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### Your Responsibility When Using the Information Provided Below:

When we wrote this Informational Material we did our best to give you useful and accurate information because we know that prisoners often have difficulty obtaining legal information and we cannot provide specific advice to all the prisoners who request it. The laws change frequently and are subject to differing interpretations. We do not always have the resources to make changes to this material every time the law changes. If you use this pamphlet it is your responsibility to make sure that the law has not changed and is applicable to your situation. Most of the materials you need should be available in your institution law library.

### **INFORMATION RE: *PEOPLE V. LE* (recent California Supreme Court case on gang and gun enhancements) December 2015**

We have received your letter asking for information, advice or assistance in regards to a recent development in the law concerning gang enhancements and gun enhancements. The relevant case is a June 2015 California Supreme Court decision, *People v. Le* (2015) 61 Cal.4th 416. We are unable to write individual responses to everyone who has contacted us about the *Le* case. We hope that the general information in this letter will help answer your questions.

#### **What does the *People v. Le* decision say?**

*People v. Le* addressed a complicated issue about the legal rules for when a criminal defendant can be subjected to both a gang enhancement *and* a gun enhancement for the same crime.

The defendant in *Le* was convicted of one crime and two attached enhancements, specifically:

- a felony that is not normally a serious or violent offense; in Mr. Le's case, the crime was assault with an automatic firearm deadly weapon in violation of Penal Code (PC) § 245(b). However, that crime becomes a serious felony *if* it is proven that the defendant personally used a firearm or a deadly weapon (see PC §1192.7(c));
- an enhancement for committing a serious felony for the benefit of, at the direction of, or in association with a gang (PC § 186.22(b)(1)(B));
- an enhancement for personally using a firearm in the commission of the crime (PC § 12022.5(a)(1)).

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The California Supreme Court held that Mr. Le could not be sentenced to both the firearm enhancement and the serious felony gang enhancement. This is because Penal Code § 1170.1(f) prohibits imposing two sentence enhancements “for being armed with or using a dangerous or deadly weapon or a firearm in the commission of a single offense.” In Mr. Le’s case, the serious felony gang enhancement depended on the assault qualifying as a serious felony – a criteria that was met solely because the personal gun use enhancement had been found true. The Supreme Court thus affirmed that one of the enhancements had to be “stayed” (could not be included as part of the sentence).

The California Supreme Court previously reached a similar holding in *People v. Rodriguez* (2009) 47 Cal.4th 501. In *Rodriguez*, the Court held that a defendant's single act of personally using a gun during a felony could not be used to support both a sentence enhancement for personal use of a gun under PC § 12022.5 and to increase the punishment for a criminal street gang enhancement to that for a violent felony under PC § 186.22(b)(1)(C). As in the *Le* case, the decision rested on application of PC § 1170.1(f).

Prisoners should be aware that one common type of gun enhancement – PC § 12022.53 – contains an exception to PC § 1170.1(f). In *People v. Robinson* (2012) 208 Cal.App.4th 232, the court of appeal held that a defendant convicted of a crime that was not normally a serious or violent felony can be subjected to both a PC § 12022.53 gun enhancement and a serious or violent felony gang enhancement if the defendant personally used a gun. The court found that PC § 12022.53(e)(2) creates an exception to PC § 1170.1(f) by stating that a gang enhancement “shall not be imposed on a person in addition to an enhancement imposed pursuant [§ 12022.53], unless the person personally used or personally discharged a firearm in the commission of the offense.”

**Does the decision in *People v. Le* affect prisoners serving already sentences? What should I do if I think that my conviction might be affected by *People v. Le*?**

Whether *People v. Le* applies to a particular person’s case depends what the base offense is, and what gun and gang enhancements were imposed. It is possible that a prisoner who was convicted in the past and is still serving the sentence can get the sentence reduced under *Le*, but there are not yet any published cases on this topic. Also, the type of action that can be brought depends on whether the conviction was by a trial or a plea bargain, whether the criminal case is currently on appeal (or there is still time to file an appeal), and whether the prisoner has previously raised this issue in the trial/appellate courts.

Even if *People v. Le* applies to you, your sentence will not change unless a court changes your sentence. We cannot help you with this issue. **If you think that your conviction might be affected by *People v. Le*, you should write to your criminal trial and/or appellate attorney, asking for more information or help.** You should try to contact the attorney who worked on your case. If you cannot remember who the attorney was or don’t have contact information for the attorney, you can try writing to the public defender’s office for the county where you were convicted.

We do not know if your trial or appellate attorney will help you, and you may have to challenge your sentence under *Le* on your own. If the deadline for filing a direct appeal of your conviction and sentence has passed, you can seek modification of your sentence by filing a state petition for habeas corpus in the local superior court that sentenced you.

On request, The Prison Law Office can provide free information packets on criminal appeals, challenging guilty plea convictions, and state court petitions for writ of habeas corpus. These packets are also available on the resources page at [prisonlaw.com](http://prisonlaw.com).