

STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION AND STUDY

*relating to*

The Maximum Period of Confinement  
in a County Jail

October 15, 1956

## LETTER OF TRANSMITTAL

To HIS EXCELLENCY GOODWIN J. KNIGHT  
*Governor of California*  
and to the *Members of the Legislature*

The California Law Revision Commission was authorized by Resolution Chapter 207 of the Statutes of 1955 to make a study of the conflict between Penal Code Section 19a, which limits commitment to a county jail to one year in misdemeanor cases, and other code sections which provide for commitment to a county jail for longer than one year in certain cases. The commission herewith submits its recommendation relating to this subject and the study prepared by its research consultant, Mr. Thomas W. Cochran of Los Angeles, a member of the State Bar.

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October 15, 1956



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## RECOMMENDATION OF THE CALIFORNIA LAW REVISION COMMISSION

### Relating to the Maximum Period of Confinement in a County Jail

Penal Code Section 19a provides that no person shall be committed to a "county or city jail, or a county or joint county penal farm, road camp, work camp, or other county adult detention facility"<sup>1</sup> for more than one year "on conviction of misdemeanor, or as a condition of probation, or for any other reason."<sup>2</sup> The Law Revision Commission has concluded that the basic principle of Penal Code Section 19a, that confinement in a county jail should be limited to one year, is sound. This was the conclusion of the commission's research consultant and of the judges, probation officers, lawyers, law enforcement officers, and others in Los Angeles County with whom he discussed the matter. This conclusion was also expressed by 83 of the 96 judges, district attorneys, sheriffs, and probation officers who responded to a request by the commission for an expression of their views. The reason universally given for this opinion was that in most counties there is no adequate provision for rehabilitation of prisoners in the county jail and that incarceration without a rehabilitation program for more than one year not only does not benefit the prisoner but is actually harmful to him. The commission has concluded and recommends that no prisoner should be kept in a county jail for more than one year for a single offense. The reason for this recommendation is not that penalties as such should be reduced but that when confinement for more than a year is deemed necessary such confinement should not be in a county jail which does not have adequate facilities for rehabilitation.

There are 27 sections in the California codes which were originally enacted prior to 1933 and which provide for commitment to a county jail for more than one year.<sup>3</sup> The enactment of Section 19a in 1933 repealed these provisions by implication insofar as they conflict with it. Revision of these code sections to limit commitment to a county jail to one year would, therefore, merely give expression to the existing legal situation and would involve no substantive change in the law.

There are 11 sections in the California codes which were originally enacted after 1933 and which provide for commitment to a county jail for more than one year.<sup>4</sup> There is also one code section which, although

<sup>1</sup> The term "county jail" is used in this Recommendation and Study for convenience of expression and includes all of the detention facilities embraced in Section 19a.

<sup>2</sup> This language might be thought broad enough to embrace commitment after conviction of a felony, but Section 19a has been held to apply only in misdemeanor cases.

<sup>3</sup> These are the following: BUS. & PROF. CODE §§ 10140, 11020; CORP. CODE § 26104; ELEC. CODE §§ 11642-48; GOVT. CODE § 27443; H. & S. CODE §§ 12107, 12306; INS. CODE § 333; PEN. CODE §§ 33, 69, 142, 148, 149, 270, 270a, 347b, 405, 529, 587, 607; REV. & TAX. CODE § 23303. These code sections are included in Tables I through V in the research consultant's study.

<sup>4</sup> These are the following: BUS. & PROF. CODE § 4164; CORP. CODE §§ 25306, 27203; ELEC. CODE §§ 11650-54; H. & S. CODE § 11715.7; PEN. CODE § 337f; REV. & TAX. CODE § 12832. These code sections are included in Tables I through V in the research consultant's study.

enacted prior to 1933, was amended after 1933 to provide for commitment to a county jail for more than one year.<sup>5</sup> These sections prevail over Section 19a under the principle of repeal by implication. Their revision to limit commitment to a county jail to one year would, therefore, involve substantive change in the law.

The principle underlying Section 19a is, of course, essentially one of penology: That extended incarceration without adequate provision for rehabilitation does not benefit and actually harms the prisoner. The Legislature may accept this principle and yet believe that in particular cases the nature of the offense is such that imprisonment for one year is not an adequate punishment, at least in the case of some offenders. If this is the judgment of the Legislature as to the offenses defined in some or all of the code sections which conflict with Section 19a, it can be given effect by making the offenses alternative felonies. Of the 39 code sections which are inconsistent with Section 19a, 22 now make the offenses alternative felonies. The other 17 which do not are listed in Table VI of the research consultant's study. The commission has considered each of these code sections and recommends that the offenses defined in the following sections be made alternative felonies with a maximum period of confinement in the state prison equal to the present maximum period of confinement in the county jail:

Code	Section	Nature of offense	Recommended maximum state prison sentence
Penal	69	Deterring or resisting executive officer from performing his duty	5 years
Penal	142	Officer refusing to receive or arrest parties charged with crime	5 years
Penal	149	Assault by officer under color of authority-----	5 years
Penal	529	Performing certain acts while falsely impersonating another	2 years

The courts have held that Section 19a does not preclude commitment to a county jail for more than one year in several situations: (1) when consecutive sentences for separate offenses are imposed; (2) when a person is imprisoned for a time on condition of probation, released, and then later sentenced and imprisoned again upon revocation of his probation; (3) when a person is committed for civil contempt; (4) when a person is convicted of a felony and committed to a county jail as a condition of probation; and (5) when a person is convicted of a felony and fined with provision for commitment to a county jail for one day for each stated amount of the fine which is not paid (e.g., one day for each \$3 of fine). The commission believes that the basic principle underlying Section 19a applies as fully to the last three of these cases as to any other and recommends that the section be revised to make it applicable to such cases.

The commission believes that the basic principle underlying Section 19a also applies when consecutive sentences for separate offenses are imposed. A prisoner confined in a county jail for more than one year is harmed as much when the confinement is under consecutive sen-

<sup>5</sup> MIL. & VET. CODE § 145. This section is included in Table V in the research consultant's study.

tences as when it is under a single sentence. However, whether Section 19a should be revised to limit confinement in the county jail to one year in cases of consecutive sentences presents a difficult question. If such a limitation were imposed, some other arrangement for imprisonment in such cases would have to be made; otherwise, an offender would be punished no more severely for several offenses than for one. The Legislature might provide that in a case involving consecutive offenses, where a prisoner would otherwise be committed to a county jail for a period longer than one year, he should be delivered instead into the custody of the Director of Corrections for imprisonment in a state institution. If such provision were made, it might also specify (1) that such imprisonment shall not have the legal effect, when the prisoner was convicted of two or more misdemeanors, of making the offenses felonies and (2) that the county shall reimburse the State in an amount equal to what it would have cost the county to keep the prisoner had he been imprisoned in the county jail. However, an examination of the feasibility of state prison confinement for persons convicted of several misdemeanors with sentences running consecutively is beyond the scope of the study which the commission was authorized to make. The commission does not, therefore, recommend that Section 19a be revised to limit confinement in the county jail to one year in cases of consecutive sentences.

The commission does not believe that Section 19a should apply in a case like *In re Hays*,<sup>6</sup> wherein defendant spent six months in the county jail as a condition of probation, was released, had his probation revoked, and was sentenced to one year in the county jail. In such a case the principle of Section 19a would not seem to be applicable because the imprisonment in excess of one year is not continuous and the progressive deterioration against which Section 19a is directed is not, therefore, involved. The commission has, accordingly, recommended no change in the language of Section 19a upon which the court relied in *In re Hays*.

All except two<sup>7</sup> of the code sections which provide for county jail sentences in excess of one year also provide for the imposition of a fine, either in addition to or as an alternative to imprisonment. These sections are listed in Table VII in the research consultant's study. Generally, the maximum fine provided for is on a scale commensurate with the maximum term of imprisonment as this relationship has been established in the law of the State: \$5,000 or five years, \$2,000 or two years, etc. The commission believes that when a county jail sentence provision is reduced to one year in a case in which the offense is not also an alternative felony the maximum fine provision should also be reduced to provide a balance between the provision for imprisonment and the provision for a fine. The commission recommends, therefore, that in the following cases the fine provision be made \$1,000 if the maximum county jail sentence is reduced to one year:

<sup>6</sup> 120 Cal. App. 2d 308, 260 P. 2d 1030 (1953).

<sup>7</sup> H. & S. CODE § 11715.7 and PEN. CODE § 587 do not contain a fine provision.



Code	Section	Nature of offense	Present maximum imprisonment	Present maximum fine
Bus. & Prof.	4164	Misuse of needle or syringe .....	None specified	\$500
Bus. & Prof.	10140	Publishing false statement concerning land or subdivision	2 years	2,000
Bus. & Prof.	11020	Publishing false statement concerning land or subdivision	2 years	2,000
Govt.	27443	Misconduct by public administrator ..	2 years	5,000
H. & S.	12107	Violating provisions concerning records of sales of high explosives	None specified	2,000
H. & S.	12306	Violating regulations for transportation of explosives	18 months	2,000
Penal	148	Resisting public officers in the discharge of their duties	5 years	5,000
Penal	347b	Disposition or manufacture of poisonous alcoholic solutions	2 years	2,000
Penal	405	Riot .....	2 years	2,000

The commission has noted that some of the code sections involved in this study provide that the offender must be both fined and imprisoned and that others provide that he may be either fined or imprisoned. These sections are listed in Tables VIII and IX, respectively, in the research consultant's study. Most modern criminal statutes provide for either fine or imprisonment or both. The commission recommends that if these code sections are revised to limit the maximum county jail sentence to one year, the Legislature revise them at the same time to provide for either a fine or imprisonment or both.

The commission has also noted that some of the code sections involved in this study provide for a minimum fine or a minimum period of confinement as well as for a maximum fine or maximum period of confinement. The commission believes that in dealing with misdemeanors it is desirable to leave the minimum sentence within the discretion of the court and recommends that, if the following sections are to be otherwise revised, their minimum fine and imprisonment provisions be deleted:

Code	Section	Nature of offense	Present fine minimum-maximum	Present imprisonment minimum-maximum
Bus. & Prof.	4164	Misuse of needle or syringe .....	\$100-\$500	6 mos.-none
H. & S.	11715.7	Violating provisions regulating pharmacists and dispensing of drugs	None-none	6 mos.-none
H. & S.	12107	Violating provisions concerning records of sales of high explosives	\$100-\$2,000	6 mos.-none
Mil. & Vet.	145	Violating or resisting martial law ..	\$500-none	6 mos.-none
Penal	337f	Administering drugs to race horses.	None-\$5,000	1 yr.-2 yrs.
Penal	347b	Disposition or manufacture of poisonous alcoholic solutions	\$500-\$2,000	30 days-2 yrs.
Penal	587	Injuring railroads or railroad bridges	None-none	6 mos.-none
Penal	607	Destroying or injuring bridges, dams, levees, water-courses, etc.	\$100-\$1,000	None-2 yrs.
Rev. & Tax.	12832	Acting as insurer after suspension or forfeiture	\$250-\$1,000	50 days-500 days
Rev. & Tax.	23303	Exercising rights, privileges or powers of bank or corporation	\$250-\$1,000	50 days-500 days

The commission also recommends that, in accordance with the practice which has been adopted by the Legislative Counsel, any code section otherwise being revised which contains a caption enacted as a part of the section also be revised to delete the caption.

The commission's recommendation would be effectuated by the enactment of the following measure: <sup>8</sup>

*An act to amend Sections 11 and 19a of the Penal Code, Sections 4164, 10140 and 11020 of the Business and Professions Code, Sections 25306, 26104 and 27203 of the Corporations Code, Sections 11642, 11643, 11644, 11645, 11646, 11647, 11648, 11650, 11651, 11652, 11653 and 11654 of the Elections Code, Section 27443 of the Government Code, Sections 11715.7, 12107 and 12306 of the Health and Safety Code, Section 833 of the Insurance Code, Section 145 of the Military and Veterans Code, Sections 33, 69, 142, 148, 149, 270, 270a, 337f, 347b, 405, 529, 587, and 607 of the Penal Code, and Sections 12832 and 23303 of the Revenue and Taxation Code, all relating to the maximum period of confinement in a county jail.*

*The people of the State of California do enact as follows:*

SECTION 1. Section 11 of the Penal Code is amended to read:

11. ~~Authority of courts martial preserved. Courts of justice to punish for contempts.~~ This code does not affect any power conferred by law upon any court martial, or other military authority or officer, to impose or inflict punishment upon offenders; nor, *except as provided in Section 19a of this code*, any power conferred by law upon any public body, tribunal, or officer, to impose or inflict punishment for a contempt.

SEC. 2. Section 19a of the Penal Code is amended to read:

19a. In no case shall any person sentenced to confinement in a county or city jail, or in a county or joint county penal farm, road camp, work camp, or other county adult detention facility, or committed to the sheriff for placement in any such county adult detention facility, on conviction of a misdemeanor, or as a condition of probation *upon conviction of either a felony or a misdemeanor, or upon commitment for civil contempt, or upon default in the payment of a fine upon conviction of either a felony or a misdemeanor*, or for any reason *except upon conviction of more than one misdemeanor when consecutive sentences have been imposed*, be committed for a period in excess of one year; provided, however, that the time allowed on parole shall not be considered as a part of the period of confinement.

SEC. 3. Section 4164 of the Business and Professions Code is amended to read:

4164. Any person who has obtained a hypodermic needle or hypodermic syringe from any person to whom a permit has been issued as provided in this article and uses, or permits or causes, directly or indirectly, such hypodermic needle or hypodermic syringe to be used for any purpose other than that for which it was purchased is guilty of a misdemeanor and upon conviction thereof is punishable by ~~imprisonment for not less than six months or by a fine of not less than one hundred dollars (\$100) or more than five hundred dollars (\$500)~~ *a fine not exceeding one thousand dollars, or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment.*

<sup>8</sup> Matter in italics would be added to the present law; matter in "strikeout" type would be omitted.

SEC. 4. Section 10140 of the Business and Professions Code is amended to read:

10140. Every officer, agent or employee ~~of~~ of any company, and every other person who knowingly authorizes, directs or aids in the publication, advertisement, distribution or circularization of any false statement or representation concerning any land or subdivision thereof (as defined in Chapter 1 of Part 2 of this division), offered for sale or lease, and every person who, with knowledge that any advertisement, pamphlet, prospectus or letter concerning any said land or subdivision (as defined in Chapter 1 of Part 2 of this division) contains any written statement that is false or fraudulent, issues, circulates, publishes or distributes the same, or causes the same to be issued, circulated, published or distributed, or who, in any other respect, wilfully violates or fails to comply with any of the provisions of this section, or who in any other respect wilfully violates or fails, omits or neglects to obey, observe or comply with any order, permit, decision, demand or requirement of the commissioner under this section, is guilty of a public offense, and shall be punished by ~~imprisonment in the county jail for a term not to exceed two years; by a fine of not to exceed two thousand dollars (\$2,000)~~ *a fine not exceeding one thousand dollars, or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment*, and, if a real estate licensee, he shall be held to trial by the commissioner for a suspension or revocation of his license, as provided in the provisions of this part relating to hearings. The district attorney of each county in this State shall prosecute all violations of the provisions of this section in respective counties in which the violations occur.

SEC. 5. Section 11020 of the Business and Professions Code is amended to read:

11020. Every officer, agent or employee of any company, and every other person who knowingly authorizes, directs or aids in the publication, advertisement, distribution or circularization of any false statement or representation concerning any land, or subdivision thereof offered for sale or lease, and every person who, with knowledge that any advertisement, pamphlet, prospectus or letter concerning any said land or subdivision contains any written statement that is false or fraudulent, issues, circulates, publishes or distributes the same, or shall cause the same to be issued, circulated, published or distributed, or who, in any other respect, wilfully violates or fails to comply with any of the provisions of this chapter, or who in any other respect wilfully violates or fails, omits or neglects to obey, observe or comply with any order, permit, decision, demand or requirement of the commissioner under this chapter, is guilty of a public offense, and shall be punished by ~~imprisonment in the county jail for a term not to exceed two years; or by a fine of not to exceed two thousand dollars (\$2,000)~~ *a fine not exceeding one thousand dollars, or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment*, and, if a real estate licensee, he shall be held to trial by the commissioner for a suspension or revocation of his license, as provided in Article 3 of Chapter 2 of Part 1 of Division 4 of this code. The district attorney of each county in this State shall prosecute all violations of the provisions of this chapter in respective counties in which the violations occur.

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SEC. 6. Section 25306 of the Corporations Code is amended to read:

25306. No commissioner and no person who acts as a deputy commissioner in supervising the organization, reorganization, merger, or rehabilitation of any corporation under any law of this State shall, for a period of two years from and after the effective date of such organization, reorganization, merger, or rehabilitation, become an officer or director of, or serve as an officer or director of, or serve in any position of gain or profit in, any corporation formed in whole or in part of the assets or funds, or any part of the assets or funds, of such corporation.

Every person violating this section is guilty of a public offense punishable by imprisonment in a state prison not exceeding five years, or in the county jail not exceeding two years, or by a fine not exceeding five thousand dollars, (~~(\$5,000)~~), or by imprisonment in a state prison not exceeding five years or in a county jail not exceeding one year, or by both such fine and imprisonment.

SEC. 7. Section 26104 of the Corporations Code is amended to read:

26104. Every officer, agent, or employee of any company and every other person, who does any of the following acts is guilty of a public offense punishable by imprisonment in a state prison not exceeding five years, or in a county jail not exceeding two years, or by a fine not exceeding five thousand dollars, (~~(\$5,000)~~), or by imprisonment in the state prison not exceeding five years or in a county jail not exceeding one year, or by both such fine and imprisonment:

(a) Knowingly authorizes, directs, or aids in the issue or sale of, or issues or executes, or sells, or causes or assists in causing to be issued, executed, or sold, any security, in nonconformity with a permit of the commissioner then in effect authorizing such issue, or contrary to the provisions of this division, or of the Constitution of this State.

(b) In any application to the commissioner, or in any proceeding before him, or in any examination, audit, or investigation made by him or his authority, knowingly makes any false statement or representation, or, with knowledge of its falsity, files or causes to be filed in the office of the commissioner any false statement or representation concerning the company or the property which it then holds or proposes to acquire, or concerning its officers or its financial condition or other affairs, or concerning its proposed plan of business, or, with knowledge of the falsity of any such statement or representation, issues, executes, or sells, or causes to be issued, executed, or sold, any security.

(c) Directly or indirectly, knowingly applies, or causes or assists in causing to be applied, the proceeds, or any part thereof, from the sale of any security to any purpose contrary to the provisions of the permit authorizing the issue of the security, or to any purpose specified in the permit in excess of any amount limited in the permit to be used for that purpose.

(d) With knowledge that any security has been issued or executed in violation of any provision of this division, sells, or offers the security for sale.

(e) Issues, circulates, or publishes, or causes to be issued, circulated, or published, any advertisement, pamphlet, prospectus, or circular concerning any security containing any statement that is false or misleading, or otherwise likely to deceive a reader thereof, with knowledge that it contains such false, misleading, or deceptive statement.

(f) In any respect wilfully violates or fails to comply with any provision of this division, or wilfully violates or fails, omits, or neglects to obey, observe, or comply with any order, permit, decision, demand, or requirement, or any part or provision thereof, of the commissioner under this division.

(g) With one or more other persons, conspires to violate any permit or order issued by the commissioner or any provision of this division.

SEC. 8. Section 27203 of the Corporations Code is amended to read:

27203. Every individual who knowingly violates any provision of this division, or any condition of any certificate issued under this division, is guilty of a public offense punishable ~~by imprisonment in a state prison for a term not exceeding two (2) years, or in a county jail not exceeding two (2) years, or by a fine not exceeding five thousand dollars, (\$5,000), or by imprisonment in the state prison not exceeding two years or in a county jail not exceeding one year, or by both such~~ fine and imprisonment.

SEC. 9. Section 11642 of the Elections Code is amended to read:

11642. Every person is punishable ~~by imprisonment in the State prison or in a county jail not exceeding two years, or by a fine not exceeding five thousand dollars, (\$5,000), or by imprisonment in the state prison not exceeding two years or in a county jail not exceeding one year, or by both such fine and imprisonment~~, who, circulating, as principal or agent, or having charge or control of the circulation of, or obtaining signatures to, any initiative, referendum or recall petition, misrepresents or makes any false statement concerning the contents, purport or effect of the petition to any person who signs, or who desires to sign, or who is requested to sign, or who makes inquiries with reference to it, or to whom it is presented for his signature.

SEC. 10. Section 11643 of the Elections Code is amended to read:

11643. Every person is punishable ~~by imprisonment in the State prison, or in a county jail not exceeding two years, or by a fine not exceeding five thousand dollars, (\$5,000), or by imprisonment in the state prison not exceeding two years or in a county jail not exceeding one year, or by both such fine and imprisonment~~, who wilfully or knowingly circulates, publishes or exhibits any false statement or misrepresentation concerning the contents, purport or effect of any initiative, referendum, or recall petition for the purpose of obtaining any signature to, or persuading any person to sign, that petition.

SEC. 11. Section 11644 of the Elections Code is amended to read:

11644. Every person is punishable ~~by imprisonment in the State prison, or in a county jail, not exceeding two years, or by a fine not exceeding five thousand dollars, (\$5,000), or by imprisonment in the state prison not exceeding two years or in a county jail not exceeding one year, or by both such fine and imprisonment~~, who files in the office of the clerk or other officer provided by law to receive such filing, any initiative, referendum, or recall petition to which is attached, appended or subscribed any signature which the person filing the petition knows to be false or fraudulent or not the genuine signature of the person whose name it purports to be.

SEC. 12. Section 11645 of the Elections Code is amended to read:

11645. Every person is punishable ~~by imprisonment in the State prison, or in a county jail, not exceeding two years, or by a fine not~~

exceeding five thousand dollars, ~~(\$5,000)~~, or by imprisonment in the state prison not exceeding two years or in a county jail not exceeding one year, or by both such fine and imprisonment, who circulates, or causes to be circulated, any initiative, referendum, or recall petition, knowing it to contain false, forged, or fictitious names.

SEC. 13. Section 11646 of the Elections Code is amended to read:

11646. Every person is punishable ~~by imprisonment in the State prison, or in a county jail, not exceeding two years, or~~ by a fine not exceeding five thousand dollars, ~~(\$5,000)~~, or by imprisonment in the state prison not exceeding two years or in a county jail not exceeding one year, or by both such fine and imprisonment, who makes any false affidavit concerning any initiative, referendum, or recall petition or the signatures appended thereto.

SEC. 14. Section 11647 of the Elections Code is amended to read:

11647. Every public official or employee is punishable ~~by imprisonment in the State prison, or in a county jail, not exceeding two years, or~~ by a fine not exceeding five thousand dollars, ~~(\$5,000)~~, or by imprisonment in the state prison not exceeding two years or in a county jail not exceeding one year, or by both such fine and imprisonment, who knowingly makes any false return, certification or affidavit, concerning any initiative, referendum, or recall petition or the signatures appended thereto.

SEC. 15. Section 11648 of the Elections Code is amended to read:

11648. Every person is punishable ~~by imprisonment in the State prison, or in a county jail, not exceeding two years, or~~ by a fine not exceeding five thousand dollars, ~~(\$5,000)~~, or by imprisonment in the state prison not exceeding two years or in a county jail not exceeding one year, or by both such fine and imprisonment, who knowingly signs his own name more than once to any initiative, referendum, or recall petition, or signs his name to any such petition knowing himself at the time of signing not to be qualified to sign it.

SEC. 16. Section 11650 of the Elections Code is amended to read:

11650. Every person who seeks, solicits, bargains for, or obtains any money, thing of value, or advantage of, or from any person, firm, or corporation for the purpose or represented purpose of fraudulently inducing, persuading, or seeking the proponent or proponents of any initiative or referendum measure or recall petition to (a) abandon such measure or petition; (b) fail, neglect, or refuse to file in the office of the clerk or other officer provided by law within the time required by law such initiative or referendum measure or recall petition after securing the number of signatures required to qualify such measure or petition; (c) stop the circulation of such initiative or referendum measure or recall petition; (d) perform any act that will prevent or aid in preventing the initiative or referendum measure or recall petition from qualifying as an initiative or referendum measure, or the recall petition from resulting in a recall election, is punishable ~~by imprisonment in the State prison or in the county jail for not exceeding two years, or~~ by a fine not exceeding five thousand dollars, ~~(\$5,000)~~, or by imprisonment in the state prison not exceeding two years or in a county jail not exceeding one year, or by both such fine and imprisonment.

SEC. 17. Section 11651 of the Elections Code is amended to read:

11651. Any proponent of an initiative or referendum measure or recall petition who seeks, solicits, bargains for, or obtains any money or thing of value, of or from any person, firm, or corporation for the purpose of abandoning the same or stopping the circulation of petitions concerning the same, or failing or neglecting or refusing to file such measure or petition in the office of the clerk or other officer provided by law within the time required by law after obtaining the number of signatures required under the law to qualify such measure or petition, or performing any act that will prevent or aid in preventing the initiative, referendum or recall proposed from qualifying as an initiative or referendum measure, or resulting in a recall election, is punishable by imprisonment in the State prison or in the county jail for not exceeding two years, or by a fine not exceeding five thousand dollars, ~~(\$5,000),~~ or by imprisonment in the state prison not exceeding two years or in a county jail not exceeding one year, or by both such fine and imprisonment.

SEC. 18. Section 11652 of the Elections Code is amended to read:

11652. Any person who seeks, solicits, bargains for, or obtains any money, thing of value or advantage of or from any person, firm, or corporation on the threat or representation or claim or demand that unless such money, thing of value, or advantage is obtained, that an initiative or referendum measure will be proposed and circulated or proposed or circulated affecting either directly or indirectly, the business, property or interests of such person, firm, or corporation is punishable by imprisonment in the State prison or in the county jail for not exceeding two years, or by a fine not exceeding five thousand dollars, ~~(\$5,000),~~ or by imprisonment in the state prison not exceeding two years or in a county jail not exceeding one year, or by both such fine and imprisonment.

SEC. 19. Section 11653 of the Elections Code is amended to read:

11653. Any proponent of a referendum measure shall within the time required by law for the filing of such measure file in the office of the clerk or other officer provided by law all petitions and signatures obtained in connection with such measure accompanied by an affidavit that the signatures so filed constitute and are all of the signatures secured or obtained in connection with such measure or petition.

A violation of this section is punishable by imprisonment in the State prison or in the county jail for not exceeding two years, or by a fine not exceeding five thousand dollars, ~~(\$5,000),~~ or by imprisonment in the state prison not exceeding two years or in a county jail not exceeding one year, or by both such fine and imprisonment.

SEC. 20. Section 11654 of the Elections Code is amended to read:

11654. Any person working for the proponent or proponents of an initiative or referendum measure or recall petition who solicits signatures to qualify such measure or petition and accepts any payment therefor and who fails to surrender such measure or petition to the proponents thereof for filing is punishable by imprisonment in the State prison or in the county jail for not exceeding two years, or by a fine not exceeding five thousand dollars, ~~(\$5,000),~~ or by imprisonment in the state prison not exceeding two years or in a county jail not exceeding one year, or by both such fine and imprisonment.

SEC. 21. Section 27443 of the Government Code is amended to read:

27443. Any person holding the office of public administrator who wilfully refuses or neglects to perform the duties of his office or who violates any law relating to the duties thereof, for which some other punishment is not prescribed, is punishable by a fine not exceeding ~~five~~ one thousand dollars, ~~((\$5,000))~~, or by imprisonment in ~~the~~ a county jail not exceeding ~~two~~ one year ~~s~~, or by both *such fine and imprisonment*.

SEC. 22. Section 11715.7 of the Health and Safety Code is amended to read:

11715.7. Any person who shall violate any of the provisions of Sections 11162, 11162.5, 11163, 11163.5, 11164, 11170 and 11170.5, shall be punished by imprisonment ~~in a county jail for not less than six months~~ or in the state prison ~~for not more than exceeding six years or in a county jail not exceeding one year~~.

SEC. 23. Section 12107 of the Health and Safety Code is amended to read:

12107. Every person who violates any provision of this chapter is guilty of a misdemeanor punishable by a fine ~~of not less than one hundred nor more than two~~ exceeding one thousand dollars, or by imprisonment in a county jail ~~for not less than six months exceeding one year~~, or by both *such fine and imprisonment*.

SEC. 24. Section 12306 of the Health and Safety Code is amended to read:

12306. Every person who wilfully violates, or causes the violation of, any provision of this chapter, except a provision in Sections 12302, 12304, and 12305, is guilty of a misdemeanor punishable by a fine ~~of not more than two~~ exceeding one thousand dollars, or by imprisonment ~~for in a county jail not more than 18 months exceeding one year~~, or by both *such fine and imprisonment*.

SEC. 25. Section 833 of the Insurance Code is amended to read:

833. Every person who commits any of the acts specified in this section is guilty of a public offense and punishable ~~by imprisonment in the State prison not exceeding five years or in a county jail not exceeding two years~~, or by a fine not exceeding five thousand dollars, ~~((\$5,000))~~, or by imprisonment ~~in the state prison not exceeding five years or in a county jail not exceeding one year~~, or by both *such fine and imprisonment*.

(a) Knowingly authorizing, causing, or assisting in causing the issue, ~~or~~ any security, in nonconformity with a permit ~~or~~ ~~in effect and authorizing~~ such issue, or contracting ~~with~~ of this article.

(b) Knowingly making a ~~statement~~ or representation in any application to the commissioner, ~~or~~ any proceeding before him, or in any examination, audit, or ~~any~~ ~~statement~~ made by him, or by his authority.

(c) With knowledge of the falsity, causing to be filed in the office of the commissioner any false statement or representation concerning an insurer, the property which the insurer then holds or proposes to acquire, the insurer's officers, the insurer's financial condition or other affairs, or the insurer's proposed plan of business.



(d) With knowledge of the falsity of any such statement or representation, causing any security to be issued, executed, or sold without first informing the commissioner of the falsity of such statement in writing.

(e) Directly or indirectly, knowingly causing or assisting in causing any part of the proceeds from the sale of any security to be applied to any purpose contrary to the provisions of the permit authorizing the issue of such security, or to any purpose in excess of the amount specified in such permit for such purpose.

(f) Selling a security with knowledge that it has been issued or executed in violation of any of the provisions of this article.

(g) Causing a writing concerning a security to be issued, circulated, or published while having knowledge that such matter contains any statement that is false, misleading, or otherwise likely to deceive a reader thereof.

(h) In any respect, wilfully violating or failing to comply with any of the provisions of this article.

(i) In any other respect, wilfully violating or neglecting to comply with any part of an order or permit of the commissioner under the provisions of this article.

(j) Conspiring with one or more other persons to violate any permit or order issued by the commissioner, or any of the provisions of this article.

SEC. 26. Section 145 of the Military and Veterans Code is amended to read:

145. A person who, after publication of the proclamation authorized by Section 143, joins, participates or takes any part in a rebellion, insurrection, tumult or riot, or who is party to any conspiracy or combination to resist by force the execution of the laws or who resists or aids in resisting the execution of process in any county or city declared to be in a state of insurrection, or who aids or attempts the rescue or escape of another from the lawful custody or confinement, or who resists or aids in resisting any force ordered out by the Governor to quell or suppress an insurrection, is punishable by imprisonment either in the state prison not less than two years or in the county jail not less than six months or by a fine of not less than five hundred dollars, (\$500) or by imprisonment in the state prison not less than two years or in a county jail not exceeding one year, or by both such fine and imprisonment.

SEC. 27. Section 33 of

ended to read:

33. Punishment of cases where a different punishment is prescribed, is punishable by imprisonment in the State Prison not exceeding five years, or in a County Jail not exceeding two years, or by a fine not exceeding five thousand dollars, or by imprisonment in the state prison not exceeding five years or in a county jail not exceeding one year, or by both such fine and imprisonment.

SEC. 28. Section 69 of the Penal Code is amended to read:

69. Resisting officers. Every person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon such officer by law, or who knowingly resists, by the use of force or violence, such officer, in the performance

of his duty, is punishable by a fine not exceeding five thousand dollars, ~~and imprisonment in the County Jail not exceeding five years or by imprisonment in the state prison not exceeding five years or in a county jail not exceeding one year, or by both such fine and imprisonment.~~

SEC. 29. Section 142 of the Penal Code is amended to read:

142. ~~Officer refusing to receive or arrest parties charged with crime.~~ Every sheriff, coroner, keeper of a jail, constable, or other peace officer, who wilfully refuses to receive or arrest any person charged with a criminal offense, is punishable by a fine not exceeding five thousand dollars, ~~and imprisonment in the County Jail not exceeding five years or by imprisonment in the state prison not exceeding five years or in a county jail not exceeding one year, or by both such fine and imprisonment.~~

SEC. 30. Section 148 of the Penal Code is amended to read:

148. ~~Resisting public officers in the discharge of their duties.~~ Every person who wilfully resists, delays, or obstructs any public officer, in the discharge or attempt to discharge any duty of his office, when no other punishment is prescribed, is punishable by a fine not exceeding ~~five~~ one thousand dollars, ~~and or by imprisonment in the a county jail not exceeding five one year s , or by both such fine and imprisonment.~~

SEC. 31. Section 149 of the Penal Code is amended to read:

149. ~~Assaults, etc., by officers, under color of authority.~~ Every public officer who, under color of authority, without lawful necessity, assaults or beats any person, is punishable by a fine not exceeding five thousand dollars, ~~and imprisonment in the County Jail not exceeding five years or by imprisonment in the state prison not exceeding five years or in a county jail not exceeding one year, or by both such fine and imprisonment.~~

SEC. 32. Section 270 of the Penal Code is amended to read:

270. A father of either a legitimate or illegitimate minor child who wilfully omits without lawful excuse to furnish necessary food, clothing, shelter or medical attendance or other remedial care for his child is guilty of a misdemeanor and punishable ~~by imprisonment in the county jail not exceeding two years or by a fine not exceeding one thousand dollars, (\$1,000), or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment.~~ If the father, during such violation, remains out of the State for 30 days, or if he fails or refuses to comply with the order of a court of competent jurisdiction requiring him to make any provision for the maintenance, support, medical treatment or other remedial care of such minor child and remains out of the State for 10 days without doing so, he is guilty of a felony. This statute shall not be construed so as to relieve such father from the criminal liability defined herein for such omission merely because the mother of such child is legally entitled to the custody of such child nor because the mother of such child, or any other person, or organization, voluntarily or involuntarily furnishes such necessary food, clothing, shelter or medical attendance or other remedial care for such child, or undertakes to do so.

Proof of abandonment or desertion of a child by such father, or the omission by such father to furnish necessary food, clothing, shelter or medical attendance or other remedial care for his child is prima facie

evidence that such abandonment or desertion or omission to furnish necessary food, clothing, shelter or medical attendance or other remedial care is wilful and without lawful excuse.

In the event that the father of either a legitimate or illegitimate minor child is dead or for any other reason whatsoever fails to furnish the necessary food, clothing, shelter or medical attendance or other remedial care for his minor child, the mother of said child shall become subject to the provisions of this section and be criminally liable for the support of said minor child during the period of failure on the part of the father to the same extent and in the same manner as the father.

The provisions of this section are applicable whether the parents of such child are married or divorced, and regardless of any decree made in any divorce action relative to alimony or to the support of the child. A child conceived but not yet born is to be deemed an existing person insofar as this section is concerned.

SEC. 33. Section 270a of the Penal Code is amended to read:

270a. Every husband having sufficient ability to provide for his wife's support, or who is able to earn the means of such wife's support, who wilfully abandons and leaves his wife in a destitute condition, or who refuses or neglects to provide such wife with necessary food, clothing, shelter or medical attendance, unless by her misconduct he was justified in abandoning her, is punishable ~~by imprisonment in the state prison, or in the county jail, not exceeding two years, or by a fine not exceeding one thousand dollars, or by imprisonment in the state prison not exceeding two years or in a county jail not exceeding one year, or by both such fine and imprisonment.~~

SEC. 34. Section 337f of the Penal Code is amended to read:

337f. Any person: (a) Who influences, or induces, or conspires with, any owner, jockey, groom or other person associated with or interested in any stable, horse, or race in which a horse participates, to affect the result of such race by stimulating or depressing a horse through the administration of any drug to such horse, or by the use of any electrical device or any electrical equipment or by any mechanical or other device not generally accepted as regulation racing equipment, or

(b) Who so stimulates or depresses a horse, or

(c) Who knowingly enters any horse in any race within a period of 24 hours after any drug has been administered to such horse for the purpose of increasing or retarding the speed of such horse, is ~~guilty of a felony and punishable by a fine of not more than exceeding five thousand dollars, (\$5,000), or by imprisonment in a the state prison or a county jail for not less than one nor more than exceeding two years or in a county jail not exceeding one year, or by both such fine and imprisonment, or~~

(d) Who wilfully or unjustifiably enters or races any horse in any running or trotting race under any name or designation other than the name or designation assigned to such horse by and registered with the Jockey Club or the United States Trotting Association or who wilfully sets on foot, instigates, engages in or in any way furthers any act by which any horse is entered or raced in any running or trotting race under any name or designation other than the name or designation

duly assigned by and registered with the Jockey Club or the United States Trotting Association is guilty of a felony and punishable by imprisonment in the state prison for a period not exceeding five years or by a fine not exceeding five thousand dollars (~~\$5,000~~) or by both such fine and imprisonment.

The term "drug" includes all substances recognized as having the power of stimulating or depressing the central nervous system, respiration, or blood pressure of an animal, such as narcotics, hypnotics, benzdrine or its derivatives, but shall not include recognized vitamins or supplemental feeds approved by the veterinarian representing the California Racing Board.

SEC. 35. Section 347b of the Penal Code is amended to read:

347b. It shall be unlawful for any person, firm or corporation to manufacture, sell, furnish, or give away, or offer to manufacture, sell, furnish, or give away any alcoholic solution of a potable nature containing any deleterious or poisonous substance, and the burden of proof shall be upon the person, firm or corporation manufacturing, selling, furnishing, or giving away, or offering to manufacture, sell, furnish, or give away, any such alcoholic solution of a potable nature containing any deleterious or poisonous substance, to show that such alcoholic solution of a potable nature did not contain any deleterious or poisonous substance. Every person who violates any of the provisions of this section is guilty of a misdemeanor, and shall be punished by a fine of not less than five hundred dollars or more than two exceeding one thousand dollars, or by imprisonment in a county jail for not less than thirty days or more than two exceeding one year, or by both such fine and imprisonment.

SEC. 36. Section 405 of the Penal Code is amended to read:

405. ~~Riot, punishment of.~~ Every person who participates in any riot is punishable by imprisonment in the County Jail not exceeding two years, or by a fine not exceeding two one thousand dollars, or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment.

SEC. 37. Section 529 of the Penal Code is amended to read:

529. Every person who falsely personates another in either his private or official capacity, and in such assumed character, either:

1. Becomes bail or surety for any party in any proceeding whatever, before any court or officer authorized to take such bail or surety;
2. Verifies, publishes, acknowledges, or proves, in the name of another person, any written instrument, with intent that the same may be recorded, delivered, or used as true; or,
3. Does any other act whereby, if done by the person falsely personated, he might, in any event, become liable to any suit or prosecution, or to pay any sum of money, or to incur any charge, forfeiture, or penalty, or whereby any benefit might accrue to the party personating, or to any other person;

Is punishable by imprisonment in the county jail not exceeding two years, or by a fine not exceeding five thousand dollars, or by imprisonment in the state prison not exceeding two years or in a county jail not exceeding one year, or by both such fine and imprisonment.

SEC. 38. Section 587 of the Penal Code is amended to read:

587. ~~Injuries to railroads and railroad bridges.~~ Every person who maliciously, either:

1. Removes, displaces, injures, or destroys any part of any railroad, whether for steam or horse cars, or any track of any railroad, or any branch or branchway, switch, turnout, bridge, viaduct, culvert, embankment, station house, or other structure or fixture, or any part thereof, attached to or connected with any railroad; or,

2. Places any obstruction upon the rails or track of any railroad, or of any switch, branch, branchway, or turnout connected with any railroad;

Is punishable by imprisonment in the state prison not exceeding five years, or in the county jail not ~~less than six months.~~ *exceeding one year.*

SEC. 39. Section 607 of the Penal Code is amended to read:

607. Every person who wilfully and maliciously cuts, breaks, injures or destroys any bridge, dam, canal, flume, aqueduct, levee, embankment, reservoir, or other structure erected to create hydraulic power, or to drain or reclaim any swamp, overflow, tide or marsh land, or to store or conduct water for mining, manufacturing, reclamation, or agricultural purposes, or for the supply of the inhabitants of any city or town, or any embankment necessary to the same, or either of them or wilfully or maliciously makes, or causes to be made, any aperture or plows up the bottom or sides in such dam, canal, flume, aqueduct, reservoir, embankment, levee, or structure, with intent to injure or destroy the same; or draws up, cuts or injures any piles fixed in the ground for the purpose of securing any sea bank, or sea wall, or any dock, quay or jetty, lock, or sea wall; or who, between the first day of October and the fifteenth day of April of each year, plows up or loosens the soil in the bed or on the side of any natural water course, reclamation or drainage ditch, with an intent to destroy the same without removing such soil within twenty-four hours from such water course, reclamation or drainage ditch, or who, between the fifteenth day of April and the first day of October of each year, shall plow up or loosen the soil in the bed or on the sides of such natural water course, reclamation or drainage ditch, with an intent to destroy the same and shall not remove therefrom the soil so plowed up or loosened before the first day of October next thereafter, is guilty of a misdemeanor, and upon conviction, punishable by a fine of not ~~less than one hundred dollars and not~~ exceeding one thousand dollars, or by imprisonment in ~~the~~ a county jail; not exceeding ~~two~~ one year s, or by both *such fine and imprisonment*; provided that nothing in this section shall be construed so as to in any manner prohibit any person from digging or removing soil from any such water course, reclamation or drainage ditch, for the purpose of mining.

SEC. 40. Section 12832 of the Revenue and Taxation Code is amended to read:

12832. Every person who attempts or purports to exercise any of the rights, privileges or powers of a suspended domestic insurer or attempts to transact any intrastate business in this State in behalf of a forfeited foreign insurer is guilty of a misdemeanor. Upon conviction he shall be punished by a fine of not ~~less than two hundred fifty dollars~~

~~(\$250) and not exceeding one thousand dollars, (\$1,000), or by imprisonment in the a county jail for not less than 50 days nor more than 500 days exceeding one year, or by both such fine and imprisonment.~~

SEC. 41. Section 23303 of the Revenue and Taxation Code is amended to read:

23303. Any person who attempts or purports to exercise any of the rights, privileges or powers of any such domestic bank or corporation, except as hereinabove permitted, or who transacts or attempts to transact any intrastate business in the State in behalf of any such foreign bank or corporation, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine ~~of not less than two hundred fifty dollars (\$250) and not exceeding one thousand dollars, (\$1,000),~~ or by imprisonment in the a county jail not less than ~~fifty days nor more than five hundred days exceeding one year,~~ or by both such fine and imprisonment. The jurisdiction of such offense shall be held to be in any county in which any part of such attempted exercise of such powers, or any part of such transaction of business occurred, and the district attorney of the county must prosecute such offense. In addition to the penal provisions in this paragraph, any taxpayer which transacts business during the period of suspension or forfeiture shall be subject to tax under the provisions of this chapter.



## A STUDY OF PENAL CODE SECTION 19a AND RELATED CODE SECTIONS \*

Penal Code Section 19a, enacted in 1933, provides:

§ 19a. In no case shall any person sentenced to confinement in a county or city jail, or in a county or joint county penal farm, road camp, work camp, or other county adult detention facility, or committed to the sheriff for placement in any such county adult detention facility, on conviction of misdemeanor, or as a condition of probation, or for any reason, be committed for a period in excess of one year; provided, however, that the time allowed on parole shall not be considered as a part of the period of confinement.<sup>1</sup>

There are approximately 40 California code sections which provide for county jail sentences in excess of one year. Some of these, enacted prior to 1933, were repealed by implication insofar as inconsistent with Section 19a when it was enacted that year.<sup>2</sup> Others, however, were enacted after 1933 and presumably prevail over Section 19a in the situations to which they apply.<sup>3</sup> Moreover, the courts have held that Section 19a does not limit county jail commitments to one year in a number of situations.<sup>4</sup>

The purpose of this study is to examine the present area of operation of Section 19a, to determine whether code sections in conflict with Section 19a should be revised to eliminate the conflict, to determine whether Section 19a should be extended to some or all cases which it does not now cover, and to point out what revisions of existing law would be necessary to effectuate various policy decisions which might be taken relating to the resolution of the existing conflicts between Section 19a and other code provisions.

### PRESENT AREA OF OPERATION OF SECTION 19a

In general, as is shown below, Penal Code Section 19a limits county jail sentences to one year in misdemeanor cases in which a longer maximum county jail sentence was authorized by a code section enacted prior to 1933. The courts have held, however, that Section 19a does not limit county jail confinement in a number of situations. The present law may be summarized as follows.

\* This study was made at the direction of the Law Revision Commission by Mr. Thomas W. Cochran of Los Angeles, a member of the State Bar.

<sup>1</sup> The pertinent provisions of Section 19a limiting commitment to the county jail to one year have not been materially changed since their enactment in 1933. Section 19a was added by Cal. Stat. 1933, c. 848, p. 2217, and amended by Cal. Stat. 1941, c. 552, p. 1916; Cal. Stat. 1949, c. 1390, p. 2426; Cal. Stat. 1951, c. 1412, p. 3367.

<sup>2</sup> *In re Chiapetto*, 93 Cal. App. 2d 497, 209 P. 2d 154 (1949).

<sup>3</sup> *Ibid.* See Tables I through V, pp. A-29-31 *infra* for those sections enacted prior to Section 19a and those enacted after Section 19a.

<sup>4</sup> See discussion pp. A-24-28 *infra*.



### Prior-enacted Inconsistent Statutes

Section 19a limits all prior-enacted misdemeanor penal sections in California law inconsistent therewith. In *People v. Phair*<sup>5</sup> appellant had been convicted on four counts of contributing to the delinquency of a minor, in violation of Section 702 of the Welfare and Institutions Code, and had been sentenced to two years in the county jail on each count, the sentences on three of the counts to run concurrently and the sentence on the fourth count to run consecutively to the other three counts. The sole question on appeal was whether Section 19a repealed or modified the penal provisions of the prior-enacted Juvenile Court Act so as to limit incarceration in the county jail to one year in all cases of conviction for offenses proscribed by that act.

The court noted that when Section 19a was adopted the Legislature also amended Section 19 of the Penal Code, which specifies the punishment for all misdemeanors not otherwise provided for, by changing the phrase, "Except in cases where a different punishment is prescribed by this code," to read, "Except in cases where a different punishment is prescribed by any law of this State." The opinion then went on to state:

It is clear that the legislature intended by the amendment [to Section 19] to remove the words of limitation which made the section applicable to misdemeanors prescribed by the Penal Code, and make it applicable to all misdemeanors "prescribed by any law of the state." Hence, as amended, the section fixed the maximum imprisonment at six months for any misdemeanor, "except in cases where a different punishment is prescribed by any law of this state."

The wording of the first part of section 19a, limiting imprisonment in the county jail for misdemeanors to one year, is very comprehensive in its language. When read in connection with the amendment to section 19 it would seem clear that this provision in the new section was intended to cover all cases of misdemeanors not included in section 19 as amended. \* \* \*

From the foregoing considerations, \* \* \* there would seem no escape from the conclusion that in adding section 19a to the Penal Code it was the intention to limit the period of confinement in the county jail to one year in any and all cases where a misdemeanor has been committed.<sup>6</sup>

### Consecutive Sentences

Where two or more misdemeanors are involved, sentences may be for a maximum of one year on each count whether charged in one complaint or in separate complaints and the sentences may legally be ordered served consecutively. In *People v. Carr*<sup>7</sup> defendant had been convicted on four counts of statutory rape. The jury recommended punishment in the county jail on each count, thus making each offense a misdemeanor. The court pronounced sentence of one year in the county jail on each count and ordered that the sentences be served consecutively. Defendant appealed, contending that under the limitations

<sup>5</sup> 137 Cal. App. 612, 31 P. 2d 421 (1934).

<sup>6</sup> *Id.* at 614-15, 31 P. 2d at 422-23; accord, 12 Ops. Cal. Att'y Gen. 125 (1948).

<sup>7</sup> 6 Cal. 2d 227, 57 P. 2d 489 (1936).

of Section 19a of the Penal Code the court was without jurisdiction to impose sentence to the county jail for more than one year. Rejecting this, the Supreme Court stated:

If this was the legislative purpose, it was certainly not made clear; and we do not believe that such is the effect of the statute. \* \* \* [T]here is nothing in the statute to suggest that it was intended to obliterate the distinction between one crime and several crimes. On the contrary, it refers to a "case," not cases; and to "conviction of misdemeanor," not misdemeanors. The language plainly has reference to a single offense. A person who commits two or more misdemeanors is subject to the possible imposition of two or more separate punishments.<sup>8</sup>

The Court said that Section 669 of the Penal Code, which provides that when a person is convicted of two or more crimes the judgment shall direct whether the terms of imprisonment, or any of them, on which he is sentenced shall run concurrently or consecutively, clearly governed the case. It specifically disapproved language in *In re Stein*,<sup>9</sup> and *In re Buchanan*,<sup>10</sup> District Court of Appeal decisions, inconsistent with its decision.

#### Felonies: Condition of Probation

Penal Code Section 19a is not applicable in felony cases; a defendant convicted of a felony may, therefore, be ordered to serve more than one year in the county jail as a condition of probation. *In re Marquez*<sup>11</sup> was a proceeding in habeas corpus to secure release from the county jail. The petitioner had been charged by information with four counts of rape and had pleaded guilty to one count and applied for probation. The court ordered that proceedings be suspended (leaving the case a felony under Penal Code Section 17) and placed the defendant on probation for a period of 20 years upon condition that he spend the first four years in the county road camp. After serving one year defendant sued out a writ of habeas corpus claiming that further confinement was illegal under the provisions of Section 19a of the Penal Code. The superior court granted the writ and ordered the defendant released. On appeal, the District Court of Appeal dismissed the appeal<sup>12</sup> and the cause was taken over by the Supreme Court.

The decision of the Supreme Court, so far as it is pertinent, was as follows:

Defendant claims that this section [19a] applies to all crimes, misdemeanors and felonies, and limits the period during which any prisoner may be confined in a penal institution, other than penitentiary or prison farm, to one year. Appellant claims that the section relates to and governs only sentences inflicted or terms of probation granted in misdemeanor cases, not felony cases; that as defendant was convicted of a felony, his term of probation was not limited by said statute. To put it another way, defendant

<sup>8</sup> *Id.* at 228, 57 P. 2d at 489; accord, *People v. Flanagan*, 7 Cal. App. 2d 214, 45 P. 2d 1032 (1935); 12 Ops. Cal. Att'y Gen. 125 (1948).

<sup>9</sup> 4 Cal. App. 2d 267, 40 P. 2d 934 (1935).

<sup>10</sup> 4 Cal. App. 2d 269, 40 P. 2d 935 (1935).

<sup>11</sup> 3 Cal. 2d 625, 45 P. 2d 342 (1935).

<sup>12</sup> *Ex parte Marquez*, 40 P. 2d 886 (Cal. 1935).

claims that the underlined phrase "or as a condition of probation" is unqualified by the remaining language of the section and applies to all cases, whereas appellant claims that the meaning of the phrase is so limited by its connection with associated phrases that it applies only to misdemeanor cases.<sup>13</sup>

The Court then stated that the statute must be read and construed in harmony with other statutes relating to the same general subject and quoted provisions of Penal Code Section 1203 to the effect that in granting probation the court may "imprison the defendant in the county jail for a period not exceeding the maximum time fixed by law in the instant case." The Court also reviewed the language of Penal Code Section 1203a dealing with the power of the courts in misdemeanor cases and stated:

After consideration of these several sections, we are led to concur in the views of appellant as to the purport of section 19a. To ascertain the meaning of the statute, the phrases used therein must be construed in connection with the phrases with which they are associated, and the particular expressions qualify those which are general (maxim of *ejusdem generis*, as codified, sec. 3534, Civ. Code; \* \* \*). Thus it is clear that section 19a relates solely to misdemeanor cases and may not be invoked by this defendant who is on probation under conviction of a felony. \* \* \* The statute places no limitation upon the term of a probationary period ordered spent in a road camp in a felony case. It follows that the power of the court to place defendant in a road camp was limited, as to period of confinement, only by the maximum possible term of his sentence \* \* \*.<sup>14</sup>

The order discharging the defendant was reversed and the court below was ordered to discharge the writ and remand the defendant.

#### **Felonies: Failure to Pay Fine**

Section 19a is inapplicable when a defendant convicted of a felony is sent to the county jail upon failure to pay a fine. In the case of *In re Bellotti*<sup>15</sup> defendant had pleaded guilty to a violation of Section 146 of the California Vehicle Act which was specifically denounced by that section as a felony. Section 153d of the Vehicle Act provided that all offenses designated in the act as felonies be punished by a fine of not more than \$5,000 or by imprisonment in the state prison for not less than one nor more than five years. The court ordered defendant to pay a fine of \$5,000, or, in default of such payment, to be punished by imprisonment in the county jail at the rate of one day for each \$3.00 of such fine not paid. After defendant had been confined in the county jail for one year he sought a writ of habeas corpus to procure his release.

The lower court ordered defendant's release but the District Court of Appeal reversed the order on the ground that, since Section 19a had

<sup>13</sup> 3 Cal. 2d 625, 628, 45 P. 2d 342, 343 (1935).

<sup>14</sup> *Id.* at 629, 45 P. 2d at 344; accord, *In re Webber*, 95 Cal. App. 2d 183, 212 P. 2d 540 (1949); *In re Tantlinger*, 8 Cal. App. 2d 157, 47 P. 2d 301 (1935).

<sup>15</sup> 12 Cal. App. 2d 103, 54 P. 2d 1115 (1936).

been held to apply only to misdemeanors,<sup>16</sup> it could not be relied on when defendant was convicted of a felony. The court squarely decided that this ruling was not at variance with Section 17 of the Penal Code, which provides:

§ 17. A felony is a crime which is punishable with death or by imprisonment in the state prison. Every other crime is a misdemeanor. When a crime, punishable by imprisonment in the state prison, is also punishable by fine or imprisonment in a county jail, in the discretion of the court, it shall be deemed a misdemeanor for all purposes after a judgment other than imprisonment in the state prison, unless the court commits the defendant to the California Youth Authority. \* \* \*

Section 17 has only a prospective operation.<sup>17</sup> It changes a felony to a misdemeanor in the cases specified only for purposes after judgment and cannot affect the validity of the judgment itself. Since the offense was specifically declared a felony by Section 146 of the Vehicle Act, the judgment requiring confinement in the county jail for more than a year was held valid on the ground that Section 19a does not apply to felonies.

### Contempt

*In re Salkin*<sup>18</sup> presented the question whether Section 19a limits imprisonment in a county jail for contempt of court to one year. The court held that it does not, relying on Penal Code Section 11 which provides that "This Code does not affect any power conferred by law upon any \* \* \* tribunal \* \* \* to impose or inflict punishment for a contempt."

### Confinement Before and After Period of Probation

Where a defendant, convicted of a misdemeanor and granted probation upon condition that he spend a period less than one year in the county jail, is released and then later has his probation revoked and is sentenced to imprisonment in the county jail for one year, such sentence is valid. In *In re Hays*<sup>19</sup> defendant was convicted of misdemeanor manslaughter and the jury recommended punishment in the county jail. Proceedings were suspended and the defendant was placed on probation, one condition being that he spend eight months in the county jail, with good time to be allowed, if earned. He spent approximately six months in jail and was released. Thereafter his probation was revoked and he was sentenced to one year in the county jail. About three months later defendant sought a writ of habeas corpus, invoking the limitation of Penal Code Section 19a.

The court held that the time spent in jail as a condition of probation having been voluntarily accepted by defendant (although he un-

<sup>16</sup> The court cited *In re Marquez*, 3 Cal. 2d 625, 45 P. 2d 342 (1935) as authority for this proposition. *In re Bellotti*, 12 Cal. App. 2d 103, 104, 54 P. 2d 1115, 1116 (1936).

<sup>17</sup> *In re Miller*, 218 Cal. 698, 24 P. 2d 766 (1933). The prospective operation of Section 17 reduces the offense to a misdemeanor for purposes of determining the punishment of the same defendant on a second violation in cases where the punishment on a second violation is greater if defendant has a "prior conviction of felony" against him. *People v. Rowland*, 19 Cal. App. 2d 540, 65 P. 2d 1333 (1937); *People v. Trimble*, 18 Cal. App. 2d 350, 63 P. 2d 1173 (1936).

<sup>18</sup> 5 Cal. App. 2d 436, 42 P. 2d 1041 (1935).

<sup>19</sup> 120 Cal. App. 2d 308, 260 P. 2d 1030 (1953).

doubtedly could have refused it) may not be deducted from the only sentence *imposed*, to wit, one year in the county jail, which was ordered placed in effect when defendant violated his probation. The court stated that no such contention could be read into Section 19a; that, if the Legislature had intended any such result, there was no reason to doubt that a definite provision to that effect would have been incorporated in the section. The writ was discharged.

It would seem to follow that in a similar case, if defendant were sentenced to serve one year in the county jail, and *execution* of the sentence were ordered suspended and probation granted and then later revoked and the sentence previously imposed ordered placed in effect, the same rule would apply.

### CONCLUSIONS AND RECOMMENDATIONS

The writer has asked a large number of judges, probation officers, lawyers, law enforcement officers and others in Los Angeles County whether, in their opinion, the policy underlying Section 19a is sound, considering such factors as the purpose of punishment, the rehabilitation of the person sentenced, and sociological and other factors involved. None of these persons was of the opinion that Section 19a should be repealed and all agreed that no person should be sentenced or committed to the county jail for any misdemeanor for more than one year. A few of them expressed the opinion that even under separate counts or separate offenses in different counts a defendant should not spend more than one year continuously in a city or county jail. These general conclusions are supported by an independent survey of opinion of judges, probation officers, sheriffs, district attorneys and other officials made by the Law Revision Commission. In the light of these expressions of opinion and his own consideration of the matter, the writer has concluded that code sections inconsistent with Penal Code Section 19a, whether enacted prior to or after 1933, should be revised to conform therewith.

Tables I through V below list code sections inconsistent with Penal Code Section 19a, classified according to the maximum county jail commitment for which they provide. It is recommended that all of these code sections be revised to provide for maximum county jail sentences of one year.

Some of the code sections recommended for revision to conform to Section 19a have provisions making the offenses specified in them alternative felonies punishable by sentence to the state prison. Others do not. A question is presented whether some or all of the latter group should be revised to make the offenses specified alternative felonies if the maximum county jail sentence is reduced to one year. Table VI lists all of these code sections.

A number of code sections which provide for county jail sentences in excess of one year make commensurate provisions for fine in lieu of or in addition to imprisonment. If the maximum jail sentence is reduced to one year, the fine provisions should probably be reduced concomitantly. Table VII shows present and recommended fine provisions in the case of such code sections.

A few of the code sections which are inconsistent with Section 19a and therefore recommended for revision do not now provide for punishment by fine or imprisonment or both. Some of these now require both fine and imprisonment; others provide only for fine or imprisonment as alternatives. It is recommended that these code sections, which are set forth in Tables VIII and IX, respectively, be revised to provide for fine or imprisonment or both.

## TABLES

TABLE I

**CODE SECTIONS WHICH PROVIDE FOR MAXIMUM COUNTY  
JAIL SENTENCE OF FIVE YEARS**

Code	Section	Nature of offense	Date of enactment
Penal.....	69	Detering or resisting executive officer from performing his duty.....	1872
Penal.....	142	Officer refusing to receive or arrest parties charged with crime.....	1872
Penal.....	148	Resisting public officers in the discharge of their duties.....	1872
Penal.....	149	Assault by officer under color of authority.....	1872

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TABLE II

**CODE SECTIONS WHICH PROVIDE FOR MAXIMUM COUNTY  
JAIL SENTENCE OF TWO YEARS**

Code	Section	Nature of offense	Date of enactment
Bus. & Prof. ....	10140	Publishing false statement concerning land or sub-division .....	1919
Bus. & Prof. ....	11020	Publishing false statement concerning land or sub-division .....	1919
Corporations .....	25306	Commissioner or deputy not to become officer of corporation within 2 years after organization .....	1943
Corporations .....	26104	Public offenses by officers, agents and employees of company .....	1917 <sup>20</sup>
Corporations .....	27203	Violating provisions relating to procurement of certificates to sell securities or violating conditions of certificate .....	1937
Elections .....	11642	Obtaining signatures by false representations .....	1915
Elections .....	11643	Publishing or circulating false representations concerning a proposed measure .....	1915
Elections .....	11644	Filing petition containing known false signature .....	1915
Elections .....	11645	Circulating petition known to contain false, forged or fictitious names .....	1915
Elections .....	11646	Making false affidavits concerning petitions .....	1915
Elections .....	11647	Officials making false returns, certificates, or affidavits .....	1915
Elections .....	11648	Signing petition more than once or when disqualified .....	1915
Elections .....	11650	Soliciting money for purpose of inducing abandonment of a measure .....	1941
Elections .....	11651	Soliciting money for purpose of stopping circulation of petitions .....	1941
Elections .....	11652	Soliciting money on threat of proposing and circulating measure .....	1941
Elections .....	11653	Not filing all petitions and signatures obtained .....	1941
Elections .....	11654	Failing to surrender petition to proponents for filing .....	1941
Govt. ....	27443	Misconduct by public administrator .....	1872
Insurance .....	833	Fraudulent application or sale of securities in violation of law or permit .....	1929
Penal .....	33	Punishment of accessories .....	1872
Penal .....	270	Failing to provide .....	1872
Penal .....	270a	Nonsupport of wife .....	1907 <sup>21</sup>
Penal .....	337f (a)	Administering drugs to race horses .....	1941
Penal .....	(b) (c)		
Penal .....	347b	Disposition or manufacture of poisonous alcoholic solutions .....	1931
Penal .....	405	Riot .....	1872
Penal .....	529	Performing certain acts while falsely impersonating another .....	1872
Penal .....	607	Destroying or injuring bridges, dams, levees, water-courses, etc. ....	1872 <sup>22</sup>

<sup>20</sup> When this section was codified in 1949 the maximum county jail sentence was reduced to one year. By a later enactment in 1949 the sentence was changed back to two years. The second 1949 enactment contained the following provision: "Sec. 2. The purpose of this act is to restore in Section 26104 of the Corporations Code, which codifies Section 18 of the Corporate Securities Act, the identical language concerning the punishment for violation of the section which appeared in the said Section 18. It is the intention of the Legislature that Section 26104 of the Corporations Code, as amended by this act, shall be construed as a restatement and continuation of Section 18 of the Corporate Securities Act as it existed immediately prior to codification, without any change whatever in meaning or legal effect." Cal. Stat. 1949, c. 389, p. 732.

<sup>21</sup> Penal provision amended to present form in 1909. Cal. Stat. 1909, c. 159, p. 258.

<sup>22</sup> Penal provision amended to present form in 1880. Code Am. 1880, c. 59, p. 36.

TABLE III  
CODE SECTION WHICH PROVIDES FOR MAXIMUM COUNTY  
JAIL SENTENCE OF 18 MONTHS

Code	Section	Nature of offense	Date of enactment
H. & S.-----	12806	Violating regulations for transportation of explosives.	1911

TABLE IV  
CODE SECTIONS WHICH PROVIDE FOR MAXIMUM COUNTY  
JAIL SENTENCE OF 500 DAYS

Code	Section	Nature of offense	Date of enactment
Rev. & Tax.-----	12832	Acting as insurer after suspension or forfeiture.	1939
Rev. & Tax.-----	23303	Exercising rights, privileges or powers of bank or corporation.	1929

TABLE V  
CODE SECTIONS WHICH PROVIDE NO MAXIMUM LIMIT AS TO THE COUNTY  
JAIL SENTENCE WHICH MAY BE IMPOSED <sup>23</sup>

Code	Section	Nature of offense	Date of enactment
Bus. & Prof.-----	4164	Misuse of needle or syringe	1947
H. & S.-----	11715.7	Violating provisions regulating pharmacists and dispensing of drugs	1945
H. & S.-----	12107	Violating provisions concerning records of sales of high explosives	1905
Mil. & Vet.-----	145	Violating or resisting martial law	1851 <sup>24</sup>
Penal.-----	587	Injuring railroads or railroad bridges	1872

<sup>23</sup> These code sections may be inconsistent with Penal Code Section 19a because, although they provide a minimum period of imprisonment in the county jail, they do not specify a maximum period of imprisonment. The Supreme Court has said in dictum that: "When the minimum punishment only is fixed, then the punishment may be adjudged at anything not less than the minimum." *People v. Tom Nop*, 124 Cal. 150, 151-52, 56 Pac. 786 (1899). However, the precise question before the Court was the jurisdiction of the superior court over the offense and not the effect of Section 19a in determining the maximum punishment. The latter question has not yet been decided. If the policy of Section 19a, limiting confinement in the county jail to one year, is reaffirmed, it would seem desirable also to clarify the question of whether that policy applies to the code sections listed in Table V.

<sup>24</sup> Provision for county jail confinement inserted in 1947. Cal. Stat. 1947, c. 155, p. 684.



TABLE VI

**CODE SECTIONS WHICH DO NOT HAVE PROVISIONS MAKING  
OFFENSES ALTERNATIVE FELONIES**

Code	Section	Nature of offense	Present maximum sentence
Bus. & Prof. ....	4164	Misuse of needle or syringe .....	None
Bus. & Prof. ....	10140	Publishing false statement concerning land or sub- division .....	2 years
Bus. & Prof. ....	11020	Publishing false statement concerning land or sub- division .....	2 years
Govt. ....	27443	Misconduct by public administrator .....	2 years
H. & S. ....	12107	Violating provisions concerning records of sales of high explosives .....	None
H. & S. ....	12306	Violating regulations for transportation of explosives .....	18 months
Penal. ....	69	Deterring or resisting executive officer from per- forming his duty .....	5 years
Penal. ....	142	Officer refusing to receive or arrest parties charged with crime .....	5 years
Penal. ....	148	Resisting public officers in the discharge of their duties .....	5 years
Penal. ....	149	Assault by officer under color of authority .....	5 years
Penal. ....	270	Failing to provide .....	2 years
Penal. ....	347b	Disposition or manufacture of poisonous alcoholic solutions .....	2 years
Penal. ....	405	Riot .....	2 years
Penal. ....	529	Performing certain acts while falsely impersonating another .....	2 years
Penal. ....	607	Destroying or injuring bridges, dams, levees, water- courses, etc. ....	2 years
Rev. & Tax. ....	12832	Acting as insurer after suspension or forfeiture .....	500 days
Rev. & Tax. ....	23303	Exercising rights, privileges or powers of bank or corporation .....	500 days

TABLE VII

**PRESENT MAXIMUM FINE PROVISIONS AND ADJUSTED MAXIMUM FINE PROVISIONS  
WHICH WOULD PROVIDE BALANCE BETWEEN FINE AND RECOM-  
MENDED IMPRISONMENT PROVISIONS**

Code	Section	Present maximum imprisonment	Present maximum fine	Adjusted maximum fine
Bus. & Prof. ....	4164	None specified .....	\$500	\$500
Bus. & Prof. ....	10140	2 yrs., county jail .....	2,000	1,000
Bus. & Prof. ....	11020	2 yrs., county jail .....	2,000	1,000
Corporations .....	25306	5 yrs., prison or 2 yrs., county jail ..	5,000	5,000
Corporations .....	26104	5 yrs., prison or 2 yrs., county jail ..	5,000	5,000
Corporations .....	27203	2 yrs., prison or 2 yrs., county jail ..	5,000	5,000
Elections <sup>25</sup> .....	11642	2 yrs., prison or 2 yrs., county jail ..	5,000	5,000
Elections .....	11643	2 yrs., prison or 2 yrs., county jail ..	5,000	5,000
Elections .....	11644	2 yrs., prison or 2 yrs., county jail ..	5,000	5,000
Elections .....	11645	2 yrs., prison or 2 yrs., county jail ..	5,000	5,000
Elections .....	11646	2 yrs., prison or 2 yrs., county jail ..	5,000	5,000
Elections .....	11647	2 yrs., prison or 2 yrs., county jail ..	5,000	5,000
Elections .....	11648	2 yrs., prison or 2 yrs., county jail ..	5,000	5,000
Elections .....	11650	2 yrs., prison or 2 yrs., county jail ..	5,000	5,000
Elections .....	11651	2 yrs., prison or 2 yrs., county jail ..	5,000	5,000
Elections .....	11652	2 yrs., prison or 2 yrs., county jail ..	5,000	5,000
Elections .....	11653	2 yrs., prison or 2 yrs., county jail ..	5,000	5,000
Elections .....	11654	2 yrs., prison or 2 yrs., county jail ..	5,000	5,000
Govt. ....	27443	2 yrs., county jail .....	5,000	5,000
H. & S. ....	12107	None specified .....	2,000	1,000
H. & S. ....	12306	18 months, county jail .....	2,000	2,000
Insurance .....	833	5 yrs., prison or 2 yrs., county jail ..	5,000	5,000
Mil. & Vet. ....	145	Prison or county jail, no maximum specified	No maximum (\$500 minimum)	500
Penal .....	33	5 yrs., prison or 2 yrs., county jail ..	5,000	1,000
Penal .....	69	5 yrs., county jail .....	5,000	1,000
Penal .....	142	5 yrs., county jail .....	5,000	1,000
Penal .....	148	5 yrs., county jail .....	5,000	1,000
Penal .....	149	5 yrs., county jail .....	5,000	1,000
Penal .....	270	2 yrs., county jail .....	1,000	1,000
Penal .....	270a	2 yrs., prison or 2 yrs., county jail ..	1,000	1,000
Penal .....	337f (a) (b) (c)	2 yrs., prison or 2 yrs., county jail ..	5,000	1,000
Penal .....	347b	2 yrs., county jail .....	2,000	1,000
Penal .....	405	2 yrs., county jail .....	2,000	1,000
Penal .....	529	2 yrs., county jail .....	5,000	1,000
Penal .....	607	2 yrs., county jail .....	1,000	1,000
Rev. & Tax. ....	12832	500 days, county jail .....	1,000	1,000
Rev. & Tax. ....	23303	500 days, county jail .....	1,000	1,000

<sup>25</sup> All of the Elections Code sections included in this table (Sections 11642 to 11648 and 11650 to 11654) which relate to abuses of initiative, referendum and recall, make the offenses which they create felonies or, alternatively, misdemeanors. In general, these sections seem to specify a maximum imprisonment of two years whether confinement is in the state prison or in the county jail. However, because of its wording and punctuation it might be argued that Section 11643 imposes a two year limitation only on county jail confinement and that Sections 11644 to 11648 impose a two year limitation only on state prison confinement. It has been assumed, for purposes of this table, that these sections would all be construed as limiting confinement in both the state prison and the county jail to two years. This assumption is based on the nature of the offenses involved, the fact that the remaining sections in the group unambiguously limit both state prison and county jail confinement to two years, and the general rule of construction that punctuation should not control in determining meaning.

TABLE VIII

**CODE SECTIONS WHICH PROVIDE FOR BOTH FINE AND IMPRISONMENT  
BUT NOT FOR EITHER FINE OR IMPRISONMENT**

Code	Section	Nature of offense
Bus. & Prof.-----	10140	Publishing false statement concerning land or subdivision
Penal.-----	69	Deterring or resisting executive officer from performing his duty
Penal.-----	142	Officer refusing to receive or arrest parties charged with crime
Penal.-----	148	Resisting public officers in the discharge of their duties
Penal.-----	149	Assault by officer under color of authority

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TABLE IX

**CODE SECTIONS WHICH PROVIDE FOR EITHER FINE OR IMPRISONMENT  
BUT NOT FOR BOTH**

Code	Section	Nature of offense
Bus. & Prof.-----	11020	Publishing false statement concerning land or subdivision
Penal.-----	33	Punishment of accessories
Penal.-----	529	Performing certain acts while falsely impersonating another

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