

Table of Contents

CHAPTER 1. THE CLOCK

I. TIME WAIVERS

- § 1:1 Defendant's agreement to waive time
- § 1:2 Penal Code § 859b
- § 1:3 General time waivers
- § 1:4 Limited time waivers
- § 1:5 Once taken, time waivers are likely irrevocable
- § 1:6 Penal Code § 1368 and competency
- § 1:7 Absent § 859b violation, no dismissal within 60 day period
- § 1:8 If defendant enters general time waiver, court has limited options to dismiss
- § 1:9 Defendant must personally waive time
- § 1:10 Penal Code § 977(b) waiver and Penal Code § 859b's personal waiver requirement
- § 1:11 Time waiver scripts
- § 1:12 Preliminary hearing waiver script and form

II. CONTINUOUS PRELIMINARY HEARING

- § 1:13 One session rule
- § 1:14 Violation of the rule
- § 1:15 No violation of the rule

III. AMENDING THE COMPLAINT, BENCH WARRANT PICK UPS, AND THE CLOCK

- § 1:16 Amending complaint requires new clock
- § 1:17 Only substantive amendments "trigger" a new clock
- § 1:18 Does a substantive amendment give the People the right to a new clock?
- § 1:19 Bench warrant pick ups

IV. CONTINUANCES

- § 1:20 Motions to continue and the 10/60-day rules
- § 1:21 The 10-day rule
- § 1:22 The 10 day rule—Operative statutes—Penal Code § 1050
- § 1:23 The 10-day rule—Operative statutes—Penal Code § 859b (second and third paragraphs)

- § 1:24 —Continuances within the 10-day period
- § 1:25 —Defendants out of custody
- § 1:26 —Defendants In Custody
- § 1:27 —People’s motion to continue for good cause
- § 1:28 —Defense motion to continue over defendant’s objection
- § 1:29 The 60-day rule

V. MOTIONS TO DISMISS FOR VIOLATIONS OF 10/60 DAY RULES

- § 1:30 Three categories of motions
- § 1:31 The 10-day rule
- § 1:32 —Motions to dismiss for violation of 10-day rule: sequential considerations
- § 1:33 — —Custody status
- § 1:34 — —Solely on this complaint
- § 1:35 —Motions to dismiss for violations of 10-day rule: sequential considerations—No good cause: dismiss or release OR (two schools of thought)
- § 1:36 — —Good cause: OR release (the OR rule)
- § 1:37 — — —The *In re Samano* Exception
- § 1:38 — — —The 10th day miss-out problem
- § 1:39 — — —The quarantine problem
- § 1:40 — — —No dismissal for violation of the OR rule
- § 1:41 Motions to dismiss for violations of 60-day rule: the 60-day rule
- § 1:42 —No good cause exception to 60-day rule
- § 1:43 —In or out of custody
- § 1:44 —Counting the 60-Day clock
- § 1:45 —Tolled in limited circumstances
- § 1:46 —The 60 day predicament
- § 1:47 Motions to dismiss for violation of limited time waivers

- Appendix 1A. Penal Code § 859b
- Appendix 1B. Penal Code §§ 977(b) and 977(c) Waiver Forms
- Appendix 1C. Time Waiver Scripts (Penal Code § 859b)
- Appendix 1D. Preliminary Hearing Waiver Script and Form
- Appendix 1E. Continuous Hearing Waiver Script
- Appendix 1F. 10/60 Day Rules Chart
- Appendix 1G. The Clock—Judge Gustavo Sztraicher’s Bench Card

CHAPTER 2. HEARINGS AND COURTROOM ISSUES

- § 2:1 Handcuffing

TABLE OF CONTENTS

§ 2:2	Preliminary hearing script
§ 2:3	Code of Civil Procedure Section 170.6 (Timeliness)
§ 2:4	Oaths
§ 2:5	Statement of constitutional rights
§ 2:6	Confrontation rights: not at preliminary hearings
§ 2:7	Confrontation rights: masks and COVID
§ 2:8	Remote and/or non-face-to-face cross-examination likely permissible
§ 2:9	Remote appearance of defendant; Penal Code § 977(b), (c)
§ 2:10	Remote appearances of witnesses
§ 2:11	Demurrer (Penal Code § 1003)
§ 2:12	Amending complaint/consolidation/joiner/severance
§ 2:13	Preliminary hearings: not for discovery
§ 2:14	Preliminary hearing waiver and adding new charges (Penal Code § 1009)
§ 2:15	Bar on successive prosecution (Penal Code § 654 and <i>Kellett</i>)
§ 2:16	Magistrate: scope of authority and Penal Code § 859a limitations
§ 2:17	Special concerns involving self-represented litigants
§ 2:18	Short breaks without continuous hearing waiver
§ 2:19	Witness's invocation of the Fifth on cross
§ 2:20	Witness's invocation of the Fifth by and through counsel
§ 2:21	Defendants on bond should be ordered back for all appearances
§ 2:22	Bench warrants: actual notice not required
§ 2:23	Expanding scope of hearing (Penal Code § 739)
§ 2:24	Criminal protective orders
§ 2:25	—Prejudgment protective order
§ 2:26	—Postjudgment protective order during probationary period
§ 2:27	—Postjudgment protective order for up to 10 years
§ 2:28	Exclusion of witnesses
§ 2:29	Unruly defendant
§ 2:30	Unruly/intimidating spectator
§ 2:31	Minor/child witnesses
§ 2:32	Recording the proceedings
§ 2:33	Separate interpreters required
§ 2:34	Transcripts (Cal. Rules of Court, rule 2.1040(b)(2) or (b)(3))
§ 2:35	Moral Support Person (MSP)
§ 2:36	Moral support dog

- § 2:37 Calendaring motions
- § 2:38 Ex parte applications (Cal. Rules of Court, rule 3.1200)
- § 2:39 Under seal filings
- § 2:40 Expert fees/ancillary costs
- § 2:41 Expert reports (Evid. Code § 730)
- § 2:42 Evid. Code § 782
- § 2:43 Reviewing police reports (Penal Code § 1204.5)
- § 2:44 Bench officer who arraigned defendant and considered bail not disqualified
- § 2:45 Any preliminary hearing judge can hear motion to quash/traverse
- § 2:46 Refiling and Code of Civil Procedure § 170.6 challenges
- § 2:47 Penal Code § 1368.1
- § 2:48 Involuntary medication
- § 2:49 Restoration hearing Penal Code § 1370(c)(1)
- § 2:50 Guilty plea cannot be joined with plea of not guilty by reason of insanity
- § 2:51 Common Penal Code offenses & corresponding CALCRIM instructions
- § 2:52 Operative preliminary hearing statutes
- Appendix 2A. Preliminary Hearing Script and Discussion
- Appendix 2B. Oaths
- Appendix 2C. Statement of Constitutional Rights
- Appendix 2D. Operative Preliminary Hearing Statutes

CHAPTER 3. EVIDENTIARY ISSUES

I. DISCOVERY

- § 3:1 Discovery: Constitutional, not statutory
- § 3:2 Discovery of prior convictions
- § 3:3 Delayed disclosure of informant/witness information

II. MOTIONS/EVIDENTIARY OBJECTIONS

- § 3:4 Motion to quash/traverse warrant
- § 3:5 Motion to dismiss for lack of venue
- § 3:6 Motion to change venue
- § 3:7 *Harvey-Madden* rule
- § 3:8 *Miranda* motions and motions challenging voluntariness of statements
- § 3:9 Motion to suppress identification
- § 3:10 —Six-pack photo arrays
- § 3:11 —Multiple six-packs

TABLE OF CONTENTS

§ 3:12	—Single person show-up
§ 3:13	Eyewitness identification
§ 3:14	Witness’s identification based on viewing of photo/ video surveillance (the <i>Mixon</i> objection)
§ 3:15	Secondary evidence rule: oral testimony re contents of writing/video
§ 3:16	Secretly recorded conversation
§ 3:17	Admission of DNA evidence
§ 3:18	Corpus delicti rule applies in preliminary hearings
§ 3:19	Cross examination re U visa
§ 3:20	Evidence and inferences
§ 3:21	Asking whether other witnesses are lying/credibility
§ 3:22	Speed
§ 3:23	Domestic violence and friends with benefits
§ 3:24	Rap Lyrics and Evidence Code § 352.2
§ 3:25	Demonstrative evidence
§ 3:26	Motion to quash subpoena for third party records

III. HEARSAY

§ 3:27	Hearsay generally inadmissible
§ 3:28	Prop. 115
§ 3:29	—Experts and Prop. 115
§ 3:30	—Business records and Prop. 115
§ 3:31	—Defense and Prop. 115
§ 3:32	Compilations
§ 3:33	Price Tags Are Nonhearsay
§ 3:34	Injuries
§ 3:35	Witness’s statement to doctor
§ 3:36	Translator
§ 3:37	Accomplice/codefendant’s statements
§ 3:38	Prior inconsistent statement as substantive evidence
§ 3:39	Prior convictions
§ 3:40	Labels/chain of custody/identification
§ 3:41	Logos used as circumstantial evidence of identity
§ 3:42	Receipts
§ 3:43	Prior identification of defendant
§ 3:44	Check
§ 3:45	Past recollection recorded
§ 3:46	Unavailability exception
§ 3:47	Silence in response to text may not be adoptive admission
§ 3:48	Texting
§ 3:49	Admission of child statements
§ 3:50	Excited utterance

- § 3:51 Impeachment (Evidence Code section 1202)
- § 3:52 Excited utterance—Evidence code § 1240
- § 3:53 Fresh complaint

IV. AUTHENTICATION

- § 3:54 Defined
- § 3:55 Medical records
- § 3:56 Police reports
- § 3:57 Certification (CLETS) re convictions
- § 3:58 Uncertified, unauthenticated records of conviction
not admissible
- § 3:59 Court records/minute orders/official records re
convictions
- § 3:60 Prison/jail records re conviction
- § 3:61 Chain of custody
- § 3:62 Request for judicial notice
- § 3:63 Social media evidence

V. EXPERTS

- § 3:64 General standard
- § 3:65 —*Kelly*
- § 3:66 Kelly—TruNarc did not meet the kelly test
- § 3:67 General standard—*Sargon*
- § 3:68 Scientific expert testimony and the gatekeeper
function
- § 3:69 Lay witness testimony
- § 3:70 Expert need not rely upon admissible evidence
- § 3:71 Hypothetical questions
- § 3:72 Expert opinions
- § 3:73 —Drugs
- § 3:74 —Bulletproof vest
- § 3:75 —HGN and opinion re: driving under the
influence
- § 3:76 —Eyewitness identification
- § 3:77 Expert Opinions—Computer animation and
expert testimony
- § 3:78 —Crime scene reconstruction
- § 3:79 —Shotspotter evidence
- § 3:80 —Permanent injury in hit and run
- § 3:81 Expert opinions—Stun gun
- § 3:82 —DNA
- § 3:83 —Suggestibility and susceptibility re false
confession
- § 3:84 —Tool mark analysis
- § 3:85 —Child Sexual Assault Accommodation Syndrome
- § 3:86 Expert opinion—Mold and causation

TABLE OF CONTENTS

- § 3:87 Expert opinion: Matching a cartridge case to the gun
- § 3:88 *Sanchez*, case-specific hearsay, and preliminary hearings
- § 3:89 —Expert's use of reference materials was background information, not case-specific hearsay
- § 3:90 —Information in autopsy report was case-specific hearsay
- § 3:91 —Expert's testimony regarding supervisor's approval was case-specific hearsay
- § 3:92 —Expert's testimony regarding size of the real property lot was case-specific hearsay

VI. COMMON PRELIMINARY HEARING EVIDENTIARY ISSUES

- § 3:93 Determining amount of loss/value
- § 3:94 —Business publications and compilations
- § 3:95 —Receipts
- § 3:96 —Vandalism
- § 3:97 —Loss amounts and hearsay
- § 3:98 Stolen cars
- § 3:99 —Post-theft driving

CHAPTER 4. CRIMES

I. MURDER

- § 4:1 Murder Defined

II. FIRST DEGREE

- § 4:2 First Degree Defined
- § 4:3 Substantial concurrent proximate cause
- § 4:4 Examples:
- § 4:5 Felony Murder Defined
- § 4:6 Actus reus requirement for felony murder
- § 4:7 Major Participant/Reckless Indifference: Crime Spree

III. SECOND DEGREE

- § 4:8 Second Degree Defined
- § 4:9 Second Degree Murder: Elements of Implied Malice Murder—Perpetrator
- § 4:10 Second Degree Murder: Implied Malice Vehicular Murder (*Watson* Murder)

IV. ATTEMPTED MURDER

- § 4:11 Second degree—Provocation

- § 4:12 Attempted Murder Defined
- § 4:13 Premeditated, Deliberated, and Willful Attempted Murder
- § 4:14 Kill Zone
- § 4:15 Multiple Counts for Shooting Into Crowd (Specific vs. Random Targets)
- § 4:16 Attempted Murder By Pointing a Gun

V. AIDING AND ABETTING MURDER

- § 4:17 Aiding and Abetting Defined
- § 4:18 Aiding and Abetting: Circumstances to Consider
- § 4:19 Aiding and Abetting First Degree Murder
- § 4:20 Aiding and Abetting Second Degree Murder
- § 4:21 Aiding and Abetting Second Degree Implied Malice Murder
- § 4:22 Aiding and Abetting Attempted Murder

VI. MANSLAUGHTER

- § 4:23 Manslaughter Defined
- § 4:24 Voluntary Manslaughter
- § 4:25 —Heat of Passion Defense
- § 4:26 —Imperfect Self-Defense
- § 4:27 Involuntary Manslaughter
- § 4:28 Vehicular Manslaughter Gross Negligence
- § 4:29 Vehicular Manslaughter Not Lesser Included Offense of Murder
- § 4:30 DUI Causing Bodily Injury Not Lesser Included Offense of Gross Vehicular Manslaughter While Intoxicated Where Different Victims Are Involved

VII. ARSON

- § 4:31 Arson Defined
- § 4:32 Arson of inhabited dwelling
- § 4:33 Burning of Trash
- § 4:34 Arson and the manufacture of controlled substance (butane honey oil.)
- § 4:35 Burning of Structure
- § 4:36 Burning on Forest Land

VIII. EAVESDROPPING

- § 4:37 Eavesdropping/Recording Conversations
- § 4:38 Expectation of Privacy and Confidential Communication

IX. ROBBERY

- § 4:39 Robbery Defined

TABLE OF CONTENTS

- § 4:40 Robbery by Force
- § 4:41 Robbery by Fear
- § 4:42 Fear is Subjective Not Objective
- § 4:43 *Estes* Robbery
- § 4:44 Attempted *Estes* Robbery
- § 4:45 Robbery at ATM
- § 4:46 Aiding and Abetting Robbery
- § 4:47 Abandonment

X. CRIMINAL THREATS

- § 4:48 Criminal Threats Generally
- § 4:49 Excludes Non-Verbal Conduct
- § 4:50 Threats in a School Setting
- § 4:51 Threat in context
- § 4:52 Sustained Fear
- § 4:53 Absolutely Unconditional Threat Not Required
- § 4:54 One Count Versus Two Counts of Criminal Threats
- § 4:55 Criminal Threats and Stalking: Not Lesser Included Offenses
- § 4:56 Stalking: Penal Code section 646.9
- § 4:57 Use of intermediaries is not attempted stalking: Penal Code section 646.9
- § 4:58 Criminal Threats: Attempted Criminal Threats is Lesser Included Offense
- § 4:59 Family Members

XI. DISSUADING A WITNESS

- § 4:60 Dissuading a Witness Generally
- § 4:61 Dissuading a Witness Applies to Completed Crimes, Not Future Crimes
- § 4:62 Felony Dissuading Does Not Include Threat of Self-Harm
- § 4:63 Dissuading a Witness From Causing a Complaint to be Sought
- § 4:64 Dissuading By Preventing a Call to 911

XII. ASSAULT WITH A DEADLY OR DANGEROUS WEAPON

- § 4:65 Assault With a Deadly Weapon Generally
- § 4:66 Use of Weapon Must be Capable of and Likely to Produce Death or Great Bodily Injury
- § 4:67 Specific Intent Not Necessary
- § 4:68 Imminence and Present Ability
- § 4:69 Victim Need Not Be Aware of Threat
- § 4:70 Assault with Deadly Weapon and 12022, subd. (b) Enhancement

- § 4:71 Duplicative Counts and Enhancement
- § 4:72 Lesser Included Offenses
- § 4:73 Examples of Deadly Weapons That Are Not
Inherently Deadly or Dangerous
- § 4:74 Not Used as Deadly or Dangerous Weapon

XIII. GREAT BODILY INJURY (GBI)

- § 4:75 GBI Defined
- § 4:76 Assault By Means of Force Likely to Produce
Great Bodily Injury
- § 4:77 GBI Must Be to Person Other Than Accomplice
- § 4:78 GBI and Reckless Driving
- § 4:79 GBI and Furnishing Drugs

XIV. VANDALISM

- § 4:80 Vandalism Generally
- § 4:81 Damage/Loss Amounts
- § 4:82 Loss Amounts and Hearsay
- § 4:83 Kelley Blue Book Value
- § 4:84 Voluntary Intoxication Not a Defense to
Vandalism

XV. KIDNAPPING

- § 4:85 Kidnapping Generally
- § 4:86 Incidental Movement is Not Kidnapping as
Charged in Penal Code § 209 (Kidnapping to
Commit Robbery)
- § 4:87 Capacity to Consent
- § 4:88 General Kidnapping Requires Threat or Force,
Not Deceit
- § 4:89 General Kidnapping to Commit Rape

XVI. FELONY CHILD ABUSE

- § 4:90 Felony Child Abuse Generally
- § 4:91 Social Worker's Nonfeasance Does Not Support
Charges of Child Abuse
- § 4:92 Child endangerment

XVII. MAYHEM

- § 4:93 Mayhem Generally
- § 4:94 Scarring Can Establish Mayhem

XVIII. THEFT AND THEFT-RELATED CRIMES

- § 4:95 Theft
- § 4:96 Fair Market Value

TABLE OF CONTENTS

§ 4:97	Theft from Elder
§ 4:98	Theft and Receipt of Same Stolen Property
§ 4:99	Single Larceny Doctrine (<i>Bailey Doctrine</i>)
§ 4:100	Forgery
§ 4:101	Identity Theft
§ 4:102	Identify Theft—Defendant Does Not Need to Know Victim is Real Person
§ 4:103	Forgery and Identity Theft
§ 4:104	Counterfeiting
§ 4:105	—Possession of Counterfeiting Equipment
§ 4:106	—Possession for Sale of Counterfeit Goods
§ 4:107	—Counterfeit Currency
§ 4:108	Access Card Fraud
§ 4:109	Embezzlement
§ 4:110	Shoplifting (Cashing Stolen Check)
§ 4:111	Charging Limitations: Burglary, Theft, and Shoplifting
§ 4:112	Receiving Stolen Property from Two Stores Where Each Theft is Less Than \$950
§ 4:113	Mail Theft as a Misdemeanor

XIX. VEHICLE THEFT

§ 4:114	Vehicle Theft Generally
§ 4:115	Vehicle Theft and Posttheft Driving
§ 4:116	Joyriding: Car Theft and Prop. 47
§ 4:117	Buying or Receiving Stolen Vehicle
§ 4:118	Definition of Vehicle
§ 4:119	VIN Tampering—Vehicle Code § 10802

XX. BURGLARY

§ 4:120	Burglary Generally
§ 4:121	First Degree Burglary (Inhabited Dwelling)
§ 4:122	First Degree Burglary—Not Inhabited Dwelling
§ 4:123	—Person Present
§ 4:124	—Incidental use of utilities/consumption of items and specific intent
§ 4:125	Second Degree Commercial Burglary—Value Over \$950
§ 4:126	Burglary or Shoplifting from Commercial Establishment
§ 4:127	Burglary or Shoplifting of Interior Room
§ 4:128	Burglary or Shoplifting Involving ATM
§ 4:129	Attempted Burglary
§ 4:130	Penetration of Outer Boundary
§ 4:131	Vehicle Burglary
§ 4:132	Burglary Tools
§ 4:133	—Intent

§ 4:134 —Possession

XXI. LAW ENFORCEMENT AND CUSTODY-RELATED OFFENSES

- § 4:135 Obstructing or Resisting Officer by Threat or Violence
- § 4:136 First Amendment Defense to Penal Code § 69
- § 4:137 Resisting, Delaying, or Obstructing Officer
- § 4:138 Lesser Included Offenses
- § 4:139 Battery on Peace Officer: Incidental Touching
- § 4:140 Defendant's Mental States for Law Enforcement-Related Crimes
- § 4:141 Assault by public officer
- § 4:142 Evasion
- § 4:143 Battery By Gassing
- § 4:144 Bringing Contraband into Jail
- § 4:145 Possession of Small Amounts of Cannabis in Prison is Still a Felony
- § 4:146 Usable Amount of Methamphetamine Paper in Prison
- § 4:147 Conviction for Penal Code § 4573 Requires Usable Amount
- § 4:148 Conspiracy to Deliver Cell Phone in Prison
- § 4:149 Conspiracy to bring contraband into jail
- § 4:150 Computer Fraud or Abuse—Penal Code § 502

XXII. DRIVING UNDER THE INFLUENCE

- § 4:151 Driving Under the Influence Generally
- § 4:152 Title 17 Compliance
- § 4:153 DUI and Blood Draw
- § 4:154 DUI, FSTs and the Fifth Amendment
- § 4:155 Blood Draws and the Fourth Amendment

XXIII. FIREARMS AND WEAPONS

- § 4:156 *Bruen* and California's Firearm Statutes
- § 4:157 Cannot Carry Gun While Committing A Crime
- § 4:158 Dirk and Dagger
- § 4:159 Ten Year Firearm Enhancement
- § 4:160 Personal Use
- § 4:161 Constructive Possession of Firearm
- § 4:162 Knowledge of Size of Sawed-Off Shotgun
- § 4:163 Possession of Machine Gun is Strict Liability Offense
- § 4:164 Possession of Concealed Firearm
- § 4:165 Possession of Firearm vs. Armed with Firearm
- § 4:166 Possession of Controlled Substance While Armed with Loaded Firearm

TABLE OF CONTENTS

§ 4:167 Discharging a firearm from a vehicle

XXIV. DRUG CRIMES

- § 4:168 Furnishing Controlled Substance to Minor and Great Bodily Injury
- § 4:169 Possession of Controlled Substance While Armed with Loaded Firearm
- § 4:170 Possession of Small Amounts of Cannabis in Prison is Still a Felony
- § 4:171 Usable Amount of Methamphetamine Paper in Prison
- § 4:172 Conviction for Penal Code § 4573 Requires Usable Amount

XXV. FINANCIAL WHITE COLLAR CRIMES

- § 4:173 Money Laundering
- § 4:174 Bribery

XXVI. SEX CRIMES

- § 4:175 Sexual Communications with Minor
- § 4:176 Human Trafficking of Minor
- § 4:177 —Substantive Offense
- § 4:178 —Attempt
- § 4:179 Human Trafficking and Consent
- § 4:180 Human Trafficking and Hearsay
- § 4:181 Aiding and Abetting Human Trafficking and Pimping
- § 4:182 Pandering
- § 4:183 Forcible Acts of Sexual Penetration
- § 4:184 Sexual battery by restraint
- § 4:185 Sexual Battery by Fraud
- § 4:186 Rape by an intoxicating substance and kidnapping to commit rape
- § 4:187 Sodomy and oral copulation by duress
- § 4:188 Child Pornography
- § 4:189 *Mayberry* Defense

XXVII. THEORIES OF LIABILITY, DEFENSES, AND CHALLENGES TO PROSECUTION’S CASE

- § 4:190 Prosecution Theories of Liability
- § 4:191 —Attempt
- § 4:192 —Attempt vs. Preparation (First Degree Robbery)
- § 4:193 —Aiding and Abetting
- § 4:194 —Natural and Probable Consequences

- § 4:195 —Aiding and Abetting Natural and Probable
Consequences
 - § 4:196 —Conspiracy
 - § 4:197 —Conspiracy to Murder
 - § 4:198 —Distinction Between Conspiracy and Aiding
and Abetting
 - § 4:199 —Accessory After the Fact
 - § 4:200 Defenses and Challenges to Prosecution’s Case
 - § 4:201 —*Williamson* Rule: More Specific Statute
Controls
 - § 4:202 —Corpus Delicti Rule
 - § 4:203 —Corpus Delicti Rule and Conspiracy
 - § 4:204 —Self-Defense: Proof at Preliminary Hearing
 - § 4:205 —Self-Defense: Defendant’s Physical Limitations
Can Be Considered in Determining Objective
Reasonableness of Self-Defense
 - § 4:206 —Self-Defense/Heat of Passion Defense and
Gang Evidence
 - § 4:207 —Imperfect Self-Defense
 - § 4:208 —Heat of Passion/Provocation
 - § 4:209 —Robbery and Self-Defense
 - § 4:210 —Assault and Self-Defense
 - § 4:211 Defense and Challenges to Prosecution’s Case—
Unconsciousness
 - § 4:212 —Mistake of Fact
 - § 4:213 Defenses and Challenges to Prosecution’s Case—
Displays of Deadly Force Cannot Be Used To
Defend Property
 - § 4:214 —Voluntary Intoxication and Second Degree
Murder
 - § 4:215 Defenses and Challenges to Prosecution’s Case—
Self-Defense Unavailable Where Defendant is
Instigator
 - § 4:216 Defenses and Challenges to Prosecution’s Case—
First Amendment Defense to Penal Code § 69
Where Statement Is Not a True Threat
 - § 4:217 —Violent Victim Rule
 - § 4:218 —Home Protection Bill of Rights Presumption
 - § 4:219 Defenses and challenges to prosecution’s case—
Intervening cause
- Appendix 4A. Common Penal Code Offenses and
Corresponding CALCRIM Instructions

CHAPTER 5. STREET TERRORISM (GANG CRIMES)

I. INTRODUCTION

- § 5:1 The Legislation

TABLE OF CONTENTS

II. ELEMENTS OF CRIMINAL STREET GANG

- § 5:2 Difficult statutory language
- § 5:3 Elements of a criminal street gang
- § 5:4 —“organized”
- § 5:5 —Common name or common identifying sign or symbol
- § 5:6 —Primary activities
- § 5:7 —Pattern of criminal gang activity
- § 5:8 —*Prunty*, gang subsets and the sameness requirement

III. PENAL CODE § 186.22(A): ACTIVE PARTICIPATION IN A CRIMINAL STREET GANG

- § 5:9 Penal Code § 186.22(a)—Substantive offense
- § 5:10 —Active participation
- § 5:11 —Willfully assisted, furthered or promoted
- § 5:12 —Felonious criminal conduct
- § 5:13 —Sentencing

IV. PENAL CODE § 186.22(B): FELONY COMMITTED FOR BENEFIT OF CRIMINAL STREET GANG

- § 5:14 Penal Code § 186.22(b)—Proving the enhancement
- § 5:15 Penal Code Section 186.22(b)—Benefit, direction, association
- § 5:16 —Underlying felony must be gang-related
- § 5:17 Penal Code § 186.22(b)—Specific intent to promote, further, or assist
- § 5:18 —Insufficient evidence crime was committed for benefit of, at the direction of, or in association with a criminal street gang
- § 5:19 —Crime was committed for benefit of, at the direction of, or in association with a criminal street gang
- § 5:20 —Sentencing and alternate penalties

V. PENAL CODE § 186.22(D): ALTERNATE PENALTY—ELEVATING A MISDEMEANOR TO A WOBLER

- § 5:21 Penal Code § 186.22(d)—Alternate penalty
- § 5:22 —Sentencing
- § 5:23 Penal Code § 186.22(d) Sentencing—Interaction with the Three Strikes Law (Penal Code §§ 667(a)-(i), 1170.12(a)-(d))

VI. GANG CONSPIRACY CRIMES (PENAL CODE § 182.5; CALCRIM NO. 1400)

- § 5:24 Attempted first degree robbery
- § 5:25 Attempted murder
- § 5:26 Not unconstitutionally vague

VII. GANG EXPERTS

- § 5:27 Insufficient evidence to support expert's opinions
- § 5:28 Gang experts
- § 5:29 Gang expert's testimony unhelpful to the jury, but not prejudicial
- § 5:30 Gang experts—*Sanchez* bars introduction of case-specific testimonial hearsay by expert witness
- § 5:31 —*Sanchez* applies at preliminary hearing
- § 5:32 —Unclear whether expert witness, who is qualified Prop. 115 officer, can relate case specific hearsay
- § 5:33 —Pattern of criminal gang activity—Primary activities are background information and not case specific facts
- § 5:34 — —Predicates are case specific hearsay
- § 5:35 —Field identification cards involving defendant may be case-specific hearsay

Appendix 5A. Penal Code § 186.22

Appendix 5B. The Predicate Offenses (Penal Code § 186.22(e)(1)(A)-(Z)) (by offense section number)

CHAPTER 6. HOLD TO ANSWER

I. HOLD TO ANSWER (HTA)

- § 6:1 "Sufficient cause"
- § 6:2 Degree of murder
- § 6:3 Attempted willful, deliberate, and premeditated murder
- § 6:4 Special circumstances
- § 6:5 Pleading and proof—Enhancements
- § 6:6 —Special circumstance allegation
- § 6:7 —Priors that are elements of the offense or used to elevate a misdemeanor to a felony
- § 6:8 —Priors, strikes, and bail
- § 6:9 —Aggravating factors
- § 6:10 Misdemeanors
- § 6:11 Setting date in arraignment court
- § 6:12 Exhibits: Introduction and retention
- § 6:13 People unable to proceed

TABLE OF CONTENTS

- § 6:14 Penal Code § 1385 dismissal and consideration of arguments
- § 6:15 Penal Code § 1385 dismissal—Enhancements
- § 6:16 Proceeding on existing complaint in lieu of dismissal
- § 6:17 Holding order and jurisdiction
- § 6:18 Not held to answer and release
- § 6:19 Court cannot add a charge on its own
- § 6:20 Once preliminary hearing waiver taken, the People cannot add new charges
- § 6:21 Transcript
- § 6:22 Use of the prelim transcript at the trial

II. PENAL CODE § 17(B)

- § 6:23 The statute
- § 6:24 What type of cases can be reduced
- § 6:25 When Penal Code § 17(b) motion can be heard
- § 6:26 Ruling must be made before HTA
- § 6:27 Factors to consider
- § 6:28 Penal Code § 17(b) indicated sentence
- § 6:29 Penal Code § 17(b) and the clock
- § 6:30 People cannot appeal magistrate's reduction of a wobbler to a misdemeanor
- § 6:31 People can appeal trial court's Penal Code 17(b) reduction when entered without authority

III. THE INFORMATION AND REVIEW OF THE MAGISTRATE'S DECISION

- § 6:32 Petition for writ of mandate in superior court
- § 6:33 Adding charges to the information
- § 6:34 Standard of review in superior court
- § 6:35 Dismissed charges and the People's options
- § 6:36 Findings of fact or conclusions of law
- § 6:37 Penal Code § 995 motion
- § 6:38 After the hearing on the Penal Code § 995 motion
- § 6:39 The People's Penal Code § 995 dilemma—proceed or dismiss and refile
- § 6:40 Remanding to correct minor errors—Penal Code § 995(a)
- § 6:41 People's appeal (Penal Code § 871.5)
- § 6:42 Standard of review in appellate court

IV. TWO DISMISSAL RULE

- § 6:43 Generally
- § 6:44 Exceptions to two dismissal rule
- Appendix 6A. After the Hearing: The Procedural Options

CHAPTER 7. PLEAS

I. FELONY PLEA SCRIPT

- § 7:1 Change of plea/maximum sentence/terms of disposition
- § 7:2 True name and date of birth
- § 7:3 Consequences of plea
- § 7:4 Other possible consequences depending on charges
- § 7:5 Waiver of constitutional rights
- § 7:6 Voluntariness inquiry
- § 7:7 Factual basis
- § 7:8 —*West* plea
- § 7:9 Court's approval of plea (Penal Code § 1192.5)
- § 7:10 Take the plea
- § 7:11 Findings
- § 7:12 Prop. 63/Penal Code § 29810 advisement and orders
- § 7:13 Sentencing
- § 7:14 —Immediate sentencing
- § 7:15 — —Firearms compliance hearing waiver
- § 7:16 — —Impose sentence and conditions
- § 7:17 —Continuing the sentencing date
- § 7:18 — —Time waiver
- § 7:19 — —*Arbuckle* (same judge)
- § 7:20 — —*Cruz* waiver (out of custody, ordered back)
- § 7:21 — —Remand
- § 7:22 — —Impose sentence and conditions
- § 7:23 Alternative felony plea script

II. MISDEMEANOR PLEA SCRIPT WITHOUT *TAHL* WAIVER FORM

- § 7:24 Arraignment on amended complaint
- § 7:25 Change of plea/maximum sentence/terms of disposition
- § 7:26 Consequences of plea
- § 7:27 Other possible consequences depending on the charges
- § 7:28 Waiver of constitutional rights
- § 7:29 Voluntariness inquiry
- § 7:30 Counsel
- § 7:31 *West* plea
- § 7:32 Take the plea
- § 7:33 Findings
- § 7:34 Prop. 63/Penal Code § 29810 advisement and orders

TABLE OF CONTENTS

- § 7:35 Immediate sentencing
- § 7:36 —Impose sentence and conditions
- § 7:37 Continuing the sentencing date—Time waiver
- § 7:38 —*Arbuckle* (same judge)
- § 7:39 —*Cruz* waiver (out of custody, ordered back)
- § 7:40 —remand
- § 7:41 Sentencing
- § 7:42 —Impose sentence and conditions

III. MISDEMEANOR PLEA SCRIPT WITH COMPLETED *TAHL* WAIVER FORM

- § 7:43 Arraignment on amended complaint
- § 7:44 Change of plea
- § 7:45 Waiver of rights/Voluntariness/Consequences
- § 7:46 *Watson* advisement
- § 7:47 Counsel
- § 7:48 *West* plea
- § 7:49 Take the plea
- § 7:50 Findings
- § 7:51 Sentencing

IV. MISDEMEANOR PENAL CODE § 977(A) CHANGE OF PLEA SCRIPT

- § 7:52 Arraignment on amended complaint
- § 7:53 Change of plea
- § 7:54 Waiver of rights/Voluntariness/Consequences
- § 7:55 Counsel
- § 7:56 Take the plea
- § 7:57 Findings
- § 7:58 Sentencing

V. INDICATED SENTENCE SCRIPT

- § 7:59 By the court

CHAPTER 8. SENTENCING

I. SENTENCING GENERALLY

- § 8:1 Back time
- § 8:2 Sentencing triad
- § 8:3 Aggravating factors
- § 8:4 Right to be physically present or by remote appearance
- § 8:5 Penal Code § 654
- § 8:6 One year/364 day limitation in county jail
- § 8:7 Diagnostic study

- § 8:8 Mental health diversion (Penal Code § 1001.36
(amended eff. 1/1/23))
- § 8:9 Conspiracy and substantive offenses
- § 8:10 Possession of concealed firearm: alternate ways of
committing the same offense
- § 8:11 Multiple cases, single sentence
- § 8:12 Penal Code § 290 registration—misdemeanor
battery
- § 8:13 Penal Code § 290 Registration unaffected by 17(b)
reduction to a misdemeanor
- § 8:14 Penal Code § 290 registration—Termination
- § 8:15 Sentences for attempt crimes and notable
exceptions
- § 8:16 Enhancement for attempted voluntary
manslaughter

II. PLEA AGREEMENTS

- § 8:17 Plea agreements generally
- § 8:18 Violation of Cruz Waiver
- § 8:19 Motion to withdraw plea based upon ineffective
assistance of counsel
- § 8:20 Withdrawal of plea for misadvice re credit
limitations

III. ENHANCEMENTS

- § 8:21 Enhancements generally
- § 8:22 Crimes committed while on bail
- § 8:23 Penal Code § 1385 and dismissal of
enhancements
- § 8:24 Status enhancements not subject to 1/3 term
limitations
- § 8:25 Pleading and proving vicarious firearm
enhancements
- § 8:26 Striking enhancements or punishment for
enhancements
- § 8:27 Striking or imposing personal use of firearm
enhancements
- § 8:28 Prison priors
- § 8:29 —Penal Code § 667.5 not applicable to attempt
crimes
- § 8:30 Arson

IV. STRIKES

- § 8:31 Strikes generally
- § 8:32 Fair Notice
- § 8:33 Applying *Gallardo* (determining whether prior
conviction is a strike)

TABLE OF CONTENTS

- § 8:34 Foreign state convictions as priors
- § 8:35 Determining whether prior Penal Code § 245 conviction is serious felony
- § 8:36 Mandatory state prison for prior strike
- § 8:37 Prior strike precludes probation and diversion
- § 8:38 Prior strike and custody credits
- § 8:39 Gang enhancement subject to strike penalty
- § 8:40 Offense reduced to misdemeanor does not qualify as prior serious felony (strike)
- § 8:41 Serious and violent sentences concurrent
- § 8:42 Sex crimes
- § 8:43 Striking a strike (*Romero* motion)
- § 8:44 Juvenile adjudication is a strike

V. CUSTODY CREDITS

- § 8:45 Presentence mental health custody credits
- § 8:46 Two days in custody equals four days presentence credits
- § 8:47 Presentence custody credits for electronic monitoring and home detention
- § 8:48 Presentence conduct custody credits—violent felonies
- § 8:49 —serious felonies
- § 8:50 Presentence custody credits—Strikes
- § 8:51 —Concurrent multiple open cases
- § 8:52 Calculating custody credits upon resentencing
- § 8:53 Calculating Presentence Custody Credits

VI. PROBATION

- § 8:54 Suspending imposition of sentence or suspending execution of sentence
- § 8:55 Crimes eligible and ineligible for probation
- § 8:56 One year maximum in county jail as condition of probation
- § 8:57 Maximum probation period of 2 years for felonies and 1 year for misdemeanors
- § 8:58 Term of probation not reduced by presentencing custody
- § 8:59 Maximum probation term with exempt and non-exempt crimes
- § 8:60 AB 1950 applies retroactively
- § 8:61 Probation conditions—*Lent* test
- § 8:62 —Electronic search conditions allowed
- § 8:63 —Electronic search condition not allowed
- § 8:64 —Marijuana condition fails *Lent* test
- § 8:65 —Unconsented sexual touching not unconstitutionally vague

- § 8:66 —“Pornographic” is vague and overbroad
- § 8:67 —Court cannot add new conditions absent changed circumstances
- § 8:68 Multiple counts—One grant of probation
- § 8:69 Early termination and reduction of felony to misdemeanor
- § 8:70 Early termination and sex offender counseling
- § 8:71 Termination of DV probation

VII. PROBATION VIOLATIONS—SUMMARY REVOCATION

- § 8:72 Summary revocation generally
- § 8:73 Evidentiary standard at hearing
- § 8:74 Due process rights apply but not Sixth Amendment confrontation rights
- § 8:75 Hearsay
- § 8:76 Willful violation and deportation
- § 8:77 No violation where event occurs while probation is revoked
- § 8:78 Reinstatement or imposition of new probation term
- § 8:79 AB 1950 and the court’s jurisdiction

VIII. PAROLE/POSTRELEASE COMMUNITY SUPERVISION (PRCS)

- § 8:80 State prison parole/PRCS
- § 8:81 Time served and defendant’s obligation to report to probation/parole
- § 8:82 Extension of PRCS
- § 8:83 Excess custody credits and PRCS

IX. MANDATORY SUPERVISION

- § 8:84 Not after completion of county jail sentence
- § 8:85 County jail split sentences
- § 8:86 Electronic search condition not justified under *Lent*
- § 8:87 Finality of judgment
- § 8:88 Early termination of mandatory supervision

X. FINES AND FEES

- § 8:89 Shifting burdens at sentencing
- § 8:90 Ability to pay code provisions
- § 8:91 Defendant’s right to be present

XI. RESTITUTION

- § 8:92 Restitution generally

TABLE OF CONTENTS

§ 8:93	Restitution based upon victim's estimate of the value of the property
§ 8:94	Extending probation to pay restitution
§ 8:95	Restitution—Sentence completed
§ 8:96	Restitution can be ordered during term of mental health diversion, not afterwards
§ 8:97	Section 1203.1 restitution cannot be modified after termination of probation
§ 8:98	Victim restitution with interest
§ 8:99	Court has jurisdiction to order restitution after probation terminates
§ 8:100	Restitution imposed by a different judge absent an <i>Arbuckle</i> waiver
§ 8:101	Restitution for parents of child victims
§ 8:102	Restitution for vandalism
§ 8:103	Restitution for attorney fees
§ 8:104	Restitution overcompensating the victim
§ 8:105	Restitution for victim of human trafficking
§ 8:106	Restitution and time limits
§ 8:107	Restitution—Not for the trip
§ 8:108	Ability to pay
§ 8:109	Defendant's presence generally required (unless waived) at restitution hearing
§ 8:110	Restitution awarded to company despite mitigation
§ 8:111	Restitution for lost resale value
§ 8:112	Restitution for victim relocation costs
§ 8:113	In-kind restitution for cryptocurrency
§ 8:114	Restitution not for insurance companies
§ 8:115	Restitution for flight from the scene
Appendix 8A.	Violent Felony Reference Sheet
Appendix 8B.	Serious Felony Reference Sheet
Appendix 8C.	One Strike Offenses
Appendix 8D.	Offenses Requiring STATIC-99 Reports/ 290 Registrable Sex Offenses (By Section Number and Alphabetical)
Appendix 8E.	AIDS Testing Required Offenses (Penal Code § 1202.1)
Appendix 8F.	Striking a Strike Checklist
Appendix 8G.	Probation Eligibility and Mandatory Jail Terms
Appendix 8H.	Crimes Excluded From the One-Year or Two-Year Limit on Probation Due to Specific Probation Lengths (Penal Code §§ 1203a(b), 1203.1(1)(1))
Appendix 8I.	Crimes Excluded From the Two-Year

Limit on Probation Due to Inclusion in
Penal Code §§ 667.5(c) or 1203.1(1)(2)

Appendix 8J. PPRF Misdemeanor Crimes

CHAPTER 9. POSTCONVICTION & RESENTENCING

- § 9:1 Court generally lacks jurisdiction to modify final sentence/restitution/fines and fees
- § 9:2 No general, nonstatutory right to recall and correct a sentence
- § 9:3 Finality of judgment
- § 9:4 —Probation not final
- § 9:5 Whether a new law applies retroactively to *nonfinal* cases: the *Estrada* rule
- § 9:6 Does a new law apply retroactively to cases that are *final*?
- § 9:7 Resentencing—Defendant’s presence at resentencing hearing
- § 9:8 —Waiver of appearance and remote appearance of defendant
- § 9:9 —Correcting abstract of judgment
- § 9:10 —SB 483 (Penal Code § 1172.75) striking sentence enhancements pursuant to Penal Code § 667.5(b) entitles defendant to full resentencing
- § 9:11 Petition for resentencing re veteran
- § 9:12 Penal Code § 1172.1—Recall and resentencing
- § 9:13 Resentencing—Resentencing after remand—plea agreements and the *Stamps* case
- § 9:14 — —Upper term/aggravating factors and plea agreements
- § 9:15 — —Open plea agreement
- § 9:16 — —Stipulated plea agreements
- § 9:17 — —AB 1950 and prior plea agreements
- § 9:18 — —Postconviction rehabilitative conduct considered
- § 9:19 Calculating custody credits upon resentencing
- § 9:20 Expungement (felonies/misdemeanors)
- § 9:21 Sealing records—Expungement pursuant to Penal Code § 1203.4 insufficient
- § 9:22 Penal Code § 17(b)(1) or (b)(3) reduction to misdemeanor
- § 9:23 Reduction to a misdemeanor does not affect 290 registration
- § 9:24 Prop. 47 reduction from felony to misdemeanor and misdemeanor parole
- § 9:25 Parole revocation and Penal Code § 1385
- § 9:26 Transfer from parole to PRCS
- § 9:27 Certificate of rehabilitation

TABLE OF CONTENTS

§ 9:28 170.6 Challenge to the same sentencing judge is untimely with respect to section 1172.6 petition for resentencing.

Appendix 9A. Assembly Bill No. 200 Renumbered Penal Code Sections

CHAPTER 10. *MARSDEN, FARETTA* AND DISRUPTIVE DEFENDANTS

I. *MARSDEN* MOTIONS

§ 10:1 Procedure
§ 10:2 Timing
§ 10:3 Burden of proof
§ 10:4 Four requirements
§ 10:5 The legal landscape
§ 10:6 Motion to withdraw plea based upon IAC triggers
Marsden hearing
§ 10:7 *Marsden* summary sheet
§ 10:8 Court's *Marsden* script

II. *FARETTA* MOTIONS

§ 10:9 Procedure
§ 10:10 Timing
§ 10:11 *Faretta* and competency
§ 10:12 Burden of proof
§ 10:13 *Faretta* waiver
§ 10:14 Court's *Faretta* colloquy
§ 10:15 Denial of *Marsden* motion followed directly by
Faretta request
§ 10:16 Timeliness of *Faretta* motion
§ 10:17 Post-trial motions
§ 10:18 Critical stages

III. DISRUPTIVE DEFENDANTS REPRESENTED BY COUNSEL

§ 10:19 Steps for removal
Appendix 10A. *Marsden* Summary Sheet
Appendix 10B. *Faretta* Waiver Summary Sheet

CHAPTER 11. CONTEMPT

I. INTRODUCTION

§ 11:1 Contempt generally

II. NON-DOMESTIC VIOLENCE CASES

§ 11:2 Make preliminary finding

- § 11:3 Order witness to take oath or answer questions
- § 11:4 Appoint counsel for witness
- § 11:5 Warn the witness
- § 11:6 Find witness in contempt
- § 11:7 Sanctions
- § 11:8 Witness eventually agrees to take oath/answer questions

III. DOMESTIC VIOLENCE CASES

- § 11:9 Make preliminary finding
- § 11:10 Make finding re domestic violence witness
- § 11:11 Optional referral to domestic violence counselor (Code of Civil Procedure § 1219(b))
- § 11:12 Order witness to take oath or answer questions
- § 11:13 Appoint counsel for witness
- § 11:14 Warn the witness
- § 11:15 Find witness in contempt
- § 11:16 Sanctions
- § 11:17 Stay contempt sentence, if fine imposed
- § 11:18 Witness eventually agrees to take oath/answer questions

IV. SEXUAL ASSAULT CASES

- § 11:19 Make preliminary finding
- § 11:20 Make finding re sexual assault victim (Code of Civil Procedure § 128(d)(1))
- § 11:21 Order witness to take oath or answer questions
- § 11:22 Appoint counsel for witness
- § 11:23 Warn the witness
- § 11:24 Find witness in contempt
- § 11:25 Sanctions
- § 11:26 Stay contempt sentence, if imposed
- § 11:27 Witness eventually agrees to take oath/answer questions

Appendix 11A. Code of Civil Procedure § 1219

Appendix 11B. Penal Code § 861

CHAPTER 12. MOTIONS INVOLVING OFFICIAL INFORMATION AND GOVERNMENT INFORMANT PRIVILEGES

I. INTRODUCTION

- § 12:1 Context, privileges, and scripts
- § 12:2 Official information privilege

TABLE OF CONTENTS

§ 12:3 Informant privilege

**II. MOTION TO DISCLOSE OFFICIAL
INFORMATION PRIOR TO OR DURING
PRELIMINARY HEARING**

§ 12:4 Procedural steps

§ 12:5 Script

**III. MOTION TO DISCLOSE SURVEILLANCE
SITE PRIOR TO OR DURING
PRELIMINARY HEARING**

§ 12:6 Procedural steps

§ 12:7 Script

**IV. MOTION TO DISCLOSE INFORMANT'S
IDENTITY PRIOR TO OR DURING
PRELIMINARY HEARING**

§ 12:8 Procedural steps

§ 12:9 Script

**V. MOTION TO DISCLOSE INFORMANT'S
IDENTITY FILED IN CONJUNCTION WITH
A MOTION TO SUPPRESS (WITHOUT A
WARRANT)**

§ 12:10 Motions to suppress (without a warrant)
generally

**VI. MOTION TO DISCLOSE INFORMANT'S
IDENTITY FILED IN CONJUNCTION WITH
A MOTION TO QUASH/TRAVERSE (WITH
WARRANT, NOT SEALED)**

§ 12:11 Motions to quash/traverse generally

**VII. MOTION TO DISCLOSE INFORMANT'S
IDENTITY FILED IN CONJUNCTION WITH
A MOTION TO QUASH AND/OR TRAVERSE
(WITH SEALED WARRANT)**

§ 12:12 *Hobbs* protocol

§ 12:13 Procedural steps

Appendix 12A. Evidence Code § 1040—Privilege for
Official Information

Appendix 12B. Evidence Code § 1041—Privilege for
Identity of Informer

Appendix 12C. Evidence Code § 1042—Adverse Order or Finding in Certain Cases

Appendix 12D. Common Motions

CHAPTER 13. PRETRIAL RELEASE AND BAIL

I. BAIL REVIEW

- § 13:1 In re Humphrey
- § 13:2 Felony bail review
- § 13:3 —Court and counsel colloquy
- § 13:4 Ruling: Deny defense motion for less restrictive conditions
- § 13:5 Ruling: Grant defense motion for alternative release
- § 13:6 Serious and/or violent felony cases
- § 13:7 —Deny motion to deviate from bail schedule
- § 13:8 —Grant motion to deviate from bail schedule
- § 13:9 —Discussion of notice requirement with counsel
- § 13:10 —Less restrictive alternative

II. PEOPLE'S MOTION FOR MORE RESTRICTIVE RELEASE CONDITIONS, INCREASED BAIL, OR PRETRIAL DETENTION

- § 13:11 Procedural posture
- § 13:12 California Constitution—People seek no bail
- § 13:13 California Constitution, Art. I, § 12
- § 13:14 —Violent felony and great bodily harm to others (Art. I, § 12(b))
- § 13:15 —Felony and threatened great bodily harm (Art. I, § 12(c))
- § 13:16 Ruling—Grant request for no bail
- § 13:17 —Deny request for no bail
- § 13:18 California Constitution, Art. I, § 28(f)(3)
- § 13:19 *Humphrey/Brown/Kowalczyk*—People's motion for more restrictive conditions, higher bail, or pretrial detention

III. PROCEDURAL POSTURE

- § 13:20 Pretrial proceedings
- § 13:21 Reconsideration of prior judge's bail ruling
- § 13:22 After guilty plea and before sentencing (felony cases)
- § 13:23 After sentencing pending appeal (felony cases)
- § 13:24 Probation violations

TABLE OF CONTENTS

IV. MISCELLANEOUS BAIL/BOND ISSUES

- § 13:25 Defendants on bond ordered back for all
appearances
- § 13:26 Bail bond premium
- § 13:27 Conditions of release
- § 13:28 Recall of forfeiture
- § 13:29 Jailer can set date
- § 13:30 Sufficient excuse not to forfeit bond
- Appendix 13A. *Humphrey/Brown* Pretrial Release Flow
Chart

**CHAPTER 14. RIGHT TO CONFLICT-
FREE COUNSEL AND WAIVER**

- § 14:1 Legal principles
- § 14:2 Waiver script

Table of Laws and Rules

Table of Cases

Index

