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## **SYLLABUS FOR CLE PRESENTATION – NEW CRIMINAL JUSTICE LAWS EFFECTIVE IN 2020**

### **I. Use of Deadly Force by Law Enforcement (Assembly Bill No. 392 – Amended California Penal Code §835a)**

- “Stephon Clark’s Law”
  - Stephon Clark was a 22 year old, unarmed black man who was shot and killed by law enforcement officers who mistook his cell phone for a firearm.
- Lobbied for and passed in response to the large numbers of deaths from police-related shootings in past years.
- Signed by Governor Newsome on August 19, 2019; Effective January 1, 2020.
- “[C]reate[s] what some have described as one of the toughest standards in the nation for when law enforcement officers can kill.” -Los Angeles Times

#### **A. Key Changes**

- Sets forth amended Legislative Intent:
  - PC §835a(a)(2) amended to read, “[I]t is the intent of the Legislature that peace officers **can use deadly force only when necessary in defense of human life.**”
- Changes the language of the statute defining when an officer is justified in using deadly force.
  - PC §835a(c) amended to read:
    - (1) A peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons:
      - (A) To defend against an imminent threat of death or serious bodily injury to the officer or to another person; [or]
      - (B) To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used[.]

#### **B. Additional Talking Points**

- **Sergio Contreras Villanueva (Salinas wrongful death case)**
- **Any other wrongful death cases you’ve handled involving police shootings/use of force**

## **II. Increased Training for Law Enforcement Officers Regarding New Statewide Use of Force Policy** **(Senate Bill No. 230 – Added California Penal Code §13519.10)**

- Passed as an accompaniment to Assembly Bill 392.
- Signed by Governor Newsome on September 12, 2019
- Sets deadlines for when the newly required ongoing trainings for law enforcement officers need to be in place.
- “[SB 230] establishes the nation’s most robust state-level use-of-force training guidelines for law enforcement officers that focus[es] on de-escalation, crisis intervention, bias-free policing, and only using force when absolutely necessary.” -Governor Gavin Newsome to The Sacramento Bee

### **A. Key Changes**

- Requires each law enforcement agency across the state, by January 1, 2021, to implement and maintain a publicly-accessible minimum standard on the use of force that complies with newly amended PC §835a.
- Requires each law enforcement agency across the state, by varying deadlines, to **implement and maintain courses of instruction for the regular and periodic training of law enforcement officers in the use of force.**
  - Newly added PC §13519.10 reads:
    - (a) The commission shall a course or courses of instruction for the regular and periodic training of law enforcement officers in the use of force and shall also develop uniform, minimum guidelines for adoption and promulgation by California law enforcement agencies for use of force. The guidelines and course of instruction shall stress that use of force by law enforcement personnel is of important concern to the community and law enforcement and that law enforcement should safeguard life, dignity, and liberty of all persons, without prejudice to anyone.
    - (b) The course or courses of the regular basic course for law enforcement officers and the guidelines shall include all of the following:
      - (1) Legal standards for use of force;
      - (2) Duty to intercede;
      - (3) The use of objectively reasonable force;
      - (4) Supervisory responsibilities;
      - (5) Use of force review and analysis;
      - (6) Guidelines for the use of deadly force;
      - (7) State required reporting;
      - (8) De-escalation and interpersonal communication training, including tactical methods that use time, distance, cover, and concealment, to avoid escalating situations that lead to violence;

- (9) Implicit and explicit bias and cultural competency;
- (10) Skills including de-escalation techniques to effectively, safely, and respectfully interact with people with disabilities or behavioral health issues;
- (11) Use of force scenario training including simulations of low-frequency, high-risk situations and calls for service, shoot-or-don't shoot situations, and real-time force option decision making;
- (12) Alternatives to the use of deadly force and physical force, so that de-escalation tactics and less lethal alternatives are, where reasonably feasible, part of the decision making process leading up to the consideration of deadly force;
- (13) Mental health and policing, including bias and stigma; [and]
- (14) Using public service, including the rendering of first aid, to provide a positive point of contact between law enforcement officers and community members to increase trust and reduce conflicts.

#### **B. Additional Talking Points**

- Same as for Section I
- Any case you've handled in which you've had to cross-examine officers on their publicly-available training policies

### **III. Surveillance by Drones**

**(Assembly Bill No. 1129 – Amended California Penal Code §647)**

- Signed by Governor Newsome on October 11, 2019; Effective January 1, 2020.
- Makes it a misdemeanor-level criminal offense to conduct surveillance by drone of an area in which a person has a reasonable expectation of privacy.

#### **A. Key Changes**

- PC §647(j) amended to include “**electronic devices and unmanned aircraft systems [such as drones]**” in the list of instrumentalities that, if used for surveillance of an area “in which the occupant has a reasonable expectation of privacy,” would constitute a misdemeanor.

#### **B. Additional Talking Points**

- Any cases you've handled with 4th Amend. issues involving the surveillance of private property by some sort of advanced technology
- Any cases you've handled involving stalking, ‘peeping Toms,’ etc.

### **IV. Submission and Testing of Sexual Assault Evidence**

**(Senate Bill No. 22 – Amended California Penal Code §680)**

- Signed by Governor Newsome on October 8, 2019; Effective January 1, 2020.
- Lobbied for and passed following reports of evidence samples sitting untested for years.

- Requires that evidence of an alleged sexual assault, specifically those collected through rape kits, must be submitted to a crime lab within 20 days and tested within no more than 120 days following its receipt by the crime lab.

#### A. Key Changes

- PC §680(c) amended to read:  
In order to ensure that sexual assault forensic evidence is analyzed within the two-year timeframe . . . the following shall occur:  
(1) A law enforcement agency . . . shall do one of the following for any sexual assault forensic evidence[:]  
(A) Submit sexual assault forensic evidence to the crime lab **within 20 days after it is booked into evidence**; [or] (B) Ensure that a rapid turnaround DNA program is in place to submit forensic evidence collected from the victim of a sexual assault directly from the medical facility where the victim is examined to the crime lab within 5 days after the evidence is obtained from the victim. [and]  
(2) The crime lab shall do one of the following for any sexual assault forensic evidence[:]  
(A) Process sexual assault forensic evidence, create DNA profiles when able, and upload qualifying DNA profiles into CODIS as soon as practically possible, but **no later than 120 days after initially receiving the evidence**; [or]  
(B) Transmit the sexual assault forensic evidence to another crime lab as soon as practically possible, but no later than 30 days after initially receiving the evidence, for processing of the evidence for the presence of DNA.

#### B. Additional Talking Points

- Any cases you've handled involving PC §'s 261, 261.5, 262, 286, 287, 288a, or 289
- Any post-conviction cases you've handled involving the failed testing or re-testing of what should have been viable DNA samples

### V. No More Co-pays or Fees for Medical Care and Medically Necessary Items for Inmates (Assembly Bill No. 45 – Added California Penal Code §§ 4011.2 and 4011.3)

- Signed by Governor Newsome on October 8, 2019; Effective January 1, 2020.
- Prohibits a sheriff, or chief or director of corrections, or a chief of police, from charging a fee for an inmate-initiated medical visit. Also prohibits those same officials from charging an inmate of the state prison or a city or county jail a fee for necessary medical equipment or medical supplies.

#### A. Key Changes

- Newly added PC §4011.2 reads, "A sheriff, chief or director of corrections, or a chief of police **shall not charge a fee for an inmate-initiated medical visit** of an inmate confined in a county or city jail."
- Newly added PC §4011.3(a) reads, "A sheriff, chief or director of corrections, or a chief of police **shall not charge a fee for durable medical equipment or medical supplies** provided to an inmate confined in a county or city jail as medically

necessary to ensure the inmate has equal access to jail services, programs, or activities.”

#### **B. Additional Talking Points**

- **Any post-conviction cases you’ve handled involving clients negative experiences with prison/jail medical**

### **VI. No New or Renewed Contracts with Private, For-Profit Prisons (Assembly Bill No. 32 – Added California Penal Code §§ 5003.1 and 9501)**

- Signed by Governor Newsome on October 11, 2019; Effective January 1, 2020.
- Prevents state officials from entering into or renewing contracts with for-profit prison companies. Also begins the graduate phasing out of the state’s use of those facilities by 2028.
- Bans the operation of private immigration detention centers within the state.

#### **A. Key Changes**

- Newly added PC §5003.1 reads:
  - (a) On or after January 1, 2020, the department **shall not enter into** a contract with a private, for-profit prison facility located in or outside the state to provide housing for state prison inmates.
  - (b) On or after January 1, 2020, the department **shall not renew** an existing contract with a private, for-profit prison facility located in or outside the state to provide housing for state prison inmates.
  - (c) After January 1, 2028, a state prison inmate or other person under the jurisdiction of the department **shall not be incarcerated** in a private, for-profit prison facility.
- Newly added PC §9501 reads, “Except as otherwise provided in [Title 9.5], a person **shall not operate** a private detention facility within the state.

#### **B. Additional Talking Points**

- **Any opinions you might have regarding the problems posed by the for-profit prison system (ex. they make more money when more people incarcerated)**

### **VII. Disclosure of Law Enforcement Personnel Files (*Association of Los Angeles Deputy Sheriffs v. Superior Court of Los Angeles County* (2019) 8 Cal.5th 28.)**

- Decided by the California Supreme Court on August 26, 2019.
- “[T]he state high court tried to ‘harmonize’ state laws that protect police personnel records with . . . *Brady v. Maryland*[.]” -Los Angeles Times

#### **A. Key Change/Holding**

- The California Supreme Court held that the **disclosure of certain information from law enforcement personnel files, specifically of officers listed as potential**

**witnesses in pending criminal prosecutions, by law enforcement agencies to the prosecution did not violate state statutes regarding the confidentiality of internal personnel files (known as *Pitchess* statutes).**

- The information allowed to be disclosed by law enforcement agencies included the names of officers, the identifying information of officers, and notes that officers may have relevant exonerating or impeaching material (i.e. *Brady* material) in their personnel files.

#### **B. Additional Talking Points**

- Any difficulties you've faced attempting to argue a *Pitchess* or *Brady* motion
- Any difficulties you've faced getting records/citizens complaints regarding misconduct by a law enforcement officer witness

### **VIII. Admission of Surreptitiously Recorded Telephone Conversations by Private Actors (*People v. Guzman* (2019) 8 Cal.5th 673.)**

- Decided by the California Supreme Court on December 5, 2019.

#### **A. Key Change/Holding**

- The California Supreme Court held that the recent amendment to the California Constitution (the "Right to Truth in Evidence" Amendment) **requiring the admission of all relevant evidence in any criminal proceeding abrogated the provision in the Invasion of Privacy Act (codified in California Penal Code §630) which required the exclusion, in any judicial proceeding, of evidence obtained via recording of a telephone conversation with the consent of only one of the parties to the conversation.**
- Therefore, the court also held that relevant portions of a telephone conversation between the complaining witness's mother and the defendant's niece, surreptitiously recorded by the aunt without the consent of the niece, were lawfully admitted by the trial court against the defendant.

#### **B. Additional Talking Points**

- Any cases you've handled involving the secret recording of telephone conversations
- Could explain why different for state actors recording conversations vs. private actors under the 4th Amend. (i.e. only applies to state actors)
- Could explain some of the evidentiary issues that can be involved in cases such as these

### **IX. Confrontation Rights of Criminal Defendant in Sexual Abuse Cases (*People v. Arredondo* (2019) 8 Cal.5th 694.)**

- Decided by the California Supreme Court on December 16, 2019.

#### **A. Key Change/Holding**

- The California Supreme Court held that, without an order of necessity, the trial court's decision to allow an 18 year old witness – the minor victim in a case alleging lewd acts on a child under 16 – to testify over a television monitor facing the jury in a way that the witness and the defendant could not see each other violated the defendant's rights under the Confrontation Clause.

**B. Additional Talking Points**

- **Any cases you've handled involving specific accommodations made for victims of alleged sexual abuse or other particularly vulnerable witnesses**