

# Legal Foundations and Liability

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DPO Core 1.3



# DPO Core 1.3 Legal Foundations and Liability Objectives

- 1.3.1 Identify the legal references and sources that impact the work of an officer (e.g. Title 15, CA penal code, WIC, case/statute regulations. Etc..)
- 1.3.2 Given a specific code violation, identify the elements, classification and associated penalties
- 1.3.3 Identify the aspects of civil liability law that influence the officer and department
- 1.3.4 Given scenarios, identify situations where a duty to inform exists
- 1.3.5 Identify the legal categories of minors in the juvenile justice system, according to relevant code sections

## Training Notes

- 1.3.A Identify the major types of institutional holds and the documents associated with each
- 1.3.B Identify who is legally capable of committing a crime, according to the Penal Code

# Legal References and Sources that Impact Probation California Code of Regulations

## Title 15. Crime Prevention and Corrections

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Title 15. Crime Prevention and Corrections

- [Division 1. Board of State and Community Corrections](#)
- [Division 2. Board of Parole Hearings](#)
- [Division 3. Adult Institutions, Programs and Parole](#)
- [Division 4. Division of Juvenile Justice \[Renumbered\]](#)
- [Division 4.5. Youthful Offender Parole Board \[Renumbered\]](#)
- [Division 5. Narcotic Addict Evaluation Authority](#)
- [Division 6. Commission on Correctional Peace Officer Standards and Training](#)
- [Division 7. Youth and Adult Correctional Agency](#)
- [Division 8. California Prison Industry Authority](#)
- [Division 8.5. California Prison Industry Board](#)

Hiring and Training Standards

Jail Operations, PRCS

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## Title 9. Rehabilitative and Developmental Services

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Title 9. Rehabilitative and Developmental Services

- [Division 1. Department of Mental Health](#)
- [Division 3. Department of Rehabilitation](#)
- [Division 4. Department of Alcohol and Drug Programs](#)
- [Division 6. Division of Juvenile Justice](#)

Juvenile Hall DJJ

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# Legal References and Sources that Impact Probation

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## California Codes: Penal Code, Welfare and Institution Code, Health and Safety Code

- Includes state laws and penalties for breaking them
- 830.5 PC- Peace Officer authority
- 1203 PC/ 1203(b)(1) PC- Adult Probation/ probation investigations
- 602 WIC- Persons subject to juvenile court jurisdiction
- 1170h(1) PC- Created Mandatory Supervision

## Statutes

- Proposition 57- Gave discretion to the juvenile court judge over filing charges against youth in adult court
- AB392- Used legislation in CA to change the reasonable force case law below
- Marsy's Law- Created Victims bill of rights

## Case Law

- Graham v Connor and Tennessee v Garner- reasonable Force
- Miranda v Arizona- Miranda warning

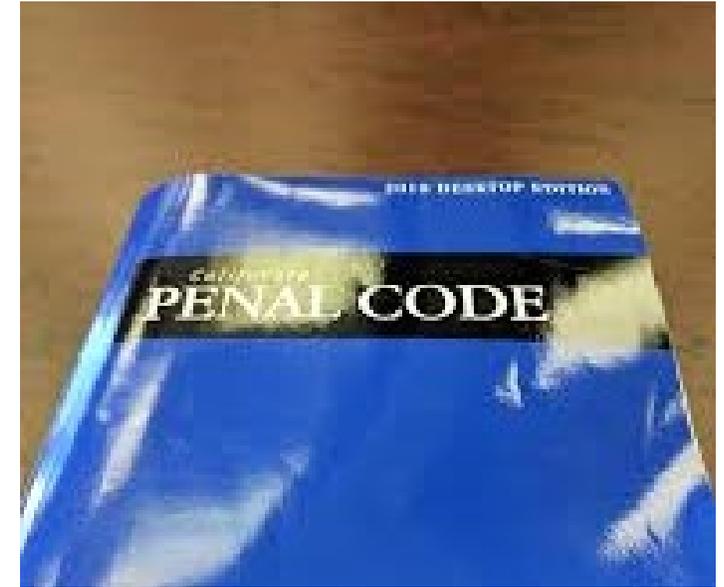
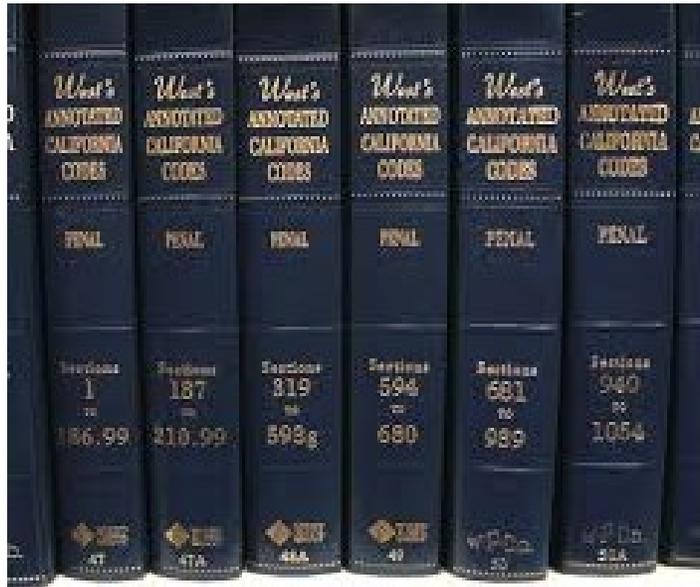
# Legal References and Sources that Impact Probation

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- California Community Corrections Performance Incentives Act of 2009
  - 1228 PC through 1233.8 PC
    - Defines community corrections and sets the following goals
    - Enhance public safety
    - Provides range of supervision tools, sanctions and services
    - Maximize victim restitution
    - Holds offenders accountable
    - Improve public safety outcomes
    - Utilize evidence-based practices

## Rules of Court

- Rules that regulate practices and procedures in state court
- Rules related to probation eligibility and suitability



# Crime and Punishment

- The penal and other code books provide a statutory foundation for the criminal justice system
- The code is written in an organized way, much like a dictionary, and special attention must be paid to whether letters are capital or lower case, where parentheses lie, etc..
- 487(a) PC and 487a(a)PC are not equivalent

# Crime and Punishment

What is a Crime?

- 15 PC

Elements of a crime

- Actus Reus- Guilty Act
- Mens Rea- Guilty Mind

Types of crimes

- Felony, Misd, and Infractions defined- 17(b)PC
- Attempt- 664PC

# Crime and Punishment

- FELONY

- Felony convictions are punishable by a triad- three fixed periods of time determined by statute
- Unless noted with a specific punishment, a felony is punishable by 16months, 2 or 3 years
- Formal probation
- State Prison v County Jail pursuant to 1170(h)PC
- Generally set by the PC, but also impacted by prior strike offenses and 290PC registration status.

- Misdemeanor

- Punishable by custody time not to exceed 365 days as well as fines
- Common jail sentence 180 days
- Summary probation is most common is supervision is ordered, but offenders can also be granted formal probation

# Crime and Punishment Activity

Group Activity by table

Look up assigned criminal code.

Each group will report out on following:

- What is the violation title and elements of the offense?
- What is the offense classified as? Felony, Misd, Wobbler
- What are the penalties for the offense?
- If a felony, is the crime served in state prison or county jail pursuant to 1170(h) PC?

# Who is legally capable of committing a crime?

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- 26 PC- Persons capable of committing crimes exceptions
- 27 PC-Persons punishable
- 28 PC- Evidence of mental disease. Defense of diminished capacity
- 29.4 PC- Evidence of voluntary intoxication
- 29.8 PC- Insanity Plea
  
- 1369 PC Inquiry unto defendant's mental competence and 1001.36 PC Diversion

## SANITY vs. INSANITY

**They laughed at my joke- my humour is socially acceptable!**

**They laughed at my joke- they're patronising me!**

**She called me 'babe' - their use of colloquial language reaffirms my status**

**I think she's being ironic. Is she calling me fat?!**

**Everyone is being so nice to me today**

**THEY PITY ME!**

**Why thank you, my hair *does* look nice today**

**Oh God, they know I'm wearing a wig. THEY KNOW.**



# Civil Liability and the Probation department

Probation officers have exposure  
to both criminal and civil liability  
when fulfilling their duties



## Duties of the Probation officer

Ministerial- Duties performed  
in a prescribed manner

Discretionary- Duties  
performed in a matter that  
requires personal  
deliberation, decision and  
judgement

The department is also civilly  
responsible for the actions of  
their employees

- Concept of “respondent superior”

# Civil Liability and the Probation Department

## **Ministerial**

- Conducting Drug testing
- Transporting offenders
- Completing an assessment
- Handcuffing
- Filing a child abuse report
- Operating a county vehicle
- Transferring supervision

## **Discretionary**

- Violating an offender's probation
- Consequences/ recommendation for violations
- Field contacts
- Case planning
- Sentencing report recommendations

Civil Liability and the Probation  
Department  
<https://youtube/Zg5ex8WZUao>

## Criminal Liability- Deals with the laws of society

- Arises from a violation of a legal statute. Could result in employment actions (discipline) for employees, as well as criminal prosecution.

## Civil Liability- Deals with the rights of private citizens

- Could result in financial consequences for the employer/  
California allows employees to be personally sued for harassment
- Civil law violations include
  - Intentional tort- a person committed an unauthorized intentional act or omission that caused damages
  - Negligence- A person acted negligently where they had a duty of care and breached that duty, causing damages
  - Strict Liability- A person engaged in an activity that involved such a high risk of harm to another, that although they employed reasonable care, they would be responsible for the damages caused.

# Civil Liability and the Probation Department

- Exclusionary Rule- Deals with 4<sup>th</sup> Amendment violations by law enforcement. “fruit from the poisonous tree”
- Good Faith Doctrine
  - An exception to the exclusionary rule, it comes into play when an employee was acting in a manner that was consistent with the law, County ordinance, MOU, policy and procedure, without malice and within their scope of authority.
- Official Immunity Doctrine
  - This protects government workers from potential harassment from those who's interests they might negatively affect, as long as the government worker is not acting with malice. (reckless disregard.)

# Civil Liability and the Probation Department

- Constitutional Law Immunity- Protects government workers from harassment
- Absolute Immunity- This is a constitutional right provided to the judiciary, legislative (also applies to spouses)
  - Probation falls under the judiciary branch when making oral and written recommendations to the court. (sentencing reports, violations, etc..)
- Qualified Immunity
  - Third party- Providing information to a third party (potential employer) about an employee that may be adverse to them getting the job
  - Own interest- Saying adverse things about the third party who reported the information
  - Common/ public interest- Provided a warning (with no duty to do so) to the public in the interest of the public good.



# Criminal liability scenario

- An on the clock probation officer is driving a county vehicle to training when they receive a text message on their personal phone. Without using a hands-free device, the PO reads and then carefully replies to the message. While distracted by their phone, despite attempting to do their best to pay attention to the road, the PO rear ends a vehicle stopped at a stop sign. The collision causes great bodily injury to the driver and passenger of the other vehicle.
  - Were the PO's actions ministerial or discretionary?
  - Can the PO be charged with a criminal offense and if so what offense?
  - In what way can the PO's employment be impacted?
  - What type of civil liability would the department incur based upon the scenario?
  - Would this civil liability be different if instead of driving to training, the PO was transporting an offender and the offender also was injured in the collision? What would be the difference?



# Duty to Warn

- A duty to warn. Inform is a concept within the law of negligence in which the party has the duty to warn, breaches that duty by failing to warn in a timely manner, and that breach of duty causes detriment to another.
- Duty to warn/ inform Case Law
  - Tarrasoff v Regents of the University of California
  - Thompson v County of Alameda

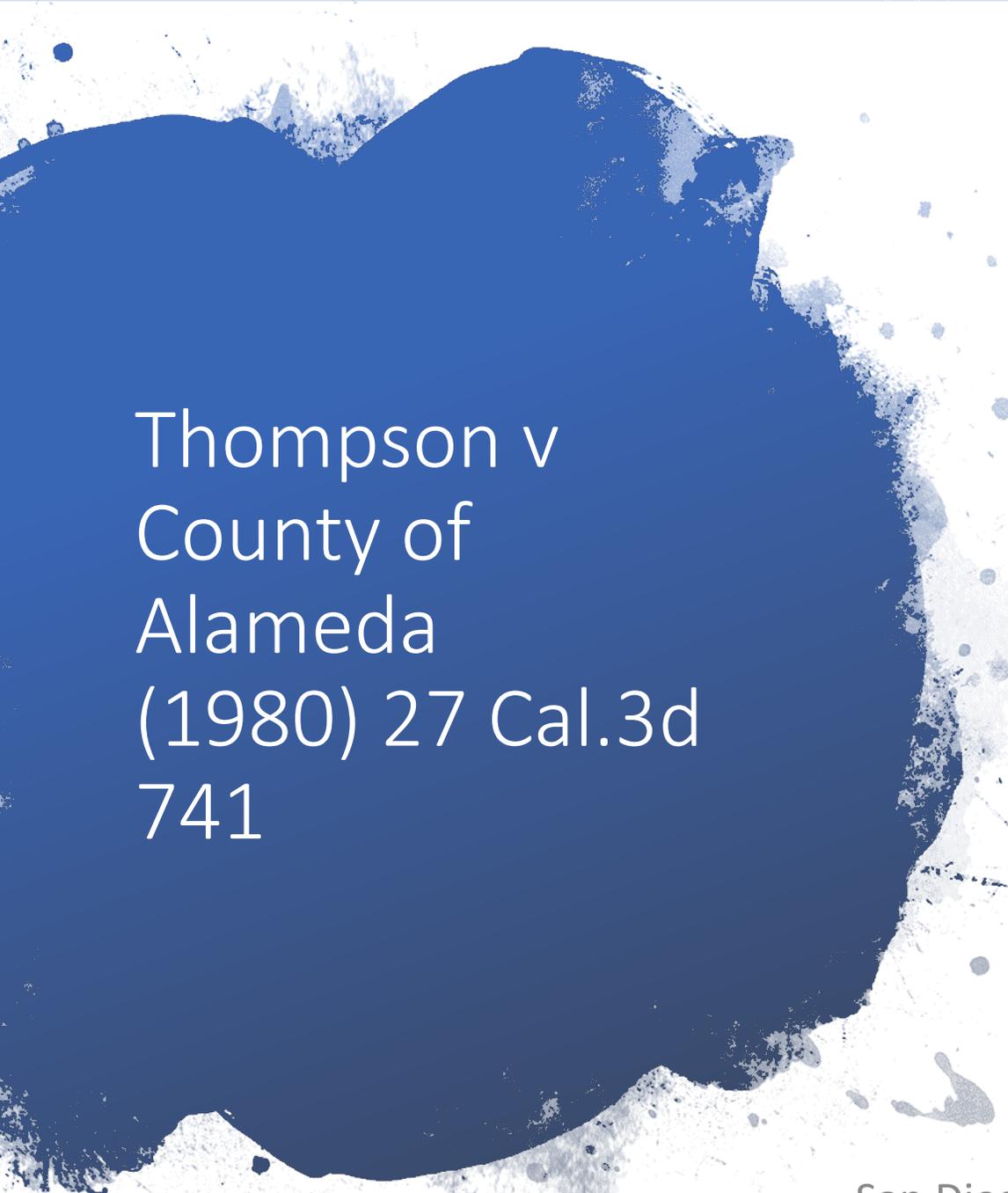
# Tarasoff v Regents of the University of California

17 Cal. 3d 425, 131 Cal.Rptr.14,551 P.2d 334 (1976)

In October 1969, Prosenjit Poddar murdered Tatiana Tarasoff. Prior to the murder, Poddar confided in his therapist, Dr. Lawrence Moore that he wanted to kill Tarasoff. Dr. Moore took the information and warned the campus police of Poddar's intentions. The police briefly detained Poddar, but then released him. Tarasoff's parents sued, alleging they or their daughter should have been given a warning about Poddar's threats. The case ultimately created a standard for reasonable care.

## RULE

The California court held that the therapist could be liable for not warning Tarasoff, stating that "the therapist obligations to his patient require that he not disclose a confidence unless such disclosure is necessary to avert danger to others," and, even then, that, "he do so discreetly, and in a fashion that would preserve the privacy of his patient to the fullest extent compatible with the prevention of the threatened danger."



Thompson v  
County of  
Alameda  
(1980) 27 Cal.3d  
741

A juvenile offender, James, F., was in the custody of the County of Alameda and had stated that if he was released, he would kill a neighborhood child. The County was also aware that James had, “latent, extremely dangerous and violent propensities regarding young children and violence connected therewith were a likely result of releasing him into the community.” Regardless, the County released James, temporarily, into his mother’s custody, without warning local police or nearby families. Almost immediately, James sexually assaulted and murdered a five-year-old boy. The boy’s parents sued the County for wrongful death.

#### Ruling

Despite the tragic background, the Supreme Court found no duty to warn existed, because the “decedent was no known, identifiable victim, but rather a member of a large amorphous public group of potential targets,... the County had no affirmative duty to warn plaintiffs, the police, the mother of the juvenile offender, or other local parents.”

# Duty to Warn/ Inform Scenarios

- Groups will each be given a scenario to review and determine their best course of action
  - Groups should consider the following
    - Confidentiality issues
    - Potential Problems
    - Whether there is a duty to inform? Why or why not?

# Institutional Holds

## Lanterman-Petris-Short Act (WIC Section 5000 et seq.)

### **5150/5250 Holds**

- Criteria for a Hold
  - Danger to self
  - Danger to others
  - Grave disability

### **Hold outcomes**

- Release
- Convert to voluntary patient
- Another 72-hour hold
- Another 14 day hold (5260 WIC)
- 180 day post certification hold (5301 WIC)

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# Legal Categories of Minors in the Juvenile Justice System

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- 654.2 WIC
  - Youth makes no admission of guilt
  - No 707(b) offenses
  - Six months informal probation with a review hearing
  - If previously granted an opportunity on 654 WIC, cannot have it again
  - Placed on “contract”
  - No drug testing conditions
  - No search conditions
  - Victim restitution, if ordered is the only condition
  - Court does not see the contract
  - If revoked, proceeds to “pretrial” phase of original petition
  - 654.1 WIC is for DUI offenses, but DA’s office prefers admissions in these cases

# Legal Categories of Minors in the Juvenile Justice System

## 725(a) WIC

Youth admits charges  
Six months formal probation with a review hearing  
No 707(b) WIC offenses  
Conditions have to have a nexus to the offense

## 790 WIC

youth admit charges  
Deferred entry of judgment  
Felony cases, youth must be at least 14 years old  
Not previously a ward of the Court  
No 707(b) offenses  
Supervision from 1 to 3 years with review hearings every year

## Wardship

Care, custody and control with the Chief Probation officer (can be arrested by a PO)  
Formal Probation  
Probation can be terminated by the Court with recommendation from Probation

The seal of the San Diego County Probation Department is a gold Maltese cross with a blue center. The center contains the County of San Diego seal and the text "PROBATION DEPARTMENT" and "COUNTY OF SAN DIEGO".

Questions,  
Evaluations, Instructor  
Contact Info

A 3D graphic of the words "QUESTIONS", "CONCERNS", "PROBLEMS", and "SOLUTIONS" stacked vertically in red, yellow, green, and blue respectively. A 3D grey figure stands to the right, holding a ball to its chin in a thinking pose.

QUESTIONS  
CONCERNS  
PROBLEMS  
SOLUTIONS