

3 California Criminal Law (4th), Punishment

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 - (2) [§430] Individual Application of Prior Convictions to Each Count.
 - (g) Consecutive Sentencing.
 - (1) [§431] Statutory Provisions.
 - (2) Application of Provisions.
 - (aa) [§432] In General.
 - (bb) [§433] Exception for Same Occasion or Operative Facts.
 - (cc) [§434] Effect of Dismissal of Strike as to Fewer Than All Counts.
 - (h) [§435] Dual Use of Prior Conviction.
 - (i) [§436] Effect of Enhancement When Calculating Indeterminate Term.
 - (j) [§437] Felony-Misdemeanors ("Wobblers").
 - (k) [§438] Pleading and Proof.
 - (l) Power To Strike Prior Convictions.

- (l) [§439] Court Retains Discretion To Strike.
- (2) [§440] Scope of Discretion.
- (3) [§441] Striking Prior Convictions as to Fewer Than All Counts.
- (4) [§442] Appellate Review.
- (5) [§443] Procedure for Challenging Failure To Exercise Discretion.

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- (a) [§444] Accusatory Pleading.
- (b) [§445] Answer.
- (c) [§446] Effect of Defendant's Admission.
- (d) [§447] Trial of Issue.
- (e) Evidence.
 - (1) [§448] In General.
 - (2) [§449] Sufficiency.
 - (3) [§450] Effect of Reversal for Insufficient Evidence.
 - (4) [§451] Offense Committed in Another Jurisdiction.
- (f) [§452] Finding.
- (g) [§453] Review on Appeal.
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 - (1) [§454] Propriety of Remedy.
 - (2) [§455] Scope of Review.

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- 1. [§456] Fully Consecutive Sentences.
- 2. [§457] Discretion of Trial Judge.
- 3. [§458] Separate Occasions.
- 4. One Strike Law.
 - (a) [§459] In General.
 - (b) [§460] Where Minimum Term Is 15 Years.
 - (c) [§461] Where Minimum Term Is 25 Years.
 - (d) [§462] Offenses Committed Against Minors.
 - (e) [§463] Imposition of Sentence.

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- 1. Presentence Custody Credits.
 - (a) [§464] Credit for All Days of Custody.
 - (b) [§465] Calculation of Credits Where Sentence Is Altered.
 - (c) Effect of Dual Custody.
 - (1) [§466] Nature of Problem.
 - (2) [§467] Rule of Strict Causation.
 - (3) [§468] Defendant Imprisoned on Another Sentence Awaiting Trial.
 - (4) [§469] Defendant Subject to Parole or Probation Hold or Revocation.
 - (4a) [§469A] (New) Defendant Given Concurrent Sentences for Unrelated Crimes.
 - (5) [§470] Absconders and Escapers.

- (6) [§471] Credit Applicable to Subordinate Term.
- (d) [§472] Particular Confinements.
- (e) [§473] Waiver of Credit.
- 2. Conduct Credits.
 - (a) Local Custody.
 - (1) [§474] In General.
 - (2) [§475] Amount and Computation.
 - (b) State Prison Custody.
 - (1) [§476] Eligibility for Credit.
 - (2) [§477] Limitations on Credit Under Three Strikes Law.
 - (3) [§478] Limitations on Credit for Violent Felonies.
 - (4) [§479] Persons Ineligible for Credit.
 - (5) [§480] Suspension of Eligibility.
 - (6) [§481] Denial of Credit.
 - (c) [§482] Other Custody.
 - (d) [§483] Juveniles and Youthful Offenders.

XV. CAPITAL PUNISHMENT

A. [§484] In General.

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- 1. [§485] Early Cases.
- 2. Death Penalty Is Constitutional.
 - (a) [§486] California Constitution and Statutes.
 - (b) [§487] United States Constitution.
- 3. Guided Discretion.
 - (a) [§488] In General.
 - (b) [§489] Effect of Invalid Aggravating Factor.
- 4. Mitigating Evidence.
 - (a) [§490] All Mitigating Evidence Must Be Considered.
 - (b) [§491] Distinction: Limitations on How Evidence Is Considered.
 - (c) [§492] Compatibility With Requirement of Guided Discretion.
- 5. [§493] Weighing of Factors by Appellate Court.
- 6. [§494] Manner of Execution.
- 7. [§495] Delay in Execution.
- 8. Restrictions on Imposition.
 - (a) [§496] Mandatory Death Penalty Is Unconstitutional.
 - (b) [§497] Death Penalty for Murder.
 - (c) Death Penalty for Felony Murder.
 - (1) [§498] No Intent To Kill.
 - (2) [§499] Reckless Indifference.
 - (d) [§500] No Death Penalty for Minors.
 - (e) [§501] Death Penalty for Insane or Mentally Disabled Persons.
 - (f) [§502] Death Penalty May Not Be Restricted to Jury Cases.
 - (g) [§503] Sentencing Procedures Must Meet Due Process Standards.
 - (h) [§504] Consideration of Lesser Included Offenses.
- 9. [§505] Proportionality Review Is Not Required.
- 10. [§506] Unconstitutionality Is Not Established by Proof of Disparate Impact.

11. [§507] Retroactivity.

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2. [§509] Former Law.

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(a) [§510] In General.

(b) [§511] Defendant Under Age 18.

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(1) [§512] In General.

(2) [§513] Standard of Proof.

(3) [§514] Vagueness.

(4) [§515] International Law.

(d) [§516] Subsequent Amendment.

4. [§517] Offenses Punishable by Death.

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1. [§518] In General.

2. [§519] Prior Murders.

3. [§520] Multiple Murders.

4. [§521] Murder for Financial Gain.

5. [§522] Murder To Prevent Arrest or Perfect Escape.

6. [§523] Murder To Further Gang Activities.

7. [§524] Murder by Destructive Device.

8. Murder by Lying in Wait.

(a) [§525] In General.

(b) [§526] Illustrations.

9. [§527] Murder by Torture.

10. [§528] Murder by Poison.

11. [§529] Murder by Discharge of Firearm From Vehicle.

12. [§530] Especially Heinous, Atrocious, or Cruel Murder.

13. [§531] Murder Because of Race, Color, Religion, Nationality, or Country of Origin.

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(a) [§532] In General.

(b) [§533] Illustrations.

(c) [§534] Corpus Delicti Rule Is Not Applicable.

(d) [§535] Felony May Not Be Merely Incidental to Murder.

(e) [§536] Intent.

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(a) [§537] In General.

(b) [§538] Law Enforcement Officers.

(c) [§539] Firefighters.

(d) [§540] Witnesses to Crime.

(e) [§541] Prosecutor, Judge, Public Official, or Juror.

16. [§542] Special Circumstances Not Involving Death Penalty.

17. [§543] Aider and Abettor.

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- (a) [§544] In General.
- (b) [§545] Multiple Special Circumstances.

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- (a) [§546] Nature and Development of Proceeding.
- (b) [§547] Sequence of Phases.
- (c) [§548] Function of Judge and Jury.
- (d) [§549] Discretion of Trier of Fact.

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- (a) [§550] In General.
- (b) [§551] Rebuttal Evidence.
- (c) [§552] Comment by Judge.

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- (a) Notice of Intended Use.
 - (1) [§553] Requirement of Advance Notice.
 - (2) [§554] Exceptions and Distinctions.
- (b) Factors Properly Considered.
 - (1) [§555] Circumstances of Crime.
 - (2) Victim Impact Evidence.
 - (aa) [§556] In General.
 - (bb) [§557] Illustrations.
 - (3) Criminal Activity Involving Force or Violence.
 - (aa) [§558] In General.
 - (bb) [§559] Interpretation and Application.
 - (cc) [§560] Duty To Instruct.
 - (dd) [§561] Particular Conduct.
 - (4) [§562] Prior Felony Conviction.
 - (5) [§563] Other Factors.
- (c) Factors Not Properly Considered.
 - (1) [§564] Deterrent Effect of Death Penalty.
 - (2) [§565] Effect of Life Sentence.
 - (3) [§566] Absence of Mitigating Factors.
 - (4) [§567] Other Factors.

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- (a) [§568] In General.
- (b) [§569] Failure To Present Mitigating Evidence.
- (c) Factors Properly Considered.
 - (1) [§570] Defendant's Background and History.
 - (2) [§571] Defendant's Mental Condition.
 - (3) [§572] Other Extenuating Circumstances.
 - (4) [§573] Other Factors.
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 - (1) [§574] Lack of Deterrent Effect of Death Penalty.
 - (2) [§575] Manner of Execution and Conditions of Confinement.
 - (3) [§576] Other Factors.

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- (a) [§577] In General.
 - (b) [§578] Effect of Life Sentence.
 - (c) [§579] Weighing Process.
 - (d) [§580] Appeal to Religious Authority.
 - (e) [§581] Inviting Jurors To Place Themselves in Victim's Position.
 - (f) [§582] Lingering Doubt.
 - (g) [§583] Other Illustrations.
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- (a) [§584] In General.
 - (b) [§585] Applicability of Guilt Phase Instructions.
 - (c) Weighing Process.
 - (1) [§586] In General.
 - (2) [§587] Illustrations.
 - (d) [§588] Sympathy and Related Instructions.
 - (e) [§589] Possibility of Clemency or Change in Law.
 - (f) [§590] Parole Ineligibility.
 - (g) [§591] Other Instruction Issues.
7. [§592] Verdict.
8. Application for Modification.
- (a) [§593] Procedure.
 - (b) [§594] Statement of Reasons.
 - (c) [§595] Standard of Review.
 - (d) [§596] Consideration of Probation Report.
 - (e) [§597] Illustrations.
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- (a) [§598] In General.
 - (b) [§599] Preparation of Record.
 - (c) [§600] Certification of Record.

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- 1. [§601] Nature and Purpose.
- 2. [§602] Probation Officers and Agencies.
- 3. [§603] Supervision of Probationer.
- 4. [§604] Community Corrections Program.
- 5. [§605] Sex Offender Management Program.
- 6. [§606] Continuous Electronic Monitoring.

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- 1. [§607] Former Statutory Framework.
- 2. [§608] Personal Use of Firearm.
- 3. [§609] Infliction of Great Bodily Injury.
- 4. [§610] Felony Against Aged or Disabled Person.
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 - (a) [§611] Circumstances Barring Probation.
 - (b) [§612] Exceptions.
 - (c) [§613] Procedure.
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7. Controlled Substances Offenses.
 - (a) [§615] Penal Code Provisions.
 - (b) [§616] Health and Safety Code Provisions.
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9. [§618] Designated Felonies Within Ten-Year Period.
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1. [§621] P.C. 1203.
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 - (a) Necessity of Reference.
 - (1) [§626] Mandatory Requirement.
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 - (3) [§628] New Reference After Reversal or Remand.
 - (4) [§629] Effect of Defendant's Ineligibility.
 - (b) Report by Probation Officer.
 - (1) [§630] In General.
 - (2) [§631] Required Contents.
 - (3) [§632] Improper Contents.
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 - (aa) [§633] In General.
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 - (c) [§635] Hearing and Determination.
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 - (a) [§636] Election To Refer.
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 - (a) [§638] Discretion of Trial Judge.
 - (b) [§639] Criteria Affecting Grant or Denial of Probation.
2. Grounds for Reversal of Order Denying Probation.
 - (a) [§640] Failure To Determine Merits of Application.
 - (b) [§641] Lack of Fundamental Fairness.
 - (c) [§642] Ex Parte Communications.
 - (d) [§643] Abuse of Discretion.
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 - (a) Alternative Procedures.
 - (1) [§644] In General.
 - (2) [§645] Imposition of Sentence Is Suspended Without Judgment.
 - (3) [§646] Execution of Sentence Is Suspended After Judgment.

- (4) [§647] Suspension as Alternative Where Probation Is Denied.
- (b) Period.
 - (1) [§648] Felony Cases.
 - (2) [§649] Misdemeanor Cases.
- (c) Defendant's Rejection of Probation.
 - (1) [§650] Right To Reject.
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1. Permissible Conditions.

- (a) [§652] Scope of Discretion.
- (b) County Jail Sentence and Fine.
 - (1) [§653] Permissible.
 - (2) [§654] Mandatory.
- (c) Restitution.
 - (1) [§655] In General.
 - (2) [§656] Particular Statutes.
 - (3) [§657] Definitions.
 - (4) [§658] Condition Is Proper When Related to Crime for Which Convicted.
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 - (6) [§660] Defendant's Ability To Pay.
 - (7) [§661] Amount and Manner of Disbursement.
- (d) [§662] Payment of Probation Costs.
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- (f) [§664] Counseling, Treatment, and Education.
- (g) [§665] Abstinence From Alcohol or Drugs.
- (h) [§666] Other Express Conditions.
- (i) [§667] Catch-all Provision Requiring Affirmative Act.
- (j) [§668] Catch-all Provision Requiring Abstention.
- (k) [§669] Implied Conditions.

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- (a) [§670] Circumstances Required for Invalidity.
- (b) [§671] Failure To Object Precludes Challenge on Appeal.
- (c) [§672] Banishment From County, State, or Country.
- (d) [§673] Prohibition Against Pregnancy.
- (e) [§674] Unwarranted Requirement of Psychiatric Treatment.
- (f) [§675] Invalid Interference With First Amendment Rights.
- (g) [§676] Attempt To Influence Board of Prison Terms.
- (h) [§677] Waiver of Knock-Notice Requirements.
- (i) [§678] Reimbursement of Cost of Appointed Counsel.
- (j) [§679] Other Invalid Conditions.

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- 1. [§680] Power To Modify.
- 2. [§681] New Facts Are Essential.
- 3. [§682] New Conditions May Be Imposed.

4. [§683] Procedure.

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- (a) [§684] Power To Revoke.
- (b) [§685] Court's Discretion.
- (c) [§686] Revocation Restitution Fine.
- (d) [§687] Time Limitations.
- (e) [§687A] (New) Uniform Revocation Procedure.

2. Due Process Requirements.

- (a) [§688] Former Law.
- (b) [§689] Right to Hearing Before Sentencing.
- (c) [§690] Similarity Between Parole and Probation Revocation.
- (d) [§691] When Probationer Is Entitled to Counsel.
- (e) [§692] When Hearing Is Required.

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- (a) [§693] Statutory Requirements.
- (b) Formal Revocation Hearing.
 - (1) [§694] In General.
 - (2) [§695] Standard of Proof.
 - (3) [§696] Right to Counsel.
 - (4) [§697] Hearsay.
 - (5) [§698] Inapplicable Trial Practices.
 - (6) [§699] Right of Confrontation.
 - (7) [§700] Hearing Before Trial on Concurrent Criminal Charges.
 - (8) [§701] Hearing Concurrent With Preliminary Examination.
- (c) [§702] Vacation and Review of Revocation Order.

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- (a) [§703] In General.
- (b) Where Imposition of Sentence Was Suspended.
 - (1) [§704] Length of Sentence.
 - (2) [§705] Due Process Rights.
 - (3) Probationer Imprisoned for Another Offense.
 - (aa) [§706] In General.
 - (bb) [§707] Procedure.
 - (cc) [§708] Loss of Jurisdiction.
 - (dd) [§709] Failure To Give Defendant Notice of Pending Revocation Proceeding.
 - (ee) [§710] Commitment Is Required.
 - (ff) [§711] Application to Out-of-State Prisoners.
 - (gg) [§712] Optional Procedures for Unsented Probationer.
- (c) Where Execution of Sentence Was Suspended.
 - (1) [§713] In General.
 - (2) [§714] Imprisoned Probationer.

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1. After Fulfillment of Conditions.

- (a) Nature of Right.
 - (1) [§715] When Applicable.
 - (2) [§716] Exceptions.
 - (3) [§717] Alternative Attack by Coram Nobis.
 - (b) [§718] Procedure.
 - (c) [§719] Remaining Effects of Conviction.
2. [§720] Without Probation.

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- 1. Where Minor Was Convicted.
 - (a) [§721] In General.
 - (b) [§722] Constitutionality.
 - (c) [§723] Power To Seal Is Statutory.
 - (d) [§724] Effect of Prior Sealing on Subsequent Sealing.
- 2. [§725] Where Minor Was Not Convicted.
- 3. [§725A] (New) Minor Declared Ward for Commission of Prostitution Offenses.

XVII. PAROLE

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- 1. [§727] In General.
- 2. [§728] Parole From Prison Prior to October 1, 2011.
- 3. [§729] Law Operative Until July 1, 2013.
- 4. [§730] Law Operative On July 1, 2013.

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- 1. In General.
 - (a) [§731] Board of Parole Hearings.
 - (b) [§732] Notice of Impending Release.
 - (b-1) [§732A] (New) Notice of Terms and Conditions of Release.
 - (c) [§733] Liberty Interest Protected by Due Process.
- 2. Limitations on Power.
 - (a) [§734] When Parole Is Prohibited.
 - (b) [§735] Requirement of Minimum Period of Service.
- 3. Setting Conditions and Length of Parole: Under Former Indeterminate Sentence Law.
 - (a) [§736] In General.
 - (b) [§737] Statement of Reasons Is Required.
 - (c) [§738] Rescission of Parole Date Before Parole Begins.
 - (d) [§739] Discovery of Information Affecting Denial of Parole.
 - (e) [§740] Condition of Trial Elsewhere.
- 4. Setting Conditions and Length of Parole: Under Current Law.
 - (a) [§741] In General.
 - (b) [§742] Place of Return.
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 - (1) [§743] In General.
 - (2) Participation by Victim and Family.
 - (aa) [§744] In General.

- (bb) [§745] Notice.
 - (3) [§746] Public Participation.
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 - (aa) [§747] In General.
 - (bb) [§748] Scope of Review Power.
 - (5) [§749] Notice of Action.
 - (6) [§750] Next Hearing Where Parole Is Denied.
 - (7) [§751] Next Hearing Advanced to Earlier Date.
 - (8) [§751A] (New) Youth Offender Parole Hearing.
 - (d) Conditions of Parole.
 - (1) [§752] Discretionary Conditions.
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 - (3) [§754] Constructive Custody of Parolee.
 - (e) Parole Period.
 - (1) [§755] Under Determinate Sentencing Law.
 - (2) Under Indeterminate Sentencing Law.
 - (aa) [§756] In General.
 - (bb) [§757] Release Date.
 - (cc) [§758] Right to Consideration Under Both Sentence Law Guidelines.
 - (3) [§759] For Persons Convicted of Murder.
 - (4) [§760] For Life Prisoners.
 - (f) [§761] Mandatory Discharge From Custody.
 - (g) [§762] Concurrent California and Out-of-State Sentences.
 - (h) Mentally Disordered Prisoners.
 - (1) Treatment as Condition of Parole.
 - (aa) [§763] Mentally Disordered Offender Law.
 - (bb) [§764] Treatment Criteria.
 - (cc) [§765] Illustrations of Qualifying Offenses.
 - (dd) [§766] Hearing and Determination.
 - (2) Continued Involuntary Treatment.
 - (aa) [§767] Report and Petition.
 - (bb) [§768] Nature of Determination.
 - (cc) [§769] When Trial Must Commence.
 - (dd) [§770] Testimony of Defendant.
 - (ee) [§771] Petition Filed After Commitment Has Expired.
 - (ff) [§772] Release on Outpatient Status.
 - (gg) [§773] Effect of Prior MDO Proceeding.
 - (hh) [§774] No Right to Instruction on Presumption of Innocence.
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 - (i) Sex Offenders.
 - (1) [§776] Extended Parole Period.
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- (a) [§778] In General.
 - (b) [§779] Effect of Revocation on Term.
 - (c) [§780] Distinction: No Revocation After Term Has Been Served.
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 - (e) Requirement of Good Cause.
 - (1) [§782] Necessity.
 - (2) [§783] Scope of Review.
 - (f) Constitutional Requirement of Due Process.
 - (1) [§784] Parole Is Protected by Fourteenth Amendment.
 - (2) [§785] Alleged New Offense as Basis for Revocation.
 - (3) [§786] Limited Right to Counsel.
 - (4) [§787] Right to Information.
 - (5) [§788] No Right to Bail.
 - (6) [§789] Extradition Proceedings.
 - (7) [§790] Incarceration in Other Jurisdiction.
 - (8) [§791] Waiver of Hearing Rights.
 - (9) [§792] Effect of Denial of Rights.
 - (g) Drug Treatment Under Proposition 36.
 - (1) [§793] In General.
 - (2) [§794] Sanctions.
 - (h) [§795] Intermediate Sanctions in Lieu of Revocation.
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- (a) [§796] In General.
 - (b) [§797] Excluded Offenses.
 - (c) [§798] Notification.
 - (d) [§799] Agreement.
 - (e) [§800] Community-Based Punishment.
 - (f) [§801] Assessment and Refinement.
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 - (1) [§802] In General.
 - (2) [§803] Petition.
 - (3) [§804] Probable Cause Review.
 - (4) [§805] Hearing.
 - (5) (New) Uniform Revocation Procedures.
 - (aa) [§805A] (New) In General.
 - (bb) [§805B] (New) Petition and Report.
 - (cc) [§805C] (New) Hearing and Determination.
 - (h) [§806] Events Terminating Postrelease Supervision.
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- (a) [§808] In General.
 - (b) "Some Evidence" Standard.
 - (1) [§809] In General.
 - (2) [§810] Development of Standard.
 - (3) [§811] Suitability Determination Does Not Require Comparative Analysis.

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1. [§817] Placement of Inmates in Program.
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G. [§820] Continuous Electronic Monitoring.

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I. [§822] Parole Reentry Programs.

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XVIII. EXECUTIVE CLEMENCY

A. [§824] Nature of Powers.

B. Commutation and Pardon.

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 - (a) [§825] Recommendation by Board of Parole Hearings.
 - (b) [§826] Application by Prisoner.
 - (c) [§827] Investigation and Report.
 - (d) [§828] Referral to Supreme Court.
 - (e) [§829] Decision and Report by Governor.
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 - (a) [§830] In General.
 - (b) [§831] Indemnity for Person Pardoned.

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B. [§833] Residence and Rehabilitation Period.

C. [§834] Petition, Notice, and Investigation.

D. [§835] Grant of Petition: Certificate of Rehabilitation.

E. [§836] Denial of Petition.

F. [§837] Effect of Certificate and Pardon.