



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
Sophie Hart
Corene Kendrick
Rita Lomio
Margot Mendelson
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.

**New Laws on
Prior Serious Felony Conviction Enhancements (Senate Bill 1393)
&
Gun Enhancements (Senate Bill 620)
&
and Drug Enhancements (Senate Bill 180)
(October 1, 2018)**

The California Legislature recently changed some of the laws about adding enhancements to people's criminal sentences. We are sending this information in response to your request for advice or assistance concerning these new laws. Unfortunately, we cannot provide individual responses to everyone who contacts us. We hope this letter will help answer your questions. Note that 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.

- ◆ Part 1 discusses a law that gives judges the authority to dismiss or strike five-year prior serious felony conviction enhancements, which will go into effect on January 1, 2019 (SB 1393).
- ◆ Part 2 discusses a law that gives judges the authority to dismiss or strike enhancements for using a gun, which went into effect on January 1, 2018 (SB 620).
- ◆ Part 3 discusses a law that eliminates the recidivist enhancement for some types of prior drug offenses, which went into effect on January 1, 2018 (SB 180).
- ◆ None of these new laws apply retroactively to criminal cases that were final before the new law took or takes effect. A case is final when the court has sentenced you and either you did not appeal the case or your whole appeal process has been finished. Unfortunately, if your conviction is final, the new laws do not apply to you. In part 4 of the letter, we discuss the rules about finality and describe some ways you might be able to seek resentencing on your enhancement, even if your case is final.

Note that a proposal to amend the law on one-year prior prison term enhancements was NOT passed by the Legislature and is no longer being considered (SB 1392).

Board of Directors
Penelope Cooper, President • Michele WalkinHawk, Vice President
Marshall Krause, Treasurer • Christiane Hipps • Margaret Johns
Cesar Lagleva • Laura Magnani • Michael Marcum • Ruth Morgan • Seth Morris

1. IN EFFECT AS OF JANUARY 1, 2019
Senate Bill 1393 – The Fair and Just Sentencing Reform Act --
New Discretion for Judges to Strike Penal Code Five-year Prior Serious Felony Conviction Enhancements

In the past, Penal Code § 667(a) required a sentencing court to add a five-year enhancement to a person's sentence for each prior serious felony conviction that was charged and tried separately, and Penal Code § 1385 (b) stated that courts did not have discretion to strike § 667(a) enhancements.

Effective January 1, 2019, these laws have been changed so that so that sentencing courts can strike or dismiss § 667(a) enhancements if doing so is in the "interests of justice."

2. 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 changed so that sentencing courts can strike or dismiss a firearm enhancement if doing so is in the "interests of justice."

Courts have held that SB 620 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.) (See Section 4 for more information.)

3. 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 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).

Courts have held that SB 180 applies 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) 25 Cal.App.5th 1207.) (See Section 4 for more information.)

4. WHO IS AFFECTED BY THESE NEW LAWS AND HOW CAN SOMEONE SEEK RESENTENCING?

Under a rule established in a case called *In re Estrada* (1965) 63 Cal.2d 740, new laws like the ones described in this letter should apply to anyone whose criminal case is not yet final when the law takes effect. A criminal case is not 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 of the enhancements affected by SB 1393, SB 620, and/or SB 180 and your case was not final when the new law took effect, 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.

These new laws on enhancements do *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 1393, SB 620, or SB 180). (Penal Code § 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.

There are a few other ways in which some people might be able to get resentenced under the new enhancement laws:

- ◆ If you have been sentenced recently (and even if you did not appeal), the court that sentenced you has the authority to recall your sentence and resentence you “in the interests of justice” within 120 days after the original sentence was imposed. (Penal Code §1170(d)(1).) You can contact the court to ask the court to move to recall your sentence. There is no official form for making such a request.
- ◆ Even if the judgment in your case is final, *at any time* during your sentence the CDCR (or for people in jail, the county correctional administrator) may make a recommendation to the sentencing court to recall your sentence and resentence you to a lower term. (Penal Code § 1170(d)(1).) The Prison Law Office has a letter with more information on CDCR resentencing recommendations. If the § 1170(d)(1) information letter is not enclosed here, you can get a free copy of it by writing to the Prison Law Office or on the Resources page of the website at www.prisonlaw.com.