

**Introduced by Senator Strickland**February 16, 2011

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An act to amend Section 15202.1 of the Government Code, and to amend Sections 466, 633.8, 992, 1181, 1387, and 1466 of the Penal Code, relating to public safety.

## LEGISLATIVE COUNSEL'S DIGEST

SB 428, as introduced, Strickland. Public safety omnibus bill.

(1) Existing law provides that, in any homicide cases in which a final judgment was entered prior to January 1, 1990, if the venue for trial of a homicide case has been changed from the county which is eligible for reimbursement, as specified, to a location more than 60 miles from the county seat of that county, and the district attorney of that county has entered into a contract with an attorney to try the case or an investigator to assist in the trial of the case, the Controller shall reimburse the county for the actual costs of the attorney or investigator, as specified.

This bill would instead apply the provisions above to any homicide cases in which a final judgment was not entered prior to January 1, 1990.

(2) Existing law makes it a misdemeanor for any person to have upon him or her in his or her possession a picklock, crow, keybit, crowbar, or other specified items, with felonious intent, or for other specified purposes.

This bill would instead make it a misdemeanor for any person to have upon him or her or in his or her possession those specified items, with felonious intent, or for those other specified purposes. By expanding the definition of a crime, this bill would create a state-mandated local program.

(3) Existing law authorizes peace officers to use or authorize the use of an electronic amplifying or recording device to eavesdrop on or record, or both, any oral communication under specified conditions.

This bill would make a technical, nonsubstantive change to those provisions.

(4) Existing law requires the court, in any case in which the defendant is charged with a felony, to require the defendant to provide a right thumbprint on a form developed for that purpose.

This bill would require the court to obtain the thumbprint at the arraignment on the information or indictment, or upon entry of a guilty or no contest plea unless the court has obtained the thumbprint at an earlier proceeding.

(5) Existing law provides that when a verdict has been rendered or a finding made against the defendant, the court may, upon the defendant's application, grant a new trial, in limited specified cases, including when the jury has been guilty of any misconduct by which a fair and due consideration of the case has been prevented.

This bill would make technical, nonsubstantive changes to those provisions.

(6) Existing law provides that an order terminating an action, as specified, is a bar to any other prosecution for the same offense, except as specified. Existing law provides that an order terminating an action is not a bar to prosecution if a complaint is dismissed before the commencement of a preliminary hearing in favor of an indictment filed pursuant to specified grand jury proceedings and the indictment is based upon the same subject matter as charged in the dismissed complaint, information, or indictment.

This bill would instead provide that an order terminating an action is not a bar to prosecution if a complaint is dismissed before the commencement of a preliminary hearing in favor of an indictment filed pursuant to those grand jury proceedings or an indictment is based upon the same subject matter as charged in a dismissed complaint, information, or indictment.

(7) Existing law permits, under specified conditions, an appeal to be taken from a judgment or order, in an infraction or misdemeanor case, to the appellate division of the superior court of the county in which the court from which the appeal is taken is located.

This bill would make technical, nonsubstantive changes to this provision.

(8) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 15202.1 of the Government Code is  
2 amended to read:

3 15202.1. (a) If the venue for trial of a homicide case has been  
4 changed from the county which is eligible for reimbursement under  
5 Section 15202 to a location more than 60 miles from the county  
6 seat of that county, and the district attorney of that county has  
7 entered into a contract with an attorney to try the case or an  
8 investigator to assist in the trial of the case, the Controller shall  
9 reimburse the county for the actual costs of the attorney or  
10 investigator under this section, at an hourly rate not to exceed the  
11 hourly rate charged state agencies by the Attorney General for  
12 similar attorney services or investigators, without further showing  
13 of justification. Nothing in this section shall permit the  
14 reimbursement of costs for travel in excess of 1,000 miles on any  
15 single round trip, without the prior approval of the Attorney  
16 General.

17 (b) (1) This section shall apply to any homicide cases in which  
18 a final judgment was entered ~~prior to~~ on or after January 1, 1990.

19 (2) The limitation provided in this subdivision shall not apply  
20 to Sierra County. Instead, the County of Sierra may apply to the  
21 Controller for reimbursement pursuant to subdivision (a) for its  
22 costs incident to the prosecution of the homicide trial of People v.  
23 Corjasso.

24 SEC. 2. Section 466 of the Penal Code is amended to read:

25 466. Every person having upon him or her *or* in his or her  
26 possession a picklock, crow, keybit, crowbar, screwdriver, vise  
27 grip pliers, water-pump pliers, slidehammer, slim jim, tension bar,  
28 lock pick gun, tubular lock pick, bump key, floor-safe door puller,  
29 master key, ceramic or porcelain spark plug chips or pieces, or  
30 other instrument or tool with intent feloniously to break or enter

1 into any building, railroad car, aircraft, or vessel, trailer coach, or  
2 vehicle as defined in the Vehicle Code, or who shall knowingly  
3 make or alter, or shall attempt to make or alter, any key or other  
4 instrument named above so that the same will fit or open the lock  
5 of a building, railroad car, aircraft, vessel, trailer coach, or vehicle  
6 as defined in the Vehicle Code, without being requested to do so  
7 by some person having the right to open the same, or who shall  
8 make, alter, or repair any instrument or thing, knowing or having  
9 reason to believe that it is intended to be used in committing a  
10 misdemeanor or felony, is guilty of a misdemeanor. Any of the  
11 structures mentioned in Section 459 shall be deemed to be a  
12 building within the meaning of this section.

13 SEC. 3. Section 633.8 of the Penal Code is amended to read:

14 633.8. (a) It is the intent of the Legislature in enacting this  
15 section to provide law enforcement with the ability to use electronic  
16 amplifying or recording devices to eavesdrop on and record the  
17 otherwise confidential oral communications of individuals within  
18 a location when responding to an emergency situation that involves  
19 the taking of a hostage or the barricading of a location. It is the  
20 intent of the Legislature that eavesdropping on oral  
21 communications pursuant to this section comply with paragraph  
22 (7) of Section 2518 of Title 18 of the United States Code.

23 (b) Notwithstanding the provisions of this chapter, and in  
24 accordance with federal law, a designated peace officer described  
25 in subdivision (c) may use, or authorize the use of, an electronic  
26 amplifying or recording device to eavesdrop on or record, or both,  
27 any oral communication within a particular location in response  
28 to an emergency situation involving the taking of a hostage or  
29 hostages or the barricading of a location if all of the following  
30 conditions are satisfied:

31 (1) The officer reasonably determines that an emergency  
32 situation exists involving the immediate danger of death or serious  
33 physical injury to any person, within the meaning of Section  
34 2518(7)(a)(i) of Title 18 of the United States Code.

35 (2) The officer reasonably determines that the emergency  
36 situation requires that the eavesdropping on oral communication  
37 occur immediately.

38 (3) There are grounds upon which an order could be obtained  
39 pursuant to Section 2516(2) of Title 18 of the United States Code  
40 in regard to the offenses enumerated therein.

1 (c) Only a peace officer who has been designated by either a  
2 district attorney in the county where the emergency exists, or by  
3 the Attorney General to make the necessary determinations  
4 pursuant to paragraphs (1), (2), and (3) of subdivision (b) may  
5 make those determinations for purposes of this section.

6 (d) If the determination is made by a designated peace officer  
7 described in subdivision (c) that an emergency situation exists, a  
8 peace officer shall not be required to knock and announce his or  
9 her presence before entering, installing, and using any electronic  
10 amplifying or recording devices.

11 (e) If the determination is made by a designated peace officer  
12 described in subdivision (c) that an emergency situation exists and  
13 an eavesdropping device has been deployed, an application for an  
14 order approving the eavesdropping shall be made within 48 hours  
15 of the beginning of the eavesdropping and shall comply with the  
16 requirements of Section 629.50. A court may grant an application  
17 authorizing the use of electronic amplifying or recording devices  
18 to eavesdrop on and record otherwise confidential oral  
19 communications in barricade or hostage situations where there is  
20 probable cause to believe that an individual is committing, has  
21 committed, or is about to commit an offense listed in Section  
22 2516(2) of Title 18 of the United States Code.

23 (f) The contents of any oral communications overheard pursuant  
24 to this section shall be recorded on tape or other comparable device.  
25 The recording of the contents shall be done so as to protect the  
26 recording from editing or other alterations.

27 (g) For purposes of this section, a “barricading” occurs when a  
28 person refuses to come out from a covered or enclosed position.  
29 Barricading also occurs when a person is held against his or her  
30 will and the captor has not made a demand.

31 (h) For purposes of this section, a “hostage situation” occurs  
32 when a person is held against his or her will and the captor has  
33 made a demand.

34 (i) A judge shall not grant an application made pursuant to this  
35 section in anticipation that an emergency situation will arise. A  
36 judge shall grant an application authorizing the use of electronic  
37 amplifying or recording devices to eavesdrop on and record  
38 otherwise confidential oral communications in barricade or hostage  
39 situations where there is probable cause to believe that an  
40 individual is committing, has committed, or is about to commit an

1 offense listed in Section 2516(2) of Title 18 of the United States  
2 Code, and only if the peace officer has fully complied with the  
3 requirements of this section. If an application is granted pursuant  
4 to this section, an inventory shall be served pursuant to Section  
5 629.68.

6 (j) This section does not require that a peace officer designated  
7 pursuant to subdivision (c) undergo training pursuant to Section  
8 629.94.

9 (k) A peace officer who has been designated pursuant to  
10 subdivision (c) to use an eavesdropping device shall cease use of  
11 the device upon the termination of the barricade or hostage  
12 situation, or upon the denial by a judge of an application for an  
13 order to approve the eavesdropping, whichever is earlier.

14 (l) Nothing in this section shall be deemed to affect the  
15 admissibility or ~~inadmissibility~~ *inadmissibility* of evidence.

16 SEC. 4. Section 992 of the Penal Code is amended to read:

17 992. (a) (1) In any case in which the defendant is charged  
18 with a felony, the court, ~~immediately following the arraignment~~  
19 ~~in the superior court~~, shall require the defendant to provide a right  
20 thumbprint on a form developed for this purpose. ~~This~~ *Unless the*  
21 *court has obtained the thumbprint at an earlier proceeding, it shall*  
22 *do so at the arraignment on the information or indictment, or upon*  
23 *entry of a guilty or no contest plea under Section 859a. The*  
24 fingerprint form shall include the name and superior court case  
25 number of the defendant, the date, and the printed name, position,  
26 and badge or serial number of the court bailiff who imprints the  
27 defendant's thumbprint. In the event the defendant is physically  
28 unable to provide a right thumbprint, the defendant shall provide  
29 a left thumbprint. In the event the defendant is physically unable  
30 to provide a left thumbprint, the court shall make a determination  
31 as to how the defendant might otherwise provide a suitable  
32 identifying characteristic to be imprinted on the judgment of  
33 conviction. The clerk shall note on the fingerprint form which  
34 digit, if any, of the defendant's was imprinted thereon. In the event  
35 that the defendant is convicted, this fingerprint form shall be  
36 attached to the minute order reflecting the defendant's sentence.  
37 The fingerprint form shall be permanently maintained in the  
38 superior court file.

39 ~~This~~

1 (2) *This* thumbprint or fingerprint shall not be used to create a  
2 database. The Judicial Council shall develop a form to implement  
3 this section.

4 (b) In the event that a county implements a countywide policy  
5 in which every felony defendant's photograph and fingerprints are  
6 permanently maintained in the superior court file, the presiding  
7 judge of that county may elect, after consultation with the district  
8 attorney, to continue compliance with this section.

9 SEC. 5. Section 1181 of the Penal Code is amended to read:

10 1181. When a verdict has been rendered or a finding made  
11 against the defendant, the court may, upon his *or her* application,  
12 grant a new trial, in the following cases only:

13 ~~1.~~

14 (a) When the trial has been had in ~~his~~ *the defendant's* absence  
15 except in cases where the trial may lawfully proceed in ~~his absence;~~  
16 *the defendant's absence.*

17 ~~2.~~

18 (b) When the jury has received any evidence out of court, other  
19 than that resulting from a view of the premises, or of personal  
20 ~~property;~~ *property.*

21 ~~3.~~

22 (c) When the jury has been separated without leave of the court  
23 after retiring to deliberate upon their ~~verdict,~~ *or verdict.*

24 (d) *When the jury has* been guilty of any misconduct by which  
25 a fair and due consideration of the case has been ~~prevented;~~  
26 *prevented.*

27 ~~4.~~

28 (e) When the verdict has been decided by lot, or by any means  
29 other than a fair expression of opinion on the part of all the ~~jurors;~~  
30 *jurors.*

31 ~~5.~~

32 (f) When the court has misdirected the jury in a matter of law,  
33 or has erred in the decision of any question of law arising during  
34 the course of the ~~trial, and when~~ *trial.*

35 (g) *When* the district attorney or other counsel prosecuting the  
36 case has been guilty of prejudicial misconduct during the trial  
37 thereof before a ~~jury;~~ *jury.*

38 ~~6.~~

39 (h) When the verdict or finding is contrary to law or evidence,  
40 ~~but if:~~

1 (1) If the evidence shows the defendant to be not guilty of the  
 2 degree of the crime of which he *or she* was convicted, but guilty  
 3 of a lesser degree thereof, or of a lesser crime included therein,  
 4 the court may modify the verdict, finding or judgment accordingly  
 5 without granting or ordering a new trial, and this power shall extend  
 6 to any court to which the cause may be ~~appealed~~; *appealed*.

7 ~~7. When the verdict or finding is contrary to law or evidence;~~  
 8 ~~but in~~

9 (2) In any case wherein authority is vested by statute in the trial  
 10 court or jury to recommend or determine as a part of its verdict or  
 11 finding the punishment to be imposed, the court may modify such  
 12 verdict or finding by imposing the lesser punishment without  
 13 granting or ordering a new trial, and this power shall extend to any  
 14 court to which the case may be ~~appealed~~; *appealed*.

15 ~~8.~~

16 (i) When new evidence is discovered material to the defendant,  
 17 and which he *or she* could not, with reasonable diligence, have  
 18 discovered and produced at the trial. When a motion for a new  
 19 trial is made upon the ground of newly discovered evidence, the  
 20 defendant must produce at the hearing, in support thereof, the  
 21 affidavits of the witnesses by whom such evidence is expected to  
 22 be given, and if time is required by the defendant to procure such  
 23 affidavits, the court may postpone the hearing of the motion for  
 24 such length of time as, under all circumstances of the case, may  
 25 seem reasonable.

26 ~~9.~~

27 (j) When the right to a phonographic report has not been waived,  
 28 and when it is not possible to have a phonographic report of the  
 29 trial transcribed by a stenographic reporter as provided by law or  
 30 by rule because of the death or disability of a reporter who  
 31 participated as a stenographic reporter at the trial or because of  
 32 the loss or destruction, in whole or in substantial part, of the notes  
 33 of such reporter, the trial court or a judge, thereof, or the reviewing  
 34 court shall have power to set aside and vacate the judgment, order  
 35 or decree from which an appeal has been taken or is to be taken  
 36 and to order a new trial of the action or proceeding.

37 SEC. 6. Section 1387 of the Penal Code is amended to read:

38 1387. (a) An order terminating an action pursuant to this  
 39 chapter, or Section 859b, 861, 871, or 995, is a bar to any other  
 40 prosecution for the same offense if it is a felony or if it is a

1 misdemeanor charged together with a felony and the action has  
2 been previously terminated pursuant to this chapter, or Section  
3 859b, 861, 871, or 995, or if it is a misdemeanor not charged  
4 together with a felony, except in those felony cases, or those cases  
5 where a misdemeanor is charged with a felony, where subsequent  
6 to the dismissal of the felony or misdemeanor the judge or  
7 magistrate finds any of the following:

8 (1) That substantial new evidence has been discovered by the  
9 prosecution which would not have been known through the exercise  
10 of due diligence at, or prior to, the time of termination of the action.

11 (2) That the termination of the action was the result of the direct  
12 intimidation of a material witness, as shown by a preponderance  
13 of the evidence.

14 (3) That the termination of the action was the result of the failure  
15 to appear by the complaining witness, who had been personally  
16 subpoenaed in a prosecution arising under subdivision (e) of  
17 Section 243 or Section 262, 273.5, or 273.6. This paragraph shall  
18 apply only within six months of the original dismissal of the action,  
19 and may be invoked only once in each action. Nothing in this  
20 section shall preclude a defendant from being eligible for diversion.

21 (b) Notwithstanding subdivision (a), an order terminating an  
22 action pursuant to this chapter is not a bar to another prosecution  
23 for the same offense if it is a misdemeanor charging an offense  
24 based on an act of domestic violence, as defined in subdivisions  
25 (a) and (b) of Section 13700, and the termination of the action was  
26 the result of the failure to appear by the complaining witness, who  
27 had been personally subpoenaed. This subdivision shall apply only  
28 within six months of the original dismissal of the action, and may  
29 be invoked only once in each action. Nothing in this subdivision  
30 shall preclude a defendant from being eligible for diversion.

31 (c) An order terminating an action is not a bar to prosecution  
32 if a complaint is dismissed before the commencement of a  
33 preliminary hearing in favor of an indictment filed pursuant to  
34 Section 944 ~~and the~~ *or an* indictment is based upon the same  
35 subject matter as charged in ~~the~~ *a* dismissed complaint,  
36 information, or indictment.

37 ~~However, if the~~

38 *(d) If the* previous termination was pursuant to Section 859b,  
39 861, 871, or 995, the subsequent order terminating an action is not  
40 a bar to prosecution if:

1 (1) Good cause is shown why the preliminary examination was  
2 not held within 60 days from the date of arraignment or plea.

3 (2) The motion pursuant to Section 995 was granted because of  
4 any of the following reasons:

5 (A) Present insanity of the defendant.

6 (B) A lack of counsel after the defendant elected to represent  
7 himself or herself rather than being represented by appointed  
8 counsel.

9 (C) Ineffective assistance of counsel.

10 (D) Conflict of interest of defense counsel.

11 (E) Violation of time deadlines based upon unavailability of  
12 defense counsel.

13 (F) Defendant’s motion to withdraw a waiver of the preliminary  
14 examination.

15 (3) The motion pursuant to Section 995 was granted after  
16 dismissal by the magistrate of the action pursuant to Section 871  
17 and was recharged pursuant to Section 739.

18 SEC. 7. Section 1466 of the Penal Code is amended to read:

19 1466. An appeal may be taken from a judgment or order, in an  
20 infraction or misdemeanor case, to the appellate division of the  
21 superior court of the county in which the court from which the  
22 appeal is taken is located, in the following cases:

23 ~~(1)~~

24 (a) By the people:

25 ~~(A)~~

26 (1) From an order recusing the district attorney or city attorney  
27 pursuant to Section 1424.

28 ~~(B)~~

29 (2) From an order or judgment dismissing or otherwise  
30 terminating all or any portion of the action, including such an order  
31 or judgment, entered after a verdict or finding of guilty or a verdict  
32 or judgment entered before the defendant has been placed in  
33 jeopardy or where the defendant has waived jeopardy.

34 ~~(C)~~

35 (3) From sustaining a demurrer to any portion of the complaint  
36 or pleading.

37 ~~(D)~~

38 (4) From an order granting a new trial.

39 ~~(E)~~

40 (5) From an order arresting judgment.

1     ~~(F)~~  
2     (6) From any order made after judgment affecting the substantial  
3 rights of the people.

4     ~~(G)~~  
5     (7) From the imposition of an unlawful sentence, whether or  
6 not the court suspends the execution of sentence. As used in this  
7 subparagraph, “unlawful sentence” means the imposition of a  
8 sentence not authorized by law or the imposition of a sentence  
9 based upon an unlawful order of the court that strikes or otherwise  
10 modifies the effect of an enhancement or prior conviction. A  
11 defendant shall have the right to counsel in the people’s appeal of  
12 an unlawful sentence under the same circumstances that he or she  
13 would have a right to counsel under subdivision (a) of Section  
14 1238.

15     ~~(H)~~  
16     (8) Nothing in this section shall be construed to authorize an  
17 appeal from an order granting probation. Instead, the people may  
18 seek appellate review of any grant of probation, whether or not  
19 the court imposes sentence, by means of a petition for a writ of  
20 mandate or prohibition that is filed within 60 days after probation  
21 is granted. The review of any grant of probation shall include  
22 review of any order underlying the grant of probation.

23     ~~(2)~~  
24     (b) By the defendant:

25     ~~(A)~~  
26     (1) From a final judgment of conviction. A sentence, an order  
27 granting probation, a conviction in a case in which before final  
28 judgment the defendant is committed for insanity or is given an  
29 indeterminate commitment as a mentally disordered sex offender,  
30 or the conviction of a defendant committed for controlled substance  
31 addiction shall be deemed to be a final judgment within the  
32 meaning of this section. Upon appeal from a final judgment or an  
33 order granting probation the court may review any order denying  
34 a motion for a new trial.

35     ~~(B)~~  
36     (2) From any order made after judgment affecting his or her  
37 substantial rights.

38     SEC. 8. Any section of any act, other than \_\_\_\_\_, enacted by  
39 the Legislature during the 2011 calendar year that takes effect on  
40 or before January 1, 2012, and that amends, amends and renumbers,

1 adds, repeals and adds, or repeals any one or more of the sections  
2 affected by this act shall prevail over this act, whether this act is  
3 enacted prior to, or subsequent to, the enactment of that act. The  
4 repeal, or repeal and addition, of any article, chapter, part, title, or  
5 division of any code by this act shall not become operative if any  
6 section of any other act, other than \_\_\_\_\_, that is enacted by the  
7 Legislature during the 2011 calendar year and takes effect on or  
8 before January 1, 2012, amends, amends and renumbers, adds,  
9 repeals and adds, or repeals any section contained in that article,  
10 chapter, part, title, or division.

11 SEC. 9. No reimbursement is required by this act pursuant to  
12 Section 6 of Article XIII B of the California Constitution because  
13 the only costs that may be incurred by a local agency or school  
14 district will be incurred because this act creates a new crime or  
15 infraction, eliminates a crime or infraction, or changes the penalty  
16 for a crime or infraction, within the meaning of Section 17556 of  
17 the Government Code, or changes the definition of a crime within  
18 the meaning of Section 6 of Article XIII B of the California  
19 Constitution.