



PRISON LAW OFFICE
General Delivery, San Quentin, CA 94964
Telephone (510) 280-2621 • Fax (510) 280-2704
www.prisonlaw.com

Director:
Donald Specter

Managing Attorney:
Sara Norman

Staff Attorneys:
Rana Anabtawi
Steven Fama
Alison Hardy
Corene Kendrick
Rita Lomio
Margot Mendelson
Millard Murphy
Thomas Nosewicz
Camille Woods
Lynn Wu

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.

***Proposed* New Laws on Prior Serious Felony Conviction
or Prior Felony Prison or Jail Term Enhancements
(Senate Bill 1393; Senate Bill 1392)
&
Enacted New Laws on Gun Enhancements
and Drug Enhancements
(Senate Bill 620; Senate Bill 180)**

(July 2018)

Over the past 18 months, the California Legislature has been considering proposals to change how courts add enhancements to people's sentences based on prior offenses or using a gun.

This letter first discusses two proposed amendments to the laws on prior conviction enhancements; one of these has not yet been passed but is still being considered by the Legislature (SB 1393). The other one is no longer being considered by the Legislature (SB 1392).

The letter then discusses new laws that did pass and went into effect on January 1, 2018 and which (1) give judges the authority to dismiss or strike enhancements for using a gun (SB 620) and (2) eliminate the recidivist enhancement for some types of prior drug offenses (SB 180).

None of the new laws changing enhancements that are being proposed or that are in effect apply retroactively to criminal cases that are final before the new law takes effect. A case is final when the court has imposed the person's sentence and either the person did not appeal the case or the person's whole appeal process has been finished. Unfortunately, if your conviction is final, the new laws do not apply to you.

A good source of information on pending criminal justice reform bills is The Ella Baker Center for Human Rights, 1970 Broadway, Suite 1125 Oakland, CA 94612 or www.ellabakercenter.org/contact-us. Their recent information sheet is attached to this letter.

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1. NOT IN EFFECT-- STILL UNDER CONSIDERATION
Senate Bill 1393 – The Fair and Just Sentencing Reform Act,
Proposal to Grant Discretion for Judges to Strike Penal Code § 667(a) Five-year
Enhancements for Prior Serious Felony Convictions

Penal Code § 667(a) currently requires a sentencing court to add a five-year sentence enhancement to a person's sentence for each prior serious felony conviction that was charged and tried separately. Penal Code § 1385 (b) states that courts do not have discretion to strike § 667(a) enhancements.

The Legislature is considering a proposal to change the law to give judges discretion to strike or dismiss § 667(a) enhancements in the interests of justice. However, as of mid-July 2018, the proposal has *not* been approved by the Legislature and has *not* been signed by the Governor. Even if the proposal continues to go forward, the Legislature may make big changes in how it is worded and who it covers. If the proposal does become law in the future, we will try to update this letter with the most recent information.

2. NOT IN EFFECT– NO LONGER BEING CONSIDERED
Senate Bill 1392 – Repeal Ineffective Sentencing Enhancement (RISE) Act,
Proposal to Eliminate Penal Code § 667.5(b) One-year Enhancements for Prior
Prison or Felony Jail Terms

Penal Code § 667.5(b) authorizes a one year sentence enhancement for a prior prison or county jail felony term, unless there has been a five-year “washout” period (meaning that the prior cannot be used if the person has since both been free of custody and did not commit a new felony offense during some five year period). In spring of 2018, the Legislature was considering a proposal to eliminate § 667.5(b) enhancements. However, the proposal failed to pass a Senate vote, and as of July 2018 it is no longer actively being considered.

3. IN EFFECT AS OF JANUARY 1, 2018
Senate Bill 620 – New Discretion for Judges to Strike Firearm Use Enhancements

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

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

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 when the time for you to file a direct appeal has passed, or when 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.

Courts have held that the new law applies to anyone whose criminal case was not yet final when the new law took effect on January 1, 2018, and that non-final cases should be remanded to allow the sentencing judge to consider striking a gun enhancement unless the record shows that the sentencing court clearly would not have used its discretion to strike the enhancement. (*People v. Robbins* (2018) 19 Cal.App.5th 660; *People v. Woods* (2018) 19 Cal.App.5th 1080; *People v. Arredondo* (2018) 21 Cal.App.5th 493; *People v. Watts* (2018) 22 Cal.App.5th 102; *People v. McDaniels* (2018) 22 Cal.App.5th 420; *People v. Chavez* (2018) 22 Cal.App.5th 663; *People v. Billingsley* (2018) 22 Cal.App.5th 1076.) 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 § 12022.5 or § 12022.53 enhancement and your case was not final as of January 1, 2018, 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 sentencing or your direct appeal about whether and how this issue can be raised in your case.

4. IN EFFECT AS OF JANUARY 1, 2018 **Senate Bill 180 (Repeal Ineffective Sentencing Enhancement (RISE) Act) –** **Elimination of Most Recidivist Drug Trafficking Offense Enhancements**

In the past, if a person was convicted of a 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 § 11370.2.

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

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 became final if the time for you to file a notice of 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.

Courts have held the new laws apply to anyone whose criminal case was not yet final when the new law took effect on January 1, 2018. See *People v. Millan* (2018) 22 Cal.App.5th 102. 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 § 11370.2 enhancements and your case was not final as of January 1, 2018, 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 sentencing or your direct appeal about whether and how this issue can be raised in your case.

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July 10th, 2018

Greetings friends,

I hope this letter finds you well. We are writing with an update on two sentencing enhancement reform bills that the Ella Baker Center for Human Rights has been co-sponsoring along with some updates on a few bills folks inside have been writing to us about.

The Ella Baker Center for Human Rights is excited to be working on SB 1392 and SB 1393 with Senators Mitchell and Lara along with our co-sponsoring organizations: ACLU of California for Advocacy and Policy, Coalition for Humane Immigrant Rights, California Coalition for Women Prisoners, Californians United for a Responsible Budget, Drug Policy Alliance, Friends Committee on Legislation California, Legal Services for Prisoners with Children, Pillars of the Community, Tides Advocacy, and the Women's Foundation of California - Women's Policy Institute.

First, we are disappointed to report that **the Repeal Ineffective Sentence Enhancement Act 2018** also, known as SB 1392 by Senator Holly Mitchell, did not pass the Senate. As a reminder this bill would have amended Penal Code 667.5, removing the sentencing enhancement that adds an additional year of incarceration ("prison prior") for each prior prison term or felony county jail term. To pass the Senate we need 21 votes and unfortunately during the vote on May 31st we only got 18 votes in support. We will be working with the authors office and the other cosponsors to figure out if we will reintroduce the bill in 2019. We are grateful to everyone who sent in letters of support for this bill. We will keep you posted.

Second, we are excited to report that **the Fair and Just Sentencing Reform of 2018** also known as SB 1393 by Senator Holly Mitchell did pass the Senate!! We are grateful to everyone who sent in letters of support for this bill, we were overwhelmed with the outpouring of support. This bill amends Penal Code Sections 667 and 1385 to restore the court's discretion, in the interest of justice and at the time of sentencing, to strike sentence enhancements ("nickel prior") for prior serious felony convictions, when a person is currently charged with a serious felony. Allowing judicial discretion is consistent with other sentence enhancement laws and retains existing sanctions for serious crimes.



On May 14th, 2018 the bill went in front of the Senate and received 23 votes, we then went in front of Assembly Public Safety on June 12th and passed that committee as well. The bill is currently in the Assembly Appropriations Committee and we expect that it will go to the full

Assembly in early August. To pass the Assembly we need 41 votes. We have enclosed a list of target Assembly Members, a list of address for their district offices and some sample text for you to help us pass the Fair and Just Sentencing Reform of 2018.

We are excited to report that we got a lot of support from Editorial Boards across the State that supported the bill including: Daily Breeze Torrance, Daily KOS, Inland Valley Daily Bulletin, LA Daily News, LA Times, Long Beach Press-Telegram, Orange County Register, Pasadena Star-News, Press Enterprise Riverside, Redland Daily Facts, San Bernardino Sun, San Gabriel Valley Tribune and the Whittier Daily News. We have included a copy of the LA Times editorial for you to check out.

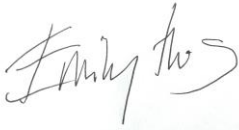
To help pass the Fair and Just Sentencing Reform Act, we are working on a new social media story collection project. We'd love to include your story about the 5-year sentence enhancement. You can call us via Global Tel Link at 909-717-8520 and we will record your statement. The best times to call are Monday or Fridays between 12 pm-2 pm. You can also send us your story and a photo to be included in the project [1970 Broadway, Suite 1125, Oakland CA 94612]. We will include excerpts from the stories on our social media as we continue to organize. Let us know if you have other ideas as well. Thank you so much for your support.

Finally, we've received a few letters asking about some updates on some other bills that the Ella Baker Center has been supporting:

- **SB 1437 (Skinner) Accomplice Liability for Felony Murder** - a bill that would bring reform to accomplice liability and give much needed relief to people who are serving disproportionately long sentences for a homicide that person did not commit. This bill made it out of the Senate with 26 votes and is now in the Assembly.
- **SB 1279 (Bradford) Sentencing: Double the Base Term** - This bill would, with exceptions, as specified, limit the maximum term of imprisonment to twice the number of years imposed by the trial court as the base term. This bill passed the Senate with 22 votes and is now in the Assembly.
- **SB 1138 (Skinner) Food Options: Plant-Based Meals** - This bill would provide plant-based meals to people in prison who request them. This bill passed the Senate with 39 votes and is now in the Assembly.
- **AB 2533 (Stone) Inmate Indigence** - This bill would require that a person in prison who has maintained an inmate trust account with \$25 or less for 30 consecutive days be deemed indigent. This bill made it out of the Assembly with 56 votes and is now in the Senate.
- **AB 2942 (Ting) Criminal Procedure: Recall of Sentencing** - This bill would allow the court to also recall and resentence upon the recommendation of the district attorney of the county in which a defendant was sentenced. This bill passed the Assembly with 45 votes and is now in the Senate.

None of these proposed bills will become law until they make it all the way through the legislature and are signed into law by Governor Brown. The last day for the Governor to sign or veto bills this year will be September 30th.

In Solidarity,



Emily Harris
Senior Campaigner

If you or your family is from any of these key districts we encourage you to write a letter of support asking them to vote for SB 1393. We anticipate this vote will take place in early August.

- Assemblymember Gonzalez-Fletcher, 1350 Front Street, Suite 6022, San Diego, CA 92101
- Assemblymember Calderon, 13181 Crossroads Parkway North, Suite 160, City of Industry, CA 91746
- Assemblymember Gipson, 205 South Willowbrook Ave., Compton, CA 90220
- Assemblymember Santiago, 320 West Fourth Street, Room 1050, Los Angeles, CA 90013
- Assemblymember Steinorth, 10350 Commerce Center Drive, Suite A-200, Rancho Cucamonga, CA 91730
- Assemblymember Grayson - 2151 Salvio Street, Suite P, Concord, CA 94520

EXAMPLE LETTER OF SUPPORT:

Date

Address

Re: *Support for SB 1393 (Mitchell) Fair and Just Sentencing Reform of 2018*

Dear Assemblymember XXX,
I write in strong support of SB 1393, the Fair and Just Sentencing Reform Act. SB 1393 (Mitchell) amends Penal Code Sections 667 and 1385 by restoring the court's discretion, in the interest of justice, to strike a five-year sentence enhancement for each prior serious felony conviction on a person's record, when a person is currently convicted of a serious felony. Allowing judicial discretion is consistent with other sentence enhancement laws and retains existing penalties for serious crimes.

[FEEL FREE TO SHARE YOUR NARRATIVE IF AFFECTED!!]

Nearly every sentence enhancement in California can be dismissed if the judge believes they are unjust in a specific case. But for people with current and prior serious felonies, for which people receive a mandatory five extra years for each prior, judges are forbidden from tailoring a sentence to an individual's case and culpability. This has resulted in mandatory terms for thousands of individuals incarcerated throughout California's prisons. This rigid and arbitrary system has meted out punishments that are disproportionate to the offense and do not serve

the interests of justice, public safety, or communities. I ask you to please support SB 1393 when it is voted on in the Assembly.

Respectfully,

YOUR NAME
SIGNATURE