

AMENDED IN ASSEMBLY MAY 26, 2000

AMENDED IN ASSEMBLY MAY 15, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2447

**Introduced by Assembly Members Wright and Washington
(Coauthors: Assembly Members Cedillo, Migden, Vincent,
and Wesson)**

(Coauthors: Senators Hughes and Murray)

February 24, 2000

An act to amend Section 1385 of the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

AB 2447, as amended, R. Wright. Sentencing: 3 strikes.

Existing law authorizes a judge or magistrate to dismiss a prior conviction allegation in the furtherance of justice. The Three Strikes law requires that a person convicted of a felony who has one or more prior serious or violent felony convictions, as defined, must be sentenced under the proscribed enhanced sentencing scheme. The California Supreme Court has interpreted these statutes to authorize the trial court to dismiss a prior conviction allegation in furtherance of justice on its own motion in a case brought under the Three Strikes law. In making this determination, the trial court is required to consider both the constitutional rights of the defendant and the interests of society represented by the People, including the defendant's

background, the nature and circumstances of the defendant’s present and prior felony convictions, and the particulars of his or her background, character, and prospects.

This bill would direct a judge, when determining whether to strike a prior conviction under the Three Strikes law, to consider both the constitutional rights of the defendant and the interests of society represented by the People, including the nature and circumstances of the defendant’s present felonies and prior serious and violent felony convictions, and the particulars of the defendant’s background, character, and prospects. The bill would require the court to place great weight in favor of striking a prior conviction if the present felony conviction is not a violent or serious felony as defined.

This bill would also state the intent of the Legislature that courts continue to exercise sentencing discretion as specified.

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

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

1 SECTION 1. Section 1385 of the Penal Code is
2 amended to read:

3 1385. (a) The judge or magistrate may, either—of
4 upon his or her own motion or upon the application of the
5 prosecuting attorney, and in furtherance of justice, order
6 an action to be dismissed. The reasons for the dismissal
7 must be set forth in an order entered upon the minutes.
8 No dismissal shall be made for any cause which would be
9 ground of demurrer to the accusatory pleading.

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

13 (c) In determining whether to strike a prior
14 conviction under subdivisions (b) to (i), inclusive, of
15 Section 667, or Section 1170.12, a judge shall consider both
16 the constitutional rights of the defendant, and the
17 interests of society represented by the People. The judge
18 shall consider the nature and circumstances of the
19 defendant’s present felonies and prior serious or violent
20 felony convictions, and the particulars of his or her



1 background, character, and prospects. Great weight in
2 favor of striking a prior conviction shall be given if the
3 present felonies are not violent or serious felonies, as
4 defined in subdivision (c) of Section 667.5 and subdivision
5 (c) of Section 1192.7.

6 SEC. 2. It is the intent of the Legislature that courts
7 continue to exercise their discretion under Section 1385
8 of the Penal Code in determining the extent to which
9 persons should be punished under the law, and nothing
10 in this act shall be construed to limit the current
11 discretion of courts to strike prior convictions.

