

RESOLUTION 06-04-2018

DIGEST

Criminal Procedure: Defense Motion for Dismissal in Interests of Justice

Amends Penal Code section 1385 to allow defense motions to dismiss in the furtherance of justice.

STATEMENT OF REASONS

The Problem: Once a criminal case is filed only a judge or magistrate may dismiss it. The judge may dismiss the case (or individual charges or enhancements) for good cause shown in the interest of justice either upon the court’s own motion or upon the motion of the prosecution. The problem is that the statute does not allow the defense to move for a dismissal. But, the defense can ask the court to dismiss on its own motion. (*Boulas v. Superior Court* (1986) 188 Cal.App.3d 422, 428, fn. 6.)

The Solution: Let’s be honest and let the defense just move to dismiss, not create this clever workaround. This resolution fixes the problem and lets the defense make a motion to dismiss. It does not require the court to dismiss nor does it change the legal precedent when a dismissal is (or is not) proper. This fix is procedural, not substantive.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 1385 to read as follows:

1 § 1385

2 (a) The judge or magistrate may, either of his or her own motion or upon the application
3 of the prosecuting attorney or the defendant or the defendant’s counsel, and in furtherance of
4 justice, order an action to be dismissed. The reasons for the dismissal shall be stated orally on the
5 record. The court shall also set forth the reasons in an order entered upon the minutes if
6 requested by either party or in any case in which the proceedings are not being recorded
7 electronically or reported by a court reporter. A dismissal shall not be made for any cause that
8 would be ground of demurrer to the accusatory pleading.

9 (b) This section does not authorize a judge to strike any prior conviction of a serious
10 felony for purposes of enhancement of a sentence under Section 667.

11 (c)(1) If the court has the authority pursuant to subdivision (a) to strike or dismiss an
12 enhancement, the court may instead strike the additional punishment for that enhancement in the
13 furtherance of justice in compliance with subdivision (a).

14 (2) This subdivision does not authorize the court to strike the additional punishment for
15 any enhancement that cannot be stricken or dismissed pursuant to subdivision (a).

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

PROPONENT: Los Angeles 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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RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Penal Code section 1385 to allow defense motions to dismiss in the furtherance of justice. This resolution should be approved in principle because it would allow defendants in criminal cases to seek such dismissals with the benefit of a full record and briefing, rather than by the informal method currently permitted.

Penal Code section 1385 is California’s extension of the common law doctrine of *nolle prosequi*, the state’s absolute right to dismiss a criminal prosecution. Like similar statutes in other jurisdictions, section 1385 limits the prosecution’s discretion, and grants a court the right to order such a dismissal even over the prosecution’s objection. Unlike statutes in some other jurisdictions, however, section 1385 does not allow for a defendant to bring a motion. (See *People v. Andrade* (1978) 86 Cal.App.3d 963, 973; compare, e.g., NY.Crim. Proc. L. §§ 170.30 [defense motion re misdemeanors] 210.40 [same re felonies]; Idaho Criminal Rule 48(a)(2) [same]; Utah R. Crim. Proc. 25(a) [same].) As a result, California courts have created a strange, indirect route to the same result: allowing defendants to “suggest” that courts exercise their own authority. None of the case authority cites any benefit to this informal procedure; rather, it appears to be the best that the courts can do in the face of a statute that does not permit a defense motion. Allowing defendants to bring these motions directly has worked in other jurisdictions and should be permitted in California.