

RESOLUTION 06-03-2018

Felonies: Criminal Threats

Amends Penal Code section 1192.7 to remove a felony violation of Penal Code section 422 as a ‘serious’ felony.

STATEMENT OF REASONS

The Problem: Strike offenses are enumerated in Penal Code section 1192.7. The list contains the most serious and violent offenses in the penal code. Among the rape, murder, terrorism, and child-molestation charges hides outlier, criminal threats. In summary, “criminal threats” are any threats to commit a crime resulting in death or great bodily injury made with the intent that the statement is to be taken as a threat, even if there is no intent to carry it out, and which causes the victim to be afraid.

Under current law, if a defendant told her victim, “I’m going to knock you unconscious!” and proceeded to punch her victim square in the jaw, failing to knock the victim out, she could be convicted of two offenses. She could be convicted for the initial threat, a strike offense, with potential *life imprisonment* consequences. She could also be convicted of the assault, for actually punching the person and knocking them to the ground. That offense, *the actual assault*, would not qualify as a strike.

The status of “criminal threats” as a strike offense is an absurdity. Words alone, often made in the context of the above example, should not be enough to sentence someone to prison for life.

The Solution: California’s “Three Strikes” scheme imposes increased punishments for criminal defendants suffering from previous convictions for “strike” offenses. If a defendant has a prior conviction for a strike offense, her sentence for any subsequent felony can be doubled. Any term sentence will be served in state prison (as opposed to county jail). She will accrue credits at a rate of 20% instead of 50%. If she suffers from two prior strike offenses and her current charge is a strike offense, she can be sentenced from 25 years to life in prison.

This resolution would amend Penal Code section 1192.7 to remove criminal threats from the list of strike offenses. A violation of Penal Code section 422 would remain a felony, punishable by up to three years in prison.

TEXT OF RESOLUTION

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

- 1 § 1192.7
- 2 (a) (1) It is the intent of the Legislature that district attorneys prosecute violent sex crimes
- 3 under statutes that provide sentencing under a “one strike,” “three strikes” or habitual sex
- 4 offender statute instead of engaging in plea bargaining over those offenses.
- 5 (2) Plea bargaining in any case in which the indictment or information charges any
- 6 serious felony, any felony in which it is alleged that a firearm was personally used by the

7 defendant, or any offense of driving while under the influence of alcohol, drugs, narcotics, or any
8 other intoxicating substance, or any combination thereof, is prohibited, unless there is
9 insufficient evidence to prove the people's case, or testimony of a material witness cannot be
10 obtained, or a reduction or dismissal would not result in a substantial change in sentence.

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

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

23 (c) As used in this section, "serious felony" means any of the following:

24 (1) Murder or voluntary manslaughter; (2) mayhem; (3) rape; (4) sodomy by force,
25 violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily
26 injury on the victim or another person; (5) oral copulation by force, violence, duress, menace,
27 threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or
28 another person; (6) lewd or lascivious act on a child under 14 years of age; (7) any felony
29 punishable by death or imprisonment in the state prison for life; (8) any felony in which the
30 defendant personally inflicts great bodily injury on any person, other than an accomplice, or any
31 felony in which the defendant personally uses a firearm; (9) attempted murder; (10) assault with
32 intent to commit rape or robbery; (11) assault with a deadly weapon or instrument on a peace
33 officer; (12) assault by a life prisoner on a noninmate; (13) assault with a deadly weapon by an
34 inmate; (14) arson; (15) exploding a destructive device or any explosive with intent to injure;
35 (16) exploding a destructive device or any explosive causing bodily injury, great bodily injury, or
36 mayhem; (17) exploding a destructive device or any explosive with intent to murder; (18) any
37 burglary of the first degree; (19) robbery or bank robbery; (20) kidnapping; (21) holding of a
38 hostage by a person confined in a state prison; (22) attempt to commit a felony punishable by
39 death or imprisonment in the state prison for life; (23) any felony in which the defendant
40 personally used a dangerous or deadly weapon; (24) selling, furnishing, administering, giving, or
41 offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP),
42 or any methamphetamine-related drug, as described in paragraph (2) of subdivision (d) of
43 Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as
44 described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or
45 subdivision (a) of Section 11100 of the Health and Safety Code; (25) any violation of subdivision
46 (a) of Section 289 where the act is accomplished against the victim's will by force, violence,
47 duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person;
48 (26) grand theft involving a firearm; (27) carjacking; (28) any felony offense, which would also
49 constitute a felony violation of Section 186.22; (29) assault with the intent to commit mayhem,
50 rape, sodomy, or oral copulation, in violation of Section 220; (30) throwing acid or flammable
51 substances, in violation of Section 244; (31) assault with a deadly weapon, firearm, machinegun,
52 assault weapon, or semiautomatic firearm or assault on a peace officer or firefighter, in violation

53 of Section 245; (32) assault with a deadly weapon against a public transit employee, custodial
54 officer, or school employee, in violation of Section 245.2, 245.3, or 245.5; (33) discharge of a
55 firearm at an inhabited dwelling, vehicle, or aircraft, in violation of Section 246; (34)
56 commission of rape or sexual penetration in concert with another person, in violation of Section
57 264.1; (35) continuous sexual abuse of a child, in violation of Section 288.5; (36) shooting from
58 a vehicle, in violation of subdivision (c) or (d) of Section 26100; (37) intimidation of victims or
59 witnesses, in violation of Section 136.1; ~~(38) criminal threats, in violation of Section 422;~~ (39) any
60 any attempt to commit a crime listed in this subdivision other than an assault; ~~(40)~~ any
61 violation of Section 12022.53; ~~(41)~~ a violation of subdivision (b) or (c) of Section 11418; and
62 ~~(42)~~ any conspiracy to commit an offense described in this subdivision.

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

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

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

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

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

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

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

PROPONENT: Sacramento County Bar Association

IMPACT STATEMENT

This 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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