

RESOLUTION 09-19-06

DIGEST

Juvenile Petitions: Eliminate the Use of Priors as Strikes

Amends Penal Code sections 667 and 1190.12 to eliminate the use of juvenile petitions for the purposes of the “three strikes law”.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Penal Code, sections 667 and 1170.12 to read as follows:

1 §667

2 (a) (1) In compliance with subdivision (b) of Section 1385, any person convicted of a
3 serious felony who previously has been convicted of a serious felony in this state or of any
4 offense committed in another jurisdiction which includes all of the elements of any serious
5 felony, shall receive, in addition to the sentence imposed by the court for the present
6 offense, a five-year enhancement for each such prior conviction on charges brought and
7 tried separately. The terms of the present offense and each enhancement shall run
8 consecutively.

9 (2) This subdivision shall not be applied when the punishment imposed under other
10 provisions of law would result in a longer term of imprisonment. There is no requirement of
11 prior incarceration or commitment for this subdivision to apply.

12 (3) The Legislature may increase the length of the enhancement of sentence provided
13 in this subdivision by a statute passed by majority vote of each house thereof.

14 (4) As used in this subdivision, "serious felony" means a serious felony listed in
15 subdivision (c) of Section 1192.7.

16 (5) This subdivision shall not apply to a person convicted of selling, furnishing,
17 administering, or giving, or offering to sell, furnish, administer, or give to a minor any
18 methamphetamine-related drug or any precursors of methamphetamine unless the prior
19 conviction was for a serious felony described in subparagraph (24) of subdivision (c) of
20 Section 1192.7.

21 (b) It is the intent of the Legislature in enacting subdivisions (b) to (i), inclusive, to
22 ensure longer prison sentences and greater punishment for those who commit a felony and
23 have been previously convicted of serious and/or violent felony offenses.

24 (c) Notwithstanding any other law, if a defendant has been convicted of a felony and
25 it has been pled and proved that the defendant has one or more prior felony convictions as
26 defined in subdivision (d), the court shall adhere to each of the following:

27 (1) There shall not be an aggregate term limitation for purposes of consecutive
28 sentencing for any subsequent felony conviction.

29 (2) Probation for the current offense shall not be granted, nor shall execution or
30 imposition of the sentence be suspended for any prior offense.

31 (3) The length of time between the prior felony conviction and the current felony
32 conviction shall not affect the imposition of sentence.

33 (4) There shall not be a commitment to any other facility other than the state prison.
34 Diversion shall not be granted nor shall the defendant be eligible for commitment to the
35 California Rehabilitation Center as provided in Article 2 (commencing with Section 3050)
36 of Chapter 1 of Division 3 of the Welfare and Institutions Code.

37 (5) The total amount of credits awarded pursuant to Article 2.5 (commencing with
38 Section 2930) of Chapter 7 of Title 1 of Part 3 shall not exceed one-fifth of the total term of
39 imprisonment imposed and shall not accrue until the defendant is physically placed in the
40 state prison.

41 (6) If there is a current conviction for more than one felony count not committed on
42 the same occasion, and not arising from the same set of operative facts, the court shall
43 sentence the defendant consecutively on each count pursuant to subdivision (e).

44 (7) If there is a current conviction for more than one serious or violent felony as
45 described in paragraph (6), the court shall impose the sentence for each conviction
46 consecutive to the sentence for any other conviction for which the defendant may be
47 consecutively sentenced in the manner prescribed by law.

48 (8) Any sentence imposed pursuant to subdivision (e) will be imposed consecutive to
49 any other sentence which the defendant is already serving, unless otherwise provided by
50 law.

51 (d) Notwithstanding any other law and for the purposes of subdivisions (b) to (i),
52 inclusive, a prior conviction of a felony shall be defined as:

53 (1) Any offense defined in subdivision (c) of Section 667.5 as a violent felony or any
54 offense defined in subdivision (c) of Section 1192.7 as a serious felony in this state. The
55 determination of whether a prior conviction is a prior felony conviction for purposes of
56 subdivisions (b) to (i), inclusive, shall be made upon the date of that prior conviction and is
57 not affected by the sentence imposed unless the sentence automatically, upon the initial
58 sentencing, converts the felony to a misdemeanor. None of the following dispositions shall
59 affect the determination that a prior conviction is a prior felony for purposes of subdivisions
60 (b) to (i), inclusive:

61 (A) The suspension of imposition of judgment or sentence.

62 (B) The stay of execution of sentence.

63 (C) The commitment to the State Department of Health Services as a mentally
64 disordered sex offender following a conviction of a felony.

65 (D) The commitment to the California Rehabilitation Center or any other facility
66 whose function is rehabilitative diversion from the state prison.

67 (2) A conviction in another jurisdiction for an offense that, if committed in
68 California, is punishable by imprisonment in the state prison. A prior conviction of a
69 particular felony shall include a conviction in another jurisdiction for an offense that
70 includes all of the elements of the particular felony as defined in subdivision (c) of Section
71 667.5 or subdivision (c) of Section 1192.7.

72 ~~(3) A prior juvenile adjudication shall constitute a prior felony conviction for~~
73 ~~purposes of sentence enhancement if:~~

74 ~~(A) The juvenile was 16 years of age or older at the time he or she committed the~~
75 ~~prior offense.~~

76 ~~(B) The prior offense is listed in subdivision (b) of Section 707 of the Welfare and~~
77 ~~Institutions Code or described in paragraph (1) or (2) as a felony.~~

78 ~~(C) The juvenile was found to be a fit and proper subject to be dealt with under the~~
79 ~~juvenile court law.~~

80 ~~(D) The juvenile was adjudged a ward of the juvenile court within the meaning of~~
81 ~~Section 602 of the Welfare and Institutions Code because the person committed an offense~~
82 ~~listed in subdivision (b) of Section 707 of the Welfare and Institutions Code.~~

83 (e) For purposes of subdivisions (b) to (i), inclusive, and in addition to any other
84 enhancement or punishment provisions which may apply, the following shall apply where a
85 defendant has a prior felony conviction:

86 (1) If a defendant has one prior felony conviction that has been pled and proved, the
87 determinate term or minimum term for an indeterminate term shall be twice the term
88 otherwise provided as punishment for the current felony conviction.

89 (2) (A) If a defendant has two or more prior felony convictions as defined in
90 subdivision (d) that have been pled and proved, the term for the current felony conviction
91 shall be an indeterminate term of life imprisonment with a minimum term of the
92 indeterminate sentence calculated as the greater of:

93 (i) Three times the term otherwise provided as punishment for each current felony
94 conviction subsequent to the two or more prior felony convictions.

95 (ii) Imprisonment in the state prison for 25 years.

96 (iii) The term determined by the court pursuant to Section 1170 for the underlying
97 conviction, including any enhancement applicable under Chapter 4.5 (commencing with
98 Section 1170) of Title 7 of Part 2, or any period prescribed by Section 190 or 3046.

99 (B) The indeterminate term described in subparagraph (A) shall be served
100 consecutive to any other term of imprisonment for which a consecutive term may be
101 imposed by law. Any other term imposed subsequent to any indeterminate term described in
102 subparagraph (A) shall not be merged therein but shall commence at the time the person
103 would otherwise have been released from prison.

104 (f) (1) Notwithstanding any other law, subdivisions (b) to (i), inclusive, shall be
105 applied in every case in which a defendant has a prior felony conviction as defined in
106 subdivision (d). The prosecuting attorney shall plead and prove each prior felony conviction
107 except as provided in paragraph (2).

108 (2) The prosecuting attorney may move to dismiss or strike a prior felony conviction
109 allegation in the furtherance of justice pursuant to Section 1385, or if there is insufficient
110 evidence to prove the prior conviction. If upon the satisfaction of the court that there is
111 insufficient evidence to prove the prior felony conviction, the court may dismiss or strike the
112 allegation.

113 (g) Prior felony convictions shall not be used in plea bargaining as defined in
114 subdivision (b) of Section 1192.7. The prosecution shall plead and prove all known prior
115 felony convictions and shall not enter into any agreement to strike or seek the dismissal of
116 any prior felony conviction allegation except as provided in paragraph (2) of subdivision (f).

117 (h) All references to existing statutes in subdivisions (c) to (g), inclusive, are to
118 statutes as they existed on June 30, 1993.

119 (i) If any provision of subdivisions (b) to (h), inclusive, or the application thereof to
120 any person or circumstance is held invalid, that invalidity shall not affect other provisions or

121 applications of those subdivisions which can be given effect without the invalid provision or
122 application, and to this end the provisions of those subdivisions are severable.

123 (j) The provisions of this section shall not be amended by the Legislature except by
124 statute passed in each house by rollcall vote entered in the journal, two-thirds of the
125 membership concurring, or by a statute that becomes effective only when approved by the
126 electors.

127

128 1170.12.

129 (a) Notwithstanding any other provision of law, if a defendant has been convicted of
130 a felony and it has been pled and proved that the defendant has one or more prior felony
131 convictions, as defined in subdivision (b), the court shall adhere to each of the following:

132 (1) There shall not be an aggregate term limitation for purposes of consecutive
133 sentencing for any subsequent felony conviction.

134 (2) Probation for the current offense shall not be granted, nor shall execution or
135 imposition of the sentence be suspended for any prior offense.

136 (3) The length of time between the prior felony conviction and the current felony
137 conviction shall not affect the imposition of sentence.

138 (4) There shall not be a commitment to any other facility other than the state prison.
139 Diversion shall not be granted nor shall the defendant be eligible for commitment to the
140 California Rehabilitation Center as provided in Article 2 (commencing with Section 3050)
141 of Chapter 1 of Division 3 of the Welfare and Institutions Code.

142 (5) The total amount of credits awarded pursuant to Article 2.5 (commencing with
143 Section 2930) of Chapter 7 of Title 1 Part 3 shall not exceed one-fifth of the total term of
144 imprisonment imposed and shall not accrue until the defendant is physically placed in the
145 state prison.

146 (6) If there is a current conviction for more than one felony count not committed on
147 the same occasion, and not arising from the same set of operative facts, the court shall
148 sentence the defendant consecutively on each count pursuant to this section.

149 (7) If there is a current conviction for more than one serious or violent felony as
150 described in paragraph (6) of this subdivision, the court shall impose the sentence for each
151 conviction consecutive to the sentence for any other conviction for which the defendant may
152 be consecutively sentenced in the manner prescribed by law.

153 (8) Any sentence imposed pursuant to this section will be imposed consecutive to
154 any other sentence which the defendant is already serving, unless otherwise provided by
155 law.

156 (b) Notwithstanding any other provision of law and for the purposes of this section, a
157 prior conviction of a felony shall be defined as:

158 (1) Any offense defined in subdivision (c) of Section 667.5 as a violent felony or any
159 offense defined in subdivision (c) of Section 1192.7 as a serious felony in this state. The
160 determination of whether a prior conviction is a prior felony conviction for purposes of this
161 section shall be made upon the date of that prior conviction and is not affected by the
162 sentence imposed unless the sentence automatically, upon the initial sentencing, converts the
163 felony to a misdemeanor. None of the following dispositions shall affect the determination
164 that a prior conviction is a prior felony for purposes of this section:

165 (A) The suspension of imposition of judgment or sentence.

166 (B) The stay of execution of sentence.
167 (C) The commitment to the State Department of Health Services as a mentally
168 disordered sex offender following a conviction of a felony.
169 (D) The commitment to the California Rehabilitation Center or any other facility
170 whose function is rehabilitative diversion from the state prison.
171 (2) A conviction in another jurisdiction for an offense that, if committed in
172 California, is punishable by imprisonment in the state prison. A prior conviction of a
173 particular felony shall include a conviction in another jurisdiction for an offense that
174 includes all of the elements of the particular felony as defined in subdivision (c) of Section
175 667.5 or subdivision (c) of Section 1192.7.
176 ~~(3) A prior juvenile adjudication shall constitute a prior felony conviction for the~~
177 ~~purposes of sentence enhancement if:~~
178 ~~(A) The juvenile was sixteen years of age or older at the time he or she committed~~
179 ~~the prior offense, and~~
180 ~~(B) The prior offense is~~
181 ~~(i) listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, or~~
182 ~~(ii) listed in this subdivision as a felony, and~~
183 ~~(C) The juvenile was found to be a fit and proper subject to be dealt with under the~~
184 ~~juvenile court law, and~~
185 ~~(D) The juvenile was adjudged a ward of the juvenile court within the meaning of~~
186 ~~Section 602 of the Welfare and Institutions Code because the person committed an offense~~
187 ~~listed in subdivision (b) of Section 707 of the Welfare and Institutions Code.~~(c) For purposes
188 of this section, and in addition to any other enhancements or punishment provisions which
189 may apply, the following shall apply where a defendant has a prior felony conviction:
190 (1) If a defendant has one prior felony conviction that has been pled and proved, the
191 determinate term or minimum term for an indeterminate term shall be twice the term
192 otherwise provided as punishment for the current felony conviction.
193 (2)(A) If a defendant has two or more prior felony convictions, as defined in
194 paragraph (1) of subdivision (b), that have been pled and proved, the term for current felony
195 conviction shall be an indeterminate term of life imprisonment with a minimum term of the
196 indeterminate sentence calculated as the greater of
197 (i) three times the term otherwise provided as punishment for each current felony
198 conviction subsequent to the two or more prior felony convictions, or
199 (ii) twenty-five years or
200 (iii) the term determined by the court pursuant to Section 1170 for the underlying
201 conviction, including any enhancement applicable under Chapter 4.5 (commencing with
202 Section 1170) of Title 7 of Part 2, or any period prescribed by Section 190 or 3046.
203 (B) The indeterminate term described in subparagraph (A) of paragraph (2) of this
204 subdivision shall be served consecutive to any other term of imprisonment for which a
205 consecutive term may be imposed by law. Any other term imposed subsequent to any
206 indeterminate term described in subparagraph (A) of paragraph (2) of this subdivision shall
207 not be merged therein but shall commence at the time the person would otherwise have been
208 released from prison.
209 (d) (1) Notwithstanding any other provision of law, this section shall be applied in
210 every case in which a defendant has a prior felony conviction as defined in this section. The

211 prosecuting attorney shall plead and prove each prior felony conviction except as provided
212 in paragraph (2).
213 (2) The prosecuting attorney may move to dismiss or strike a prior felony conviction
214 allegation in the furtherance of justice pursuant to Section 1385, or if there is insufficient
215 evidence to prove the prior conviction. If upon the satisfaction of the court that there is
216 insufficient evidence to prove the prior felony conviction, the court may dismiss or strike the
217 allegation.
218 (e) Prior felony convictions shall not be used in plea bargaining, as defined in
219 subdivision (b) of Section 1192.7. The prosecution shall plead and prove all known prior
220 felony convictions and shall not enter into any agreement to strike or seek the dismissal of
221 any prior felony conviction allegation except as provided in paragraph (2) of subdivision (d).

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: San Mateo County Bar Association

STATEMENT OF REASONS

Existing Law: The three strikes law provides for enhanced penalties being applied to a convicted felon who has previously suffered convictions for specified serious or violent felonies. Provided that certain conditions are met, a petition sustained in the juvenile court against a minor may, in a future felony prosecution, be used against him or her as one or more strike priors under the three strikes law in the same manner as would an adult conviction for these same offenses. The potential effect of such a prior would be to make him or her ineligible for a probationary sentence, extend the sentencing range so as to either double the length of a possible determinate sentence and even to lead to an indeterminate sentence of 25 years to life or even longer.

This Resolution: Deletes those provisions now present in the Penal Code which provide for the use of sustained juvenile petitions as being equivalent to adult convictions for purposes of the three strikes law.

The Problem: The “3 Strikes” law is actually two parallel Penal Code provisions, one enacted by legislative action and the other through the initiative process. Proposition 184 (the initiative part of the “3 Strikes” law) was overwhelmingly approved in 1994 with the intent of protecting law-abiding citizens by enhancing the sentences of repeat offenders who commit serious and/or violent felonies. Both versions of the law provided that certain juvenile adjudications may be used as priors after the minor was determined to be amenable to the care and treatment of the juvenile court. The clear suggestion of the language therein infers an election be made by the prosecution at the time of the juvenile filing, to wit: if the offense was sufficiently serious to be used as a strike prior for future adult prosecutions, make a motion to certify the minor and send him or her to adult court. Moreover, this was the only mechanism by which a minor might be treated as an adult and prosecuted in the Superior Court.

Six years after the enactment of the “3 Strikes” law, voters passed Proposition 21, which made sweeping changes both to the administration of juvenile justice and to the three strikes law.

Perhaps the most fundamental change is to allow the prosecution to file against the most serious offenders in the Municipal Court without first obtaining a fitness determination in the juvenile court.

The result of this change is that most of the cases envisioned – by the voters and legislators in enacting the “3 Strikes” law” – to be later used as strike priors are now filed directly in the Municipal Court.

Under the current law, a minor might be involved in such innocuous behavior as pushing another minor down and taking the hat from his head, and years later can be treated in the same manner as if he or she had once been convicted of an armed robbery. Moreover, at the time of the earlier case, the minor had no right to a jury trial. Finally, the prosecutor at the time of the juvenile filing has no way to alert a future prosecutor in other parts of the state either the seriousness of the case or lack thereof. Often, when reviewing such a prior neither the prosecutor nor the defense attorney has no means of obtaining records long since destroyed.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

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