

# **Table of Contents**

## **CHAPTER 1. THE PURPOSES OF SENTENCING**

- § 1:1 Generally
- § 1:2 Three major purposes of sentencing
- § 1:3 The principles of evidence-based practice
- § 1:4 Consideration of least restrictive alternative disposition of criminal cases

## **CHAPTER 2. THE FELONY PLEA**

- § 2:1 Plea bargaining—Authority of the court and prosecutor
  - § 2:2 —Offer by the prosecution
  - § 2:3 —Approval by the court
  - § 2:4 —Nature of the offer
  - § 2:5 —Ineffective assistance of counsel
  - § 2:6 —Confusion over the offer
  - § 2:7 —Specific performance of plea bargain
  - § 2:8 —Impact of restrictions on plea bargaining
  - § 2:9 —Indicated sentence
  - § 2:10 —Remedy for improper judicial plea bargain
  - § 2:11 Taking the plea
  - § 2:12 —Statement of the terms of the plea
  - § 2:13 —Waiver of constitutional rights
  - § 2:14 —Advisement of the direct consequences of the plea
  - § 2:15 —Indirect or collateral consequences
  - § 2:16 —The factual basis for the plea
  - § 2:17 —Statement of findings by the court
  - § 2:18 —Additional waivers
  - § 2:19 —Financial disclosure for restitution
  - § 2:20 —Plea agreement after trial
  - § 2:21 Advisement of firearms exclusion (§ 29810)
- Appendix 2A. Oral Arraignment on Felony Plea
- Appendix 2B. Crimes Subject to Gun Relinquishment Under § 29810

## **CHAPTER 3. REFERRAL TO PROBATION AND SETTING OF SENTENCING**

- § 3:1 Misdemeanor convictions—Summary sentencing

- § 3:2 —Misdemeanor sex offenses
- § 3:3 —Information to consider
- § 3:4 Referral for felony convictions—Necessity of referral
- § 3:5 Contents of the probation report
- § 3:6 —Hearsay statements
- § 3:7 Timing of the sentencing hearing—Misdemeanors
- § 3:8 —Felonies
- § 3:9 Service of the probation report
- § 3:10 Access to the probation report
- § 3:11 —Request for disclosure of report

## **CHAPTER 4. WITHDRAWAL OF OR SETTING ASIDE GUILTY PLEA**

- § 4:1 Generally
- § 4:2 Showing of good cause
- § 4:3 Burden of proof
- § 4:4 Liberal construction
- § 4:5 Estoppel
- § 4:6 Effect of granting motion
- § 4:7 Duty of the court
- § 4:8 Time limit for motion
- § 4:9 Grounds for the motion—Mistake, ignorance, inadvertence or any other factor overreaching defendant's free and clear judgment
- § 4:10 —Defendant not represented by counsel; good cause still must be shown
- § 4:11 —Defendant was denied effective assistance of counsel
- § 4:12 —Breach of plea agreement
- § 4:13 —Defendant was not correctly advised of the consequences of the plea
- § 4:14 —Mental incompetence at the time of the plea
- § 4:15 —Where the plea contemplates an illegal sentence
- § 4:16 —Judge who took plea becomes unavailable
- § 4:17 —Co-defendants
- § 4:18 —Other grounds
- § 4:19 The people's right to set aside a plea
- § 4:20 Counsel's obligation to make a motion to withdraw a plea
- § 4:21 No reconsideration of order granting motion to withdraw plea
- § 4:22 Specific performance instead of withdrawal of plea
- § 4:23 Post-judgment motions to withdraw a plea—  
Coram nobis
- § 4:24 —Habeas corpus

## TABLE OF CONTENTS

- § 4:25 Immigration consequences—Advisement of immigration consequences by the court
- § 4:26 —*Padilla v. Kentucky*—Counsel’s duty to advise of immigration consequences
- § 4:27 —Motion to withdraw guilty plea for failure to advise of immigration consequences
- § 4:28 Motion to vacate conviction or sentence based on immigration advisement (§ 1473.7)
- § 4:29 Use of section 1385
- § 4:30 *Sumstine* motions to collaterally attack plea

## CHAPTER 5. EVIDENCE-BASED SENTENCING PRACTICES

- § 5:1 The problem
- § 5:2 The challenge
- § 5:3 Purposes of sentencing
- § 5:4 —Accountability (“just deserts”)
- § 5:5 —Public safety
- § 5:6 —Restitution/restoration
- § 5:7 The legislative response
- § 5:8 The role of the courts
- § 5:9 What is Evidence-Based Practice?
- § 5:10 Principles of Evidence-Based Practice
- § 5:11 The risk principle—Who should receive services
- § 5:12 The needs principle—What are the risk factors
- § 5:13 The treatment principle—What works
- § 5:14 Probation violations
- § 5:15 The proper use of EBP at sentencing

## CHAPTER 6. THE SENTENCING HEARING

- § 6:1 The presence of the defendant—Felony cases
- § 6:2 —Misdemeanor cases
- § 6:3 What the court may consider
- § 6:4 —The transcript of the plea
- § 6:5 —Report of the probation officer
- § 6:6 —Statements in mitigation and aggravation
- § 6:7 —Private probation report (§ 1204)
- § 6:8 —Testimony of witnesses
- § 6:9 —Reports prepared under section 1203.03
- § 6:10 —Facts of charges dismissed as part of a plea bargain
- § 6:11 —Factors that were implicitly found not true by the jury
- § 6:12 —Defendant’s perjury
- § 6:13 —Letters
- § 6:14 —Reports of experts

- § 6:15 What the court should not consider
- § 6:16 —Evidence that a court later determines was  
illegally seized
- § 6:17 —Arrests and convictions when diversion  
successfully completed
- § 6:18 —Arrests not resulting in convictions
- § 6:19 —Juvenile records sealed under Welfare and  
Institutions Code section 389
- § 6:20 —Specified marijuana offenses
- § 6:21 —Dismissed charges not transactionally related
- § 6:22 Rejection of plea bargain
- § 6:23 Opening comments
- § 6:24 —Calling of the case
- § 6:25 —Legal cause preventing judgment; waiver of  
arraignment
- § 6:26 —Statement of what was read and considered
- § 6:27 —Tentative sentence
- § 6:28 —Further comments

## **CHAPTER 7. DEFERRED ENTRY OF JUDGMENT; DIVERSION; ALTERNATIVE SENTENCING**

- § 7:1 Generally
- § 7:2 Drug diversion (§§ 1000–1000.6)
- § 7:3 Bad check diversion program (§ 1001.60)
- § 7:4 Child abuse and neglect diversion
- § 7:5 Diversion of cognitive developmentally disabled  
persons (§§ 1001.20–1001.34)
- § 7:6 Diversion for misdemeanor offenses
- § 7:7 Prostitution/drug offenses and AIDS education  
(§ 1001.10(b))
- § 7:8 Multiple charges
- § 7:9 Restitution fee
- § 7:10 Pregnant and parenting women’s alternative  
sentencing program act (§§ 1174–1174.9)
- § 7:11 Home detention; electronic monitoring  
(§§ 1203.016 and 1203.017)—Home detention  
(§ 1203.016)
- § 7:12 —Involuntary home detention (§ 1203.017)
- § 7:13 Home detention; Electronic monitoring  
(§§ 1203.016 and 1203.017)—Custody credits
- § 7:14 Work, job training or education furlough (§ 1208)
- § 7:15 Sealing of record after diversion
- § 7:16 Dismissal of charges
- § 7:17 Diversion of military veterans charged with a  
misdemeanor (§ 1001.80)
- § 7:18 Mental health diversion (§ 1001.36)

## TABLE OF CONTENTS

|              |                                                                           |
|--------------|---------------------------------------------------------------------------|
| § 7:19       | Mental health diversion—Crimes eligible for diversion                     |
| § 7:20       | —When diversion may be granted                                            |
| § 7:21       | —Determining eligibility and suitability for diversion                    |
| § 7:22       | —Statutory eligibility for diversion                                      |
| § 7:23       | —Statutory suitability for diversion                                      |
| § 7:24       | —Preserving judicial discretion                                           |
| § 7:25       | —Need for a psychological report                                          |
| § 7:26       | —Program requirements                                                     |
| § 7:27       | —Firearms restrictions                                                    |
| § 7:28       | —Termination or modification of treatment                                 |
| § 7:29       | —Successful completion of diversion                                       |
| § 7:30       | —Diversion of persons incompetent to stand trial                          |
| § 7:31       | —Funding and placement issues                                             |
| § 7:32       | Primary Caregiver Diversion (§ 1001.83)                                   |
| § 7:33       | Caregiver Diversion—Voluntary participation by the court                  |
| § 7:34       | —Components of the program                                                |
| § 7:35       | —Qualification requirements                                               |
| § 7:36       | —Defendant’s participation                                                |
| § 7:37       | —Criminal record                                                          |
| § 7:38       | —Retroactivity of statute                                                 |
| § 7:39       | Court initiated misdemeanor diversion (§§ 1001.95, <i>et seq.</i> )       |
| § 7:40       | Diversion of mentally incompetent misdemeanor offenders (§ 1370.01)       |
| § 7:41       | Diversion for theft offenses (§ 1001.81)                                  |
| Appendix 7A. | Procedural Checklist for Mental Health Diversion (§§ 1001.35 and 1001.36) |
| Appendix 7B. | Offenses listed in P.C. § 667(e)(2)(C)(iv)                                |
| Appendix 7C. | Mental Health Diversion—§ 1001.36                                         |
| Appendix 7D. | Payment For Expert Report                                                 |

## CHAPTER 8. THE PROBATION SENTENCE

|       |                                                       |
|-------|-------------------------------------------------------|
| § 8:1 | The purposes of probation                             |
| § 8:2 | Eligibility for probation                             |
| § 8:3 | Presumptively eligible for probation                  |
| § 8:4 | —Factors to consider in granting or denying probation |
| § 8:5 | Eligible for probation only in unusual cases          |
| § 8:6 | —Pleading and proof of disqualifying factor           |
| § 8:7 | —Applicable crimes                                    |
| § 8:8 | Ineligible for probation in all circumstances         |
| § 8:9 | —Pleading and proof of the disqualification           |

- § 8:10 —Defendants statutorily ineligible for a grant of probation
- § 8:11 —Ability to dismiss disqualifying factor
- § 8:12 Probation—Illegal alien status
- § 8:13 The probation sentence—Suspend imposition or execution of state prison sentence
- § 8:14 —Summary probation
- § 8:15 —The length of probation
- § 8:16 Misdemeanor offenses
- § 8:17 Felony Offenses
- § 8:18 Domestic Violence Cases
- § 8:19 Driving under the influence
- § 8:20 When a case has a mix of probation terms
- § 8:21 Effective date of AB 1950
- § 8:22 Extension of term of probation
- § 8:23 Imposition of custody term as a condition of probation
- § 8:24 Miscellaneous issues
- § 8:25 Extension of term of probation
- § 8:26 The probation sentence—The conditions of probation
- § 8:27 —Specific terms of probation
- § 8:28 Acceptance of terms
- § 8:29 Modification of terms of probation
- § 8:30 Transfer of probation to another county
- § 8:31 Request for sentencing while on probation—§ 1203.2a
- § 8:32 Application of *People v. Leiva*
- § 8:33 Application of competency procedures to probationers (§ 1368)
- § 8:34 Early termination of probation
- § 8:35 Right to automatic conviction record relief; advisement by the court
- § 8:36 Prehearing release of probationers (AB 1228)
- Appendix 8A. Crimes Excluded From The One-Year Or Two-Year Limit On Probation Due To Specific Probation Lengths (Pen. Code, §§ 1203a(b), 1203.1(l)(1))
- Appendix 8B. Crimes Excluded From The Two-Year Limit On Probation Due To Inclusion In Penal Code Section 667.5(c) OR SECTION 1203.1(l)(2)
- Appendix 8C. Checklist for Prehearing Release on Probation Violations

## **CHAPTER 9. PROPOSITION 36: SUBSTANCE ABUSE AND CRIME PREVENTION ACT OF 2000**

- § 9:1 The purpose of Proposition 36

## TABLE OF CONTENTS

|        |                                                                                 |
|--------|---------------------------------------------------------------------------------|
| § 9:2  | Effective date of Proposition 36                                                |
| § 9:3  | Eligibility for treatment                                                       |
| § 9:4  | —Eligible crimes                                                                |
| § 9:5  | —Ineligible crimes                                                              |
| § 9:6  | —Mixed eligibility                                                              |
| § 9:7  | —Eligible defendants                                                            |
| § 9:8  | Probation—Referral to probation department                                      |
| § 9:9  | —Conditions of probation                                                        |
| § 9:10 | —Drug testing                                                                   |
| § 9:11 | —Fees                                                                           |
| § 9:12 | —Use of drug tests                                                              |
| § 9:13 | —Revocation of probation for program failure                                    |
| § 9:14 | —Transfer of cases to county of residence                                       |
| § 9:15 | Disposition after violation of probation                                        |
| § 9:16 | —Non-drug-related violations                                                    |
| § 9:17 | —Drug-related violations                                                        |
| § 9:18 | Custody status of the defendant pending disposition—New drug possession offense |
| § 9:19 | —Drug-related violation of probation                                            |
| § 9:20 | Sentence to state prison after violation of probation                           |
| § 9:21 | Persons on probation for drug offenses as of effective date                     |
| § 9:22 | Defendants on probation for non-drug-related crimes                             |
| § 9:23 | Expungement                                                                     |
| § 9:24 | —Status of expunged convictions                                                 |
| § 9:25 | Defendants on Parole                                                            |
| § 9:26 | Defendants subject to the Three Strikes Law                                     |
| § 9:27 | —Sentencing for current crime (§ 1210.1(b)(1))                                  |
| § 9:28 | —Violation of probation (§ 1210.1(e)(1))                                        |
| § 9:29 | —Parolees (§ 3063.1(b)(1))                                                      |
| § 9:30 | Procedure under Proposition 36                                                  |

## CHAPTER 10. APPLICATION OF *CUNNINGHAM V. CALIFORNIA*

|        |                                                                            |
|--------|----------------------------------------------------------------------------|
| § 10:1 | Generally                                                                  |
| § 10:2 | Introduction                                                               |
| § 10:3 | — <i>Blakely v. Washington</i> (2004) 542 U.S. 296                         |
| § 10:4 | — <i>United States v. Booker</i> (2005) 543 U.S. 220                       |
| § 10:5 | — <i>Cunningham v. California</i> (2007) 549 U.S. 270                      |
| § 10:6 | — <i>Alleyne v. United States</i> (2013) 133 S.Ct. 2151                    |
| § 10:7 | Application of <i>Cunningham</i> to california sentencing                  |
| § 10:8 | —Application of <i>Cunningham</i> to cases final prior to January 22, 2007 |
| § 10:9 | The legislative response                                                   |

- § 10:10 —Practice under the amended statute
- § 10:11 —Ex post facto concerns
- § 10:12 —Correction of a drafting omission in SB 40
- § 10:13 —Pleading aggravating circumstances
- § 10:14 Sentencing circumstances where *Cunningham* and *Blakely* do not apply
- § 10:15 Sentencing circumstances where *Cunningham* and *Blakely* do apply
- § 10:16 Practical application of *Cunningham/Blakely*—Indeterminate terms
- § 10:17 —Determinate term enhancements added to indeterminate terms
- § 10:18 —Three Strikes cases
- § 10:19 —Misdemeanor sentences

## **CHAPTER 11. SENTENCING AFTER REALIGNMENT**

- § 11:1 Generally
- § 11:2 Felony commitments
- § 11:3 —Defendants committed to county jail (§ 1170(h)(5))
- § 11:4 —Felonies excluded from county jail
- § 11:5 —Felonies specifying punishment in state prison and felonies without a designated housing
- § 11:6 —Conflicts in the designation of punishment
- § 11:7 —Alternatives to Commitment to Jail or Prison
- § 11:8 —No Parole Following Release From Jail Commitment
- § 11:9 Imposition of Sentence Under section 1170(h)(5)
- § 11:10 Imposition of sentence under section 1170(h)—Practical application
- § 11:11 —Sentencing script
- § 11:12 —Concurrent and consecutive sentences
- § 11:13 Use of flash incarceration (§ 1203.35)
- § 11:14 Imposition of sentence under section 1170(h)—The early release
- § 11:15 —Modification or termination of a sentence imposed under section 1170(h)
- § 11:16 —Violations of mandatory supervision
- § 11:17 —Tolling of supervision period
- § 11:18 —Transfer of supervision under section 1203.9; transfer to another state
- § 11:19 The Misdemeanor Sentence
- § 11:20 Effective Date of Section 1170(h)
- § 11:21 Multiple Counts, Mixed Punishment
- § 11:22 Multiple counts, mixed punishment—Application of the exclusion provisions
- § 11:23 —Application of sections 1170(d) and (e)

## TABLE OF CONTENTS

|         |                                                                                                                              |
|---------|------------------------------------------------------------------------------------------------------------------------------|
| § 11:24 | —Crimes committed in county jail while serving sentence under section 1170(h)                                                |
| § 11:25 | —Reconciliation of realignment legislation with probation ineligibility statutes                                             |
| § 11:26 | —Exercise of discretion under sections 17(b), 1203.4, and 1203.41                                                            |
| § 11:27 | —Execution of a prior suspended sentence                                                                                     |
| § 11:28 | —Status of defendants sentenced to state prison prior to October 1, 2011                                                     |
| § 11:29 | —Crimes punishable by “state prison” or “pursuant to subdivision (h) of Section 1170”                                        |
| § 11:30 | —Commitment under section 1170(h)(5) as a “prior” under section 667.5(b)                                                     |
| § 11:31 | —Prior convictions in another jurisdiction (§ 668)                                                                           |
| § 11:32 | —Collection of victim restitution                                                                                            |
| § 11:33 | —Restitution fines                                                                                                           |
| § 11:34 | —Expansion of home detention programs                                                                                        |
| § 11:35 | —Contracts with Department of Corrections and Rehabilitation and other counties                                              |
| § 11:36 | —Cases from multiple jurisdictions                                                                                           |
| § 11:37 | Multiple counts, mixed punishment—Commitments to the California Rehabilitation Center (CRC) (Welf. & Inst. §§ 3050, et seq.) |
| § 11:38 | Multiple counts, mixed punishment—Application of California Vehicle Code, § 41500                                            |
| § 11:39 | —Application of Section 1368 proceedings                                                                                     |
| § 11:40 | —Parole/ PRCS advisement at sentencing                                                                                       |
| § 11:41 | —Attorney fees                                                                                                               |
| § 11:42 | —Supervision fees                                                                                                            |
| § 11:43 | —Affordable Care Act                                                                                                         |
| § 11:44 | —Work furlough programs                                                                                                      |
| § 11:45 | —Application of section 1203.2a to commitments under section 1170(h)                                                         |
| § 11:46 | —Application of <i>People v. Leiva</i>                                                                                       |
| § 11:47 | —Violations occurring during period when mandatory supervision is not active                                                 |
| § 11:48 | —Ability of the court to issue a criminal protective order                                                                   |
| § 11:49 | —Sentencing violations of section 4573 and 4573.5; denial of equal protection                                                |
| § 11:50 | Certificate of rehabilitation                                                                                                |
| § 11:51 | Mitigating change in law applicable if case on appeal from order revoking split sentence                                     |
| § 11:52 | Persons on mandatory supervision resentenced after violent felony                                                            |
| § 11:53 | Custody Credits—Sentences to county jail                                                                                     |
| § 11:54 | —Sentences to state prison                                                                                                   |

SENTENCING CALIFORNIA CRIMES

- § 11:55 —Credit for sentences imposed after October 1, 2011, for crimes committed prior to the effective date
- § 11:56 —Violations of probation
- § 11:57 —Equal protection
- § 11:58 —Summary of rules governing calculation of credits
- § 11:59 —Specialized work credits
- § 11:60 —Credits and parole eligibility as a result of a federal court order
- § 11:61 —Custody credits for crime committed while on mandatory supervision
- § 11:62 Custody credits—Additional material on custody credits
- § 11:63 Postrelease Community Supervision (PRCS) (§§ 3450-3465)
- § 11:64 Postrelease Community Supervision (PRCS)—Applicable crimes
- § 11:65 —Length of PRCS
- § 11:66 —Conditions of PRCS
- § 11:67 —PRCS revocation fine
- § 11:68 —Violation of PRCS
- § 11:69 —Transfer of PRCS (§ 3460)
- § 11:70 —Demands for production
- § 11:71 —Application of Section 1368 proceedings
- § 11:72 —Legal issues related to PRCS
- § 11:73 —Affordable Healthcare Act
- § 11:74 —Work furlough programs
- § 11:75 —Contracts for medical services
- § 11:76 —Application of *People v. Leiva*
- § 11:77 Parole- Adjudication of Parole Violations (§ 3000.08, effective July 1, 2013)
- § 11:78 Parole—Inmates subject to new procedure
- § 11:79 —Supervision procedure by agency
- § 11:80 —Referral to court
- § 11:81 —Acceptance of proposed sanctions
- § 11:82 —Parole revocation fine
- § 11:83 —Application of Section 1368 proceedings
- § 11:84 —Potential conflict with Marsy’s Law
- § 11:85 —Potential application of *Valdivia* consent decree
- § 11:86 —Affordable Healthcare Act
- § 11:87 —Work furlough programs
- § 11:88 —Application of *People v. Leiva*
- § 11:89 Issuance of criminal protective orders for persons on mandatory supervision, PRCS or parole
- § 11:90 Entry of a stipulated order of modification after waiver of appearance

## TABLE OF CONTENTS

|               |                                                                                 |
|---------------|---------------------------------------------------------------------------------|
| § 11:91       | Application of Section 1368 to Mandatory Supervision, PRCS and Parole           |
| § 11:92       | Application of <i>Valdivia</i> Consent Decree to Parole                         |
| § 11:93       | Determination of probable cause for detention                                   |
| § 11:94       | Use of hearsay                                                                  |
| § 11:95       | Tolling of the supervision period                                               |
| § 11:96       | Review of court's decision                                                      |
| Appendix 11A. | Table of Crimes Punishable in State Prison or County Jail Under Section 1170(h) |
| Appendix 11B. | Summary of Sentencing Under Pen. Code, § 1170, subd. (h)                        |
| Appendix 11C. | Modification, Revocation, & Termination of Supervision                          |
| Appendix 11D. | PRCS/Parole Advisement at Sentencing                                            |
| Appendix 11E. | Parole Violation Flow Chart                                                     |

## **CHAPTER 12. BASIC STATE PRISON OR SECTION 1170(H) SENTENCE (DETERMINATE SENTENCING LAW)**

|               |                                                                                                                                                  |
|---------------|--------------------------------------------------------------------------------------------------------------------------------------------------|
| § 12:1        | Generally                                                                                                                                        |
| § 12:2        | Deny probation                                                                                                                                   |
| § 12:3        | Determine the sentence                                                                                                                           |
| § 12:4        | —The base term                                                                                                                                   |
| § 12:5        | Imposition of the upper term of imprisonment, mandatory imposition of the lower term of imprisonment, service of term imposed for an enhancement |
| § 12:6        | Imposing an upper term of imprisonment                                                                                                           |
| § 12:7        | Required imposition of the low term of imprisonment                                                                                              |
| § 12:8        | Place of custody for service of sentence on enhancement follows the base term                                                                    |
| § 12:9        | Selecting the base term—Court's discretion                                                                                                       |
| § 12:10       | Determine the sentence—Enhancements                                                                                                              |
| § 12:11       | Required striking of enhancements under section 1385                                                                                             |
| § 12:12       | Striking or staying conduct enhancements, generally                                                                                              |
| § 12:13       | Determine the sentence—Fines in addition to a prison or section 1170(h) term                                                                     |
| § 12:14       | Convictions involving alcohol or drugs                                                                                                           |
| § 12:15       | Record of conviction                                                                                                                             |
| Appendix 12A. | State Prison/Section 1170(h) Sentence Checklist                                                                                                  |
| Appendix 12B. | Table of Conduct Enhancements                                                                                                                    |

Appendix 12C. Table of Status Enhancements

## **CHAPTER 13. MULTIPLE COUNTS**

- § 13:1 Generally
- § 13:2 Whether any counts are subject to section 654—  
Overview of application of section 654
- § 13:3 —Context of section 654
- § 13:4 —Indivisible course of conduct
- § 13:5 —Multiple victims of violence
- § 13:6 —Application to enhancements
- § 13:7 —Waiver of error
- § 13:8 —Examples of the application of section 654
- § 13:9 Application of section 654 in setting maximum  
term under section 1026
- § 13:10 Whether any counts are subject to section 654—  
Procedure
- § 13:11 —Lesser-included offenses
- § 13:12 —Appellate review
- § 13:13 “Splintering” of counts or charges
- § 13:14 —Cases discussing “splintering”
- § 13:15 Whether to impose consecutive or concurrent  
sentences
- § 13:16 —Factors relating to the crimes
- § 13:17 —Mandatory consecutive sentencing
- § 13:18 Prison or section 1170(h) sentence with  
concurrent terms
- § 13:19 Prison or section 1170(h) sentence with  
consecutive terms
- § 13:20 Crimes committed in prison
- § 13:21 Sentences with extremely long terms

## **CHAPTER 14. PRISON SENTENCE WITH MULTIPLE CASES**

- § 14:1 Generally
- § 14:2 The package disposition
- § 14:3 Sequential sentencing

## **CHAPTER 15. CREDIT FOR TIME SERVED**

- § 15:1 Generally
- § 15:2 General rule
- § 15:3 Introduction
- § 15:4 The applicable rules
- § 15:5 Exclusion from the enhanced credit provisions
- § 15:6 Calculation of credits
- § 15:7 Additional issues
- § 15:8 Additional credit issues—Aggregate credits

## TABLE OF CONTENTS

|         |                                                                 |
|---------|-----------------------------------------------------------------|
| § 15:9  | —When credits exceed the sentence (“paper commitment”)          |
| § 15:10 | —Full actual time and conduct credits                           |
| § 15:11 | —Credits earned over different time periods                     |
| § 15:12 | —Limitations on custody credits                                 |
| § 15:13 | —Denial of pretrial conduct credits                             |
| § 15:14 | —Waiver of credits                                              |
| § 15:15 | —Credits after appeal or reconsideration of sentence            |
| § 15:16 | —Correction of credits                                          |
| § 15:17 | —Appeal of credit calculation                                   |
| § 15:18 | —Applying custody credits to fines                              |
| § 15:19 | —Credit for participation in rehabilitation programs (§ 4019.4) |
| § 15:20 | —Credits after resentencing                                     |
| § 15:21 | —Credits with resentencing with violent felony                  |
| § 15:22 | —Specialized work credits                                       |
| § 15:23 | Oral statement of custody credits                               |
| § 15:24 | Custody credits while in state prison                           |
| § 15:25 | Custody credit for juveniles on electronic monitoring           |

## Appendix 15A. Summary of Key Credit Provisions

## CHAPTER 16. VICTIM RESTITUTION

|         |                                                                             |
|---------|-----------------------------------------------------------------------------|
| § 16:1  | Right to restitution                                                        |
| § 16:2  | Scope of restitution obligation: probation vs. state prison/section 1170(h) |
| § 16:3  | <i>Harvey</i> waiver                                                        |
| § 16:4  | “Direct Victim” for purpose of restitution                                  |
| § 16:5  | —Personal loss recoverable                                                  |
| § 16:6  | —When victim has died                                                       |
| § 16:7  | Order for income deduction (§ 1202.42)                                      |
| § 16:8  | Statement of calculation                                                    |
| § 16:9  | Traditional tort rules                                                      |
| § 16:10 | Economic loss                                                               |
| § 16:11 | Non-economic loss                                                           |
| § 16:12 | Restitution hearings                                                        |
| § 16:13 | —Participation by district attorney at restitution hearing                  |
| § 16:14 | —Ability to pay                                                             |
| § 16:15 | —Victim’s insurance                                                         |
| § 16:16 | —Restitution order vs. civil proceeding                                     |
| § 16:17 | —Offset to defendant                                                        |
| § 16:18 | Payments by the State Victim Compensation and Government Claims Board       |
| § 16:19 | Payments by the State Bar Client Security Fund (Bus. & Prof. Code § 6140.5) |

- § 16:20 Independent civil action
- § 16:21 Joint and several liability
- § 16:22 Extension of probation
- § 16:23 Lien procedures for collection of restitution  
(§ 1202.42(g))
- § 16:24 Enforcement as a civil judgment
- § 16:25 Collection procedures for victim restitution
- § 16:26 Collection fee
- § 16:27 Reserving jurisdiction on state prison  
commitment
- § 16:28 Custody in lieu of payment of restitution
- § 16:29 Change of restitution order following appeal
- § 16:30 Death of defendant pending appeal
- § 16:31 Victim contact information sent to CDCR
- § 16:32 Restitution obligation of accessory after the fact
- § 16:33 Determination of restitution after transfer of  
supervision
- § 16:34 Determination after probation has expired

## **CHAPTER 17. RESTITUTION FINES AND OTHER ASSESSMENTS**

- § 17:1 Restitution fines (§ 1202.4(b))—Amount of fine
- § 17:2 —Alternate formula
- § 17:3 —Factors to consider
- § 17:4 —Ability to pay
- § 17:5 —Collection fee
- § 17:6 —Change of fine
- § 17:7 —Use of seized funds
- § 17:8 —Civil judgment
- § 17:9 —Diversion fee
- § 17:10 —Appeal
- § 17:11 Additional restitution fines (§§ 1202.44 and  
1202.45)
- § 17:12 —Probation revocation fine (§ 1202.44)
- § 17:13 —Parole revocation fine (§ 1202.45)
- § 17:14 Restitution fines after realignment legislation
- § 17:15 —Misdemeanors
- § 17:16 —Felonies when defendant placed on probation
- § 17:17 —Felonies when defendant committed to state  
prison or under section 1170(h)
- § 17:18 Restitution fines in multiple cases
- § 17:19 Custody in lieu of payment of fines and  
assessments
- § 17:20 Special fines and assessments (if applicable)
- § 17:21 —Court’s duty to detail all assessments
- § 17:22 —Court operations assessment (§ 1465.8)
- § 17:23 —Criminal facility assessment (Gov’t Code  
§ 70373(a)(1))

## TABLE OF CONTENTS

- § 17:24 —Criminal surcharge (§ 1465.7)
- § 17:25 —Fines and assessments as conditions of probation
- § 17:26 —Ability to pay assessments, generally
- § 17:27 —Attorney fees (§ 987.8)
- § 17:28 —Custody in lieu of payment of fine; installment payment
- § 17:29 Ability of court to dismiss restitution fines
- § 17:30 Termination of specified fees and fines

## CHAPTER 18. CONCLUDING THE SENTENCE

- § 18:1 Registration requirements
  - § 18:2 —Sex offenders (§ 290(c)(2))
  - § 18:3 —Narcotics offenders (Health & Safety Code § 11590)
  - § 18:4 —Arson offenders (§ 457.1)
  - § 18:5 —Gang offenders (§ 186.30)
  - § 18:6 —Registration is not punishment
  - § 18:7 —Discriminatory enforcement of registration
  - § 18:8 Appeal rights
  - § 18:9 DNA data bank (§ 296(a)(1))
  - § 18:10 Referral to probation for report under section 1203c
  - § 18:11 Notice of prohibition of use or possession of firearms
  - § 18:12 Exoneration of bail
  - § 18:13 Advisement of Certificate of Rehabilitation and Pardon
  - § 18:14 Advisement of parole
  - § 18:15 Remanding the defendant
  - § 18:16 Bail pending appeal
  - § 18:17 Statement of views (§ 1203.01)
- Appendix 18A. Table of Crimes Prohibiting Possession of Firearm/Notice

## CHAPTER 19. SEX CRIMES

- § 19:1 Generally
- § 19:2 Potential sentencing issues
- § 19:3 The Containment Model for management of sex offenders
- § 19:4 Restrictions on grant of probation
- § 19:5 —Sex crimes where defendant is ineligible for probation
- § 19:6 —Sex crimes where defendant is eligible for probation only in unusual circumstances
- § 19:7 —Grant of probation for violation of sections 288 or 288.5 with special findings (§ 1203.066(d))

# SENTENCING CALIFORNIA CRIMES

- § 19:8 Required evaluations—Required evaluations if probation is denied
- § 19:9 —Required evaluations before probation is granted
- § 19:10 —Reports under section 288.1
- § 19:11 —Reports under section 1203.067
- § 19:12 Risk assessment under sections 290.04–290.07
- § 19:13 Mandatory conditions of probation
- § 19:14 Victim restitution in sex crime cases
- § 19:15 Fines and assessments—Restitution fine for child abuse prevention (§ 294)
- § 19:16 —Victim-Witness Assistance Fund
- § 19:17 —Department of Justice Sexual Habitual Offender Fund (“Sex Offender Fine”) (§ 290.3)
- § 19:18 —Civil assessment (§ 261.5(e)(1))
- § 19:19 “One Strike” law (§ 667.61)
- § 19:20 —Applicable crimes
- § 19:21 —Potential sentences
- § 19:22 —Use of enumerated circumstances
- § 19:23 —Conduct credits
- § 19:24 —Consecutive sentences
- § 19:25 —Interplay of the One Strike law and section 667.6
- § 19:26 —Multiple victims
- § 19:27 —Pleading and proof of allegations
- § 19:28 Habitual Sex Offenders (“Two Strikes” Law) (§ 667.71)
- § 19:29 Relationship between the one, two and three strikes laws
- § 19:30 —One strike and two strikes cases
- § 19:31 —Sentencing with the three strikes law
- § 19:32 Continuous sexual abuse of a child and included offenses (§ 288.5)
- § 19:33 Consecutive sentencing
- § 19:34 —Section 667.6
- § 19:35 —Other circumstances where consecutive sentencing is required
- § 19:36 Custody credits—Section 2933.1
- § 19:37 —Sections 269, 667.61 and 667.71
- § 19:38 Collateral consequences—Registration (§§ 290, *et seq.*)
- § 19:39 —Post-conviction AIDS testing (§ 1202.1)
- § 19:40 —Blood and saliva samples, fingerprinting (§ 296)
- § 19:41 —Chemical castration (§ 645)
- § 19:42 —Order prohibiting contact with victim
- § 19:43 —Conditions of parole
- § 19:44 —Sex offender registration law effective January 1, 2021

TABLE OF CONTENTS

Appendix 19A. Sex Crimes Registerable Under Section  
290

**CHAPTER 20. THREE STRIKES  
SENTENCING**

- § 20:1 Generally
- § 20:2 Basic sentencing structure
- § 20:3 Qualifying prior convictions and adjudications
- § 20:4 —California adult felony convictions
- § 20:5 —Out-of-state felony convictions and  
adjudications
- § 20:6 —California juvenile felony adjudications under  
Welfare and Institutions Code section 707(b)
- § 20:7 Characteristics of strike prior convictions
- § 20:8 —Date applicable to statutes defining strikes
- § 20:9 —Priors have no “washout”
- § 20:10 —Strike status determined at time of conviction
- § 20:11 —Sentence to state prison not required
- § 20:12 —Priors need not be “separately brought and  
tried”
- § 20:13 Pleading and proof of prior convictions
- § 20:14 —Jurisdiction: pleading, burden of proof, and  
right to jury trial
- § 20:15 —Jurisdiction: issues tried by the court
- § 20:16 —Jurisdiction: issues tried by the jury
- § 20:17 —Process: trial on prior convictions
- § 20:18 Evidence to prove truth of prior conviction
- § 20:19 —Record of conviction, defined
- § 20:20 —Record of conviction, individual items
- § 20:21 —Evidence that may not be used to prove a  
prior strike
- § 20:22 —“Rap sheets” and other evidence not part of  
the record of conviction
- § 20:23 General sentencing principles for all three  
strikes cases
- § 20:24 —No aggregate term limitation
- § 20:25 —No probation or diversion; mandatory state  
prison
- § 20:26 —Proposition 36 drug treatment and three  
strikes
- § 20:27 —Duty to impose enhancements; no dual use of  
facts
- § 20:28 —Limitation on conduct credits
- § 20:29 Application of *Cunningham v. California*
- § 20:30 —*Cunningham* has no application to the  
determination of a prior strike
- § 20:31 Application of *Apprendi* and sections 1170 and  
1170.1 to three strikes sentencing

- § 20:32 Calculation of sentence with one prior strike  
(single count)
- § 20:33 —Current offense with a determinate term
- § 20:34 —Current offense with an indeterminate term
- § 20:35 Proposition 36: Sentencing the multiple strike  
offender
- § 20:36 Defendants excluded from the new sentencing  
provisions
- § 20:37 Calculation of sentence with two or more prior  
strikes (single count)
- § 20:38 —The calculation of a third strike sentence  
always is a two step process
- § 20:39 —Applying Step One: calculating the “greatest  
minimum term”
- § 20:40 —Applying Step Two: adding enhancements
- § 20:41 —Examples of third strike sentencing
- § 20:42 —Crimes without stated minimum terms
- § 20:43 Punishment for attempts to commit a felony
- § 20:44 Concurrent/consecutive sentencing of multiple  
counts, generally—When consecutive  
sentencing is mandatory
- § 20:45 —When consecutive sentencing is discretionary
- § 20:46 —Factors to consider
- § 20:47 Procedure for consecutive sentencing of multiple  
counts—Multiple-count second strike  
sentencing
- § 20:48 —Multiple-count third strike sentences
- § 20:49 —Multiple terms with determinate and  
indeterminate sentences
- § 20:50 Dismissal of strikes (§ 1385)
- § 20:51 —Summary of *People v. Superior Court (Romero)*
- § 20:52 —The motion to dismiss a prior strike
- § 20:53 —Authority to dismiss enhancements; effect
- § 20:54 —The hearing on the motion to dismiss prior  
strike
- § 20:55 —Factors the court may consider in ruling on  
motion to dismiss strikes
- § 20:56 —Factors the court may not consider in ruling  
on motion to dismiss strikes
- § 20:57 —Court must make findings
- § 20:58 Exercise of discretion in striking prior strikes
- § 20:59 Specification of offense as misdemeanor (§ 17(b))
- § 20:60 —Authority to specify “wobblers” as  
misdemeanors
- § 20:61 —Hearing on the motion to specify an offense as  
a misdemeanor
- § 20:62 Proposition 36: petition for resentencing as  
second strike offender
- § 20:63 The Petition

## TABLE OF CONTENTS

|               |                                                                          |
|---------------|--------------------------------------------------------------------------|
| § 20:64       | Initial Screening of the Petition                                        |
| § 20:65       | The Qualification Hearing                                                |
| § 20:66       | Order of the Court on resentencing                                       |
| § 20:67       | The Right to Counsel                                                     |
| § 20:68       | Successive petitions                                                     |
| § 20:69       | Amendment of NGI commitment (§ 1170.127)                                 |
| § 20:70       | Constitutional Challenge to Disqualifying Prior Conviction               |
| § 20:71       | Appellate Review                                                         |
| Appendix 20A. | Proposed Petition for Resentencing                                       |
| Appendix 20B. | Proposed Order Denying Petition for Resentencing After Initial Screening |
| Appendix 20C. | Proposed Waiver of Personal Appearance by Petitioner                     |
| Appendix 20D. | Proposed Order Re Hearing on Request for Resentencing                    |
| Appendix 20E. | Resources Available from CDCR                                            |
| Appendix 20F. | Table of Crimes That Will Qualify For Third Strike Sentencing            |

# Table of Contents

## CHAPTER 21. GANG CRIMES (§ 186.22)

- § 21:1 Generally
- § 21:2 A discrete crime: participation in criminal street gang (§ 186.22(a))
- § 21:3 —Punishment
- § 21:4 —Application of section 654
- § 21:5 A discrete crime: Participation in criminal street gang (§ 186.22(a))—Gang registration
- § 21:6 An enhancement: crime committed to benefit a criminal street gang (§ 186.22(b))
- § 21:7 —Enhanced felony punishment
- § 21:8 —Three strikes law
- § 21:9 Vicarious liability for firearm enhancements under section 12022.53
- § 21:10 An alternative sentencing scheme for misdemeanors and felonies (§ 186.22(d))
- § 21:11 Other STEP act offenses
- § 21:12 Dismissal in the interests of justice
- § 21:13 Relationship to sections 12031(a)(2)(C), 12021.5 and 12025
- § 21:14 As a special circumstance for murder (§ 190.2(a)(22))
- § 21:15 Gang conditions of probation

Appendix 21A. Summary of STEP Act (Section 186.22)

## CHAPTER 22. MISDEMEANOR AND INFRACTION SENTENCES

- § 22:1 Generally
- § 22:2 Conducting the hearing—Presence of the defendant
- § 22:3 —Right to counsel
- § 22:4 Probation report
- § 22:5 Arraignment for judgment
- § 22:6 Evidence at the hearing
- § 22:7 Sentencing rules
- § 22:8 Probation
- § 22:9 —Types of probation
- § 22:10 —Length of probation
- § 22:11 —Terms and conditions of probation
- § 22:12 —Refusal of probation
- § 22:13 “Wobbler” offenses/section 17(b)

- § 22:14 Custodial options
- § 22:15 Fines
- § 22:16 Applying custody credits to fines
- § 22:17 General infractions
- § 22:18 Vehicle code infractions
- § 22:19 City ordinances
- § 22:20 Community service in lieu of infraction fines
- § 22:21 Infractionalizing a misdemeanor
- § 22:22 Civil Compromise (§ 1377-1378)

## CHAPTER 23. MISCELLANEOUS SENTENCING ISSUES

- § 23:1 Sentence After Violation of Probation
- § 23:2 Sentence after violation of probation—  
Reinstatement
- § 23:3 —Denial of reinstatement
- § 23:4 —Imposition of sentence suspended
- § 23:5 —Execution of sentence suspended
- § 23:6 —Credits
- § 23:7 —Setting aside order of revocation and sentence
- § 23:8 Domestic violence cases
- § 23:9 Misdemeanor cases sentenced with state prison
- § 23:10 *Cruz/Vargas* waivers
- § 23:11 —Form of waiver
- § 23:12 —Nature of *Cruz* hearing
- § 23:13 California Rehabilitation Center (CRC)—  
Termination of civil addict program: (Welf. &  
Inst. Code § 3051)
- § 23:14 —Sentencing of defendant upon return from  
CRC
- § 23:15 Diagnostic study (§ 1203.03)
- § 23:16 —Contents of report received by the court
- § 23:17 —Procedure
- § 23:18 Specification of offense as misdemeanor (§ 17(b))
- § 23:19 Dismissal of allegations or enhancements  
(§ 1385)
- § 23:20 Hate crimes (§ 422.85)
- § 23:21 Not guilty by reason of insanity (§ 1026)
- § 23:22 Request for sentencing under sections 1203.2a  
and 1381
- § 23:23 Transferring probation or mandatory supervision  
(§ 1203.9)
- § 23:24 —Transfer of jurisdiction
- § 23:25 —Procedure for transfer
- § 23:26 Compassionate release
- § 23:27 Military veterans
- § 23:28 Sentencing a defendant on parole

## TABLE OF CONTENTS

|         |                                                                                                              |
|---------|--------------------------------------------------------------------------------------------------------------|
| § 23:29 | Dismissals under sections 1203.4, 1203.4a, and 1203.41—Section 1203.4                                        |
| § 23:30 | Dismissals under sections 1203.4 and 1203.4a—Section 1203.4a                                                 |
| § 23:31 | Dismissal under section 1203.41 and 1203.42                                                                  |
| § 23:32 | Sentencing juveniles tried as an adult                                                                       |
| § 23:33 | —Homicide cases                                                                                              |
| § 23:34 | —Nonhomicide cases                                                                                           |
| § 23:35 | —Recall of juvenile life cases                                                                               |
| § 23:36 | Housing defendants with the division of juvenile justice                                                     |
| § 23:37 | Mentally disordered offenders (§§ 2960 <i>et seq.</i> )                                                      |
| § 23:38 | —Initial commitment                                                                                          |
| § 23:39 | —Extension of commitment                                                                                     |
| § 23:40 | Sexually violent predators                                                                                   |
| § 23:41 | Certificate of rehabilitation and pardon                                                                     |
| § 23:42 | Determination of factual innocence (§ 851.8)                                                                 |
| § 23:43 | Cruel and unusual punishment                                                                                 |
| § 23:44 | Sheriff's Voluntary Alternative Sentencing Program                                                           |
| § 23:45 | Accomplice Liability (SB 1437 and SB 775)                                                                    |
| § 23:46 | Accomplice liability—Law prior to January 2019                                                               |
| § 23:47 | —Effective dates of SB 1437 and SB 775                                                                       |
| § 23:48 | —Amendment of the felony murder rule                                                                         |
| § 23:49 | —Elimination of the natural and probable consequences doctrine                                               |
| § 23:50 | —Other issues related to amendment of sections 188 and 189                                                   |
| § 23:51 | Accomplice liability—Petition for resentencing (§ 1172.6)                                                    |
| § 23:52 | Constitutionality of SB 1437                                                                                 |
| § 23:53 | Motion to vacate conviction or sentence based on immigration advisement (§ 1473.7)                           |
| § 23:54 | Suspension of driving privilege                                                                              |
| § 23:55 | Removal of invalid sentence enhancements (§§ 1172.7 and 1172.75)                                             |
| § 23:56 | Proposition 36 (Drugs and Theft)—“Homeless, Drug Addiction, and Theft Reduction Act” and Related Legislation |
| § 23:57 | Effective date of changes                                                                                    |
| § 23:58 | Relationship of Proposition 36 to other criminal laws                                                        |
| § 23:59 | Property offenses                                                                                            |
| § 23:60 | Drug offenses                                                                                                |
| § 23:61 | Uniform standards for postconviction proceedings (§ 1171)                                                    |
| § 23:62 | Standards of treatment court programs                                                                        |
| § 23:63 | Finality for the purposes of <i>Estrada</i>                                                                  |

- Appendix 23A. Split CDCR/Mental Health Commitment  
Appendix 23B. Checklist for Hearing under Pen. Code,  
§ 1172.6

## **CHAPTER 24. INDETERMINATE SENTENCES**

- § 24:1 Pronouncement of judgment  
§ 24:2 Sentencing multiple counts  
§ 24:3 Ordering service of term  
§ 24:4 Parole term

## **CHAPTER 25. PROPOSITION 47**

- § 25:1 Introduction  
§ 25:2 Effective Date  
§ 25:3 Exclusion From Benefits of Proposition 47  
§ 25:4 Reduction of Penalties  
§ 25:5 Petition for Redesignation of a Crime as a Misdemeanor  
§ 25:6 Petition for resentencing—Persons who may petition for relief  
§ 25:7 —Procedure for resentencing of a crime  
§ 25:8 The filing of a petition  
§ 25:9 Petition for resentencing—Initial screening of the petition  
§ 25:10 —The qualification hearing  
§ 25:11 —The resentencing as a misdemeanor  
§ 25:12 Application for reclassification of a crime  
§ 25:13 Application for reclassification—Persons who may apply for relief  
§ 25:14 —Procedure for reclassification  
§ 25:15 Right to counsel  
§ 25:16 Application to the Three Strikes law  
§ 25:17 Appellate review  
§ 25:18 Additional issues—Refund of fees and fines  
§ 25:19 —Cases transferred to different county  
§ 25:20 —Persons committed under section 1368  
§ 25:21 —Prison priors under section 667.5(b)  
§ 25:22 —DNA samples  
§ 25:23 —Plea bargains  
§ 25:24 —Application of the “dangerousness” standard to parole hearings  
§ 25:25 —Felony warrants; failure to appear  
§ 25:26 —Mixed counts  
§ 25:27 —Ability to apply for certificate of rehabilitation (§ 4852.01)  
§ 25:28 —Application to section 12022.1 (out-on-bail enhancement)

## TABLE OF CONTENTS

|               |                                                                                                   |
|---------------|---------------------------------------------------------------------------------------------------|
| § 25:29       | —Application to section 1320.5 (felony failure to appear)                                         |
| § 25:30       | —The court’s reporting responsibilities                                                           |
| § 25:31       | —Whether the court may grant a reclassification motion after case expunged under section 1203.4   |
| § 25:32       | —Parole violations                                                                                |
| § 25:33       | —Registration as a narcotics offender                                                             |
| § 25:34       | —Effect of Proposition 47 on § 2933.1 credit limits                                               |
| § 25:35       | —Effect of Proposition 47 on commitment as a Mentally Disordered Offender (MDO)                   |
| § 25:36       | —Persons found not guilty by reason of insanity                                                   |
| § 25:37       | Additional issues—Effect of resentencing on gang conviction under section 186.22, subdivision (a) |
| Appendix 25A. | Text of Proposition 47                                                                            |
| Appendix 25B. | Table of Disqualifying Prior Convictions                                                          |
| Appendix 25C. | Proposition 47 Crimes                                                                             |
| Appendix 25D. | Notice of Petition and Response                                                                   |
| Appendix 25E. | Table of Crimes Listed in P.C.<br>§ 667(e)(2)(C)(iv)—“Super Strikes”                              |
| Appendix 25F. | Order After Petition for Resentence or Reclassification                                           |

## CHAPTER 26. PROPOSITION 57

|               |                                                            |
|---------------|------------------------------------------------------------|
| § 26:1        | Introduction                                               |
| § 26:2        | Effective Date                                             |
| § 26:3        | Parole and credits for state prison inmates                |
| § 26:4        | Constitutional Amendment                                   |
| § 26:5        | Parole consideration                                       |
| § 26:6        | Conduct credits                                            |
| § 26:7        | Regulations                                                |
| § 26:8        | No resentencing relief                                     |
| § 26:9        | Elimination of direct filing in juvenile cases             |
| § 26:10       | History of prosecuting juvenile offenses in criminal court |
| § 26:11       | The provisions of Proposition 57                           |
| § 26:12       | Senate Bill No. 1391                                       |
| § 26:13       | Return of case to juvenile court for disposition (AB 1423) |
| § 26:14       | Retroactive application to juvenile cases                  |
| § 26:15       | The transfer hearing                                       |
| Appendix 26A. | Regulations for The Implementation of Proposition 57       |

## CHAPTER 27. PROPOSITION 64

|        |              |
|--------|--------------|
| § 27:1 | Introduction |
|--------|--------------|

## SENTENCING CALIFORNIA CRIMES

- § 27:2 Application of the law related to Propositions 36 and 47
- § 27:3 Effective Date
- § 27:4 —Application of the *Estrada* rule
- § 27:5 Reduced Penalties for Specified Marijuana Offenses—Provisions applicable to adults
- § 27:6 —Provisions applicable to juveniles
- § 27:7 Resentencing Provisions—Currently serving a sentence
- § 27:8 —Eligible persons
- § 27:9 —Eligible crimes
- § 27:10 —Persons currently serving a sentence
- § 27:11 —Procedure for resentencing
- § 27:12 Redesignation Provisions—Completed sentence
- § 27:13 Redesignation Provisions—Eligible persons
- § 27:14 Redesignation Provisions—Eligible crimes
- § 27:15 Redesignation Provisions—Persons who have completed their sentence
- § 27:16 Redesignation Provisions—Procedure for redesignation or dismissal
- § 27:17 Right to Counsel
- § 27:18 Right to Counsel—Preparation of the petition or application and initial screening
- § 27:19 Right to Counsel—The qualification hearing
- § 27:20 Right to Counsel—The resentencing
- § 27:21 Appellate review
- § 27:22 Additional issues—Previously imposed fees and fines
- § 27:23 Additional Issues—Cases transferred to different county
- § 27:24 —Felony warrants; failure to appear
- § 27:25 —Ability to apply for certificate of rehabilitation (Pen. Code § 4852.01)
- § 27:26 —The court’s reporting responsibilities
- § 27:27 —Registration requirement
- § 27:28 —Requests for relief when record destroyed
- § 27:29 —Plea agreements
- § 27:30 Additional Provisions of the Act—Destruction of records (§ 11361.5)
- § 27:31 —Lawful activity not probable cause for search or arrest
- § 27:32 Expedited review of petitions for relief under Section 11361.8
- Appendix 27A. Changes to Criminal Penalties Under Proposition 64
- Appendix 27B. Proposition 64: Text of Resentencing Provisions: Health & Safety Code, § 11361.8

TABLE OF CONTENTS

**CHAPTER 28. CALIFORNIA RACIAL JUSTICE ACT OF 2020**

- § 28:1 Introduction
- § 28:2 Declaration of legislative intent
- § 28:3 Effective date
- § 28:4 Operative version of section 745
- § 28:5 Penal Code section 745
- § 28:6 Procedure for determining a violation of Section 745, subdivision (a)
- § 28:7 Remedies for violating section 745, subdivision (a)
- § 28:8 Additional issues
- § 28:9 Penal Code § 1473—Habeas Proceedings
- § 28:10 Penal Code § 1473.7—Persons Out of Custody
- Appendix 28A. Bibliography of Materials on Implicit Bias

**CHAPTER 29. CORRECTION OF SENTENCING ERRORS**

- § 29:1 Generally
- § 29:2 Clerical errors
- § 29:3 —Correction of custody credits and fees and fines
- § 29:4 Judicial errors
- § 29:5 —Void or unauthorized judgment
- § 29:6 —Modification of judgment
- § 29:7 Recall of sentence
- § 29:8 Procedures for recall and resentencing
- § 29:9 Setting aside order of revocation and sentence
- § 29:10 Sentencing following appeal
- § 29:11 —Correction of sentencing error
- § 29:12 —Conviction reversed and defendant convicted again and resentenced
- § 29:13 —Restitution fines (§§ 1202.4(b), 1202.44, 1202.45)
- § 29:14 Resentencing of defendant based on military service
- Appendix 29A. Statutory Changes Triggering Court’s Authority to Recall Sentence
- Appendix 29B. Form of Order Setting Matter for Status Conference
- Appendix 29C. Notice of Appellate Rights (Pen. Code, § 1172.1(d))
- Appendix 29D. Form Petition Under Penal Code § 1172.1

**APPENDICES**

- APPENDIX A. Glossary of Sentencing Terms

SENTENCING CALIFORNIA CRIMES

APPENDIX B. Resources for Sentencing Issues

**Table of Laws and Rules**

**Table of Cases**

**Index**