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CALIFORNIA CRIMINAL LAW

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The Honorable
ALEX RICCIARDULLI

2025–2026 Edition

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Important Developments in this Edition

This edition features the following important developments:

New laws enacted by the Legislature, effective January 1, 2025, include the following:

- Creating the new crime of unlawful deprivation of a retail business opportunity, punishable as a felony or a misdemeanor (Penal Code § 496.6, enacted by AB 2943).
- Reinstating enhancements adding punishment for great takings in felony theft crimes which sunset in 2018 (Penal Code § 12022.6, enacted by AB 1960).
- Creating enhancements for selling, exchanging, or returning for value, or attempting to sell, exchange, or return for value, any property acquired through one or more acts of shoplifting, theft, or burglary from a retail business, if the property value exceeds specified amounts (Penal Code § 12022.10, enacted by SB 1416).
- Allowing the value of property stolen at different times to be aggregated to permit the charging of a felony when the loss exceeds \$950 (Penal Code § 487(e), enacted by AB 2943).
- Permitting multi-jurisdictional thefts to be prosecuted in a single county (Penal Code § 786.5(b), added by AB 1779).
- Creating the aggravating factor for sentencing when a person unlawfully causes a fire, when the crime is committed within a merchant's premises in order to facilitate organized retail theft (Penal Code § 452(f), enacted by SB 1242).
- Enacting the new offenses of unlawful entry of a vehicle, and automotive property theft for resale (Penal Code §§ 465 & 496.5, respectively, both enacted by SB 905).
- Deleting the 2026 sunset date for the offense of organized retail theft (Penal Code § 490.4, SB 982).
- The November 2024-enacted Proposition 36 contained some similar provisions to the Legislature's new bills, and it also added wholly new provisions. The proposition enacted laws that included:
 - Reinstating enhancements adding punishment for great takings, and allowing the value of property stolen at different times to be aggregated. (Penal Code § 12022.6; Penal Code § 490.3, respectively.)
 - Allowing persons who commit thefts after having two or more prior theft convictions to be punished by jail or prison (Penal Code § 666.1).

- Requiring persons convicted of crimes “involving a hard drug” to be given an advisement designed to give them notice that they could be charged with murder in the future if a drug crime causes a death to occur (Health & Safety Code § 11369).
- Creating a “Treatment-Mandated Felony,” authorizing a court to sentence a person to jail or prison when the person has two or more prior convictions for drug crimes and the person commits a new drug crime, but allowing the person to opt to be ordered to attend drug counseling instead (Health & Safety Code § 11395).

Several opinions dealing with various laws were issued this year, including:

- The California Supreme Court in *People v. Hin*, 17 Cal.5th 401, 551, 329 Cal.Rptr.3d 612, 563 P.3d 514 (2025), held that the kill zone theory of murder liability does not apply to victims which were not visible to a shooter.
- In *People v. Antonelli*, 17 Cal.5th 719, 721, 332 Cal.Rptr.3d 120, 567 P.3d 690 (2025), the California Supreme Court held that, because it was only in 2009 that *People v. Concha*, 47 Cal.4th 653, 101 Cal.Rptr.3d 141, 218 P.3d 660 (2009) determined that, to be convicted of provocative act murder, a defendant had to personally harbor malice, defendants with pre-*Concha* provocative act murder convictions are not categorically barred from seeking resentencing under Penal Code § 1172.6.
- The California Supreme Court in *People v. Emanuel*, 17 Cal. 5th 867, 875, 333 Cal. Rptr. 3d 1, 569 P.3d 372 (Cal. 2025), reversed the denial of a petition for resentencing under Penal Code § 1172.6, determining the evidence was insufficient to support a finding that the defendant acted with reckless indifference to human life.
- The Courts of Appeal in *People v. Gomez*, 110 Cal.App.5th 419, 424, 331 Cal.Rptr.3d 674 (2025), *People v. Anderson*, 104 Cal.App.5th 577, 582, 324 Cal.Rptr.3d 661 (2024), and *People v. Bey*, 108 Cal.App.5th 144, 150, 328 Cal.Rptr.3d 904 (2025), in post-*United States v. Rahimi*, 602 U.S. 680, 144 S.Ct. 1889, 1898, 219 L.Ed.2d 351 (2024), decisions, held that the law barring a felon from possessing a firearm (Penal Code § 29800 (a)(1)), was constitutional. *People v. Richardson*, 108 Cal.App.5th 1203, 1207, 330 Cal.Rptr.3d 130 (2025), held the crimes of felon with a firearm and being a felon in possession of ammunition (Penal Code § 30305(a)(1)) did not violate the Second Amendment.”
- *People v. Reid*, 105 Cal.App.5th 446, 458-459, 325 Cal.Rptr.3d 820 (2024), held that evidence that a defendant choked a victim, and that she had difficulty breath-

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ing and swallowing, can constitute causing a traumatic condition for purposes of violating Penal Code § 273.5.

- *People v. Obermueller*, 104 Cal.App.5th 207, 211, 324 Cal.Rptr.3d 544 (2024), held that the crime of stalking (Penal Code § 646.9) can occur when a defendant emails threatening messages only to the victim’s family, who then forwards the messages to the victim, “because stalkers who recklessly intend to threaten a victim incur full liability under the stalking statute, no matter how they do it.”

- *People v. Planchard*, 109 Cal.App.5th 157, 169, 330 Cal.Rptr.3d 277 (2025), held, for purposes of stalking (Penal Code § 646.9), that “it is sufficient that the nature of the conduct makes it reasonably foreseeable that the victim would become aware of it,” and therefore stalking can occur when a defendant publicly posts harassing and threatening messages on Facebook rather than directly sending the messages to a victim.

- *People v. Hall*, 104 Cal.App.5th 1077, 1082, 325 Cal.Rptr.3d 344 (2024), held that forcing a home invasion robbery victim upstairs so that one defendant he could open a safe, and then taking him back downstairs to tie him up while the defendants continued looting the house, did not amount to substantial movement for purposes of kidnapping (Penal Code § 207).

- *In re Randy C.*, 101 Cal.App.5th 933, 940-941, 320 Cal.Rptr.3d 713 (2024), held that a “marijuana blunt,” which was wrapped in paper but for a “speck of marijuana” on its flattened end, constituted an “open container” of marijuana within the meaning of Health & Safety Code § 11362.3.

- *People v. Lattin*, 107 Cal.App.5th 596, 600, 328 Cal.Rptr.3d 241 (2024), held that, a defendant can commit assault with a firearm (Penal Code § 245(a)(2) even if the gun is unloaded and the defendant is too far away to use the gun as a club or bludgeon, when there is evidence that there is ammunition readily available for immediately loading the gun.

- *People v. Ellis*, 108 Cal.App.5th 590, 598-599, 329 Cal.Rptr.3d 418 (2025), held that, even when the actual distance the victim is moved is very short, the contextual factors must still be considered in determining whether there is sufficient evidence to prove the crime of kidnapping.

- The Court of Appeal held in *People v. Gray*, 109 Cal.App.5th 680, 685-686, 330 Cal.Rptr.3d 604 (2025), that the defendant’s cutting a gate hasp and lock on a truck constituted entry into a locked vehicle for purposes of automobile burglary (Penal Code § 459).

- *People v. Tafoya*, 109 Cal.App.5th 868, 893-894, 330 Cal.Rptr.3d 845 (2025), held that a conviction for

stalking (Penal Code § 646.9) can be based on a defendant's Facebook posts.

- *People v. Copeland*, 109 Cal.App.5th 534, 330 Cal.Rptr.3d 526 (2025), held that Penal Code § 136.1(a)(2) prohibits attempting to dissuade a witness from giving testimony, but does not include potential witnesses to a civil dispute.

- *People v. Townes*, 108 Cal.App.5th 603, 329 Cal.Rptr.3d 427 (2025), held that rape may include duress by psychological coercion, including telling the victim that failure to comply will result in retribution by God.

- *People v. Torres*, 107 Cal.App.5th 513, 328 Cal.Rptr.3d 300 (2024), held that family relationship in an incest case may be proved by circumstantial evidence.

- *People v. Jones*, 105 Cal.App.5th 83, 92, 325 Cal.Rptr.3d 425 (2024), joined with other courts in explaining that a family's decision to withdraw life support does not necessarily break the chain of causation in a murder case.

- *People v. Martinez*, 105 Cal.App.5th 178, 189-191, 325 Cal.Rptr.3d 700 (4th Dist. 2024), held that a person who uses their position of authority to coerce a child into a sex act may be held guilty under Penal Code § 288.

- *People v. Serna*, 109 Cal.App.5th 563, 330 Cal.Rptr.3d 592 (2025), held that resisting arrest does not require actual knowledge that the person the defendant resisted or obstructed was a peace officer. It is enough that the defendant knew or should have known that the person they obstructed was a police officer.

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About the Authors

Laurie L. Levenson is a professor of law and David W. Burcham Chair in Ethical Advocacy at Loyola Law School—Los Angeles. She serves as the Director of the Center for Ethical Advocacy. From 1996–1999 Professor Levenson was the Associate Dean for Academic Affairs at Loyola Law School. She teaches and specializes in criminal law, criminal procedure, ethics and evidence.

Professor Levenson received her A.B. from Stanford University and her J.D. from UCLA School of Law, where she was the Chief Articles Editor at the UCLA Law Review. Following law school, Professor Levenson clerked for the Honorable James Hunter III of the U.S. Court of Appeals for the Third Circuit. From 1981–89, she was an Assistant U.S. Attorney for the Central District of California.

Alex Ricciardulli is a Los Angeles County Superior Court Judge. He was appointed to the bench by Governor Arnold Schwarzenegger and took his oath of office on April 29, 2005. Judge Ricciardulli was previously an attorney with the Los Angeles County Public Defender’s Office for over 16 years, and an adjunct professor at Loyola Law School—Los Angeles and USC Law School since 2002. As an attorney, Judge Ricciardulli specialized in trials, search and seizure, and appeals. He was counsel of record in over 40 published cases, including three in the California Supreme Court.

Judge Ricciardulli received his B.A. from UCLA and his J.D. from U.C. Berkeley School of Law in 1987. He was an Associate Editor for the California Law Review. During law school, Mr. Ricciardulli was employed as a law clerk with several civil firms in the San Francisco Bay area.

Preface

California Criminal Law is a comprehensive review of the statutes and cases that comprise the criminal laws of the State of California. This book is written to be a practical, easy-to-use reference tool for courts, prosecutors and defense counsel practicing in this field. Instead of having to rely on a multi-volume treatise, this book provides an “all-in-one” guide with the most recent statutes and opinions affecting criminal law, along with practical hints for handling cases.¹

The book is organized by dividing the criminal law field into thirteen areas, each constituting a separate chapter. The first four chapters focus on general principles of criminal law, as construed by California courts: **Chapter One**, Overview of Crime and Punishment in California; **Chapter Two**, Elements of the Crime and Sufficiency of the Evidence; **Chapter Three**, Criminal Liability; **Chapter Four**, Defenses and Exemptions. The remaining chapters deal with specific crimes, defenses, and punishment provided: **Chapter Five**, Homicide; **Chapter Six**, Crimes Against Security of the Person; **Chapter Seven**, Sex Crimes; **Chapter Eight**, Theft Crimes; **Chapter Nine**, White Collar Crimes; **Chapter Ten**, OSHA and Environmental Crimes; **Chapter Eleven**, Drug and Alcohol Offenses; **Chapter Twelve**, Organizational Crimes; and **Chapter Thirteen**, Crimes Against the Administration of Government. Subsumed within chapters five-through-thirteen are detailed discussions of the elements of individual offenses, such as murder, rape, robbery, perjury, fraud, narcotics offenses, antitrust, etc.

The authors express their great gratitude to previous writers and contributors to this book. Our foremost thanks go to Douglas Dalton who was the original author of the book, and Patricia Knighten, the book’s most recent writer, but we will also not forget the many individuals who drafted previous chapters in the book: Harry M. Caldwell, Michael J. Delaney, Donn Dimichele, Eric L. Dobberteen, Scott H. Dunham, Frederick D. Friedman, Thomas E. Holiday, Chad

¹ The reader will find references in the book to the pronouns “he,” “she,” “his,” “her,” “him,” and “her.” These notations are used for ease of reference only. “It is the policy of the State of California that nonbinary people are entitled to full legal recognition and equal treatment under the law. In accordance with this policy, attorneys and courts should ensure that they are using preferred personal pronouns.” (Guide for Using Judicial Council of California Criminal Jury Instructions (CALCRIM), p. xxiii.) We wholeheartedly join in these sentiments.

S. Hummel, Janet I. Levine, Vincent J. Marella, Edward M. Medvene, Alvin S. Michaelson, Anthony Murray, Brian O'Neill, Andrea Sheridan Ordin, Michael Overly, John J. Quinn, Tara Selver, and Hugh Steven Wilson. The authors are also grateful for the assistance of Professor Levenson's research assistants, Jacquelyn Rembis and Tamara Fisher, as well as her administrative assistant, Byllie Richardson.

We anticipate updating *California Criminal Law* on a yearly basis to keep up with the never-ending changes in the law. The present edition covers all cases and statutes as of July 1, 2025. We would be pleased to incorporate into the updates any suggestions, comments, and recommendations you may have.

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