

RESOLUTION 06-03-2014

DIGEST

Three Strikes: Removal of Criminal Threats as a Qualifying Offense

Amends Penal Code section 1192.7 to remove violation of section 422 (“criminal threats”) as a qualifying strike in sentencing repeat offenders.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution amends Penal Code section 1192.7 to remove violation of section 422 (“criminal threats”) as a qualifying strike in sentencing repeat offenders. This resolution should be disapproved because the making of credible threats of physical harm that cause another person to be in fear is a serious offense.

The proponent identifies the problem as the inclusion of “attempted criminal threats” as a strike that can lead to harsher penalties for future offenses. However, rather than add criminal threats as a crime, the attempt of which cannot be a strike, the author removes criminal threats from the statute entirely. Threats of physical harm that create substantial fear in the person being threatened are serious offenses that should remain as potential strikes.

To be convicted of criminal threats, a defendant must specifically intend to threaten to commit a crime resulting in death or great bodily injury with the further intent that the threat be taken as such, under circumstances so unequivocal, unconditional, immediate and specific as to convey a gravity of purpose and an immediate prospect of execution, thereby causing the person threatened to be in sustained fear for his or her own safety, or that of his or her family. Attempted criminal threats requires the defendant to have that specific intent and to perform an act that goes beyond mere preparation, and indicates a plan is being put in action. For example, if the perpetrator makes the threat, fully intending to cause the person being threatened substantial distress, but for some reason the threat does not cause that person to be in sustained fear, there has been an attempted criminal threats.

Because the offense of criminal threats is a psychological attack, it may not seem to belong in the same list of crimes as rape or murder. But there are other crimes in section 1192.7 that are not the equivalent of rape or murder, such as intimidation of witnesses or the discharge of a firearm at an inhabited dwelling. Intentionally causing a person to be in sustained fear for his safety is extremely harmful to the person being threatened and criminal threats is a serious offense.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to add Penal Code section 1192.7 to read as follows:

§ 1192.7

1 (a) (1) It is the intent of the Legislature that district attorneys prosecute violent sex crimes
2 under statutes that provide sentencing under a "one strike," "three strikes" or habitual sex
3 offender statute instead of engaging in plea bargaining over those offenses.

4 (2) Plea bargaining in any case in which the indictment or information charges any
5 serious felony, any felony in which it is alleged that a firearm was personally used by the
6 defendant, or any offense of driving while under the influence of alcohol, drugs, narcotics, or any
7 other intoxicating substance, or any combination thereof, is prohibited, unless there is
8 insufficient evidence to prove the people's case, or testimony of a material witness cannot be
9 obtained, or a reduction or dismissal would not result in a substantial change in sentence.

10 (3) If the indictment or information charges the defendant with a violent sex crime, as
11 listed in subdivision (c) of Section 667.61, that could be prosecuted under Sections 269, 288.7,
12 subdivisions (b) through (i) of Section 667, Section 667.61, or 667.71, plea bargaining is
13 prohibited unless there is insufficient evidence to prove the people's case, or testimony of a
14 material witness cannot be obtained, or a reduction or dismissal would not result in a substantial
15 change in sentence. At the time of presenting the agreement to the court, the district attorney
16 shall state on the record why a sentence under one of those sections was not sought.

17 (b) As used in this section "plea bargaining" means any bargaining, negotiation, or
18 discussion between a criminal defendant, or his or her counsel, and a prosecuting attorney or
19 judge, whereby the defendant agrees to plead guilty or nolo contendere, in exchange for any
20 promises, commitments, concessions, assurances, or consideration by the prosecuting attorney or
21 judge relating to any charge against the defendant or to the sentencing of the defendant.

22 (c) As used in this section, "serious felony" means any of the following: (1) Murder or
23 voluntary manslaughter; (2) mayhem; (3) rape; (4) sodomy by force, violence, duress, menace,
24 threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or
25 another person; (5) oral copulation by force, violence, duress, menace, threat of great bodily
26 injury, or fear of immediate and unlawful bodily injury on the victim or another person; (6) lewd
27 or lascivious act on a child under 14 years of age; (7) any felony punishable by death or
28 imprisonment in the state prison for life; (8) any felony in which the defendant personally inflicts
29 great bodily injury on any person, other than an accomplice, or any felony in which the
30 defendant personally uses a firearm; (9) attempted murder; (10) assault with intent to commit
31 rape or robbery; (11) assault with a deadly weapon or instrument on a peace officer; (12) assault
32 by a life prisoner on a noninmate; (13) assault with a deadly weapon by an inmate; (14) arson;
33 (15) exploding a destructive device or any explosive with intent to injure; (16) exploding a
34 destructive device or any explosive causing bodily injury, great bodily injury, or mayhem; (17)
35 exploding a destructive device or any explosive with intent to murder; (18) any burglary of the
36 first degree; (19) robbery or bank robbery; (20) kidnapping; (21) holding of a hostage by a
37 person confined in a state prison; (22) attempt to commit a felony punishable by death or
38 imprisonment in the state prison for life; (23) any felony in which the defendant personally used
39 a dangerous or deadly weapon; (24) selling, furnishing, administering, giving, or offering to sell,
40 furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any
41 methamphetamine-related drug, as described in paragraph (2) of subdivision (d) of Section
42 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as
43 described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or
44 subdivision (a) of Section 11100 of the Health and Safety Code; (25) any violation of
45 subdivision (a) of Section 289 where the act is accomplished against the victim's will by force,

46 violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or
47 another person; (26) grand theft involving a firearm; (27) carjacking; (28) any felony offense,
48 which would also constitute a felony violation of Section 186.22; (29) assault with the intent to
49 commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220; (30) throwing
50 acid or flammable substances, in violation of Section 244; (31) assault with a deadly weapon,
51 firearm, machinegun, assault weapon, or semiautomatic firearm or assault on a peace officer or
52 firefighter, in violation of Section 245; (32) assault with a deadly weapon against a public transit
53 employee, custodial officer, or school employee, in violation of Section 245.2, 245.3, or 245.5;
54 (33) discharge of a firearm at an inhabited dwelling, vehicle, or aircraft, in violation of Section
55 246; (34) commission of rape or sexual penetration in concert with another person, in violation
56 of Section 264.1; (35) continuous sexual abuse of a child, in violation of Section 288.5; (36)
57 shooting from a vehicle, in violation of subdivision (c) or (d) of Section 26100; (37) intimidation
58 of victims or witnesses, in violation of Section 136.1; ~~(38) criminal threats, in violation of~~
59 ~~Section 422;~~ (39)38 any attempt to commit a crime listed in this subdivision other than an
60 assault; ~~(40)39~~ any violation of Section 12022.53; ~~(41)40~~ a violation of subdivision (b) or (c) of
61 Section 11418; and ~~(42)41~~ any conspiracy to commit an offense described in this subdivision.

62 (d) As used in this section, "bank robbery" means to take or attempt to take, by force or
63 violence, or by intimidation from the person or presence of another any property or money or
64 any other thing of value belonging to, or in the care, custody, control, management, or
65 possession of, any bank, credit union, or any savings and loan association.

66 As used in this subdivision, the following terms have the following meanings:

67 (1) "Bank" means any member of the Federal Reserve System, and any bank, banking
68 association, trust company, savings bank, or other banking institution organized or operating
69 under the laws of the United States, and any bank the deposits of which are insured by the
70 Federal Deposit Insurance Corporation.

71 (2) "Savings and loan association" means any federal savings and loan association and
72 any "insured institution" as defined in Section 401 of the National Housing Act, as amended, and
73 any federal credit union as defined in Section 2 of the Federal Credit Union Act.

74 (3) "Credit union" means any federal credit union and any state-chartered credit union the
75 accounts of which are insured by the Administrator of the National Credit Union administration.

76 (e) The provisions of this section shall not be amended by the Legislature except by
77 statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership
78 concurring, or by a statute that becomes effective only when approved by the electors.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: Under current law, numerous felony offenses are strikes. Many of these are listed under Penal Code section 1192.7. Among those listed under section 1192.7 is the offense of criminal threats (§ 422). One might argue that placing a mere crime of words (without more) on the same list as "rape, murder and robbery" is an overreach, however section 1192.7 lists that all attempts to commit any of the enumerated felonies also qualify as strike offenses, with the exception of assault. This means that trying unsuccessfully to threaten somebody is a strike on the same level as rape, murder, robbery, arson and continuous sexual abuse.

The Solution: Because it is unjust to place criminal threats or attempted criminal threats on the same level as "attempted murder, robbery or rape," section 1192.7 should be amended to exclude criminal threats entirely from the list of felony strike offenses.

LEGISLATIVE HISTORY

Not known.

IMPACT STATEMENT

The proposed resolution does not affect any other law, statute or rule.

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