

### **3 California Criminal Law (3d), Punishment**

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      - (5) [§395] Absconders and Escapers.
      - (6) [§396] Credit Applicable to Subordinate Term.
    - (c) [§397] Particular Confinements.
    - (d) [§398] Juveniles and Youthful Offenders.
    - (e) [§399] Waiver.
  - 2. Conduct Credits.
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    - (b) State Prison Custody.
      - (1) [§401] Eligibility for Credit.

- (2) [§402] Limitations on Credit.
- (3) [§403] Persons Ineligible for Credit.
- (4) [§404] Suspension of Eligibility.
- (5) [§405] Denial of Credit.
- (c) [§406] Other Custody.
- (d) [§407] Juveniles and Youthful Offenders.

## **XVI. CAPITAL PUNISHMENT**

- A. [§408] In General.
- B. Cruel and Unusual Punishment Issues.
  - 1. [§409] Early Cases.
  - 2. Death Penalty Constitutional.
    - (a) [§410] California Constitution and Statutes.
    - (b) [§411] Federal Constitution.
  - 3. Guided Discretion.
    - (a) [§412] In General.
    - (b) [§413] Effect of Invalid Aggravating Factor.
  - 4. Mitigating Evidence.
    - (a) [§414] All Mitigating Evidence Must Be Considered.
    - (b) [§415] Compatibility With Requirement of Guided Discretion.
  - 5. [§416] Weighing of Factors by Appellate Court.
  - 6. [§417] Manner of Execution.
  - 7. [§418] Delay in Execution.
  - 8. Restrictions on Imposition.
    - (a) [§419] Death Penalty for Murder.
    - (b) [§420] Mandatory Death Penalty Unconstitutional.
    - (c) [§421] Death Penalty for Rape Unconstitutional.
    - (d) Death Penalty for Felony Murder.
      - (1) [§422] No Intent To Kill.
      - (2) [§423] Reckless Indifference.
    - (e) [§424] Death Penalty for Minors.
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    - (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.

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  - (a) [§438] In General.
  - (b) [§439] Prior Murders.
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  - (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.
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  - (o) [§459] Special Circumstances Not Involving Death Penalty.
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  - (a) [§461] In General.
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  - (a) [§463] Nature and Development of Proceeding.
  - (b) [§464] Sequence of Phases.
  - (c) [§465] Function of Judge and Jury.
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      - (aa) [§471] Circumstances of Crime.
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      - (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.
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  - (cc) [§478] Absence of Mitigating Factors.
  - (dd) [§479] Other Factors.
- (g) Mitigating Circumstances.
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  - (2) [§481] Failure To Present Mitigating Evidence.
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    - (aa) [§482] Defendant's Background and History.
    - (bb) [§483] Defendant's Mental Condition.
    - (cc) [§484] Other Extenuating Circumstances.
    - (dd) [§485] Other Factors.
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    - (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.
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  - (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.
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- 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.
  - 5. [§504B] (New) Sex Offender Management 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.
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- D. Reference or Summary Pronouncement.
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    - (a) Necessity of Reference.
      - (1) [§521] Mandatory Requirement.
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      - (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.
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      - (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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    - (b) [§533] Criteria Affecting Grant or Denial of Probation.
  2. Grounds for Reversal of Order Denying Probation.
    - (a) [§534] Failure To Determine Merits of Application.
    - (b) [§535] Lack of Fundamental Fairness.
    - (c) [§536] Ex Parte Communications.
    - (d) [§537] Abuse of Discretion.
  3. Granting of Probation.
    - (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.
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- (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.
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- (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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    - (b) [§578] Time Limitations.
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    - (a) [§579] Former Law.
    - (b) [§580] Hearing Before Sentencing.
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    - (a) [§584] Statutory Requirements.
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      - (1) [§585] In General.
      - (2) [§586] Conduct of Hearing.
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      - (4) [§588] Hearing Concurrent With Preliminary Examination.
      - (5) [§589] Right of Confrontation.
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    - (a) [§591] In General.
    - (b) Where Imposition of Sentence Was Suspended.
      - (1) [§592] Length of Sentence.
      - (2) [§593] Due Process Rights.
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        - (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.
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- 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**

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(a-1) [§611A] (New) Judicial Standard of Review for Parole Decisions.

(b) [§612] Notice of Impending Release.

(c) [§613] Liberty Interest Protected by Due Process.

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(a) [§614] When Parole Is Prohibited.

(b) [§615] Requirement of Minimum Period of Service.

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(a) Under Former Indeterminate Sentence Law.

(1) [§616] In General.

(2) [§617] Statement of Reasons Required.

(3) [§618] Rescission of Parole Date Before Parole Begins.

(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.

(3) Hearing Procedure.

(aa) [§623] In General.

(bb) [§624] Conduct of Hearing.

(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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(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.

(dd) [§640A] (New) No Right to Instruction on Presumption of Innocence.

(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.

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- (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.
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  - (6) [§651] Extradition Proceedings.
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- (f) (New) Drug Treatment Under Proposition 36.
  - (1) [§654A] (New) In General.
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C. From County Jail.

- 1. [§655] In General.
- 2. [§656] Grant of Parole.
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- 4. [§658] Repayment of Costs.

D. Work Furlough Program.

- 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.

H. [§662C] (New) Parole Reentry Accountability Program.

I. [§662D] (New) Medical Parole.

**XIX. EXECUTIVE CLEMENCY**

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- (a) [§664] Recommendation by Board of Prison Terms.
- (b) [§665] Application by Prisoner.

- (c) [§666] Investigation and Report.
- (d) [§667] Referral to Supreme Court.
- (e) [§668] Decision and Report by Governor.
- 2. Effect of Full Pardon.
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## **XX. REHABILITATION PROCEEDING**

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- C. [§673] Order, Certificate, and Pardon.
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