



Please Note: The majority of laws signed in 2020 will not take effect until January 1, 2021. The information contained in this overview is not intended as legal advice in any individual's case. If you have questions about any new laws, please consult with an experienced attorney.

CRIMINAL JUSTICE HIGHLIGHTS 2020 LEGISLATIVE SESSION IN CALIFORNIA

I. Laws impacting incarcerated and formerly incarcerated people

AB 3234

AB 3234 will reduce the age of eligibility for elderly parole consideration from 60 to 50 years and decrease the required period of continuous incarceration from 25 years to 20 years. It also provides judges with the authority to allow a person to complete a two-year pretrial diversion commitment, despite a prosecutor's objections. The new law excludes second and third strikers from eligibility for elderly parole consideration; however, it is not yet known if the Board of Parole Hearings (BPH) will continue to give second and third strikers hearings in accordance with the three-judge Court's order in *Coleman/Plata*.

SB 132

Under SB 132, the California Department of Corrections and Rehabilitation (CDCR) will be required to house transgender people in a facility where they feel safest, which can include housing consistent with their gender identity as long as there are no specific security or management concerns. Additionally, CDCR staff will be required to record each individual's self-reported gender identity and gender pronouns and use those pronouns in all verbal and written communications.

AB 3043

Although there is a well-established right to confidential attorney-client communication, there has been confusion as to how and where these confidential calls should take place inside California prisons. The scheduling process has varied greatly from institution to institution, with some institutions refusing to schedule calls unless special justifications are met. Under AB 2043, CDCR will be required to guarantee attorneys the right to confidential phone calls with every incarcerated client for at least 30 minutes every month.

AB 2147

Despite being trained in firefighting skills, formerly incarcerated individuals who serve on fire crews while in prison struggle to find employment after release because their conviction history prevents them from becoming properly certified. AB 2147 adds Section 1203.4b to the California Penal Code. This will allow formerly incarcerated individuals who served time on fire crews while in prison to file a petition in county court to expunge their records and waive parole time, which will open career pathways in firefighting and emergency medical response. AB 2147 excludes people convicted of serious crimes such as murder, arson, sex crimes, and kidnapping from petitioning for relief.

AB 1869

According to a study by the Ella Baker Center, families incur large amounts of debt due to the incarceration of a loved one. The average debt incurred for court-related fines and fees is over \$13,000. If someone fails to repay their debt or make payments on time, a county can refer that debt to the state Franchise Tax Board, which can collect money from paychecks and bank accounts until paid in full. Under AB 1869, counties will no longer collect administrative fees such as those for booking and arrest, work release programs, home detention, electronic monitoring, and public defenders. It will take effect on July 1, 2021.

II. Laws impacting pre-trial & trial stages

AB 1950

AB 1950 will limit adult probation maximums to one year for misdemeanors and two years for felonies. Although probation violations are often technical and minor in nature, they account for 20% of prison admissions in California. The annual cost to incarcerate people for supervision violations is \$2 billion dollars. Instead of unnecessarily extending the probation supervision period, this bill will allow for the reinvestment of funding into supportive services for people on probation.

AB 2542

In *McCleskey v. Kemp* (1987), the U.S. Supreme Court ruled that people charged with crimes had to demonstrate that actors in the criminal justice system acted with conscious and intentional racial bias in order to be granted relief. This standard was almost impossible to meet. Under AB 2542, which is also known as the Racial Justice Act, California will be prohibited from using discriminatory means to seek a conviction or sentence. The bill addresses racially discriminatory behavior in the courtroom in fundamental ways, including the following: explicit bias against the defendant on the basis of race, ethnicity, or national origin; bias at trial; bias in jury selection; and statistical disparities in charging and sentencing. Unfortunately, the bill does not allow people who have already been sentenced to challenge their convictions on this basis; however, cosponsoring organizations plan to expand eligibility next year.

AB 3070

In a Berkeley Law study of nearly 700 cases decided by the California Court of Appeals between 2006 and 2018, district attorneys asked to remove Black jurors in 72% of the cases and Latinx jurors in about 28% of the cases. In contrast, White jurors were removed in only 0.5% of the cases that were studied. Under AB 3070, discriminatory practices in jury selection will be prohibited in California courts. When prosecutors use their peremptory challenges to exclude potential jurors,

defendants will be able to object and ask the reason for a prosecutor's decision. AB 3070 will give judges the authority to determine whether the exclusion is justified for reasons unrelated to race, ethnicity, gender identity, sexual orientation, or national origin.

SB 592

Under current law, only Californians who are registered voters or licensed drivers are eligible for jury duty. This practice has prompted concerns about the overrepresentation of jurors who are whiter and wealthier than the rest of California's population. Under SB 592, county jury selection pools will be expanded to include those who paid Franchise Tax Board (FTB) state taxes, which is expected to make at least a few million more Californians eligible for jury duty. The new potential juror pools are expected to be skewed towards people of color and largely those who are lower income.

III. Laws impacting law enforcement practices

AB 1506

In the wake of the murders of George Floyd and Breonna Taylor and the countless examples of the mistreatment of people of color, California policymakers have considered how to take steps to ensure that police officers and other law enforcement groups are held accountable for wrongful behaviors and practices. Under AB 1506, district attorneys and local law enforcement agencies will be able to request that the California Attorney General launch formal independent investigations relating to incidents of police misconduct, including shootings or use of force incidents that result in bodily injury of an unarmed civilian. The Department of Justice would review incidents and could pursue prosecution if deemed appropriate. The bill also establishes a separate Police Practice Division within the department by July 1, 2023 to review the policies and practices related to use-of-force. It will not go into effect until the California Legislature approves funding for any associated costs.

AB 1185

Many taxpayers pay millions of dollars because of legal fees related to allegations of sheriff misconduct as a result of a lack of oversight. Under AB 1185, counties will be authorized to create a Sheriff Oversight Commission or an Office of the Inspector General either through a vote of county residents or by an action by their Board of Supervisors. The new body will have the ability to issue subpoenas to investigate potential sheriff misconduct. This bill was written in response to the 2017 death of Mikel McIntyre, a Black man who was shot by deputies after hitting them with rocks during a mental health crisis in Sacramento County.

AB 1196

AB 1196 eliminates the use of chokeholds and carotid artery restraint tactics when a law enforcement officer is detaining someone during an arrest. A carotid artery restraint tactic generally refers to applying pressure to the side of a person's neck to restrict blood flow and make a person unconscious. This bill was written directly in response to the murder of George Floyd in Minneapolis, Minnesota, on May 25, 2020.

IV. Laws impacting systems-involved youth

AB 901

Despite not being convicted of a crime, students – predominately students of color – are often assigned probation officers when they are delinquent or struggling academically. Between 2005 and 2016, over 3,000 young people in Riverside County alone were placed on probation for behavior like being late to class, having poor attendance, and being “easily persuaded by peers.” AB 901 will decriminalize truancy and normal adolescent behavior by preventing judges from prosecuting students in juvenile court for truancy and limiting the ability of probation officers and county officials to place young students on

voluntary probation programs. Instead, the bill requires that schools connect their students in need of support to community-based services.

SB 203

Under SB 203, youths 17 years of age or younger who are arrested are ensured the right to counsel before being interrogated by police while being detained as potential suspects. The bill will require that access to counsel be provided to children prior to waiving their Miranda rights – whether in person, by phone, or video conference – to prevent forced juvenile confessions.

SB 1290

Although the California Legislature formally abolished youth fees through SB 190 in 2018, the bill did not prevent counties from collecting fees that were assessed prior to the new law. This loophole has allowed for the collection of over \$136 million in fees that predominately impact low-income families of color with system-involved youth. Under SB 1290, California will end the county collection of administrative fees that have been charged to youth under age 21 and erase all outstanding debt for families affected by the juvenile criminal justice system. It is a measure that is intended to address the criminalization of low-income minority youth in the juvenile criminal justice system.

SB 823

Under SB 823, California will close the Division of Juvenile Justice (DJJ) and transfer responsibility for justice-involved minors to counties, which will receive state funds for their custody and care. This will enable justice-involved young people to be closer to their homes, families, and much-needed services. It also requires the state to create a plan to improve its data collection system and asks that counties report data regarding programs, services, and youth outcomes. This effort to pass this bill was led by community-members who were formerly incarcerated at DJJ, and its success is seen as a critical step towards permanently closing the state's youth prison system.

SB 145

SB 145 will address discrimination against those who identify as LGBTQ+ in the sex offender registration process. Under SB 145, automatic sex offender registration will be eliminated for young adults who have anal or oral sex with a minor, provided that they are no more than 10 years older than the minor. Instead of mandatory sex offender registration, this bill will give judges the same discretion they currently have in cases involving vaginal sex.

V. Vetoed bills

SB 1064

Cosponsored by UnCommon Law, SB 1064 would have prohibited CDCR and BPH from relying on uncorroborated and unreliable confidential allegations of misconduct, especially when making decisions regarding parole suitability. In his veto message, Governor Newsom wrote that he was concerned that the bill as written was “ambiguous and overly burdensome,” and instead directed CDCR and BPH to examine and improve their current processes. The bill’s author and cosponsoring organizations are committed to ending the use of unverified confidential information and are considering how to best revisit this issue in the future.

SB 369

SB 369 would have established the California Reentry Commission in the California Health and Human Services Agency. This agency would have been tasked with developing a health and safety plan for returning citizens. In his veto message, Governor Newsom wrote that a new commission with over twenty members and appointees would be unnecessary to ensure that returning citizens are given the support that they need. Instead, the Governor directed CDCR and the Council on Criminal Justice and Behavioral Health to engage with stakeholders to determine how to overcome barriers to reentry.

SB 555

Under SB 555, California’s jails and juvenile facilities would have been required to limit the cost of commissary items as well as video and phone calls. In his veto message, Governor Newsom wrote that he was concerned that the bill would have unintended consequences of reducing important programming for individuals in custody. SB 555 was cosponsored by the Ella Baker Center and several other notable organizations. Outside advocates remain committed to lowering the unfair financial burdens that incarcerated people and their families face.

AB 2054

AB 2054, also known as the C.R.I.S.E.S. Act, would have created a \$16 million dollar grant pilot program through the Office of Emergency Services (OES) to fund community-based alternatives to policing in emergency situations involving people experiencing a public health crisis, people who are unhoused, people exposed to intimate partner or community violence, people experiencing substance abuse, and people involved in natural or climate disasters. In his veto message, Governor Newsom wrote that the OES was not an appropriate location for the pilot program and that it should instead be established through the state budget process.