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

When putting this material together, we did our best to give you useful and accurate information because we know that prisoners often have trouble getting legal information and we cannot give specific advice to all prisoners who ask for it. The laws change often and can be looked at in different ways. 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 still applies to your situation. Most of the materials you need should be available in your facility's law library.

## New Laws on Gun and Drug Enhancements (Senate Bill 620; Senate Bill 180) (October 2017)

California has recently enacted new laws that go into effect on January 1, 2018 and which (1) give judges the authority to dismiss or strike enhancements for the use of a gun (SB 620) and (2) eliminate the recidivist enhancement for certain types of prior drug offenses (SB 180). These new laws are not retroactive to criminal cases that are final. This means that if your conviction is final, the new laws do not apply to you.

### Senate Bill 620 – New Discretion for Judges to Strike Firearm Use Enhancements

Up until now, if the prosecutor proved that a defendant used a gun during a felony crime, a court was required to enhance the sentence under Penal Code sections 12022.5 or 12022.53. Depending on the circumstances, these enhancements could add at least several years or up to 25 years to life to a defendant's sentence. Judges did not have the power to strike a firearm enhancement.

Effective January 1, 2018, these laws have been changed so that courts can strike or dismiss a firearm enhancement at the time of sentencing or resentencing if doing so is in the "interests of justice."

It appears that the new law does not apply retroactively to anyone whose criminal case is already final. A new criminal law decreasing punishment for a crime does not apply to final cases (unless the Legislature specifically says otherwise, which it did not do in SB 620). (Penal Code section 3; *In re Estrada* (1965) 63 Cal.2d 740, 745; *People v. Brown* (2012) 54 Cal.4th 314, 319.) Your case is final if the time for you to file a direct appeal has passed, or if your appeal and any petition for review by the California Supreme Court were denied and your time to file a petition for writ of certiorari in the U.S. Supreme Court (90 days after denial of a petition for review) has expired.

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However, criminal defense lawyers expect to argue that the new laws should apply to anyone whose criminal case is not yet final when the new law takes effect on January 1, 2018. The basis for this argument is that the Legislature intended for the law to apply to cases that are not yet final and applying the new law to not yet final cases is required under a rule of statutory construction set forth in *In re Estrada* (1965) 63 Cal.2d 740. A criminal case is not yet final if a direct appeal is still pending in the court of appeal, a petition for review can still be filed or is pending in the California Supreme Court, or the 90-day timeline for filing a petition for writ of certiorari in the U.S. Supreme Court has not expired. If you have a section 12022.5 or 12022.53 enhancement and the court of appeal had not yet decided your appeal or the California Supreme Court had not yet ruled on your petition for review before October 4, 2017, you may be eligible to have your case sent back to the superior court to see if the court will exercise discretion to strike your enhancement. The procedure for raising the issue will depend on what stage your case is at currently. You should contact the attorney who handled or is handling your direct appeal about whether and how this issue can be raised in your case.

### **Senate Bill 180 – Elimination of Most Recidivist Drug Trafficking Offense Enhancements**

Up until now, if a defendant was convicted of a current drug trafficking offense, the sentence could be enhanced by consecutive terms of three years for each prior conviction of a wide range of drug trafficking offenses under Health and Safety Code section 11370.2.

Effective January 1, 2018, the law has been changed so that this type of enhancement can be added to the sentence only if the prior conviction was for a violation or conspiracy to violate Health and Safety Code section 11380 (using or employing a minor in the sale or possession for sale of specified controlled substances).

It appears that the new law does not apply retroactively to anyone whose criminal case is already final. A new criminal law decreasing punishment for a crime does not apply to final cases (unless the Legislature specifically says otherwise, which it did not do in SB 180). (Penal Code section 3; *In re Estrada* (1965) 63 Cal.2d 740, 745.) Your case is final if the time for you to file a direct appeal has passed, or if your appeal and any petition for review by the California Supreme Court were denied and your time to file a petition for writ of certiorari in the U.S. Supreme Court (90 days after denial of a petition for review) has expired.

However, criminal defense lawyers expect to argue that the new laws should apply to anyone whose criminal case is not yet final when the new law takes effect on January 1, 2018. The basis for this argument is that the Legislature intended for the law to apply to cases that are not yet final and that applying the new law to not yet final cases is required by a rule of statutory construction set forth in *In re Estrada* (1965) 63 Cal.2d 740. A criminal case is not yet final if a direct appeal is still pending in the court of appeal, a petition for review can still be filed or is pending in the California Supreme Court, or the 90-day timeline for filing a petition for writ of certiorari in the U.S. Supreme Court has not expired. If you have one or more section 11370.2 enhancements and the court of appeal had not yet decided your appeal or the California Supreme Court had not yet ruled on your petition for review before October 4, 2017, you may be eligible to have your enhancement(s) stricken. The procedure for raising the issue will depend on what stage your case is at currently. You should contact the attorney who handled or is handling your direct appeal about whether and how this issue can be raised in your case.