

TEXT OF PROPOSED REGULATIONS

In the following, underline indicates additional text and ~~strikethrough~~ indicates deleted text.

California Code of Regulations, Title 15, Division 3, Adult Institutions, Programs and Parole

Chapter 1. Rules and Regulations of Adult Operations and Programs

Article 1. Behavior

3000. Definitions.

Section 3000 is amended to alphabetically merge the definition below with those that exist in the regulations.

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Alternative Custody Program (ACP) means a voluntary program developed for non-violent, non-serious and non-registerable sex offense inmates pursuant to PC section 1170.05 that allows eligible inmates committed to state prison to serve their sentence in the community in lieu of confinement in state prison.

Alternative Custody Program Participant means any offender who is approved for and placed in the Alternative Custody Program as defined in this section.

Case Conference Review means a documented review of the progress made in the Case Plan and will review the effectiveness of the current plan to determine necessary modifications. It will also include a review to determine if the parole supervision/case management expectations have been met conference between a parole agent and his/her supervisor to discuss a parolee's behavior.

Face-to-Face Contact means an in-person contact with a parolee, or an Alternative Custody Program Participant, by ~~Division of Adult Parole Operations staff~~ a CDCR parole agent.

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NOTE: Authority cited: Sections 2717.3, 3000.03, 5058 and 5058.3, Penal Code; Section 10115.3(b), Public Contract Code; and Sections 4525(a), 4526 and 14837, Government Code. Reference: Sections 186.22, 243, 314, 530, 532, 646.9, 653m, 832.5, 1170.05, 1203.8, 1389, 2080, 2081.5, 2600, 2601, 2700, 2717.1, 2717.6, 2932.5, 3550, 4570, 5009, 5054, 5068, 7000 et seq. and 11191, Penal Code; Sections 1132.4 and 1132.8, Labor Code; Sections 10106, 10108, 10108.5, 10115, 10115.1, 10115.2, 10115.3 and 10127, Public Contract Code; and Section 999, Military and Veterans Code; Section 391, Code of Civil Procedure; Section 297.5, Family Code; Section 8550 and 8567, Government Code; Governor's Prison Overcrowding State of Emergency Proclamation dated October 4, 2006; In re Bittaker, 55 Cal.App. 4th 1004, 64 Cal. Rptr. 2d 679; Section 11007, Health and Safety Code; and Madrid v. Cate (U.S.D.C. N.D. Cal. C90-3094 TEH).

Article 3.5. Credits

3043. Credit Earning.

Subsections 3043(a) and (b) are unchanged.

Subsections 3043(c) and (c)(1) are unchanged but shown as reference.

(c) Milestone completion credits.

(c)(1) Milestone means the achievement of a distinct objective of a rehabilitative program as established by CDCR in the Milestone Completion Credit Schedule (see 3043(c)(6)). If an inmate is eligible for program credits pursuant to PC section 2933.05, reaching a milestone allows for awarding of such credits.

Subsection 3043(c)(2) is amended to read:

(c)(2) In addition to any credit awarded pursuant to section 3042, credit reductions to reduce an eligible inmate's term of confinement may be awarded in increments of not less than one week, but no more than six weeks in a twelve-month period for achievement of specific program performance milestones concluding with the successful completion of in-prison or Alternative Custody Program (ACP), pursuant to Chapter 1, Article 6.8, rehabilitative programs approved and listed by CDCR on the Milestone Completion Credit Schedule (see 3043(c)(6)). One week is equivalent to 7 calendar days.

Subsection 3043(c)(3) is unchanged.

Subsection 3043(c)(4) is amended to read:

(c)(4) For the purposes of this section, in-prison or ACP rehabilitative programs shall include, but are not limited to academic programs, vocational training programs, substance abuse programs and other core programs such as anger management and social life skills.

Subsections 3043(c)(5) and 3043(c)(6) are unchanged.

Subsection 3043(c)(7) is unchanged but is shown as reference.

(7) Program milestones earned in excess of six weeks within a 12-month period shall be applied at the beginning of the next 12-month period of continuous incarceration.

Subsections 3043(c)(7)(A) through 3043(c)(7)(C) are amended to read:

(c)(7)(A) For the purposes of this section, the 12-month period shall begin on the date when the first milestone completion credits are completed and verified by the Inmate Assignment Lieutenant. For ACP Participants, the 12-month period shall begin on the date when the first milestone completion credits are completed and verified by the ACP Program Manager or designee.

(c)(7)(B) Within 3 business days of completion of an approved performance milestone, the approved program instructor will certify completion of a milestone via a CDC Form 128-B (Rev. 4/74), General Chrono and forward the document to the Inmate Assignment Office. ACP Participants shall notify the ACP Case Manager or designee of completion of an approved performance milestone in writing and provide documentation of completion. The ACP Case Manager or designee will verify completion of the performance milestone and, upon verification, notify the ACP Program Manager of completion of a performance milestone within 3 business days via a CDCR Form 1502 Activity Report (Rev. 10/06).

(c)(7)(C) Upon receipt of General Chrono, within 3 business days, the inmate assignment lieutenant or custody staff member not less than the rank of lieutenant, or the ACP Program Manager or designee, will verify the inmate's eligibility for milestone completion credits and complete a CDC Form 128-G (Rev. 10/89), Classification Chrono and forward to Case Records.

Subsections 3043(c)(8) through 3043(h) are unchanged.

NOTE: Authority cited: Sections 2700, ~~and~~ 5058 and 5058.3, Penal Code. Reference: Sections 1170.05, 2931, 2933, 2933.05, 2935, 5054, 6260, 11189 and 11190, Penal Code; Section 3201, Welfare and Institutions Code; In re Monigold, 205 Cal. App. 3d 1224, and People v. Jones, 44 Cal. Rptr. 2d 164 (Cal. 1995).

Article 6.5. Intake, Release and Discharge of Inmates

3075.2. Releases.

Subsections 3075.2(a) through 3075.2(c) are unchanged.

Subsection 3075.2(d) is unchanged but shown as reference.

(d) Release Allowances. A release allowance is a sum of money intended for the rehabilitative purpose of assisting in an inmate/parolee's reintegration into society, and shall only be provided to an inmate who is released from prison to the direct supervision of a parole agent in the community, is placed on non-revocable parole, or is discharged from the jurisdiction of the Department of Corrections and Rehabilitation. Except as stipulated below, inmates with six months or more served on a sentence or parole violation shall be given \$200, less the costs of clothing and public transportation provided by the facility in connection with their release. Parolees who willfully abscond shall forfeit any remaining release allowance otherwise due them.

Subsections 3075.2(d)(1) through 3075.2(d)(7) are unchanged.

New subsection 3075.2(d)(8) is adopted to read:

(d)(8) Alternative Custody Program (ACP) Participants:

(A) Upon approval by the ACP Program Manager or designee, an ACP Participant may receive an advance of up to \$100 of their release allowance upon release and placement to ACP.

(B) An ACP Participant shall receive \$200 upon release to parole, less any amount previously advanced.

Subsections 3075.2(e) through 3075.2(e)(2) are unchanged.

NOTE: Authority cited: Sections 2713.1, 3000.03, ~~and~~ 5058 and 5058.3, Penal Code. Reference: Sections 290, 457.1, 1168, 1170, 1170.05, 2713.1, 2901, 2962, 3053.5, 5054, 11175, 11176 and 11180, Penal Code; Section 11592, Health and Safety Code; and Sections 6601 and 6604, Welfare and Institutions Code.

New Article 6.8 is adopted to read:

Article 6.8. Alternative Custody Program

Under Chapter 1, new section 3078 is adopted to read:

3078. Alternative Custody Program Definitions.

For the purposes of the ACP, the following definitions shall apply:

(a) Alternative Custody Program (ACP) Case Manager means a designated Division of Adult Parole Operations (DAPO) employee who is assigned to supervise those persons released to ACP while in the community.

(b) ACP Program Manager means a department employee who is responsible for the overall coordination of the ACP and the ACP Participants within the community.

(c) Residential Home means a structure in an area that is zoned for residential habitation, and can be located and identified by a street number and street name.

(d) Transitional Care Facility means an approved facility located in a structure in an area that is zoned for residential habitation, and can be located and identified by a street number and street name and which assists in the transition from a custody or treatment environment to an independent living environment.

(e) Residential Drug or Treatment Program means an approved program located in a structure in an area that is zoned for residential habitation, that can be located and identified by a street number and street name, and which provides substance abuse or other treatment.

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 1170.05 and 5054, Penal Code.

New section 3078.1 is adopted to read:

3078.1. Alternative Custody Program General Policy.

(a) Pursuant to Penal Code section 1170.05, the Secretary of the Department of Corrections and Rehabilitation (department) is authorized to offer a program under which female inmates, pregnant inmates, or inmates who immediately prior to incarceration were primary caregivers of dependent children, as defined in subsection 3078.2(a)(3), and who are committed to state prison may be allowed to participate in a voluntary alternative custody program in lieu of confinement in state prison.

(b) An Alternative Custody Program (ACP) Participant's confinement in the community shall consist of restriction to one of the following:

(1) A Residential Home during the hours designated by the department, or

(2) A Transitional Care Facility that offers appropriate services during the hours designated by the department, or

(3) A Residential Drug or Treatment Program during the hours designated by the department.

(c) One day of participation in the ACP shall be in lieu of one day of incarceration in state prison. Participants in the program shall receive any sentence reduction credits that they would have received

pursuant to section 3043 had they served their sentence in state prison and shall be subject to denial and loss of credit pursuant to PC section 2932(a).

(d) The Secretary or his or her designee shall have the sole discretion concerning whether to permit program participation as an alternative to custody in state prison.

(e) Each inmate released for placement in the ACP shall be subject to applicable rules and regulations governing inmates pursuant to the California Code of Regulations, Title 15, Division 3.

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 1170.05, 2932(a), and 5054, Penal Code.

New section 3078.2 is adopted to read:

3078.2. Alternative Custody Program Eligibility Criteria.

(a) To be eligible to participate in the Alternative Custody Program (ACP), the inmate must volunteer and be:

(1) Female, or

(2) Pregnant, or

(3) A primary caregiver of a dependent child immediately prior to incarceration meeting all of the following criteria:

(A) The child is the inmate's legal son, daughter, stepchild, adopted child or foster child.

(B) The child is 17 years of age or younger at the time of the inmate's placement into the ACP.

(C) The child resided with the inmate more than 6 months of the year preceding the inmate's arrest.

(D) At the time of arrest, the inmate had physical custody of the child and was primarily responsible for the care and upbringing of the child.

(b) The inmate shall have no more than 24 months left to serve at the time of placement into the ACP.

(c) The inmate does not meet any of the exclusionary criteria as provided for in section 3078.3.

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 1170.05 and 5054, Penal Code.

New section 3078.3 is adopted to read:

3078.3. Alternative Custody Program Exclusionary Criteria.

(a) Exclusionary criteria includes, but is not limited to:

(1) Current or prior conviction of any of the crimes listed as a violent felony in Penal Code (PC) section 667.5(c) including stayed counts and enhancements.

(2) Current or prior conviction of any of the crimes listed as a serious felony in PC sections 1192.7(c) and 1192.8 including stayed counts and enhancements.

(3) Current or prior conviction for an offense that requires the person to register as a sex offender pursuant to PC section 290.

(4) High risk to commit a violent offense as determined by the department using a validated risk assessment tool. This tool may include but is not limited to the California Static Risk Assessment tool, as provided in section 3768.1.

(5) History of escape within the last 10 years from a facility while under juvenile or adult custody, including, but not limited to any detention facility, camp, jail, or state prison facility or inmates that have been reviewed for escape and have been assessed an administrative determinant of ESC, as provided in subsection 3375.2(b)(9).

(6) Active or potential holds, warrants, or detainers.

(7) Active or potential United States Immigration and Customs Enforcement holds.

(8) Active restraining order.

(9) In-custody misconduct equivalent to a Division "A-C" offense, as defined in section 3323, during the last 24 calendar months, except for physical possession of alcohol.

(10) Security Housing Unit or Psychiatric Services Unit terms in the last 12 calendar months.

(11) Current Close or Max Custody, as defined in section 3377.2.

(12) Current or prior conviction for a sexually violent offense, as defined in Welfare and Institutions Code section 6600(b).

(13) Validated active or inactive prison gang members or associates, as defined in subsection 3378(c). Does not exclude validated prison gang dropouts or street gang/disruptive groups.

(14) Current or prior probable/good cause finding by the Board of Parole Hearings (BPH), as defined in section 3000, for a violation of a condition of parole for a serious or violent offense.

(15) Probable/good cause finding by BPH for absconding parole within the last 24 calendar months.

(16) Current Parole Violator Return to Custody or pending revocation status.

(17) A juvenile sustained adjudication, what is commonly referred to as a juvenile sustained petition for a crime listed as a violent felony in PC section 667.5(c).

(18) A juvenile sustained adjudication, which is commonly referred to as a juvenile sustained petition for a crime listed as a serious felony in PC sections 1192.7(c) and 1192.8.

(b) Additional exclusionary criteria shall be reviewed on a case-by-case basis, including but not limited to:

- (1) Current or prior sexual offense convictions not requiring PC section 290 registration.
- (2) Current psychiatric or medical condition that requires ongoing care.
- (3) Current or prior child abuse arrest(s) or conviction(s), probable/good cause finding by BPH or conviction(s) where the offense was related to abuse or neglect of a child.
- (4) Current or prior conviction(s) or probable/good cause finding(s) by BPH for a violation of a condition of parole for stalking.
- (5) Current or prior administrative determinants that result in a mandatory minimum placement score, as defined in subsection 3375.2(b).
- (6) Prior ACP participation that resulted in a return to an institution.
- (7) Upon review of all case factors, no appropriate placement is available in the community.

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 290, 667.5(c), 1170.05, 1192.7(c), 1192.8 and 5054, Penal Code. Section 6600(b), Welfare and Institutions Code.

New section 3078.4 is adopted to read:

3078.4. Alternative Custody Program Processing.

(a) Screening and Assessment.

(1) Every inmate shall be afforded the opportunity to sign and submit to their assigned Correctional Counselor a CDCR Form 2234 (06/11), ACP Application and Voluntary Agreement, which is incorporated by reference.

(2) Upon receipt of a CDCR Form 2234, the Correctional Counselor shall complete a preliminary screening for Alternative Custody Program (ACP) eligibility utilizing the criteria provided in section 3078.2 on a CDCR Form 2235 (06/11), Alternative Custody Program Screening Form, which is incorporated by reference.

(3) An assessment of the inmate's criminogenic needs and other predictive factors shall be completed using validated assessment tool(s). The assessment tool(s) used for this purpose shall facilitate decisions regarding the placement, supervision and case-management of an offender in a community setting.

(b) Individualized Treatment and Rehabilitation Plan.

(1) Based on the assessment completed in (a)(3) above and a review of the inmate's central file, an Individualized Treatment and Rehabilitation Plan (ITRP) shall be prepared by designated institution staff. The ITRP shall address a full range of issues including those directly and indirectly related to the specific needs of the potential ACP Participant. The ITRP shall describe specific activities and services needed to achieve identified goals. The ITRP shall address, but is not limited to the following factors:

(A) Housing.

(B) Employment plans.

(C) Transportation.

(D) Substance abuse treatment.

(E) Parenting and life skills.

(F) Anger management and criminal thinking.

(G) Vocational and educational needs.

(H) Social services needs, e.g., Veteran's Affairs benefits, general assistance, social security.

(I) Medical, dental, and mental health needs.

(2) Institution staff shall coordinate with the ACP Program Manager, as defined in section 3078, to identify appropriate placement consistent with the offender's needs and availability of appropriate program(s). Other factors to be considered include but are not limited to:

(A) Child dependency issues wherein the court and/or a representative of the appropriate county agency has determined that a potential participant's inclusion in the program is not in the best interest of the child.

(B) Placement resulting in a potential participant residing in close proximity to any person that was the victim of the potential participant's crime.

(3) The participant shall agree to fill out and sign forms pertaining to any county, state, or federal medical benefit program(s) for which the participant is eligible.

(4) The participant shall sign the CDCR Form 1516-ACP (06/11), Requirements of the Alternative Custody Program, which is incorporated by reference, agreeing to comply with the requirements of participation in ACP.

(c) Classification and Case Records

(1) The ITRP and all other pertinent information will be presented to the Institution Classification Committee (ICC), as provided in subsection 3376(c)(2), for program participation consideration. The ICC will consider the totality of the information along with input from the inmate prior to recommendation for ACP placement.

(2) Upon recommendation of ICC for ACP placement, the case will be referred to a Classification Staff Representative (CSR) for endorsement.

(3) Upon the endorsement of an ACP Participant, Case Records shall be notified to ensure the ACP release process is completed. Victim notification shall be made at least 45 days prior to the participant's release to ACP.

(4) Prior to release to ACP, Case Records shall notify local law enforcement of the jurisdiction in which the ACP Participant will reside, providing the following information:

(A) The participant's name, address, and date of birth.

(B) The current offense committed by the participant.

(C) The estimated duration of time the participant will be in the community under ACP.

(5) Case Records functions of inmates on ACP shall be managed by the location designated by the Director, Division of Adult Institutions.

(6) While in the ACP, the participant's annual classification review, pursuant to subsection 3376(d)(2), shall be suspended.

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 1170.05 and 5054, Penal Code.

New section 3078.5 is adopted to read:

3078.5. Alternative Custody Program Participant Case Management and Supervision.

(a) Each Alternative Custody Program (ACP) Participant shall be assigned to the supervision of a designated Division of Adult Parole Operations (DAPO) staff who shall function as the case manager. The designated DAPO staff shall:

(1) Monitor, track, record, evaluate, and provide guidance to ACP Participants and their progress in meeting their Individualized Treatment and Rehabilitation Plan (ITRP) goals and objectives.

(2) Act as liaison with the ACP Program Manager to ensure tracking and administrative processes are completed including but not limited to:

(A) Case Records, including such things as providing proposed address during the release process, reviewing and completing forms and documents regarding residence verification and reporting instructions, etc.

(B) Disciplinary process, including such things as obtaining copies of police reports, providing information regarding witnesses and witness testimony, curfew violation reports, positive anti-narcotic test reports, etc.

(C) Return to institution process.

(D) Transitioning from ACP to parole or post-release community supervision.

(b) Level of supervision will be determined by DAPO staff based on prior criminal history, case factors, risk factors and participant's current behavior. Supervision includes but is not limited to:

(1) Electronic monitoring, consistent with section 3540.

(2) Anti-narcotic testing, if applicable.

(3) Face-to-Face Contacts, as defined in section 3000.

(c) The participant and their residence shall be subject to search and seizure by a peace officer at any time of the day or night, with or without a warrant and with or without cause, for the purpose of verifying compliance with the requirements of the ACP.

(d) Subsequent residential and/or program changes after initial ACP placement shall require coordination between designated DAPO staff, involved relevant staff from the participant's program, if applicable, and the ACP Program Manager. Any such changes that involve movement into or between any combination of Transitional Care Facilities or Residential Drug or Treatment Programs, as defined in section 3078(d) and (e), must be coordinated between designated DAPO staff and the ACP Program Manager.

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 1170.05 and 5054, Penal Code.

New section 3078.6 is adopted to read:

3078.6. Alternative Custody Program Return to Institution.

(a) An Alternative Custody Program (ACP) Participant may be returned to state prison to serve the remainder of their original sentence, with or without cause, pursuant to the provisions of subsections (b)-(b)(7) below.

(b) Division of Adult Parole Operations staff shall Case Conference, as defined in section 3000, regarding whether a participant should be returned to prison. Reasons for return to prison may include, but are not limited to:

(1) Reasonable suspicion exists that the participant is not complying with the terms or requirements of the program.

(2) The participant for any other reason no longer meets the established criteria pursuant to section 3078.2.

(3) The electronic monitoring device is unable for any reason to properly perform its function at the designated place of detention.

(4) The participant's needs can no longer be met by existing community programs.

(5) Local law enforcement has identified the participant as a suspect in new criminal activity that if charged and found guilty would result in a misdemeanor and/or felony conviction.

(6) A felony hold, warrant or detainer is received by the department after an inmate is placed in the ACP.

(7) The participant requests voluntary return.

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 1170.05 and 5054, Penal Code.

Subchapter 2. Inmate Resources

Article 1.5. Inmate Wages and Deductions

3097. Inmate Restitution Fine and Direct Order Collections.

Subsections 3097(a) through 3097(h) are unchanged.

Subsection 3097(i) is amended to read:

(i) Fines and direct orders of restitution may be collected from inmates and parole violators housed in a Reception Center, Community Correctional Center, Community Correctional Facility, Community Correctional Reentry Center, Restitution Community Correctional Center or Return to Custody Substance Abuse Treatment Facility. Fines and direct orders of restitution may also be collected from inmates in the Community Prisoner Mother, ~~and~~ Family Foundations Programs and the Alternative Custody Program.

Subsections 3097(j) through (o) are unchanged.

NOTE: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 1170.05, 2085.5 and 5054, Penal Code.

Article 9. Personal Property

3195. Release Clothing.

Section 3195 is amended to read:

Inmates scheduled for release and placement to the Alternative Custody Program (ACP), parole or awaiting discharge may receive a release clothing package via U.S. Postal Service or common carrier no earlier than 30 days prior to their scheduled release to ACP, parole or discharge date. Inmate release clothing packages, limited to one set of clothing, shall be retained in a secure location by the department until their release.

NOTE: Authority cited: Section 5058 and 5058.3, Penal Code. Reference: Section 1170.05 and 5054, Penal Code.

Subchapter 4. General Institution Regulations

Article 5. Inmate Discipline

3320. Hearing Procedures and Time Limitations.

Subsection 3320(a) is amended to read:

(a) A classified copy of the CDC Form 115 (Rev. 07/88) per section 3313(a), CDC Form 115-A (Rev. 07/88), and any additional/supplemental information documented via the CDC Form 115-C (Rev. 5/95) containing any elements of the violation charged shall normally be provided to the inmate within 15 days from the date the information leading to the charges is discovered by staff or, in the case of an escapee, within 15 days after the escapee's return to the department's custody, or in the case of an ACP Participant's removal from the community, within 15 days of the participant's return to an institution.

Subsections 3320(a)(1) through 3320(m) are unchanged.

NOTE: Authority cited: Section 5058 and 5058.3, Penal Code. Reference: Sections 1170.05, 2932 and 5054, Penal Code.

3323. Disciplinary Credit Forfeiture Schedule.

Subsections 3323(a) through 3323(d) are unchanged.

Subsection 3323(e) is unchanged but shown as reference.

(e) Division “C” offenses; credit forfeiture of 91–120 days.

Subsection 3323(e)(1) is amended to read:

(e)(1) Escape without force from a camp, ~~or~~ community-access facility, or any Alternative Custody Program placement, as provided in Chapter 1, Article 6.8.

Subsections 3323(e)(2) through 3323(e)(7) are unchanged.

Subsection 3323(e)(8) is amended to read:

(e)(8) Possession of any narcotic, drug, or controlled substance in a community-access facility or any Alternative Custody Program placement.

Subsections 3323(e)(9) through 3323(e)(13) are unchanged.

Subsection 3323(f) is unchanged but shown as reference.

(f) Division “D” offenses; credit forfeiture of 61–90 days.

Subsections 3323(f)(1) through 3323(f)(13) are unchanged.

Subsection 3323(f)(14) is amended to read:

(f)(14) Solicitation to possess, distribute or introduce ~~a~~ controlled substance into an institution, ~~or~~ contract health facility, or any Alternative Custody Program placement.

Subsection 3323(g) is unchanged.

Subsection 3323(h) is unchanged but shown as reference.

(h) Division “F” offenses; credit forfeiture of 0–30 days.

Subsection 3323(h)(1) is unchanged.

Subsection 3323(h)(2) is amended to read:

(h)(2) Late return to a community-access facility or any Alternative Custody Program placement.

Subsections 3323(h)(3) through 3323(k)(4) are unchanged.

NOTE: Authority cited: Section 5058 and 5058.3, Penal Code. Reference: Sections 148, 243, 295–300.3, 314, 647, 1170.05, 2932, 2933, 4573.6, 4600, 5054 and 12020, Penal Code.