

## Assembly Bill No. 232

### CHAPTER 83

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

[Approved by Governor July 5, 1995. Filed with  
Secretary of State July 6, 1995.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 232, 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 delete the requirement that the burden of proof 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.

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

SECTION 1. Section 41403 of the Vehicle Code is amended to read:

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



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

(1) The prosecution shall initially have the burden of producing evidence of the separate conviction sufficient to justify a finding that the defendant has suffered that separate conviction.

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

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

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

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

