

Introduced by Senator StricklandFebruary 16, 2011

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.