

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, Vincent, and  
Wesson)**

(Coauthors: Senators Hughes and Murray)

February 24, 2000

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An act to amend ~~Sections 667 and 1170.12~~ *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.

~~(1) Existing law, added by 2 initiative statutes, prescribes an indeterminate term enhancement of life imprisonment for any person convicted of a felony who has 2 or more prior violent or serious felony convictions, as defined. Existing law provides that the minimum term of this enhancement shall be served consecutively and is 3 times the term otherwise provided for the current offense, 25 years, or the term calculated by the court pursuant to existing determinate sentencing provisions, whichever is greater. These initiative statutes provide that any amendment of their provisions shall require a 2/3 vote of the membership of each house.~~

~~(2) This bill would provide that this enhancement shall apply only if a defendant's current conviction is for a violent or serious felony or offense, as defined.~~

Vote: ~~2/3~~—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 667 of the Penal Code is~~
- 2 ~~SECTION 1. Section 1385 of the Penal Code is~~
- 3 ~~amended to read:~~
- 4 1385. (a) The judge or magistrate may, either of his
- 5 or her own motion or upon the application of the
- 6 prosecuting attorney, and in furtherance of justice, order
- 7 an action to be dismissed. The reasons for the dismissal



1 must be set forth in an order entered upon the minutes.  
2 No dismissal shall be made for any cause which would be  
3 ground of demurrer to the accusatory pleading.

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

7 (c) *In determining whether to strike a prior*  
8 *conviction under subdivisions (b) to (i), inclusive, of*  
9 *Section 667, or Section 1170.12, a judge shall consider both*  
10 *the constitutional rights of the defendant, and the*  
11 *interests of society represented by the People. The judge*  
12 *shall consider the nature and circumstances of the*  
13 *defendant's present felonies and prior serious or violent*  
14 *felony convictions, and the particulars of his or her*  
15 *background, character, and prospects. Great weight in*  
16 *favor of striking a prior conviction shall be given if the*  
17 *present felonies are not violent or serious felonies, as*  
18 *defined in subdivision (c) of Section 667.5 and subdivision*  
19 *(c) of Section 1192.7.*

20 SEC. 2. *It is the intent of the Legislature that courts*  
21 *continue to exercise their discretion under Section 1385*  
22 *of the Penal Code in determining the extent to which*  
23 *persons should be punished under the law, and nothing*  
24 *in this act shall be construed to limit the current*  
25 *discretion of courts to strike prior convictions.*

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**All matter omitted in this version of the  
bill appears in the bill as introduced in the  
Assembly, February 24, 2000 (JR 11)**

