuses any animal, or fails to provide the animal with proper food, drink, or shelter or protection from the weather, or who drives, rides, or otherwise uses the animal when unfit for labor, is, for every such offense, guilty of a crime punishable as a misdemeanor or as a felony or alternatively punishable as a misdemeanor or a felony and by a fine of not more than twenty thousand dollars (\$20,000).

(c) Every person who maliciously and intentionally maims, mutilates, or tortures any mammal, bird, reptile, amphibian, or fish as described in subdivision (d), is guilty of an offense punishable by imprisonment in the state prison, or by a fine of not more than twenty thousand dollars (\$20,000), or by both the fine and imprisonment, or, alternatively, by imprisonment in the county jail for not more than one year, by a fine of not more than twenty thousand dollars (\$20,000), or by both the fine and imprisonment.

(d) Subdivision (c) applies to any mammal, bird, reptile, amphibian, or fish which is a creature described as follows:

(1) Endangered species or threatened species as described in Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code.

(2) Fully protected birds described in Section 3511 of the Fish and Game Code.

(3) Fully protected mammals described in Chapter 8 (commencing with Section 4700) of Part 3 of Division 4 of the Fish and Game Code.

(4) Fully protected reptiles and amphibians described in Chapter 2 (commencing with Section 5050) of Division 5 of the Fish and Game Code.

(5) Fully protected fish as described in Section 5515 of the Fish and Game Code.

This subdivision does not supersede or affect any provisions of law relating to taking of the described species, including, but not limited to, Section 12008 of the Fish and Game Code.

(e) For the purposes of subdivision (c), each act of malicious and intentional maiming, mutilating, or torturing a separate specimen of a creature described in subdivision (d) is a separate offense. If any person is charged with a violation of subdivision (c), the proceedings shall be subject to Section 12157 of the Fish and Game Code.

(f) (1) Upon the conviction of a person charged with a violation of this section by causing or permitting an act of cruelty, as defined in Section 599b, all animals lawfully seized and impounded with respect to the violation by a peace officer, officer of a humane society, or officer of a pound or animal regulation department of a public agency shall be adjudged by the court to be forfeited and shall thereupon be awarded to the impounding officer for proper disposition. A person convicted of a violation of this section by causing or permitting an act of cruelty, as defined in Section 599b, shall be liable to the impounding officer for all costs of impoundment from the time of seizure to the time of proper disposition.

(2) Mandatory seizure or impoundment shall not apply to animals in properly conducted scientific experiments or investigations performed under the authority of the faculty of a regularly incorporated medical college or university of this state.

(g) Notwithstanding any other provision of law, if a defendant is granted probation for a conviction under this section, the court shall order the defendant to pay for, and successfully complete, counseling, as determined by the court, designed to evaluate and treat behavior or conduct disorders. If the court finds that the defendant is financially unable to pay for that counseling, the court may develop a sliding fee schedule based upon the defendant's ability to pay. An indigent defendant may negotiate a deferred payment schedule, but shall pay a nominal fee if the defendant has the ability to pay the nominal fee. County mental health departments or Medi-Cal shall be responsible for the costs of counseling required by this section only for those persons who meet the medical necessity criteria for mental health managed

care pursuant to Section 1830.205 of Title 7 of the California Code of Regulations or the targeted population criteria specified in Section 5600.3 of the Welfare and Institutions Code. The counseling specified in this subdivision shall be in addition to any other terms and conditions of probation, including any term of imprisonment and any fine. This provision specifies a mandatory additional term of probation and is not to be utilized as an alternative in lieu of imprisonment in the state prison or county jail when such a sentence is otherwise appropriate. If the court does not order custody as a condition of probation for a conviction under this section, the court shall specify on the court record the reason or reasons for not ordering custody. This subdivision shall not apply to cases involving police dogs or horses as described in Section 600.

PC 597.1. Failing to Care for Animals

(a) Every owner, driver, or keeper of any animal who permits the animal to be in any building, enclosure, lane, street, square, or lot of any city, county, city and county, or judicial district without proper care and attention is guilty of a misdemeanor. Any peace officer, humane society officer, or animal control officer shall take possession of the stray or abandoned animal and shall provide care and treatment for the animal until the animal is deemed to be in suitable condition to be returned to the owner. When the officer has reasonable grounds to believe that very prompt action is required to protect the health or safety of the animal or the health or safety of others, the officer shall immediately seize the animal and comply with subdivision (f). In all other cases, the officer shall comply with the provisions of subdivision (g). The cost of caring for and treating any animal properly seized under this subdivision shall constitute a lien on the animal and the animal shall not be returned to its owner until the charges are paid, if the seizure is upheld pursuant to this section.

(b) Every sick, disabled, infirm, or crippled animal, except a dog or cat, that is abandoned in any city, county, city and county, or judicial district may be killed by the officer if, after a reasonable search, no owner of the animal can be found. It shall be the duty of all peace officers, humane society officers, and animal control officers to cause the animal to be killed or rehabilitated and placed in a suitable home on information that the animal is stray or abandoned. The officer may likewise take charge of any animal, including a dog or cat, that by reason of lameness, sickness, feebleness, or neglect, is unfit for the labor it is performing, or that in any other manner is being cruelly treated, and provide care and treatment for the animal until it is deemed to be in a suitable condition to be returned to the owner. When the officer has reasonable grounds to believe that very prompt action is required to protect the health or safety of an animal or the health or safety of others, the officer shall immediately seize the animal and comply with subdivision (f). In all other cases, the officer shall comply with subdivision (g). The cost of caring for and treating any animal properly seized under this subdivision shall constitute a lien on the animal and the animal shall not be returned to its owner until the charges are paid.

PC 597.2. Sale of Equine at Public Auction or Sale

(a) It shall be the duty of an officer of a pound, humane society, or animal regulation department of a public agency to assist in a case involving the abandonment or voluntary relinquishment of an equine by the equine's owner. This section does not require a pound, humane society, or animal regulation department of a public agency to take actual possession of the equine.

(b) If a pound, humane society, or animal regulation department of a public agency sells an equine at a private or public auction or sale, it shall set the minimum bid for the sale of the equine at a price above the current slaughter price of the equine.

(c) (1) This section does not prohibit a pound, humane society, or animal regulation department of a public agency from placing an equine through an adoption program at an adoption fee that may be set below current slaughter price.

(2) A person adopting an equine under paragraph (1) shall submit a written statement declaring that the person is adopting the equine for personal use and not for purposes of resale, resale for slaughter, or holding or transporting the equine for slaughter.

PC 597.3. Cruelty to Animals; Live Animal Market Requirements [Renumbered from 597.2]

- (a) Every person who operates a live animal market shall do all of the following:
- (1) Provide that no animal will be dismembered, flayed, cut open, or have its skin, scales, feathers, or shell removed while the animal is still alive.
 - (2) Provide that no live animals will be confined, held, or displayed in a manner that results, or is likely to result, in injury, starvation, dehydration, or suffocation.
- (b) As used in this section:
- (1) "Animal" means frogs, turtles, and birds sold for the purpose of human consumption, with the exception of poultry.
 - (2) "Live animal market" means a retail food market where, in the regular course of business, animals are stored alive and sold to consumers for the purpose of human consumption.
- (c) Any person who fails to comply with any requirement of subdivision (a) shall for the first violation, be given a written warning in a written language that is understood by the person receiving the warning. A second or subsequent violation of subdivision (a) shall be an infraction, punishable by a fine of not less than two hundred fifty dollars (\$250), nor more than one thousand dollars (\$1,000). However, a fine paid for a second violation of subdivision (a) shall be deferred for six months if a course is available that is administered by a state or local agency on state law and local ordinances relating to live animal markets. If the defendant successfully completes that course within six months of entry of judgment, the fine shall be waived. The state or local agency may charge the participant a fee to take the course, not to exceed one hundred dollars (\$100).

PC 597.5. Dog Fights - Training, Conducting, Attending

- (a) Any person who does any of the following is guilty of a felony and is punishable by imprisonment in a state prison for 16 months, or two or three years, or by a fine not to exceed fifty thousand dollars (\$50,000), or by both such fine and imprisonment:
- (1) Owns, possesses, keeps, or trains any dog, with the intent that the dog shall be engaged in an exhibition of fighting with another dog.
 - (2) For amusement or gain, causes any dog to fight with another dog, or causes any dogs to injure each other.
 - (3) Permits any act in violation of paragraph (1) or (2) to be done on any premises under his or her charge or control, or aids or abets that act.
- (b) Any person who is knowingly present, as a spectator, at any place, building, or tenement where preparations are being made for an exhibition of the fighting of dogs, with the intent to be present at those preparations, or is knowingly present at that exhibition or at any other fighting or injuring as described in paragraph (2) of subdivision (a), with the intent to be present at that exhibition, fighting, or injuring, is guilty of a misdemeanor.

PC 597.6. Surgical Claw Removal, etc. on Exotic or Native Wild Cat Species

- (a) (1) No person may perform, or otherwise procure or arrange for the performance of, surgical claw removal, declawing, onychectomy, or tendonectomy on any cat that is a member of an exotic or native wild cat species, and shall not otherwise alter such a cat's toes, claws, or paws to prevent the normal function of the cat's toes, claws, or paws.
- (2) This subdivision does not apply to a procedure performed solely for a therapeutic purpose.
- (b) Any person who violates this section is guilty of a misdemeanor punishable by imprisonment in a county jail for a period not to exceed one year, by a fine of ten thousand dollars (\$10,000), or by both that imprisonment and fine.
- (c) For purposes of this section, the following terms have the following meanings:
- (1) "Declawing" and "onychectomy" mean any surgical procedure in which a portion of the animal's paw is amputated in order to remove the animal's claws.

(2) "Tendonectomy" means a procedure in which the tendons to an animal's limbs, paws, or toes are cut or modified so that the claws cannot be extended.

(3) "Exotic or native wild cat species" include all members of the taxonomic family Felidae, except domestic cats (*Felis catus* or *Felis domesticus*) or hybrids of wild and domestic cats that are greater than three generations removed from an exotic or native cat. "Exotic or native wild cat species" include, but are not limited to, lions, tigers, cougars, leopards, lynxes, bobcats, caracals, ocelots, margays, servals, cheetahs, snow leopards, clouded leopards, jungle cats, leopard cats, and jaguars, or any hybrid thereof.

(4) "Therapeutic purpose" means for the purpose of addressing an existing or recurring infection, disease, injury, or abnormal condition in the claw that jeopardizes the cat's health, where addressing the infection, disease, injury, or abnormal condition is a medical necessity.

PC 597a. Cruelty in Transporting Animals

Whoever carries or causes to be carried in or upon any vehicle or otherwise any domestic animal in a cruel or inhuman manner, or knowingly and willfully authorizes or permits it to be subjected to unnecessary torture, suffering, or cruelty of any kind, is guilty of a misdemeanor; and whenever any such person is taken into custody therefor by any officer, such officer must take charge of such vehicle and its contents, together with the horse or team attached to such vehicle, and deposit the same in some place of custody; and any necessary expense incurred for taking care of and keeping the same, is a lien thereon, to be paid before the same can be lawfully recovered; and if such expense, or any part thereof, remains unpaid, it may be recovered, by the person incurring the same, of the owner of such domestic animal, in an action therefor.

PC 597b. Fighting Animals or Birds - Worrying Animals

(a) Except as provided in subdivision (b), any person who, for amusement or gain, causes any bull, bear, or other animal, not including any dog, to fight with like kind of animal or creature, or causes any animal, including any dog, to fight with a different kind of animal or creature, or with any human being; or who, for amusement or gain, worries or injures any bull, bear, dog, or other animal, or causes any bull, bear, or other animal, not including any dog, to worry or injure each other; and any person who permits the same to be done on any premises under his or her charge or control; and any person who aids, abets, or is present at the fighting or worrying of an animal or creature, as a spectator, is guilty of a misdemeanor.

(b) Notwithstanding subdivision (a), any person who, for amusement or gain, causes any cock to fight with another cock or with a different kind of animal or creature or with any human being; or who, for amusement or gain, worries or injures any cock, or causes any cock to worry or injure another animal; and any person who permits the same to be done on any premises under his or her charge or control, and any person who aids or abets the fighting or worrying of any cock is guilty of a misdemeanor punishable by imprisonment in a county jail for a period not to exceed one year, by a fine not to exceed five thousand dollars (\$5,000), or by both that imprisonment and fine.

(c) A second or subsequent conviction of this section, Section 597c, or Section 597j is a misdemeanor punishable by imprisonment in a county jail for a period not to exceed one year, by a fine not to exceed twenty-five thousand dollars (\$25,000), or by both that imprisonment and fine, except in unusual circumstances where the interests of justice would be better served by the imposition of a lesser sentence.

(d) For the purposes of this section, aiding and abetting a violation of this section shall consist of something more than merely being present or a spectator at a place where a violation is occurring.

PC 597c. Training Animals to Fight, Attending Training Quarters or Fight; Exceptions

(a) Except as provided in subdivision (b), whoever owns, possesses, keeps, or trains any animal with the intent that the animal shall be engaged in an exhibition of fighting; or is present at any place, building, or tenement where preparations are being made for an exhibition of the fighting of animals with the intent to be present at that exhibition; or is present at that exhibition, is guilty of a misdemeanor.

Crimes Against Public Order and Morality

(b) Notwithstanding subdivision (a), whoever owns, possesses, keeps, or trains any cock or other bird with the intent that the cock or other bird shall be engaged in an exhibition of fighting is guilty of a crime punishable by imprisonment in a county jail for a period not to exceed one year, by a fine not to exceed five thousand dollars (\$5,000), or by both that imprisonment and fine.

(c) A second or subsequent conviction of this section, Section 597b, or Section 597j is a misdemeanor punishable by imprisonment in a county jail for a period not to exceed one year, by a fine not to exceed twenty-five thousand dollars (\$25,000), or by both that imprisonment and fine, except in unusual circumstances where the interests of justice would be better served by the imposition of a lesser sentence.

(d) This section shall not apply to an exhibition of fighting of a dog with another dog.

PC 597d. Arrest of Attendants or Promoters of Animal or Bird Fight Without Warrant

*Any sheriff, police, or peace officer, or officer qualified as provided in Section 14502 of the Corporations Code, may enter any place, building, or tenement, where there is an exhibition of the fighting of birds or animals, or where preparations are being made for such an exhibition, and, **without a warrant, arrest all persons present.***

PC 597e. Impounding Animal With Insufficient Food and Water

Any person who impounds, or causes to be impounded in any pound, any domestic animal, shall supply it during such confinement with a sufficient quantity of good and wholesome food and water, and in default thereof, is guilty of a misdemeanor. In case any domestic animal is at any time so impounded and continues to be without necessary food and water for more than 12 consecutive hours, it is lawful for any person, from time to time, as may be deemed necessary, to enter into and upon any pound in which the animal is confined, and supply it with necessary food and water so long as it remains so confined. Such person is not liable for the entry and may collect the reasonable cost of the food and water from the owner of the animal, and the animal is subject to enforcement of a money judgment for the reasonable cost of such food and water.

PC 597f. Neglecting Animals - Killing Neglected, Sick, or Useless Animal

(a) Every owner, driver, or possessor of any animal, who permits the animal to be in any building, enclosure, lane, street, square, or lot, of any city, city and county, or judicial district, without proper care and attention, shall, on conviction, be deemed guilty of a misdemeanor. And it shall be the duty of any peace officer, officer of the humane society, or officer of a pound or animal regulation department of a public agency, to take possession of the animal so abandoned or neglected and care for the animal until it is redeemed by the owner or claimant, and the cost of caring for the animal shall be a lien on the animal until the charges are paid. Every sick, disabled, infirm, or crippled animal, except a dog or cat, which shall be abandoned in any city, city and county, or judicial district, may, if after due search no owner can be found therefor, be killed by the officer; and it shall be the duty of all peace officers, an officer of such society, or officer of a pound or animal regulation department of a public agency to cause the animal to be killed on information of such abandonment. The officer may likewise take charge of any animal, including a dog or cat, that by reason of lameness, sickness, feebleness, or neglect, is unfit for the labor it is performing, or that in any other manner is being cruelly treated; and, if the animal is not then in the custody of its owner, the officer shall give notice thereof to the owner, if known, and may provide suitable care for the animal until it is deemed to be in a suitable condition to be delivered to the owner, and any necessary expenses which may be incurred for taking care of and keeping the animal shall be a lien thereon, to be paid before the animal can be lawfully recovered.

(b) It shall be the duty of all officers of pounds or humane societies, and animal regulation departments of public agencies to convey, and for police and sheriff departments, to cause to be conveyed all injured cats and dogs found without their owners in a public place directly to a veterinarian known by the officer or agency to be a veterinarian that ordinarily treats dogs and cats for a determination of whether the animal shall be immediately and humanely destroyed or shall be hospitalized under proper care and given emergency treatment.

If the owner does not redeem the animal within the locally prescribed waiting period, the veterinarian may personally perform euthanasia on the animal; or, if the animal is treated and recovers from its injuries, the veterinarian may keep the animal for purposes of adoption, provided the responsible animal control agency has first been contacted and has refused to take possession of the animal.

Whenever any animal is transferred pursuant to this subdivision to a veterinarian in a clinic, such as an emergency clinic which is not in continuous operation, the veterinarian may, in turn, transfer the animal to an appropriate facility.

If the veterinarian determines that the animal shall be hospitalized under proper care and given emergency treatment, the costs of any services which are provided pending the owner's inquiry to the agency, department, or society shall be paid from the dog license fees, fines, and fees for impounding dogs in the city, county, or city and county in which the animal was licensed or if the animal is unlicensed the jurisdiction in which the animal was found, subject to the provision that this cost be repaid by the animal's owner. No veterinarian shall be criminally or civilly liable for any decision which he or she makes or services which he or she provides pursuant to this section.

(c) An animal control agency which takes possession of an animal pursuant to subdivision (b), shall keep records of the whereabouts of the animal for a 72-hour period from the time of possession and those records shall be available to inspection by the public upon request.

(d) Notwithstanding any other provisions of this section, any officer of a pound or animal regulation department or humane society, or any officer of a police or sheriff's department may, with the approval of his or her immediate superior, humanely destroy any abandoned animal in the field in any case where the animal is too severely injured to move or where a veterinarian is not available and it would be more humane to dispose of the animal.

PC 597g. Poling of Horses

(a) Poling a horse is a method of training horses to jump which consists of (1) forcing, persuading, or enticing a horse to jump in such manner that one or more of its legs will come in contact with an obstruction consisting of any kind of wire, or a pole, stick, rope or other object with brads, nails, tacks or other sharp points imbedded therein or attached thereto or (2) raising, throwing or moving a pole, stick, wire, rope or other object, against one or more of the legs of a horse while it is jumping an obstruction so that the horse, in either case, is induced to raise such leg or legs higher in order to clear the obstruction. Tripping a horse is an act that consists of the use of any wire, pole, stick, rope, or other object or apparatus whatsoever to cause a horse to fall or lose its balance. The poling or tripping of any horse is unlawful and any person violating the provisions of this section is guilty of a misdemeanor.

(b) It is a misdemeanor for any person to intentionally trip or fell an equine by the legs by any means whatsoever for the purposes of entertainment or sport.

(c) This section does not apply to the lawful laying down of a horse for medical or identification purposes, nor shall the section be construed as condemning or limiting any cultural or historical activities, except those prohibited herein.

PC 597h. Attaching Animals to Machine or Powered Device

It shall be unlawful for any person to tie or attach or fasten any live animal to any machine or device propelled by any power for the purpose of causing such animal to be pursued by a dog or dogs. Any person violating any of the provisions of this section shall be guilty of a misdemeanor.

PC 597i. Manufacture, Sale or Possession of Cock Fighting Implements

(a) It shall be unlawful for anyone to manufacture, buy, sell, barter, exchange, or have in his or her possession any of the implements commonly known as gaffs or slashers, or any other sharp implement designed to be attached in place of the natural spur of a gamecock or other fighting bird.

(b) Any person who violates any of the provisions of this section is guilty of a misdemeanor punishable by imprisonment in a county jail for a period not to exceed one year, by a fine not to exceed five thousand dollars (\$5,000), or by both that imprisonment and fine and upon conviction thereof shall, in addition to any judgment or sentence imposed by the court, forfeit possession or ownership of those implements.

PC 597j. Owning, Possessing or Keeping Any Cock With Intention to Engage in Fighting

(a) Any person who owns, possesses, keeps, or trains any bird or animal with the intent that it be used or engaged by himself or herself, by his or her vendee, or by any other person in an exhibition of fighting is guilty of a misdemeanor punishable by imprisonment in a county jail for a period not to exceed one year, by a fine not to exceed five thousand dollars (\$5,000), or by both that imprisonment and fine.

(b) This section shall not apply to an exhibition of fighting of a dog with another dog.

PC 597k. Use of Bristle or Tack Bur on Animals

Anyone who, having care, custody or control of any horse or other animal, uses what is known as the bristle bur, tack bur, or other like device, by whatsoever name known or designated, on such horse or other animal for any purpose whatsoever, is guilty of a misdemeanor and is punishable by a fine of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500), or by imprisonment in the county jail for not less than 10 days nor more than 175 days, or by both such fine and imprisonment.

PC 597l. Pet Shops - Definitions - Care of Animals and Premises

(a) It shall be unlawful for any person who operates a pet shop to fail to do all of the following:

(1) Maintain the facilities used for the keeping of pet animals in a sanitary condition.

(2) Provide proper heating and ventilation for the facilities used for the keeping of pet animals.

(3) Provide adequate nutrition for, and humane care and treatment of, all pet animals under his or her care and control.

(4) Take reasonable care to release for sale, trade, or adoption only those pet animals that are free of disease or injuries.

(5) Provide adequate space appropriate to the size, weight, and specie of pet animals.

(b) (1) Sellers of pet animals shall provide buyers of a pet animal with general written recommendations for the generally accepted care of the class of pet animal sold, including recommendations as to the housing, equipment, cleaning, environment, and feeding of the animal. This written information shall be in a form determined by the sellers of pet animals and may include references to Web sites, books, pamphlets, videos, and compact discs.

(2) If a seller of pet animals distributes material prepared by a third party, the seller shall not be liable for damages caused by any erroneous information in that material unless a reasonable person exercising ordinary care should have known of the error causing the damage.

(3) This subdivision shall apply to any private or public retail business that sells pet animals to the public and is required to possess a permit pursuant to Section 6066 of the Revenue and Taxation Code.

(4) Charges brought against a seller of pet animals for a first violation of the provisions of this subdivision shall be dismissed if the person charged produces in court satisfactory proof of compliance. A second or subsequent violation is an infraction punishable by a fine not to exceed two hundred fifty dollars (\$250).

(c) As used in this section, the following terms have the following meanings:

(1) "Pet animals" means dogs, cats, monkeys and other primates, rabbits, birds, guinea pigs, hamsters, mice, snakes, iguanas, turtles, and any other species of animal sold or retained for the purpose of being kept as a household pet.

(2) "Pet shop" means every place or premises where pet animals are kept for the purpose of either wholesale or retail sale. "Pet shop" does not include any place or premises where pet animals are occasionally sold.

(d) Any person who violates any provision of subdivision (a) is guilty of a misdemeanor and is punishable by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in the county jail not exceeding 90 days, or by both that fine and imprisonment.

PC 597m. Conducting Bullfighting Exhibitions

It shall be unlawful for any person to promote, advertise, stage, hold, manage, conduct, participate in, engage in, or carry on any bullfight exhibition, any bloodless bullfight contest or exhibition, or any similar contest or exhibition, whether for amusement or gain or otherwise; provided, that nothing herein shall be construed to prohibit rodeos or to prohibit measures necessary to the safety of participants at rodeos.

This section shall not, however, be construed as prohibiting bloodless bullfights, contests, or exhibitions held in connection with religious celebrations or religious festivals.

Any person violating the provisions of this section is guilty of a misdemeanor.

PC 597n. Docking Horses Prohibited; Penalty

Any person who cuts the solid part of the tail of any horse in the operation known as "docking," or in any other operation performed for the purpose of shortening the tail of any horse, within the State of California, or procures the same to be done, or imports or brings into this state any docked horse, or horses, or drives, works, uses, races, or deals in any unregistered docked horse, or horses, within the State of California except as provided in Section 597r, is guilty of a misdemeanor.

PC 597o. Transportation of Equine Requirements

(a) Any person who transports an equine in a vehicle to slaughter shall meet the following requirements:

(1) The vehicle shall have sufficient clearance to allow the equine to be transported in a standing position with its head in a normal upright position above its withers.

(2) Any ramps and floors in the vehicle shall be covered with a nonskid surface to prevent the equine from slipping.

(3) The vehicle shall provide adequate ventilation to the equine while the equine is being transported.

(4) The sides and overhead of the vehicle shall be constructed to withstand the weight of any equine which may put pressure against the sides or overhead.

(5) Any compartments in the interior of the vehicle shall be constructed of smooth materials and shall contain no protrusions or sharp objects.

(6) The size of the vehicle shall be appropriate for the number of equine being transported and the welfare of the equine shall not be jeopardized by overcrowding.

(7) Stallions shall be segregated during transportation to slaughter.

(8) Diseased, sick, blind, dying, or otherwise disabled equine shall not be transported out of this state.

(9) Any equine being transported shall be able to bear weight on all four feet.

(10) Unweaned foals shall not be transported.

(11) Mares in their last trimester of pregnancy shall not be transported.

(12) The person shall notify a humane officer having jurisdiction 72 hours before loading the equine in order that the humane officer may perform a thorough inspection of the vehicle to determine if all requirements of this section have been satisfied.

(b) (1) Any person who violates this section is guilty of a misdemeanor and is subject to a fine of one hundred dollars (\$100) per equine being transported.

(2) Any person who violates this section for a second or subsequent time is guilty of a misdemeanor and shall be fined five hundred dollars (\$500) per equine being transported.

(c) Whenever a person is taken into custody by an officer for a violation of this section, the officer shall take charge of the vehicle and its contents and deposit the property in some place of custody.

(d) (1) Any necessary expense incurred for taking care of and keeping the property described in subdivision (c) is a lien thereon, to be paid before the property can be lawfully recovered.

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(2) If the expense, or any part thereof, remains unpaid, it may be recovered by the person incurring the expense from the owner of the equine in an action therefor.

(e) For the purposes of this section, "equine" means any horse, pony, burro, or mule.

PC 597p. Docked Horse; Registration Required

Within 30 days after the passage of this act, every owner, or user of any docked horse, within the State of California, shall register his or her docked horse, or horses by filing in the office of the county clerk of the county in which such docked horse, or horses, may then be kept, a certificate, which certificate shall contain the name, or names of the owner, together with his or her post office address, a full description of the color, age, size and the use made of such docked horse, or horses; which certificate shall be signed by the owner, or his, or her agent. The county clerk shall number such certificate consecutively and record the name in a book, or register to be kept for that purpose only; and shall receive as a fee for recording of such certificate, the sum of fifty cents (\$0.50), and the clerk shall thereupon issue to such person so registering such horse or horses a certificate containing the facts recited in this section which upon demand shall be exhibited to any peace officer, and the same shall be conclusive evidence of a compliance with the provisions of Section 597n of this code.

PC 597q. Unregistered Docked Horse; Keeping or Using Prima Facie Evidence

The driving, working, keeping, racing or using of any unregistered docked horse, or horses, after 60 days after the passage of this act, shall be deemed prima facie evidence of the fact that the party driving, working, keeping, racing or using such unregistered docked horse, or horses, docked the tail of such horse or horses.

PC 597r. Docked Horses; Exceptions; Penalties

Any person or persons violating any of the provisions of this act, shall be deemed guilty of a misdemeanor; provided, however, that the provisions of Sections 597n, 597p, and 597q, shall not be applied to persons owning or possessing any docked purebred stallions and mares imported from foreign countries for breeding or exhibition purposes only, as provided by an act of Congress entitled "An act regulating the importation of breeding animals" and approved March 3, 1903, and to docked native-bred stallions and mares brought into this State and used for breeding or exhibition purposes only; and provided further, that a description of each such animal so brought into the State, together with the date of importation and name and address of importer, be filed with the county clerk of the county where such animal is kept, within 30 days after the importation of such animal.

PC 597s. Abandoning Domestic Dog or Cat

(a) Every person who willfully abandons any animal is guilty of a misdemeanor.

(b) This section shall not apply to the release or rehabilitation and release of native California wildlife pursuant to statute or regulations of the California Department of Fish and Game.

PC 597t. Mistreatment of Confined Animals

Every person who keeps an animal confined in an enclosed area shall provide it with an adequate exercise area. If the animal is restricted by a leash, rope, or chain, the leash, rope, or chain shall be affixed in such a manner that it will prevent the animal from becoming entangled or injured and permit the animal's access to adequate shelter, food, and water. Violation of this section constitutes a misdemeanor. This section shall not apply to an animal which is in transit, in a vehicle, or in the immediate control of a person.

PC 597u. Use of Carbon Monoxide Gas to Kill Animal

(a) No person, peace officer, officer of a humane society, or officer of a pound or animal regulation department of a public agency shall kill any animal by the use of carbonusing any of the following methods:

(1) Carbon monoxide gas.

(2) Intracardiac injection of a euthanasia agent on a conscious animal, unless the animal is heavily sedated or anesthetized in a humane manner, or comatose, or unless, in light of all the relevant circumstances, the procedure is justifiable.

(b) This section shall become operative on January 1, 2000.

(c) With respect to the killing of any dog or cat, no person, peace officer, officer of a humane society, or officer of a pound or animal regulation department of a public agency shall use any of the methods specified in subdivision (a) or any of the following methods:

(1) High-altitude decompression chamber.

(2) Nitrogen gas

PC 597v. Killing Newborn Dog or Cat - Requirements

No person, peace officer, officer of a humane society, or officer of a pound or animal regulation department of a public agency shall kill any newborn dog or cat whose eyes have not yet opened by any other method than by the use of chloroform vapor or by inoculation of barbiturates.

PC 597x. Transportation of Live Animals

(a) Notwithstanding Section 18734 of the Food and Agricultural Code or any other provision of law, it is unlawful for any person to sell, attempt to sell, load, cause to be loaded, transport, or attempt to transport any live horse, mule, burro, or pony that is disabled, if the animal is intended to be sold, loaded, or transported for commercial slaughter out of the state.

(b) For the purposes of this section, "disabled animal" includes, but is not limited to, any animal that has broken limbs, is unable to stand and balance itself without assistance, cannot walk, or is severely injured.

(c) A person who violates this section is guilty of a misdemeanor and subject to the same penalties imposed upon a person convicted of a misdemeanor under Section 597a.

PC 597y. Penalties

A violation of Section 597u, 597v, or 597w is a misdemeanor.

PC 597z. Sale of Dog Under 8 Weeks of Age; Exceptions

(a)(1) Except as otherwise authorized under any other provision of law, it shall be a crime, punishable as specified in subdivision (b), for any person to sell one or more dogs under eight weeks of age, unless, prior to any physical transfer of the dog or dogs from the seller to the purchaser, the dog or dogs are approved for sale, as evidenced by written documentation from a veterinarian licensed to practice in California.

(2) For the purposes of this section, the sale of a dog or dogs shall not be considered complete, and thereby subject to the requirements and penalties of this section, unless and until the seller physically transfers the dog or dogs to the purchaser.

(b)(1) Any person who violates this section shall be guilty of an infraction or a misdemeanor.

(2) An infraction under this section shall be punishable by a fine not to exceed two hundred fifty dollars (\$250).

(3) With respect to the sale of two or more dogs in violation of this section, each dog unlawfully sold shall represent a separate offense under this section.

(c) This section shall not apply to any of the following:

(1) An organization, as defined in Section 501(c)(3) of the Internal Revenue Code, or any other organization that provides, or contracts to provide, services as a public animal sheltering agency.

(2) A pet dealer as defined under Article 2 (commencing with Section 122125) of Chapter 5 of Part 6 of Division 105 of the Health and Safety Code.

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(3) *A public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group regulated under Division 14 (commencing with Section 30501) of the Food and Agricultural Code.*

PC 598. Killing Birds or Robbing Nests in Cemeteries

Every person who, within any public cemetery or burying ground, kills, wounds, or traps any bird, or destroys any bird's nest other than swallows' nests, or removes any eggs or young birds from any nest, is guilty of a misdemeanor.

PC 598a. Killing or Possessing Dog or Cat With Intent of Selling or Giving Away Pelt

(a) *Every person is guilty of a misdemeanor who kills any dog or cat with the sole intent of selling or giving away the pelt of such animal.*

(b) *Every person is guilty of a misdemeanor who possesses, imports into this state, sells, buys, gives away or accepts any pelt of a dog or cat with the sole intent of selling or giving away the pelt of the dog or cat, or who possesses, imports into this state, sells, buys, gives away, or accepts any dog or cat, with the sole intent of killing or having killed such dog or cat for the purpose of selling or giving away the pelt of such animal.*

PC 598b. Possession, Buying, Selling, Etc. of Pet for Food

(a) *Every person is guilty of a misdemeanor who possesses, imports into, or exports from, this state, sells, buys, gives away, or accepts any carcass or part of any carcass of any animal traditionally or commonly kept as a pet or companion with the intent of using or having another person use any part of that carcass for food.*

(b) *Every person is guilty of a misdemeanor who possesses, imports into, or exports from, this state, sells, buys, gives away, or accepts any animal traditionally or commonly kept as a pet or companion with the intent of killing or having another person kill that animal for the purpose of using or having another person use any part of the animal for food.*

(c) *This section shall not be construed to interfere with the production, marketing, or disposal of any livestock, poultry, fish, shellfish, or any other agricultural commodity produced in this state. Nor shall this section be construed to interfere with the lawful killing of wildlife, or the lawful killing of any other animal under the laws of this state pertaining to game animals.*

PC 599. Mistreatment of Poultry and Rabbits

Every person is guilty of a misdemeanor who:

(a) *Sells or gives away, any live chicks, rabbits, ducklings, or other fowl as a prize for, or as an inducement to enter, any contest, game or other competition or as an inducement to enter a place of amusement or place of business; or*

(b) *Dyes or otherwise artificially colors any live chicks, rabbits, ducklings or other fowl, or sells, offers for sale, or gives away any live chicks, rabbits, ducklings, or other fowl which has been dyed or artificially colored; or*

(c) *Maintains or possesses any live chicks, rabbits, ducklings, or other fowl for the purpose of sale or display without adequate facilities for supplying food, water and temperature control needed to maintain the health of such fowl or rabbit; or*

(d) *Sells, offers for sale, barter, or for commercial purposes gives away, any live chicks, rabbits, ducklings, or other fowl on any street or highway. This section shall not be construed to prohibit established hatchery management procedures or the display, or sale of natural chicks, rabbits, ducklings, or other fowl in proper facilities by dealers, hatcheries, poultrymen, or stores regularly engaged in the business of selling the same*

PC 599a. Duty of Magistrate to Issue Warrant

When complaint is made, on oath, to any magistrate authorized to issue warrants in criminal cases, that the complainant believes that any provision of law relating to, or in any way affecting, dumb animals or birds, is being, or is about to be violated in any particular building or place, the magistrate must issue and deliver immediately a warrant directed to any sheriff, police or peace officer or officer of any incorporated association qualified as provided by law, authorizing him to enter and search that building or place, and to arrest any person there present violating, or attempting to violate, any law relating to, or in any way affecting, dumb animals or birds, and to bring that person before some court or magistrate of competent jurisdiction, within the city, city and county, or judicial district within which the offense has been committed or attempted, to be dealt with according to law, and the attempt must be held to be a violation of Section 597.

PC 599aa. Officer May Take Possession of Birds or Animals Pursuant to Arrest

(a) Any authorized officer making an arrest under Section 597.5 shall, and any authorized officer making an arrest under Section 597b, 597c, 597j, or 599a may, lawfully take possession of all birds or animals and all paraphernalia, implements or other property or things used or employed, or about to be employed, in the violation of any of the provisions of this code relating to the fighting of birds or animals that can be used in animal or bird fighting, in training animals or birds to fight, or to inflict pain or cruelty upon animals or birds in respect to animal or bird fighting.

(b) Upon taking possession, the officer shall inventory the items seized and question the persons present as to the identity of the owner or owners of the items. The inventory list shall identify the location where the items were seized, the names of the persons from whom the property was seized, and the names of any known owners of the property.

Any person claiming ownership or possession of any item shall be provided with a signed copy of the inventory list which shall identify the seizing officer and his or her employing agency. If no person claims ownership or possession of the items, a copy of the inventory list shall be left at the location from which the items were seized.

(c) The officer shall file with the magistrate before whom the complaint against the arrested person is made, a copy of the inventory list and an affidavit stating the affiant's basis for his or her belief that the property and items taken were in violation of this code. On receipt of the affidavit, the magistrate shall order the items seized to be held until the final disposition of any charges filed in the case subject to subdivision (e).

(d) All animals and birds seized shall, at the discretion of the seizing officer, be taken promptly to an appropriate animal storage facility. For purposes of this subdivision, an appropriate animal storage facility is one in which the animals or birds may be stored humanely. However, if an appropriate animal storage facility is not available, the officer may cause the animals or birds used in committing or possessed for the purpose of the alleged offenses to remain at the location at which they were found. In determining whether it is more humane to leave the animals or birds at the location at which they were found than to take the animals or birds to an animal storage facility, the officer shall, at a minimum, consider the difficulty of transporting the animals or birds and the adequacy of the available animal storage facility. When the officer does not seize and transport all animals or birds to a storage facility, he or she shall do both of the following:

(1) Seize a representative sample of animals or birds for evidentiary purposes from the animals or birds found at the site of the alleged offenses. The animals or birds seized as a representative sample shall be transported to an appropriate animal storage facility.

(2) Cause all animals or birds used in committing or possessed for the purpose of the alleged offenses to be banded, tagged, or marked by microchip, and photographed or videotaped for evidentiary purposes.

(e)(1) If ownership of the seized animals or birds cannot be determined after reasonable efforts, the officer or other person named and designated in the order as custodian of the animals or birds may, after holding the animals and birds for a period of not less than 10 days, petition the magistrate for permission to humanely destroy or otherwise dispose of the animals or birds. The petition shall be published for

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three successive days in a newspaper of general circulation. The magistrate shall hold a hearing on the petition not less than 10 days after seizure of the animals or birds, after which he or she may order the animals or birds to be humanely destroyed or otherwise disposed of, or to be retained by the officer or person with custody until the conviction or final discharge of the arrested person. No animal or bird may be destroyed or otherwise disposed of until 4 days after the order.

(2) Paragraph (1) shall apply only to those animals and birds seized under any of the following circumstances:

(A) After having been used in violation of any of the provisions of this code relating to the fighting of birds or animals.

(B) At the scene or site of a violation of any of the provisions of this code relating to the fighting of birds or animals.

PC 599b. Definitions

In this title, the word "animal" includes every dumb creature; the words "torment," "torture," and "cruelty" include every act, omission, or neglect whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted; and the words "owner" and "person" include corporations as well as individuals; and the knowledge and acts of any agent of, or person employed by, a corporation in regard to animals transported, owned, or employed by, or in the custody of, the corporation, must be held to be the act and knowledge of the corporation as well as the agent or employee.

PC 599c. Non-Interference with Other Laws

No part of this title shall be construed as interfering with any of the laws of this state known as the "game laws," or any laws for or against the destruction of certain birds, nor must this title be construed as interfering with the right to destroy any venomous reptile, or any animal known as dangerous to life, limb, or property, or to interfere with the right to kill all animals used for food, or with properly conducted scientific experiments or investigations performed under the authority of the faculty of a regularly incorporated medical college or university of this state.

PC 599d. Statement of Policy; No Adoptable or Treatable Animal Should be Euthanized

(a) It is the policy of the state that no adoptable animal should be euthanized if it can be adopted into a suitable home. Adoptable animals include only those animals eight weeks of age or older that, at or subsequent to the time the animal is impounded or otherwise taken into possession, have manifested no sign of a behavioral or temperamental defect that could pose a health or safety risk or otherwise make the animal unsuitable for placement as a pet, and have manifested no sign of disease, injury, or congenital or hereditary condition that adversely affects the health of the animal or that is likely to adversely affect the animal's health in the future.

(b) It is the policy of the state that no treatable animal should be euthanized. A treatable animal shall include any animal that is not adoptable but that could become adoptable with reasonable efforts. This subdivision, by itself, shall not be the basis of liability for damages regarding euthanasia.

PC 599e. Destroying Unfit Animal After Notice by Specified Officers

Every animal which is unfit, by reason of its physical condition, for the purpose for which such animals are usually employed, and when there is no reasonable probability of such animal ever becoming fit for the purpose for which it is usually employed, shall be by the owner or lawful possessor of the same, deprived of life within 12 hours after being notified by any peace officer, officer of said society, or employee of a pound or animal regulation department of a public agency who is a veterinarian, to kill the same, and such owner, possessor, or person omitting or refusing to comply with the provisions of this section shall, upon conviction, be deemed guilty of a misdemeanor, and after such conviction the court or magistrate having jurisdiction of such offense shall order any peace officer, officer of said society, or officer of a pound or animal regulation department of a public agency, to immediately kill such animal;

provided, that this shall not apply to such owner keeping any old or diseased animal belonging to him on his own premises with proper care.

PC 599f. Nonambulatory Animals; Receipt and Treatment by Stockyards, Etc.

(a) No slaughterhouse that is not inspected by the United States Department of Agriculture, stockyard, or auction shall buy, sell, or receive a nonambulatory animal.

(b) No slaughterhouse, stockyard, auction, market agency, or dealer shall hold a nonambulatory animal without taking immediate action to humanely euthanize the animal or remove the animal from the premises.

(c) While in transit or on the premises of a stockyard, auction, market agency, dealer, or slaughterhouse, a nonambulatory animal may not be dragged at any time, or pushed with equipment at any time, but shall be moved with a sling or on a stoneboat or other sled-like or wheeled conveyance.

(d) A violation of this section is a misdemeanor.

(e) As used in this section, "nonambulatory" means unable to stand and walk without assistance.

(f) As used in this section, "animal" means live cattle, swine, sheep, or goats.

(g) As used in this section, "humanely euthanized" means to kill by a mechanical, chemical, or electrical method that rapidly and effectively renders the animal insensitive to pain.

PC 600. Harming, Interfering With or Obstructing Peace Officer's Horse or Dog

(a) Any person who willfully and maliciously and with no legal justification strikes, beats, kicks, cuts, stabs, shoots with a firearm, administers any poison or other harmful or stupefying substance to, or throws, hurls, or projects at, or places any rock, object, or other substance which is used in such a manner as to be capable of producing injury and likely to produce injury, on or in the path of, any horse being used by, or any dog under the supervision of, any peace officer in the discharge or attempted discharge of his or her duties, is guilty of a public offense. If the injury inflicted is a serious injury, as defined in subdivision (c), the person shall be punished by imprisonment in the state prison for 16 months, two or three years, or in a county jail for not exceeding one year, or by a fine not exceeding two thousand dollars (\$2,000), or by both a fine and imprisonment.

If the injury inflicted is not a serious injury, the person shall be punished by imprisonment in the county jail for not exceeding one year, or by a fine not exceeding one thousand dollars (\$1,000), or by both a fine and imprisonment.

(b) Any person who willfully and maliciously and with no legal justification interferes with or obstructs any horse or dog being used by any peace officer in the discharge or attempted discharge of his or her duties by frightening, teasing, agitating, harassing, or hindering the horse or dog shall be punished by imprisonment in a county jail for not exceeding one year, or by a fine not exceeding one thousand dollars (\$1,000), or by both a fine and imprisonment.

(c) Any person who, in violation of this section, and with intent to inflict such injury or death, personally causes the death, destruction, or serious physical injury including bone fracture, loss or impairment of function of any bodily member, wounds requiring extensive suturing, or serious crippling, of any horse or dog, shall, upon conviction of a felony under this section, in addition and consecutive to the punishment prescribed for the felony, be punished by an additional term of imprisonment in the state prison for one year.

(d) Any person who, in violation of this section, and with the intent to inflict such injury, personally causes great bodily injury, as defined in Section 12022.7, to any person not an accomplice, shall, upon conviction of a felony under this section, in addition and consecutive to the punishment prescribed for the felony, be punished by an additional term of imprisonment in the state prison for two years unless the conduct described in this subdivision is an element of any other offense of which the person is convicted or receives an enhancement under Section 12022.7.

(e) In any case in which a defendant is convicted of a violation of this section, the defendant shall be ordered to make restitution to the agency owning the animal and employing the peace officer for any

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veterinary bills, replacement costs of the animal if it is disabled or killed, and the salary of the peace officer for the period of time his or her services are lost to the agency.

PC 600.2. Allow Dog To Injure or Kill Guide, Signal, or Service Dog While In Discharge of Duties

(a) It is a crime for any person to permit any dog which is owned, harbored, or controlled by him or her to cause injury to or the death of any guide, signal, or service dog, as defined by Section 54.1 of the Civil Code, while the guide, signal, or service dog is in discharge of its duties.

(b) A violation of this section is an infraction punishable by a fine not to exceed two hundred fifty dollars (\$250) if the injury or death to any guide, signal, or service dog is caused by the person's failure to exercise ordinary care in the control of his or her dog.

(c) A violation of this section is a misdemeanor if the injury or death to any guide, signal, or service dog is caused by the person's reckless disregard in the exercise of control over his or her dog, under circumstances that constitute such a departure from the conduct of a reasonable person as to be incompatible with a proper regard for the safety and life of any guide, signal, or service dog. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year, or by a fine of not less than two thousand five hundred dollars (\$2,500) nor more than five thousand dollars (\$5,000), or both. The court shall consider the costs ordered pursuant to subdivision (d) when determining the amount of any fines.

(d) In any case in which a defendant is convicted of a violation of this section, the defendant shall be ordered to make restitution to the person with a disability who has custody or ownership of the guide, signal, or service dog for any veterinary bills and replacement costs of the dog if it is disabled or killed, or other reasonable costs deemed appropriate by the court. The costs ordered pursuant to this subdivision shall be paid prior to any fines.

PC 600.5. Cause Injury or Death of Guide, Signal, or Service Dog

(a) Any person who intentionally causes injury to or the death of any guide, signal, or service dog, as defined by Section 54.1 of the Civil Code, while the dog is in discharge of its duties, is guilty of a misdemeanor, punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both a fine and imprisonment. The court shall consider the costs ordered pursuant to subdivision (b) when determining the amount of any fines.

(b) In any case in which a defendant is convicted of a violation of this section, the defendant shall be ordered to make restitution to the person with a disability who has custody or ownership of the dog for any veterinary bills and replacement costs of the dog if it is disabled or killed, or other reasonable costs deemed appropriate by the court. The costs ordered pursuant to this subdivision shall be paid prior to any fines.

PC 653o. Unlawful Import of Dead Animals for Commercial Purposes

*(a) It is unlawful to import into this state for commercial purposes, to possess with intent to sell, or to sell within the state, the dead body, or any part or product thereof, of any alligator, crocodile, polar bear, leopard, ocelot, tiger, cheetah, jaguar, sable antelope, wolf (*Canis lupus*), zebra, whale, cobra, python, sea turtle, colobus monkey, kangaroo, vicuna, sea otter, free-roaming feral horse, dolphin or porpoise (*Delphinidae*), Spanish lynx, or elephant.*

Any person who violates any provision of this section is guilty of a misdemeanor and shall be subject to a fine of not less than one thousand dollars (\$1,000) and not to exceed five thousand dollars (\$5,000) or imprisonment in the county jail for not to exceed six months, or both such fine and imprisonment, for each violation.

The prohibitions against importation for commercial purposes, possession with intent to sell, and sale of the species listed in this section are severable. A finding of the invalidity of any one or more prohibitions shall not affect the validity of any remaining prohibitions.

PC 653p. Unlawful Possession With Intent to Sell Dead Animals

It is unlawful to possess with the intent to sell, or to sell, within the state, the dead body, or any part or product thereof, of any species or subspecies of any fish, bird, mammal, amphibian, reptile, mollusk, invertebrate, or plant, the importation of which is illegal under the Federal Endangered Species Act of 1973 (Title 16, United States Code Sec. 1531 et seq.) and subsequent amendments, or under the Marine Mammal Protection Act of 1972 (Title 16, United States Code Sec. 1361 et seq.), or which is listed in the Federal Register by the Secretary of the Interior pursuant to the above acts. The violation of any federal regulations adopted pursuant to the above acts shall also be deemed a violation of this section and shall be prosecuted by the appropriate state or local officials.

PC 653q. Importation, Possession of Dead Seals for Commerce

It is unlawful to import into this state for commercial purposes, to possess with intent to sell, or to sell within the state, the dead body, or any part or product thereof, of any seal. Any person who violates any provision of this section is guilty of a misdemeanor and shall be subject to a fine of not less than one thousand dollars (\$1,000) and not to exceed five thousand dollars (\$5,000) or imprisonment in the county jail for not to exceed six months, or both such fine and imprisonment, for each violation.

PC 653r. Possession With Intent to Sell Dead Animals or Products

Notwithstanding the provisions of Section 3 of Chapter 1557 of the Statutes of 1970, it shall be unlawful to possess with intent to sell, or to sell, within this state, after June 1, 1972, the dead body, or any part or product thereof, of any fish, bird, amphibian, reptile, or mammal specified in Section 653o or 653p.

PC 374d Leaving Carcass of Dead Animal on Highway

Every person who knowingly allows the carcass of any dead animal which belonged to him at the time of its death to be put, or to remain, within 100 feet of any street, alley, public highway, or road in common use, and every person who puts the carcass of any dead animal within 100 feet of any street, alley, highway, or road in common use is guilty of a misdemeanor.

F&G 2118. Unlawful To Import, Etc. Specified Wild Animals; Exception

It is unlawful to import, transport, possess, or release alive into this state, except under a revocable, nontransferable permit as provided in this chapter and the regulations pertaining thereto, any wild animal of the following species:

(a) Class Aves: (birds)

Family Cuculidae (cuckoos) All species.

*Family Alaudidae (larks) Skylark, *Alauda arvensis**

*Family Corvidae (crows, jays, magpies) All species. Family Turdidae (thrushes) European blackbird, *Turdus merula* Missel (or mistle), thrush, *Turdus viscivorus**

*Family Sturnidae (starlings and mynas or mynahs) All species of the family, except hill myna (or hill mynah), *Gracula religiosa* (sometimes referred to as *Eulabes religiosa*)*

*Family Ploceidae (weavers) The following species: Spanish sparrow, *Passer hispaniolensis*; Italian sparrow, *Passer italiae*; European tree sparrow, *Passer montanus*; Cape sparrow, *Passer capensis*; Madagascar weaver, *Foudia madagascariensis*; Baya weaver, *Ploceus baya*; Hawaiian rice bird, *Munia nitoria*; Red-billed quelea, *Quelea quelea*; Red-headed quelea, *Quelea erythrops**

*Family Fringillidae (sparrows, finches, buntings) Yellowhammer, *Emberiza citrinella**

*(b) Class Mammalia (mammals) Order Primates All species except those in family Hominidae
Order Edentata (sloths, anteaters, armadillos, etc.) All species.*

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Order Marsupialia (marsupials or pouched mammals) All species.

Order Insectivora (shrews, moles, hedgehogs, etc.) All species.

Order Dermoptera (gliding lemurs) All species.

Order Chiroptera (bats) All species.

Order Monotremata (spiny anteaters, platypuses) All species. der Pholidota (pangolins, scaly anteaters)

All species.

Order Lagomorpha (pikas, rabbits, hares) All species, except domesticated races of rabbits.

Order Rodentia (rodents) All species, except domesticated golden hamsters, also known as Syrian hamster, Mesocricetus auratus; domesticated races of rats or mice (white or albino; trained, dancing or spinning, laboratory-reared); and domestic strains of guinea pig (Cavia porcellus).

Order Carnivora (carnivores) All species, except domestic dogs (Canis familiaris) and domestic cats (Felis catus). Order Tubulidentata (aardvarks) All species.

Order Proboscidea (elephants) All species.

Order Hyracoidea (hyraxes) All species.

Order Sirenia (dugongs, manatees) All species.

Order Perissodactyla (horses, zebras, tapirs, rhinoceroses, etc.) All species except those of the family Equidae.

Order Artiodactyla (swine, peccaries, camels, deer, elk, except elk (genus Cervus) which are subject to Section 2118.2, moose, antelopes, cattle, goats, sheep, etc.) All species except: domestic swine of the family Suidae; American bison, and domestic cattle, sheep and goats of the family Bovidae; races of big-horned sheep (Ovis canadensis) now or formerly indigenous to this state. Mammals of the orders Primates, Edentata, Dermoptera, Monotremata, Pholidota, Tubulidentata, Proboscidea, Perissodactyla, Hyracoidea, Sirenia and Carnivora are restricted for the welfare of the animals, except animals of the families Viverridae and Mustelidae in the order Carnivora are restricted because such animals are undesirable and a menace to native wildlife, the agricultural interests of the state, or to the public health or safety.

(c) Class amphibia (frogs, toads, salamanders)

Family Bufonidae (toads) Giant toad or marine toad, Bufo marinus

(d) Class Monorhina (lampreys) All species.

(e) Class Osteichthyes (bony fishes)

Family Serranidae (bass) White perch, Morone or Roccus americana

Family Clupeidae (herring) Gizzard shad, Dorosoma cepedianum

Family Sciaenidae (croakers) Freshwater sheepshead, Aplodinotus grunniens

Family Characidae (characins) Banded tetra, Astyanax fasciatus; All species of piranhas

Family Lepisosteidae (gars) All species.

Family Amiidae (bowfins) All species.

(f) Class Reptilia (snakes, lizards, turtles, alligators)

Family Crocodilidae All species.

(g) Class Crustacea (crustaceans)

Genus Cambarus (crayfishes) All species.

Genus Astacus (crayfishes) All species.

Genus Astacopsis (crayfishes) All species.

(h) Class Gastropoda (slugs, snails, clams)

All species of slugs. All species of land snails.

(i) Other classes, orders, families, genera, and species of wild animals which may be designated by the commission in cooperation with the Department of Food and Agriculture, (1) when the class, order, family, genus, or species is proven to be undesirable and a menace to native wildlife or the agricultural interests of the state, or (2) to provide for the welfare of wild animals.

(j) Except as expressly authorized in this code, any live nonindigenous Atlantic salmon or the roe thereof into the Smith River watershed.

(k) Classes, families, genera, and species in addition to those listed in this section may be added to or deleted from the above lists from time to time by commission regulations in cooperation with the Department of Food and Agriculture.

F&G 2118.2. Unlawful To Import Elk - Exceptions

Except as provided in Section 1007, it is unlawful to import any elk (genus Cervus) into this state. The department may import elk pursuant to Section 1007, if prior to such importation, the department issues written findings justifying the need for and explaining the purpose of the importation.

F&G 2118.3. Elk Horn or Antler - Removal For Commercial Purposes Unlawful

No part of any elk horn or antler shall be removed from any live elk for commercial purposes.

F&G 2118.4. Seizure of Imported Elk

The department shall seize any elk imported in violation of Section 2118.2.

(Added by Statutes 1979 Chap. 1074)

F&G 2118.5. Designation of Wild Animal Possession

The commission may designate wild animals which may be possessed without a permit.

F&G 2119. Prohibited Animals - Publication of List

The Department of Fish and Game shall publish from time to time as changes arise, a list of animals which may not be imported or transported into this State.

F&G 2121. Permit Release or Escape of Wild Animals

No person having possession or control over any wild animal legally imported under the provisions of this chapter shall intentionally free, or knowingly permit the escape, or release of such animals, except in accordance with the regulations of the commission.

F&G 2193. Escape or Release of Wild Animal; Reporting Requirements

(a) Every person who holds a permit issued pursuant to Section 2150 shall immediately report by telephone the intentional or unintentional escape or release of the wild animal, to the department and the nearest enforcing officer of the city or county in which the wild animal was released or escaped. The permit holder shall be liable for all expenses associated with efforts to recapture the wild animal. For the purposes of this subdivision, the exhibition of a wild animal on a movie set, film set, television set, still photography set, or any other professional activity allowable under a permit issued pursuant to Section 2150, does not constitute an intentional or unintentional escape or release of the wild animal unless the person exhibiting the wild animal has lost control of the wild animal.

(b) The commission shall promulgate regulations establishing the criteria for permit holders to notify the department prior to taking possession of or transferring an animal and upon the death of an animal.

(c) These regulations shall be developed and adopted by the commission on or before January 1, 2007.

F&G 2225. Transportation of Game Birds

Except as otherwise provided, it is unlawful for any common carrier to transport any live protected nongame bird or any live resident or migratory game bird for which there is no open season.

F&G 2250. Muskrats; Import, Transport or Possess

It is unlawful to import or transport into or possess any live muskrat (genus Ondatra) in California

F&G 2270. Import From Infected or Diseased Area Prohibited

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It is unlawful for any person to receive, bring, or cause to be brought into this state, for the purpose of propagation, any fish, reptile, amphibian, or aquatic plant from any place wherein any infected, diseased, or parasitized fish, reptile, amphibia, or aquatic plants are known to exist.

Review Questions

1. Under what circumstances would indecent exposure be a felony?
2. How could “loitering” be linked to prostitution?
3. Is being “homeless” or a “transient” a crime?
4. How has community policing affected quality of life crimes?
5. Compare and contrast the differences between obscenity and harmful matter?
6. Under what circumstances would “simulated sexual conduct” be illegal?
7. How could a gang drive by shooting lead to the death penalty in California?
8. What do you think about “victimless” crimes? If your family suffers because you are an alcoholic or drug addict, lose your money gambling, view child porn, get a STD from a prostitute, or you cannot work, pay the bills, etc., because of your own acts, is it still “ok” in your book?

Web Resources:

- COPS – Office of Community Oriented Policing Services <http://www.cops.usdoj.gov/>
- Problem Oriented Policing: <http://www.popcenter.org/>
- Broken Windows, by George L. Kelling and James Q. Wilson, *The Atlantic Monthly* March 1982
Access on-line at: <http://www.theatlantic.com/doc/prem/198203/broken-windows>
- Scott, Michael (2000) *Problem-Oriented Policing: Reflections on the First 20 Years*, Office of Community-Oriented Policing Services, U.S. Department of Justice, Grant #98CKWXK052.
http://www.popcenter.org/library-recommended_readings.htm#
- Animal Law Info: <http://www.animallaw.info/policy/popleadings.htm>
- http://elephant.elehost.com/News/General_News/About_Circuses/about_circuses.html
- Humane Society of the U.S.: <http://www.hsus.org/>
- *Kolender v. Lawson*, 461 U.S. 352 (1983) <http://laws.findlaw.com/us/461/352.html>

Case Study #1: Kolender v. Lawson (1983) , 461 U.S. 352 (1983)

Discussion Question: Do you think this should limit the police in their ability to “check out” suspicious people? Why do you think the legislature or Attorney General has not seen to remove the section from the Penal Code? And, why is the one bringing this forward to the Supreme Court, were the police and not Mr. Lawson?

Facts

Appellee Edward Lawson was detained or arrested on approximately 15 occasions between March 1975 and January 1977 pursuant to Cal. Penal Code Ann. 647(e) (West 1970). Lawson was prosecuted only twice, and was convicted once. The second charge was dismissed.

Lawson then brought a civil action in the District Court for the Southern District of California seeking a declaratory judgment that 647(e) is unconstitutional, a mandatory injunction to restrain enforcement of the statute, and compensatory and punitive damages against the various officers who detained him. The District Court found that 647(e) was overbroad because "a person who is stopped on less than probable cause cannot be punished for failing to identify himself." App. to Juris. Statement A-78. The District Court enjoined enforcement of the statute, but held that Lawson could not recover damages because the officers involved acted in the good-faith belief that each detention or arrest was lawful.

Appellant H. A. Porazzo, Deputy Chief Commander of the California Highway Patrol, appealed the District Court decision to the Court of Appeals for the Ninth Circuit. Lawson [461 U.S. 352, 355] cross-appealed, arguing that he was entitled to a jury trial on the issue of damages against the officers. The Court of Appeals affirmed the District Court determination as to the unconstitutionality of 647(e). 658 F.2d 1362 (1981). The appellate court determined that the statute was unconstitutional in that it violates the Fourth Amendment's proscription against unreasonable searches and seizures, it contains a vague enforcement standard that is susceptible to arbitrary enforcement, and it fails to give fair and adequate notice of the type of conduct prohibited. Finally, the Court of Appeals reversed the District Court as to its holding that Lawson was not entitled to a jury trial to determine the good faith of the officers in his damages action against them, and remanded the case to the District Court for trial.

A California statute (PC 647(e)) requires persons who loiter or wander on the streets to identify themselves and to account for their presence when requested by a peace officer. The California Court of Appeal has construed the statute to require a person to provide "credible and reliable" identification when requested by a police officer who has reasonable suspicion of criminal activity sufficient to justify a stop under the standards of Terry v. Ohio, 392 U.S. 1. The California court has defined "credible and reliable" identification as "carrying reasonable assurance that the identification is authentic and providing means for later getting in touch with the person who has identified himself." Appellee, who had been arrested and convicted under the statute, brought an action in Federal District Court challenging the statute's constitutionality. The District Court held the statute unconstitutional and enjoined its enforcement, and the Court of Appeals affirmed.

Issue

This appeal presents a facial challenge to a criminal statute that requires persons who loiter or wander on the streets to provide a "credible and reliable" identification and to account for their presence when requested by a peace officer under circumstances that would justify a stop under the standards of Terry v. Ohio, 392 U.S. 1 (1968). We conclude that the statute as it has been construed is unconstitutionally vague within the meaning of the Due Process Clause of the Fourteenth Amendment by failing to clarify what is contemplated [461 U.S. 352, 354] by the requirement that a suspect provide a "credible and reliable" identification. Accordingly, we affirm the judgment of the court below.

The officers appealed to this Court from that portion of the judgment of the Court of Appeals which declared 647(e) unconstitutional and which enjoined its enforcement. We noted probable jurisdiction pursuant to 28 U.S.C. 1254(2). 455 U.S. 999 (1982).

In the courts below, Lawson mounted an attack on the facial validity of 647(e). In evaluating a facial challenge to a state law, a federal court must, of course, consider any limiting construction that a state court or enforcement agency has proffered." *Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494, n. 5 (1982). As construed by the California Court of Appeal, 647(e) requires that an individual [461 U.S. 352, 356] provide "credible and reliable" identification when requested by a police officer who has reasonable suspicion of criminal activity sufficient to justify a Terry detention. *People v. Solomon*, 33 Cal. App. 3d 429, 108 Cal. Rptr. 867 [461 U.S. 352, 357] (1973). "Credible and reliable" identification is defined by the State Court of Appeal as identification "carrying reasonable assurance that the identification is authentic and providing means for later getting in touch with the person who has identified himself." *Id.*, at 438, 108 Cal. Rptr., at 873. In addition, a suspect may be required to "account for his presence . . . to the extent that it assists in producing credible and reliable identification . . ." *Id.*, at 438, 108 Cal. Rptr., at 872. Under the terms of the statute, failure of the individual to provide "credible and reliable" identification permits the arrest

Our Constitution is designed to maximize individual freedoms within a framework of ordered liberty. Statutory limitations on those freedoms are examined for substantive authority and content as well as for definiteness or certainty of expression. See generally *M. Bassiouni, Substantive Criminal Law 53* (1978). As generally stated, the void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement. *Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, *supra*; *Smith v. Goguen*, 415 U.S. 566 (1974); *Grayned v. City of Rockford*, 408 U.S. 104 (1972); *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972); *Connally v. General Construction Co.*, 269 U.S. 385 (1926). Although the doctrine focuses [461 U.S. 352, 358] both on actual notice to citizens and arbitrary enforcement, we have recognized recently that the more important aspect of the vagueness doctrine "is not actual notice, but the other principal element of the doctrine - the requirement that a legislature establish minimal guidelines to govern law enforcement." *Smith*, 415 U.S., at 574. Where the legislature fails to provide such minimal guidelines, a criminal statute may permit "a standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal predilections." *Id.*, at 575.

Section 647(e), as presently drafted and as construed by the state courts, contains no standard for determining what a suspect has to do in order to satisfy the requirement to provide a "credible and reliable" identification. As such, the statute vests virtually complete discretion in the hands of the police to determine whether the suspect has satisfied the statute and must be permitted to go on his way in the absence of probable cause to arrest. An individual, whom police may think is suspicious but do not have probable cause to believe has committed a crime, is entitled to continue to walk the public streets "only at the whim of any police officer" who happens to stop that individual under 647(e). *Shuttlesworth v. City of Birmingham*, 382 U.S. 87, 90 (1965). Our concern here is based upon the "potential for arbitrarily suppressing First Amendment liberties . . ." *Id.*, at 91. In addition, 647(e) implicates consideration of the constitutional right to freedom of movement. See *Kent v. Dulles*, 357 U.S. 116, 126 (1958); *Aptheker v. Secretary of State*, 378 U.S. 500, 505-506 (1964). [461 U.S. 352, 359] Section 647(e) is not simply a "stop-and-identify" statute. Rather, the statute requires that the individual provide a "credible and reliable" identification that carries a "reasonable assurance" of its authenticity, and that provides "means for later getting in touch with the person who has identified himself." *Solomon*, 33 Cal. App. 3d, at 438, 108 Cal. Rptr., at 872-873. In addition, the suspect may also have to account for his presence "to the extent it assists in producing [461 U.S. 352, 360] credible and reliable identification." *Id.*, at 438, 108 Cal. Rptr., at 872.

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At oral argument, the appellants confirmed that a suspect violates 647(e) unless "the officer [is] satisfied that the identification is reliable." Tr. of Oral Arg. 6. In giving examples of how suspects would satisfy the requirement, appellants explained that a jogger, who was not carrying identification, could, depending on the particular officer, be required to answer a series of questions concerning the route that he followed to arrive at the place where the officers detained him, or could satisfy the identification requirement simply by reciting his name and address. See *id.*, at 6-10.

It is clear that the full discretion accorded to the police to determine whether the suspect has provided a "credible and reliable" identification necessarily "entrust[s] lawmaking to the moment-to-moment judgment of the policeman on his beat." *Smith, supra*, at 575 (quoting *Gregory v. Chicago*, 394 U.S. 111, 120 (1969) (Black, J., concurring)). Section 647(e) "furnishes a convenient tool for `harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure,'" *Papachristou*, 405 U.S., at 170 (quoting *Thornhill v. Alabama*, 310 U.S. 88, 97-98 (1940)), and "confers on police a virtually unrestrained power to arrest and charge persons with a violation." *Lewis v. City of New Orleans*

415 U.S. 130, 135 (1974) (POWELL, J., concurring in result). In providing that a detention under 647(e) may occur only where there is the level of suspicion sufficient to justify a Terry stop, the State ensures the existence of "neutral limitations on the conduct of individual officers." *Brown v. Texas*, 443 Page 361 U.S., at 51. Although the initial detention is justified, the State fails to establish standards by which the officers may determine whether the suspect has complied with the subsequent identification requirement.

Appellants stress the need for strengthened law enforcement tools to combat the epidemic of crime that plagues our Nation. The concern of our citizens with curbing criminal activity is certainly a matter requiring the attention of all branches of government. As weighty as this concern is, however, it cannot justify legislation that would otherwise fail to meet constitutional standards for definiteness and clarity. See *Lanzetta v. New Jersey*, 306 U.S. 451 (1939). Section 647(e), as presently construed, requires that "suspicious" persons satisfy some undefined identification requirement, or face criminal punishment. Although due process does not require "impossible standards" of clarity, see *United States v. Petrillo*, 332 U.S. 1, 7-8 (1947), this is not a case where further precision in the statutory language is either impossible or impractical.

Held

The statute, as drafted and as construed by the state court, is unconstitutionally vague on its face within the meaning of the Due Process Clause of the Fourteenth Amendment by failing to clarify what is contemplated by the requirement that a suspect provide a "credible and reliable" identification. As such, the statute vests virtually complete discretion in the hands of the police to determine whether the suspect has satisfied the statute and must be permitted to go on his way in the absence of probable cause to arrest

We conclude 647(e) is unconstitutionally vague on its face because it encourages arbitrary enforcement by failing to describe with sufficient particularity what a suspect must do in order to satisfy the statute. Accordingly, the judgment of [461 U.S. 352, 362] the Court of Appeals is affirmed, and the case is remanded for further proceedings consistent with this opinion.

Case Study #2: P. v. Pulliam, 62 Cal. App. 4th 1430 (1998)

Discussion Question: In this case, do you agree that the defendant, Sherrie Lynn Pulliam, a prostitute, should have been convicted despite the fact she had not yet had an opportunity to engage in her profession?

FACTS

On November 12, 1996, Officer Steveson received a radio call around 10:30 p.m. reporting prostitutes **loitering** on Roosevelt Avenue in National City. As Steveson approached the area in his patrol car he saw Sherrie Lynn Pulliam standing on the sidewalk waving her arms toward a passing vehicle. She was wearing a black tight-fitting miniskirt and a jacket partially unzipped to reveal the inner portions of her breasts.

Pulliam was standing on a street within a five-block area known for prostitution activity. There were open businesses and houses in the five-block area. During the 15 to 20 seconds that Steveson watched Pulliam she did not walk toward or away from any of the open businesses or houses.

After watching Pulliam for 15 to 20 seconds, Steveson approached and asked her what she was doing. Pulliam replied she was there to engage in prostitution but had just arrived and had made no money that night. Pulliam was arrested, tried and convicted for violating section 653.22.

The jury found appellant Sherrie Lynn Pulliam (Pulliam) guilty of **loitering** in a public place with intent to commit an act of prostitution in violation of Penal Code n1 section 653.22. Pulliam's sole contention on appeal is that section 653.22 is unconstitutional because it is vague and overbroad

Issues

Pulliam challenges the constitutionality of section 653.22, which provides: "(a) It is unlawful for any person to loiter in any public place with the intent to commit prostitution. This intent is evidenced by acting in a manner and under circumstances which openly demonstrate the purpose of inducing, enticing, or soliciting prostitution, or procuring another to commit prostitution."

Subdivision (b) of section 653.22 specifies a nonexclusive list of circumstances that may be considered to determine whether a person loiters with the requisite intent. Subdivision (c) of that section states the factors listed in subdivision (b) are "particularly salient if they occur in an area that is known for prostitution activity" but permits consideration of all relevant circumstances to determine whether a person has the requisite intent. THE VAGUENESS CLAIM

(1) A penal statute must sufficiently delineate the proscribed conduct to enable an ordinary person of common intelligence to understand what conduct is prohibited and to discourage arbitrary and discriminatory enforcement. (*Kolender v. Lawson* (1983) 461 U.S. 352, 357 [103 S. Ct. 1855, 1858, 75 L. Ed. 2d 903] (hereafter *Kolender*).) As the court in *Tobe v. City of Santa Ana* (1995) 9 Cal. 4th 1069 [40 Cal. Rptr. 2d 402, 892 P.2d 1145] explained: "To satisfy the constitutional command, a statute must meet two basic requirements: (1) The statute must be sufficiently definite to provide adequate notice of the conduct proscribed; and (2) the statute must provide sufficiently definite guidelines for the police in order to prevent arbitrary and discriminatory enforcement. [Citations.] Only a reasonable degree of certainty is required, however. [Citation.] . . . ' . . . A statute should be sufficiently certain so that a person may know what is prohibited thereby and what may be done without violating its provisions, but it cannot be held void for uncertainty if any reasonable and practical construction can be given to its language.' " (*Tobe v. City of Santa Ana*, *supra*, at pp. 1106-1107, quoting *Walker v. Superior Court* (1988) 47 Cal. 3d 112, 143 [253 Cal. Rptr. 1, 763 P.2d 852].)

Therefore, section 653.22 satisfies due process if it provides adequate notice to citizens of the

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proscribed conduct and guidelines to permit nonarbitrary enforcement.

A. Adequate Notice of the Proscribed Activity

(2) We are convinced section 653.22 provides sufficient notice of the prohibited conduct. Section 653.22 prohibits **loitering** with the specific intent to commit prostitution. A substantively identical statute, which prohibited "loiter[ing] . . . for the purpose of engaging in or soliciting any lewd or lascivious or any unlawful act" (§ 647, subd. (d)), was found constitutional in *People v. Superior Court (Caswell)* (1988) 46 Cal. 3d 381, 390 [250 Cal. Rptr. 515, 758 P.2d 1046] (hereafter *Caswell*). The *Caswell* court first held the "adequate notice" test was satisfied. It concluded the term "**loitering**" was not impermissibly indefinite (*ibid.*), and Pulliam concedes this term does not make section 653.22 vague. *Caswell* also concluded the requirement that the loiterer possess a described specific intent bolstered the adequacy of notice because "[p]ersons of ordinary intelligence need not guess at the applicability of the section; so long as they do not linger for the proscribed purpose, they have not violated the statute." (46 Cal. 3d at p. 391.)

Section 653.22 is narrower and more precise than the statute considered in *Caswell*. The specific intent required in the statute considered in *Caswell* was the intent to engage in "any lewd or lascivious or any unlawful act" (§ 647, subd. (d)), a more amorphous intent than the intent of section 653.22 to commit prostitution. A comparison of the statute considered in *Caswell* with section 653.22 convinces us the adequate notice of proscribed conduct test for due process is satisfied.

B. Adequate Enforcement Guidelines

Pulliam relies on *Kolender, supra*, 461 U.S. 352 to contend the absence from section 653.22 of sufficient guidelines circumscribing law enforcement's determination of what conduct violates the statute creates a risk that innocent conduct will be punished. Pulliam argues the inclusion in section 653.22, subdivision (b) of innocent overt acts as indicia of the intent to commit prostitution exposes citizens to arrest and conviction for innocent conduct.

Substantially similar arguments to those raised by Pulliam were rejected by *Caswell*. *Caswell* began its adequate-guidelines analysis by distinguishing *Kolender*. The statute considered in *Kolender*, as construed by the courts, was violated if a person failed to produce "credible and reliable" identification when stopped by police. *Kolender* concluded the statute was invalid because it "contains no standard for determining what a suspect has to do in order to satisfy the requirement to provide a 'credible and reliable' identification. . . . [T]he statute [therefore] vests virtually complete discretion in the hands of the police to determine whether the suspect has satisfied the statute" (*Kolender, supra*, 461 U.S. at p 358 [103 S. Ct. at p. 1858].) Because of the absence of adequate guidelines, *Kolender* concluded, "full discretion [is] accorded to the police to determine whether the suspect has provided a 'credible and reliable' identification [which] necessarily 'entrust[s] lawmaking "to the moment-to-moment judgment of the policeman on his beat." ' [Citations.]" (*Kolender, supra*, at p. 360 [103 S. Ct. at pp. 1859-1860].)

Caswell held there were significant differences between the statute considered in *Kolender* and the one considered in *Caswell*. *Caswell* concluded the portion of the statute considered in *Kolender* which was fatal to the adequate-guidelines test stated the **loitering** individual was required to provide "credible and reliable" identification and his failure to provide credible and reliable identification made him guilty of a crime. *Caswell* stated:

"Because the statute [considered in *Kolender*], even with the judicial gloss, contained 'no standard

for determining what a suspect ha[d] to do to satisfy the requirement to provide a "credible and reliable" identification' (*Kolender, supra*, 461 U.S. at p. 358 [75 L. Ed. 2d at p. 909]), the *Kolender* court concluded that the provision effectively made the very definition of the crime subject to the personal standards of each individual law enforcement officer.

"By contrast, section 647(d) vests no such discretion with law enforcement. The essence of this provision is **loitering** in a certain place while entertaining a specified criminal intent. . . . A person is subject to arrest under the provision only if his or her conduct gives rise to probable cause to believe that he or she is **loitering** in or about a public restroom with the proscribed illicit intent." (*Caswell, supra*, 46 Cal. 3d at p. 394.)

The constitutional vice of the statute considered in *Kolender* was that the definition of the crime--whether the identification produced was credible and reliable--was undefined and based entirely on the police officer's judgment of what would be deemed credible and reliable. In contrast, neither the statute considered in *Caswell* nor section 653.22 makes police the final arbiters of whether the crime has been committed. Instead, section 653.22 defines the elements of the offense, and it is for the trier of fact to determine whether the crime has been committed.

Pulliam argues that because section 653.22, subdivision (b) lists actions which by themselves are innocuous, the statute permits officers to arrest people for engaging in the listed actions even though they lack criminal intent. n4 Pulliam's argument is based on the assertion that section 653.22, subdivision (b) criminalizes the listed conduct. Pulliam misconstrues the statute. Section 653.22, subdivision (a) states the elements of the crime. Subdivision (b) of that section merely lists conduct that guides but is not dispositive of (§ 653.22, subd. (c)) whether the loiterer possessed the requisite intent. Pulliam does not convince us there is any constitutional vice to a statutory listing of circumstances which may be considered in deciding whether a loiterer has the requisite intent, particularly because of *Caswell's* statement that it can "readily envision numerous situations where noncriminal conduct may legitimately give rise to probable cause to believe an individual is in violation of [the **loitering** statute]." (*Caswell, supra*, 46 Cal. 3d at p. 395.)

Pulliam's claim that inclusion of the subdivision (b) criteria in section 653.22 undermines the constitutionality of that statute is also inconsistent with *Caswell's* statement that, although a listing of criteria is not required, a statute's "potential vagueness may be ameliorated by the express enumeration of observable behavior which can serve to guide police discretion [and] . . . if observed, give rise to a legitimate inference of the prohibited intent" (*Caswell, supra*, 46 Cal. 3d at pp. 400-401, fn. omitted.) Other states have held that statutes containing similar criteria satisfy due process requirements for adequate notice and adequate guidelines. (See *People v. Smith* (1978) 44 N.Y.2d 613 [407 N.Y.S.2d 462, 378 N.E.2d 1032] [rejecting claim that **loitering** with intent to commit prostitution law lacked adequate guidelines because listing of observable behavior limited police discretion]; *City of Akron v. Massey* (1978) 56 Ohio Misc. 22 [10 Ohio Op. 3d 216, 381 N.E.2d 1362] [same]; *City of Seattle v. Jones* (1971) 79 Wn.2d 626 [488 P.2d 750] [rejecting vagueness attack on "**loitering** with intent to commit prostitution" law, which contained nonexclusive list of observable behavior]; *Matter of D.* (1976) 27 Or.App. 861 [557 P.2d 687] [same]; *Short v. City of Birmingham* (Ala. Crim. App. 1981) 393 So.2d 518 ["**loitering** with intent to commit prostitution" statute containing nonexclusive list of observable behavior held to provide "adequate guidelines" limiting police discretion].)

The holding and reasoning of *Caswell*, which are consistent with the weight of authority in other states, n5 convince us section 653.22 gives adequate police enforcement guidelines as well as adequate notice of proscribed conduct to satisfy due process requirements.

THE OVERBREADTH CLAIM

(3a) Pulliam alternatively argues section 653.22 is facially overbroad. (4) A claim of overbreadth addresses statutes that punish both constitutionally protected conduct, such as conduct protected by the First Amendment, and which may validly be prohibited. (*People v. Antoine* (1996) 48 Cal. App. 4th 489, 495 [56 Cal. Rptr. 2d 530].) When a statute as written "sweeps in a substantial amount of constitutionally protected conduct . . . a more stringent vagueness test applies. [Citations.]" (*Tobe v. City of Santa Ana, supra*, 9 Cal. 4th at p. 1109.) A statute that on its face criminalizes both protected and unprotected conduct must narrowly be drawn to reach only unprotected conduct and to avoid penalizing protected speech. (*People v. Mirmirani* (1981) 30 Cal. 3d 375, 383 & fn. 7 [178 Cal. Rptr. 792, 636 P.2d 1130].)

Pulliam asserts that the more stringent overbreadth test applies because section 653.22 "reaches a substantial amount of constitutionally protected conduct." (*Hoffman Estates v. Flipside, Hoffman Estates* (1982) 455 U.S. 489, 494 [102 S. Ct. 1186, 1191, 71 L. Ed. 2d 362].) Pulliam argues section 653.22 criminalizes activities protected by the First Amendment because conviction under subdivision (b) of that section is possible if a person (1) loiters while repeatedly beckoning to, or engaging in conversations with, passersby to promote a political candidate; or (2) hails, engages, or attempts to engage, drivers of passing vehicles for that purpose.

(3b) We do not agree that section 653.22 criminalizes the conduct listed in its subdivision (b), and hence criminalizes a substantial amount of constitutionally protected conduct. The statute prohibits **loitering** with the intent to commit prostitution; it does not prohibit protected speech. n6 A statute may properly criminalize certain forms of conduct even though that conduct may be intertwined with speech or association. As the court explained in *Cox v. Louisiana* (1965) 379 U.S. 559, 563 [85 S. Ct. 476, 480, 13 L. Ed. 2d 487]: "The examples are many of the application by this Court of the principle that certain forms of conduct mixed with speech may be regulated or prohibited. The most classic of these was pointed out long ago by Mr. Justice Holmes: 'The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic.' [Quoting *Schenck v. United States* (1919) 249 U.S. 47, 52 [39 S. Ct. 247, 249, 63 L. Ed. 470].] A man may be punished for encouraging the commission of a crime, [citation], or for uttering 'fighting words,' [citation] . . . These authorities make it clear . . . that 'it has never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed.' [Quoting *Giboney v. Empire Storage & Ice Co.* (1949) 336 U.S. 490, 502 [69 S. Ct. 684, 691, 93 L. Ed. 834].]"

Criminal laws penalize conduct. If the conduct is permissibly prohibited under the state and federal Constitutions, the fact that the conduct may peripherally involve speech or association does not cloak it with constitutional protections that invalidate the criminal statute prohibiting the conduct. As aptly stated by *People v. Smith, supra*, 407 N.Y.S.2d at page 468: "That defendant may have employed language and the public streets to ply her trade does not imbue her conduct with the full panoply of First Amendment protections. On the contrary, the statute, by its terms, is limited to conduct 'for the purpose of prostitution . . .' --behavior which has never been a form of constitutionally protected free speech. [Citations.]"

Because section 653.22 criminalizes the conduct of **loitering** with intent to commit prostitution, which may constitutionally be prohibited, and does not on its face prohibit "a substantial amount of constitutionally protected conduct," section 653.22 is not overbroad.

Decision

The judgment is affirmed.

Answers to Review Questions

Chapter 15

1. Under what circumstances would indecent exposure be a felony?

*A. They would be felonies if... having entered, without consent, an **inhabited dwelling house, or trailer coach as defined in Section 635 of the Vehicle Code, or the inhabited portion of any other building**, is a ...felony... Upon **the second and each subsequent conviction** under subdivision 1 of this section, or upon a first conviction under subdivision 1 of this section after a previous conviction under Section 288, every person so convicted is guilty of a **felony***

2. How could “loitering” be linked to prostitution?

A. PC 653.22. Loitering for the Purpose of Engaging in a Prostitution Offense

(a) It is unlawful for any person to loiter in any public place with the intent to commit prostitution. This intent is evidenced by acting in a manner and under circumstances which openly demonstrate the purpose of inducing, enticing, or soliciting prostitution, or procuring another to commit prostitution.

(b) Among the circumstances that may be considered in determining whether a person loiters with the intent to commit prostitution are that the person:

(1) Repeatedly beckons to, stops, engages in conversations with, or attempts to stop or engage in conversations with passersby, indicative of soliciting for prostitution.

(2) Repeatedly stops or attempts to stop motor vehicles by hailing the drivers, waving arms, or making any other bodily gestures, or engages or attempts to engage the drivers or passengers of the motor vehicles in conversation, indicative of soliciting for prostitution.

(3) Has been convicted of violating this section, subdivision (a) or (b) of Section 647, or any other offense relating to or involving prostitution, within five years of the arrest under this section.

(4) Circles an area in a motor vehicle and repeatedly beckons to, contacts, or attempts to contact or stop pedestrians or other motorists, indicative of soliciting for prostitution.

(5) Has engaged, within six months prior to the arrest under this section, in any behavior described in this subdivision, with the exception of paragraph (3), or in any other behavior indicative of prostitution activity.

3. Is being “homeless” or a “transient” a crime?

A. No, it isn't a crime to be homeless or a transient.

4. How has community policing affected quality of life crimes?

A. if the police, the city or county government, and the community themselves do not take proactive steps to at least mitigate the effects of these offenses, the potential for the expansion of crime and resulting deterioration of the area is imminent. If neighborhood residents live in fear of crime and the criminal element is allowed to flourish, the police are forced into a reactive rather than a proactive mode. The virtual revitalization of policing efforts now known as Community Oriented Policing and Problem Oriented Policing, have been well established and are used nationally to fight the deteriorative effects of crime, drugs, and quality of life crimes.

5. Compare and contrast the differences between obscenity and harmful matter?

*A. Obscenity is **not** protected under the First Amendment. Child pornography is entitled to even less protection. In California law, there is a difference between “obscenity” and “harmful matter.” Obscene matter” means matter, taken as a whole, that to the average person, applying contemporary statewide standards, appeals to the prurient interest, that, taken as a whole, depicts or describes sexual*

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conduct in a patently offensive way, and that, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(1) If it appears from the nature of the matter or the circumstances of its dissemination, distribution, or exhibition that it is designed for clearly defined deviant sexual groups, the appeal of the matter shall be judged with reference to its intended recipient group.

6. Under what circumstances would “simulated sexual conduct” be illegal?

A. With children under the age of 18, in California.

7. How could a gang drive by shooting lead to the death penalty in California?

A. Because “drive bys” would be inclusive of murder with special circumstances, thus qualifying for the death penalty. PC 189. Murder

8. What do you think about “victimless” crimes? If your family suffers because you are an alcoholic or drug addict, lose your money gambling, view child porn, get a STD from a prostitute, or you cannot work, pay the bills, etc., because of your own acts, is it still “ok?” in your book?

A. Subjective answer.