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CALIFORNIA CRIMINAL LAW

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JUDGE ALEX RICCIARDULLI (Ret.)

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Important Developments in this Edition

This edition includes the following important developments:

New laws enacted by the Legislature, effective January 1, 2026, include the following: AB 379, making solicitation of a 16 or 17-year old minor for human trafficking a wobbler (Penal Code § 647(l)(1)(B)(2)), and loitering in a public place for the purpose of purchasing sex a misdemeanor (Penal Code § 653.25). AB 352, providing that, when sentencing a person convicted of making a criminal threat, the court may consider in aggravation that the defendant willfully threatened a state constitutional officer, a Member of the Legislature, or a judge or court commissioner (Penal Code § 422(b)). AB 468, providing with respect to burglary of a house or building that “The fact that the structure entered has been damaged by a natural or other disaster, or the extent of that damage, does not preclude conviction” (Penal Code § 459(b)). SB 258, expanding the definition of rape to include sex when a spouse cannot consent due to mental disorder or other disability (Penal Code § 261(a)(1)(A)).

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

- The United States Supreme Court in *United States v. Hemani*, ___ U.S. ___ (No. 24–1234, 6/18/26) held that it violated the Second Amendment to prosecute a defendant who used marijuana every other day for possession of a firearm. The statute at issue provided anyone who is an “unlawful user of” or “addicted to” a “controlled substance” was banned from possessing a gun, and could face up to 15 years in federal prison (18 U.S.C. § 924(a)(8)) and disarmament for life (18 U.S.C. § 922(g)).
- The California Supreme Court in *Sellers v. SC*, 19 Cal.5th 75, 87, 341 Cal.Rptr.3d 173, 582 P.3d 950 (2026), held that a small amount of loose, crumbled marijuana on a car’s floorboards did not violate of Health and Safety Code § 11362.3(a)(4).
- The California Supreme Court in *People v. Collins*, 17 Cal.5th 293, 309, 328 Cal.Rptr.3d 641, 561 P.3d 801 (2025), held, regarding implied malice murder liability, that a parent has a legal duty to protect their child, but “a parent may be more limited in what they can reasonably be expected to do to protect their child from the other parent, as compared to a non-parent.”

- In *People v. Morris*, 19 Cal.5th 671, 688, 343 Cal.Rptr.3d 711, 587 P.3d 1231 (2026), with respect to the act which must be committed by an aider and abettor who is not the actual killer in order to be convicted of murder, the California Supreme Court interpreted Senate Bill 1437 to “require[] proof the defendant aided or abetted the actual killer in the lethal act itself, and not just the underlying felony.”
- The Court of Appeal in *Nevarez v. Superior Court*, 115 Cal.App.5th 552, 557, 338 Cal.Rptr.3d 263 (2025) held that a conviction for murder under *People v. Watson*, 30 Cal.3d 290, 300–301, 179 Cal.Rptr. 43, 637 P.2d 279 (1981), can occur even when the defendant has stopped driving the vehicle and a fatality thereafter results.
- In *People v. Pierce*, 114 Cal.App.5th 508, 530-532, 337 Cal.Rptr.3d 123 (2025), the Court of Appeal held, affirming a *Watson* murder, that driving with a blood-alcohol concentration of 0.24 percent and at speeds of up to 129 miles per hour on city streets having a 55-mile-per-hour speed limit with many other drivers on the road, constituted substantial evidence there existed a high probability that the driving would result in death, even without expert testimony of this being the case.
- The Court of Appeal in *People v. Molina*, 114 Cal.App.5th 1059, 1068, 337 Cal.Rptr.3d 435 (2025), held a person having “care or custody” of an elder can be found guilty for abuse under Penal Code § 368(e), and the term “care or custody” carries no special meaning “beyond the plain meaning of the words themselves.”
- *People v. Roberts*, 114 Cal.App.5th 187, 191, 336 Cal.Rptr.3d 836 (2025) held that the crimes of carrying a concealed loaded firearm in a vehicle (Penal Code § 25400(a)(1)) and carrying a loaded firearm in a vehicle when the firearm is not registered to the person (Penal Code § 25850(a) & (c)(6)) were constitutional under the Second Amendment.
- *People v. Crenshaw*, 116 Cal.App.5th 1169, 1172, 339 Cal.Rptr.3d 888 (2025), held the ban against assault weapons in Penal Code § 30605 was “beyond the scope of the Second Amendment because it has not been shown that such weapons are in common use by law-abiding citizens,”
- The Court of Appeal in *People v. Mendez-Torres*, 113 Cal.App.5th 1007, 1011, 336 Cal.Rptr.3d 298 (2025) held that, in affirming a conviction for robbery (Penal Code § 211), a victim engaged in sufficient physical resistance by placing her hand on a cash register as the defendant violently wrested it away.
- *People v. Newt*, 119 Cal.App.5th 804, 807, 342 Cal.Rptr.3d 905 (2026), explained that receiving a high-capacity magazine for a gun is a felony under Penal Code

HIGHLIGHTS

§ 32310(a), and possession of a high-capacity magazine is misdemeanor under Penal Code § 32310(c).

- The Court of Appeal in *People v. Hardy*, 120 Cal.App.5th 45, 48, 343 Cal.Rptr.3d 475 (2026), held that statutes outlawing possession of a short-barreled shotgun (Penal Code § 33215), possession of a silencer (Penal Code § 33410), unlawful high-capacity magazine activity (Penal Code § 32310(a)), and unlawful transfer of a handgun with no licensed firearms dealer (Penal Code § 27545) did not violate the Second Amendment.

- The Court of Appeal in *People v. Berch*, 120 Cal.App.5th 401, 404, 343 Cal.Rptr.3d 893 (2026), held “felony false imprisonment based on menace does not require a threat to inflict force that is greater than necessary to effectuate restraint on a person’s liberty.”

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About the Authors

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

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

Alex Ricciardulli was a Los Angeles County Superior Court Judge for 21 years from 2005-2026 prior to his retirement. Judge Ricciardulli presided in trial courts, and worked in the Superior Court's Appellate Division, serving as lead judge in 45 published opinions. He was previously an attorney with the Los Angeles County Public Defender's Office for 17 years. As an attorney, Judge Ricciardulli specialized in appeals, trials, sentencing, and search and seizure. He was counsel of record in over 40 published appellate cases, including three in the California Supreme Court. Judge Ricciardulli currently teaches as an adjunct professor at Loyola Law School-Los Angeles and Loyola Marymount University.

Judge Ricciardulli co-authors with Professor Laurie Levenson California Criminal Law, California Criminal Procedure, and California Criminal Motions (The Rutter Group). Since 2007, he has been the author and editor of the California Center on Judicial Education and Research/Daily Journal MCLE & Judicial Education Series, articles providing continuing education credits to judges and lawyers.

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

Preface

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

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

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

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

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

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

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