

# Judicial Council of California Criminal Jury Instructions

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**CALCRIM**

2008

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Series 100–1800



**Judicial Council of California  
Advisory Committee on Criminal Jury Instructions**

Hon. Sandra Lynn Margulies, Chair

LexisNexis Matthew Bender  
Official Publisher

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**April 25, 2008**

*This edition includes all revised Judicial Council of California Criminal Jury Instructions (CALCRIM) effective April 25, 2008.*

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# Preface

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These instructions represent the work of the Task Force on Jury Instructions, appointed by Chief Justice Ronald M. George in 1997. Our charge was to write instructions that are both legally accurate and understandable to the average juror. The eight-year effort addressed a need for instructions written in plain English and responded to the specific recommendation of the Blue Ribbon Commission on Jury System Improvement that observed: “jury instructions as presently given in California and elsewhere are, on occasion, simply impenetrable to the ordinary juror” (Blue Ribbon Commission on Jury System Improvement, Final Report (May 1996) p. 93).<sup>1</sup>

The reason instructions are so often impenetrable is that they are based on the language of case law and statutes written by and for a specialized legal audience and expressed in terms of art that have evolved through multiple languages, in many countries, over several centuries. We do not seek to lose either the majesty of the law or the rich language in which lawyers and judges have expressed it. However, our work reflects a belief that sound communication takes into account the audience to which it is addressed. Jurors perform an essential service in our democracy. We are absolutely dependent upon them to apply the law fairly and accurately. In order to do so, they must be able to understand the instructions they are asked to follow.

These instructions were prepared by a statewide committee of justices from the Court of Appeal, trial court judges, attorneys, academicians, and lay people. They are approved by the Judicial Council as the state’s official instructions pursuant to the California Rules of Court (Cal. Rules of Court, rule 2.1050(a)).<sup>2</sup> The Rules of Court strongly encourage their use (*Id.*, Rule 2.1050(e)).<sup>3</sup>

Each instruction began with the preparation of an initial draft, followed by subcommittee review and full committee consideration. The task force was assisted by a remarkable group of staff attorneys that included Robin Seeley, Natasha Minsker, Jeffrey Shea, Melissa Johnson, Elizabeth Givens, and Lisa Lockyer. Throughout our multi-year effort, drafts were repeatedly circulated for public comment. The task force reviewed thousands of observations, and this final product reflects the input of judges and lawyers throughout California. We are grateful for the willingness of prosecutors, defense counsel, appellate specialists, judges, and justices to share their insights and the benefit of their experience.

A list of people and organizations who have contributed to this undertaking follows this preface; we apologize to anyone who has been omitted through oversight.

The official publisher of this work is LexisNexis Matthew Bender. Its representatives have worked closely with us to prepare the instructions and to create a software

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<sup>1</sup> Blue Ribbon Commission on Jury System Improvement, Final Report (May 1996) p. 93.

<sup>2</sup> Cal. Rules of Court, rule 2.1050(a).

<sup>3</sup> *Id.*, Rule 2.1050(e).

platform for their usage. We have been greatly aided by their efficiency, professionalism, and commitment to excellence. We particularly recognize Bruce Greenlee for his tireless efforts in this regard.

We gratefully acknowledge our predecessor. The Committee on Standard Jury Instructions, Criminal, of the Superior Court of Los Angeles County, published the first edition of California Jury Instructions, Criminal (CALJIC) in 1946. For six decades, their efforts have helped guide the deliberations of California jurors. While we have taken a very different approach to the drafting of instructions, the tremendous contribution the CALJIC committee has made to the California justice system cannot be overestimated.

Like the law on which they are based, these instructions will continue to change. This evolution will come not only through appellate decisions and legislation but also through the observations and comments of the legal community. The Judicial Council's Advisory Committee on Criminal Jury Instructions, charged with maintaining these instructions, welcomes your comments and suggestions for modification.

Finally, I wish to express my personal appreciation for the leadership of Chief Justice George whose vision and commitment have infused this project from its inception and to the remarkable men and women who so tirelessly served on the task force.

May 2005

Carol A. Corrigan  
Associate Justice of the Court of Appeal  
First Appellate District

# Preface to CALCRIM Updates

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This edition of CALCRIM includes a number of additions and changes to the instructions that were first published in 2005. In providing these updates, the Judicial Council Advisory Committee on Criminal Jury Instructions is fulfilling its charge to ensure that CALCRIM reflects all changes in the law.

In addition to maintaining the legal accuracy of CALCRIM, the committee carefully considered and implemented suggestions from CALCRIM users. Responding to feedback from users is consistent with the Advisory Committee's goal to maintain CALCRIM as the work product of the legal community. We hope that our many contributors view our role in the same way and will continue to support us.

April 2008

Hon. Sandra Lynn Margulies, Associate Justice  
Court of Appeal, First Appellate District, Division One  
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**The Advisory Committee on Criminal Jury Instructions welcomes comments.**

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## **Guide for Using Judicial Council of California Criminal Jury Instructions (CALCRIM)**

The Judicial Council jury instructions are accurate, designed to be easy to understand, and easy to use. This guide provides an introduction to the instructions and explains conventions and features that will assist in their use.

### **Judicial Council Instructions Endorsed by Rule of Court**

Rule 2.1050 of the California Rules of Court provides: “The California jury instructions approved by the Judicial Council are the official instructions for use in the state of California. . . .

[The Judicial Council endorses these instructions for use and makes every effort to ensure that they accurately state existing law. . . .]

[Use of the Judicial Council instructions is strongly encouraged.]

### ***Using the Instructions***

#### **Bench Notes**

The text of each instruction is followed by a section in the Bench Notes titled “Instructional Duty,” which alerts the user to any *sua sponte* duties to instruct and special circumstances raised by the instruction. It may also include references to other instructions that should or should not be used. In some instances, the directions include suggestions for modification. In the “Authority” section, all of the pertinent sources for the instruction are listed, including secondary source materials. Some of the instructions also have sections containing “Related Issues” and “Commentary.” The Bench Notes also refer to any relevant lesser included offenses. Users should consult the Bench Notes before using an instruction.

Italicized notes between angle brackets in the language of the instruction itself signal important issues or choices. For example, in instruction 1750, Receiving Stolen Property, optional element 3 is introduced thus: *<Give element 3 when instructing on knowledge of presence of property; see Bench Notes>*.

#### **Multiple-Defendant and Multiple-Count Cases**

These instructions were drafted for the common case in which a single defendant is on trial. The HotDocs document assembly program from the Judicial Council’s official publisher, LexisNexis will, however, modify the instructions for use in multi-defendant cases. It will also allow the user to name the defendants charged in a particular instruction if the instruction applies only to some of the defendants on trial in the case.

It is impossible to predict the possible fact combinations that may be present when a crime is charged multiple times or committed by different defendants against different victims involving different facts. Thus, when an instruction is being used for more than one count and the factual basis for the instruction is different for the different counts, the user will need to modify the instruction as appropriate.

#### **Related California Jury Instructions, Criminal (CALJIC)**

The CALJIC and CALCRIM instructions should *never* be used together. While the legal

principles are obviously the same, the organization of concepts is approached differently. Trying to mix the two sets of instructions into a unified whole cannot be done and may result in omissions or confusion that could severely compromise clarity and accuracy. Nevertheless, for convenient reference this publication includes tables of related CALJIC instructions.

### **Titles and Definitions**

The titles of the instructions are directed to lawyers and sometimes use words and phrases not used in the instructions themselves. The title is not a part of the instruction. The titles may be removed before presentation to the jury.

The instructions avoid separate definitions of legal terms whenever possible. Instead, definitions have been incorporated into the language of the instructions in which the terms appear. When a definition is lengthy, a cross-reference to that definition is provided.

Defined terms are printed in italics in the text of the definition.

### **Alternatives vs. Options**

When the user must choose one of two or more options in order to complete the instruction, the choice of necessary alternatives is presented in parentheses thus: *When the defendant acted, George Jones was performing (his/her) duties as a school employee.*

The instructions use brackets to provide optional choices that may be necessary or appropriate, depending on the individual circumstances of the case: *[If you find that George Jones threatened or harmed the defendant [or others] in the past, you may consider that information in evaluating the defendant's beliefs.]*

Finally, both parentheses and brackets may appear in the same sentence to indicate options that arise depending on which necessary alternatives are selected: *[It is not required that the person killed be the (victim/intended victim) of the (felony/ [or] felonies).].*

### **General and Specific Intent**

The instructions do not use the terms general and specific intent because while these terms are very familiar to judges and lawyers, they are novel and often confusing to many jurors. Instead, if the defendant must specifically intend to commit an act, the particular intent required is expressed without using the term of art "specific intent." Instructions 250–254 provide jurors with additional guidance on specific vs. general intent crimes and the union of act and intent.

### **Organization of the Instructions**

The instructions are organized into 24 series, which reflect broad categories of crime (e.g., Homicide) and other components of the trial (e.g., Evidence). The series, and the instructions within each series, are presented in the order in which they are likely to be given in an actual trial. As a result, greater offenses (like DUI with injury) come before lesser offenses (DUI). All of the defenses are grouped together at the end of the instructions, rather than dispersed throughout. The misdemeanors are placed within the

category of instructions to which they belong, so simple battery is found with the other battery instructions rather than in a stand-alone misdemeanor section.

### **Lesser Included Offenses**

Users will need to modify instructions used to explain lesser included offenses. The introductory language states: “The crime of \_\_\_\_\_ (e.g., false imprisonment) is a lesser offense than the crime of \_\_\_\_\_ (e.g., kidnapping).” This would replace the standard introductory sentence, “The defendant is charged with . . . .” In addition, the user must add to the end of the instruction on any lesser offense an explanation of the burden of proof as required by *People v. Dewberry* (1992) 8 Cal.App.4th 1017, 1021. That addition is: “The People have the burden of proving that the defendant committed \_\_\_\_\_ (insert greater offense, e.g., kidnapping) rather than a lesser offense. If the People have not met this burden, you must find the defendant not guilty of \_\_\_\_\_ (insert greater offense, e.g., kidnapping).”

### **Burden of Production/Burden of Proof**

The instructions never refer to the “burden of producing evidence.” The drafters concluded that it is the court’s decision whether the party has met the burden of production. If the burden is not met, no further instruction is necessary. The question for the jury is whether a party has met its properly allocated burden based on the evidence received.

Instruction 103 on Reasonable Doubt states, “Whenever I tell you the People must prove something, I mean they must prove it beyond a reasonable doubt [unless I specifically tell you otherwise].” Thus, when the concept of reasonable doubt is explained and defined, the jury is told that it is the standard that applies to every issue the People must prove, unless the court specifically informs the jury otherwise.

### **Sentencing Factors and Enhancements**

Because the law is rapidly evolving regarding when sentencing factors and enhancements must be submitted to the jury, we have provided “template” instructions 3250 and 3251 so that the court may tailor an appropriate instruction that corresponds to this emerging body of law.

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**(iii) Sodomy**

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1091. Sodomy With Minor: Defendant 21 or Older (Pen. Code, § 286(b)(2))

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- 2385–2389. Reserved for Future Use

### **(ii) Marijuana**

- 2390. Sale, Furnishing, etc., of Marijuana to Minor (Health & Saf. Code, § 11361)
- 2391. Offering to Sell, Furnish, etc., Marijuana to Minor (Health & Saf. Code, § 11361)
- 2392. Employment of Minor to Sell, etc., Marijuana (Health & Saf. Code, § 11361(a))
- 2393. Inducing Minor to Use Marijuana (Health & Saf. Code, § 11361(a))
- 2394–2399. Reserved for Future Use

## **G. USE AND POSSESSION OF PARAPHERNALIA**

### **(i) Use**

- 2400. Using or Being Under the Influence of Controlled Substance (Health & Saf. Code, § 11550)
- 2401. Aiding and Abetting Unlawful Use of Controlled Substance (Health & Saf. Code, § 11365)
- 2402–2409. Reserved for Future Use

### **(ii) Possession of Paraphernalia**

- 2410. Possession of Controlled Substance Paraphernalia (Health & Saf. Code, § 11364)

- 2411. Possession of Hypodermic Needle or Syringe (Bus. & Prof. Code, § 4140)
- 2412. Fraudulently Obtaining a Hypodermic Needle or Syringe (Bus. & Prof. Code, § 4326(a))
- 2413. Using or Permitting Improper Use of a Hypodermic Needle or Syringe (Bus. & Prof. Code, § 4326(b))
- 2414–2429. Reserved for Future Use

**H. MONEY FROM CONTROLLED SUBSTANCES**

- 2430. Possession of More Than \$100,000 Related to Transaction Involving Controlled Substance: Proceeds (Health & Saf. Code, § 11370.6)
- 2431. Possession of More Than \$100,000 Related to Transaction Involving Controlled Substance: Money to Purchase (Health & Saf. Code, § 11370.6)
- 2432. Attorney’s Possession of More Than \$100,000 Related to Transaction Involving Controlled Substance (Health & Saf. Code, § 11370.6(b))
- 2433–2439. Reserved for Future Use

**I. OTHER RELATED OFFENSES**

- 2440. Maintaining a Place for Controlled Substance Sale or Use (Health & Saf. Code, § 11366)
- 2441. Use of False Compartment to Conceal Controlled Substance (Health & Saf. Code, § 11366.8)
- 2442–2499. Reserved for Future Use

**SERIES 2500 WEAPONS**

**A. POSSESSION OF ILLEGAL OR DEADLY WEAPON**

- 2500. Illegal Possession, etc., of Weapon (Pen. Code, § 12020(a)(1) & (2))
- 2501. Carrying Concealed Explosive or Dirk or Dagger (Pen. Code, § 12020(a)(3) & (4))
- 2502. Possession, etc., of Switchblade Knife (Pen. Code, § 653k)
- 2503. Possession of Deadly Weapon With Intent to Assault (Pen. Code, § 12024)
- 2504–2509. Reserved for Future Use

**B. POSSESSION OF FIREARM BY PERSON PROHIBITED**

- 2510. Possession of Firearm by Person Prohibited Due to Conviction—No Stipulation to Conviction (Pen. Code, §§ 12021(a)–(c) & (e), 12021.1(a), 12001.6)
- 2511. Possession of Firearm by Person Prohibited Due to Conviction—Stipulation to Conviction (Pen. Code, §§ 12021(a)–(c) & (e), 12021.1(a), 12001.6)

- 2512. Possession of Firearm by Person Prohibited by Court Order (Pen. Code, § 12021(d) & (g))
- 2513. Possession of Firearm by Person Addicted to a Narcotic Drug (Pen. Code, § 12021(a))
- 2514. Possession of Firearm by Person Prohibited by Statute: Self-Defense
- 2515–2519. Reserved for Future Use

**C. CARRYING A FIREARM**

**(i) Concealed**

- 2520. Carrying Concealed Firearm on Person (Pen. Code, § 12025(a)(2) & (f))
- 2521. Carrying Concealed Firearm Within Vehicle (Pen. Code, § 12025(a)(1) & (f))
- 2522. Carrying Concealed Firearm: Caused to Be Carried Within Vehicle (Pen. Code, § 12025(a)(3) & (f))
- 2523–2529. Reserved for Future Use

**(ii) Loaded**

- 2530. Carrying Loaded Firearm (Pen. Code, § 12031(a))
- 2531–2539. Reserved for Future Use

**(iii) Sentencing Factors**

- 2540. Carrying Firearm: Specified Convictions (Pen. Code, §§ 12025(b)(1), (5), 12031(a)(2)(A), (E))
- 2541. Carrying Firearm: Stolen Firearm (Pen. Code, §§ 12025(b)(2), 12031(a)(2)(B))
- 2542. Carrying Firearm: Active Participant in Criminal Street Gang (Pen. Code, §§ 12025(b)(3), 12031(a)(2)(C))
- 2543. Carrying Firearm: Not in Lawful Possession (Pen. Code, §§ 12025(b)(2), 12031(a)(2)(D))
- 2544. Carrying Firearm: Possession of Firearm Prohibited Due to Conviction, Court Order, or Mental Illness (Pen. Code, §§ 12025(b)(4), 12031(a)(2)(D))
- 2545. Carrying Loaded Firearm: Not Registered Owner (Pen. Code, § 12031(a)(2)(F))
- 2546. Carrying Concealed Firearm: Not Registered Owner and Weapon Loaded (Pen. Code, § 12025(b)(6))
- 2547–2559. Reserved for Future Use

**D. ASSAULT WEAPONS**

- 2560. Possession, etc., of Assault Weapon or .50 BMG Rifle (Pen. Code, § 12280(a)(1) & (2))
- 2561. Possession, etc., of Assault Weapon or .50 BMG Rifle While Committing

Other Offense—Charged as Separate Count and as Enhancement (Pen. Code, § 12280(d))

2562. Possession, etc., of Assault Weapon or .50 BMG Rifle While Committing Other Offense—Charged Only as Enhancement (Pen. Code, § 12280(d))

2563–2569. Reserved for Future Use

#### **E. EXPLOSIVES AND DESTRUCTIVE DEVICES**

2570. Possession of Destructive Device (Pen. Code, § 12303)

2571. Carrying or Placing Explosive or Destructive Device on Common Carrier (Pen. Code, § 12303.1)

2572. Possession of Explosive or Destructive Device in Specified Place (Pen. Code, § 12303.2)

2573. Possession, Explosion, etc., of Explosive or Destructive Device With Intent to Injure or Damage (Pen. Code, § 12303.3)

2574. Sale or Transportation of Destructive Device (Pen. Code, § 12303.6)

2575. Offer to Sell Destructive Device (Pen. Code, § 12303.6)

2576. Explosion of Explosive or Destructive Device With Intent to Murder (Pen. Code, § 12308)

2577. Explosion of Explosive or Destructive Device Causing Bodily Injury (Pen. Code, § 12309)

2578. Explosion of Explosive or Destructive Device Causing Death, Mayhem, or Great Bodily Injury (Pen. Code, § 12310)

2579. Possession of Materials to Make Destructive Device or Explosive (Pen. Code, § 12312)

2580–2589. Reserved for Future Use

#### **F. OTHER WEAPONS OFFENSES**

2590. Armed Criminal Action (Pen. Code, § 12023)

2591. Possession of Ammunition by Person Prohibited From Possessing Firearm Due to Conviction or Mental Illness (Pen. Code, § 12316(b)(1))

2592. Possession of Ammunition by Person Prohibited From Possessing Firearm Due to Court Order (Pen. Code, § 12316(b)(1))

2593–2599. Reserved for Future Use

### **SERIES 2600 CRIMES AGAINST GOVERNMENT**

#### **A. BRIBERY OF OFFICIAL**

2600. Giving or Offering a Bribe to an Executive Officer (Pen. Code, § 67)

2601. Giving or Offering a Bribe to a Ministerial Officer (Pen. Code, § 67.5)

- 2602. Giving or Offering a Bribe to a Ministerial Officer: Value of Thing Offered (Pen. Code, § 67.5(b))
- 2603. Requesting or Taking a Bribe (Pen. Code, §§ 68, 86, 93)
- 2604–2609. Reserved for Future Use

**B. BRIBERY OR INTIMIDATION OF WITNESS**

**(i) Bribery**

- 2610. Giving or Offering a Bribe to a Witness (Pen. Code, § 137(a))
- 2611. Giving or Offering a Bribe to a Witness Not to Testify (Pen. Code, § 138(a))
- 2612. Witness Receiving a Bribe (Pen. Code, § 138(b))
- 2613–2619. Reserved for Future Use

**(ii) Threatening or Intimidating**

- 2620. Using Force or Threatening a Witness Before Testimony or Information Given (Pen. Code, § 137(b))
- 2621. Influencing a Witness by Fraud (Pen. Code, § 137(b))
- 2622. Intimidating a Witness (Pen. Code, § 136.1(a) & (b))
- 2623. Intimidating a Witness: Sentencing Factors (Pen. Code, § 136.1(c))
- 2624. Threatening a Witness After Testimony or Information Given (Pen. Code, § 140(a))
- 2625–2629. Reserved for Future Use

**C. EVIDENCE TAMPERING**

- 2630. Evidence Tampering by Peace Officer or Other Person (Pen. Code, § 141)
- 2631–2639. Reserved for Future Use

**D. PERJURY**

- 2640. Perjury (Pen. Code, § 118)
- 2641. Perjury by False Affidavit (Pen. Code, § 118a)
- 2642–2649. Reserved for Future Use

**E. THREATENING OR RESISTING OFFICER**

- 2650. Threatening a Public Official (Pen. Code, § 76)
- 2651. Trying to Prevent an Executive Officer From Performing Duty (Pen. Code, § 69)
- 2652. Resisting an Executive Officer in Performance of Duty (Pen. Code, § 69)
- 2653. Taking Firearm or Weapon While Resisting Peace Officer or Public Officer (Pen. Code, § 148(b) & (c))

- 2654. Intentionally Taking or Attempting to Take Firearm From Peace Officer or Public Officer (Pen. Code, § 148(d))
- 2655. Causing Death or Serious Bodily Injury While Resisting Peace Officer (Pen. Code, § 148.10(a) & (b))
- 2656. Resisting Peace Officer, Public Officer, or EMT (Pen. Code, § 148(a))
- 2657–2669. Reserved for Future Use

**F. LAWFUL PERFORMANCE**

- 2670. Lawful Performance: Peace Officer
- 2671. Lawful Performance: Custodial Officer
- 2672. Lawful Performance: Resisting Unlawful Arrest With Force
- 2673. Pat-Down Search
- 2674–2679. Reserved for Future Use

**G. UNLAWFUL ASSEMBLY AND DISTURBING THE PEACE**

- 2680. Courthouse Picketing (Pen. Code, § 169)
- 2681. Disturbance of Public Meeting (Pen. Code, § 403)
- 2682. Inciting a Riot (Pen. Code, § 404.6(a))
- 2683. Participating in a Riot (Pen. Code, §§ 404, 405)
- 2684. Participating in a Rout (Pen. Code, §§ 406, 408)
- 2685. Participating in an Unlawful Assembly (Pen. Code, §§ 407, 408)
- 2686. Refusal to Disperse: Riot, Rout, or Unlawful Assembly (Pen. Code, §§ 407, 409)
- 2687. Refusal to Disperse: Intent to Commit Unlawful Act (Pen. Code, § 416(a))
- 2688. Disturbing the Peace: Fighting or Challenging Someone to Fight (Pen. Code, §§ 415(1), 415.5(a)(1))
- 2689. Disturbing the Peace: Loud and Unreasonable Noise (Pen. Code, §§ 415(2), 415.5(a)(2))
- 2690. Disturbing the Peace: Offensive Words (Pen. Code, §§ 415(3), 415.5(a)(3))
- 2691–2699. Reserved for Future Use

**H. VIOLATION OF COURT ORDER**

- 2700. Violation of Court Order (Pen. Code, § 166(a)(4) & (b)(1))
- 2701. Violation of Court Order: Protective Order or Stay Away (Pen. Code, §§ 166(c)(1), 273.6)
- 2702. Violation of Court Order: Protective Order or Stay Away—Physical Injury (Pen. Code, §§ 166(c)(2), 273.6(b))

2703. Violation of Court Order: Protective Order or Stay Away—Act of Violence  
(Pen. Code, §§ 166(c)(4), 273.6(d))

2704–2719. Reserved for Future Use

## **I. CRIMES INVOLVING PRISONERS**

### **(i) Assault and Battery**

2720. Assault by Prisoner Serving Life Sentence (Pen. Code, § 4500)

2721. Assault by Prisoner (Pen. Code, § 4501)

2722. Battery by Gassing (Pen. Code, §§ 243.9, 4501.1)

2723. Battery by Prisoner on Nonprisoner (Pen. Code, § 4501.5)

2724–2734. Reserved for Future Use

### **(ii) Hostage Taking and Rioting**

2735. Holding a Hostage (Pen. Code, § 4503)

2736. Inciting a Riot in a Prison or Jail (Pen. Code, § 404.6(c))

2737–2744. Reserved for Future Use

### **(iii) Possession of Contraband**

2745. Possession or Manufacture of Weapon in Penal Institution (Pen. Code, § 4502)

2746. Possession of Firearm, Deadly Weapon, or Explosive in a Jail or County Road  
Camp (Pen. Code, § 4574(a))

2747. Bringing or Sending Firearm, Deadly Weapon, or Explosive Into Penal  
Institution (Pen. Code, § 4574(a)–(c))

2748. Possession of Controlled Substance or Paraphernalia in Penal Institution (Pen.  
Code, § 4573.6)

2749–2759. Reserved for Future Use

### **(iv) Escape**

2760. Escape (Pen. Code, § 4532(a)(1) & (b)(1))

2761. Escape by Force or Violence (Pen. Code, § 4532(a)(2) & (b)(2))

2762. Escape After Remand or Arrest (Pen. Code, § 836.6)

2763. Escape After Remand or Arrest: Force or Violence (Pen. Code, § 836.6)

2764. Escape: Necessity Defense

2765–2799. Reserved for Future Use

## **SERIES 2800 TAX CRIMES**

### **A. FAILURE TO FILE**

2800. Failure to File Tax Return (Rev. & Tax. Code, § 19701(a))

2801. Willful Failure to File Tax Return (Rev. & Tax. Code, § 19706)

2802–2809. Reserved for Future Use

**B. FALSE RETURN**

2810. False Tax Return (Rev. & Tax. Code, § 19701(a))

2811. Willfully Filing False Tax Return: Statement Made Under Penalty of Perjury (Rev. & Tax. Code, § 19705(a)(1))

2812. Willfully Filing False Tax Return: Intent to Evade Tax (Rev. & Tax. Code, § 19706)

2813–2824. Reserved for Future Use

**C. OTHER TAX OFFENSES**

2825. Aiding in Preparation of False Tax Return (Rev. & Tax. Code, § 19705(a)(2))

2826. Willful Failure to Pay Tax (Rev. & Tax. Code, § 19701(c))

2827. Concealing Property With Intent to Evade Tax (Rev. & Tax. Code, § 19705(a)(4))

2828. Failure to Withhold Tax (Rev. & Tax. Code, §§ 19708, 19709)

2829–2839. Reserved for Future Use

**D. EVIDENCE**

2840. Evidence of Uncharged Tax Offense: Failed to File Previous Returns

2841. No Deductions on Gross Income From Illegal Conduct (Rev. & Tax. Code, § 17282(a))

2842. Determining Income: Net Worth Method

2843. Determining Income: Bank Deposits Method

2844. Determining Income: Cash Expenditures Method

2845. Determining Income: Specific Items Method

2846. Proof of Unreported Taxable Income: Must Still Prove Elements of Offense

2847–2859. Reserved for Future Use

**E. DEFENSES**

2860. Defense: Good Faith Belief Conduct Legal

2861. Defense: Reliance on Professional Advice

2862–2899. Reserved for Future Use

**SERIES 2900      VANDALISM, LOITERING, TRESPASS, AND OTHER  
MISCELLANEOUS OFFENSES**

**A. VANDALISM**

- 2900. Vandalism (Pen. Code, § 594)
- 2901. Vandalism: Amount of Damage (Pen. Code, § 594(b)(1))
- 2902. Damaging Phone or Electrical Line (Pen. Code, § 591)
- 2903–2914. Reserved for Future Use

**B. LOITERING**

- 2915. Loitering (Pen. Code, § 647(h))
- 2916. Loitering: Peeking (Pen. Code, § 647(i))
- 2917. Loitering: About School (Pen. Code, § 653g)
- 2918–2928. Reserved for Future Use

**C. TRESPASS**

- 2929. Trespass After Making Credible Threat (Pen. Code, § 601(a))
- 2930. Trespass: To Interfere With Business (Pen. Code, § 602(k))
- 2931. Trespass: Unlawfully Occupying Property (Pen. Code, § 602(m))
- 2932. Trespass: Entry Into Dwelling (Pen. Code, § 602.5(a) & (b))
- 2933. Trespass: Person Present (Pen. Code, § 602.5(b))
- 2934–2949. Reserved for Future Use

**D. DANGEROUS ANIMAL**

- 2950. Failing to Maintain Control of a Dangerous Animal (Pen. Code, § 399)
- 2951. Negligent Control of Attack Dog (Pen. Code, § 399.5)
- 2952. Defenses: Negligent Control of Attack Dog (Pen. Code, § 399.5(c))
- 2953–2959. Reserved for Future Use

**E. ALCOHOL RELATED OFFENSES (NON-DRIVING)**

- 2960. Possession of Alcoholic Beverage by Person Under 21 (Bus. & Prof. Code, § 25662(a))
- 2961. Purchase of Alcoholic Beverage by Person Under 21 (Bus. & Prof. Code, § 25658(b))
- 2962. Selling or Furnishing Alcoholic Beverage to Person Under 21 (Bus. & Prof. Code, § 25658(a))
- 2963. Permitting Person Under 21 to Consume Alcoholic Beverage (Bus. & Prof. Code, § 25658(d))

- 2964. Purchasing Alcoholic Beverage for Person Under 21: Resulting in Death or Great Bodily Injury (Bus. & Prof. Code, §§ 25658(a) & (c))
- 2965. Parent Permitting Child to Consume Alcoholic Beverage: Causing Traffic Collision (Bus. & Prof. Code, § 25658.2)
- 2966. Disorderly Conduct: Under the Influence in Public (Pen. Code, § 647(f))
- 2967–2979. Reserved for Future Use

**F. OFFENSES INVOLVING CARE OF MINOR**

- 2980. Contributing to Delinquency of Minor (Pen. Code, § 272)
- 2981. Failure to Provide (Pen. Code, § 270)
- 2982. Persuading, Luring, or Transporting a Minor Under 14 Years of Age (Pen. Code, § 272(b)(1))
- 2983–2989. Reserved for Future Use

**G. BETTING**

- 2990. Bookmaking (Pen. Code, § 337a(a)(1))
- 2991. Pool Selling (Pen. Code, § 337a(a)(1))
- 2992. Keeping a Place for Recording Bets (Pen. Code, § 337a(a)(2))
- 2993. Receiving or Holding Bets (Pen. Code, § 337a(a)(3))
- 2994. Recording Bets (Pen. Code, § 337a(a)(4))
- 2995. Permitting Place to Be Used for Betting Activities (Pen. Code, § 337a(a)(5))
- 2996. Betting or Wagering (Pen. Code, § 337a(a)(6))
- 2997–3099. Reserved for Future Use

**SERIES 3100      ENHANCEMENTS AND SENTENCING FACTORS**

**A. PRIOR CONVICTION**

- 3100. Prior Conviction: Nonbifurcated Trial (Pen. Code, §§ 1025, 1158)
- 3101. Prior Conviction: Bifurcated Trial (Pen. Code, §§ 1025, 1158)
- 3102. Prior Conviction: Prison Prior
- 3103. Prior Conviction: Factual Issue for Jury (Pen. Code, §§ 1025, 1158)
- 3104–3114. Reserved for Future Use

**B. ARMED WITH FIREARM**

- 3115. Armed With Firearm (Pen. Code, § 12022(a)(1))
- 3116. Armed With Firearm: Assault Weapon, Machine Gun, or .50 BMG Rifle (Pen. Code, § 12022(a)(2))

3117. Armed With Firearm: Knowledge That Coparticipant Armed (Pen. Code, § 12022(d))

3118–3129. Reserved for Future Use

**C. PERSONALLY ARMED WITH DEADLY WEAPON OR FIREARM**

3130. Personally Armed With Deadly Weapon (Pen. Code, § 12022.3)

3131. Personally Armed With Firearm (Pen. Code, §§ 1203.06(b)(3), 12022(c), 12022.3(b))

3132. Personally Armed With Firearm: Unlawfully Armed When Arrested (Pen. Code, § 1203.06(a)(3))

3133–3144. Reserved for Future Use

**D. PERSONALLY USED DEADLY WEAPON OR FIREARM**

3145. Personally Used Deadly Weapon (Pen. Code, §§ 667.61(e)(4), 1192.7(c)(23), 12022(b)(1) & (2), 12022.3)

3146. Personally Used Firearm

3147. Personally Used Firearm: Assault Weapon, Machine Gun, or .50 BMG Rifle (Pen. Code, § 12022.5(b))

3148. Personally Used Firearm: Intentional Discharge (Pen. Code, § 12022.53(c))

3149. Personally Used Firearm: Intentional Discharge Causing Injury or Death (Pen. Code, §§ 667.61(e)(3), 12022.53(d))

3150. Personally Used Firearm: Intentional Discharge and Discharge Causing Injury or Death—Both Charged (Pen. Code, §§ 667.61(e)(3), 12022.53(d))

3151–3159. Reserved for Future Use

**E. GREAT BODILY INJURY**

3160. Great Bodily Injury (Pen. Code, §§ 667.5(c)(8), 667.61(e)(3), 1192.7(c)(8), 12022.7, 12022.8)

3161. Great Bodily Injury: Causing Victim to Become Comatose or Paralyzed (Pen. Code, § 12022.7(b))

3162. Great Bodily Injury: Age of Victim (Pen. Code, § 12022.7(c) & (d))

3163. Great Bodily Injury: Domestic Violence (Pen. Code, § 12022.7(e))

3164–3174. Reserved for Future Use

**F. SEX OFFENSES**

3175. Sex Offenses: Sentencing Factors—Aggravated Kidnapping (Pen. Code, § 667.61(d)(2))

3176. Sex Offenses: Sentencing Factors—Aggravated Mayhem (Pen. Code, § 667.61(d)(3))

- 3177. Sex Offenses: Sentencing Factors—Torture (Pen. Code, § 667.61(d)(3))
- 3178. Sex Offenses: Sentencing Factors—Burglary With Intent to Commit Sex Offense (Pen. Code, § 667.61(d)(4))
- 3179. Sex Offenses: Sentencing Factors—Kidnapping (Pen. Code, § 667.61(e)(1))
- 3180. Sex Offenses: Sentencing Factors—Burglary (Pen. Code, § 667.61(e)(2))
- 3181. Sex Offenses: Sentencing Factors—Multiple Victims (Pen. Code, § 667.61(e)(5))
- 3182. Sex Offenses: Sentencing Factors—Tying or Binding (Pen. Code, § 667.61(e)(6))
- 3183. Sex Offenses: Sentencing Factors—Administered Controlled Substance (Pen. Code, § 667.61(e)(7))
- 3184–3199. Reserved for Future Use

#### **G. CONTROLLED SUBSTANCES**

- 3200. Controlled Substance: Quantity (Pen. Code, §§ 1203.07(a)(1), (2) & (4); Health & Saf. Code, §§ 11352.5, 11370.4)
- 3201. Controlled Substance: Quantity—Manufacture of Controlled Substance (Health & Saf. Code, § 11379.8)
- 3202–3219. Reserved for Future Use

#### **H. OTHER ENHANCEMENTS**

- 3220. Amount of Loss (Pen. Code, § 12022.6)
- 3221. Aggravated White Collar Crime (Pen. Code, § 186.11(a)(1))
- 3222. Characteristics of Victim (Pen. Code, §§ 667.9(a) & (b), 667.10(a))
- 3223–3249. Reserved for Future Use

#### **I. TEMPLATES**

- 3250. Enhancement, Sentencing Factor, or Specific Factual Issue: Template
- 3251. Enhancement, Sentencing Factor, or Specific Factual Issue: Template—Bifurcated Trial
- 3252–3259. Reserved for Future Use

#### **J. RELATED INSTRUCTIONS**

- 3260. Duty of Jury: Verdict Form for Enhancement, Sentencing Factor, or Prior Conviction
- 3261. During Commission of Felony: Defined—Escape Rule
- 3262–3399. Reserved for Future Use

**SERIES 3400        DEFENSES AND INSANITY**

**A.    GENERAL DEFENSES**

- 3400. Alibi
- 3401. Reserved for Future Use
- 3402. Duress or Threats
- 3403. Necessity
- 3404. Accident (Pen. Code, § 195)
- 3405. Parental Right to Punish a Child
- 3406. Mistake of Fact
- 3407. Defenses: Mistake of Law
- 3408. Entrapment
- 3409. When Conduct of Officer May Not Be Attributed to Defendant
- 3410. Statute of Limitations
- 3411–3424. Reserved for Future Use

**B.    IMPAIRMENT DEFENSES**

- 3425. Unconsciousness
- 3426. Voluntary Intoxication (Pen. Code, § 22)
- 3427. Involuntary Intoxication
- 3428. Mental Impairment: Defense to Specific Intent or Mental State (Pen. Code, § 28)
- 3429. Reasonable Person Standard for Physically Disabled Person
- 3430–3449. Reserved for Future Use

**C.    INSANITY AND CIVIL COMMITMENTS**

- 3450. Insanity: Determination, Effect of Verdict (Pen. Code, §§ 25, 25.5)
- 3451. Present Mental Competence of Defendant
- 3452. Determining Restoration to Sanity (Pen. Code, § 1026.2)
- 3453. Extension of Commitment (Pen. Code, § 1026.5(b)(1))
- 3454. Commitment as Sexually Violent Predator (Welf. & Inst. Code, §§ 6600, 6600.1)
- 3455. Idiocy as a Defense (Pen. Code, §§ 25, 25.5)
- 3456–3469. Reserved for Future Use

**D.    SELF-DEFENSE AND DEFENSE OF ANOTHER**

- 3470. Right to Self-Defense or Defense of Another (Non-Homicide)

- 3471. Right to Self-Defense: Mutual Combat or Initial Aggressor
- 3472. Right to Self-Defense: May Not Be Contrived
- 3473. Reserved for Future Use
- 3474. Danger No Longer Exists or Attacker Disabled
- 3475. Right to Eject Trespasser From Real Property
- 3476. Right to Defend Real or Personal Property
- 3477. Presumption That Resident Was Reasonably Afraid of Death or Great Bodily Injury (Pen. Code, § 198.5)
- 3478–3499. Reserved for Future Use

**SERIES 3500 POST-TRIAL: CONCLUDING**

**A. UNANIMITY**

- 3500. Unanimity
- 3501. Unanimity: When Generic Testimony of Offense Presented
- 3502. Unanimity: When Prosecution Elects One Act Among Many
- 3503–3514. Reserved for Future Use

**B. MULTIPLE COUNTS AND COMPLETION OF VERDICT FORMS**

- 3515. Multiple Counts: Separate Offenses (Pen. Code, § 954)
- 3516. Multiple Counts: Alternative Charges for One Event—Dual Conviction Prohibited
- 3517. Deliberations and Completion of Verdict Forms: For Use When Lesser Included Offenses and Greater Crimes Are Not Separately Charged (Non-Homicide)
- 3518. Deliberations and Completion of Verdict Forms: For Use When Lesser Included Offenses and Greater Crimes Are Not Separately Charged and the Jury Is Given Only One Not Guilty Verdict Form for Each Count (Non-Homicide)
- 3519. Deliberations and Completion of Verdict Forms: Lesser Offenses—For Use When Lesser Included Offenses and Greater Crimes Are Separately Charged (Non-Homicide)
- 3520–3529. Reserved for Future Use

**C. ADMONITIONS**

- 3530. Judge’s Comment on the Evidence (Cal. Const., art. VI, § 10; Pen. Code, §§ 1127, 1093(f))
- 3531. Service Provider for Juror With Disability (Code Civ. Proc., § 224)

3532–3549. Reserved for Future Use

**D. CONCLUDING INSTRUCTION ON SUBMISSION TO JURY**

3550. Pre-Deliberation Instructions

3551–3574. Reserved for Future Use

**E. ALTERNATES**

3575. Substitution of Alternate Juror: During Deliberations (Pen. Code, § 1089)

3576. Substitution of Alternate Juror in Capital Case: After Guilt Determination,  
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