

Route to: ☐ _____ ☐ _____ ☐ _____ ☐ _____
 ☐ _____ ☐ _____ ☐ _____ ☐ _____

California Criminal Defense Practice

Publication 171 Release 80 November 2017

HIGHLIGHTS

Elder Abuse

- When the conduct proscribed involves the direct infliction of unjustifiable physical pain or mental suffering on an elder or dependent adult, as set forth in Penal Code § 368(b)(1) and (c), a defendant must have a mens rea of general criminal. *People v. Thiel* (2016) 5 Cal. App. 5th 1201, 210 Cal. Rptr. 3d 744. Ch. 142.

Lewd and Lascivious Acts

- A defendant may commit the crime of attempt to commit a lewd act on a minor under 14, Penal Code Section 288, through the medium of text messaging. *People v. Villagran* (2016) 5 Cal. App. 5th 880, 210 Cal. Rptr. 3d 426. Ch. 142.

Bail Bond Surety

- The description of the maximum extension under Pen. Code, § 1305.4 as 180 days past the initial appearance period is no longer accurate. Rather than apply that description of the maximum pe-

riod, courts are bound by the plain language of § 1305.4, which allows a trial court to order an extension of up to 180 days from its order. *People v. Financial Casualty & Surety, Inc.* (2016) 2 Cal. 5th 35, 49, 211 Cal. Rptr. 3d 79, 384 P.3d 1226. Ch. 12.

Double Jeopardy

- A single forceful taking of victim's van that contained rare coins completed the actus reus for robbery and carjacking and was therefore a single physical act for purposes of double jeopardy considerations. *People v. Corpening* (2016) 2 Cal. 5th 307, 315, 211 Cal. Rptr. 3d 863, 386 P.3d 379. Ch. 63.

Misdemeanor Upon Rehabilitation of Juvenile Probationer

- Penal Code § 17(b) is applicable to juvenile proceedings, therefore a juvenile court is authorized to reduce a wobbler to a misdemeanor if a defendant's conduct on probation demonstrates he or she is rehabilitated. *In re E.G.* (2016) 6 Cal. App. 5th 871, 211 Cal. Rptr. 3d 580. Ch. 124.

Probation

- An express knowledge requirement does not apply to possessory probation conditions, nor must possessory probation conditions include an express knowledge requirement where the prohibited item was not criminalized by statute but was merely related to criminality. *People v. Hall* (2017) 2 Cal. 5th 494, 504, 213 Cal. Rptr. 3d 561, 388 P.3d 794. Ch. 90.

Prohibition on Firearm Ownership

- A juvenile's record can still be sealed pursuant to Welf. & Inst. Code, § 786, while at the same time allowing the California Department of Justice to maintain the form described in § 29820(d), prohibiting the juvenile from owning a firearm until the juvenile turns 30. *In re Joshua R.* (2017) 7 Cal. App. 5th 864, 212 Cal. Rptr. 3d 803. Chs. 93, 103.

Preservation of Evidence

- A superior court has the inherent power under Code Civ. Proc. § 187 to order preservation of evidence that might otherwise be lost if that evidence would potentially be subject to Penal Code Section 1054.9 discovery. *People v. Superior Court (Morales)* (2017) 2 Cal. 5th 523, 213 Cal. Rptr. 3d 581. Ch. 70.

Certificate of Appealability

- The threshold question of whether a certificate of appealability should issue after a final habeas order must be decided without full consideration of the factual or legal bases adduced in support of the claims. When a court of appeals sidesteps the certificate process by first deciding the merits of an appeal, and then justifying its denial of a certificate based on its adjudication of the actual merits, it is in essence deciding an appeal without jurisdiction. *Buck v. Davis* (2017) ____ U.S. ____, 137 S. Ct. 759, 774, 197 L. Ed. 2d 1. Ch. 102.

Advisement of Immigration Consequences

- Nothing in the language of § 1016.5 suggests that the legislature intended the generalized advisement regarding immigration consequences of a plea to bar defendants from seeking the time-limited relief from a mistakenly entered guilty plea under § 1018. *People v. Patterson* (2017) 2 Cal. 5th 885, 897, 216 Cal. Rptr. 3d 95, 391 P.3d 1169. Ch. 42.

Pretrial Detention

- A pretrial detainee's claim that he was unlawfully detained based on a probable cause finding that relied on fabricated evidence is properly brought under the Fourth Amendment rather than the Due Process Clause. *Manuel v. City of Joliet* (2017) ____ U.S. ____, 137 S. Ct. 911, 197 L. Ed. 2d 312. Ch. 41.

Probation Conditions

- Probation condition under Penal Code § 1203.067(b)(3) requiring waiver of the privilege against self-incrimination and participation in polygraph examinations does not violate the Fifth Amendment. *People v. Garcia* (2017) 2 Cal. 5th 792, 216 Cal. Rptr. 3d 75, 391 P.3d 1153. Ch. 90.

Shoplifting

- The shoplifting statute encompasses the various theft offenses in Penal Code § 484, and is not limited to larceny of openly displayed merchandise. *People v. Gonzales* (2017) 2 Cal. 5th 858, 874, 216 Cal. Rptr. 3d 285, 392 P.3d 437. Ch. 143.

Miller Resentencing

- Resort to the Penal Code § 1170(d)(2) process for recall of certain juvenile life sentences should not be required in lieu or in advance of habeas corpus proceedings where a petitioner's original sentence is infirm under *Miller*. *In re Kirchner* (2017) 2 Cal. 5th

1040, 1055, 216 Cal. Rptr. 3d 876.
Ch. 91.

Restitution

- When a criminal conviction is invalidated by a reviewing court and no retrial will occur, the State is obliged to refund fees, court costs, and restitution exacted from the defendant upon, and as a consequence of, the conviction. *Nelson v. Colorado* (2017) ____ U.S. ____, 137 S. Ct. 1249, 197 L. Ed. 2d 611. Ch. 91.

Be prepared for the unexpected transactional matters that come your way with Lexis Practice Advisor®. This definitive practice resource allows you easy, one stop access to the information you need to handle transactional matters more effectively. Access topic-based overviews, practical guidance, forms and model documents, as well as “on point” cases, codes and analytical materials, all organized by relevant topics for attorneys who handle transactional matters. Now you can advise, negotiate and draft with complete confidence, focusing your expertise on what matters most whether it be expanding your practice, taking on new matters or advising clients. For more information on Lexis Practice Advisor, visit

<http://www.lexisnexis.com/en-us/products/lexis-practice-advisor.page>.

Get the results faster and easier with Lexis Advance®. Transform the way you do legal research with Lexis Advance, our new online research solution. It provides a more efficient and intuitive way to search while delivering comprehensive and relevant results that can be managed, stored and accessed on demand. Our new natural search algorithm and intuitive interface accesses LexisNexis® and free web content to deliver a larger set of answers faster. Take control of your results with our search filters that get you to the right answer easily, and manage your activity with work folders that allow you to save your information right where you are working. With Lexis Advance you can be confident that you have the right answers faster and easier.

NEED MORE RESEARCH INFORMATION?

- Lexis Advance online research (call Online Sales at 1-888-285-3947);
- LexisNexis e-Books or Digital Library (call Inbound Sales at 1-800-223-1940);
- Or, ask your LexisNexis representative.

Matthew Bender provides continuing customer support for all its products:

- Editorial assistance—please consult the “Questions About This Publication” directory printed on the copyright page;
- Customer Service—missing pages, shipments, billing or other customer service

matters, +1.800.833.9844.

- Outside the United States and Canada, +1.937.247.0293, or fax (+1.800.828.8341) or email (international@bender.com);
- Toll-free ordering (+1.800.223.1940) or visit www.lexisnexis.com/BrowseUs.



www.lexis.com

Copyright © 2017 Matthew Bender & Company, Inc., a member of the LexisNexis Group.
Publication 171, Release 80, November 2017

LexisNexis, the knowledge burst logo, and Michie are trademarks of Reed Elsevier Properties Inc., used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.

FILING INSTRUCTIONS

California Criminal Defense Practice

Publication 171 Release 80

November 2017

**Check
As
Done**

- ☐ 1. Check the Title page in the front of your present Volume 1. It should indicate that your set is filed through Release Number 79. If the set is current, proceed with the filing of this release. If your set is not filed through Release Number 79, DO NOT file this release. Please call Customer Services at 1-800-833-9844 for assistance in bringing your set up to date.
- ☐ 2. This Release Number 80 contains only White Revision pages.
- ☐ 3. Circulate the "Publication Update" among those individuals interested in the contents of this release.

**Check
As
Done**

Remove Old
Pages Numbered

Insert New
Pages Numbered

For faster and easier filing, all references are to right-hand pages only.

VOLUME 1

Revision

☐	Title page.	Title page
☐	1-30.1 thru 1-46.2(1)	1-31 thru 1-46.2(5)
☐	1-100.7 thru 1-100.12(1).	1-100.7 thru 1-100.12(1)
☐	10-48.1 thru 10-48.3.	10-48.1 thru 10-48.3
☐	12-61.	12-61 thru 12-62.1
☐	20-67.	20-67 thru 20-68.1
☐	20-79 thru 20-85	20-79 thru 20-86.1
☐	21-43.	21-43
☐	21-63.	21-63 thru 21-64.1
☐	22-27 thru 22-28.1	22-27 thru 22-28.1
☐	22-37 thru 22-41	22-37 thru 22-42.1
☐	22-53 thru 22-59	22-53 thru 22-60.1
☐	22-68.1.	22-68.1

VOLUME 2

Revision

☐	Title page.	Title page
☐	30-41 thru 30-51	30-41 thru 30-52.1
☐	30-63.	30-63 thru 30-64.1
☐	30-89.	30-89 thru 30-90.1
☐	40-122.3	40-122.3 thru 40-122.4(1)
☐	41-87 thru 41-91	41-87 thru 41-91
☐	42-45 thru 42-47	42-45 thru 42-47
☐	42-67 thru 42-68.17	42-67 thru 42-68.19
☐	42-103	42-103 thru 42-104.1
☐	51-25.	51-25 thru 51-26.1
☐	51-43.	51-43
☐	51-57 thru 51-58.1	51-57 thru 51-58.1

VOLUME 3

Revision

☐	Title page.	Title page
☐	63-63.	63-63 thru 63-64.1
☐	64-68.4(1)	64-68.4(1) thru 64-68.4(2)(a)
☐	70-19 thru 70-22.1	70-19 thru 70-22.1
☐	73-27 thru 73-28.1	73-27 thru 73-28.1

**Check
As
Done**

*Remove Old
Pages Numbered*

*Insert New
Pages Numbered*

VOLUME 4

Revision

☐	Title page.	Title page
☐	80-27 thru 80-37	80-27 thru 80-38.1
☐	80-50.1	80-50.1
☐	80-100.1 thru 80-106.1	80-101 thru 80-106.1
☐	81-51 thru 81-53	81-51 thru 81-54.1
☐	82-52.1 thru 82-53	82-53 thru 82-54.1
☐	83-18.1 thru 83-24.1.	83-19 thru 83-24.1
☐	83-146.4(2)(a) thru 83-146.4(4)(b)(i)	83-146.4(3) thru 83-146.4(4)(b)(i)
☐	85-17 thru 85-32.1	85-17 thru 85-32.1
☐	85-66.1 thru 85-67	85-67 thru 85-68.1
☐	85-91.	85-91 thru 85-92.1
☐	85-112.1 thru 85-113	85-113 thru 85-114.1
☐	87-70.1 thru 87-71	87-71 thru 87-72.1
☐	87-83 thru 87-85	87-83 thru 87-86.1
☐	87-173 thru 87-175	87-173 thru 87-176.1

VOLUME 5

Revision

☐	Title page.	Title page
☐	90-19.	90-19 thru 90-20.1
☐	90-47 thru 90-55	90-47 thru 90-55
☐	90-66.1 thru 90-66.3.	90-66.1 thru 90-66.3
☐	91-19 thru 91-21	91-19 thru 91-22.1
☐	91-32.1 thru 91-33	91-33 thru 91-34.1
☐	91-75 thru 91-76.5	91-75 thru 91-76.5
☐	91-157	91-157 thru 91-158.1
☐	91-199	91-199 thru 91-200.1
☐	91-247	91-247 thru 91-248.1
☐	91-257	91-257 thru 91-258.1
☐	91-267	91-267 thru 91-268.1
☐	91-296.35 thru 91-296.38(3)	91-296.35 thru 91-296.38(3)
☐	91-315 thru 91-317	91-315 thru 91-318.1
☐	91-331	91-331
☐	91-348.5 thru 91-348.9	91-348.5 thru 91-348.9
☐	91-394.1 thru 91-394.2(1)	91-394.1 thru 91-394.2(1)
☐	91-394.37.	91-394.37 thru 91-394.38(1)
☐	93-11 thru 93-21	93-11 thru 93-22.1
☐	93-52.1 thru 93-53	93-53 thru 93-54.1
☐	93-71 thru 93-73	93-71 thru 93-73
☐	94-17.	94-17

Check As Done	<u>Remove Old Pages Numbered</u>	<u>Insert New Pages Numbered</u>
☐	100-7 thru 100-9	100-7 thru 100-9
☐	101-13 thru 101-14.1	101-13 thru 101-14.1
☐	101-37	101-37 thru 101-38.1
☐	102-80.19.	102-80.19 thru 102-80.20(1)
☐	102-80.29 thru 102-80.32(1)	102-80.29 thru 102-80.32(2)(a)
☐	103-38.1 thru 103-39	103-39 thru 103-40.1
☐	104-41 thru 104-48.1	104-41 thru 104-48.1
☐	104-68.1 thru 104-68.3	104-68.1 thru 104-68.3
☐	104-81 thru 104-83	104-81 thru 104-84.1
☐	104-128.1.	104-128.1

VOLUME 6

Revision

☐	Title page.	Title page
☐	120-3 thru 120-19.	120-3 thru 120-19
☐	123-1 thru 123-37.	123-1 thru 123-33
☐	124-33 thru 124-40.1	124-33 thru 124-40.1
☐	124-49 thru 124-59	124-49 thru 124-60.1
☐	124-70.1 thru 124-70.3	124-70.1 thru 124-70.5
☐	140-15 thru 140-16.1	140-15 thru 140-16.3
☐	140-29	140-29 thru 140-30.1
☐	140-75 thru 140-76.1	140-75 thru 140-76.1
☐	141-5 thru 141-13.	141-5 thru 141-13
☐	142-19 thru 142-21	142-19 thru 142-22.1
☐	142-61 thru 142-62.1	142-61 thru 142-62.1
☐	142-93 thru 142-101.	142-93 thru 142-102.1
☐	142-115 thru 142-116.1	142-115 thru 142-116.1
☐	142-131 thru 142-141	142-131 thru 142-142.1
☐	142-163	142-163 thru 142-164.1
☐	142-168.14(7) thru 142-168.14(15)	142-168.14(7) thru 142-168.14(16)(c)
☐	142-183 thru 142-186.2(1)	142-183 thru 142-186.2(2)(a)
☐	142-186.2(9) thru 142-186.4(1).	142-186.3 thru 142-186.4(11)
☐	142-186.37 thru 142-186.43	142-186.37 thru 142-186.43
☐	143-11 thru 143-19	143-11 thru 143-20.1
☐	143-32.1 thru 143-34.1	143-33 thru 143-34.3
☐	143-45 thru 143-62.1	143-45 thru 143-62.3
☐	143-75 thru 143-77	143-75 thru 143-78.1
☐	144-67 thru 144-68.1	144-67 thru 144-68.1
☐	145-19 thru 145-25	145-19 thru 145-26.1
☐	145-35 thru 145-36.1	145-35 thru 145-36.1
☐	145-40.21 thru 145-40.25	145-40.21 thru 145-40.26(1)
☐	145-107 thru 145-108.1	145-107 thru 145-108.1

VOLUME 7

Check As Done	<i>Remove Old <u>Pages Numbered</u></i>	<i>Insert New <u>Pages Numbered</u></i>
------------------------------	---	---

Revision

☐	Title page.	Title page
☐	TS-1 thru TS-169	TS-1 thru TS-169
☐	TC-1 thru TC-395	TC-1 thru TC-397
☐	I-1 thru I-269	I-1 thru I-265

FILE IN THE FRONT OF THE FIRST VOLUME
OF YOUR SET

To order missing pages log on to our self service center, www.lexisnexis.com/printedsc or call Customer Services at 1 (800) 833-9844 and have the following information ready:

- (1) the publication title;
- (2) specific volume, chapter and page numbers; and
- (3) your name, phone number, and Matthew Bender account number.

Please recycle removed pages.

MISSING FILING INSTRUCTIONS?
FIND THEM AT www.lexisnexis.com/printedsc

Use the search tool provided to find and download missing filing instructions, or sign on to the Print & CD Service Center to order missing pages or replacement materials. Visit us soon to see what else the Print & CD Service Center can do for you!



www.lexis.com

**Copyright © 2017 Matthew Bender & Company, Inc., a member of the LexisNexis Group.
Publication 171, Release 80, November 2017**

LexisNexis, the knowledge burst logo, and Michie are trademarks of Reed Elsevier Properties Inc., used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.