



DEPARTMENT NOTICE

21-048
03/26/21

2021 Legislative Updates

The following legislative updates are meant as a summary of changes to the law. For exact language, please refer to the specific code section referenced. Members who need clarification are encouraged to ask a supervisor or contact the Legal Division of the Risk Management Office.

Penal Code

Penal Code § 290 and SB 145 and SB 384. Senate Bill 145 deletes several crimes from the list of offenses requiring an individual to register as a sex offender. Senate Bill 384 converts lifetime registration into a tiered system of sex offender registration.

Penal Code § 396 makes several changes to the crime of price gouging. Price gouging prohibits increasing the cost, by more than a specific amount, of essential goods during an emergency. This section applies to goods and services offered or sold in person, in stores, or online.

Penal Code § 647.9 creates a new misdemeanor crime making it illegal for a first responder to photograph a deceased person at the scene of an accident or at the scene of a crime for any purpose other than an official law enforcement purpose or a genuine public interest. The simple act of taking the photo is the crime, the first responder need not sell or distribute it. **Penal Code § 1524** was amended to permit a search warrant to be obtained to seize evidence of this.

Note: The creation of this misdemeanor was in response to several LASD deputies taking photos, without an investigative purpose, at the scene of a high-profile helicopter crash. Courts have found that morbid and sensational gossip serves no legitimate public interest and is not deserving of protection.

Penal Code § 653y creates a new misdemeanor and infraction crime for misusing the 911 system to harass another person.

Note: P.C. 653y criminalizes the use of the 911 emergency system for any reason other than an emergency and includes “swatting” or racially motivated calls.

Penal Code §§ 679.10 and 679.11 makes changes to the U-Visa and T-Visa procedures for certifying the helpfulness or cooperation of a non-citizen crime victim in a criminal case. A certifying official is prohibited from refusing to complete the form that certifies helpfulness or cooperation in a criminal case solely because the case is over or closed, or because the statute of limitations has expired.

Note: A variety of crimes qualify but this is most applicable to SVU Investigators.

Penal Code §§ 1001.95, 1001.96, and 1001.97 create “Court Initiated Misdemeanor Diversion.” The only misdemeanor crimes that are excluded are: any offense that requires registration as a sex offender; a violation of P.C. 273.5; a violation of P.C. 243(e); and a violation of P.C. 646.9.

All other misdemeanors are eligible including first time or repeat DUI offenses, DUI causing injury, vehicular manslaughter, elder abuse, vehicle theft, identity theft, firearms offenses, burglary, assault with a deadly weapon, battery on a peace officer, restraining order violations, and child endangerment. Upon successful completion of diversion, the arrest will be deemed to have never occurred.

Reminder: While certain crimes can be charged by the District Attorney's Office or sentenced by a court as either a misdemeanor or a felony (wobblers), crimes that are considered to be wobblers are treated as felonies by law enforcement officers.

Penal Code § 1534 expands the definition of "tracking device" to "any electronic or mechanical device, or software, that permits the tracking of the movement of a person or object."

Note: Penal Code § 1524(a)(12) continues to permit the obtaining of a search warrant for the use of a tracking device to obtain evidence that a felony has been committed. Penal Code § 1534(b) sets forth the specific rules for tracking device search warrants. Remember that Penal Code § 1524(b)(4) requires that, no later than 10 calendar days after the use of the tracking device has ended, the officer who executed the tracking device warrant shall notify the person who was tracked or whose property was tracked pursuant to subdivision (a) of Section 1546.2 (CalECPA).

Penal Code § 13651 requires every agency that employs peace officers to review the peace officer job description used in recruiting and hiring and to make changes that emphasize community-based policing and de-emphasize the paramilitary aspects of the job.

Firearms

Penal Code § 18140 requires a law enforcement officer who requests a temporary gun violence restraining order (GVRO) to file a copy of the order with the court no later than three court days after the issuance.

Penal Code § 18205 expands the misdemeanor crime of a person owning or possession a firearm or ammunition with that knowledge that they are prohibited from doing so because of a GVRO to include out-of-state GVROs.

Note: Refer to Department Bulletin 19-238 for an explanation of GVROs. For specific questions, please contact the Crime Gun Investigations Center at (415) 553-9731 or gvro.cgic@sfgov.org.

Penal Code § 25555 adds another exception to the Penal Code § 25400 crime of carrying a concealed firearm on the person or in a vehicle: transporting an unsafe handgun in order to comply with **Penal Code section 32000(e)(2)**, which requires the sale or transfer of an unsafe handgun to a law enforcement agency, a law enforcement officer, or a member of the military for use as a service weapon, to be processed through a licensed firearms dealer or to be reported to DOJ within 72 hours.

Note: Penal Code § 31910 defines "unsafe handgun." A number of changes were made to Penal Code § 32000 which pertains to "unsafe handguns."

Penal Code § 26379 adds another exception to the Penal Code § 26350(a)(1) crime of openly carrying an unloaded handgun: complying with **Penal Code § 32000(e)(2)**, which requires the sale or transfer of an unsafe handgun to a law enforcement agency, a law enforcement officer, or a member of the military for use as a service weapon, to be processed through a licensed firearms dealer or to be reported to DOJ within 72 hours.

Penal Code §§ 29800, 29805, 29851 requires that a defendant have knowledge of an outstanding warrant in order to be convicted of the crime of owning, purchasing, receiving, or possessing a firearm while having an outstanding warrant from P.C. 29851 to both P.C. 29800 and 29805. Penal Code § 29851 was repealed and §§ 29800 and 29805 were amended.

Note: This is not a substantive amendment but rather creates a new paragraph in each of the crimes.

Penal Code § 30515 adds three types of semiautomatic centerfire firearms to the definition of “assault weapon.” See statute for specifics.

Penal Code § 30685 provides that a person does not illegally possess any one of the three newly specified semiautomatic centerfire assault weapons defined in P.C. 30515 if they possessed it before September 1, 2020 and: prior to September 1, 2020 the person would have been eligible to register the assault weapon pursuant to **P.C. 30900(c)**; and the person lawfully possessed the weapon prior to September 1, 2020; and the person registers the assault weapon by January 2, 2022 in accordance with **P.C. 30900(c)**.

Welfare and Institutions Code

W&I Code § 208.5 permits any person whose case originated in juvenile court, if held in secure detention, to be housed in a juvenile facility until the person reaches 25 years of age. The probation department may petition the court to house any person who is 19 years of age or older in an adult facility.

W&I Code § 625.6 requires that prior to a custodial interrogation, all Youth 17 years of age and younger must consult with legal counsel in person, by phone, or by video conference prior to a waiver of *Miranda* or a custodial interrogation. This consultation cannot be waived. Exempt from this requirement are situations where the officer reasonably believes that the information sought is necessary to protect life or property from imminent threat and the questions are reasonably necessary to obtain that information (exigent circumstances).

Note: The Jeff Adachi Youth Ordinance (San Francisco Administrative Code section 96C) which applies to SFPD is far more expansive than W&I Code section 625.6. See Department Bulletin 20-006.

W&I Code §§ 827, 827.95, 828 set forth a number of new restrictions and procedures for the release of juvenile police records and the sealing of juvenile police records. See code sections for specifics.

Vehicle Code

Vehicle Code § 21809 extends the reach of the “slow down, move over” law from freeways only to also include local streets and roads by changing the word “freeway” to “highway.” V.C. 21809 requires a driver approaching a stationary emergency vehicle displaying emergency lights or a tow truck displaying flashing amber lights to either make a lane change into a lane that is not immediately adjacent to the emergency vehicle or to slow to a reasonable and prudent speed.

Government Code

Government Code § 1031 adds to the list of minimum standards for a peace officer: being free from “bias against race or ethnicity, gender, nationality, religion, disability, and sexual orientation, that might adversely affect the exercise of the powers of a peace officer.”

Government Code § 7286.5 prohibits a law enforcement agency from authorizing the use of a carotid restraint or choke hold by any peace officer employed by that agency. A “carotid restraint” means a vascular neck restraint or any similar restraint, hold, or other defensive tactic in which pressure is applied to the sides of a person’s neck that involves a substantial risk of restricting blood flow and may render the person unconscious in order to subdue or control the person. A “choke hold” means any defensive tactic or force option in which direct pressure is applied to a person’s trachea or windpipe.

Note: Department General Order 5.01 prohibits the use of both the carotid restraint and a choke hold.

Government Code § 12525.3 requires the Attorney General to investigate officer-involved shootings that result in the death of an unarmed civilian. Under § 12525.3, “Unarmed civilian” includes anyone who is not in possession of a deadly weapon. “Deadly weapon” includes, *but is not limited to*, any loaded weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged, or a switchblade knife, pilum ballistic knife, metal knuckle knife, dagger, billy, blackjack, plastic knuckles, or metal knuckles.

Remember: A weapon can be categorized as a “deadly weapon” in two different ways. (Penal Code §§ 245(a)(1), 12022(b)(1); CALCRIM 875.) A deadly weapon is any object, instrument, or weapon that is inherently deadly (firearm) *or* one that is used in such a way that is capable of causing and likely to cause death or great bodily injury (baseball bat). An object is inherently deadly if it is deadly or dangerous in the ordinary use for which it was designed.

Civil Code

Civil Code § 1798.145 is part of Prop 24, “California Privacy Rights Act of 2020” and will be effective on January 1, 2023. Law enforcement agencies may direct a business, pursuant to an investigation with an active case number, not to delete a consumer’s personal information for 90 days. This will allow the law enforcement agency to obtain a subpoena or warrant. Good cause will allow additional 90-day periods.

Health and Safety Code

H&S Code § 11364 continues to recognize the exception to the crime of unlawfully possessing drug paraphernalia if an individual is in possession of hypodermic needles or syringes possessed solely for personal use.

H&S Code § 104559.5 creates as new infraction of a tobacco retailer or employee selling, or offering for sale, or possession with intent to sell a flavored tobacco product or a tobacco product flavor enhancer. There are three exceptions written into the section.

Education Code

Education Code §§ 48263, 48267, 48268, 48269 make several amendments to the truancy and school behavior statutes. Schools are no longer required to report a student to the juvenile court for being “habitually insubordinate or disorderly during attendance at school.” **W&I § 601** no longer gives the juvenile court jurisdiction over an individual who refuses to obey school authority.

Business & Professions Code

B&P Code § 21628 eliminates the requirement that personal identifying information of an individual who sells items to a secondhand dealer (i.e., pawnshop) be reported to law enforcement if the seller verifies their identity with a Matricula Consular (an identification card for Mexican citizens living outside of Mexico). This becomes effective on January 1, 2023.



WILLIAM SCOTT
Chief of Police

Per DN 20-150, all sworn & non-sworn members shall electronically acknowledge this Department document in PowerDMS. Members whose duties are relevant to this document shall be held responsible for compliance. Any questions regarding this policy should be made to sfpd.writtendirectives@sfgov.org who will provide additional information.