

3 California Criminal Law (3d), Punishment

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(1) [§422] No Intent To Kill.

(2) [§423] Reckless Indifference.

(e) [§424] Death Penalty for Minors.

(f) [§425] Death Penalty for Insane or Mentally Disabled Persons.

(g) [§426] Death Penalty May Not Be Restricted to Jury Cases.

(h) [§427] Sentencing Procedures Must Meet Due Process Standards.

(i) [§428] Consideration of Lesser Included Offenses.

9. [§429] Proportionality Review Is Not Required.

10. [§430] Unconstitutionality Not Established by Proof of Disparate Impact.

11. [§431] Retroactivity.

C. California Death Penalty Law.

1. [§432] In General.

2. [§433] Former Law.

3. 1978 Statute.

(a) [§434] In General.

(b) [§435] Constitutionality Upheld.

(c) [§436] Subsequent Amendment.

4. [§437] Offenses Punishable by Death.

5. Special Circumstances.

(a) [§438] In General.

(b) [§439] Prior Murders.

(c) [§440] Multiple Murders.

(d) [§441] Murder for Financial Gain.

- (e) [§442] Murder To Prevent Arrest or Perfect Escape.
- (f) [§443] Murder To Further Gang Activities.
- (g) [§444] Murder by Destructive Device.
- (h) [§445] Murder by Lying in Wait.
- (i) [§446] Murder by Torture or Poison.
- (j) [§447] Murder by Discharge of Firearm From Vehicle.
- (k) [§448] Especially Heinous, Atrocious, or Cruel Murder.
- (l) [§449] Murder Because of Race, Color, Religion, Nationality, or Country of Origin.
- (m) Felony-Murder.
 - (1) [§450] In General.
 - (2) [§451] Corpus Delicti Rule Not Applicable.
 - (3) [§452] Killing Incidental to Felony.
 - (4) [§453] Intent.
- (n) Particular Victims.
 - (1) [§454] In General.
 - (2) [§455] Law Enforcement Officers.
 - (3) [§456] Firefighters.
 - (4) [§457] Witnesses to Crime.
 - (5) [§458] Prosecutor, Judge, Public Official, or Juror.
- (o) [§459] Special Circumstances Not Involving Death Penalty.
- 6. [§460] Aider and Abettor.
- 7. Proof of Special Circumstances.
 - (a) [§461] In General.
 - (b) [§462] Multiple Special Circumstances.
- 8. Penalty Phase of Trial.
 - (a) [§463] Nature and Development of Proceeding.
 - (b) [§464] Sequence of Phases.
 - (c) [§465] Function of Judge and Jury.
 - (d) [§466] Discretion of Trier of Fact.
 - (e) Evidence.
 - (1) [§467] In General.
 - (2) [§468] Rebuttal Evidence.
 - (3) [§469] Comment by Judge.
 - (f) Aggravating Circumstances.
 - (1) [§470] Notice of Intended Use.
 - (2) Factors Properly Considered.
 - (aa) [§471] Circumstances of Crime.
 - (bb) [§472] Impact on Victim.
 - (cc) [§473] Criminal Activity Involving Force or Violence.
 - (dd) [§474] Prior Felony Conviction.
 - (ee) [§475] Other Factors.
 - (3) Factors Not Properly Considered.
 - (aa) [§476] Deterrent Effect of Death Penalty.
 - (bb) [§477] Effect of Life Sentence.
 - (cc) [§478] Absence of Mitigating Factors.

- (dd) [§479] Other Factors.
- (g) Mitigating Circumstances.
 - (1) [§480] In General.
 - (2) [§481] Failure To Present Mitigating Evidence.
 - (3) Factors Properly Considered.
 - (aa) [§482] Defendant's Background and History.
 - (bb) [§483] Defendant's Mental Condition.
 - (cc) [§484] Other Extenuating Circumstances.
 - (dd) [§485] Other Factors.
 - (4) Factors Not Properly Considered.
 - (aa) [§486] Lack of Deterrent Effect of Death Penalty.
 - (bb) [§487] Other Factors.
- (h) Argument.
 - (1) [§488] In General.
 - (2) [§489] Effect of Life Sentence.
 - (3) [§490] Jury's Weighing Process.
 - (4) [§491] Appeal to Religious Authority.
 - (5) [§492] Other Illustrations.
- (i) Instructions.
 - (1) [§493] In General.
 - (2) [§494] Weighing Process.
 - (3) [§495] Sympathy and Related Instructions.
 - (4) [§496] Possibility of Clemency.
 - (5) [§497] Other Instruction Issues.
- (j) [§498] Verdict.
- (k) [§499] Application for Modification.
- (l) [§500] Automatic Appeal.
- (m) [§501] Preparation and Certification of Record.

XVII. PROBATION

- A. In General.
 - 1. [§502] Nature and Purpose.
 - 2. [§503] Probation Officers and Agencies.
 - 3. [§504] Supervision of Probationer.
 - 4. [§504A] (New) Improved Supervision Under Community Corrections Program.
- B. When Probation Cannot Be Granted.
 - 1. [§505] Former Statutory Framework.
 - 2. [§506] Personal Use of Firearm.
 - 3. [§507] Infliction of Great Bodily Injury.
 - 4. [§508] Felony Against Aged or Handicapped Person.
 - 5. [§509] Lewd Act With Child.
 - 6. [§510] Other Sex Offenses.
 - 7. Controlled Substances Offenses.
 - (a) [§511] Penal Code Provisions.
 - (b) [§512] Health and Safety Code Provisions.
 - 8. [§513] Felony Involving Public Transit Vehicle.

9. [§514] Designated Felonies Within Ten-Year Period.
 10. [§515] Felony by Person on Parole or Probation.
 11. [§516] Other Offenses.
- C. When Probation Is Possible but Disfavored.
1. [§517] P.C. 1203.
 2. [§518] Other Statutory Provisions.
 3. [§519] Unusual Circumstances Justifying Probation.
 4. [§520] Procedure.
- D. Reference or Summary Pronouncement.
1. Reference to Probation Officer in Felony Case.
 - (a) Necessity of Reference.
 - (1) [§521] Mandatory Requirement.
 - (2) [§522] Waiver.
 - (3) [§523] New Reference After Reversal on Appeal.
 - (4) [§524] Effect of Defendant's Ineligibility.
 - (b) Report by Probation Officer.
 - (1) [§525] In General.
 - (2) [§526] Required Contents.
 - (3) [§527] Improper Contents.
 - (4) [§528] Availability of Report.
 - (c) [§529] Hearing and Determination.
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 - (a) [§530] Election To Refer.
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- E. Action Taken.
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 - (a) [§532] Discretion of Trial Judge.
 - (b) [§533] Criteria Affecting Grant or Denial of Probation.
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 - (a) [§534] Failure To Determine Merits of Application.
 - (b) [§535] Lack of Fundamental Fairness.
 - (c) [§536] Ex Parte Communications.
 - (d) [§537] Abuse of Discretion.
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 - (a) Alternative Procedures.
 - (1) [§538] In General.
 - (2) [§539] Imposition of Sentence Suspended Without Judgment.
 - (3) [§540] Execution of Sentence Suspended After Judgment.
 - (4) [§541] Suspension as Alternative If Probation Is Denied.
 - (b) Period.
 - (1) [§542] Felony Cases.
 - (2) [§543] Misdemeanor Cases.
 - (c) Defendant's Rejection of Probation.
 - (1) [§544] Right To Reject.
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1. Permissible Conditions.

- (a) [§546] Scope of Discretion.
- (b) County Jail Sentence and Fine.
 - (1) [§547] Permissible.
 - (2) [§548] Mandatory.
- (c) Restitution.
 - (1) [§549] Statutory Requirements.
 - (2) [§550] Definitions.
 - (3) [§551] Proper When Related to Crime for Which Convicted.
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 - (5) [§553] Defendant's Ability To Pay.
 - (6) [§554] Amount and Manner of Disbursement.
- (d) [§555] Payment of Probation Costs.
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- (f) Other Express Conditions Authorized by P.C. 1203.1.
 - (1) [§557] In General.
 - (2) [§558] Catch-all Provision Requiring Affirmative Act.
 - (3) [§559] Catch-all Provision Requiring Abstention.
- (g) Other Express Conditions Authorized by Miscellaneous Statutes.
 - (1) [§560] In General.
 - (2) [§561] Counseling, Treatment, or Education.
- (h) [§562] Implied Conditions.

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- (a) [§563] Circumstances Required for Invalidity.
- (b) [§564] Failure To Object Precludes Challenge on Appeal.
- (c) [§565] Banishment From County, State, or Country.
- (d) [§566] Prohibition Against Pregnancy.
- (e) [§567] Unwarranted Requirement of Psychiatric Treatment.
- (f) [§568] Overbroad Interference With First Amendment Rights.
- (g) [§569] Attempt To Influence Board of Prison Terms.
- (h) [§570] Waiver of Knock and Announce Requirements.
- (i) [§571] Reimbursement of Cost of Appointed Counsel.
- (j) [§572] Other Invalid Conditions.

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- 1. [§573] Power To Modify.
- 2. [§574] New Facts Essential.
- 3. [§575] New Conditions Imposed.
- 4. [§576] Procedure.

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- 1. Power To Revoke.
 - (a) [§577] In General.
 - (b) [§578] Time Limitations.
- 2. Due Process Requirements.
 - (a) [§579] Former Law.
 - (b) [§580] Hearing Before Sentencing.

- (c) [§581] Similarity Between Parole and Probation Revocation.
- (d) [§582] When Previously Sentenced Probationer Is Entitled to Counsel.
- (e) [§583] When Hearing Required.
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 - (a) [§584] Statutory Requirements.
 - (b) Formal Revocation Hearing.
 - (1) [§585] In General.
 - (2) [§586] Conduct of Hearing.
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 - (a) [§591] In General.
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 - (1) [§592] Length of Sentence.
 - (2) [§593] Due Process Rights.
 - (3) Probationer Imprisoned for Another Offense.
 - (aa) [§594] In General.
 - (bb) [§595] Procedure.
 - (cc) [§596] Failure To Give Imprisoned Defendant Notice of Pending Revocation Proceeding.
 - (dd) [§597] Commitment Required.
 - (ee) [§598] Application to Out-of-State Prisoners.
 - (ff) [§599] Optional Procedures for Unsented Probationer.
 - (c) [§600] Where Execution of Sentence Was Suspended.
- I. Dismissal.
 - 1. After Fulfillment of Conditions.
 - (a) [§601] Nature of Right.
 - (b) [§602] Procedure.
 - (c) [§603] Remaining Effects of Conviction.
 - 2. [§604] Without Probation.
- J. Sealing of Minor's Misdemeanor Records.
 - 1. Where Minor Was Convicted.
 - (a) [§605] In General.
 - (b) [§606] Constitutionality.
 - (c) [§607] Power To Seal Is Statutory.
 - (d) [§608] Effect of Prior Sealing on Subsequent Sealing.
 - 2. [§609] Where Minor Was Not Convicted.

XVIII. PAROLE

- A. [§610] In General.
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- (b) [§612] Notice of Impending Release.
- (c) [§613] Liberty Interest Protected by Due Process.
- 2. Limitations on Power.
 - (a) [§614] When Parole Is Prohibited.
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- 3. Setting Conditions and Length of Parole.
 - (a) Under Former Indeterminate Sentence Law.
 - (1) [§616] In General.
 - (2) [§617] Statement of Reasons Required.
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 - (4) [§619] Discovery of Information Affecting Denial of Parole.
 - (5) [§620] Condition of Trial Elsewhere.
 - (b) Under Current Law.
 - (1) [§621] In General.
 - (2) [§622] County of Return.
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 - (aa) [§623] In General.
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 - (cc) [§625] Determination.
 - (dd) [§626] Participation of Victim and Family.
 - (ee) [§627] Public Participation.
 - (ff) [§628] Request or Review by Governor.
 - (4) Conditions of Parole.
 - (aa) [§629] Discretionary Conditions.
 - (bb) [§630] Mandatory Conditions.
 - (cc) [§631] Constructive Custody of Parolee.
 - (5) Parole Period.
 - (aa) [§632] Under Determinate Sentencing Law.
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 - (cc) [§634] For Persons Convicted of Murder.
 - (dd) [§635] For Life Prisoners.
 - (6) [§636] Mandatory Discharge From Custody.
 - (7) [§637] Concurrent California and Out-of-State Sentences.
 - (8) Mentally Disordered Prisoners.
 - (aa) [§638] Treatment as Condition of Parole.
 - (bb) [§639] Continued Involuntary Treatment: Report to District Attorney.
 - (cc) [§640] Hearing and Trial.
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 - (ee) [§640B] (New) Right to Refuse Antipsychotic Medication.
 - (9) (New) Sex Offenders.
 - (aa) [§640C] (New) In General
 - (bb) [§640D] (New) Parole Period.
 - (cc) [§640E] (New) Intensive Supervision.
- 4. Suspension and Revocation.
 - (a) [§641] In General.
 - (b) [§642] Effect of Revocation on Term.

- (c) [§643] Distinction: No Revocation After Term Served.
 - (c-1) [§643A] (New) Limitation on Procedural Rights.
 - (d) Good Cause.
 - (1) [§644] Necessity.
 - (2) [§645] Scope of Review.
 - (e) Constitutional Requirement of Due Process.
 - (1) [§646] Parole Protected by Fourteenth Amendment.
 - (2) [§647] Alleged New Offense as Basis for Revocation.
 - (3) [§648] Limited Right to Counsel.
 - (4) [§649] Right to Information.
 - (5) [§650] No Right to Bail.
 - (6) [§651] Extradition Proceedings.
 - (7) [§652] Incarceration in Other Jurisdiction.
 - (8) [§653] Waiver of Hearing Rights.
 - (9) [§654] Effect of Denial of Rights.
 - (f) (New) Drug Treatment Under Proposition 36.
 - (1) [§654A] (New) In General.
 - (2) [§654B] (New) Sanctions.
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- C. From County Jail.
- 1. [§655] In General.
 - 2. [§656] Grant of Parole.
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- 1. [§659] In General.
 - 2. [§660] Placement of Inmates in Program.
 - 3. [§661] Notification of Inmate's Pending Release or Escape.
- E. [§662] Out-of-State Supervision of Probationers and Parolees.
- F. [§662A] (New) Continuous Electronic Monitoring.
- G. [§662B] (New) Reentry Program Facilities.
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XIX. EXECUTIVE CLEMENCY

- A. [§663] Nature of Powers.
- B. Commutation and Pardon.
 - 1. Procedure.
 - (a) [§664] Recommendation by Board of Prison Terms.
 - (b) [§665] Application by Prisoner.
 - (c) [§666] Investigation and Report.
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 - 2. Effect of Full Pardon.
 - (a) [§669] In General.
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XX. REHABILITATION PROCEEDING

- A. [§671] In General.
- B. [§672] Petition, Notice, and Investigation.
- C. [§673] Order, Certificate, and Pardon.
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