

Introduced by Senator WrightJanuary 30, 2014

An act to amend Section 17 of the Penal Code, relating to felonies.

LEGISLATIVE COUNSEL'S DIGEST

SB 929, as introduced, Wright. Nonviolent felonies.

Existing law provides that a crime punishable with death, by imprisonment in the state prison, or by imprisonment in a county jail for more than one year is a felony and all other offenses, except those that are classified as infractions, are misdemeanors. Existing law further provides that a crime that is punishable, in the discretion of the court, as a felony or as a misdemeanor is a misdemeanor under certain circumstances, including when the court grants a defendant probation without imposing a sentence and, at the time of granting probation or on application of the defendant or probation officer thereafter, the court declares the offense to be a misdemeanor.

This bill would require, upon application of a defendant, a felony offense to be deemed a misdemeanor for all purposes, except as specified, if the court finds that certain circumstances apply, including that the defendant was not imprisoned in the state prison for the offense, the offense for which the defendant was convicted was not a serious or violent felony, as defined, the offense does not require registration as a sex offender, the defendant is not currently charged with and has not been convicted of an offense in the preceding 5 years, except as specified, and the defendant presents clear and convincing evidence that he or she has been rehabilitated.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17 of the Penal Code is amended to read:

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

8 (b) When a crime is punishable, in the discretion of the court,
9 either by imprisonment in the state prison or imprisonment in a
10 county jail under the provisions of subdivision (h) of Section 1170,
11 or by fine or imprisonment in the county jail, it is a misdemeanor
12 for all purposes under the following circumstances:

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

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

19 (3) When the court grants probation to a defendant without
20 imposition of sentence and at the time of granting probation, or
21 on application of the defendant or probation officer thereafter, the
22 court declares the offense to be a misdemeanor.

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

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

35 (c) When a defendant is committed to the Division of Juvenile
36 Justice for a crime punishable, in the discretion of the court, either
37 by imprisonment in the state prison or imprisonment in a county
38 jail under the provisions of subdivision (h) of Section 1170, or by

1 fine or imprisonment in the county jail not exceeding one year,
2 the offense shall, upon the discharge of the defendant from the
3 Division of Juvenile Justice, thereafter be deemed a misdemeanor
4 for all purposes.

5 *(d) (1) When a defendant is convicted of a felony offense, the*
6 *offense shall, on application of the defendant, thereafter be deemed*
7 *a misdemeanor for all purposes, except as specified in paragraph*
8 *(2), if the court finds that all of the following circumstances apply:*

9 *(A) The defendant was not imprisoned in the state prison for*
10 *the offense.*

11 *(B) The offense for which the defendant was convicted is not*
12 *either of the following:*

13 *(i) A serious felony, as described in subdivision (c) of Section*
14 *1192.7.*

15 *(ii) A violent felony, as described in subdivision (c) of Section*
16 *667.5.*

17 *(C) The offense for which the defendant was convicted does not*
18 *require him or her to register as a sex offender pursuant to Chapter*
19 *5.5 (commencing with Section 290) of Title 9 of Part 1.*

20 *(D) The defendant is not currently charged with the commission*
21 *of any offense, and has not been convicted of an offense in the*
22 *preceding five years, except the offense to be deemed a*
23 *misdemeanor pursuant to this subdivision, a misdemeanor that*
24 *does not involve moral turpitude, a misdemeanor driving offense,*
25 *or an infraction.*

26 *(E) The defendant presents clear and convincing evidence that*
27 *he or she has been rehabilitated.*

28 *(2) The reduction of a conviction from a felony to a*
29 *misdemeanor pursuant to this subdivision shall not prohibit its*
30 *use as a prior felony conviction in any future criminal proceeding*
31 *against the defendant, including, but not limited to, a sentencing*
32 *hearing.*

33 ~~(e)~~

34 *(e) A violation of any code section listed in Section 19.8 is an*
35 *infraction subject to the procedures described in Sections 19.6 and*
36 *19.7 when:*

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

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

5 (e)

6 (f) Nothing in this section authorizes a judge to relieve a
7 defendant of the duty to register as a sex offender pursuant to
8 Section 290 if the defendant is charged with an offense for which
9 registration as a sex offender is required pursuant to Section 290,
10 and for which the trier of fact has found the defendant guilty.