

AMENDED IN SENATE MAY 30, 1995
AMENDED IN ASSEMBLY APRIL 25, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 232

Introduced by Assembly Member Kevin Murray

February 1, 1995

An act to amend Section 41403 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 232, as amended, K. Murray. Prior conviction: burden of proof: *evidence*.

(1) Under existing law, the burden of proof remains with the prosecution throughout a proceeding to have a judgment of a prior conviction declared invalid on constitutional grounds when the prior conviction involves driving when the privilege has been suspended or revoked, as specified, or driving under the influence, as specified. The burden of proof is that of beyond a reasonable doubt.

This bill would, ~~instead, provide~~ *delete the requirement that the burden of proof shifts to the defendant and is that of proof by a preponderance of the evidence remains with the prosecution throughout the described proceeding.*

(2) *Under existing law, the prosecution initially has the burden of producing evidence of the separate conviction sufficient to justify a finding that the separate conviction occurred. After that production by the prosecution, the*

defendant then has the burden of producing evidence, in that separate proceeding, that the defendant’s constitutional rights were infringed upon.

As to the defendant’s burden, this bill would, instead, provide that the defendant has the burden of proof by a preponderance of the evidence, rather than the burden of producing evidence, as described.

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 41403 of the Vehicle Code is
2 amended to read:

3 41403. (a) In any proceedings to have a judgment of
4 conviction of a violation of Section 14601, 14601.1, 14601.2,
5 23152, or 23153, or Section 23103 as specified in Section
6 23103.5, which was entered in a separate proceeding,
7 declared invalid on constitutional grounds, the defendant
8 shall state in writing and with specificity wherein the
9 defendant was deprived of the defendant’s constitutional
10 rights, which statement shall be filed with the clerk of the
11 court and a copy served on the court that rendered that
12 judgment and on the prosecuting attorney in the present
13 proceedings at least five court days prior to the hearing
14 thereon.

15 (b) Except as provided in subdivision (c), the court
16 shall, prior to the trial of any pending criminal action
17 against the defendant wherein the separate conviction is
18 charged as such, hold a hearing, outside of the presence
19 of the jury, in order to determine the constitutional
20 validity of the charged separate conviction issue. At the
21 hearing the procedure, the burden of proof, and the
22 burden of producing evidence shall be as follows:

23 ~~(1) The burden of proof shifts to the defendant and is~~
24 ~~that of proof by a preponderance of the evidence.~~

25 ~~(2)–~~

26 (1) The prosecution shall initially have the burden of
27 producing evidence of the separate conviction sufficient



1 to justify a finding that the defendant has suffered that
2 separate conviction.

3 ~~(3)~~

4 (2) After the production of evidence required by
5 paragraph ~~(2)~~ (1), the defendant then has the burden of
6 ~~producing proof by a preponderance of the~~ evidence that
7 the defendant's constitutional rights were infringed in
8 the separate proceeding at issue. If the separate
9 conviction sought to be invalidated is based upon a plea
10 of guilty or nolo contendere, the defendant shall provide
11 the court with evidence of the prior plea, including the
12 court docket, written waivers of constitutional rights
13 executed by the defendant, and transcripts of the
14 relevant court proceedings at the time of the entry of the
15 defendant's plea. These records shall be provided to the
16 defendant without cost to him or her, when the
17 defendant is represented by the public defender or
18 counsel appointed pursuant to Section 987.2 of the Penal
19 Code.

20 (4) If the defendant bears this burden successfully, the
21 prosecution shall have the right to produce evidence in
22 rebuttal.

23 (5) The court shall make a finding on the basis of the
24 evidence thus produced and shall strike from the
25 accusatory pleading any separate conviction found to be
26 constitutionally invalid.

27 (c) If the defendant fails to comply with the notice
28 requirement of subdivision (a) or fails to produce the
29 evidence required by paragraph ~~(3)~~ (2) of subdivision
30 (b), the court shall hear the motion at the time of
31 sentencing in lieu of continuing the trial, unless good
32 cause is shown for failure to provide notice pursuant to
33 subdivision (a) or produce the evidence required by
34 paragraph ~~(3)~~ (2) of subdivision (b), in which case the
35 court shall grant a continuance of the trial for a reasonable
36 period. The procedure, burden of proof, and burden of
37 producing evidence as provided in subdivision (b) shall
38 apply regardless of when the motion is heard.

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