

RESOLUTION 16-01-2017

DIGEST

Wobblers: Reducing Offense to Misdemeanor Following Successful Probation

Amends Penal Code section 17 to grant courts the ability to reduce wobblers to misdemeanors if the defendant complies with the terms of probation.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Penal Code section 17 to grant courts the ability to reduce wobblers to misdemeanors if the defendant complies with the terms of probation. This resolution should be approved in principle because it provides that in cases of probation with a suspended sentence, the wobbler is deemed a misdemeanor rather than a felony conviction.

Subdivision (b) of Penal Code section 17 is the mechanism by which defendants can get certain felonies reduced to a misdemeanor. Subdivision (b)(3) allows the judge to declare the offense a misdemeanor when putting the convicted defendant on probation, rather than imposing sentence, or upon a subsequent application by the defendant or probation officer. Penal Code section 1203.4 provides a mechanism, on application to the court following successful completion or discharge from probation, for a convicted defendant to withdraw or change a plea, or set aside a guilty conviction.

This resolution would provide for this same result in cases where the sentence has been executed, but then suspended and probation imposed. This additional circumstance is a reasonable ground for relief, and consistent with the intent of the statute. It provides a defendant with a similar procedural history, (i.e. a suspended sentence and order for probation as opposed to simple probation), the additional incentive to successfully complete probation and earn a misdemeanor, and an opportunity to move forward in life as a rehabilitated individual.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 17 to read as follows:

- 1 § 17
- 2 (a) A felony is a crime that is punishable with death, by imprisonment in the state prison,
- 3 or notwithstanding any other provision of law, by imprisonment in a county jail under the
- 4 provisions of subdivision (h) of Section 1170. Every other crime or public offense is a
- 5 misdemeanor except those offenses that are classified as infractions.
- 6 (b) When a crime is punishable, in the discretion of the court, either by imprisonment in
- 7 the state prison or imprisonment in a county jail under the provisions of subdivision (h) of

8 Section 1170, or by fine or imprisonment in the county jail, it is a misdemeanor for all purposes
9 under the following circumstances:

10 (1) After a judgment imposing a punishment other than imprisonment in the state prison
11 or imprisonment in a county jail under the provisions of subdivision (h) of Section 1170.

12 (2) When the court, upon committing the defendant to the Division of Juvenile Justice,
13 designates the offense to be a misdemeanor.

14 (3) When the court grants probation to a defendant without imposition of sentence or
15 grants probation after first executing but suspending a sentence and at the time of granting
16 probation, or on application of the defendant or probation officer thereafter, the court declares
17 the offense to be a misdemeanor.

18 (4) When the prosecuting attorney files in a court having jurisdiction over misdemeanor
19 offenses a complaint specifying that the offense is a misdemeanor, unless the defendant at the
20 time of his or her arraignment or plea objects to the offense being made a misdemeanor, in which
21 event the complaint shall be amended to charge the felony and the case shall proceed on the
22 felony complaint.

23 (5) When, at or before the preliminary examination or prior to filing an order pursuant to
24 Section 872, the magistrate determines that the offense is a misdemeanor, in which event the
25 case shall proceed as if the defendant had been arraigned on a misdemeanor complaint.

26 (c) When a defendant is committed to the Division of Juvenile Justice for a crime
27 punishable, in the discretion of the court, either by imprisonment in the state prison or
28 imprisonment in a county jail under the provisions of subdivision (h) of Section 1170, or by fine
29 or imprisonment in the county jail not exceeding one year, the offense shall, upon the discharge
30 of the defendant from the Division of Juvenile Justice, thereafter be deemed a misdemeanor for
31 all purposes.

32 (d) A violation of any code section listed in Section 19.8 is an infraction subject to the
33 procedures described in Sections 19.6 and 19.7 when:

34 (1) The prosecutor files a complaint charging the offense as an infraction unless the
35 defendant, at the time he or she is arraigned, after being informed of his or her rights, elects to
36 have the case proceed as a misdemeanor, or;

37 (2) The court, with the consent of the defendant, determines that the offense is an
38 infraction in which event the case shall proceed as if the defendant had been arraigned on an
39 infraction complaint.

40 (e) Nothing in this section authorizes a judge to relieve a defendant of the duty to register
41 as a sex offender pursuant to Section 290 if the defendant is charged with an offense for which
42 registration as a sex offender is required pursuant to Section 290, and for which the trier of fact
43 has found the defendant guilty.

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

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: Under existing criminal law, a court has the discretion to sentence a defendant charged with a “wobbler” (an offense that can be charged as either a felony or a misdemeanor) to supervised felony probation and then, if the defendant successfully completes probation, to

reduce the offense to a misdemeanor. The possibility of such a reduction (which may thereby remove some of the stigma and harm to employment and housing prospects) motivates defendants to perform well on probation.

The problem is that under current law, if a judge wishes to motivate a defendant to perform well on probation by also suspending a prison sentence over their head as a condition of probation, the use of such a suspended sentence bars the defendant from ever requesting a reduction in the future, regardless of how well the defendant performs on probation. For example, a defendant who was convicted of a wobbler offense twenty years ago and has no further criminal record is currently unable to ask for a reduction if the court ever suspended prison time over the defendant's head, regardless of how well the defendant performed on probation.

The Solution: The proposed resolution would give courts the ability to reduce deserving defendant's wobbler convictions to misdemeanors upon successful completion of probation, while still allowing courts to motivate defendant's by imposing suspended sentences as a condition of probation.

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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