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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.

***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)**

(August 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.

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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-August 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; *People v. Valenzuela* (2018) 23 Cal.App.5th 82.)

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. (*People v. Millan* (2018) 20 Cal.App.5th 450; *People v. McKenzie* (Aug. 10, 2018) __ Cal.App.5th __.) 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.