

LF-01-2015

DIGEST

Criminal Law: Eliminating the Three-year Time Limit on Petitions to Recall Sentences

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that legislation be sponsored to Amend Penal Code section 1170.18 to read as follows:

1170.18.

(a) A person currently serving a sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under the act that added this section (“this act”) had this act been in effect at the time of the offense may petition for a recall of sentence before the trial court that entered the judgment of conviction in his or her case to request resentencing in accordance with Sections 11350, 11357, or 11377 of the Health and Safety Code, or Section 459.5, 473, 476a, 490.2, 496, or 666 of the Penal Code, as those sections have been amended or added by this act.

(b) Upon receiving a petition under subdivision (a), the court shall determine whether the petitioner satisfies the criteria in subdivision (a). If the petitioner satisfies the criteria in subdivision (a), the petitioner’s felony sentence shall be recalled and the petitioner resentenced to a misdemeanor pursuant to Sections 11350, 11357, or 11377 of the Health and Safety Code, or Section 459.5, 473, 476a, 490.2, 496, or 666 of the Penal Code, those sections have been amended or added by this act, unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety. In exercising its discretion, the court may consider all of the following:

- (1) The petitioner’s criminal conviction history, including the type of crimes committed, the extent of injury to victims, the length of prior prison commitments, and the remoteness of the crimes.
- (2) The petitioner’s disciplinary record and record of rehabilitation while incarcerated.
- (3) Any other evidence the court, within its discretion, determines to be relevant in deciding whether a new sentence would result in an unreasonable risk of danger to public safety.

(c) As used throughout this Code, “unreasonable risk of danger to public safety” means an unreasonable risk that the petitioner will commit a new violent felony within the meaning of clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667.

(d) A person who is resentenced pursuant to subdivision (b) shall be given credit for time served and shall be subject to parole for one year following completion of his or her sentence, unless the court, in its discretion, as part of its resentencing order, releases the person from parole. Such person is subject to Section 3000.08 parole supervision by the Department of

Corrections and Rehabilitation and the jurisdiction of the court in the county in which the parolee is released or resides, or in which an alleged violation of supervision has occurred, for the purpose of hearing petitions to revoke parole and impose a term of custody.

(e) Under no circumstances may resentencing under this section result in the imposition of a term longer than the original sentence.

(f) A person who has completed his or her sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under this act had this act been in effect at the time of the offense, may file an application before the trial court that entered the judgment of conviction in his or her case to have the felony conviction or convictions designated as misdemeanors.

(g) If the application satisfies the criteria in subdivision (f), the court shall designate the felony offense or offenses as a misdemeanor.

(h) Unless requested by the applicant, no hearing is necessary to grant or deny an application filed under subsection (f).

(i) The provisions of this section shall not apply to persons who have one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290.

~~(j) Any petition or application under this section shall be filed within three years after the effective date of the act that added this section or at a later date upon a showing of good cause.~~

~~(i)~~ Any felony conviction that is recalled and resentenced under subdivision (b) or designated as a misdemeanor under subdivision (g) shall be considered a misdemeanor for all purposes, except that such resentencing shall not permit that person to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.

~~(k)~~ If the court that originally sentenced the petitioner is not available, the presiding judge shall designate another judge to rule on the petition or application.

~~(l)~~ Nothing in this section is intended to diminish or abrogate any rights or remedies otherwise available to the petitioner or applicant.

~~(m)~~ Nothing in this and related sections is intended to diminish or abrogate the finality of judgments in any case not falling within the purview of this act.

~~(n)~~ A resentencing hearing ordered under this act shall constitute a “post-conviction release proceeding” under paragraph (7) of subdivision (b) of Section 28 of Article I of the California Constitution (Marsy’s Law).

(Added November 4, 2014, by initiative Proposition 47, Sec. 14.)

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

PROPOSERS: Jeanmarie Klingenbeck [Warren]; Rodolfo Aguirre; Robin Bernstein-Lev; Enedina Garcia; Candis Glover; Russell Griffith; Scott Herin; Suzanne Mills; Erin Noonan; Rudolph Rousseau; Debra Sims; Carole Telfer; Mary Elaine Tennant

STATEMENT OF REASONS

The Problem: With the passage of Proposition 47, a tremendous number of criminal offenses previously deemed to be felonies are now eligible to be recalled and resentenced as misdemeanors or, if the sentence has been completed, the conviction is eligible to be deemed a misdemeanor. In Los Angeles County alone, looking at the last 10 years of cases, there are approximately 250,000 to 300,000 Public Defender cases alone that are eligible to be considered for the reduction. This number does not include cases where the Defendant went pro per, was represented by the Alternate Public Defender, Bar Panel or private counsel. The sheer number of cases alone would make it impossible for the Public Defenders to handle all their eligible cases and clearly the courts would not be able to absorb all the additional paperwork from Public Defenders, Alternate Public Defenders, Private Counsel, and pro per Defendants with their current staff.

The Solution: This resolution would eliminate the three year deadline. This would allow individuals and their counsel to file their petitions as they deemed necessary; just as there is no deadline for individuals to have their convictions expunged by filing motions to reduce and/or dismiss their convictions pursuant to Penal Code Section 1203.4.

IMPACT STATEMENT

Unknown and Unlikely

CURRENT OR PRIOR RELATED LEGISLATION

Unknown

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RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Penal Code section 1170.18 to remove the time limit within which certain convicted felons may apply for sentence reduction or conviction reclassification under Proposition 47. This resolution should be approved in principle because the three year time limit provided by section 1170.18, subdivision (j) is an arbitrary and unnecessary time limit.

Proposition 47, which was enacted by initiative in November 2014, changed the classification of many non-serious and non-violent property and drug crimes from felony to misdemeanor. Penal Code section 1170.18, one of the statutes added by Proposition 47, prescribes procedures and standards under which persons with felony convictions for crimes now classified as misdemeanors could, subject to certain eligibility requirements, modify their conviction based on the reclassification of the underlying crime. (Pen. Code, § 1170.18, subds. (a), (f).) Specifically, if currently serving their sentence, eligible persons could petition to have their sentence reduced. Alternatively, if their sentence has already been completed, they could apply to have their conviction reclassified as a misdemeanor. However, all such petitions or applications must be filed within three years of November 4, 2014, absent a showing of good cause. (Pen. Code, § 1170.18, subd. (j).)

There is no publicly-available data on the number of persons eligible to seek modification of their conviction and/or sentence under Proposition 47. The proponents provide credible data suggesting that the potential petitions and applications would inundate the court system if all such petitions were to be filed before November 4, 2017, the current filing deadline, which would result in many valid modifications not being granted. There is also no known rationale for the statute's three-year deadline. It furthers no public policy. There is no such deadline in the somewhat analogous context of motions to expunge a conviction under Penal Code section 1203.4. There are likely many persons who may not learn of the beneficial provisions of section 1170.18 until after it is too late to avail of them, including non-residents of California who may be eligible for reclassification of their conviction, and resident incarcerated persons who may be eligible for reduction of their sentences. While such persons might arguably be entitled to relief for "good cause" even after the expiration of the deadline, reliance on the good cause exception bestows too much discretion to the trial court. As such it appears to contravene the spirit and intent of Proposition 47 as set forth in section 3 of the proposition. The current three-year deadline could therefore result in serious miscarriages of justice, and this resolution addresses this serious problem.

Note: Although Penal Code section 1170.18 derives from the initiative process and was passed by the voters of California, section 15 of Proposition 47 specifically gave the Legislature the authority to amend its provisions, by two-thirds vote of the Assembly and Senate and the Governor's signature, if such amendments accord with the proposition's intent. Removing the three-year deadline furthers the intent of Proposition 47.