

 KeyCite Yellow Flag - Negative Treatment

Unconstitutional or Preempted Limitation Recognized by [People v. Robinson](#), Cal.App. 2 Dist., Sep. 28, 2011

West's Annotated California Codes

Constitution of the State of California 1879 (Refs & Annos)

Article I. Declaration of Rights (Refs & Annos)

West's Ann.Cal.Const. Art. 1, § 28

§ 28. Findings and declarations; rights of victims; enforcement

Effective: November 5, 2008

Currentness

<For Executive Order N-49-20 (2019 CA EO 49-20), relating to changes in the discharge and re-entry process at the Division of Juvenile Justice due to the COVID-19 pandemic, see Historical and Statutory Notes under Welfare and Institutions Code § 1766.>

Sec. 28. (a) The People of the State of **California** find and declare all of the following:

(1) Criminal activity has a serious impact on the citizens of **California**. The rights of victims of crime and their families in criminal prosecutions are a subject of grave statewide concern.

(2) Victims of crime are entitled to have the criminal justice system view criminal acts as serious threats to the safety and welfare of the people of **California**. The enactment of comprehensive provisions and laws ensuring a bill of rights for victims of crime, including safeguards in the criminal justice system fully protecting those rights and ensuring that crime victims are treated with respect and dignity, is a matter of high public importance. **California's** victims of crime are largely dependent upon the proper functioning of government, upon the criminal justice system and upon the expeditious enforcement of the rights of victims of crime described herein, in order to protect the public safety and to secure justice when the public safety has been compromised by criminal activity.

(3) The rights of victims pervade the criminal justice system. These rights include personally held and enforceable rights described in paragraphs (1) through (17) of subdivision (b).

(4) The rights of victims also include broader shared collective rights that are held in common with all of the People of the State of **California** and that are enforceable through the enactment of laws and through good-faith efforts and actions of **California's** elected, appointed, and publicly employed officials. These rights encompass the expectation shared with all of the people of **California** that persons who commit felonious acts causing injury to innocent victims will be appropriately and thoroughly investigated, appropriately detained in custody, brought before the courts of **California** even if arrested outside the State, tried by the courts in a timely manner, sentenced, and sufficiently punished so that the public safety is protected and encouraged as a goal of highest importance.

(5) Victims of crime have a collectively shared right to expect that persons convicted of committing criminal acts are sufficiently punished in both the manner and the length of the sentences imposed by the courts of the State of **California**. This right includes the right to expect that the punitive and deterrent effect of custodial sentences imposed by the courts will not be undercut or diminished by the granting of rights and privileges to prisoners that are not required by any provision of the United States **Constitution** or by the laws of this State to be granted to any person incarcerated in a penal or other custodial facility in this State as a punishment or correction for the commission of a crime.

(6) Victims of crime are entitled to finality in their criminal cases. Lengthy appeals and other post-judgment proceedings that challenge criminal convictions, frequent and difficult parole hearings that threaten to release criminal offenders, and the ongoing threat that the sentences of criminal wrongdoers will be reduced, prolong the suffering of crime victims for many years after the crimes themselves have been perpetrated. This prolonged suffering of crime victims and their families must come to an end.

(7) Finally, the People find and declare that the right to public safety extends to public and private primary, elementary, junior high, and senior high school, and community college, **California** State University, University of **California**, and private college and university

campuses, where students and staff have the right to be safe and secure in their persons.

(8) To accomplish the goals it is necessary that the laws of **California** relating to the criminal justice process be amended in order to protect the legitimate rights of victims of crime.

(b) In order to preserve and protect a victim's rights to justice and due process, a victim shall be entitled to the following rights:

(1) To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment, and abuse, throughout the criminal or juvenile justice process.

(2) To be reasonably protected from the defendant and persons acting on behalf of the defendant.

(3) To have the safety of the victim and the victim's family considered in fixing the amount of bail and release conditions for the defendant.

(4) To prevent the disclosure of confidential information or records to the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, which could be used to locate or harass the victim or the victim's family or which disclose confidential communications made in the course of medical or counseling treatment, or which are otherwise privileged or confidential by law.

(5) To refuse an interview, deposition, or discovery request by the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, and to set reasonable conditions on the conduct of any such interview to which the victim consents.

(6) To reasonable notice of and to reasonably confer with the prosecuting agency, upon request, regarding, the arrest of the defendant if known by the prosecutor, the charges filed, the determination whether to extradite the defendant, and, upon request, to be notified of and informed before any pretrial disposition of the case.

(7) To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other post-conviction release proceedings, and to be present at all such proceedings.

(8) To be heard, upon request, at any proceeding, including any delinquency proceeding, involving a post-arrest release decision, plea, sentencing, post-conviction release decision, or any proceeding in which a right of the victim is at issue.

(9) To a speedy trial and a prompt and final conclusion of the case and any related post-judgment proceedings.

(10) To provide information to a probation department official conducting a pre-sentence investigation concerning the impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant.

(11) To receive, upon request, the pre-sentence report when available to the defendant, except for those portions made confidential by law.

(12) To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant, and the release of or the escape by the defendant from custody.

(13) To restitution.

(A) It is the unequivocal intention of the People of the State of **California** that all persons who suffer losses as a result of criminal activity shall have the right to seek and secure restitution from the persons convicted of the crimes causing the losses they suffer.

(B) Restitution shall be ordered from the convicted wrongdoer in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss.

(C) All monetary payments, monies, and property collected from any person who has been ordered to make restitution shall be first applied to pay the amounts ordered as restitution to the victim.

(14) To the prompt return of property when no longer needed as evidence.

(15) To be informed of all parole procedures, to participate in the parole process, to provide information to the parole authority to be considered before the parole of the offender, and to be notified, upon request, of the parole or other release of the offender.

(16) To have the safety of the victim, the victim's family, and the general public considered before any parole or other post-judgment release decision is made.

(17) To be informed of the rights enumerated in paragraphs (1) through (16).

(c)(1) A victim, the retained attorney of a victim, a lawful representative of the victim, or the prosecuting attorney upon request of the victim, may enforce the rights enumerated in subdivision (b) in any trial or appellate court with jurisdiction over the case as a matter of right. The court shall act promptly on such a request.

(2) This section does not create any cause of action for compensation or damages against the State, any political subdivision of the State, any officer, employee, or agent of the State or of any of its political subdivisions, or any officer or employee of the court.

(d) The granting of these rights to victims shall not be construed to deny or disparage other rights possessed by victims. The court in its discretion may extend the right to be heard at sentencing to any person harmed by the defendant. The parole authority shall extend the right to be heard at a parole hearing to any person harmed by the offender.

(e) As used in this section, a “victim” is a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act. The term “victim” also includes the person’s spouse, parents, children, siblings, or guardian, and includes a lawful representative of a crime victim who is deceased, a minor, or physically or psychologically incapacitated. The term “victim” does not include a person in custody for an offense, the accused, or a person whom the court finds would not act in the best interests of a minor victim.

(f) In addition to the enumerated rights provided in subdivision (b) that are personally enforceable by victims as provided in subdivision (c), victims of crime have additional rights that are shared with all of the People of the State of **California**. These collectively held rights include, but are not limited to, the following:

(1) Right to Safe Schools. All students and staff of public primary, elementary, junior high, and senior high schools, and community colleges, colleges, and universities have the inalienable right to attend campuses which are safe, secure and peaceful.

(2) Right to Truth-in-Evidence. Except as provided by statute hereafter enacted by a two-thirds vote of the membership in each house of the Legislature, relevant evidence shall not be excluded in any criminal proceeding, including pretrial and post conviction motions and hearings, or in any trial or hearing of a juvenile for a criminal offense, whether heard in juvenile or adult court.

Nothing in this section shall affect any existing statutory rule of evidence relating to privilege or hearsay, or [Evidence Code Sections 352, 782 or 1103](#). Nothing in this section shall affect any existing statutory or **constitutional** right of the press.

(3) Public Safety Bail. A person may be released on bail by sufficient sureties, except for capital crimes when the facts are evident or the presumption great. Excessive bail may not be required. In setting, reducing or denying bail, the judge or magistrate shall take into consideration the protection of the public, the safety of the victim, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case. Public safety and the safety of the victim shall be the primary considerations.

A person may be released on his or her own recognizance in the court's discretion, subject to the same factors considered in setting bail.

Before any person arrested for a serious felony may be released on bail, a hearing may be held before the magistrate or judge, and the prosecuting attorney and the victim shall be given notice and reasonable opportunity to be heard on the matter.

When a judge or magistrate grants or denies bail or release on a person's own recognizance, the reasons for that decision shall be stated in the record and included in the court's minutes.

(4) Use of Prior Convictions. Any prior felony conviction of any person in any criminal proceeding, whether adult or juvenile, shall subsequently be used without limitation for purposes of impeachment or enhancement of sentence in any criminal proceeding. When a prior felony conviction is an element of any felony offense, it shall be proven to the trier of fact in open court.

(5) Truth in Sentencing. Sentences that are individually imposed upon convicted criminal wrongdoers based upon the facts and circumstances surrounding their cases shall be carried out in compliance with the courts' sentencing orders, and shall not be substantially diminished by early release policies intended to alleviate overcrowding in custodial facilities. The legislative branch shall ensure sufficient funding to adequately house inmates for the full terms of their

sentences, except for statutorily authorized credits which reduce those sentences.

(6) Reform of the parole process. The current process for parole hearings is excessive, especially in cases in which the defendant has been convicted of murder. The parole hearing process must be reformed for the benefit of crime victims.

(g) As used in this article, the term “serious felony” is any crime defined in subdivision (c) of Section 1192.7 of the Penal Code, or any successor statute.

Credits

(Added by Initiative Measure, approved by the people, June 8, 1982. Amended by [Initiative Measure \(Prop. 9, § 4.1, approved Nov. 4, 2008, eff. Nov. 5, 2008\)](#).)

Editors’ Notes

Relevant Additional Resources

Additional Resources listed below contain your search terms.

HISTORICAL NOTES

Section 1 of Initiative **Const.** Amend. June 8, 1982, provides:

“This amendment shall be known as ‘The Victims’ Bill of Rights’.”

Amendment of **Const. Art. 1, § 12** by Assembly Const.Amend. No. 14 (1982) was approved by a higher affirmative vote at the primary election held June 8, 1982 than Initiative Measure which repealed **Const. Art. 1 § 12**, and added this section which included a new provision on “Public Safety Bail”. If provisions of 2 or more measures approved at the same election conflict, those of the measure receiving the highest affirmative vote shall prevail, see **Const. Art. 2, § 10; Art. 18, § 4**.

Initiative Measure (Prop. 9) rewrote this section, which read:

“Sec. 28. (a) Legislative findings and declaration; rights of victims. “The People of the State of **California** find and declare that the enactment of comprehensive provisions and laws ensuring a bill of rights for victims of crime, including safeguards in the criminal justice system to fully protect those rights, is a matter of grave statewide concern.

“The rights of victims pervade the criminal justice system, encompassing not only the right to restitution from the wrongdoers for financial losses suffered as a result of criminal acts, but also the more basic expectation that persons who commit felonious acts causing injury to innocent victims will be appropriately detained in custody, tried by the courts, and sufficiently punished so that the public safety is protected and encouraged as a goal of highest importance.

“Such public safety extends to public primary, elementary, junior high, and senior high school campuses, where students and staff have the right to be safe and secure in their persons.

“To accomplish these goals, broad reforms in the procedural treatment of accused persons and the disposition and sentencing of convicted persons are necessary and proper as deterrents to criminal behavior and to serious disruption of people’s lives.

“(b) Restitution. It is the unequivocal intention of the People of the State of **California** that all persons who suffer losses as a result of criminal activity shall have the right to restitution from the persons convicted of the crimes for losses they suffer.

“Restitution shall be ordered from the convicted persons in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extraordinary reasons exist to the contrary. The Legislature shall adopt provisions to implement this section during the calendar year following adoption of this section.

“(c) Right to Safe Schools. All students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure and peaceful.

“(d) Right to Truth-in-Evidence. Except as provided by statute hereafter enacted by a two-thirds vote of the membership in each house of the Legislature, relevant evidence shall not be excluded in any criminal proceeding, including pretrial and post conviction motions and hearings, or in any trial or hearing of a juvenile for a criminal offense, whether heard in juvenile or adult court. Nothing in this section shall affect any existing statutory rule of evidence relating to privilege or hearsay, or [Evidence Code, Sections 352, 782 or 1103](#). Nothing in this section shall affect any existing statutory or **constitutional** right of the press.

“(e) Public Safety Bail. A person may be released on bail by sufficient sureties, except for capital crimes when the facts are evident or the presumption great. Excessive bail may not be required. In setting, reducing or denying bail, the judge or magistrate shall take into consideration the protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case. Public safety shall be the primary consideration.

“A person may be released on his or her own recognizance in the court’s discretion, subject to the same factors considered in setting bail. However, no person charged with the commission of any serious felony shall be released on his or her own recognizance.

“Before any person arrested for a serious felony may be released on bail, a hearing may be held before the magistrate or judge, and the prosecuting attorney shall be given notice and reasonable opportunity to be heard on the matter.

“When a judge or magistrate grants or denies bail or release on a person’s own recognizance, the reasons for that decision shall be stated in the record and included in the court’s minutes.

“(f) Use of Prior Convictions. Any prior felony conviction of any person in any criminal proceeding, whether adult or juvenile, shall subsequently be used without limitation for purposes of impeachment or enhancement of sentence in any criminal proceeding. When a prior felony conviction is an element of any felony offense, it shall be proven to the trier of fact in open court.

“(g) Serious felony. As used in this article, the term ‘serious felony’ is any crime defined in [Penal Code, Section 1192.7\(c\)](#).”

Sections 1 to 3 and 7 to 10 of Initiative Measure (Prop. 9), provide:

“SECTION 1. TITLE

“This act shall be known, and may be cited as, the ‘Victims’ Bill of Rights Act of 2008: Marsy’s Law.’

“SECTION 2. FINDINGS AND DECLARATIONS

“The People of the State of **California** hereby find and declare all of the following:

“1. Crime victims are entitled to justice and due process. Their rights include, but are not limited to, the right to notice and to be heard during critical stages of the justice system; the right to receive restitution from the criminal wrongdoer; the right to be reasonably safe throughout the justice process; the right to expect the government to properly fund the criminal justice system, so that the rights of crime victims stated in these Findings and Declarations and justice itself are not eroded by inadequate resources; and, above all, the right to an expeditious and just punishment of the criminal wrongdoer.

“2. The People of the State of **California** declare that the ‘Victims’ Bill of Rights Act of 2008: Marsy’s Law’ is needed to remedy a justice system that fails to fully recognize and adequately enforce the rights of victims of crime. It is named after Marsy, a 21-year-old college senior at U.C. Santa Barbara who was preparing to pursue a career in special education for handicapped children and had her whole life ahead of her. She was murdered on November 30, 1983. Marsy’s Law is written on behalf of her mother, father, and brother, who were often treated as though they had no rights, and inspired by hundreds of thousands of victims of crime who have experienced the additional pain and frustration of a criminal justice system that too often fails to afford victims even the most basic of rights.

“3. The People of the State of **California** find that the ‘broad reform’ of the criminal justice system intended to grant these basic rights mandated in the Victims’ Bill of Rights initiative measure passed by the electorate as Proposition 8 in 1982 has not occurred as envisioned by the people. Victims of crime continue to be denied rights to justice and due process.

“4. An inefficient, overcrowded, and arcane criminal justice system has failed to build adequate jails and prisons, has failed to efficiently conduct court proceedings, and has failed to expeditiously finalize the sentences and punishments of criminal wrongdoers. Those criminal wrongdoers are being released from custody after serving as little as 10 percent of the sentences imposed and determined to be appropriate by judges.

“5. Each year hundreds of convicted murderers sentenced to serve life in prison seek release on parole from our state prisons. **California’s** ‘release from prison parole procedures’ torture the families of murdered victims and waste millions of dollars each year. In **California** convicted murderers are appointed attorneys paid by the tax dollars of its citizens, and these convicted murderers are often given parole hearings every year. The families of murdered victims are never able to escape the seemingly unending torture and fear that the murderer of their loved one will be once again free to murder.

“6. ‘Helter Skelter’ inmates Bruce Davis and Leslie Van Houghton, two followers of Charles Manson convicted of multiple brutal murders, have had 38 parole hearings during the past 30 years.

“7. Like most victims of murder, Marsy was neither rich nor famous when she was murdered by a former boyfriend who lured her from her parents’ home by threatening to kill himself. Instead he used a shotgun to brutally end her life when she entered his home in an effort to stop him from killing himself. Following her murderer’s arrest, Marsy’s mother was shocked to meet him at a local supermarket, learning that he had been released on bail without any notice to Marsy’s family and without any opportunity for her family to state their opposition to his release.

“8. Several years after his conviction and sentence to ‘life in prison,’ the parole hearings for his release began. In the first parole hearing, Marsy’s mother suffered a heart attack fighting against his release. Since then Marsy’s family has endured the trauma of frequent parole hearings and constant anxiety that Marsy’s killer would be released.

“9. The experiences of Marsy’s family are not unique. Thousands of other crime victims have shared the experiences of Marsy’s family, caused by the failure of our criminal justice system to notify them of their rights, failure to give them notice of important hearings in the prosecutions of their criminal wrongdoers, failure to provide them with an opportunity to speak and participate, failure to impose actual and just punishment upon their wrongdoers, and failure to extend to them some measure of finality to the trauma inflicted upon them by their wrongdoers.

“SECTION 3. STATEMENT OF PURPOSES AND INTENT

“It is the purpose of the People of the State of **California** in enacting this initiative measure to:

“1. Provide victims with rights to justice and due process.

“2. Invoke the rights of families of homicide victims to be spared the ordeal of prolonged and unnecessary suffering, and to stop the waste of millions of taxpayer dollars, by eliminating parole hearings in which there is no likelihood a murderer will be paroled, and to provide that a convicted murderer can receive a parole hearing no more frequently than every three years, and can be denied a follow-up parole hearing for as long as 15 years.”

“SECTION 7. CONFLICTS WITH EXISTING LAW

“It is the intent of the People of the State of **California** in enacting this act that if any provision in this act conflicts with an existing provision of law which provides for greater rights of victims of crime, the latter provision shall apply.

“SECTION 8. SEVERABILITY

“If any provision of this act, or part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional, the remaining provisions which can be given effect without the invalid or unconstitutional provision or application shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable.

“SECTION 9. AMENDMENTS

“The statutory provisions of this act shall not be amended by the Legislature except by a statute passed in each house by roll-call vote entered in the journal, three-fourths of the membership of each house concurring, or by a statute that becomes effective only when approved by the voters.

However, the Legislature may amend the statutory provisions of this act to expand the scope of their application, to recognize additional rights of victims of crime, or to further the rights of victims of crime by a statute passed by a majority vote of the membership of each house.

“SECTION 10. RETROACTIVITY

“The provisions of this act shall apply in all matters which arise and to all proceedings held after the effective date of this act.”

2020 Legislation

For Executive Order N-36-20 issued by Governor Newsom, relating to a temporary halting of the intake or transfer of inmates and youth in state prisons and youth correctional facilities, see Historical and Statutory Notes under [Penal Code § 2900](#).

For Executive Order N-49-20 issued by Governor Newsom, relating to changes in the discharge and re-entry process at the Division of Juvenile Justice due to the COVID-19 pandemic, see Historical and Statutory Notes under [Welfare and Institutions Code § 1766](#).

CROSS REFERENCES

Bail, see [Cal. Const. Art. 1, § 12](#).

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91 American Law Reports 5th 343, Validity, Construction, and Application of State Constitutional or Statutory Victims' Bill of Rights.

106 American Law Reports 555, Construction and Application of Constitutional or Statutory Requirement as to Short Title, Ballot Title, or Explanation of Nature of Proposal in Initiative, Referendum, or Recall Petition.

147 American Law Reports 443, Constitutionality, Construction, and Application of Statutory Provision Against Use in Evidence in Any Other Case of Records or Evidence in Juvenile Court Proceedings.

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- 17 **Cal.** Jur. 3d Criminal Law: Core Aspects § 89, **Constitutional** Provisions Concerning Declaration of Intent.
- 17 **Cal.** Jur. 3d Criminal Law: Core Aspects § 90, **Constitutional** Provisions Concerning Specific Rights of Victim.
- 17 **Cal.** Jur. 3d Criminal Law: Core Aspects § 91, Statutory Rights of Victim.
- 17 **Cal.** Jur. 3d Criminal Law: Core Aspects § 96, Compensation of Victims, Generally.
- 17A **Cal.** Jur. 3d Criminal Law: Crimes Against Person § 431, Evidence of Declarations by Defendant in Robbery Prosecution.
- 19 **Cal.** Jur. 3d Criminal Law: Miscellaneous Offenses § 256, Extent of Public Safety Right of Access to Safe Schools.
- 22A **Cal.** Jur. 3d Criminal Law: Post-Trial Proceedings § 292, Propriety of Reference to and Admission of Evidence of Admitted Prior Conviction.
- 22A **Cal.** Jur. 3d Criminal Law: Post-Trial Proceedings § 318, Three Strikes Reform Act of 2012.
- 22A **Cal.** Jur. 3d Criminal Law: Post-Trial Proceedings § 351, Attendance or Statement by Victim or Representative.
- 22A **Cal.** Jur. 3d Criminal Law: Post-Trial Proceedings § 352, Notice of Right to Attend or Make Statement.
- 22A **Cal.** Jur. 3d Criminal Law: Post-Trial Proceedings § 354, Notice of Right to Civil Recovery, Restitution.
- 22C **Cal.** Jur. 3d Criminal Law: Post-Trial Proceedings § 986, Appeal from Judgment of Death.
- 22 **Cal.** Jur. 3d Criminal Law: Post-Trial Proceedings § 70, Restitution Fines and Orders in Criminal Matters, Generally.
- 22 **Cal.** Jur. 3d Criminal Law: Post-Trial Proceedings § 280, Prior Convictions Requiring Enhancement, Generally.
- 20A **Cal.** Jur. 3d Criminal Law: Pretrial Proceedings § 605, Remedies, Generally.
- 20A **Cal.** Jur. 3d Criminal Law: Pretrial Proceedings § 641, Factors or Circumstances to be Considered.
- 20A **Cal.** Jur. 3d Criminal Law: Pretrial Proceedings § 642, Excessive Bail.
- 20A **Cal.** Jur. 3d Criminal Law: Pretrial Proceedings § 784, Sufficiency of Evidence of Corpus Delicti.
- 20 **Cal.** Jur. 3d Criminal Law: Pretrial Proceedings § 142, Deferral of Sentencing Pilot Program, Generally.
- 20 **Cal.** Jur. 3d Criminal Law: Pretrial Proceedings § 340, Truth in Evidence.
- 20 **Cal.** Jur. 3d Criminal Law: Pretrial Proceedings § 406, Standards for Assessing Competency of Affidavit in Support of Search Warrant--Particularity.
- 19A **Cal.** Jur. 3d Criminal Law: Rights of the Accused § 63, Right to Counsel at Pretrial Lineup.
- 19A **Cal.** Jur. 3d Criminal Law: Rights of the Accused § 324, Blood Tests for Intoxication Taken from Defendant's Person--Implied Consent.
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- 1 Witkin, **California** Evidence 5th Introduction § 9 (2019), Particular Evidentiary Rules Affected.
- 3 Witkin, **California** Evidence 5th Presentation at Trial § 275 (2019), No Psychiatric Examination in Sexual Assault Case.
- 3 Witkin, **California** Evidence 5th Presentation at Trial § 298 (2019), Criminal Action.
- 3 Witkin, **California** Evidence 5th Presentation at Trial § 315 (2019), Castro Case.
- 3 Witkin, **California** Evidence 5th Presentation at Trial § 318 (2019), Moral Turpitude Found.
- 3 Witkin, **California** Evidence 5th Presentation at Trial § 320 (2019), Test is Not Applicable in Civil Cases.
- 3 Witkin, **California** Evidence 5th Presentation at Trial § 324 (2019), Preserving Right to Review.
- 3 Witkin, **California** Evidence 5th Presentation at Trial § 331 (2019), Former **California** Law Abrogated.
- 2 Witkin, **California** Evidence 5th Witnesses § 364 (2019), Disclosure Demanded by Prosecution.
- 2 Witkin, **California** Evidence 5th Witnesses § 530 (2019), Applicability to Criminal Proceedings.
- 7 Witkin, **California** Summary 10th **Constitutional** Law § 81 (2019), Self-Executing Provisions.

7 Witkin, **California** Summary 10th **Constitutional** Law § 124 (2019), Nature of Doctrine.
7 Witkin, **California** Summary 10th **Constitutional** Law § 224 (2019), Unreasonable Search and Seizure.
16 Witkin, **California** Summary 11th Juvenile Court Law § 654 (2019), No Right to Exclude Codefendant's Extrajudicial Statement.
16 Witkin, **California** Summary 11th Juvenile Court Law § 661 (2019), Involuntary Confession or Admission.
16 Witkin, **California** Summary 11th Juvenile Court Law § 797 (2019), In General.
16 Witkin, **California** Summary 11th Juvenile Court Law § 798 (2019), Amount of Restitution.
16 Witkin, **California** Summary 11th Juvenile Court Law § 836 (2019), Enhancements.
5 Witkin, **California** Summary 10th Torts § 21 (2019), **California Constitution**: No Cause of Action Recognized.
6 Witkin, **California** Summary 10th Torts § 1193 (2019), School District.
6 Witkin, **California** Summary 10th Torts § 1219 (2019), **Constitutionality** of Statutes.
Wright & Miller Federal Practice and Procedure § 5436, Exceptions--**Constitution**.

UNITED STATES SUPREME COURT

Restitution, Colorado scheme requiring exonerated defendants to show actual innocence to be refunded costs, fees, and restitution they paid violated due process, see [Nelson v. Colorado, 2017, 137 S.Ct. 1249, 197 L.Ed.2d 611](#). **Constitutional** Law 🔑4737, 4841; [Costs](#) 🔑290; [Sentencing and Punishment](#) 🔑2107

Relevant Notes of Decisions (381)

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Notes of Decisions listed below contain your search terms.

Validity

Subdivision (d) of this section which eliminates the exclusionary rule for evidence seized in violation of state, but not federal, law does not violate the due process clause. [California v. Greenwood, U.S.Cal.1988, 108 S.Ct. 1625, 486 U.S. 35, 100 L.Ed.2d 30](#), on remand, not certified for publication. **Constitutional** Law 🔑 4655; [Criminal Law](#) 🔑 392.10(2)

Provision of "victims' bill of rights" in State **Constitution**, allowing any prior felony conviction of any person in any criminal proceeding, whether adult or juvenile, to be used without limitation for purposes of sentencing enhancement, which provision applies to any person who

has been convicted of prior felony regardless of his or her age at time of prior offense, serves rational and well-established purpose in shielding from enhancement statutes those juveniles deemed fit for rehabilitation and protection while simultaneously exposing to risk of sentence enhancement those juveniles deemed suitable for prosecution and punishment as adults and thus does not violate equal protection. *People v. Blankenship* (App. 4 Dist. 1985) 213 Cal.Rptr. 666, 167 Cal.App.3d 840, review denied. **Constitutional Law** 🔑 3741; **Sentencing And Punishment** 🔑 8

Const. Art. 1, § 28 providing that relevant evidence shall not be excluded in any criminal proceeding was not a **constitutional** revision which could be proposed only by delegates to **constitutional** convention. *In re Lance W.* (1985) 210 Cal.Rptr. 631, 37 Cal.3d 873, 694 P.2d 744. **Constitutional Law** 🔑 535

Criminal defendants are not denied equal protection of law because they may not, under **Const.** Art. 1, § 28(d) providing that relevant evidence shall not be excluded in any criminal proceeding, seek exclusion of unlawfully seized evidence while parties to civil litigation. *In re Lance W.* (1985) 210 Cal.Rptr. 631, 37 Cal.3d 873, 694 P.2d 744. **Constitutional Law** 🔑 3801; **Criminal Law** 🔑 392.41

Proposition known as Victims' Bill of Rights was not **constitutionally** infirm under principle that initiative is not applicable where inevitable effect would be greatly to impair or wholly destroy efficacy of some other governmental power on grounds that provisions of proposition which gave criminal victims opportunity to appear in felony and misdemeanor cases and impose greater punishment on defendants whose multiple offenses were tried separately would result in breakdown of justice system. *Brosnahan v. Brown* (1982) 186 Cal.Rptr. 30, 32 Cal.3d 236, 651 P.2d 274. **Constitutional Law** 🔑 541

Nothing in **constitutional** article governing amendment of statutes requiring reenactment of statutes purports to affect **constitutional** amendments, "voters' " pamphlet contained text of proposed law which set forth entire text of Art. 1, § 12, governing bail to be repealed, and substantial part of bail provision of initiative measure never took effect, thus, any procedural defect in adopting bail provisions of initiative measure was harmless and did not affect remaining, severable provisions of measure. *Brosnahan v. Brown* (1982) 186 Cal.Rptr. 30, 32 Cal.3d 236, 651 P.2d 274. **Bail** 🔑 39; **Statutes** 🔑 1538

Construction and application

The **constitutional** provisions stating that crime victims are “entitled to finality in their criminal cases” and to the State’s “good-faith efforts” to investigate, try, and punish criminals merely articulate findings and declarations, and are not an independent source of enforceable rights. [People v. Lombardo \(App. 3 Dist. 2020\) 2020 WL 5494154. Criminal Law 🔑 1220](#)

Voter-adopted **constitutional** provision promising crime victims a “prompt and final conclusion” to criminal proceedings did not prohibit Legislature from enacting statute allowing vacatur and resentencing of murder convictions under felony murder and natural and probable consequences doctrines; voters did not clearly intend to foreclose creation of any new postjudgment proceedings. [People v. Lombardo \(App. 3 Dist. 2020\) 2020 WL 5494154. Sentencing and Punishment 🔑 2236](#)

The findings and declarations from a voter initiative that amended the state **constitution** to strengthen and increase the number of crime victims’ rights are not an independent source of enforceable rights. [People v. Marquez \(Cal.App. 4 Dist. 2020\) 270 Cal.Rptr.3d 93. Constitutional Law 🔑 540](#)

The “Right to Truth-in-Evidence” provision of the **California Constitution** is applicable to statutory rules of exclusion and evidentiary restrictions. [People v. Guzman \(App. 2 Dist. 2017\) 217 Cal.Rptr.3d 509, review granted 220 Cal.Rptr.3d 669, 398 P.3d 571, affirmed 256 Cal.Rptr.3d 112, 453 P.3d 1130. Criminal Law 🔑 12.5; Criminal Law 🔑 392.4\(1\); Criminal Law 🔑 661](#)

Amendments to the statutory exclusionary rule for evidence obtained as a result of recording a confidential communication without the consent of all parties did not have the effect of reviving that exclusionary rule after its abrogation by the “Right to Truth-in-Evidence” provision of the **California Constitution**, even though the amendments were passed by a two-thirds majority of each legislative house, and even though the amendments reenacted the statute as amended, where the amendments’ only substantive change to the statute was to extend it to cellular and cordless telephones. [People v. Guzman \(App. 2 Dist. 2017\) 217 Cal.Rptr.3d 509, review granted 220 Cal.Rptr.3d 669, 398 P.3d 571, affirmed 256 Cal.Rptr.3d 112, 453 P.3d 1130. Criminal Law 🔑 12.5; Criminal Law 🔑 392.21](#)

In keeping with the voters’ unequivocal intention that victim restitution be made, statutory provisions implementing the **constitutional** restitution directive have been broadly and liberally construed. [In re Cristian S. \(App. 6 Dist. 2017\) 216 Cal.Rptr.3d 1, review denied. Sentencing](#)

and Punishment 2109

The statutory provisions implementing the **constitutional** right to victim restitution must be broadly and liberally construed. *People v. Selivanov* (App. 2 Dist. 2016) 210 Cal.Rptr.3d 117, modified on denial of rehearing, review filed, review denied. [Sentencing and Punishment !\[\]\(e51810ff30b37de53380ac76c06eed8d_img.jpg\) 2109](#)

The **constitutional** provision stating that all persons who suffer losses as a result of criminal activity shall have the right to seek and secure restitution is not self-executing. *People v. McCarthy* (App. 1 Dist. 2016) 198 Cal.Rptr.3d 741, 244 Cal.App.4th 1096, modified on denial of rehearing, review filed, review denied. [Constitutional Law !\[\]\(986082884a323475ef59af56b5554821_img.jpg\) 642](#)

The **constitutional** provision stating that all persons who suffer losses as a result of criminal activity shall have the right to seek and secure restitution is not self-executing. *People v. McCarthy* (App. 1 Dist. 2016) 198 Cal.Rptr.3d 741, 244 Cal.App.4th 1096, modified on denial of rehearing, review filed, review denied. [Constitutional Law !\[\]\(001db52133ab4d4e6f33ee52d8a36710_img.jpg\) 642](#)

The Truth-in-Evidence provision of the **California Constitution**, which permits exclusion of relevant, but unlawfully obtained evidence, only if exclusion is required by the United States **Constitution**, is applicable not only to judicially created rules of exclusion but also to statutory evidentiary restrictions. *People v. Algire* (App. 2 Dist. 2013) 165 Cal.Rptr.3d 650, 222 Cal.App.4th 219, review denied and ordered not to be officially published, certiorari denied 135 S.Ct. 144, 574 U.S. 824, 190 L.Ed.2d 46, habeas corpus denied 2016 WL 5844314. [Criminal Law !\[\]\(6ef9aa63960241c7f0b6f0f9275edb17_img.jpg\) 392.4\(1\)](#)

The Truth-in-Evidence provision of the **California Constitution**, which permitted exclusion of relevant, but unlawfully obtained evidence, only if exclusion was required by the United States **Constitution**, abrogated exclusionary rule for evidence obtained as a result of eavesdropping upon or recording a confidential communication, and thus, audio recording of conversation between victim and defendant was admissible at trial for forcible sexual penetration; amendments to suppression statute had neither intent nor effect of reviving exclusionary rules abrogated by **constitutional** amendment. *People v. Algire* (App. 2 Dist. 2013) 165 Cal.Rptr.3d 650, 222 Cal.App.4th 219, review denied and ordered not to be officially published, certiorari denied 135 S.Ct. 144, 574 U.S. 824, 190 L.Ed.2d 46, habeas corpus denied 2016 WL 5844314. [Criminal Law !\[\]\(f1d73e448c1fd3bf7b3c3929545023ac_img.jpg\) 392.21](#)

A prior felony offense, even if later reduced to a misdemeanor and then dismissed, remains a prior felony conviction which, by the terms of the **California Constitution**, shall subsequently be used for purposes of five-year sentencing enhancement for a prior felony conviction. *People v. Lucas* (App. 4 Dist. 2013) 153 Cal.Rptr.3d 914, 214 Cal.App.4th 707, review filed, review granted and cause transferred 157 Cal.Rptr.3d 620, 301 P.3d 1219, transferred to 2013 WL 3286180, habeas corpus granted 2015 WL 3905035, unpublished. Statutes 🔑 1219

The state **Constitution's** Truth-in-Evidence provision generally precludes **California** courts from creating new exclusionary rules based on the state **Constitution**. *People v. Lessie* (2010) 104 Cal.Rptr.3d 131, 47 Cal.4th 1152, 223 P.3d 3, habeas corpus denied 2012 WL 3150523. Criminal Law 🔑 392.10(2)

A written **constitution** is not to be interpreted according to narrow or supertechnical principles, but liberally and on broad general lines, so that it may accomplish in full measure the objects of its establishment and so carry out the great principles of government. *People v. Giordano* (2007) 68 Cal.Rptr.3d 51, 42 Cal.4th 644, 170 P.3d 623. **Constitutional Law** 🔑 580; **Constitutional Law** 🔑 585

Officers executing search warrant were not required to display the warrant or give defendant a copy of it, and thus, the **California Constitution** forbid suppression of evidence as a remedy for their failure to do so. *People v. Calabrese* (App. 4 Dist. 2002) 123 Cal.Rptr.2d 570, 101 Cal.App.4th 79, review denied. Searches And Seizures 🔑 141

Section of state **Constitution** generally providing that relevant evidence shall not be excluded in any criminal proceeding only requires admission of evidence relevant to a material point. *People v. Steele* (2002) 120 Cal.Rptr.2d 432, 27 Cal.4th 1230, 47 P.3d 225, rehearing denied, certiorari denied 123 S.Ct. 874, 537 U.S. 1115, 154 L.Ed.2d 791. Criminal Law 🔑 338(1)

Applicability of Proposition 8 to exclusion from subsequent prosecution of testimony given at probation revocation hearing is determined by date of crime which led to revocation of probation; disapproving *People v. Huff*, 148 Cal.App.3d 801, 196 Cal.Rptr. 290. *People v. Weaver* (1985) 217 Cal.Rptr. 245, 39 Cal.3d 654, 703 P.2d 1139. **Constitutional Law** 🔑 630

State **constitutional** provision, which declared that relevant evidence was not to be excluded in any criminal proceeding, was only applicable to prosecutions for crimes committed on or after its effective date. *People v. Smith* (1983) 193 Cal.Rptr. 692, 34 Cal.3d 251, 667 P.2d 149.

Constitutional Law 🔑 630

Construction with federal law

Pursuant to article I of the **California Constitution**, trial court may exclude evidence under statute governing motion to suppress evidence only if exclusion is mandated by the federal **Constitution**. *People v. Rosas* (App. 2 Dist. 2020) 264 Cal.Rptr.3d 43, modified on denial of rehearing. *Searches And Seizures* 🔑 23

Federal **constitutional** standards govern review of issues related to the suppression of evidence seized by the police. *People v. Racklin* (App. 1 Dist. 2011) 124 Cal.Rptr.3d 735, 195 Cal.App.4th 872. *Criminal Law* 🔑 392.7

State **constitutional** provision stating that relevant evidence shall not be excluded in any criminal proceeding, including pretrial and post conviction motions and hearings, was intended to permit the exclusion of relevant, but unlawfully obtained evidence, only if exclusion is required by the United States **Constitution**. *People v. Racklin* (App. 1 Dist. 2011) 124 Cal.Rptr.3d 735, 195 Cal.App.4th 872. *Criminal Law* 🔑 392.37

California courts review challenges to the admissibility of evidence obtained by a police search and seizure under federal **constitutional** standards. *People v. Lomax* (2010) 112 Cal.Rptr.3d 96, 49 Cal.4th 530, 234 P.3d 377, rehearing denied, modification denied. *Criminal Law* 🔑 392.7

The federal totality of the circumstances test is to be applied to determine whether a minor defendant waived his *Miranda* rights, even if the minor asked to speak with a parent; disapproving *People v. Burton*, 6 Cal.3d 375, 99 Cal.Rptr. 1, 491 P.2d 793, and *People v. Rivera* 41 Cal.3d 388, 221 Cal.Rptr. 562, 710 P.2d 362. *People v. Lessie* (2010) 104 Cal.Rptr.3d 131, 47 Cal.4th 1152, 223 P.3d 3, habeas corpus denied 2012 WL 3150523. *Criminal Law* 🔑 411.92; *Infants* 🔑 2625(15); *Infants* 🔑 2625(16)

State **Constitution** forbids the courts to order the exclusion of evidence at trial as a remedy for an unreasonable search and seizure unless that remedy is required by the federal **Constitution** as interpreted by the United States Supreme Court. *People v. Gemmill* (App. 3 Dist. 2008) 76 Cal.Rptr.3d 410, 162 Cal.App.4th 958, as modified, review denied. *Criminal Law* 🔑 392.7; *Criminal Law* 🔑 392.10(2)

Under **Constitution**, courts are not free to place higher restrictions on admissibility of seized evidence than required by Federal **Constitution**. [People v. Squire \(App. 4 Dist. 1993\) 19 Cal.Rptr.2d 121, 15 Cal.App.4th 775. Criminal Law 🔑 392.10\(2\)](#)

Suspect's statement can only be excluded if it was obtained in violation of federal **constitutional** guidelines; only exception to this is when issue involves substantive state privilege against self-incrimination, for which state judicial law preceding passage of "Truth-in-Evidence" provision of State **Constitution** controls. [People v. Lispier \(App. 4 Dist. 1992\) 6 Cal.Rptr.2d 639, 4 Cal.App.4th 1317, modified. Criminal Law 🔑 410.6](#)

Construction with other laws

The statute allowing petitions for vacatur and resentencing of murder convictions under the natural and probable consequences and felony murder theories comports with the **constitutional** provision entitling crime victims to the consideration of their safety, their families' safety, and the safety of the general public before any parole or post-judgment release decisions are made; during resentencing, a court may weigh the same sentencing factors it considers upon initial sentencing, including whether the defendant presents a serious danger to society and any other factors reasonably relating to the defendant or the circumstances of the crime's commission. [People v. Lombardo \(App. 3 Dist. 2020\) 2020 WL 5494154. Sentencing and Punishment 🔑 2236](#)

The legislation abrogating the natural and probable consequences doctrine of murder liability, limiting the application of felony murder, and allowing vacatur and resentencing of such murder convictions is intended to ensure, first and foremost, that accomplices are convicted of crimes reflecting their actual culpability, and is not primarily concerned with addressing prison overcrowding or reducing sentences; therefore, it is not an "early release policy intended to alleviate overcrowding in custodial facilities" within the meaning of the **constitutional** truth in sentencing provision. [People v. Lombardo \(App. 3 Dist. 2020\) 2020 WL 5494154. Sentencing and Punishment 🔑 2235; Sentencing and Punishment 🔑 2263](#)

Although voter initiative, which amended the state **constitution** to strengthen and increase the number of crime victims' rights, must be interpreted broadly, it does not restrict or eliminate altogether the Legislature's ability to create new postjudgment proceedings. [People v. Marquez \(Cal.App. 4 Dist. 2020\) 270 Cal.Rptr.3d 93. Criminal Law 🔑 1220](#)

Telephone conversation between child victim's mother and defendant's niece, during which niece said that she did not "feel good around [defendant], like when I'm wearing shorts or anything," that, although defendant had "not touched her vagina or breasts," she knew he was "capable of doing that" and that that was why she believed child victim accusation of sexual abuse by defendant, was relevant, and thus admissible, under **constitutional** amendment requiring admission of relevant evidence in criminal cases, in trial for lewd and lascivious acts upon child, even if mother's surreptitious recording of telephone conversation without niece's consent otherwise violated Invasion of Privacy Act, and regardless of whether mother could have testified about telephone conversation. [People v. Guzman \(2019\) 256 Cal.Rptr.3d 112, 453 P.3d 1130](#). [Criminal Law](#) 🔑 392.4(1)

Statute governing restitution fines constitutes implementing legislation, and it must be read in harmony with, and through the lens of, the State **Constitution**. [People v. Brooks \(App. 1 Dist. 2018\) 233 Cal.Rptr.3d 606](#), review granted [237 Cal.Rptr.3d 484, 425 P.3d 52](#), review dismissed, cause remanded [240 Cal.Rptr.3d 703, 430 P.3d 1179](#). [Costs](#) 🔑 285

California Constitution's truth-in-evidence provision supersedes all **California**, as opposed to federal, restrictions on the admission of relevant evidence except those preserved or permitted by the express words of the provision itself. [People v. Vannesse \(App. 2 Dist. 2018\) 232 Cal.Rptr.3d 800](#), review granted [237 Cal.Rptr.3d 485, 425 P.3d 53](#), review dismissed, cause remanded [251 Cal.Rptr.3d 79, 446 P.3d 725](#). [Automobiles](#) 🔑 411

Trial court's decision to set bail amount based solely on bail schedule, rather than on any individualized inquiry into amount necessary to satisfy purposes of money bail, violated due process rights of arrestee who was detained prior to trial due to his inability to post bail; decisions that could result in pretrial detention had to be based on factors related to individual circumstances, important financial inquiry following determination that arrestee should be admitted to bail was not the amount prescribed by bail schedule but amount necessary to secure arrestee's appearance at trial, and by relying on schedules, court reached anomalous result of finding arrestee suitable for bail but, in effect, ordering him detained. [In re Humphrey \(App. 1 Dist. 2018\) 228 Cal.Rptr.3d 513](#), review granted [233 Cal.Rptr.3d 129, 417 P.3d 769](#), approved in part [268 Cal.Rptr.3d 119, 472 P.3d 435](#). [Bail](#) 🔑 51; **Constitutional** Law 🔑 4549

Question when application for bail is made relates to each individual defendant's trustworthiness to appear for trial and what security will supply reasonable assurance of his appearance. [In re Humphrey \(App. 1 Dist. 2018\) 228 Cal.Rptr.3d 513](#), review granted [233 Cal.Rptr.3d 129, 417](#)

P.3d 769, approved in part 268 Cal.Rptr.3d 119, 472 P.3d 435. Bail  51; **Constitutional Law**  4549

Failure to make findings and inquiries regarding defendant's financial ability to post bail and less restrictive conditions of release violated due process and equal protection, where defendant was detained pretrial due to his financial inability to post bail; failure to make such inquiries and findings meant that trial court did not know whether bail imposed would serve legitimate purposes of bail statutes or impermissibly punish defendant for his poverty, and court's failure to explain order setting bail made it impossible to know whether determinations that defendant presented a flight risk and was dangerous were based upon an individualized evaluation of his circumstances and propensities or solely upon improper generalizations of future criminality. *In re Humphrey* (App. 1 Dist. 2018) 228 Cal.Rptr.3d 513, review granted 233 Cal.Rptr.3d 129, 417 P.3d 769. Bail  49(5); Bail  51; **Constitutional Law**  3227; **Constitutional Law**  4549

When money bail is imposed to prevent flight, defendant who is unable to pay the amount of bail ordered, assuming appropriate inquiry and findings as to the amount necessary to protect against flight, is detained because there is no less restrictive alternative to satisfy the governmental interest in ensuring the defendant's presence. *In re Humphrey* (App. 1 Dist. 2018) 228 Cal.Rptr.3d 513, review granted 233 Cal.Rptr.3d 129, 417 P.3d 769, approved in part 268 Cal.Rptr.3d 119, 472 P.3d 435. Bail  49(5); Bail  51; **Constitutional Law**  3227; **Constitutional Law**  4549

If the court concludes that an amount of bail defendant is unable to pay is required to ensure his or her future court appearances, it may impose that amount only upon a determination by clear and convincing evidence that no less restrictive alternative will satisfy that purpose. *In re Humphrey* (App. 1 Dist. 2018) 228 Cal.Rptr.3d 513, review granted 233 Cal.Rptr.3d 129, 417 P.3d 769. **Constitutional Law**  4548

Clear and convincing standard of proof is the appropriate standard when determining whether no less restrictive alternative will ensure defendant's future court appearances, as required for court to impose bail in amount that defendant is unable to pay to ensure his or her future appearances, because an arrestee's pretrial liberty interest, protected under the due process clause, is a fundamental interest second only to life itself in terms of **constitutional** importance. *In re Humphrey* (App. 1 Dist. 2018) 228 Cal.Rptr.3d 513, review granted 233 Cal.Rptr.3d 129, 417 P.3d 769. Bail  51; **Constitutional Law**  4549

The statutory exclusionary rule for evidence obtained as a result of recording a confidential communication without the consent of all parties is superseded to the extent it is invoked to suppress relevant evidence in a criminal proceeding, under the “Right to Truth-in-Evidence” provision of the **California Constitution**. *People v. Guzman* (App. 2 Dist. 2017) 217 Cal.Rptr.3d 509, review granted 220 Cal.Rptr.3d 669, 398 P.3d 571, affirmed 256 Cal.Rptr.3d 112, 453 P.3d 1130. Criminal Law 🔑 12.5; Criminal Law 🔑 392.21

Even assuming that the statute mandating notice to the district attorney of “commutation” applications and reasonable effort by the district attorney to notify victims represented the Legislature’s subsequent interpretation of the Victim’s Bill of Rights Act of 2008 (Marsy’s Law), that interpretation carried no weight in the Court of Appeal’s interpretation of the Marsy’s Law **constitutional** provision, because Marsy’s Law was a creation of the electorate, not the Legislature. *Santos v. Brown* (App. 3 Dist. 2015) 189 Cal.Rptr.3d 234, 238 Cal.App.4th 398, review filed, review denied. Criminal Law 🔑 1220

Pursuant to the “truth-in-evidence” provision of the state **constitution**, the statute that makes it unlawful for anyone to “use an electronic tracking device to determine the location or movement of a person” cannot define the scope of the Fourth Amendment exclusionary rule in **California**. *People v. Mackey* (App. 1 Dist. 2015) 182 Cal.Rptr.3d 401, 233 Cal.App.4th 32, review denied. Criminal Law 🔑 392.10(2)

The state **constitution’s** Right to Truth-in-Evidence provision does not eliminate the corpus delicti requirement at the preliminary hearing stage of criminal proceedings. *People v. Powers-Monachello* (App. 1 Dist. 2010) 116 Cal.Rptr.3d 899, 189 Cal.App.4th 400. Criminal Law 🔑 238(1)

Statute granting courts discretion to exclude evidence when its probative value is outweighed by concerns of undue prejudice, confusion, or consumption of time is an express exception to state **constitutional** right-to-truth-in-evidence provision, which prohibits exclusion of relevant evidence in any criminal trial except as provided by statute. *People v. Tafoya* (2007) 64 Cal.Rptr.3d 163, 42 Cal.4th 147, 164 P.3d 590, rehearing denied, certiorari denied 128 S.Ct. 1895, 552 U.S. 1321, 170 L.Ed.2d 764. Criminal Law 🔑 338(7)

Right to Truth-in-Evidence provision of state **Constitution** did not operate to admit drug evidence obtained by Indian tribal officers as result of search without probable cause outside casino on tribal land, and thus in violation of the search and seizure provision of the Indian Civil Rights Act, in light of congressional intent that exclusionary rule apply to evidence obtained in

violation of Act. [People v. Ramirez \(App. 3 Dist. 2007\) 56 Cal.Rptr.3d 631, 148 Cal.App.4th 1464](#), review denied. [Indians](#) 🔑 305

State **Constitution** forbids the courts to order the exclusion of evidence at trial as a remedy for an unreasonable search and seizure unless that remedy is required by the federal **Constitution** as interpreted by the United States Supreme Court. [In re Frank S. \(App. 1 Dist. 2006\) 47 Cal.Rptr.3d 320, 142 Cal.App.4th 145](#), review denied. [Criminal Law](#) 🔑 392.7; [Criminal Law](#) 🔑 392.10(2)

The Fourth Amendment to the United States **Constitution**, made applicable to the states by the Fourteenth Amendment, guarantees the right of persons to be free from unreasonable searches and seizures; a similar right is set forth in the **California Constitution**, but federal **constitutional** standards govern review of claims seeking exclusion of evidence on grounds of unreasonable search and seizure. [In re Frank S. \(App. 1 Dist. 2006\) 47 Cal.Rptr.3d 320, 142 Cal.App.4th 145](#), review denied. [Searches And Seizures](#) 🔑 12

Constitutional provision that supersedes all **California** restrictions on the admission of relevant evidence, except those preserved or permitted by the express words of the provision itself, superseded statute which deems inadmissible evidence of specific instances of a witness's conduct, other than a felony conviction, to attack or support the credibility of a witness. [In re Freeman \(2006\) 42 Cal.Rptr.3d 850, 38 Cal.4th 630, 133 P.3d 1013](#), rehearing denied, certiorari denied 127 S.Ct. 1844, 549 U.S. 1291, 167 L.Ed.2d 339. [Witnesses](#) 🔑 344(1)

When the admissibility of evidence is challenged as being the fruit of an unlawful search and seizure, the truth-in-evidence provision of Proposition 8 requires **California** courts to follow the decisions of the United States Supreme Court. [People v. Rege \(App. 4 Dist. 2005\) 30 Cal.Rptr.3d 922, 130 Cal.App.4th 1584](#), review denied. [Criminal Law](#) 🔑 392.7; [Criminal Law](#) 🔑 392.10(2)

Under the truth-in-evidence provision of Proposition 8, federal **constitutional** standards govern review of issues related to the suppression of evidence seized by the police. [People v. Rege \(App. 4 Dist. 2005\) 30 Cal.Rptr.3d 922, 130 Cal.App.4th 1584](#), review denied. [Criminal Law](#) 🔑 392.7; [Criminal Law](#) 🔑 392.10(2)

Under the **California Constitution**, courts are precluded from ordering evidence excluded at trial for an unreasonable search and seizure unless that remedy is required by the federal

Constitution as interpreted by the United States Supreme Court. *People v. Jenkins* (App. 4 Dist. 2004) 14 Cal.Rptr.3d 197, 119 Cal.App.4th 368, review denied. Criminal Law 🔑 392.7; Criminal Law 🔑 392.10(2)

Evidence Code section rendering inadmissible evidence of character traits for purpose of attacking or supporting witness's credibility and section generally prohibiting admission of specific instances of conduct to prove character trait were abrogated by adoption of Truth-in-Evidence provisions of State **Constitution**, which provided that relevant evidence, with certain exceptions, could not be excluded from any criminal proceeding. *People v. Stern* (App. 2 Dist. 2003) 3 Cal.Rptr.3d 479, 111 Cal.App.4th 283, review denied. Criminal Law 🔑 368.4; Witnesses 🔑 338; Witnesses 🔑 344(1)

Probative value of evidence concerning defendant's prior stabbing incident was not substantially outweighed by danger of undue prejudice, and thus evidence was admissible under Truth-in-Evidence provisions of State **Constitution** in prosecution for several offenses, including making criminal threat and attempting to dissuade witness, although defendant falsely claimed during telephone threat to victim that defendant had stabbed separate victim from prior incident in neck rather than in arm; accuracy of victim's in-court recitation of words of threat was important issue, and evidence demonstrated that defendant was in fact involved in stabbing incident around time of threatening telephone call to victim, which lent credence to victim's testimony concerning threats. *People v. Stern* (App. 2 Dist. 2003) 3 Cal.Rptr.3d 479, 111 Cal.App.4th 283, review denied. Criminal Law 🔑 338(7)

Exclusion of relevant, but unlawfully obtained evidence is permitted under provision of **California Constitution** addressing admission of relevant evidence in criminal cases only if exclusion is required by United States **Constitution**. *People v. Sanders* (2003) 2 Cal.Rptr.3d 630, 31 Cal.4th 318, 73 P.3d 496, rehearing denied, as modified. Criminal Law 🔑 392.10(2)

Provision of the County Employees Retirement Law (CERL) exempting retirement allowances from execution or other court process was not impliedly repealed by statute implementing a crime victim's **constitutional** right to restitution, and thus trial court could not order the county retirement system to deduct restitution payments from the disability allowance benefits of a retired county employee who was convicted of vandalism. *Board of Retirement v. Superior Court* (App. 2 Dist. 2002) 124 Cal.Rptr.2d 850, 101 Cal.App.4th 1062. Sentencing And Punishment 🔑 2213

Amendment

Voter initiative that amended the state **constitution** to strengthen and increase the number of crime victims' rights cannot be amended except by ballot measure or by a supermajority vote in both houses of the Legislature. *People v. Marquez* (Cal.App. 4 Dist. 2020) 270 Cal.Rptr.3d 93. Statutes 🔑 1749

Retroactive application

Petitioner who was arrested before effective date of Proposition 8 requiring admission of relevant evidence not barred by federal exclusionary rule had no due process right to application of pre-Proposition 8 state case law to his case, even if **California** courts generally chose not to apply Proposition 8 retroactively. *Toomey v. Bunnell*, C.A.9 (Cal.)1990, 898 F.2d 741, certiorari denied 111 S.Ct. 390, 498 U.S. 960, 112 L.Ed.2d 400. **Constitutional Law** 🔑 4654; **Criminal Law** 🔑 392.10(2)

Voluntariness of defendant's waiver of his rights had to be established by proof beyond reasonable doubt that he was aware of, and intelligently waived, his *Miranda* rights, where offense occurred prior to addition of subd. (d) of this section. *People v. Mattson* (1990) 268 Cal.Rptr. 802, 50 Cal.3d 826, 789 P.2d 983, rehearing denied, certiorari denied 111 S.Ct. 591, 498 U.S. 1017, 112 L.Ed.2d 595, rehearing denied 111 S.Ct. 1028, 498 U.S. 1116, 112 L.Ed.2d 1110. **Criminal Law** 🔑 413.48

It was improper to apply **constitutional** provision providing that any prior felony conviction can be used without limitation for purposes of impeachment [**Const.** Art. 1 § 28(f)] to offenses committed before effective date of provision. *People v. Forster* (App. 1 Dist. 1985) 215 Cal.Rptr. 218, 169 Cal.App.3d 519, review denied. **Witnesses** 🔑 345(1)

Where probation revocation hearing was on postconviction motion involving crime which was committed prior to effective date of adoption of Proposition 8 (this section), an addition to state **Constitution** providing that relevant evidence would not be excluded in any criminal proceeding, Proposition 8 was inapplicable to hearing. *People v. Huff* (App. 1 Dist. 1983) 196 Cal.Rptr. 290, 148 Cal.App.3d 801. **Sentencing And Punishment** 🔑 1828

Purpose

“Freeze and Seize Law,” providing that any asset or property that is in the control of defendant charged with an aggravated white collar crime enhancement may be preserved by the superior court in order to pay restitution and fines, is designed to promote the state **constitutional** rights of crime victims to the payment of restitution from persons convicted of the crimes for losses they suffer. [Q-Soft, Inc. v. Superior Court \(App. 4 Dist. 2007\) 68 Cal.Rptr.3d 687, 157 Cal.App.4th 441](#), modified on denial of rehearing, review denied. [Sentencing And Punishment](#) 🔑 2106

The Right to Truth-in-Evidence Law, providing that “relevant evidence shall not be excluded in any criminal proceeding,” was intended to abrogate judicially created rules requiring the exclusion of otherwise admissible evidence, such as a common law estoppel or use immunity theory that would previously have precluded the admission into evidence of a defendant’s voluntary admissions. [People v. Coffman \(2004\) 17 Cal.Rptr.3d 710, 34 Cal.4th 1, 96 P.3d 30](#), rehearing denied, as modified, certiorari denied 125 S.Ct. 2517, 544 U.S. 1063, 161 L.Ed.2d 1114. [Criminal Law](#) 🔑 42.3(3); [Criminal Law](#) 🔑 338(7); [Criminal Law](#) 🔑 410.12

Purpose of statute implementing a crime victim’s **constitutional** right to restitution is to relieve victims of the burden of enforcing restitution orders. [Board of Retirement v. Superior Court \(App. 2 Dist. 2002\) 124 Cal.Rptr.2d 850, 101 Cal.App.4th 1062](#). [Sentencing And Punishment](#) 🔑 2213

Statutes defining postsentence disabilities experienced by convicted felons serve vital public interests, avoid criminal punishment, and otherwise raise no ex post facto concerns. [People v. Ansell \(2001\) 108 Cal.Rptr.2d 145, 25 Cal.4th 868, 24 P.3d 1174](#). [Constitutional Law](#) 🔑 2815; [Convicts](#) 🔑 21

Corpus delicti rule

Although part of the common law corpus delicti rule excluding unsupported extrajudicial statements from evidence was abrogated by the **California Constitution**, the part requiring some independent proof of the corpus delicti to convict defendant, who makes incriminating statement, remains in force to ensure that one will not be falsely convicted, by his untested words alone, of crime that never happened. [People v. Ramirez Ruiz \(App. 1 Dist. 2020\) 2020 WL 3481719](#). [Criminal Law](#) 🔑 563

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statements from evidence was abrogated by the **California Constitution**, the part requiring some independent proof of the corpus delicti to convict defendant, who makes incriminating statement, remains in force to ensure that one will not be falsely convicted, by his untested words alone, of crime that never happened. [People v. Ramirez Ruiz \(Cal.App. 1 Dist. 2020\) 270 Cal.Rptr.3d 702](#). Criminal Law 🔑 413.93

The state **constitution's** Right to Truth-in-Evidence provision does not eliminate the corpus delicti requirement at the preliminary hearing stage of criminal proceedings. [People v. Powers-Monachello \(App. 1 Dist. 2010\) 116 Cal.Rptr.3d 899, 189 Cal.App.4th 400](#). Criminal Law 🔑 238(1)

Constitutional section generally making all relevant evidence admissible in criminal cases precludes a defendant from succeeding with a corpus delicti objection to evidence; however, the Proposition does not abrogate the corpus delicti rule insofar as it provides that every conviction must be supported by some proof of the corpus delicti aside from or in addition to such statements, and that the jury must be so instructed. [People v. Davis \(App. 3 Dist. 2008\) 86 Cal.Rptr.3d 55, 168 Cal.App.4th 617](#), review denied, habeas corpus denied 2012 WL 423618. Criminal Law 🔑 413.93; Criminal Law 🔑 563; Criminal Law 🔑 781(3)

Constitutional provision limiting exclusion of relevant evidence under corpus delicti rule applied to capital trial for murder committed after provision's effective date, even though evidence of crimes committed before effective date was offered in aggravation at penalty phase. [People v. Valencia \(2008\) 74 Cal.Rptr.3d 605, 43 Cal.4th 268, 180 P.3d 351](#), rehearing denied, certiorari denied 129 S.Ct. 198, 555 U.S. 891, 172 L.Ed.2d 158. Sentencing And Punishment 🔑 1634

In light of **constitutional** provision limiting exclusion of relevant evidence, corpus delicti rule did not prevent admission of defendant's confession to robbery offered in aggravation at penalty phase of capital trial. [People v. Valencia \(2008\) 74 Cal.Rptr.3d 605, 43 Cal.4th 268, 180 P.3d 351](#), rehearing denied, certiorari denied 129 S.Ct. 198, 555 U.S. 891, 172 L.Ed.2d 158. Sentencing And Punishment 🔑 1762

Constitutional provision that "relevant evidence shall not be excluded in any criminal proceeding" did not abrogate application to evidence adduced in preliminary hearings of the corpus delicti rule that the prosecution cannot satisfy its burden to prove the body of the crime by relying exclusively on extrajudicial statements of the defendant. [Rayyis v. Superior Court \(App. 2 Dist. 2005\) 35 Cal.Rptr.3d 12, 133 Cal.App.4th 138](#). Criminal Law 🔑 238(1)

“Truth in evidence” provision of state **constitution** adopted by voter initiative abrogated any corpus delicti basis for excluding a defendant’s extrajudicial statements from evidence. *People v. Gutierrez* (2002) 124 Cal.Rptr.2d 373, 28 Cal.4th 1083, 52 P.3d 572, as modified, rehearing denied, certiorari denied 123 S.Ct. 1899, 538 U.S. 1001, 155 L.Ed.2d 829. *Criminal Law* 413.72

Constitutional section which provided that “relevant evidence shall not be excluded in any criminal proceeding” abrogated the corpus delicti rule insofar as it excluded a defendant’s uncorroborated extrajudicial statements from evidence in a criminal prosecution; the **constitutional** language was not ambiguous, and it abolished obstacles to the admission of relevant evidence, absent a few exceptions. *People v. Alvarez* (2002) 119 Cal.Rptr.2d 903, 27 Cal.4th 1161, 46 P.3d 372, rehearing denied. *Criminal Law* 338(1)

Constitutional section which provided that “relevant evidence shall not be excluded in any criminal proceeding” did not abrogate the corpus delicti rule insofar as it provides that every conviction must be supported by some corroborating proof aside from or in addition to defendant’s statement; the language of the **constitutional** provision specifically addressed the admissibility of relevant evidence and did not address whether additional proof of corpus delicti was required to support a conviction. *People v. Alvarez* (2002) 119 Cal.Rptr.2d 903, 27 Cal.4th 1161, 46 P.3d 372, rehearing denied. *Criminal Law* 338(1); *Criminal Law* 563

Constitutional section which provided that “relevant evidence shall not be excluded in any criminal proceeding” did not abrogate the corpus delicti rule insofar as it provides that the jury must be instructed that every conviction must be supported by some corroborating proof aside from or in addition to defendant’s statement; the language of the **constitutional** provision specifically addressed the admissibility of relevant evidence and did not address whether additional proof of corpus delicti was required to support a conviction or whether the jury was required to be instructed on that issue. *People v. Alvarez* (2002) 119 Cal.Rptr.2d 903, 27 Cal.4th 1161, 46 P.3d 372, rehearing denied. *Criminal Law* 338(1); *Criminal Law* 563

Victims’ rights

Victim’s remedy, if any, for violation of his rights under the **California** Victims’ Bill of Rights by state officials involved in assailant’s sentencing was in state courts; although victim could have legitimate grievance against state officials for failing to pay heed to the victim’s rights, he

did not have a federal cause of action. [Dix v. County of Shasta, C.A.9 \(Cal.\)1992, 963 F.2d 1296](#), as amended. [Civil Rights](#) 🔑 1088(5)

California Victims' Bill of Rights did not give crime victims liberty or property interest enforceable under due process clause; the law did not require relevant state officials to consider factors related to victim before making decisions. [Dix v. County of Shasta, C.A.9 \(Cal.\)1992, 963 F.2d 1296](#), as amended. **Constitutional Law** 🔑 4840

California Victims' Bill of Rights did not require state to give victims money or aid and thus failed to create entitlement necessary to constitute property interest under due process clause. [Dix v. County of Shasta, C.A.9 \(Cal.\)1992, 963 F.2d 1296](#), as amended. **Constitutional Law** 🔑 4840

Constitutional provision entitling crime victims to have their safety, the safety of their families, and the safety of the general public “considered before any parole or other post-judgment release decision is made” did not require Legislature to consider public safety when amending statutory scope of felony murder, abrogating natural and probable consequences doctrine as statutory basis for murder, and enacting statutory vacatur and resentencing process; **constitutional** provision pertained to particularized decisions in individual cases, not public safety goals at legislative level. [People v. Lombardo \(App. 3 Dist. 2020\) 2020 WL 5494154](#). [Criminal Law](#) 🔑 1220; [Homicide](#) 🔑 576; [Sentencing and Punishment](#) 🔑 2236

The legislation narrowing the applicability of felony murder, abrogating the doctrine of natural and probable consequences as a basis for murder liability, and allowing petitions for vacatur and resentencing of such murder convictions reflects a policy to narrow the definition of murder rather than a policy to reduce the punishment for murder, and, thus, does not violate the **constitutional** rights of crime victims under Marsy's Law. [People v. Lombardo \(Cal.App. 3 Dist. 2020\) 2020 WL 5494154](#). [Criminal Law](#) 🔑 1220; [Homicide](#) 🔑 576; [Sentencing and Punishment](#) 🔑 2236

Statute authorizing persons convicted of first-degree felony murder under pre-amended statutes that imposed strict liability for murder based solely on qualifying predicate felony or under natural and probable consequences theory to petition courts for relief based on amendments to mens rea requirements for felony murder did not violate amendment to **California Constitution** that expanded victims' rights under Marsy's Law, specifically, victims' right to prompt conclusion of case; Marsy's Law did not foreclose post-judgment proceedings altogether, but expressly contemplated availability of such proceedings, at which victims had right to notice and

to be heard. *People v. Lamoureux* (App. 4 Dist. 2019) 255 Cal.Rptr.3d 253, review denied. **Constitutional Law** 🔑 2330

The right to victim restitution is a mandatory, **constitutional** right. *In re V.C.* (App. 3 Dist. 2013) 158 Cal.Rptr.3d 871, 217 Cal.App.4th 814. **Sentencing And Punishment** 🔑 2109

Unequivocal intent of State **Constitution** that all people suffering loss from criminal activity shall have right to restitution requires that “victims” under Proposition 8, concerning restitution, not be limited to natural persons. *People v. Beck* (App. 6 Dist. 1993) 21 Cal.Rptr.2d 250, 17 Cal.App.4th 209, review denied. **Sentencing And Punishment** 🔑 2121

Assault victim had no personal “right” or “interest” that would give him standing to petition Court of Appeals for writ of mandate after sentencing court recalled defendant’s sentence and released defendant. *Dix v. Superior Court* (1991) 279 Cal.Rptr. 834, 53 Cal.3d 442, 807 P.2d 1063. **Mandamus** 🔑 23(1)

Restraining orders

Petitioner’s inability to proceed with civil harassment restraining order against respondent, who was homeless, did not violate her right to justice and due process; court rescheduled the hearing on her request for a permanent restraining order multiple times and continued her temporary restraining order while providing her an extended opportunity to effect personal service, and court dismissed petition without prejudice and advised petitioner that, if harassment continued, she could file a new petition and begin the process again. *Searles v. Archangel* (Cal.App. 2 Dist. 2021) 2021 WL 221956. **Constitutional Law** 🔑 4488; **Protection of Endangered Persons** 🔑 52

Privacy rights

Investigators’ statutory error under the DNA and Forensic Identification Data Base and Data Bank Act, in collecting defendant’s blood samples for deoxyribonucleic acid (DNA) testing when defendant’s offenses did not authorize such collection under the Act, did not violate the Fourth Amendment, and thus the DNA evidence was not subject to exclusion under **California** law, where the samples were collected when defendant was in custody serving a sentence for misdemeanor convictions and awaiting transfer to state prison based on a parole revocation with

regard to a prior felony conviction. [People v. Robinson \(2010\) 104 Cal.Rptr.3d 727, 47 Cal.4th 1104, 224 P.3d 55](#), certiorari denied 131 S.Ct. 72, 562 U.S. 842, 178 L.Ed.2d 49. [Searches And Seizures](#) 🔑 78

Truth-in-evidence provision of **Constitution** was not unconstitutional as applied to defendant charged with possession of cocaine and possession of marijuana for sale by requiring him to establish at suppression hearing a reasonable expectation of privacy concerning suitcase from which drugs were seized, since suppression-hearing testimony could not be admitted against him at trial on issue of guilt, and risk that testimony could be used to impeach defendant merely prevented him from falsely claiming expectation of privacy at suppression hearing. [People v. Johnson \(App. 1 Dist. 1984\) 209 Cal.Rptr. 78, 162 Cal.App.3d 1003](#). [Criminal Law](#) 🔑 392.41

Pseudonyms

Use of pseudonym for inmate in unsealed record of inmate's habeas proceedings, which included evidence regarding repeated sexual assault of inmate in prison by other inmates, was warranted, following reduction of his death sentence to life without parole, where, if inmate's proper name was used, other inmates would learn of his past victimization such that inmate would suffer significant risk of severe harm at their hands, no arbiter of fact would be prejudiced in favor of inmate based on use of pseudonym, use of pseudonym would not prevent state from complying with **California** law entitling crime victim's family members to reasonable notice of all public proceedings, and inmate's anonymity would not obstruct public's view of issues joined or court's performance in resolving them. [Doe v. Ayers, C.A.92015, 789 F.3d 944](#). [Federal Civil Procedure](#) 🔑 101.5(2); [Records](#) 🔑 32

Right to safe schools

Because of a school district's and its employees' special relationship with the district's students arising from the mandatory character of school attendance and the comprehensive control over students exercised by school personnel, the duty of care owed by school personnel includes the duty to use reasonable measures to protect students from foreseeable injury at the hands of third parties acting negligently or intentionally. [C.A. v. William S. Hart Union High School Dist. \(2012\) 138 Cal.Rptr.3d 1, 53 Cal.4th 861, 270 P.3d 699](#). [Education](#) 🔑 793; [Education](#) 🔑 808(1)

High school was a non-public forum such that state statutes and school regulations could restrict

access to its campus without violating First Amendment freedoms; students had right to be safe, and legislative findings indicated that outsiders committed disproportionate number of crimes on school grounds. *Reeves v. Rocklin Unified School Dist.* (App. 3 Dist. 2003) 135 Cal.Rptr.2d 213, 109 Cal.App.4th 652. **Constitutional** Law 🔑 1970; Education 🔑 125

School district's denial to anti-abortion organization of access to high school campus on basis that access would be disruptive to a peaceful, non-confrontational environment for educational activities, was reasonable and, thus, did not violate First Amendment freedoms, even though organization would not engage in physically disruptive conduct; access would interfere with traffic and would require administrators to interrupt their morning duties, last attempt to gain access to campus included videotaping students, which may have intimidated them, organization could meet with students off campus at nearby public intersection, and a physical disruption was not required to permit regulation. *Reeves v. Rocklin Unified School Dist.* (App. 3 Dist. 2003) 135 Cal.Rptr.2d 213, 109 Cal.App.4th 652. **Constitutional** Law 🔑 1970; Education 🔑 127

Given the **constitutional** direction that students have a right to be safe and the legislative findings that outsiders commit a disproportionate number of the crimes on school grounds, public access to schools is limited; those who visit during school hours must register and declare their identity and purpose, those who are asked to leave must do so or else be guilty of a misdemeanor, and those who repeatedly return to cause disruption are also guilty of a misdemeanor. *In re Joseph F.* (App. 1 Dist. 2000) 102 Cal.Rptr.2d 641, 85 Cal.App.4th 975, as modified, review denied. Education 🔑 121

Constitutional mandate and legislative scheme relative to school safety render schools akin to those places and situations in which administrative searches are permissible; statutory requirement that visitors during school hours register and disclose their name, address, occupation, and purpose of visit, although unjustified on a public street, is quite reasonable in the school context given the **constitutional** inalienable right of students to attend campuses which are safe, secure and peaceful, and the legislative finding that a disproportionate share of crimes on campuses are committed by outsiders. *In re Joseph F.* (App. 1 Dist. 2000) 102 Cal.Rptr.2d 641, 85 Cal.App.4th 975, as modified, review denied. Education 🔑 744

Subdivision (c) of this section did not impose upon school districts affirmative duty to provide safe schools, the violation of which would result in liability to student allegedly abused by school officials; subd. (c) was not self-executing and could not be invoked until legislation implementing it had been passed. *Clausing v. San Francisco Unified School Dist.* (App. 1 Dist. 1990) 271 Cal.Rptr. 72, 221 Cal.App.3d 1224, rehearing denied, review denied. **Constitutional** Law 🔑 642; Education 🔑 794

Public school officials are “governmental agents” within purview of both Federal and State **Constitutions** and, thus, must respect the **constitutional** rights of students in their charge against unreasonable searches and seizures; rejecting *In re Donaldson*, 269 Cal.App.2d 509, 75 Cal.Rptr. 220; *In re Thomas G.*, 11 Cal.App.3d 1193, 90 Cal.Rptr. 361; *In re Fred C.*, 26 Cal.App.3d 320, 102 Cal.Rptr. 682; *In re Christopher W.*, 29 Cal.App.3d 777, 105 Cal.Rptr. 775. *In re William G.* (1985) 221 Cal.Rptr. 118, 40 **Cal.**3d 550, 709 P.2d 1287. Education 🔑 743

Provision of **Const.** Art. 1, **§ 28** providing students and staff of public primary, elementary, junior high and senior high schools with right to attend campuses which are safe, secure and peaceful does not create exception to exclusive remedy provisions of workers’ compensation laws (**Labor C. § 3601**) with respect to teachers’ actions against schools arising from injuries caused by students’ assaults. *Halliman v. Los Angeles Unified School Dist.* (App. 2 Dist. 1984) 209 Cal.Rptr. 175, 163 Cal.App.3d 46. **Workers’ Compensation** 🔑 2084

Reasonable application of metal detectors in schools, as a matter of law, does not violate the Fourth Amendment or **California constitutional** and statutory standards. 75 **Op.Atty.Gen.** 155, 10-6-92.

Commitment orders

Inability of Department of State Hospitals (DSH) to make enough room in hospitals to accommodate defendants found incompetent to stand trial (IST) did not constitute good cause for failing to admit IST defendants within 60 days of commitment orders, as necessary to avoid imposition of money sanctions for violation of lawful court orders, where DSH had over a decade to address longtime problem of excessive waitlist of IST defendants but failed to evolve to meet rising demand, resulting in violation of IST defendants’ **constitutional** and statutory rights to prompt commitment, treatment, and assessment during pendency of criminal proceedings. *People v. Kareem A.* (App. 2 Dist. 2020) 259 Cal.Rptr.3d 545. **Mental Health** 🔑 436.1

Trial court’s imposition of money sanctions on Department of State Hospitals (DSH) for its failure to abide by orders requiring commitment of defendants found incompetent to stand trial (IST) served statutory purposes of compensating judicial system and punishing non-compliance with court orders; punishment of DSH’s violation of orders that were designed to uphold IST

defendants' statutory and **constitutional** rights was warranted, DSH's continual violation of commitment orders created need for significant court efforts to ensure compliance with IST statutes and to remedy DSH's non-compliance, and sanctions served to compensate judicial system for unnecessary delay of large number of criminal cases caused by DSH's failure to accept, treat, and evaluate defendants in timely manner. [People v. Kareem A. \(App. 2 Dist. 2020\) 259 Cal.Rptr.3d 545](#). [Mental Health](#) 🔑 436.1

Right to truth-in-evidence--In general

Prohibition against ex post facto legislation did not apply to change in state matter of criminal procedure, subd. (d) of this section requiring admission of relevant evidence not barred by federal exclusionary rule. [Toomey v. Bunnell, C.A.9 \(Cal.\)1990, 898 F.2d 741](#), certiorari denied 111 S.Ct. 390, 498 U.S. 960, 112 L.Ed.2d 400. **Constitutional Law** 🔑 2812; [Criminal Law](#) 🔑 14

The paramount purpose of a trial is to provide a reliable process for determining the truth of the charges, not to provide the best possible opportunity for one party to obtain a particular result; the reliability of that truth-seeking process and the jury's ultimate verdict of guilt or acquittal cannot be enhanced by requiring that the jury ignore relevant evidence, whenever it is presented in the trial. [People v. Bryant, Smith and Wheeler \(2014\) 178 Cal.Rptr.3d 185, 60 Cal.4th 335, 334 P.3d 573](#), modified on denial of rehearing, certiorari denied 135 S.Ct. 1841, 575 U.S. 964, certiorari denied 135 S.Ct. 1841, 575 U.S. 964, 191 L.Ed.2d 728. [Criminal Law](#) 🔑 633.2

Under Truth-in-Evidence provision of state **constitution**, federal **constitutional** standards govern review of issues related to the suppression of evidence seized by the police. [People v. Lazlo \(App. 1 Dist. 2012\) 142 Cal.Rptr.3d 407, 206 Cal.App.4th 1063](#), review denied. [Criminal Law](#) 🔑 392.7

That a detention violates the statute, which requires prompt appearance before magistrate for person arrested for Vehicle Code violation not amounting to felony who does not present driver's license or other identification, provides no basis for excluding any statement made by detainee; in light of Proposition 8, the truth-in-evidence state **constitutional** provision, statements must be excluded only if so required by the federal **Constitution**. [People v. Jenkins \(App. 1 Dist. 2004\) 19 Cal.Rptr.3d 386, 122 Cal.App.4th 1160](#), review denied. [Criminal Law](#) 🔑 413.15

There is nothing in Truth-in-Evidence provisions of State **Constitution** that prevents use of relevant testimony to prove a crime victim, or any other witness for that matter, is telling the truth. *People v. Stern* (App. 2 Dist. 2003) 3 Cal.Rptr.3d 479, 111 Cal.App.4th 283, review denied. **Witnesses** 🔑 319

Provision of **California Constitution** allows a court to exclude unlawfully obtained evidence only if exclusion is mandated by federal **constitutional** rules. *People v. Hector* (App. 2 Dist. 2000) 99 Cal.Rptr.2d 469, 83 Cal.App.4th 228, review denied. **Criminal Law** 🔑 392.10(2)

State and federal claims relating to exclusion of evidence on grounds of unreasonable search and seizure are measured by the same standard. *People v. Camacho* (2000) 98 Cal.Rptr.2d 232, 23 **Cal.**4th 824, 3 P.3d 878. **Criminal Law** 🔑 392.7

Decisions of state Supreme Court construing the Fourth Amendment are not devalued in favor of the views of lower federal courts from around the country merely because state Supreme Court decision was decided before effective date of Proposition 8, which provided that state and federal claims relating to exclusion of evidence on grounds of unreasonable search and seizure are measured by the same standard. *People v. Camacho* (2000) 98 Cal.Rptr.2d 232, 23 **Cal.**4th 824, 3 P.3d 878. **Courts** 🔑 91(1); **Courts** 🔑 97(5)

Court must be guided by Evidence Code sections governing hearsay and discretion of court to exclude evidence, and Right to Truth-in-Evidence provision of **Constitution** when addressing admissibility in criminal prosecution of statements attributed to deceased victim. *People v. Ortiz* (App. 1 Dist. 1995) 44 Cal.Rptr.2d 914, 38 Cal.App.4th 377, modified on denial of rehearing, review denied. **Criminal Law** 🔑 419(6)

To be admissible in criminal prosecution, statements attributed to deceased victim must not violate **constitutional** provisions ensuring fair trial. *People v. Ortiz* (App. 1 Dist. 1995) 44 Cal.Rptr.2d 914, 38 Cal.App.4th 377, modified on denial of rehearing, review denied. **Criminal Law** 🔑 419(6)

Even if state statutes dealing with privacy rights of prisoners and State **Constitution** were violated by receiving party's surreptitious recording of telephone conversation with pretrial detainee, such fact would not require suppression of recording; provision of State **Constitution** precluded exclusion of evidence as remedy for violations of search and seizure provisions of Federal and State **Constitutions** except to extent that exclusion was federally compelled, and

exclusion in circumstances such as those in instant case was not federally compelled. *People v. Plyler* (App. 1 Dist. 1993) 22 Cal.Rptr.2d 772, 18 Cal.App.4th 535, review denied. Criminal Law 🔑 392.21; Prisons 🔑 359

In determining whether to exclude evidence seized pursuant to unlawful search or seizure, Court of Appeal is bound by decisions of United States Supreme Court and by **California** Supreme Court cases interpreting those decisions; although decisions of lower federal courts are not binding precedent, they are persuasive authority. *People v. Madrid* (App. 6 Dist. 1992) 9 Cal.Rptr.2d 798, 7 Cal.App.4th 1888, review denied, certiorari denied 113 S.Ct. 2355, 508 U.S. 915, 124 L.Ed.2d 263. Courts 🔑 91(1); Courts 🔑 97(1)

Refusal to allow defendant to impeach State's witness with evidence of prior accusations against out-of-state police officer was not abuse of discretion and did not violate defendant's confrontation rights, where no evidence was presented that witness' accusations were false and incident was remote, both in time and in place, from issues in case. *People v. Sully* (1991) 283 Cal.Rptr. 144, 53 Cal.3d 1195, 812 P.2d 163, modified on denial of rehearing, certiorari denied 112 S.Ct. 1494, 503 U.S. 944, 117 L.Ed.2d 634. Criminal Law 🔑 662.7; Witnesses 🔑 344(5); Witnesses 🔑 351

Refusal to allow defendant to cross-examine alleged accomplice, upon whom he sought to shift blame for murders, as to prior incident in which accomplice had participated in witchcraft ritual that involved burial of human fetus which may or may not have been alive was not abuse of discretion and did not violate defendant's confrontation clause rights, as evidence was of marginal value in contradicting accomplice's testimony that she had not killed anyone before; evidence was peripheral to issues in case and was potentially prejudicial. *People v. Sully* (1991) 283 Cal.Rptr. 144, 53 Cal.3d 1195, 812 P.2d 163, modified on denial of rehearing, certiorari denied 112 S.Ct. 1494, 503 U.S. 944, 117 L.Ed.2d 634. Criminal Law 🔑 662.7

Trial judges retain wide latitude insofar as confrontation clause is concerned to impose reasonable limits on defendant's cross-examination based on concerns about, among other things, harassment, prejudice, confusion of issues, witness safety, or interrogation that is repetitive or only marginally relevant. *People v. Sully* (1991) 283 Cal.Rptr. 144, 53 Cal.3d 1195, 812 P.2d 163, modified on denial of rehearing, certiorari denied 112 S.Ct. 1494, 503 U.S. 944, 117 L.Ed.2d 634. Criminal Law 🔑 662.7

Because defendant's trial was fair, he could not predicate reversal on contention that testimony given at preliminary hearing was involuntary and should not have been relied upon in binding

defendant over for trial. *People v. Douglas* (1990) 268 Cal.Rptr. 126, 50 Cal.3d 468, 788 P.2d 640, modified on denial of rehearing, certiorari denied 111 S.Ct. 1023, 498 U.S. 1110, 112 L.Ed.2d 1105. Criminal Law 🔑 1166(1)

Trial testimony of former codefendant was not coerced where he was not subjected to any violence by United States authorities, even though he claimed to have been beaten by Mexican authorities after he was arrested by them and prior to giving a statement to them, where he testified under a general grant of immunity and testified that his statements were freely and voluntarily made and not compelled by statement which he made in Mexico. *People v. Douglas* (1990) 268 Cal.Rptr. 126, 50 Cal.3d 468, 788 P.2d 640, modified on denial of rehearing, certiorari denied 111 S.Ct. 1023, 498 U.S. 1110, 112 L.Ed.2d 1105. Criminal Law 🔑 508(1)

Defendant could prevail on motion to suppress testimony of former codefendant only if he could show that the trial testimony given by the former codefendant was involuntary at the time that it was given. *People v. Douglas* (1990) 268 Cal.Rptr. 126, 50 Cal.3d 468, 788 P.2d 640, modified on denial of rehearing, certiorari denied 111 S.Ct. 1023, 498 U.S. 1110, 112 L.Ed.2d 1105. Criminal Law 🔑 508(1)

This section providing that relevant evidence should not be excluded in any criminal proceeding abrogated rule for determining **constitutional** materiality applicable to deported witnesses. *People v. Valencia* (App. 5 Dist. 1990) 267 Cal.Rptr. 257, 218 Cal.App.3d 808, rehearing denied, review denied. Criminal Law 🔑 2020

Under subd. (d) of this section limiting exclusion of relevant evidence in criminal proceedings, fact that discovery at issue may yield information to support challenge to search warrant affidavit and an eventual motion to suppress evidence obtained under the warrant does not mean that discovery is therefore also governed exclusively by federal principles; this section did not “federalize” state criminal discovery procedures. *People v. Luttenberger* (1990) 265 Cal.Rptr. 690, 50 Cal.3d 1, 784 P.2d 633. Criminal Law 🔑 627.5(1); Criminal Law 🔑 627.8(1)

Subdivision (d) of this section limiting exclusion of relevant evidence in criminal proceedings requires application of federal exclusionary rules to determine admissibility of illegally obtained evidence; it does not touch on discovery procedures. *People v. Luttenberger* (1990) 265 Cal.Rptr. 690, 50 Cal.3d 1, 784 P.2d 633. Criminal Law 🔑 627.8(1)

Under subd. (d) of this section limiting exclusion of relevant evidence in criminal proceedings,

California courts must follow federal exclusionary principles in resolving motions to suppress evidence in criminal trials. *People v. Luttenberger* (1990) 265 Cal.Rptr. 690, 50 Cal.3d 1, 784 P.2d 633. Criminal Law 🔑 392.7; Criminal Law 🔑 392.10(2)

Rule requiring exclusion of evidence obtained from blood sample which was not taken incident to arrest is a nonstatutory rule created by state court to exclude evidence seized in violation of State, rather than Federal, **Constitution** and thus was abrogated by subd. (d) of this section. *People v. Deltoro* (App. 1 Dist. 1989) 263 Cal.Rptr. 305, 214 Cal.App.3d 1417, review denied. Automobiles 🔑 419

California Supreme Court is powerless to mandate exclusion of evidence because of Fourth Amendment violations only when United States Supreme Court has held otherwise, under West's Ann.Cal. **Const.** Art. 1, § 28(d); clarifying *In re Lance W.*, 37 Cal.3d 873, 210 Cal.Rptr. 631, 694 P.2d 744. *People v. Neer* (App. 4 Dist. 1986) 223 Cal.Rptr. 555, 177 Cal.App.3d 991, review denied. Courts 🔑 97(1)

Constitutional "truth in evidence" provision did not preclude procedure whereby defendant charged with petty theft, with prior conviction of petty theft, could stipulate to existence of the prior conviction and thereby preclude its presentation to the jury; the provision by its own terms is limited to prior felony conviction. *People v. Shippey* (App. 5 Dist. 1985) 214 Cal.Rptr. 553, 168 Cal.App.3d 879. Sentencing And Punishment 🔑 1379(2)

Under **constitutional** provision which prevents exclusion of evidence on state **constitutional** grounds where evidence would be admissible under United States **Constitution**, court could not fashion new remedy which would require dismissal of any case where police officer engages in deliberate acts of lying, misstating or concealing evidence in search warrant affidavits. *People v. Luevano* (App. 2 Dist. 1985) 213 Cal.Rptr. 764, 167 Cal.App.3d 1123, review denied. **Constitutional** Law 🔑 2450

Const. Art. 1, § 28(d) providing that relevant evidence shall not be excluded in any criminal proceeding eliminates judicially created remedy for violations of search and seizure provisions of Federal and State **Constitutions**, through exclusion of evidence so obtained, except to the extent that the exclusion remains federally compelled. *In re Lance W.* (1985) 210 Cal.Rptr. 631, 37 Cal.3d 873, 694 P.2d 744. Criminal Law 🔑 392.7; Criminal Law 🔑 392.10(2)

Pen.C. § 1112 prohibiting court from ordering psychiatric examination of victim of sexual

assault for credibility purposes does not have a direct bearing on the admissibility or inadmissibility of evidence and does not violate guarantee of **Const.** Art. 1, § 28 that relevant evidence not be excluded in any criminal proceeding. *People v. Armbruster* (App. 3 Dist. 1985) 210 Cal.Rptr. 11, 163 Cal.App.3d 660. Criminal Law 🔑 627.5(1)

Legislature, by twice reenacting **Pen.C. 1538.5** governing motions to suppress evidence obtained as a result of search or seizure by a two-thirds vote, has not restored independent state grounds as a basis for exclusion of evidence or modified the “Right to Truth-in-Evidence” provision of Proposition 8 (**Const.** Art. 1, § 28) providing that relevant evidence shall not be excluded in criminal proceedings. *People v. Gutierrez* (App. 1 Dist. 1984) 209 Cal.Rptr. 376, 163 Cal.App.3d 332. Criminal Law 🔑 392.7; Criminal Law 🔑 392.10(2)

Enactment of subd. (d) of this section providing that relevant evidence should not be excluded in any criminal proceeding except as provided by statutes subsequently enacted by a two-thirds vote of the membership in each house of the legislature requires that federal, rather than state, **constitutional** law be applied to resolve questions of admissibility of illegally seized evidence. *People v. Helmquist* (App. 4 Dist. 1984) 207 Cal.Rptr. 718, 161 Cal.App.3d 609. Criminal Law 🔑 392.7

Penal Code § 1538.5 providing for suppression of evidence is procedural in nature prescribing mechanisms for suppression, and retention of simple phrase “state **constitutional** standards” embedded in **Pen.C. § 1538.5** could not constitute repeal of the People’s initiative (**Const.** Art. 1, § 28), and thus state **constitutional** provision adopted by initiative abrogates **California’s** vicarious exclusionary rule. *People v. Daan* (App. 4 Dist. 1984) 207 Cal.Rptr. 228, 161 Cal.App.3d 22. **Constitutional** Law 🔑 632

Though due process does not require use of any particular instruments, it demands that where evidence is collected by the state, as with intoxilyzer, agencies must establish and follow rigorous and systematic procedures to preserve the captured evidence or its equipment for use of defendant. *People v. Trombetta* (App. 1 Dist. 1983) 190 Cal.Rptr. 319, 142 Cal.App.3d 138, certiorari granted 104 S.Ct. 696, 464 U.S. 1037, 79 L.Ed.2d 163, certiorari dismissed 104 S.Ct. 1458, 465 U.S. 1085, 79 L.Ed.2d 774, reversed 104 S.Ct. 2528, 467 U.S. 479, 81 L.Ed.2d 413, on remand 219 Cal.Rptr. 637, 173 Cal.App.3d 1093, review denied. **Constitutional** Law 🔑 4594(8)

---- **Renewal of offer, right to truth-in-evidence**

Where the court rejects evidence temporarily or withholds a decision as to its admissibility, the party desiring to introduce the evidence should renew his offer, or call the court's attention to the fact that a definite decision is desired. *People v. Holloway* (2004) 14 Cal.Rptr.3d 212, 33 Cal.4th 96, 91 P.3d 164, rehearing denied, certiorari denied 125 S.Ct. 1302, 543 U.S. 1156, 161 L.Ed.2d 122. Criminal Law 🔑 1043(1); Criminal Law 🔑 1045

---- Relevant evidence, right to truth-in-evidence

Truth-in-Evidence clause of State **Constitution** generally requires that all relevant evidence be admitted in a criminal proceeding, unless obtained in violation of Federal **Constitution**. *People v. Maldonado* (App. 4 Dist. 1999) 84 Cal.Rptr.2d 898, 72 Cal.App.4th 588, review denied. Criminal Law 🔑 392.10(1)

Although defendant has **constitutional** right to present all relevant evidence of significant probative value in his favor, defendant may not make unlimited inquiry into collateral matters; proffered evidence must have more than slight relevancy to issues presented. *People v. Greenberger* (App. 2 Dist. 1997) 68 Cal.Rptr.2d 61, 58 Cal.App.4th 298, modified on denial of rehearing, review denied. Criminal Law 🔑 338(1)

Evidence of person's character or trait of character is relevant in three situations: (1) when offered on issue of person's credibility as witness; (2) when offered as circumstantial evidence of person's conduct in conformity with such character or trait of character; and (3) when person's character or trait of person's character is ultimate fact in dispute in action. *People v. Ramos* (1997) 64 Cal.Rptr.2d 892, 15 Cal.4th 1133, 938 P.2d 950, rehearing denied, certiorari denied 118 S.Ct. 1315, 523 U.S. 1027, 140 L.Ed.2d 478. Criminal Law 🔑 338(6); Witnesses 🔑 338

Admission of defendant's statement to interrogating officer did not violate his state and federal **constitutional** rights to fair trial, even though statement was not tape-recorded. *People v. Holt* (1997) 63 Cal.Rptr.2d 782, 15 Cal.4th 619, 15 Cal.4th 1385A, 937 P.2d 213, modified on denial of rehearing, certiorari denied 118 S.Ct. 606, 522 U.S. 1017, 139 L.Ed.2d 493. Criminal Law 🔑 410.55

Supreme Court is not at liberty to create rules which exclude relevant evidence that is not made inadmissible by Federal **Constitution**. *People v. Holt* (1997) 63 Cal.Rptr.2d 782, 15 Cal.4th

619, 15 Cal.4th 1385A, 937 P.2d 213, modified on denial of rehearing, certiorari denied 118 S.Ct. 606, 522 U.S. 1017, 139 L.Ed.2d 493. Courts 🔑 79

Defendant failed to establish reversible error on ground that tape recording, rather than interrogating officer's narration of recollection of defendant's statement during interrogation, should be considered best evidence of what defendant said and that recording would be more accurate than interrogating officer's postinterview narration; defendant, whose statement was not tape-recorded, did not point to any particular part of interrogating officer's testimony that was inaccurate, and no motion was made at trial to exclude statement on ground that it was not best evidence or was involuntary. *People v. Holt* (1997) 63 Cal.Rptr.2d 782, 15 Cal.4th 619, 15 Cal.4th 1385A, 937 P.2d 213, modified on denial of rehearing, certiorari denied 118 S.Ct. 606, 522 U.S. 1017, 139 L.Ed.2d 493. Criminal Law 🔑 1169.12

Section of Penal Code requiring defendant to prove relevancy to magistrate before calling witness at preliminary hearing does not exclude relevant evidence and does not impermissibly conflict with constitutional provision that relevant evidence shall not be excluded in any criminal proceeding. *People v. Eid* (App. 2 Dist. 1994) 36 Cal.Rptr.2d 835, 31 Cal.App.4th 114, review denied. Criminal Law 🔑 206; Criminal Law 🔑 234

By its terms, Truth-in-Evidence provision stating that relevant evidence shall not be excluded in any criminal proceeding affects only admissibility of evidence, largely eliminating state law rules that restricted admissibility of relevant evidence more narrowly than was required by federal Constitution. *People v. Cahill* (1993) 20 Cal.Rptr.2d 582, 5 Cal.4th 478, 853 P.2d 1037, on remand 28 Cal.Rptr.2d 1, 22 Cal.App.4th 296, rehearing denied, review denied. Criminal Law 🔑 338(1)

All relevant evidence is admissible in trial court's sound discretion, in criminal proceedings, except as limited by existing exclusionary rules such as privilege and hearsay. *People v. Wheeler* (1992) 14 Cal.Rptr.2d 418, 4 Cal.4th 284, 841 P.2d 938, rehearing denied. Criminal Law 🔑 338(1)

Relevant evidence will not be excluded unless suppression is required by the Fourth Amendment of the United States Constitution. *People v. Lepeilbet* (App. 3 Dist. 1992) 6 Cal.Rptr.2d 371, 4 Cal.App.4th 1208, review denied. Criminal Law 🔑 338(1); Criminal Law 🔑 392.10(2)

Court of Appeal would assume that enactors of **constitutional** article providing that relevant evidence shall not be excluded in any criminal proceeding intended Evidence Code definition of “relevant evidence” which had been enacted years earlier to govern interpretation of words “relevant evidence” in the **constitutional** article. [People v. Hill \(App. 3 Dist. 1992\) 4 Cal.Rptr.2d 258, 3 Cal.App.4th 16](#), rehearing denied, review denied, denial of habeas corpus affirmed [20 Fed.Appx. 665](#), certiorari denied [122 S.Ct. 2306](#). [Criminal Law 🔑 338\(1\)](#)

---- Confessions, right to truth-in-evidence

In light of The Right to Truth-in-Evidence Law, statements made by a defendant to a probation officer during a presentence investigation interview may be used against him in a later criminal proceeding, at least in the absence of any evidence that the probation officer threatened the defendant with an unfavorable recommendation if he or she refused to give a statement. [People v. Coffman \(2004\) 17 Cal.Rptr.3d 710, 34 Cal.4th 1, 96 P.3d 30](#), rehearing denied, as modified, certiorari denied [125 S.Ct. 2517, 544 U.S. 1063, 161 L.Ed.2d 1114](#). [Criminal Law 🔑 411.65](#)

For crimes committed after the June 8, 1982, enactment of the state **constitutional** provision prohibiting the exclusion in criminal cases of relevant evidence not required to be excluded under the federal **Constitution**, the voluntariness of a confession must be established, for due process purposes, by the prosecution by a preponderance of the evidence, but for crimes committed before such date, the prosecution must prove voluntariness beyond a reasonable doubt. [People v. Sapp \(2003\) 2 Cal.Rptr.3d 554, 31 Cal.4th 240, 73 P.3d 433](#), rehearing denied, as modified, certiorari denied [124 S.Ct. 2067, 541 U.S. 1011, 158 L.Ed.2d 622](#). [Constitutional Law 🔑 4667](#); [Criminal Law 🔑 413.43](#)

In determining voluntariness of confession on appeal, appellate court independently examines the record, but, to the extent the facts conflict, it accepts the version favorable to the People if supported by substantial evidence. [People v. Farnam \(2002\) 121 Cal.Rptr.2d 106, 28 Cal.4th 107, 47 P.3d 988](#), rehearing denied, as modified, certiorari denied [123 S.Ct. 861, 537 U.S. 1124, 154 L.Ed.2d 806](#). [Criminal Law 🔑 1139](#); [Criminal Law 🔑 1144.12](#)

In reviewing trial court’s determination that a confession was voluntary, Supreme Court independently examines the record, but, to the extent the facts conflict, it accepts the version favorable to the People if supported by substantial evidence. [People v. Weaver \(2001\) 111 Cal.Rptr.2d 2, 26 Cal.4th 876, 29 P.3d 103](#), certiorari denied [122 S.Ct. 1920, 535 U.S. 1058, 152 L.Ed.2d 828](#). [Criminal Law 🔑 1144.12](#); [Criminal Law 🔑 1158.13](#)

Exclusion of evidence relating to police department internal affairs investigation of circumstances under which police officer had secured statement from jailhouse informant regarding incriminating comments defendant had made, which was later recanted by informant, did not violate defendant's right under Federal and State **Constitutions** to present a defense, or provision of State **Constitution** under which relevant evidence shall not be excluded in any criminal prosecution, given minimal probative value of evidence in light of fact that neither informant nor officer testified. *People v. Jenkins* (2000) 95 Cal.Rptr.2d 377, 22 Cal.4th 900, 997 P.2d 1044, rehearing denied, as modified, certiorari denied 121 S.Ct. 1104, 531 U.S. 1155, 148 L.Ed.2d 975. **Criminal Law** 🔑 661

For crime committed prior to adoption of truth-in-evidence amendment to State **Constitution**, prosecution is required to prove voluntariness of confession beyond a reasonable doubt. *People v. Hall* (App. 4 Dist. 2000) 92 Cal.Rptr.2d 687, 78 Cal.App.4th 232, review denied. **Criminal Law** 🔑 413.43

State law which governed admissibility of confessions when defendant committed murder in 1979, which required prosecution to establish voluntariness of confession beyond a reasonable doubt, and not subsequently enacted proposition which amended State **Constitution** to require only that voluntariness be shown by preponderance of the evidence, applied to determine admissibility of confession made by defendant shortly after murder. *People v. Massie* (1998) 79 Cal.Rptr.2d 816, 19 Cal.4th 550, 967 P.2d 29, time for grant or denial of rehearing extended, certiorari denied 119 S.Ct. 1759, 526 U.S. 1113, 143 L.Ed.2d 790. **Constitutional Law** 🔑 630

Defendant's waiver of *Miranda* rights and his confession were required to be established by preponderance of the evidence. *People v. Wash* (1993) 24 Cal.Rptr.2d 421, 6 Cal.4th 215, 861 P.2d 1107, rehearing denied, certiorari denied 115 S.Ct. 116, 513 U.S. 836, 130 L.Ed.2d 62. **Criminal Law** 🔑 413.42; **Criminal Law** 🔑 413.48

Fact that former codefendant may have been beaten when arrested by Mexican authorities prior to giving them a confession did not show that the testimony which he gave at defendant's trial was coerced and thus inadmissible. *People v. Douglas* (1990) 268 Cal.Rptr. 126, 50 Cal.3d 468, 788 P.2d 640, modified on denial of rehearing, certiorari denied 111 S.Ct. 1023, 498 U.S. 1110, 112 L.Ed.2d 1105. **Criminal Law** 🔑 508(1)

Police officers' false statements to defendant indicating that physical evidence had been found which linked defendant to victim's death did not make defendant's incriminating statements

involuntary, where officers did not promise to obtain help for defendant if he confessed. *People v. Thompson* (1990) 266 Cal.Rptr. 309, 50 Cal.3d 134, 785 P.2d 857, rehearing denied, certiorari denied 111 S.Ct. 226, 498 U.S. 881, 112 L.Ed.2d 180, rehearing denied 111 S.Ct. 720, 498 U.S. 1043, 112 L.Ed.2d 708, habeas corpus denied. *Criminal Law* 411.54(1); *Criminal Law* 411.61

Police officer's statements to defendant that defendant's girl friend would not be released from custody, despite her medical problems, until defendant discussed charged felony, did not improperly induce defendant's subsequent incriminating statements, where defendant did not make incriminating statements until several hours after conversation with officer turned to other subjects, during which defendant twice declined suggestion that discussion stop. *People v. Thompson* (1990) 266 Cal.Rptr. 309, 50 Cal.3d 134, 785 P.2d 857, rehearing denied, certiorari denied 111 S.Ct. 226, 498 U.S. 881, 112 L.Ed.2d 180, rehearing denied 111 S.Ct. 720, 498 U.S. 1043, 112 L.Ed.2d 708, habeas corpus denied. *Criminal Law* 411.58

Defendant did not invoke his right to counsel during questioning by police when he stated that public defender had advised him not to talk, where statement was made as part of explanation of why he wished to talk despite public defender's advice. *People v. Thompson* (1990) 266 Cal.Rptr. 309, 50 Cal.3d 134, 785 P.2d 857, rehearing denied, certiorari denied 111 S.Ct. 226, 498 U.S. 881, 112 L.Ed.2d 180, rehearing denied 111 S.Ct. 720, 498 U.S. 1043, 112 L.Ed.2d 708, habeas corpus denied. *Criminal Law* 411.81

Police did not improperly threaten to subject defendant to death penalty if he did not confess when they told him that they had two alternative theories concerning victim's death, accidental killing and intentional killing to prevent identification; police did not promise to abandon theory of intentional killing if defendant confessed, and case was tried on alternate theories. *People v. Thompson* (1990) 266 Cal.Rptr. 309, 50 Cal.3d 134, 785 P.2d 857, rehearing denied, certiorari denied 111 S.Ct. 226, 498 U.S. 881, 112 L.Ed.2d 180, rehearing denied 111 S.Ct. 720, 498 U.S. 1043, 112 L.Ed.2d 708, habeas corpus denied. *Criminal Law* 411.57

State must prove voluntariness of defendant's confession only by preponderance of evidence, and not beyond reasonable doubt. *People v. Markham* (1989) 260 Cal.Rptr. 273, 49 Cal.3d 63, 775 P.2d 1042. *Criminal Law* 413.43

Privilege against making self-incriminatory statements, either in judicial or extrajudicial setting, is privilege protected by "statutory rule of evidence relating to privilege," [*West's Ann.Cal.Evid.Code* § 940] for purposes of exemption from requirement of Proposition 8

[West's Ann.Cal. **Const.** Art. 1, § 28(d)], that relevant evidence not be excluded, and the exemption afforded § 940 extends to judicially created rule under § 940 that out-of-court confession will not be admissible unless state can show, beyond reasonable doubt, that confession is voluntary, so that such rule remains in effect. *People v. Azure* (App. 3 Dist. 1986) 224 Cal.Rptr. 158, 178 Cal.App.3d 591, review denied. *Criminal Law* 🔑 393(1); *Criminal Law* 🔑 413.43; *Witnesses* 🔑 390.1

Defense counsel did not provide ineffective assistance in **California** murder trial, and his advice did not render involuntary defendant's guilty plea, by failing to move to suppress secretly-recorded police station conversation, in which defendant asked his father to provide him with alibi and to contact fellow gang members to seek assistance in intimidating witnesses; under **California** law, trial judge had authority to grant motion to suppress evidence only when motion was based on federal law, and defendant's right to privacy under federal law did not extend to his conversations in jail with individuals not his attorney. *Mai v. McGrath*, C.A.9 (Cal.)2012, 491 Fed.Appx. 818, 2012 WL 3268331, Unreported, certiorari denied 133 S.Ct. 892, 568 U.S. 1107, 184 L.Ed.2d 692. *Criminal Law* 🔑 1926

--- **Miranda warnings, right to truth-in-evidence**

In a prosecution for crimes committed before the 1982 effective date of the Right to Truth-in-Evidence provision of the state **constitution**, admission of defendant's confession required the prosecution to establish the validity of defendant's *Miranda* waiver beyond a reasonable doubt. *People v. Parker* (2017) 218 Cal.Rptr.3d 315, 395 P.3d 208, rehearing denied, certiorari denied 138 S.Ct. 988, 200 L.Ed.2d 264. *Criminal Law* 🔑 413.37; *Criminal Law* 🔑 413.48

Capital murder defendant's initial statement to police, "I want to have an attorney present[.]" amounted to unambiguous request for counsel, and defendant therefore was not subject to further interrogation by police until counsel was made available to him or until he personally initiated further communication. *People v. Cunningham* (2001) 108 Cal.Rptr.2d 291, 25 Cal.4th 926, 25 P.3d 519, as modified, rehearing denied, certiorari denied 122 S.Ct. 1092, 534 U.S. 1141, 151 L.Ed.2d 991. *Criminal Law* 🔑 411.81

Under provision of State **Constitution** stating that exclusion of evidence is not provided as a remedy for **constitutional** violations except to extent exclusion is federally compelled, statements obtained from defendant in violation of *Miranda* are admissible for impeachment purposes. *In re Robert E.* (App. 4 Dist. 2000) 91 Cal.Rptr.2d 774, 77 Cal.App.4th 557.

Witnesses 390.1

Voluntariness of defendant's waiver of *Miranda* rights and voluntariness of confession must be established by a preponderance of the evidence. *People v. Whitson* (1998) 70 Cal.Rptr.2d 321, 17 Cal.4th 229, 949 P.2d 18, denial of post-conviction relief affirmed 2004 WL 1447772, unpublished, review denied. *Criminal Law*  413.43

Even if officer's questioning of defendant, who was acquaintance, regarding defendant's job and location of pink slip for automobile was "interrogation," failure to give *Miranda* warnings before questioning defendant did not invalidate defendant's subsequent voluntary waiver of rights, followed by incriminatory statements. *People v. Lewis* (1990) 266 Cal.Rptr. 834, 50 Cal.3d 262, 786 P.2d 892, rehearing denied. *Criminal Law*  411.96

Conversation between officer and defendant, who was handcuffed and sitting in back seat of police car, regarding what police would do with car, where defendant obtained car, and whether defendant had "pink slip" for car, which had belonged to homicide victim, was not "custodial interrogation" so as to require that officer warn defendant of *Miranda* rights; officer was not involved in defendant's arrest, but was merely responsible for safety in checking on circumstances of traffic stop, defendant recognized officer and initiated conversation, asking what would be done with defendant's car, and it was only after the defendant claimed that he got money for car in Las Vegas that officer asked him whether he could produce pink slip. *People v. Lewis* (1990) 266 Cal.Rptr. 834, 50 Cal.3d 262, 786 P.2d 892, rehearing denied. *Criminal Law*  411.26; *Criminal Law*  411.38

Miranda warnings given to defendant prior to his confession, which included warning that defendant had right to have attorney present before and during questioning and that court would appoint attorney free of charge if defendant could not afford one, were adequate, despite defendant's claim that warning did not make clear his right to have appointed counsel present during questioning. *People v. Thompson* (1990) 266 Cal.Rptr. 309, 50 Cal.3d 134, 785 P.2d 857, rehearing denied, certiorari denied 111 S.Ct. 226, 498 U.S. 881, 112 L.Ed.2d 180, rehearing denied 111 S.Ct. 720, 498 U.S. 1043, 112 L.Ed.2d 708, habeas corpus denied. *Criminal Law*  411.11

Statements elicited by police officers from defendant before advising him of his constitutional rights were admissible in robbery prosecution for impeachment purposes. *People v. Kimble* (App. 1 Dist. 1988) 248 Cal.Rptr. 41, 201 Cal.App.3d 726. *Witnesses*  390.1

Enactment of this section allowing for admission of relevant evidence in criminal proceedings, but containing savings clause retaining statutory rules of evidence relating to privilege, abrogated judicial rule that privilege against self-incrimination precludes impeachment of defendant with extrajudicial statements obtained in violation of *Miranda*. *People v. May* (1988) 243 Cal.Rptr. 369, 44 Cal.3d 309, 748 P.2d 307, rehearing denied. *Witnesses* 🔑 390.1

Privilege against self-incrimination under **Const. Art. 1, § 15** precluding use by the prosecution of any postarrest statements taken in violation of the *Miranda* rights of the defendant in that proceeding was unaltered by **Const. Art. 1, § 28** which provides that relevant evidence shall not be excluded in any criminal proceeding, as *Evid.C. 940* which permits person to refuse to disclose any matter that may tend to incriminate him is existing statutory rule of evidence relating to privilege which is excepted from latter **constitutional** provision and thus, trial court erred in permitting defendant's postarrest statement obtained in violation of *Miranda* to be admitted at trial for impeachment purposes. *People v. Barrios* (App. 5 Dist. 1985) 212 Cal.Rptr. 644, 166 Cal.App.3d 732, review denied. *Witnesses* 🔑 390.1

--- Searches and seizures, right to truth-in-evidence

Even if Fourth Amendment required arresting officer to offer defendant option of providing breath test rather than blood test under implied consent law, defendant's blood test would have been admissible under truth-in-evidence provision of **California Constitution**, where blood test was relevant and not excluded under rules of evidence regarding privilege or hearsay. *People v. Vannesse* (App. 2 Dist. 2018) 232 Cal.Rptr.3d 800, review granted 237 Cal.Rptr.3d 485, 425 P.3d 53, review dismissed, cause remanded 251 Cal.Rptr.3d 79, 446 P.3d 725. *Automobiles* 🔑 411

The reasonableness of a search or seizure is measured by federal **constitutional** standards. *People v. Steele* (App. 3 Dist. 2016) 201 Cal.Rptr.3d 363, 246 Cal.App.4th 1110, unpublished, review filed, review denied. *Searches and Seizures* 🔑 23

California Constitution prohibits employing an exclusionary rule that is more expansive than that articulated by the United States Supreme Court. *People v. Robinson* (2010) 104 Cal.Rptr.3d 727, 47 Cal.4th 1104, 224 P.3d 55, certiorari denied 131 S.Ct. 72, 562 U.S. 842, 178 L.Ed.2d 49. *Criminal Law* 🔑 392.10(2)

Pursuant to **constitutional** truth-in-evidence provision, a trial court may exclude evidence under state suppression statute only if exclusion is mandated by the federal **Constitution**. *People v. Robinson* (2010) 104 Cal.Rptr.3d 727, 47 Cal.4th 1104, 224 P.3d 55, certiorari denied 131 S.Ct. 72, 562 U.S. 842, 178 L.Ed.2d 49. Criminal Law 🔑 392.10(2)

The Truth-in-Evidence provision of Proposition 8 leaves intact the substantive scope of state **constitutional** law governing searches and seizures, but removes the remedy of suppression unless there is a violation of federal **constitutional** standards. *People v. Hunter* (App. 1 Dist. 2005) 34 Cal.Rptr.3d 818, 133 Cal.App.4th 371. Criminal Law 🔑 392.10(2)

To decide whether relevant evidence obtained by assertedly unlawful means must be excluded in a trial for crimes allegedly committed after June 8, 1982, the court looks exclusively to whether its suppression is required by the United States **Constitution**. *People v. Hunter* (App. 1 Dist. 2005) 34 Cal.Rptr.3d 818, 133 Cal.App.4th 371. Criminal Law 🔑 392.10(2)

Probable cause supported search of trunk of defendant's car following traffic stop leading to seizures of drugs and gun; from outside car, officers observed logo-bearing bag containing marijuana residue in back seat and, when they entered car, also observed smaller bag of marijuana in front ashtray which bore same logo, they knew that youth seated near bag in backseat was on **California** Youth Authority (CYA) parole and that front passenger was known dope dealer and, although defendant admitted to being owner of car, he denied having key to trunk, but officers found such key on his keychain. *People v. Hunter* (App. 1 Dist. 2005) 34 Cal.Rptr.3d 818, 133 Cal.App.4th 371. Automobiles 🔑 349.5(7); Automobiles 🔑 349.5(10)

The Supreme Court's review of issues related to suppression of evidence seized by police is governed by federal **constitutional** standards. *People v. Lenart* (2004) 12 Cal.Rptr.3d 592, 32 Cal.4th 1107, 88 P.3d 498, rehearing denied. Criminal Law 🔑 392.2

Under both the Fourth Amendment and the state **constitution's** search and seizure provision, a person may challenge the legality of a search or seizure only if he can show a personal interest in the privacy of the place searched or the item seized; he may not vicariously challenge the alleged violation of another's interests. *People v. Hoag* (App. 3 Dist. 2000) 100 Cal.Rptr.2d 556, 83 Cal.App.4th 1198, review denied. Searches And Seizures 🔑 162

Under state **constitution's** search and seizure provision, evidence may be excluded for violation of knock and announce statute only if exclusion is mandated by the federal **constitution**. *People*

v. Hoag (App. 3 Dist. 2000) 100 Cal.Rptr.2d 556, 83 Cal.App.4th 1198, review denied. Criminal Law 🔑 392.16(6)

Fact that time span during which defendant committed 16 murders with which he was charged straddled enactment of truth-in-evidence provisions of state **constitution** did not render searches conducted after enactment valid as to evidence of some murders but invalid as to evidence of others, where both versions produced the same result as applied to each challenged search. *People v. Kraft* (2000) 99 Cal.Rptr.2d 1, 23 Cal.4th 978, 5 P.3d 68, rehearing denied, certiorari denied 121 S.Ct. 1234, 532 U.S. 908, 149 L.Ed.2d 142. Searches And Seizures 🔑 23

In general, relevant evidence that is illegally obtained under State law is nonetheless admissible, so long as federal law does not bar its admission. *People v. Riel* (2000) 96 Cal.Rptr.2d 1, 22 Cal.4th 1153, 998 P.2d 969, rehearing denied, certiorari denied 121 S.Ct. 803, 531 U.S. 1087, 148 L.Ed.2d 690. Criminal Law 🔑 392.7

Pursuant to provision of State **Constitution** relating to the right to truth in evidence, Supreme Court reviews challenges to the admissibility of evidence obtained by police searches and seizures under federal **constitutional** standards. *People v. Woods* (1999) 88 Cal.Rptr.2d 88, 21 Cal.4th 668, 981 P.2d 1019, certiorari denied 120 S.Ct. 1429, 529 U.S. 1023, 146 L.Ed.2d 319. Criminal Law 🔑 1134.49(4)

Independent source doctrine applies in state courts: if, after some illegal conduct, police obtain search warrant they would have sought without that conduct, and none of the supporting documents cites information derived from that conduct, court need not suppress evidence found in resulting search. *People v. Weiss* (1999) 86 Cal.Rptr.2d 337, 20 Cal.4th 1073, 978 P.2d 1257, certiorari denied 120 S.Ct. 1166, 528 U.S. 1158, 145 L.Ed.2d 1076. Criminal Law 🔑 392.39(11)

When admissibility of evidence is challenged as being fruit of unlawful search and seizure, **California constitution** requires **California** Supreme Court to follow decisions of United States Supreme Court. *People v. Bennett* (1998) 70 Cal.Rptr.2d 850, 17 Cal.4th 373, 949 P.2d 947, as modified. Courts 🔑 97(1)

In general, relevant evidence that is illegally obtained under **California** law is nonetheless admissible, so long as federal law does not bar its admission. *People v. Hines* (1997) 64 Cal.Rptr.2d 594, 15 Cal.4th 997, 16 Cal.4th 825B, 938 P.2d 388, modified on denial of

rehearing, certiorari denied 118 S.Ct. 855, 522 U.S. 1077, 139 L.Ed.2d 755, rehearing denied 118 S.Ct. 1345, 523 U.S. 1042, 140 L.Ed.2d 504. Criminal Law 🔑 392.7; Criminal Law 🔑 392.10(2)

Any violations by police of defendant's state law right to privacy, state law prohibition against illegal searches, and state law provisions protecting civil rights of prisoners by secretly recording conversation between defendant and his accomplice while they were in holding cell did not warrant suppression of recording, as federal law did not require suppression. *People v. Hines* (1997) 64 Cal.Rptr.2d 594, 15 Cal.4th 997, 16 Cal.4th 825B, 938 P.2d 388, modified on denial of rehearing, certiorari denied 118 S.Ct. 855, 522 U.S. 1077, 139 L.Ed.2d 755, rehearing denied 118 S.Ct. 1345, 523 U.S. 1042, 140 L.Ed.2d 504. Criminal Law 🔑 392.21; Criminal Law 🔑 410.8

Relevant evidence will not be excluded unless suppression is required by Fourth Amendment of United States **Constitution**. *People v. Zabelle* (App. 3 Dist. 1996) 58 Cal.Rptr.2d 105, 50 Cal.App.4th 1282. Criminal Law 🔑 392.7; Criminal Law 🔑 392.10(2)

Court may admit evidence obtained incident to illegal misdemeanor arrest unless exclusion is mandated by federal exclusionary rule applicable to evidence seized in violation of Fourth Amendment; judicially created exclusionary rule was abrogated by truth-in-evidence **constitutional** provision. *People v. Donaldson* (App. 2 Dist. 1995) 42 Cal.Rptr.2d 314, 36 Cal.App.4th 532, review denied. Criminal Law 🔑 392.17(2)

Under subd. (d) of this section limiting exclusion of relevant evidence in criminal proceedings, federal standards apply in deciding whether relevant evidence seized pursuant to search warrant must be excluded. *People v. Luttenberger* (1990) 265 Cal.Rptr. 690, 50 Cal.3d 1, 784 P.2d 633. Criminal Law 🔑 392.16(7)

Subdivision (d) of this section limiting exclusion of relevant evidence in criminal proceedings does not require use of federal preliminary showing standard with regard to discovery of information concerning veracity of warrant affidavit. *People v. Luttenberger* (1990) 265 Cal.Rptr. 690, 50 Cal.3d 1, 784 P.2d 633. Criminal Law 🔑 627.8(3)

Neither subd. (d) of this section limiting exclusion of relevant evidence in criminal proceedings nor federal discovery standards required defendant to meet federal preliminary showing standard before obtaining limited discovery relevant to truthfulness of search warrant affidavit. *People v.*

Luttenberger (1990) 265 Cal.Rptr. 690, 50 Cal.3d 1, 784 P.2d 633. Criminal Law 🔑 627.8(3)

Formal arrest of defendant suspected of driving under influence is not constitutional prerequisite to warrantless, nonconsensual seizure of blood sample for chemical analysis; Fourth Amendment's prohibition against unreasonable searches and seizures requires only that there be probable cause to place defendant under arrest before sample is withdrawn in medically approved manner. *People v. Trotman* (App. 2 Dist. 1989) 262 Cal.Rptr. 640, 214 Cal.App.3d 430. Automobiles 🔑 414

Exclusionary rule is only appropriate remedy for violation of a minor student's constitutional right to be free from unreasonable searches and seizures, where evidence is sought to be admitted in a juvenile or criminal prosecution against student. *In re William G.* (1985) 221 Cal.Rptr. 118, 40 Cal.3d 550, 709 P.2d 1287. Criminal Law 🔑 392.4(2); Infants 🔑 2621

California Supreme Court decisions holding that trash placed outside of a defendant's house for collection was not "abandoned property" placed beyond protection Fourth Amendment and state **Constitution** were based on both federal and state constitutional provisions, and were valid and binding authority that Court of Appeal had to follow until either **California** or United States Supreme Court ruled on the issue. *People v. Rooney* (App. 2 Dist. 1985) 221 Cal.Rptr. 49, 175 Cal.App.3d 634, review denied, certiorari granted 107 S.Ct. 268, 479 U.S. 881, 93 L.Ed.2d 245, certiorari dismissed as improvidently granted 107 S.Ct. 2852, 483 U.S. 307, 97 L.Ed.2d 258, rehearing denied 108 S.Ct. 30, 483 U.S. 1056, 97 L.Ed.2d 819. Courts 🔑 91(1); Courts 🔑 97(1)

California's vicarious standing rule is no longer applicable after passage of Proposition 8, which allows evidence to be excluded under **California Constitution** only to extent exclusion is also required by the Fourth Amendment exclusionary rule, and thus, codefendant did not have standing to challenge search of defendant's residence. *People v. Lopez* (App. 5 Dist. 1985) 218 Cal.Rptr. 799, 173 Cal.App.3d 125, review denied. Searches And Seizures 🔑 164

---- Reputation, right to truth-in-evidence

Under former statutes governing admission of evidence of character, cross-examination of deputy regarding inmate complaints against him for brutality and harassment was not relevant during penalty phase of capital murder trial in which defendant's alleged threat against deputy was an issue; complaints were not relevant to credibility, were not ultimate fact in dispute, and

were not relevant as circumstantial evidence of conduct in conformity with character. [People v. Ramos \(1997\) 64 Cal.Rptr.2d 892, 15 Cal.4th 1133, 938 P.2d 950](#), rehearing denied, certiorari denied 118 S.Ct. 1315, 523 U.S. 1027, 140 L.Ed.2d 478. [Witnesses 🔑 344\(1\)](#)

Limitations on admission of evidence relevant to witness' honesty or veracity are no longer applicable in criminal cases, except to extent that exclusion is ordered pursuant to [Evidence Code § 352](#) providing for such exclusion at discretion of trial court, following enactment of this section. [People v. Harris \(1989\) 255 Cal.Rptr. 352, 47 Cal.3d 1047, 767 P.2d 619](#), modified on denial of rehearing. [Witnesses 🔑 318](#); [Witnesses 🔑 352](#)

Admission of evidence of witness' past reliability as informant and prosecutor's reference to it in closing argument was not improper; such evidence was admissible pursuant to subd. (d) of this section. [People v. Harris \(1989\) 255 Cal.Rptr. 352, 47 Cal.3d 1047, 767 P.2d 619](#), modified on denial of rehearing. [Criminal Law 🔑 2098\(5\)](#); [Witnesses 🔑 318](#)

---- Unlawful compensation of witnesses, right to truth-in-evidence

Alleged violation of statute prohibiting potential witnesses in criminal cases from receiving compensation in exchange for providing information which resulted from codefendant's entry of guilty plea, in which he received more lenient treatment in exchange for his truthful testimony against defendant, did not require reversal of defendant's conviction; statute is not an exclusionary rule, and Truth-in-Evidence clause of State [Constitution](#) required admission of evidence regardless of any statutory violation. [People v. Maldonado \(App. 4 Dist. 1999\) 84 Cal.Rptr.2d 898, 72 Cal.App.4th 588](#), review denied. [Criminal Law 🔑 1169.1\(8\)](#)

Truth-in-Evidence clause of State [Constitution](#) requires that witness's testimony be admitted in criminal proceeding even if witness was unlawfully compensated for providing information obtained in witnessing event or occurrence, in violation of statute. [People v. Maldonado \(App. 4 Dist. 1999\) 84 Cal.Rptr.2d 898, 72 Cal.App.4th 588](#), review denied. [Criminal Law 🔑 392.13\(3\)](#)

Discretion of court, generally

Evidence of circumstances underlying a conviction is admissible to impeach credibility if the proponent demonstrates that the evidence has "any tendency in reason" to disprove credibility,

but trial courts retain discretion to exclude such evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time or create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury; disapproving *People v. Casares*, 62 Cal.4th 808, 198 Cal.Rptr.3d 167, 364 P.3d 1093, *People v. Ardoin*, 196 Cal.App.4th 102, 130 Cal.Rptr.3d 1, *People v. Szadzewicz*, 161 Cal.App.4th 823, 74 Cal.Rptr.3d 416, *People v. Shea*, 39 Cal.App.4th 1257, 46 Cal.Rptr.2d 388, *People v. Santos*, 30 Cal.App.4th 169, 35 Cal.Rptr.2d 719, *People v. Thomas*, 206 Cal.App.3d 689, 254 Cal.Rptr. 15, and *People v. Heckathorne*, 202 Cal.App.3d 458, 248 Cal.Rptr. 399. *People v. Dalton* (2019) 247 Cal.Rptr.3d 273, 441 P.3d 283, rehearing denied, certiorari denied 140 S.Ct. 505, 205 L.Ed.2d 323. Witnesses 🔑 67

Trial court acted within its discretion under the constitutional right to confrontation and cross-examination, the Truth-in-Evidence amendment to the state constitution, and the statute permitting the trial court to determine whether probative value of evidence is substantially outweighed by probability of undue prejudice, in excluding evidence of the facts underlying a prosecution witness's prior offenses of robbery, assault with deadly weapon, and possession of drugs in jail, and evidence that in another incident witness attempted through her boyfriend and her attorney to have drugs delivered to her in jail, since the evidence was cumulative, where witness's admitted use of a firearm during the robbery and assault offenses adequately indicated her violent nature and moral indigence, and her character and testimony were thoroughly challenged with withering and successful attacks on many other levels. *People v. Ardoin* (App. 1 Dist. 2011) 130 Cal.Rptr.3d 1, 196 Cal.App.4th 102, review denied, habeas corpus denied 2013 WL 541579, reversed 653 Fed.Appx. 532, 2016 WL 3545680. Criminal Law 🔑 338(7); Criminal Law 🔑 662.7; Criminal Law 🔑 675

Trial court acted within its discretion in admitting guilt phase evidence that capital defendant was in charge of an association of White inmates at his prison, that he assigned duties to himself and others, and that the duties included actions designed to effectuate his desire to "clean up" the White race by eliminating child molesters and to punish White inmates who associated with inmates of other races, even though the evidence tended to show defendant was a White supremacist and a racist, since it was relevant to prove defendant harbored the intent and motive to assault one victim for not obeying his commands and to kill another victim for being a child molester. *People v. Bivert* (2011) 127 Cal.Rptr.3d 261, 52 Cal.4th 96, 254 P.3d 300, certiorari denied 132 S.Ct. 511, 565 U.S. 984, 181 L.Ed.2d 360. Criminal Law 🔑 371.13; Criminal Law 🔑 371.40; Homicide 🔑 986; Homicide 🔑 1001

District court acted within its discretion in admitting as duly authenticated a video-taped interview of prison inmate alleging he was beaten by correctional officers, in inmate's pro se action alleging officers acted with excessive force; person who operated the camera

authenticated the recording and testified that a proper chain of custody was followed after the interview concluded. [Nwandu v. Bach, C.A.9 \(Cal.\)2013, 513 Fed.Appx. 642, 2013 WL 951325, Unreported. Evidence 🔑 380](#)

District court acted within its discretion in denying pro se prison inmate's motions for appointment of counsel in inmate's action alleging excessive force against correctional officers; inmate was capable of handling his claims effectively and his claims were not complex. [Nwandu v. Bach, C.A.9 \(Cal.\)2013, 513 Fed.Appx. 642, 2013 WL 951325, Unreported. Civil Rights 🔑 1445](#)

District court acted within its discretion in giving pro se prison inmate continuance of only one day to prepare for trial on excessive force claims against correctional officers, after district court was informed that inmate was not given his documents; district court gave inmate continuance until nine the next morning, gave him a legal pad and pen, ordered the government to give him a copy of their exhibits, and ordered the court's staff to print out copies of documents related to trial. [Nwandu v. Bach, C.A.9 \(Cal.\)2013, 513 Fed.Appx. 642, 2013 WL 951325, Unreported. Federal Civil Procedure 🔑 1859](#)

District court acted within its discretion in refusing to include pro se prison inmate's state tort claim in pretrial order, in action alleging excessive force against correctional officers; inmate had not exhausted his administrative remedies with respect to state tort claim. [Nwandu v. Bach, C.A.9 \(Cal.\)2013, 513 Fed.Appx. 642, 2013 WL 951325, Unreported. Federal Civil Procedure 🔑 1925.1](#)

District court acted within its discretion in determining that manifest justice would not result from denying pro se prison inmate's motion to modify pretrial order to include disputed facts, in inmate's action alleging excessive force against correctional officers; inmate wanted to include disputed facts in a section of pretrial order that included only admitted facts, and the pretrial order contained a fair list of admitted facts. [Nwandu v. Bach, C.A.9 \(Cal.\)2013, 513 Fed.Appx. 642, 2013 WL 951325, Unreported. Federal Civil Procedure 🔑 1935.1](#)

Prior convictions--In general

When a wobbler has been reduced to a misdemeanor the prior conviction does not constitute a "prior felony conviction" within the meaning of the statute authorizing a five-year sentence enhancement for previously having been convicted of a serious felony or the **constitutional**

provision stating that any prior felony conviction shall subsequently be used without limitation for purposes of sentence enhancement. [People v. Park \(2013\) 156 Cal.Rptr.3d 307, 56 Cal.4th 782, 299 P.3d 1263](#), appeal after new sentencing hearing [2014 WL 3526365](#), unpublished. [Sentencing and Punishment](#) 🔑 1254

Notwithstanding the Truth-in-Evidence amendment to the state **constitution**, the facts and circumstances underlying prior offenses are inadmissible for impeachment purposes, unless the witness has first attempted to mislead the jury or minimize the facts of the prior offense. [People v. Ardoin \(App. 1 Dist. 2011\) 130 Cal.Rptr.3d 1, 196 Cal.App.4th 102](#), review denied, habeas corpus denied [2013 WL 541579](#), reversed [653 Fed.Appx. 532, 2016 WL 3545680](#). [Witnesses](#) 🔑 345(1)

Same prior conviction could be used to bring defendant under “Three Strikes” scheme and to trigger statutory enhancement of his sentence by one year for prior prison commitments; “Three Strikes” scheme was alternative sentencing scheme rather than additional enhancement provision, “Three Strikes” scheme specifically provided for imposition of all enhancements, **constitutional** provision generally required use of enhancements without limitation, and fact of prior imprisonment was distinct factor properly supporting enhancement. [People v. Cressy \(App. 1 Dist. 1996\) 55 Cal.Rptr.2d 237, 47 Cal.App.4th 981](#), rehearing denied, review denied. [Sentencing And Punishment](#) 🔑 1345

Defendant was not entitled to exclusion of impeachment evidence of defendant’s prior felony convictions for sodomy, lewd conduct, and oral copulation where defendant did not testify; it was impossible to know precise nature of defendant’s “testimony,” any harm arising from denial of defendant’s motion to exclude was wholly speculative, and it was impossible to intelligently weigh prejudicial effect of any error in denying motion. [People v. Rowland \(1992\) 14 Cal.Rptr.2d 377, 4 Cal.4th 238, 841 P.2d 897](#), rehearing denied, certiorari denied [114 S.Ct. 138, 510 U.S. 846, 126 L.Ed.2d 101](#). [Witnesses](#) 🔑 359

Denial of motion to exclude prior conviction offered for impeachment is not reviewable on appeal if defendant fails to testify. [People v. Rowland \(1992\) 14 Cal.Rptr.2d 377, 4 Cal.4th 238, 841 P.2d 897](#), rehearing denied, certiorari denied [114 S.Ct. 138, 510 U.S. 846, 126 L.Ed.2d 101](#). [Criminal Law](#) 🔑 1036.10

Ruling that defendant’s prior conviction for assault with intent to commit murder was admissible for impeachment purposes was not abuse of discretion in capital murder prosecution. [People v. Sandoval \(1992\) 14 Cal.Rptr.2d 342, 4 Cal.4th 155, 841 P.2d 862](#), modified on denial

of rehearing, certiorari granted in part 114 S.Ct. 40, 509 U.S. 954, 125 L.Ed.2d 789, affirmed 114 S.Ct. 1239, 511 U.S. 1, 127 L.Ed.2d 583, rehearing denied 114 S.Ct. 1872, 511 U.S. 1101, 128 L.Ed.2d 492, grant of habeas corpus reversed in part 231 F.3d 1140, amended and superseded on denial of rehearing 241 F.3d 765, certiorari denied 122 S.Ct. 112, 151 L.Ed.2d 69, certiorari denied 122 S.Ct. 322, 151 L.Ed.2d 241. Witnesses 🔑 337(20)

“On bail” enhancement of sentence for crime during release on bail or personal recognizance is not “prior felony conviction enhancement” within meaning of **constitutional** provision mandating use of prior felony conviction without limitation for enhancement of sentence, and, thus, “on bail” enhancements are subject to statutory limitation of double the base term, even though “on bail” enhancements are not imposed unless defendant is ultimately convicted of primary and secondary offenses. *People v. McClanahan* (1992) 12 Cal.Rptr.2d 719, 3 Cal.4th 860, 838 P.2d 241. Sentencing And Punishment 🔑 98

Ruling that witness may not be impeached by prior conviction is reviewed for abuse of discretion. *People v. Clair* (1992) 7 Cal.Rptr.2d 564, 2 Cal.4th 629, 828 P.2d 705, rehearing denied, certiorari denied 113 S.Ct. 1006, 506 U.S. 1063, 122 L.Ed.2d 155. Criminal Law 🔑 1153.19

When witness subject to impeachment is not the defendant, factors to be considered in determining whether impeachment by prior felony conviction should be permitted prominently include whether the conviction reflects honesty and whether it is near in time. *People v. Clair* (1992) 7 Cal.Rptr.2d 564, 2 Cal.4th 629, 828 P.2d 705, rehearing denied, certiorari denied 113 S.Ct. 1006, 506 U.S. 1063, 122 L.Ed.2d 155. Witnesses 🔑 345(5)

Penal Code provision enhancing sentence for illegal taking or driving of vehicle, if perpetrator had previously been convicted of same offense, did not define new offense, and consequent prior conviction was not element of offense charged which was required under **Constitution** to be proven to trier of fact. *People v. Young* (App. 1 Dist. 1991) 285 Cal.Rptr. 583, 234 Cal.App.3d 111. Automobiles 🔑 359.1

Allowing prosecutor, over defendant’s objection and his attempt to stipulate to prior felony conviction in prosecution for petty theft with prior theft conviction, to present to jury evidence of prior conviction was reversible error; there was reasonable probability of different verdict had jury not been warned of defendant’s prior robbery conviction. *People v. Bouzas* (1991) 279 Cal.Rptr. 847, 53 Cal.3d 467, 807 P.2d 1076. Criminal Law 🔑 368.57; Criminal Law 🔑 1169.11

Defendant prosecuted for petty theft with prior theft-related conviction may stipulate to prior felony conviction allegation and thus preclude jury from learning of that conviction; prior conviction requirement of statute is sentencing matter for trial court and not element of offense to be determined by jury. *People v. Bouzas* (1991) 279 Cal.Rptr. 847, 53 Cal.3d 467, 807 P.2d 1076. Criminal Law 🔑 661; Larceny 🔑 68(1)

Broad mandate of Proposition 8 (“Victims’ Bill of Rights”) concerning use of “any prior felony convictions” for enhancement purposes, necessarily includes lesser category of enhancements based on prior felony convictions for which imprisonment was imposed. *People v. Prather* (1990) 267 Cal.Rptr. 605, 50 Cal.3d 428, 787 P.2d 1012, rehearing denied. Sentencing And Punishment 🔑 94

Proof that prior conviction, with respect to which defendant entered plea bargain, was a “serious felony,” for purpose of five-year enhancement for habitual offenders, is not limited to matters necessarily established by prior judgment of conviction; rather, trier of fact may look to entire record of conviction; overruling *People v. Alfaro*, 42 Cal.3d 627, 230 Cal.Rptr. 129, 724 P.2d 1154. *People v. Guerrero* (1988) 243 Cal.Rptr. 688, 44 Cal.3d 343, 748 P.2d 1150, rehearing denied. Sentencing And Punishment 🔑 1254; Sentencing And Punishment 🔑 1379(2)

Prosecution could not go behind record of prior conviction, for purposes of sentence enhancement for commission of prior serious felony, to prove some fact which was not necessary element of crime, and thus prior conviction for burglary could not be used to establish prior serious felony of burglary of a residence even though information filed in prior conviction alleged defendant entered residence; disapproving of *People v. Longinetti*, 164 Cal.App.3d 704, 210 Cal.Rptr. 729 (Cal.App. 2 Dist.); *People v. Crane*, 163 Cal.App. 667, 209 Cal.Rptr. 585 (Cal.App. 4 Dist.); *People v. Dean*, 161 Cal.App.3d 493, 207 Cal.Rptr. 688 (Cal.App. 4 Dist.). *People v. Alfaro* (1986) 230 Cal.Rptr. 129, 42 Cal.3d 627, 724 P.2d 1154. Sentencing And Punishment 🔑 1260

Rule that denial of a motion to exclude a prior conviction offered for impeachment was not reviewable on appeal where defendant failed to testify did not apply retroactively. *People v. Collins* (1986) 228 Cal.Rptr. 899, 42 Cal.3d 378, 722 P.2d 173, rehearing denied. Courts 🔑 100(1)

For cases pending on appeal at time of *Castro* decision that concern crimes committed on or

after date of this section, in cases in which defendant's motion to exclude his prior conviction was denied and he subsequently refused to testify, case should be remanded to allow trial court to exercise its discretion regarding admissibility of convictions and to determine prejudice of such evidence to defendant, by directing defendant to make offer of proof as to what his testimony would have been if he had taken stand, then ruling on excludability of prior convictions and determining whether prior convictions would have been prejudicial. [People v. Collins \(1986\) 228 Cal.Rptr. 899, 42 Cal.3d 378, 722 P.2d 173](#), rehearing denied. [Criminal Law Key 1181.5\(3.1\)](#)

For cases pending on appeal at time of *Castro* decision that concern crimes committed on or after date of this section, in order to determine whether error in failing to exclude defendant's prior felony convictions involving moral turpitude was prejudicial for a case in which defendant testified after denial of his motion to exclude his prior convictions, on remand trial court should rule error harmless if it finds that it would have admitted all convictions over which it had discretion, but if it finds that it would have excluded one or more prior convictions, it should weigh prejudice by determining whether it is reasonably probable that erroneous admission of such convictions affected the result. [People v. Collins \(1986\) 228 Cal.Rptr. 899, 42 Cal.3d 378, 722 P.2d 173](#), rehearing denied. [Criminal Law Key 1170.5\(1\)](#)

Disclosure of the nature of defendant's prior offenses for purpose of showing defendant's ex-felon status, which was an element of the offense of possession of concealable firearm by an ex-felon, after defendant had offered to stipulate to his ex-felon status, was not harmless error. [People v. Valentine \(1986\) 228 Cal.Rptr. 25, 42 Cal.3d 170, 720 P.2d 913](#), rehearing denied. [Criminal Law Key 661](#); [Criminal Law Key 1168\(2\)](#)

Under Proposition 8 [West's Ann.Cal. [Const.](#) Art. 1, [§ 28\(f\)](#)], defendant's honorable discharge from the Youth Authority, which resulted in expungement of his robbery conviction, did not preclude trial court from enhancing burglary sentence on basis of that prior robbery conviction. [People v. Jacob \(App. 2 Dist. 1985\) 220 Cal.Rptr. 520, 174 Cal.App.3d 1166](#). [Sentencing And Punishment Key 1341](#)

Passage of [constitutional](#) amendment known as Victim's Bill of Rights did not preclude application of reversible per se rule to situation in which defendant does not testify because of possibility of being impeached by prior convictions. [People v. Almaraz \(App. 2 Dist. 1985\) 214 Cal.Rptr. 105, 168 Cal.App.3d 262](#). [Criminal Law Key 1166.6](#)

Requirement [Const.](#) Art. 1, [§ 28](#) that "when a prior felony conviction is an element of any

felony offense, it shall be proven to the trier of fact in open court” does not apply to conviction of petty theft with a prior, since the required prior conviction may be either a misdemeanor or a felony. [People v. Ancira \(App. 1 Dist. 1985\) 210 Cal.Rptr. 527, 164 Cal.App.3d 378. Criminal Law 🔑 661](#)

“Wash out” provision of [Pen. C. § 667.5, subd. \(b\)](#) providing that no enhancement of sentence could occur based on prior “prison term” which was followed by five-year period free of prison custody and offenses resulting in conviction survived enactment of state **constitutional** provision that any “prior felony” could be used without limitation for enhancement of sentences, and thus, trial court erred in imposing three one-year enhancements against defendant whose three prior prison terms had been followed by five-year periods free of conviction. [People v. Maki \(App. 4 Dist. 1984\) 207 Cal.Rptr. 777, 161 Cal.App.3d 697. Sentencing And Punishment 🔑 1216](#)

Evidence, including probation report which set forth residential nature of defendant’s prior **California** burglary, and records of prior Alabama second-degree burglary conviction which contained certified report in which defendant admitted that he had burglarized residences was sufficient to establish that defendant had prior serious felony convictions for purposes of imposing enhanced sentence, despite contention that crime of second-degree burglary did not necessarily include entry of a residence in either state. [People v. Dean \(App. 4 Dist. 1984\) 207 Cal.Rptr. 688, 161 Cal.App.3d 493. Sentencing And Punishment 🔑 1381\(3\)](#)

Trial court erred in allowing proof of more than one prior felony conviction on charge of being an ex-felon in possession of a concealable firearm; “truth in evidence” **constitutional** provision did not provide for unlimited use of prior felony convictions to prove an element of the crime because such a construction would have created undue prejudice and amounted to overkill. [People v. Patino \(App. 5 Dist. 1984\) 206 Cal.Rptr. 762, 160 Cal.App.3d 986. Weapons 🔑 266](#)

Provision of this section which permits use of prior conviction of any person in criminal proceeding without limitation is not retroactive. [People v. Pugh \(App. 4 Dist. 1983\) 193 Cal.Rptr. 779, 145 Cal.App.3d 854. Constitutional Law 🔑 630](#)

---- Impeachment, prior convictions

The **California Constitution** authorizes the impeachment use of any felony conviction which necessarily involves moral turpitude, even if the immoral trait is one other than dishonesty; on

the other hand, the **Constitution**, as well as due process, forbids the use of convictions of felonies which do not necessarily involve moral turpitude. *People v. Gabriel* (App. 2 Dist. 2012) 141 Cal.Rptr.3d 784, 206 Cal.App.4th 450, review denied. **Constitutional Law** 🔑 4680; **Witnesses** 🔑 345(1)

Evidence of a prior conviction is admissible for impeachment in a criminal case, subject to the limitations of the statute permitting trial court to determine whether probative value of evidence is substantially outweighed by probability of undue prejudice, so long as the conviction involves moral turpitude as required by due process. *People v. Robinson* (App. 2 Dist. 2011) 131 Cal.Rptr.3d 177, 199 Cal.App.4th 707, rehearing denied, review denied. **Constitutional Law** 🔑 4669; **Witnesses** 🔑 345(1)

Notwithstanding the Truth-in-Evidence amendment to the state **constitution**, the facts and circumstances underlying prior offenses are inadmissible for impeachment purposes, unless the witness has first attempted to mislead the jury or minimize the facts of the prior offense. *People v. Ardoin* (App. 1 Dist. 2011) 130 Cal.Rptr.3d 1, 196 Cal.App.4th 102, review denied, habeas corpus denied 2013 WL 541579, reversed 653 Fed.Appx. 532, 2016 WL 3545680. **Witnesses** 🔑 345(1)

Trial court abused its discretion, in capital murder prosecution, in ruling that defendant's prior murder and rape convictions could be admitted to impeach him should he choose to testify, where conviction for murder was similar to charged crime and convictions for murder and rape did not strongly suggest defendant was prone to dishonesty. *People v. Gurule* (2002) 123 Cal.Rptr.2d 345, 28 Cal.4th 557, 51 P.3d 224, rehearing denied, certiorari denied 123 S.Ct. 1754, 538 U.S. 964, 155 L.Ed.2d 517. **Witnesses** 🔑 337(20); **Witnesses** 🔑 337(22); **Witnesses** 🔑 337(27)

Trial court's erroneous ruling that capital murder defendant's prior murder and rape convictions could be admitted to impeach him should he choose to testify was harmless, considering availability of another prior felony conviction for impeachment, strong evidence of defendant's guilt, and fact that his version of crime reached jury without his testimony; defendant could properly have been impeached with prior felony conviction for grand theft, defendant's accomplice gave testimony against defendant which was consistent with evidence already known to police, and interrogating officers recounted defendant's statements admitting responsibility for robbery but blaming accomplice for murder. *People v. Gurule* (2002) 123 Cal.Rptr.2d 345, 28 Cal.4th 557, 51 P.3d 224, rehearing denied, certiorari denied 123 S.Ct. 1754, 538 U.S. 964, 155 L.Ed.2d 517. **Criminal Law** 🔑 1170.5(1)

Evidence of capital murder defendant's prior felony conviction of grand theft from the person was admissible for impeachment purposes, despite defendant's contention that such evidence did not bear directly on his truthfulness, was highly prejudicial, and involved crime remote in time, where theft crime necessarily involved element of deceit, thus reflecting upon defendant's honesty and integrity. [People v. Gurule \(2002\) 123 Cal.Rptr.2d 345, 28 Cal.4th 557, 51 P.3d 224](#), rehearing denied, certiorari denied 123 S.Ct. 1754, 538 U.S. 964, 155 L.Ed.2d 517. [Witnesses 337\(16\)](#); [Witnesses 337\(25\)](#); [Witnesses 337\(28\)](#)

Admissibility for impeachment purposes of evidence of capital murder defendant's prior felony conviction of grand theft from the person was subject to determination under law applicable before amendment of state **constitution** to forbid exclusion of relevant evidence in criminal proceedings, where murder was committed approximately one month prior to passage of ballot measure amending **constitution**. [People v. Gurule \(2002\) 123 Cal.Rptr.2d 345, 28 Cal.4th 557, 51 P.3d 224](#), rehearing denied, certiorari denied 123 S.Ct. 1754, 538 U.S. 964, 155 L.Ed.2d 517. [Witnesses 337\(16\)](#)

Expungement limitation on admissibility of prior felony convictions for impeachment purposes has not been abrogated by "Truth-in-Evidence" amendment to the **California Constitution**, barring exclusion of relevant evidence from criminal proceeding, as fact of expungement prevented prior conviction from being relevant evidence on issue of credibility. [People v. Field \(App. 4 Dist. 1995\) 37 Cal.Rptr.2d 803, 31 Cal.App.4th 1778](#), rehearing denied, review denied. [Witnesses 345\(8\)](#)

Expungement limitation on admissibility of prior felony convictions for impeachment purposes was not abrogated by "Use of Prior Convictions" amendment to **California Constitution**, permitting use of any prior felony conviction without limitation for purposes of impeachment; once conviction was expunged, it was no longer viable conviction for impeachment purposes. [People v. Field \(App. 4 Dist. 1995\) 37 Cal.Rptr.2d 803, 31 Cal.App.4th 1778](#), rehearing denied, review denied. [Witnesses 345\(8\)](#)

Constitutional provision regarding admissibility of prior conviction evidence for impeachment or enhancement of sentence is inapplicable to civil cases. [Robbins v. Wong \(App. 6 Dist. 1994\) 32 Cal.Rptr.2d 337, 27 Cal.App.4th 261](#). [Witnesses 345\(1\)](#)

Decision to admit defendant's prior sex-related crimes for impeachment purposes was harmless in murder prosecution, although defendant choose not to testify because prior crimes were

similar to charged crime; defendant's guilt-phase testimony would have conformed to testimony actually given at penalty trial, where defendant raised inherently implausible alibi defense. *People v. Mickle* (1991) 284 Cal.Rptr. 511, 54 Cal.3d 140, 814 P.2d 290, rehearing denied, certiorari denied 112 S.Ct. 1679, 503 U.S. 988, 118 L.Ed.2d 396. Criminal Law 🔑 1170.5(1)

Defendant, by failing to testify at trial, did not waive right to challenge ruling making his prior convictions admissible for impeachment purposes, where case was tried before *Collins*, requiring defendant to testify in order to raise claim of improper impeachment on appeal. *People v. Mickle* (1991) 284 Cal.Rptr. 511, 54 Cal.3d 140, 814 P.2d 290, rehearing denied, certiorari denied 112 S.Ct. 1679, 503 U.S. 988, 118 L.Ed.2d 396. Courts 🔑 100(1)

Denial of a motion to exclude a prior conviction offered for impeachment is not reviewable on appeal if defendant fails to testify. *People v. Collins* (1986) 228 Cal.Rptr. 899, 42 Cal.3d 378, 722 P.2d 173, rehearing denied. Criminal Law 🔑 1134.50

Defendant's prior robbery conviction was admissible for impeachment purposes under § 28(f) of the State Constitution, governing use of prior convictions, but it was within discretionary power of trial court to grant or deny defendant's motion to bar impeachment with the prior robbery conviction should she elect to testify, in accordance with Evidence Code § 352, providing for exclusion of evidence where its probative value is substantially outweighed by its prejudicial effect. *People v. Brown* (App. 1 Dist. 1985) 215 Cal.Rptr. 494, 169 Cal.App.3d 800. Witnesses 🔑 337(19)

Due process requirement that inferences, not just presumptions, be based on rational connection between fact proved and fact inferred eliminates from impeachment use under constitutional provision those felony convictions which do not denote moral turpitude and thus are not relevant to a witness' veracity. *People v. Castro* (1985) 211 Cal.Rptr. 719, 38 Cal.3d 301, 696 P.2d 111. Constitutional Law 🔑 4680

Subsection (f) permitting any prior felony conviction to be used without limitation in any criminal proceeding for purposes of impeachment had purpose of restoring trial court discretion as visualized by the Evidence Code and rejecting rigid, black-letter rules of exclusion engrafted onto the Code by line of decisions; that is, drafters of initiative did not intend to abolish a trial court's power to exclude certain evidence, but intended merely to revert to rule that, subject to the trial court's discretion, priors are admissible to impeach. *People v. Castro* (1985) 211 Cal.Rptr. 719, 38 Cal.3d 301, 696 P.2d 111. Witnesses 🔑 345(1)

---- Juvenile offenses, prior convictions

Enactment of so called “victim’s bill of rights” [West’s Ann.Cal. **Const.** Art. 1, § 28(d, f)] on exclusion of relevant evidence from criminal proceedings did not permit use of defendant’s felony convictions while a minor for impeachment purposes when such use was precluded by honorable discharge from control of Youthful Offender Parole Board since prejudice attached to admission required its exclusion in court’s discretion. [People v. Jackson \(App. 1 Dist. 1986\) 222 Cal.Rptr. 470, 177 Cal.App.3d 708. Witnesses 🔑 345\(9\)](#)

Under **constitutional** provision allowing any prior felony conviction of any person in any criminal proceeding, whether adult or juvenile, to be used without limitation for sentence enhancement purposes, defendant’s sentence could be enhanced based on prior Wyoming felony conviction for offense committed when he was 15 years old, even though in **California** 15-year-old could not be tried as adult for felony. [People v. Blankenship \(App. 4 Dist. 1985\) 213 Cal.Rptr. 666, 167 Cal.App.3d 840, review denied. Sentencing And Punishment 🔑 101](#)

---- Remoteness, prior convictions

Prior theft convictions which a capital murder defendant had sustained 17 years before trial were not too remote for the prosecution to use them to impeach defendant, where defendant had been incarcerated during most of those 17 years. [People v. Carpenter \(1999\) 90 Cal.Rptr.2d 607, 21 Cal.4th 1016, 988 P.2d 531, rehearing denied, certiorari denied 121 S.Ct. 99, 531 U.S. 838, 148 L.Ed.2d 58. Witnesses 🔑 337\(28\)](#)

Court did not abuse its discretion in precluding defendant from cross-examining complaining witness about a voluntary manslaughter conviction which was over 20 years old in order to generally attack the witness’ credibility. [People v. Clair \(1992\) 7 Cal.Rptr.2d 564, 2 Cal.4th 629, 828 P.2d 705, rehearing denied, certiorari denied 113 S.Ct. 1006, 506 U.S. 1063, 122 L.Ed.2d 155. Witnesses 🔑 345\(2\)](#)

---- Moral turpitude, prior convictions

The test for determining whether a felony involves moral turpitude, as required for impeachment evidence of the felony to satisfy due process in a criminal case, is not whether one can imagine a set of circumstances under which a penal statute can be violated without moral fault. [People v.](#)

[Robinson \(App. 2 Dist. 2011\) 131 Cal.Rptr.3d 177, 199 Cal.App.4th 707](#), rehearing denied, review denied. **Constitutional Law** 🔑 4669; [Witnesses](#) 🔑 345(1)

Whether a particular offense involves moral turpitude, as required for impeachment evidence of the prior offense to satisfy due process in a criminal case, must be determined based on the statutory elements of the crime; the court may not consider the specific facts giving rise to the conviction but must conclude that each element of the crime, including the minimum statutory elements, involves moral turpitude. [People v. Robinson \(App. 2 Dist. 2011\) 131 Cal.Rptr.3d 177, 199 Cal.App.4th 707](#), rehearing denied, review denied. **Constitutional Law** 🔑 4669; [Witnesses](#) 🔑 345(1)

Moral turpitude, as required for impeachment evidence of a prior offense to satisfy due process in a criminal case, is not limited to dishonesty, but extends to crimes that involve other sorts of moral depravity and a readiness to do evil, such as child molestation and crimes of violence, torture, or brutality. [People v. Robinson \(App. 2 Dist. 2011\) 131 Cal.Rptr.3d 177, 199 Cal.App.4th 707](#), rehearing denied, review denied. **Constitutional Law** 🔑 4669; [Witnesses](#) 🔑 345(1)

Misconduct involving moral turpitude may suggest willingness to lie so that prior misconduct amounting only to misdemeanor is admissible to impeach witness in felony prosecution. [People v. Wheeler \(1992\) 14 Cal.Rptr.2d 418, 4 Cal.4th 284, 841 P.2d 938](#), rehearing denied. [Witnesses](#) 🔑 345(1)

Despite abrogation of felony-convictions-only rule in criminal cases and despite criminal courts' broad discretion to admit or exclude acts of dishonesty or moral turpitude relevant to impeachment, fact of conviction of misdemeanor remains inadmissible under traditional hearsay rules when offered to prove that witness committed misconduct bearing on his or her truthfulness. [People v. Wheeler \(1992\) 14 Cal.Rptr.2d 418, 4 Cal.4th 284, 841 P.2d 938](#), rehearing denied. [Witnesses](#) 🔑 345(1)

In prosecution for rape and murder with felony-murder-rape special circumstance, denial of defendant's motion in limine for exclusion of evidence concerning defendant's prior convictions for sodomy, lewd conduct, and oral copulation was not abuse of discretion; each of the offenses in question involved moral turpitude, and court barred impeachment evidence of other prior convictions for rape and kidnapping, on ground that those convictions bore too much resemblance to crimes charged. [People v. Rowland \(1992\) 14 Cal.Rptr.2d 377, 4 Cal.4th 238, 841 P.2d 897](#), rehearing denied, certiorari denied 114 S.Ct. 138, 510 U.S. 846, 126 L.Ed.2d 101.

Witnesses 359

Evidence that informant who testified against defendant had threatened witnesses to prevent them from testifying against him in legal proceeding was relevant in murder prosecution to show that informant had morally lax character from which jury could infer readiness to lie. *People v. Mickle* (1991) 284 Cal.Rptr. 511, 54 Cal.3d 140, 814 P.2d 290, rehearing denied, certiorari denied 112 S.Ct. 1679, 503 U.S. 988, 118 L.Ed.2d 396. *Witnesses*  344(2)

For cases pending on appeal at time of *Castro* decision that concern crimes committed on or after date of this section, in order to determine whether error in failing to exclude defendant's prior felony convictions involving moral turpitude was prejudicial in which defendant did not testify, appellate court should make preliminary determination of probable effect of prior convictions on outcome of trial, probable effect of impeachment on testimony and of testimony on verdict, and then determine whether it is reasonably probable that a result more favorable to defendant would have been reached in absence of error in admission. *People v. Collins* (1986) 228 Cal.Rptr. 899, 42 Cal.3d 378, 722 P.2d 173, rehearing denied. *Criminal Law*  1170.5(1)

Assault with a deadly weapon and robbery are crimes involving "moral turpitude" for purposes of West's Ann.Cal.Const. Art. 1, § 28(f), authorizing use of any felony conviction which necessarily involves moral turpitude to impeach or enhance sentence of criminal defendant, subject to trial court's discretion. *People v. Jackson* (App. 5 Dist. 1985) 220 Cal.Rptr. 39, 174 Cal.App.3d 260. *Sentencing And Punishment*  66; *Witnesses*  337(19); *Witnesses*  337(20)

Defendant's two prior felony burglary convictions involved crimes of "moral turpitude" and were therefore admissible under Victim's Bill of Rights, West's Ann.Cal.Const. Art. 1, § 28, for purposes of impeachment in prosecution for second-degree burglary, as one who enters a residence or building with intent therein to commit a felony demonstrates a "bad character," "moral depravity," and "general readiness to do evil." *People v. Knowlden* (App. 1 Dist. 1985) 217 Cal.Rptr. 758, 171 Cal.App.3d 1052. *Witnesses*  337(19)

Defendant should not have been impeached with prior conviction for simple possession of heroin, since that offense does not necessarily involve moral turpitude, but the trial court's error in stating that it had no discretion with respect thereto was not prejudicial, given strength of the People's case in prosecution for receiving stolen property, together with fact that well before the prosecution disclosed the prior for impeachment purposes, jury knew that defendant had a criminal past, defendant herself having volunteered fact that she had been incarcerated. *People*

v. Castro (1985) 211 Cal.Rptr. 719, 38 Cal.3d 301, 696 P.2d 111. Witnesses 🔑 337(21)

---- Misdemeanors, prior convictions

Witness' prior conviction for lewd conduct arising from solicitation of prostitute was inadmissible for impeachment purposes under rule governing impeachment by prior conviction; witness was subject to maximum imprisonment term of six months as result of conviction, and conviction did not involve dishonesty or false statement. *U.S. v. Colbert*, C.A.9 (Cal.)1997, 116 F.3d 395, certiorari denied 118 S.Ct. 320, 522 U.S. 920, 139 L.Ed.2d 247. Witnesses 🔑 345(2)

Constitutional amendment providing that, where prior felony conviction is element of felony offense, it shall be proven to trier of fact in open court does not apply to prior misdemeanors. *People v. Wade* (App. 5 Dist. 1996) 55 Cal.Rptr.2d 855, 48 Cal.App.4th 460. Criminal Law 🔑 661

Where defendant failed to protest on hearsay grounds when prosecution sought to impeach defense witness with witness' admission that she had suffered misdemeanor conviction for grand theft, defendant waived her hearsay objections and trial court's decision to admit theft conviction for impeachment was otherwise within its discretion. *People v. Wheeler* (1992) 14 Cal.Rptr.2d 418, 4 Cal.4th 284, 841 P.2d 938, rehearing denied. Criminal Law 🔑 698(1)

If past criminal conduct amounting to misdemeanor has logical bearing on veracity of witness in criminal proceeding, that conduct is admissible, subject to trial court discretion, as relevant evidence. *People v. Wheeler* (1992) 14 Cal.Rptr.2d 418, 4 Cal.4th 284, 841 P.2d 938, rehearing denied. Witnesses 🔑 345(1)

For purposes of determining admissibility of past misconduct of witness, there is some basis for inference that person who has committed crime which involves moral turpitude is more likely to be dishonest than witness about whom no such thing is known. *People v. Wheeler* (1992) 14 Cal.Rptr.2d 418, 4 Cal.4th 284, 841 P.2d 938, rehearing denied. Witnesses 🔑 345(1)

Trial court, in considering whether to admit evidence of commission of misdemeanor by witness, for impeachment purposes, should take into account factors traditionally deemed pertinent as well as whether admission of evidence might involve undue time, confusion or prejudice which outweighs probative value. *People v. Wheeler* (1992) 14 Cal.Rptr.2d 418, 4

[Cal.4th 284, 841 P.2d 938](#), rehearing denied. [Witnesses](#) 🔑 345(1)

---- Sentence enhancement, prior convictions

In determining whether out-of-state conviction would have been felony in [California](#) for purposes of statutory sentencing enhancement for commission of prior felony, trial court is not restricted to simply comparing operative foreign statute under which defendant was convicted to corresponding [California](#) offense to determine whether least adjudicated elements establish out-of-state conviction as felony in [California](#), but may look beyond statutory definition to entire record of out-of-state conviction. [In re Jones \(App. 5 Dist. 1994\) 33 Cal.Rptr.2d 469, 27 Cal.App.4th 1032](#), rehearing denied, review denied. [Sentencing And Punishment](#) 🔑 1379(2)

Sentence may not be enhanced for both prior conviction and for prison term imposed for that same conviction. [People v. Jones \(1993\) 22 Cal.Rptr.2d 753, 5 Cal.4th 1142, 857 P.2d 1163](#), habeas corpus denied 1994 WL 269778, vacated 42 F.3d 1400, on remand 1995 WL 55298. [Sentencing And Punishment](#) 🔑 1345

Trial court, in sentencing defendant who had previously been convicted of “serious felony,” within [Penal Code § 667](#) had discretion to strike that prior conviction and forego additional five-year serious felony enhancement in interest of justice; neither statute governing serious felony enhancement nor [Const. Art. 1, § 28](#), regarding use of prior felony convictions, could be construed to abrogate trial court’s well-established statutory authority to strike prior conviction. [People v. Fritz \(1985\) 219 Cal.Rptr. 460, 40 Cal.3d 227, 707 P.2d 833](#). [Sentencing And Punishment](#) 🔑 1369

---- Failure to object, prior convictions

Failure of murder defendant to object at trial to prosecutor’s use of his prior burglary convictions for purposes of impeachment precluded defendant from raising issue on appeal. [People v. Hines \(1997\) 64 Cal.Rptr.2d 594, 15 Cal.4th 997, 16 Cal.4th 825B, 938 P.2d 388](#), modified on denial of rehearing, certiorari denied 118 S.Ct. 855, 522 U.S. 1077, 139 L.Ed.2d 755, rehearing denied 118 S.Ct. 1345, 523 U.S. 1042, 140 L.Ed.2d 504. [Criminal Law](#) 🔑 1036.10

---- Credibility, prior convictions

Jury could consider witness' prior theft for purposes of determining credibility. *People v. Wheeler* (1992) 14 Cal.Rptr.2d 418, 4 Cal.4th 284, 841 P.2d 938, rehearing denied. *Witnesses* 345(2)

Defendant who sought at trial to use prior felony conviction of witness to generally attack the witness' credibility could not claim on appeal that he should have been permitted to use the conviction for a specific attack on the witness' credibility by showing that he had a motive to lie to avoid suspicion for the murder with which defendant was charged. *People v. Clair* (1992) 7 Cal.Rptr.2d 564, 2 Cal.4th 629, 828 P.2d 705, rehearing denied, certiorari denied 113 S.Ct. 1006, 506 U.S. 1063, 122 L.Ed.2d 155. *Criminal Law* 1036.10

Privileged communications

All attorney work product is not disclosable by addition of right to truth in evidence proposition to **Constitution**. *People v. Superior Court (Bauman & Rose)* (App. 2 Dist. 1995) 44 Cal.Rptr.2d 734, 37 Cal.App.4th 1757, rehearing denied, review denied. *Criminal Law* 627.5(6)

Psychotherapist-patient privilege is not required to yield to People's interest in successful criminal prosecutions and their state **constitutional** right to due process of law. *Menendez v. Superior Court* (1992) 11 Cal.Rptr.2d 92, 3 Cal.4th 435, 834 P.2d 786, modified on denial of rehearing. **Constitutional Law** 4692; *Privileged Communications And Confidentiality* 312

The "Truth-in-Evidence" provision of this section, which prohibited exclusion of relevant evidence in any criminal proceeding, but contained a savings clause exempting any existing statutory rule of evidence relating to privilege or hearsay, did not intend to preserve **California** decisions construing the state **constitutional** privilege against self-incrimination to afford greater protection than that of the federal privilege under *Miranda* and its progeny and thus judicial rule involving scope of privilege against self-incrimination did not survive as a specifically exempted statutory rule of evidence relating to privilege. *People v. Warner* (App. 2 Dist. 1988) 250 Cal.Rptr. 462, 203 Cal.App.3d 1122, review denied. *Criminal Law* 393(1)

This section preserving existing statutory rules of evidence relating to privilege required that minor's statements made at fitness hearing and statements made to her probation officer could not be used against her at subsequent trial of the offense. *Ramona R. v. Superior Court (People)*

(1985) 210 Cal.Rptr. 204, 37 Cal.3d 802, 693 P.2d 789.

Extrajudicial statements by codefendants

To the extent the **California** Supreme Court *Aranda* rule corresponds to the United States Supreme Court *Bruton* rule that introduction of an incriminating extrajudicial statement by a codefendant violates the defendant's right to cross-examination, it is **constitutionally** based and thus was not abrogated by the adoption of the Truth-in-Evidence state **constitutional** provision. *People v. Song* (App. 3 Dist. 2004) 22 Cal.Rptr.3d 118, 124 Cal.App.4th 973. Criminal Law 🔑 662.10

Aranda-Bruton error in admitting incriminating extrajudicial statement by a codefendant is not reversible per se; because it implicates a **constitutional** right, it is scrutinized under the harmless beyond a reasonable doubt standard of *Chapman*. *People v. Song* (App. 3 Dist. 2004) 22 Cal.Rptr.3d 118, 124 Cal.App.4th 973. Criminal Law 🔑 1168(2)

Prophylactic strictures of case law addressing extrajudicial statements of codefendant inculcating defendant at joint trial did not apply in juvenile jurisdictional hearing tried to court, so as to mandate severance, in light of state **constitutional** amendment in effect prior to trial, even though case so interpreting **constitutional** provision was decided after trial. *In re Jose M.* (App. 1 Dist. 1994) 27 Cal.Rptr.2d 55, 21 Cal.App.4th 1470. Infants 🔑 2572

Under "truth-in-evidence" provision of **California Constitution**, *Bruton* prohibition on admission into evidence of extrajudicial statements by one codefendant which incriminate another codefendant does not apply where defendants waive trial by jury and are tried by court. *People v. Walkkein* (App. 2 Dist. 1993) 18 Cal.Rptr.2d 383, 14 Cal.App.4th 1401, review denied. Criminal Law 🔑 255; Criminal Law 🔑 422(1)

Cure of error, admissibility of evidence

A limiting jury instruction does not cure *Aranda-Bruton* error in admitting directly incriminating extrajudicial statement by a codefendant, since it is not reasonably possible for a jury to follow an instruction to disregard evidence that incriminates the defendant; such a limiting instruction is not a substitute for defendant's **constitutional** right of cross-examination. *People v. Song* (App. 3 Dist. 2004) 22 Cal.Rptr.3d 118, 124 Cal.App.4th 973. Criminal Law 🔑 1168(2)

Witnesses

Trial court acted within its discretion under the **constitutional** right to confrontation and cross-examination, the Truth-in-Evidence amendment to the state **constitution**, and the statute permitting the trial court to determine whether probative value of evidence is substantially outweighed by probability of undue prejudice, in excluding evidence of the facts underlying a prosecution witness's prior offenses of robbery, assault with deadly weapon, and possession of drugs in jail, and evidence that in another incident witness attempted through her boyfriend and her attorney to have drugs delivered to her in jail, since the evidence was cumulative, where witness's admitted use of a firearm during the robbery and assault offenses adequately indicated her violent nature and moral indigence, and her character and testimony were thoroughly challenged with withering and successful attacks on many other levels. [People v. Ardoin \(App. 1 Dist. 2011\) 130 Cal.Rptr.3d 1, 196 Cal.App.4th 102](#), review denied, habeas corpus denied 2013 WL 541579, reversed 653 Fed.Appx. 532, 2016 WL 3545680. [Criminal Law 🔑 338\(7\)](#); [Criminal Law 🔑 662.7](#); [Criminal Law 🔑 675](#)

Preclusion of capital murder defendant's cross-examination of witness during penalty phase with respect to whether witness had ever been in therapy did not implicate state **constitutional** requirement that all relevant evidence be admitted, or defendant's federal **constitutional** rights to due process, fair trial, confrontation of witnesses, or reliable penalty determination, absent any indication that evidence thus excluded was relevant to witness' testimony concerning uncharged murder, where evidence that witness had received therapy would have added little to specific evidence, largely undisputed, that she had significant delusions. [People v. Anderson \(2001\) 106 Cal.Rptr.2d 575, 25 Cal.4th 543, 22 P.3d 347](#), rehearing denied, certiorari denied 122 S.Ct. 1082, 534 U.S. 1136, 151 L.Ed.2d 982.

Specific instances of witness' misconduct, including evidence that he used alias, obtained driver's license under false name, and had been convicted of other offenses in addition to felony child support violation he acknowledged in his testimony, were inadmissible under former statutes limiting impeachment of hearsay declarant and prohibiting admission of specific instances of misconduct to attack credibility. [People v. Ramos \(1997\) 64 Cal.Rptr.2d 892, 15 Cal.4th 1133, 938 P.2d 950](#), rehearing denied, certiorari denied 118 S.Ct. 1315, 523 U.S. 1027, 140 L.Ed.2d 478. [Criminal Law 🔑 338\(6\)](#)

Child victim

Father who was victim of statutory rape could be held liable for child support, even though he would have **constitutional** right to restitution, and even though mother would receive welfare in form of Aid to Families with Dependant Children (AFDC); victim discussed matter with mother, had sexual intercourse with her approximately five times over two-week period, and was not innocent, and state's interest in requiring minor parents to support children overrode state's competing interest in protecting juveniles from improvident acts. [County of San Luis Obispo v. Nathaniel J.](#) (App. 2 Dist. 1996) 57 Cal.Rptr.2d 843, 50 Cal.App.4th 842, as modified. [Child Support](#) 🔑 73; [Child Support](#) 🔑 77

Use of support person on stand as provided for by statute during testimony of rape victim, who was 16 at time of rape and 17 at time of trial, did not violate defendant's due process rights; although procedure could have had effect on jury observation of demeanor so as to infringe on confrontation clause, statute furthered compelling state interest of protecting child victim of sexual assault, and remedy was narrowly drawn in that requirement of individual showing of need by witness for support victim applied inasmuch as legislature was deemed to have known at time of enactment of statute of United States Supreme Court's requirement in *Coy* of showing of need. [People v. Adams](#) (App. 6 Dist. 1993) 23 Cal.Rptr.2d 512, 19 Cal.App.4th 412, as modified, rehearing denied, review denied. **Constitutional Law** 🔑 4675; [Witnesses](#) 🔑 228

Excludible evidence

Police officer's arrest and search of defendant were reasonable under Fourth Amendment, and thus the exclusionary rule did not apply even if the arrest was improper under state law, where defendant was sitting in a car with expired registration in a parking lot, defendant failed to provide a valid registration, and defendant identified himself by a false name. [People v. Redd](#) (2010) 108 Cal.Rptr.3d 192, 48 Cal.4th 691, 229 P.3d 101, certiorari denied 131 S.Ct. 328, 562 U.S. 932, 178 L.Ed.2d 214, habeas corpus dismissed 2017 WL 4410747, vacated and remanded 2018 WL 8244893. [Criminal Law](#) 🔑 392.17(2)

Defendant's rights under **California Constitution** were not violated in capital homicide prosecution, based on the denial of defendant's right to counsel during a live lineup; exclusionary rule that might have applied to defendant's case was abrogated by **constitutional** initiative adopted by voters, which abrogated judicial decisions requiring exclusion of relevant evidence from criminal proceedings, except as compelled by federal **Constitution** or other statutes not applicable. [People v. Cook](#) (2007) 58 Cal.Rptr.3d 340, 40 Cal.4th 1334, 157 P.3d 950, rehearing denied, certiorari denied 128 S.Ct. 443, 552 U.S. 976, 169 L.Ed.2d 309. [Criminal Law](#) 🔑 1726

Constitutional provision that relevant evidence shall not be excluded in any criminal proceeding did not make admissible in capital murder case testimony of defense psychologist about results of psychological testing of prosecution witness to impeach that witness; provision preserved trial court's discretion to exclude evidence whose probative value was substantially outweighed by its potential for prejudice, confusion, or undue consumption of time. *People v. Chatman* (2006) 42 Cal.Rptr.3d 621, 38 Cal.4th 344, 133 P.3d 534, rehearing denied, certiorari denied 127 S.Ct. 938, 549 U.S. 1120, 166 L.Ed.2d 718. Criminal Law 🔑 338(7); Witnesses 🔑 327

In penalty phase of capital prosecution, the trial court did not abuse its discretion by excluding marginally relevant testimony concerning the character of defendant's father, as perceived by mother's parents, due to its potential for prejudice and distraction. *People v. Holloway* (2004) 14 Cal.Rptr.3d 212, 33 Cal.4th 96, 91 P.3d 164, rehearing denied, certiorari denied 125 S.Ct. 1302, 543 U.S. 1156, 161 L.Ed.2d 122. Sentencing And Punishment 🔑 1760

In penalty phase of capital prosecution, trial court properly excluded testimony by jail guard as to whether he had an opinion as to defendant's adjustment in prison if he was to be sentenced to life imprisonment without possibility of parole, where defendant failed to show the guard had any experience or other source of expertise as to inmates' adjustment to and life in prison under life sentences. *People v. Holloway* (2004) 14 Cal.Rptr.3d 212, 33 Cal.4th 96, 91 P.3d 164, rehearing denied, certiorari denied 125 S.Ct. 1302, 543 U.S. 1156, 161 L.Ed.2d 122. Sentencing And Punishment 🔑 1768

Records and concurrent testimony regarding defendant's prior participation in county drinking driver program were admissible, in prosecution for gross vehicular manslaughter and driving under the influence (DUI), although prosecution failed to comply with applicable federal regulations on confidentiality of alcohol and drug abuse patient records; regulations did not require that records be excluded from evidence due to failure to comply with terms of regulations, evidence was not excludable under federal supremacy clause, and state **constitution** required it to be admitted. *People v. Barrett* (App. 3 Dist. 2003) 135 Cal.Rptr.2d 103, 109 Cal.App.4th 437, review denied. Criminal Law 🔑 374.26; Criminal Law 🔑 392.27; States 🔑 18.63

Truth-in-evidence provision of state **constitution** does not limit a court's power to exclude evidence as substantially more prejudicial than probative. *People v. Ayala* (2000) 99 Cal.Rptr.2d 532, 24 Cal.4th 243, 6 P.3d 193, modified on denial of rehearing, certiorari denied 121 S.Ct.

1978, 532 U.S. 1029, 149 L.Ed.2d 770, habeas corpus denied in part 2007 WL 2019538, certificate of appealability 2009 WL 1357416, habeas corpus denied in part 2007 WL 3146739, motion denied 2009 WL 385861. Criminal Law 🔑 338(7)

Trial court did not abuse its discretion or violate defendant's **constitutional** rights, in prosecution for capital murder and attempted murder, in excluding, as more prejudicial than probative, cross-examination of surviving victim concerning fact that victim had been armed while in possession of drugs 14 years prior to trial, where court allowed cross-examination as to victim's possession of drugs, and where mere fact that he had been armed while possessing drugs did not reveal any further character trait that would have been particularly telling for impeachment purposes. *People v. Ayala* (2000) 99 Cal.Rptr.2d 532, 24 Cal.4th 243, 6 P.3d 193, modified on denial of rehearing, certiorari denied 121 S.Ct. 1978, 532 U.S. 1029, 149 L.Ed.2d 770, habeas corpus denied in part 2007 WL 2019538, certificate of appealability 2009 WL 1357416, habeas corpus denied in part 2007 WL 3146739, motion denied 2009 WL 385861. Homicide 🔑 997

Any violation of Welfare and Institutions Code generally requiring officer to cite and release first-time curfew violator when officer arrested juvenile and transported him to station house did not require exclusion of drugs found on juvenile during full body search at station house conducted incident to arrest; officer's actions did not violate any federal **constitutional** provision and **California Constitution** precluded exclusion of evidence as remedy for violation of search and seizure provisions that did not violate federal **constitution**. *In re Charles C.* (App. 4 Dist. 1999) 90 Cal.Rptr.2d 430, 76 Cal.App.4th 420, modified on denial of rehearing, review denied. Infants 🔑 2621

Statements taken in violation of *Miranda* are to be excluded from evidence at trial in **California** only to the extent required by the United States **Constitution**. *People v. Peevy* (1998) 73 Cal.Rptr.2d 865, 17 Cal.4th 1184, 953 P.2d 1212, rehearing denied, certiorari denied 119 S.Ct. 595, 525 U.S. 1042, 142 L.Ed.2d 537. Criminal Law 🔑 411.3

Section of Vehicle Code rendering evidence derived from speed trap inadmissible was abrogated by "Right to Truth In Evidence" provision of **California Constitution**, precluding exclusion of relevant evidence in any criminal proceeding; abrogation of speed trap exclusion was not itself overridden by legislative amendment to related section which extended sunset date for local streets and roads exemption from speed trap exclusion. *People v. Sullivan* (App. 6 Dist. 1991) 285 Cal.Rptr. 553, 234 Cal.App.3d 56. Criminal Law 🔑 392.23

Coleman and its limited exclusionary remedy which declares that any testimony of probationer given at probation revocation hearing may not be used against him in subsequent trial on related criminal charges except for impeachment or rebuttal, has survived adoption of Proposition 8, which includes provision that “relevant evidence shall not be excluded at any criminal proceeding.” *People v. Weaver* (1985) 217 Cal.Rptr. 245, 39 Cal.3d 654, 703 P.2d 1139. Criminal Law 🔑 539(2)

District court acted within its discretion in granting motion in limine to exclude prior evidence of incident involving correctional officer, in prison inmate’s pro se action alleging officer acted with excessive force; prior incident was irrelevant to inmate’s current claims. *Nwandu v. Bach*, C.A.9 (Cal.)2013, 513 Fed.Appx. 642, 2013 WL 951325, Unreported. Evidence 🔑 129(1)

District court acted within its discretion in granting motion in limine to exclude prison inmate’s medical records in inmate’s pro se action alleging correctional officers acted with excessive force; inmate could not authenticate his records, establish their relevance, or overcome hearsay objections to allow their admission. *Nwandu v. Bach*, C.A.9 (Cal.)2013, 513 Fed.Appx. 642, 2013 WL 951325, Unreported. Evidence 🔑 318(3); Evidence 🔑 351; Evidence 🔑 370(1)

Sufficiency of allegations

Minor victim of sexual assault by county corrections officer adequately identified basis for county liability for officer’s repeated access of minor’s investigative file while his colleagues were attempting to identify perpetrator of minor’s sexual assault, as required to state negligence and invasion of privacy claims under California law against county; minor referred to California Constitution, which established right of crime victims to prevent disclosure of confidential information, and California’s Government Tort Liability Act allowed for public entity liability predication upon the tortious wrongdoing of its employee when committed within the scope of employment. *Doe v. County of San Diego*, S.D.Cal.2020, 445 F.Supp.3d 957. Constitutional Law 🔑 1230; Counties 🔑 146; Torts 🔑 334

Minor victim of sexual assault by county corrections officer sufficiently alleged officer was acting within scope of employment when he repeatedly accessed minor’s investigative file while his colleagues were attempting to identify perpetrator of minor’s sexual assault, as required to state negligence and invasion of privacy claims under California law against county, where claims were based entirely on officer’s access to minor’s information and his possession of it. *Doe v. County of San Diego*, S.D.Cal.2020, 445 F.Supp.3d 957. Constitutional Law 🔑 1230; Counties 🔑 146; Torts 🔑 334

Minor victim of sexual assault by county corrections officer plausibly alleged § 1983 claim against county alleging officer repeatedly accessed minor's investigative file while his colleagues were attempting to identify perpetrator of minor's sexual assault in violation of minor's **constitutional** right to informational privacy, where minor alleged that by allowing officer to access minor's address and name of her school, and to download photos of her, the county placed minor in a known and obvious danger through deliberate indifference. *Doe v. County of San Diego*, S.D.Cal.2020, 445 F.Supp.3d 957. **Constitutional Law** 🔑 1228; **Constitutional Law** 🔑 1236; Counties 🔑 146

Presumptions and burden of proof

A defendant who challenges a search warrant based upon an affidavit containing omissions bears the burden of showing that the omissions were material to the determination of probable cause, where materiality is evaluated by looking to the totality of the circumstances in determining whether the warrant affidavit establishes good cause for a search. *People v. Eubanks* (2011) 134 Cal.Rptr.3d 795, 53 **Cal.**4th 110, 266 P.3d 301. Searches and Seizures 🔑 112; Searches and Seizures 🔑 193

Federal and State **Constitutions** require the prosecution to establish, by a preponderance of the evidence, that a defendant's confession was voluntary. *People v. Boyette* (2002) 127 Cal.Rptr.2d 544, 29 **Cal.**4th 381, 58 P.3d 391, rehearing denied, as modified. **Criminal Law** 🔑 413.43

State was required to show that defendant's confession was voluntary beyond a reasonable doubt, where defendant's crimes occurred before enactment of "Truth in Evidence" **constitutional** provision requiring that state prove voluntariness by a preponderance of the evidence. *People v. Weaver* (2001) 111 Cal.Rptr.2d 2, 26 **Cal.**4th 876, 29 P.3d 103, certiorari denied 122 S.Ct. 1920, 535 U.S. 1058, 152 L.Ed.2d 828. **Criminal Law** 🔑 413.43

Preponderance of the evidence standard applied in determining voluntariness of defendant's waiver of his *Miranda* rights and to subsequent confession, where offenses charged occurred after addition of **constitutional** provision precluding exclusion of evidence in criminal case if not compelled by Federal **Constitution**. *People v. Kelly* (1990) 275 Cal.Rptr. 160, 51 **Cal.**3d 931, 800 P.2d 516, rehearing denied, certiorari denied 112 S.Ct. 134, 502 U.S. 842, 116 L.Ed.2d 101, rehearing denied 112 S.Ct. 624, 502 U.S. 1000, 116 L.Ed.2d 646. **Criminal Law** 🔑 413.43

Use immunities

The **California Constitution** requires that a person proceeding simultaneously in the criminal courts for child abuse and the juvenile court regarding a dependency of the abused minor should not only be granted use immunity for his or her testimony at dependency proceedings that constitutes an admission to the acts at issue in the criminal case against him or her but also for such statements made during court-ordered therapy. *In re D.C.* (App. 4 Dist. 2015) 196 Cal.Rptr.3d 283, 243 Cal.App.4th 41. Criminal Law 🔑 42.4; Infants 🔑 2104

Provisions of father's reunification case plan requiring him to admit sexually abusing child, including list of triggers and letters of apology, did not violate his **constitutional** rights against compelled self-incrimination, as father automatically received use immunity for statements made in court-ordered therapy. *In re D.C.* (App. 4 Dist. 2015) 196 Cal.Rptr.3d 283, 243 Cal.App.4th 41. Criminal Law 🔑 393(1); Infants 🔑 2034

Use immunity rules may be considered "statutory" rules of evidence relating to privilege and therefore are excluded from operation of **constitutional** provision regarding immunities, West's Ann.Cal. Const. Art. 1, § 28(d). *People v. Dennis* (App. 3 Dist. 1986) 223 Cal.Rptr. 236, 177 Cal.App.3d 863, review denied. Criminal Law 🔑 42.3(3)

Restitution--In general

Denial of indigent petitioner's petitions for expungement of welfare fraud and perjury convictions on ground that petitioner had not fulfilled direct victim restitution obligations did not violate petitioner's equal protection rights, where petitioner did not identify any fundamental right that, combined with her financial condition, would subject denial of expungement to strict scrutiny analysis, and withholding expungement until payment of restitution was rationally related to purposes behind direct victim restitution, including upholding victims' **constitutional** right to full restitution. *People v. Allen* (App. 4 Dist. 2019) 254 Cal.Rptr.3d 134, review denied. Criminal Law 🔑 1130(5)

Victim's right to restitution is a **constitutional** one; it cannot be bargained away or limited, nor can prosecution waive victim's right to receive restitution. *People v. Gross* (App. 3 Dist. 2015) 190 Cal.Rptr.3d 472, 238 Cal.App.4th 1313. Sentencing and Punishment 🔑 2121; Sentencing

and Punishment 2138

Defendant who entered valid *Harvey* waiver as condition of guilty plea to being a felon in possession of a firearm and dismissal of charges of assault with a firearm and false imprisonment by personal use of a firearm did not have any due process right to present evidence at restitution hearing disputing any liability for dismissed charges which posited shooting victim as the victim of defendant's criminal acts. *People v. Weatherton* (App. 1 Dist. 2015) 189 Cal.Rptr.3d 611, 238 Cal.App.4th 676. **Constitutional** Law  4737; Sentencing and Punishment  2138

Under the Victims' Bill of Rights (Marsy's Law), a deceased crime victim's personal representative may receive restitution owed to the victim. *People v. Runyan* (2012) 143 Cal.Rptr.3d 674, 54 Cal.4th 849, 279 P.3d 1143. Sentencing and Punishment  2125

Order of victim restitution against minor who admitted that he unlawfully discharged a firearm in a grossly negligent manner that could result in injury and death to a person was limited to amount of medical expenses actually paid to victim's medical provider by Medi-Cal, rather than greater amount charged by provider. *In re Anthony M.* (App. 3 Dist. 2007) 67 Cal.Rptr.3d 734, 156 Cal.App.4th 1010, review denied. Infants  2687

California Constitution requires that every crime victim who suffers a loss shall have the right to restitution from those convicted of the crime giving rise to that loss. *People v. Lai* (App. 2 Dist. 2006) 42 Cal.Rptr.3d 444, 138 Cal.App.4th 1227, review denied, appeal after new sentencing hearing 2008 WL 2009758, unpublished. Sentencing And Punishment  2100

Restitution to crime victim is **constitutionally** and statutorily mandated. *People v. Keichler* (App. 3 Dist. 2005) 29 Cal.Rptr.3d 120, 129 Cal.App.4th 1039. Sentencing And Punishment  2102

Legal fees and costs incurred by embezzlement victim in employing private attorney to oppose defense discovery in defendant's criminal case were not proper subject of restitution order; expense resulted from defense of criminal charges rather than from defendant's criminal conduct, and including expense as victim restitution would conflict with defendant's **constitutional** right to effective assistance of counsel. *People v. Lyon* (App. 1 Dist. 1996) 57 Cal.Rptr.2d 415, 49 Cal.App.4th 1521. Sentencing And Punishment  2143; Sentencing And Punishment  2153

Term “loss” in restitution statute must be construed broadly and liberally to uphold voters’ intent in **constitutional** provision calling for restitution to persons who suffer losses as result of criminal activity; “loss” refers to a victim’s injuries and require restitution for all expenses necessary to treat those injuries, regardless of when expenses arise. [People v. Phelps \(App. 4 Dist. 1996\) 48 Cal.Rptr.2d 855, 41 Cal.App.4th 946, review denied. Sentencing And Punishment 🔑 2141](#)

Statutes implementing **constitutional** right of crime victim to obtain restitution from person convicted of committing the crime should be interpreted in light of the **constitutional** mandate to provide restitution. [People v. Whisenand \(App. 4 Dist. 1995\) 44 Cal.Rptr.2d 501, 37 Cal.App.4th 1383, rehearing denied, review denied, certiorari denied 116 S.Ct. 945, 516 U.S. 1128, 133 L.Ed.2d 870. Sentencing And Punishment 🔑 2109](#)

Statute implementing **constitutional** right of crime victim to obtain restitution from person committing the crime authorizes trial courts to order criminals to compensate all crime victims, whether their loss results from physical injury or from theft or destruction of their property; word “victim” in statute is not limited to person who has suffered physical injury. [People v. Broussard \(1993\) 22 Cal.Rptr.2d 278, 5 Cal.4th 1067, 856 P.2d 1134. Sentencing And Punishment 🔑 2121](#)

Because **Constitution** speaks of “comprehensive provisions in law,” “restitution * * * for financial losses,” and “[r]estitution * * * from the convicted persons in every case,” mandate is to interpret implementing statutes broadly and liberally in order to serve unequivocal intention of state that all people who suffer losses as result of criminal activity shall have right to restitution. [People v. Beck \(App. 6 Dist. 1993\) 21 Cal.Rptr.2d 250, 17 Cal.App.4th 209, review denied. Sentencing And Punishment 🔑 2109](#)

Subdivision (b) of this section providing for direct payment of restitution to victim of crime is not self-executing and requires action by legislature. [People v. Ryan \(App. 1 Dist. 1988\) 249 Cal.Rptr. 750, 203 Cal.App.3d 189. Constitutional Law 🔑 642](#)

Constitutional provision establishing victim’s right to restitution from persons convicted of crimes for losses they suffer, West’s Ann.Cal. **Const.** Art. 1, § 28(b), is not self-executing, as it directs Legislature to adopt implementing legislation and does not so completely define nature of such right or means of enforcing such right as to render directive to Legislature insignificant.

[People v. Vega-Hernandez \(App. 1 Dist. 1986\) 225 Cal.Rptr. 209, 179 Cal.App.3d 1084.](#)
Constitutional Law 🔑 642

West's Ann.Cal.Const. Art. 1, § 28(b) governing restitution to victims of criminal activity, does not change rule that order for restitution must relate to crime of which defendant was actually convicted. [People v. Corners \(App. 3 Dist. 1985\) 221 Cal.Rptr. 387, 176 Cal.App.3d 139.](#)
Sentencing And Punishment 🔑 2143

Requiring petitioner to pay restitution for installation of security system in assault victim's home and pay for replacement of broken windows in victim's home, although he was not charged or convicted of vandalism, was not contrary to, and did not involve unreasonable application of, clearly established Supreme Court precedent, and it was not based on unreasonable determination of facts, so that federal habeas relief was not warranted; **California** Court of Appeal found that restitution order was authorized under state law and was reasonable. [O'Neal v. Kramer, N.D.Cal.2003, 2003 WL 21838241, Unreported.](#) **Habeas Corpus** 🔑 503.1

---- Economic loss, restitution

Under **California** law, insurance company, who succeeded on appeal in reversing judgment that had resulted in transfer of ownership of insurance company to opposing party holding corporation, in execution of the lower court judgment in action for breach of contract and fraud, was entitled, as part of restitution, to interest on profits earned while holding corporation held insurance company. [PSM Holding Corp. v. National Farm Financial Corp., C.D.Cal.2010, 743 F.Supp.2d 1136, affirmed in part 884 F.3d 812.](#) **Federal Courts** 🔑 3798

Under **California** law, fact that insurance company, whose ownership was transferred to opposing party holding corporation in execution of lower court judgment in breach of contract and fraud action, may have preserved its value by filing for bankruptcy post-judgment, did not entitle it to award of costs incurred in connection with the bankruptcy after it succeeded on appeal in reversing the lower court judgment; upon reversal, insurance company was entitled to specific restitution returning ownership to it, and, therefore, any benefit derived from the bankruptcy would be returned to it in the form of shares of its stock, and any award of its costs would constitute double restitution. [PSM Holding Corp. v. National Farm Financial Corp., C.D.Cal.2010, 743 F.Supp.2d 1136, affirmed in part 884 F.3d 812.](#) **Federal Courts** 🔑 3798

Under **California** law, insurance company, who succeeded on appeal in reversing judgment that

had resulted in transfer of ownership of insurance company to opposing party holding corporation, in execution of the lower court judgment in action for breach of contract and fraud, was entitled to specific restitution of the return of its company shares, and an accounting of profits earned while holding corporation held insurance company; although insurance company had been integrated into holding company and holding company had invested in changes and improvements to insurance company's operations, holding company knew when it made improvements, that an appeal was pending and that insurance company contested its ownership, and that if insurance company prevailed, insurance company would be entitled to restitution and an accounting of profits. [PSM Holding Corp. v. National Farm Financial Corp.](#), C.D.Cal.2010, 743 F.Supp.2d 1136, affirmed in part 884 F.3d 812. [Federal Courts](#) 🔑 3798

“Economic losses” personally incurred by a victim of crime as a result of the defendant’s criminal conduct, recoverable as direct victim restitution, cannot continue to accrue after the crime victim has died. [People v. Runyan](#) (2012) 143 Cal.Rptr.3d 674, 54 Cal.4th 849, 279 P.3d 1143. [Sentencing and Punishment](#) 🔑 2148

Term “all determined economic losses” in statute governing restitution in cases where a minor was adjudicated a ward of the court included cost of mental health services for victim of juvenile’s lewd act, even though such costs were not specifically enumerated in list of possible losses eligible for restitution in juvenile restitution statute, as they were listed in parallel adult restitution statute, and, thus, victim was entitled to restitution; juvenile restitution statute’s list was not exhaustive, and plain language of statute and state **constitution** required full restitution to victim for all economic losses. [In re M.W.](#) (App. 5 Dist. 2008) 86 Cal.Rptr.3d 545, 169 Cal.App.4th 1. [Infants](#) 🔑 2687

Payments to crime victim by victim’s insurance carrier for victim’s medical expenses could not be offset against defendant’s **constitutional** and statutory victim restitution obligation; statute required that restitution reimburse victim for every determined economic loss incurred as the result of defendant’s criminal conduct, which included medical expenses, and restitution order was intended to serve both deterrent and punitive goals. [People v. Hamilton](#) (App. 2 Dist. 2003) 8 Cal.Rptr.3d 190, 114 Cal.App.4th 932, review denied. [Sentencing And Punishment](#) 🔑 2177

---- Purpose, restitution

Allowing courts to withhold discretionary expungement as an inducement to ensuring payment of restitution bears a rational connection, for purposes of due process, to the primary purpose of victim restitution, namely, fulfilling the voter-enacted **constitutional** provision requiring that

defendants make victims whole; it also furthers the secondary purposes of victim restitution, that is, requiring the defendant to return his ill-gotten gains and helping him appreciate the harm done to the victim. [People v. Allen \(App. 4 Dist. 2019\) 254 Cal.Rptr.3d 134](#), review denied. [Constitutional Law 🔑 3227](#); [Constitutional Law 🔑 3826](#); [Criminal Law 🔑 1226\(3.1\)](#); [Sentencing And Punishment 🔑 1853](#); [Sentencing And Punishment 🔑 2213](#)

The primary purpose of a victim restitution hearing is to allow the People to prosecute an expedited hearing before a trial court to provide a victim with a civil remedy for economic losses suffered; this objective is not satisfied by substituting a victim's statutory and [constitutional](#) right to a restitution hearing with a civil lawsuit and its attendant costs, discovery, and delays. [People v. Smalling, 2019, 247 Cal.Rptr.3d 921](#). [Sentencing and Punishment 🔑 2191](#)

In addition to compensating victims, the [constitutional](#) victim restitution mandate serves rehabilitative and deterrent purposes. [People v. Hume \(App. 1 Dist. 2011\) 126 Cal.Rptr.3d 824, 196 Cal.App.4th 990](#), review denied. [Sentencing and Punishment 🔑 2101](#)

---- Waiver, restitution

The right to restitution, which is [constitutional](#), cannot be waived by the prosecution. [People v. Brooks \(App. 1 Dist. 2018\) 233 Cal.Rptr.3d 606](#), review granted [237 Cal.Rptr.3d 484, 425 P.3d 52](#), review dismissed, cause remanded [240 Cal.Rptr.3d 703, 430 P.3d 1179](#). [Sentencing and Punishment 🔑 2121](#); [Sentencing and Punishment 🔑 2138](#)

---- Direct victim, restitution

Victim was provided due process with respect to her right under the Victims' Bill of Rights Act of 2008, or Marsy's Law, to be heard upon defendant's appeal of restitution order, although victim was not entitled to allege new facts or raise new issues, where victim, who did not attempt to appeal restitution order, provided a substantial amount of documentation in support of her restitution claim and made a detailed oral presentation at restitution hearing, and victim filed statement on appeal which provided her the opportunity to provide her perspective on the issues on appeal, as determined by defendant, including by pointing out facts in the record or legal authorities or arguments that may have been overlooked. [People v. Hannon \(App. 1 Dist. 2016\) 209 Cal.Rptr.3d 408](#). [Constitutional Law 🔑 4673](#); [Constitutional Law 🔑 4708](#)

Orders for direct restitution in favor of victims of second degree burglary and possession of a destructive device were not a penalty or disability from which defendant was statutorily released when charges against him were dismissed following defendant's successful completion of **California** Rehabilitation Center (CRC) commitment; victims' continuing right to restitution existed following disposition of criminal proceeding under statutory scheme governing victim restitution, and direct victim restitution was imposed to protect public safety and welfare, not to punish defendant. *People v. Gross* (App. 3 Dist. 2015) 190 Cal.Rptr.3d 472, 238 Cal.App.4th 1313. Sentencing and Punishment 🔑 2200

Amounts awarded to homicide victim's estate for diminution in estate asset value, and for burial, probate, and estate administration costs, were received in the estate's capacity as a mere indirect victim of the defendant's crime, and thus the amounts did not qualify as mandatory victim restitution. *People v. Runyan* (2012) 143 Cal.Rptr.3d 674, 54 Cal.4th 849, 279 P.3d 1143. Sentencing and Punishment 🔑 2148; Sentencing and Punishment 🔑 2152

A decedent's estate or, more precisely, its executor or administrator as the decedent's personal representative, is a proper recipient, on the decedent's behalf, of restitution owed to the decedent, as an actual and immediate crime victim, for economic losses the decedent incurred as a result of the defendant's offenses against the decedent. *People v. Runyan* (2012) 143 Cal.Rptr.3d 674, 54 Cal.4th 849, 279 P.3d 1143. Sentencing and Punishment 🔑 2125

Indirect victims such as reimbursing insurers are not included in the definition of "direct victim" under the prior version of the victim restitution **constitutional** provision. *People v. Brunette* (App. 6 Dist. 2011) 124 Cal.Rptr.3d 521, 194 Cal.App.4th 268. Sentencing And Punishment 🔑 2121; Sentencing And Punishment 🔑 2123

Statute extending the right to victim restitution to business and governmental entities only if they are "direct victims" satisfies state **constitutional** mandate to implement state **constitutional** guarantee of a right to restitution to "all persons who suffer losses as a result of criminal activity." *People v. Slattery* (App. 3 Dist. 2008) 84 Cal.Rptr.3d 672, 167 Cal.App.4th 1091. Sentencing And Punishment 🔑 2107

Wife of decedent who died when struck by defendant, who was convicted of driving under the influence resulting in death of another individual, did not "step into the shoes" of decedent to recover his future losses as direct restitution to victim, and instead restitution to her was limited to economic losses she actually suffered. *People v. Giordano* (2007) 68 Cal.Rptr.3d 51, 42

Cal.4th 644, 170 P.3d 623. Sentencing And Punishment 🔑 2148

When calculating direct victim restitution for defendant convicted of driving under the influence resulting in death of another individual, court was authorized to require defendant to compensate surviving wife of decedent for lost economic support, even though such loss was not enumerated in restitution statute; list of losses in statute was not exhaustive, lost support was akin to categories of losses listed, and wife personally suffered this loss. [People v. Giordano \(2007\) 68 Cal.Rptr.3d 51, 42 Cal.4th 644, 170 P.3d 623. Sentencing And Punishment](#) 🔑 2148

Proposition 8, requiring restitution whenever a crime victim suffers a loss, absent compelling and extraordinary reasons, does not give persons other than the real, actual, immediate, and direct victims of crime a **constitutional** right to restitution from the offenders. [People v. Birkett \(1999\) 87 Cal.Rptr.2d 205, 21 Cal.4th 226, 980 P.2d 912. Sentencing And Punishment](#) 🔑 2120

Upon probation revocation, court may modify judgment to add order of direct victim restitution to sentence where victim restitution was not part of initial suspended sentence, but rather was condition of probation, in light of **constitutionally**-based policy of imposing victim restitution in every case. [People v. Young \(App. 1 Dist. 1995\) 45 Cal.Rptr.2d 177, 38 Cal.App.4th 560, review denied. Sentencing And Punishment](#) 🔑 2040

---- Discretion of court, restitution

In order to meet the **constitutional** directive for victim restitution, the trial court is required to follow the guidelines provided by statute governing restitution fines in determining whether the victim is entitled to restitution even if the offense committed is an infraction. [People v. Smalling, 2019, 247 Cal.Rptr.3d 921. Sentencing and Punishment](#) 🔑 2100

Under the victim restitution statute, the Legislature left no discretion or authority with the trial court or the prosecution to bargain away the victim's **constitutional** and statutory right to restitution; as such, it cannot properly be the subject of plea negotiations. [People v. Brown \(App. 1 Dist. 2007\) 54 Cal.Rptr.3d 887, 147 Cal.App.4th 1213, rehearing denied. Criminal Law](#) 🔑 273.1(2); [Sentencing And Punishment](#) 🔑 2138

In fashioning mandatory restitution order for adult probationer under former statute, trial court

did not have discretion to allocate award between victim and insurer that had partially reimbursed victim's losses under terms of policy; trial court was required to award full amount of losses to victim. *People v. Sexton*, 33 Cal.App.4th 64, 39 Cal.Rptr.2d 242. *People v. Birkett* (1999) 87 Cal.Rptr.2d 205, 21 Cal.4th 226, 980 P.2d 912. Sentencing And Punishment 🔑 1916

Restitution for victims of crimes is mandated by both State **Constitution** and statute, and only discretion retained by trial court is in fixing amount of award. *People v. Rowland* (App. 1 Dist. 1997) 60 Cal.Rptr.2d 351, 51 Cal.App.4th 1745, rehearing denied, review denied, habeas corpus dismissed 1998 WL 196462. Sentencing And Punishment 🔑 2100; Sentencing And Punishment 🔑 2161

Nothing in initiative granting victims of crime **constitutional** right to restitution from wrongdoers, or implementing legislation, purports to limit trial court's discretion to order restitution as condition of probation where victim's loss was not the result of crime underlying defendant's conviction, but where the trial court finds such restitution will serve one of the purposes set out in probation statute. *People v. Carbajal* (1995) 43 Cal.Rptr.2d 681, 10 Cal.4th 1114, 899 P.2d 67. Sentencing And Punishment 🔑 1973(2)

---- Jurisdiction, restitution

Under **California** law, the right to recover what one has lost by the enforcement by a judgment subsequently reversed is well established; while the subject of the controversy and the parties are before the court, it has jurisdiction to enforce restitution and so far as possible to correct what has been wrongfully done. *PSM Holding Corp. v. National Farm Financial Corp.*, C.D.Cal.2010, 743 F.Supp.2d 1136, affirmed in part 884 F.3d 812. Federal Courts 🔑 3798

Juvenile court had authority to enter abstract judgment restating restitution imposed on juvenile ward of the court for receiving stolen property upon termination of juvenile's wardship, despite contention that court was powerless to enter judgment after juvenile turned 21; entry of abstract judgment, which was based on prior, valid restitutionary order, was nothing more than a memorialization of original order, juvenile court had **constitutional** and statutory duty to order juvenile to make restitution to victim of his offense, and juvenile's obligation to pay restitution extended beyond period of wardship and survived termination of juvenile court jurisdiction. *In re Keith C.* (App. 1 Dist. 2015) 186 Cal.Rptr.3d 339, 236 Cal.App.4th 151. Infants 🔑 2771

--- Settlement payments, restitution

Payments to crime victim by insurer of defendant's mother to settle victim's civil action against mother and defendant could not be offset against defendant's **constitutional** and statutory victim restitution obligation; payments by insurer of defendant's mother were from a source completely distinct and independent from defendant, such payments were on mother's behalf and not directly on behalf of defendant, and defendant was not entitled to benefit from fortuitous circumstances that his mother procured insurance policy that covered his acts. [People v. Hamilton \(App. 2 Dist. 2003\) 8 Cal.Rptr.3d 190, 114 Cal.App.4th 932](#), review denied. [Sentencing And Punishment 🔑 2177](#)

--- Victims other than humans, restitution

The **constitutional** provision and statute governing direct victim restitution apply to persons, not dogs. [People v. Brunette \(App. 6 Dist. 2011\) 124 Cal.Rptr.3d 521, 194 Cal.App.4th 268](#). [Sentencing And Punishment 🔑 2121](#)

Probation conditions

Juvenile probation condition for the offense of possessing a knife on school grounds, prohibiting the minor from knowingly coming "within 25 feet of a Courthouse when the minor knows there are criminal or juvenile proceedings occurring" involving "anyone the minor knows to be a gang member or where the minor knows a witness or victim of gang-related activity will be present, unless the minor is a party in the action or subpoenaed as a witness or needs access to the area for a legitimate purpose or has prior permission from his Probation Officer," was unconstitutionally overbroad in infringing on minor's **constitutional** rights including his First Amendment right to attend court proceedings and his right to attend court proceedings as a victim, since the terms "needs" and "legitimate" were too vague to effectively limit the restriction, absent evidence that minor had loitered on courthouse property, that he had threatened or would threaten witnesses, or that his presence in a courthouse would incite violence. [In re E.O. \(App. 6 Dist. 2010\) 115 Cal.Rptr.3d 869, 188 Cal.App.4th 1149](#). [Constitutional Law 🔑 2314](#); [Infants 🔑 2692\(2\)](#)

Probation revocation

The statute providing that suppressed evidence "shall not be admissible against the movant at

any trial or other hearing” was superseded by the Truth-in-Evidence provision of the state **constitution** to the extent it prohibited admission of suppressed evidence at a probation revocation hearing. [People v. Lazlo \(App. 1 Dist. 2012\) 142 Cal.Rptr.3d 407, 206 Cal.App.4th 1063](#), review denied. [Sentencing and Punishment 🔑 1825](#); [Sentencing and Punishment 🔑 2019](#)

Records

Under **California Constitution** individual has an expectation of privacy in a record of telephone calls made from his or her residence, however temporary. [People v. Henderson \(App. 1 Dist. 1990\) 275 Cal.Rptr. 837, 225 Cal.App.3d 1129](#), rehearing denied, review denied. [Searches And Seizures 🔑 26](#)

Party sharing apartment with tenant of record had made no outward manifestation of privacy expectation in telephone billing records covering telephone he had paid for, and had no protected right of privacy to the records under **California Constitution**. [People v. Henderson \(App. 1 Dist. 1990\) 275 Cal.Rptr. 837, 225 Cal.App.3d 1129](#), rehearing denied, review denied. [Searches And Seizures 🔑 26](#)

Waiver of appeal rights

Subdivision (d) of this section did not permit Court of Appeal to sever invalid portion of initiative and to give effect to valid portion, but entire initiative was to have no effect. **California** [Trial Lawyers Assn. v. Eu \(App. 3 Dist. 1988\) 245 Cal.Rptr. 916, 200 Cal.App.3d 351](#), review denied. [Statutes 🔑 1745](#)

Section of insurance cost control initiative, which relieved insurers and organizations of campaign contribution limits and which exempted public officials from conflict of interest rules concerning campaign contributions, did not have reasonably discernible nexus with and was not reasonably germane to stated objective of reducing cost of insurance, and, thus, initiative violated single-subject rule; section consisted of two brief paragraphs near middle of 120-page document. **California** [Trial Lawyers Assn. v. Eu \(App. 3 Dist. 1988\) 245 Cal.Rptr. 916, 200 Cal.App.3d 351](#), review denied. [Statutes 🔑 1745](#)

Rule that privilege against self-incrimination precludes use by prosecution of any extrajudicial

statement by defendant, either as affirmative evidence or for purposes of impeachment, obtained during custodial interrogation in violation of *Miranda*, is unaffected by state **constitutional** provision that relevant evidence shall not be excluded in criminal proceeding, but that provision does not affect existing statutory rules of evidence relating to privilege or hearsay, because rule is expressly predicated upon State **Constitution**. *People v. Clark* (App. 3 Dist. 1985) 217 Cal.Rptr. 819, 171 Cal.App.3d 889. **Criminal Law** 🔑 411.4; **Witnesses** 🔑 390.1

Impeachment of verdict

Applying Evidence Code provision prohibiting impeaching jury verdict based on evidence concerning mental processes by which verdict was determined in capital murder prosecution did not violate state or federal **Constitutions**. *People v. Steele* (2002) 120 Cal.Rptr.2d 432, 27 Cal.4th 1230, 47 P.3d 225, rehearing denied, certiorari denied 123 S.Ct. 874, 537 U.S. 1115, 154 L.Ed.2d 791. **Criminal Law** 🔑 957(2)

Because, as a matter of substantive law, the jurors' mental processes leading to the verdict are of no jural consequence, evidence of those mental processes is of no consequence to the determination of the action and hence is irrelevant. *People v. Steele* (2002) 120 Cal.Rptr.2d 432, 27 Cal.4th 1230, 47 P.3d 225, rehearing denied, certiorari denied 123 S.Ct. 874, 537 U.S. 1115, 154 L.Ed.2d 791. **Criminal Law** 🔑 957(2)

Preservation of issues for review

Impact of the **Constitution** on statute governing restitution in juvenile delinquency cases was question of law the Court of Appeal could address on appeal even though the People previously did not rely on it to support an award of restitution to the direct victim's family members. *In re Scott H.* (App. 2 Dist. 2013) 164 Cal.Rptr.3d 466, 221 Cal.App.4th 515, review denied. **Infants** 🔑 2881

Review

Any error by trial court in failing to consider the impact on defendant's decision to testify when deciding whether to exclude prior misconduct impeachment evidence as unduly prejudicial was not structural error, and thus was not reversible per se; even assuming a federal **constitutional** right was implicated, defendant was free to testify, but was simply subject to impeachment with the prior misconduct evidence. *People v. Sanghera* (App. 3 Dist. 2016) 211 Cal.Rptr.3d 382,

rehearing denied, review denied. [Criminal Law](#) 🔑 1162

Supreme Court would consider the People's argument that under the Victims' Bill of Rights (Marsy's Law) a deceased crime victim's personal representative may receive restitution owed to the victim, in reviewing trial court's order for defendant to pay victim restitution to deceased victim's estate, even though the People invoked Marsy's Law for the first time in the Supreme Court. [People v. Runyan \(2012\) 143 Cal.Rptr.3d 674, 54 Cal.4th 849, 279 P.3d 1143](#). [Criminal Law](#) 🔑 1042.3(5)

Court of Appeal would consider probationer's argument on appeal that the Truth-in-Evidence provision of the state **constitution** had no impact in probation revocation proceedings because they were not "criminal proceedings," even though probationer did not raise the argument in the trial court in moving to dismiss the petition to revoke her probation, since the issue was a question of law presented on undisputed facts. [People v. Lazlo \(App. 1 Dist. 2012\) 142 Cal.Rptr.3d 407, 206 Cal.App.4th 1063](#), review denied. [Criminal Law](#) 🔑 1042.3(4)

Standard of review

Review of issues related to the trial court's suppression of evidence seized by the police is governed by federal **constitutional** standards. [People v. Tran \(App. 4 Dist. 2019\) 255 Cal.Rptr.3d 26](#). [Criminal Law](#) 🔑 1134.49(4)

Where material facts of the case are undisputed and application of law to fact is predominantly legal, such as when it implicates **constitutional** rights and the exercise of judgment about the values underlying legal principles, appellate court's review of legality of bail grant or deprivation in proceedings on habeas corpus petition is de novo. [In re Humphrey \(App. 1 Dist. 2018\) 228 Cal.Rptr.3d 513](#), review granted [233 Cal.Rptr.3d 129, 417 P.3d 769](#), approved in part [268 Cal.Rptr.3d 119, 472 P.3d 435](#). [Habeas Corpus](#) 🔑 842

Court of Appeal reviews challenges to the admissibility of evidence obtained by police searches and seizures under federal **constitutional** standards. [People v. Pleasant \(App. 4 Dist. 2004\) 19 Cal.Rptr.3d 796, 123 Cal.App.4th 194](#), review denied. [Courts](#) 🔑 97(5)

West's Ann. **Cal. Const.** Art. 1, § 28, CA **CONST** Art. 1, § 28
Current with urgency legislation through Ch. 16 of 2021 Reg.Sess

§ 28. Findings and declarations; rights of victims; enforcement, CA CONST Art. 1, § 28

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