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 incarcerated people often have trouble getting legal information and we cannot give specific advice to everyone who asks 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 the prison law library.

New Laws on
Prior Serious Felony Conviction Enhancements (Senate Bill 1393)
&
Gun Enhancements (Senate Bill 620)
&
and Drug Enhancements (Senate Bill 180)
(revised June 2019)

In the past few years, the California Legislature changed some laws about enhancements to criminal sentences. We are sending this information in response to your request for advice or assistance concerning these laws. Unfortunately, we cannot provide individual responses to everyone who contacts us. We hope this letter will help answer your questions.

♦ Part 1 discusses a law that gives judges the authority to dismiss or strike five-year prior serious felony conviction enhancements, which went 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 recidivism 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 laws took 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 2018 proposal to amend the law on Penal Code § 667.5(b) one-year prior prison term enhancements was NOT passed by the Legislature (SB 1392). Currently, there is a new proposal...
to eliminate Penal Code § 667.5(b) one-year enhancements in all cases which have not become final by January 1, 2020 (SB 136); it does not appear that the proposal would affect enhancements in cases that became or become final before that date. However, the bill will not take effect unless and until it has been passed by the Legislature and signed by the Governor; even if the bill does take effect, the provisions of the bill may be changed before it is passed and signed.

1. 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 EFFECT AS OF JANUARY 1, 2019)

   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 sentencing courts can strike or dismiss § 667(a) enhancements if doing so is in the “interests of justice.”

   Courts have held that SB 1393 applies to anyone whose criminal case was not yet final when the new law took effect on January 1, 2019, and that non-final cases should be remanded to allow the sentencing judge to consider striking or dismissing a prior serious felony conviction for sentencing purposes unless the record shows that the sentencing court clearly would not have used its discretion to strike the enhancement. (People v. Zamora (2019) 35 Cal.App.5th 200 [case not yet final].) (See Section 4 for more information.). In addition, courts have held that when non-final cases are sent back so that the sentencing court can consider striking or dismissing a prior felony conviction, the court must give the defendant and defense counsel the opportunity to be heard at a hearing. (People v. Rocha (2019) 32 Cal.App.5th 352.)

2. Senate Bill 620 -- New Discretion for Judges to Strike Firearm Use Enhancements
   (IN EFFECT AS OF JANUARY 1, 2018)

   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. Zamora (2019) 35 Cal.App.5th 200 [case not yet final]; People v. Robbins (2018) 19 Cal.App.5th 660; People v. Woods (2018)
3. Senate Bill 180 (Repeal Ineffective Sentencing Enhancement (RISE) Act) -- Elimination of Most Drug Trafficking Offense Recidivism Enhancements (IN EFFECT AS OF JANUARY 1, 2018)

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 (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. Habeas petitions and motions do not extend the date on which a judgment became final for purposes of the new enhancement laws. (People v. Johnson (2019) 32 Cal. App.5th 938.) 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. (People v. Johnson (2019) 32 Cal. App.5th 26; People v. Zamora (2019) 35 Cal.App.5th 200 [case not yet final]; People v. Morrison (2019) 34 Cal. App.5th 217 [case not yet final].) 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 have been 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 unresolved questions about how these new enhancement laws apply to defendants convicted by plea agreements, and whose cases were not yet final when the laws took effect. The courts of appeal have disagreed on whether these defendants can seek resentencing under the new laws without first obtaining a certificate of probable cause, and the California Supreme Court is reviewing those cases. (People v. Stamps (2019) No. S255145; People v. Kelly, No. 255145; see also People v. Fox (2019) 34 Cal. App.5th 1124 [case not yet final]; People v. Galindo (2019) 35 Cal. App.5th 658 [case not yet final].) The California Supreme Court is also reviewing the question of whether defendants convicted by plea agreements who specifically waived the right to appeal their sentence can seek remand for resentencing pursuant to the new laws. (People v. Barton, No. S255214.) You should contact the attorney who handled or is handling your sentencing or your direct appeal about whether and how these issues can be raised in your case.

Finally, 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.