


# EXHIBIT A

SPECIAL DIRECTIVE 20-08

TO: ALL DEPUTY DISTRICT ATTORNEYS

FROM: GEORGE GASCÓN   
District Attorney

SUBJECT: SENTENCING ENHANCEMENTS/ALLEGATIONS

DATE: DECEMBER 7, 2020

This Special Directive addresses the following chapters in the Legal Policies Manual:

Chapter 2	Crime Charging - Generally
Chapter 3	Crime Charging - Special Policies
Chapter 7	Special Circumstances
Chapter 12	Felony Case Settlement Policy
Chapter 13	Probation and Sentencing Hearings

Effective **December 8, 2020**, the policies outlined below supersede the relevant sections of the abovementioned chapters of the Legal Policies Manual. Additionally, the following sections of the Legal Policies Manual are removed in their entirety. Chapter 2.10 - Charging Special Allegations, Chapter 3.02 - Three Strikes, Chapter 7 - Special Circumstances, Chapter 12.05 - Three Strikes, Chapter 12.06 - Controlled Substances.

**INTRODUCTION**

Sentencing enhancements are a legacy of California's "tough on crime" era. (See Appendix.) It shall be the policy of the Los Angeles County District Attorney's Office that the current statutory ranges for criminal offenses alone, without enhancements, are sufficient to both hold people accountable and also to protect public safety. While initial incarceration prevents crime through incapacitation, studies show that each additional sentence year causes a 4 to 7 percent increase in recidivism that eventually outweighs the incapacitation benefit.<sup>1</sup> Therefore, sentence enhancements or other sentencing allegations, including under the Three Strikes law, shall not be filed in any cases and shall be withdrawn in pending matters.

This policy does not affect the decision to charge crimes where a prior conviction is an element of the offense [i.e., felon in possession of a firearm (Penal Code § 29800(a)(1)), driving under the influence with a prior (Vehicle Code § 23152), domestic violence with a prior (Penal Code §

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<sup>1</sup> Mueller-Smith, Michael (2015) "The Criminal and Labor Market Impacts of Incarceration.", available at <https://sites.lsa.umich.edu/mgms/wp-content/uploads/sites/283/2015/09/incar.pdf>.

273.5(f)(1)), etc.], nor does it affect Evidence Code provisions allowing for the introduction of prior conduct (i.e., Evidence Code §1101, 1108, and 1109).

The specified allegations/enhancements identified in this policy directive are not an exhaustive list of all allegations/enhancements that will no longer be pursued by this office; however, these are the most commonly used allegations/enhancements.

## **POLICY**

- Any prior-strike enhancements (Penal Code § 667(d), 667(e); 1170.12(a) and 1170.12 (c)) will not be used for sentencing and shall be dismissed or withdrawn from the charging document. This includes second strikes and any strikes arising from a juvenile adjudication;
- Any Prop 8 or “5 year prior” enhancements (Penal Code §667(a)(1)) and “3 year prior” enhancements (Penal Code §667.5(a)) will not be used for sentencing and shall be dismissed or withdrawn from the charging document;
- STEP Act enhancements (“gang enhancements”) (Penal Code § 186.22 et. seq.) will not be used for sentencing and shall be dismissed or withdrawn from the charging document;
- Special Circumstances allegations resulting in an LWOP sentence shall not be filed, will not be used for sentencing, and shall be dismissed or withdrawn from the charging document;
- Violations of bail or O.R. release (PC § 12022.1) shall not be filed as part of any new offense;
- If the charged offense is probation-eligible, probation shall be the presumptive offer absent extraordinary circumstances warranting a state prison commitment. If the charged offense is not probation eligible, the presumptive sentence will be the low term. Extraordinary circumstances must be approved by the appropriate bureau director.

## **II. PENDING CASES**

At the first court hearing after this policy takes effect, DDAs are instructed to orally amend the charging document to dismiss or withdraw any enhancement or allegation outlined in this document.

## **III. SENTENCED CASES**

Pursuant to PC § 1170(d)(1), if a defendant was sentenced within 120 days of December 8, 2020 they shall be eligible for resentencing under these provisions. DDAs are instructed to not oppose defense counsel’s request for resentencing in accordance with these guidelines.

## APPENDIX

California has enacted over 100 sentencing enhancements, many of which are outdated, incoherent, and applied unfairly. There is no compelling evidence that their enforcement improves public safety. In fact, the opposite may be true. State law gives District Attorneys broad authority over when and whether to charge enhancements. The overriding concern is interests of justice and public safety.

The Stanford Computational Policy Lab studied San Francisco's use of sentencing enhancements from 2005 to 2017. They released their report, *Sentencing Enhancements and Incarceration: San Francisco, 2005-2017* in October of 2019. The following policy is informed by the results of the Stanford study.

As noted in the study:

“During the 1980s and 90s, enhancements became more numerous and severe. Dozens of new enhancement laws were passed in a way that critics alleged was haphazard—in “reaction to the ‘crime of the month.’”

California's massive rates of incarceration can be tied directly to the extreme sentencing laws passed by voters in the 1990's, including the 1994 Three Strikes Law. In 1980, California had a prison population of 23,264. In 1990, it was 94,122. In 1999, five years after the passage of Three Strikes, California had increased its population to a remarkable 160,000. By 2006, the prison population had ballooned to 174,000 prisoners. California now has 130,000 people in state prison and 70,000 people in local jails.

The Stanford study found that the use of sentencing enhancements in San Francisco accounted for about **1 out of 4 years** served in jail and prison. This study found that the use of sentencing enhancements -- mostly Prop. 8 priors and Three Strikes enhancements -- accounted for half of the time served for enhancements. The study concluded that we could substantially reduce incarceration by ceasing to use enhancements. These enhancements also exacerbate racial disparities in the justice system: **45% of people serving life sentences in CDCR under the Three Strikes law are black.**

Gang enhancements have been widely criticized as unfairly targeting young men of color. Recent analyses by the LA Times suggest that the CALGANG database is outdated, inaccurate and rife with abuse. According to California Department of Corrections and Rehabilitation data from 2019, more than 90 percent of adults with a gang enhancement in state prison were either black or Latinx.

According to Fordham Law Prof. John Pfaff, “There is strong empirical support for declining to charge these status enhancements. Long sentences imposed by strike laws and gang enhancements provide little additional deterrence, often incapacitate long past what is required by public safety, impose serious and avoidable financial and public health costs in the process, and may even lead to greater rates of reoffending in the long run.”

According to Pfaff, a growing body of evidence-based studies have suggested that policing deters; long sentences do little. What deters most effectively is the risk of detection and apprehension in the first place. Other studies increasingly indicate that spending more time in prison can *cause* the



risk of later reoffending; as the harms and traumas experienced in prison grow, the ability to reintegrate after release falls.

That prison may actually increase the risk of reoffending while imposing serious costs on communities starkly illuminates the need to invest in alternatives. Such options do exist. One striking example: by expanding access to (non-criminal justice based) drug treatment, the expansion of Medicaid yielded billions in reduced crime in states that participated in the expansion.

By avoiding harsh sentencing and investing in rehabilitation programs for the incarcerated, we can reduce crime *and* help people improve their lives.


***The policies of this Special Directive supersede any contradictory language of the Legal Policies Manual.***

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## EXHIBIT B

SPECIAL DIRECTIVE 20-14

TO: ALL DEPUTY DISTRICT ATTORNEYS

FROM: GEORGE GASCÓN   
District Attorney

SUBJECT: RESENTENCING

DATE: DECEMBER 7, 2020

This Special Directive addresses issues of the Bureau of Prosecution Support Operations in Chapter 1.07.03 and Probation and Sentencing Hearings in Chapter 13 and Postconviction Proceedings in Chapter 17 of the Legal Policies Manual. Effective **December 8, 2020**, the policies outlined below supersede the relevant sections of Chapter 13 and Chapter 17 of the Legal Policies Manual.

**INTRODUCTION**

Today, California prisons are filled with human beings<sup>1</sup> charged, convicted and sentenced under prior District Attorneys' policies. Effective today, District Attorney George Gascón has adopted new charging and sentencing policies.

Justice demands that the thousands of people currently serving prison terms imposed in Los Angeles County under earlier, outdated policies, are also entitled to the benefit of these new policies. Many of these people have been incarcerated for decades or are serving a "[virtual life sentence](#)" designed to imprison them for life. The vast majority of incarcerated people are members of groups long disadvantaged under earlier systems of justice: Black people, people of color, young people, people who suffer from mental illness, and people who are poor. While resentencing alone cannot correct all inequities inherent in our system of justice, it should at least be consistent with policies designed to remedy those inequities.

The new Resentencing Policy is effective immediately and shall apply to all offices, units and attorneys in the Los Angeles County District Attorney's Office (hereinafter "Office"). While particular attention will be paid to certain people as discussed herein, every aspect of existing sentencing or resentencing policy will be subject to examination. The intent of this Resentencing Policy is that it will evolve with time to ensure that it reflects the values of the District Attorney, and by extension, the people of Los Angeles County.

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<sup>1</sup> We will seek to avoid using dehumanizing language such as "inmate," "prisoner," "criminal," or "offender" when referencing incarcerated people.

## LENGTH OF SENTENCE

The sentences we impose in this country, in this state, and in Los Angeles County are far too long. Researchers have long noted the high cost, ineffectiveness, and harm to people and communities caused by lengthy prison sentences; sentences that are longer than those of any comparable nation. DA-elect Gascón campaigned on stopping the practice of imposing excessive sentences.

With regard to resentencing, the Model Penal Code recommends judicial resentencing hearings after 15 years of imprisonment for all convicted people:

The legislature shall authorize a judicial panel or other judicial decision maker to hear and rule upon applications for modification of sentence from prisoners who have served 15 years of any sentence of imprisonment.

(American Law Institute (2017) Model Penal Code Sentencing, Proposed Final Draft, p. 681.)

National parole experts Edward Rhine, the late Joan Petersilia, and Kevin Reitz have endorsed this recommendation, adding: “We would have no argument with a shorter period such as 10 years.” ... These time frames correspond with criminological research showing that people age out of crime, with most “criminal careers” typically lasting less than ten years.” (Rhine, E. E., Petersilia, J., & Reitz, R. 2017. “The Future of Parole Release,” pp. 279-338 in Tonry, M. (Ed.) *Crime and Justice*, Vol, 46, p. 294.)

**Accordingly, this Office will reevaluate and consider for resentencing people who have already served 15 years in prison.** Experts on post-conviction justice recommend that resentencing be allowed for all people (not just those convicted as children or as emerging adults) and some experts recommend an earlier date for reevaluating continued imprisonment.

## **APPLICATION OF SENTENCE ENHANCEMENT POLICY FOR OPEN/PENDING CASES**

For any case that is currently pending, meaning that judgment has not yet been entered, or where the case is pending for resentencing, or on remand from another court, the Deputy District Attorney in charge of the case shall inform the Court at the next hearing of the following:

“At the direction of the Los Angeles County District Attorney, in accordance with Special Directive 20-08 concerning enhancements and allegations, and in the interest of justice, the People hereby

1. join in the Defendant’s motion to strike all alleged sentence enhancement(s); or
2. move to dismiss all alleged sentence enhancement(s) named in the information for all counts.

## **FURTHER DIRECTIVES FOR OPEN/PENDING CASES**

The following rules apply to any case where a defendant or petitioner is legally eligible for resentencing or recall of sentence, including but not limited to:

- Habeas corpus cases.
- Cases remanded to Superior Court by the Court of Appeal or Supreme Court.
- Cases referred to the Superior Court under Penal Code section 1170(d)(1).
- Cases pending resentencing under Penal Code sections 1170.126, 1170.127, 1170.18, 1170.91, and 1170.95.
- Cases pending under Penal Code section 1170(d)(2).
- All cases where the defendant was a minor at the time of the offense.
- Any other case that may be the subject of resentencing not specified here.

Any Deputy District Attorney assigned to a case pending resentencing or sentence recall consideration under any valid statute shall comply with the following directives until further notice.

- 1) If the defendant or petitioner is serving a sentence that is higher than what he/she would receive today, due to operation of law or by operation of the District Attorney's new Sentencing Policy, the deputy in charge of the case shall withdraw any opposition to resentencing or sentence recall and request a new sentence that complies with current law and/or the District Attorney's new Sentencing Policy. This policy applies even where enhancements were found true in a prior proceeding. This policy shall be liberally construed to achieve its purposes.
- 2) If the defendant or petitioner is seeking relief under Penal Code section 1170.95, the DDA may concede that the petitioner qualifies for relief. If the assigned DDA does not believe that the petitioner qualifies for relief, the DDA must request a 30 day continuance, during which time the assigned DDA shall review the case in light of the Office's specific Penal Code 1170.95 Policy, *see below*. If the DDA continues to oppose relief, the DDA shall submit the reasons in writing to the Head Deputy. The Head Deputy shall then seek approval from the District Attorney or his designee in order to determine whether the Office will continue to oppose relief.
- 3) If a defendant or petitioner would not qualify for a reduced sentence by operation of law if convicted today or under the Office's new Sentencing Policy, then the DDA in charge of the case may seek a 30-day continuance. During that time, the deputy shall evaluate whether to support or oppose the resentencing (or sentence recall) request. If the deputy believes that compelling and imminent public safety concerns justify opposition to revisiting the sentence, then the deputy must submit those concerns in writing to her Head Deputy who shall then seek approval from the District Attorney or his designee.
- 4) All laws concerning victim notification and support shall be honored.

## **PENAL CODE § 1170.95/SB 1437 RESENTENCING POLICY**

1. We start with a position of respect for our co-equal branch of government, the legislature. Like the courts, we presume that laws passed by the legislature are constitutional. “[U]nder long-established principles, a statute, once enacted, is presumed to be constitutional.” (*Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055, 1119.) We will no longer seek to delay implementation of laws by making arguments that laws that provide retroactive relief are unconstitutional.
2. The Office’s position is that defense counsel should be appointed when the petition is filed and there should be no summary denials by the court. (*People v. Cooper* (2020) 54 Cal.App.5th 106; *People v. Tarkington* (2020) 49 Cal.App.5th 892, 917, review granted Aug. 12, 2020, S263219 [dis. opn. of Lavin, J.] )
3. Many people accepted plea offers to manslaughter, made by this Office in order to avoid a conviction for murder. It is this Office’s policy that where a person took a plea to manslaughter or another charge in lieu of a trial at which the petitioner could have been convicted of felony murder, murder under the natural and probable consequences doctrine, attempted murder under the natural and probable consequences doctrine, or another theory covered by Senate Bill 1437, that person is eligible for relief under section 1170.95. Such a position avoids disparate results whereby a person who this Office has already determined to be less culpable -- as evidenced by allowing a plea for manslaughter -- serves a longer sentence than a similarly situated person who is now eligible for relief under section 1170.95.
4. Section 1170.95 (d)(2) states, “[I]f there was a prior finding by a court or jury that the defendant did not act with reckless indifference to human life or was not a major participant in the felony, the defendant is entitled to have his or her murder conviction vacated.” This prior finding includes cases where a magistrate found that there was insufficient evidence of major participation in a felony or reckless indifference to human life following a preliminary hearing, or at any stage in the proceedings.
5. The Office’s position is that, consistent with the definition of “prima facie,” the court must not engage in fact finding at the prima facie stage. (*People v. Drayton* (2020) 47 Cal. App. 5th 965.)
6. The Office’s position is that if the person was an accomplice to the underlying felony, and had a special circumstance finding that was decided before *People v. Banks* (2015) 61 Cal 4th 788 or *People v. Clark* (2016) 63 Cal. 4th 522, then the filing of a Penal Code section 1170.95 petition is adequate to trigger the section 1170.95 process. There is no requirement that the petitioner file a separate habeas petition first. (*People v. York* (2020) 54 Cal. App. 5th 250, 258.) The next stage is an evidentiary hearing.
7. The Office’s position is that if allegations pursuant to Penal Code section 190.2 (a) (17) were dismissed as part of plea negotiations and the petitioner was not the actual killer, this Office will not attempt to prove the individual is ineligible for resentencing. This Office will stipulate to eligibility per section 1170.95(d)(2).

8. The Office's position is that, consistent with *People v. Medrano* (2019) 42 Cal. App. 5th 1001, 1008, rev. granted, that a person who was convicted of attempted murder under the natural and probable consequences doctrine is eligible for resentencing under section 1170.95. Among other reasons, this avoids the great disparity that arises when one who was convicted of murder under the now abolished natural and probable consequences doctrine is able to be resentenced but one who was convicted of attempted murder is not.
9. If the client has previously won relief under *People v. Chiu* (2014) 59 Cal. 4th 155, the Office will not attempt to argue that the petitioner is ineligible for resentencing, or could be convicted as a direct aider and abettor.
10. If the jury was never instructed on direct aiding and abetting, implied malice murder, or any other intent-to-kill theory, or if the trial prosecutor never argued one of these theories, this Office will not argue that the petitioner can now be convicted under one of these theories during 1170.95 proceedings. Theories must remain consistent.
11. Relatedly, if a jury was not even instructed on implied malice murder or some other theory of homicide not covered by section 1170.95, the prosecution cannot now meet our burden of proof beyond a reasonable doubt that the petitioner is ineligible for resentencing.
12. If the petitioner was convicted of murder and the petitioner's jury was instructed on the natural and probable consequences theory doctrine and/or a first or second degree felony murder instruction at trial, then it may have been possible that petitioner was convicted under one of these theories and this Office will not seek to rebut petitioner's prima facie showing. The case must proceed to the evidentiary hearing.
13. Because jury deliberations are secret, in the absence of special findings, it is not possible to determine the actual basis of a jury verdict when multiple theories were before the jury. Therefore, at an evidentiary hearing, if the petitioner was convicted of murder and the petitioner's jury was instructed with a felony murder or a natural and probable consequences doctrine instruction along with other theories, there is a reasonable doubt that the jury convicted petitioner under the old felony murder rule or the now abolished doctrine of natural and probable consequences. Because the statute allows for the introduction of "new or additional evidence," the deputy district attorney may introduce evidence to show, for example, that the petitioner was the actual killer, or acted as a major participant with reckless indifference to human life, or was convicted under a still-valid theory on which the jury was instructed. See below for this Office's position on evidence that we will and will not seek to admit.
14. At an evidentiary hearing pursuant to section 1170.95 (d)(3), the prosecution must prove beyond a reasonable doubt that the petitioner is ineligible for resentencing. A deputy district attorney may not argue that the standard for the court to determine whether a petitioner is ineligible for resentencing is whether there is "sufficient evidence" to uphold the conviction. This is a standard of proof for an appellate court affirming a conviction. It is not the standard of proof for a trial court in a section 1170.95 proceeding. (*People v. Lopez* (2020) 56 Cal.App. 5th 936, 949-950.)

15. It is this Office's position that the Evidence Code applies to any evidentiary hearing pursuant to section 1170.95. Statements made after promises of leniency or threats of punishment (express or implied) are unreliable. A parole hearing is a coercive environment and therefore statements made in them are unreliable and involuntary. This Office will not seek to introduce statements by a petitioner made in parole hearing transcripts into court for any purpose.
16. As a matter of due process, it is this Office's policy that a petitioner has a right to confrontation at a hearing under section 1170.95. Accordingly, this Office will not seek to admit statements of a declarant when the petitioner did not have an opportunity to cross-examine the declarant or when a purported expert's opinion is based on inadmissible hearsay. (See *People v. Sanchez* (2016) 63 Cal.4th 665.)
17. The Office will comply with all of our obligations under *Brady v. Maryland* and its progeny during resentencing procedures.
18. The Office's position is that any defendant who was under the age of 25 when the crime occurred is entitled to present mitigation documents pursuant to *People v. Franklin* and Penal Code section 3051.
19. The Office's position is that a person's age and the "diminished culpability of youth," a person's mental illness, or cognitive impairment, or a person's intoxication is relevant to the determination whether a petitioner meets the standard of "reckless indifference to human life."
20. On resentencing, this Office will dismiss enhancements consistent with our current enhancement policies and otherwise not seek a sentence that is inconsistent with this Office's current sentencing policies.

### **RESENTENCING UNIT**

This Office declares that new Sentencing, Enhancement and Juvenile policies must apply with equal force to sentences where the judgment is final. Accordingly, this Office commits to a comprehensive review of cases where the defendant received a sentence that was inconsistent with the charging and sentencing policies in force after Tuesday, December 8, 2020, at 12:01 AM.

In such cases, this Office shall use its powers under Penal Code section 1170(d)(1) to recommend recall and resentencing. While priority shall be given to the cases enumerated below, the ultimate goal shall be to review and remediate every sentence that does not comport with the new Sentencing, Enhancement and Juvenile Policies.

Specifically, this Office commits to an expedited review of the following categories of cases, which are themselves a subset of a universe of 20,000-30,000 cases with out-of-policy sentences:

- People who have already served 15 years or more;
- People who are currently 60 years of age or older;
- People who are at enhanced risk of COVID-19 infection;
- People who have been recommended for resentencing by CDCR;



- People who are criminalized survivors;
- People who were 17 years of age or younger at the time of the offense and were prosecuted as an adult.

In formulating this policy, we rely on current statistical data from the California Department of Corrections and Rehabilitation (CDCR). (See Appendix.) Over time, the data may be subject to change; the urgency of our mission will not be. In seeking resentencing under 1170(d)(1), this Office shall argue that resentencing is necessary to eliminate disparity of sentences and to promote uniformity of sentencing.

At all types of resentencing hearings, filing deputies shall assist the Resentencing Court by setting forth any and all postconviction factors that support resentencing, including, but not limited to: mitigation evidence; CDCR disciplinary records and record of rehabilitation and positive programming while incarcerated; evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the risk for future violence; evidence that reflects that circumstances have changed since the original sentencing so that continued incarceration is no longer in the interest of justice; and post-release reentry plans, demonstrating any family or community support that is available upon release. (See e.g. Assembly Bill 1812, Pen. Code § 1170, subd. (d).)

### **LIFER PAROLE HEARINGS**

This Office recognizes that parole is an effective process to reduce recidivism, ensure public safety, and assist people in successfully rejoining society. The CDCR's own statistics show that people paroled from life terms have a recidivism rate of less than four percent.

We are not experts on rehabilitation. While we have information about the crime of conviction, the Board of Parole Hearings already has this information. Further, as the crime of conviction is of limited value in considering parole suitability years or decades later, (see *In re Lawrence* (2008) 44 Cal.4th 1181; *In re Shaputis* (2008) 44 Cal. 4th 1241, 1255), the value of a prosecutor's input in parole hearings is also limited. Finally, pursuant to Penal Code section 3041, there is a presumption that people shall be released on parole upon reaching the Minimum Eligible Parole Date (MEPD), their Youth Parole Eligible Date, (YEPD), or their Elderly Parole Date (EPD). Currently, sentences are being served that are much longer than the already lengthy mandatory minimum sentences imposed. Such sentences are constitutionally excessive. (See *In re Palmer* (2019) 33 Cal.App.5th 1199.)

This Office's default policy is that we will not attend parole hearings and will support in writing the grant of parole for a person who has already served their mandatory minimum period of incarceration, defined as their MEPD, YEPD or EPD. However, if the CDCR has determined in their Comprehensive Risk Assessment that a person represents a "high" risk for recidivism, the DDA may, in their letter, take a neutral position on the grant of parole.

This Office will continue to meet its obligation to notify and advise victims under California law, and is committed to a process of healing and restorative justice for all victims.

## **YOUTH AND CHILDREN<sup>2</sup>**

Currently, there are thousands of people from Los Angeles County serving sentences in the CDCR for crimes they committed as children. As recent developments in adolescent brain science teach us, young people are uniquely capable of rehabilitation and can lead productive lives as contributing members of society without serving long sentences.

Under new Juvenile Directives, available here, people who are 17 or younger at the time of their offense, will not be transferred to adult court and will remain committed to the youth system until they are mature enough to reenter society. Accordingly, any person who was a minor at the time of the offense and meets the eligibility requirements for recall and/or resentencing in adult court, including but not limited to actions pursuant to Penal Code sections 1170(d)(2), or 1170(d)(1), falls within this Office's policy to oppose transfer of minors to adult court. In such cases, DDAs shall join in any defense motion seeking to transfer the person to juvenile court for further proceedings, and the deputy on the case shall state the reasons for supporting such transfer, consistent with this Office's policies, on the record.

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<sup>2</sup> We will refer to "youth," "child," or "children" instead of "juvenile(s)." The word "juvenile" is used almost exclusively as a way to describe children who are in the criminal legal system or as police descriptors. As a result, it has become a way to mark certain children as "other." To the extent possible, we will refer to the children in the criminal legal system as we would to all children, as "young person(s)" or "children." In accordance with Penal Code § 3051, we will refer to persons age 18 to 25 as "youths."

## **APPENDIX**

### **A. Current CDCR Population from Los Angeles County**

*Table A.1: Descriptive Statistics for Demographic and Other Data*

<b>Variable</b>	<b>Level</b>	<b>Number</b>	<b>Percentage</b>
Total CDCR Prison Population Originating in Los Angeles County = 29,556* (*excluding LWOP and condemned cases)			
<i>Gender</i>			
	Female	1,078	3.65%
	Male	28,478	96.35%
<i>Race/Ethnicity</i>			
	Black	11,139	37.69%
	Latinx/Hispanic	14,683	49.68%
	White	2,263	7.66%
	Other	1,471	4.98%
<i>Age Group</i>			
	Less than 20	31	0.10%
	20-29	5,945	20.11%
	30-39	9,098	30.78%
	40-49	6,489	21.95%
	50-59	5,043	17.06%
	60+	2,950	9.98%
<i>Offense Category</i>			
	Crimes Against Persons	25,391	85.91%
	Drug Crimes	461	1.56%
	Property Crimes	2,230	7.54%
	Other Crimes	1,474	4.99%
<i>Time Served</i>			
	Less than 5	8,307	28.11%
	5 to less than 10	6,762	22.88%
	10 to less than 15	5,123	17.33%
	15 to less than 20	3,446	11.66%

	20+	5,918	20.02%
<i>Sentence Type</i>			
	2nd Strike	8,106	27.43%
	3rd Strike	2,395	8.10%
	Determinate Sentence	9,841	33.30%
	Life with Parole	9,214	31.17%

***Table A.1: Time Served, Age at Time of Offense, Current Age, Classification Scores, and Serious Rules Violation Reports (RVRs) Received in Past 3 Years***

	<b>Count/ Percentage of Total LAC Prison Population</b>
Served 20 Years or More	5,918 (20.02%)
Served 15 Years or More	9,364 (31.68%)
Served 10 Years or More	14,487 (49.02%)
Served 7 Years or More	18,206 (61.60%)
Currently 60 Years or Older	2,950 (9.98%)
Currently 65 Years or Older	1,367 (4.62%)
Age 25 or Younger at Time of Offense	13,410 (45.37%)
Age 18 or Younger at Time of Offense	3,291 (11.13%)
Age 17 or Younger (Under 18) at Time of Offense	1,557 (5.27%)

Age 16 or Younger at Time of Offense	778 (2.63%)
Age 15 or Younger at Time of Offense	255 (0.86%)
Classification Score of 25 or Below	12,297 (41.61%)
Classification Score of 19 or Below	10,700 (36.20%)
No Serious RVRs in Past 3 Years	25,501 (86.28%)
CS of 25 or Below with No Serious RVRs in Past 3 Years	12,016 (40.66%)
CS of 19 or Below with No Serious RVRs in Past 3 Years	10,490 (35.49%)

**Table A.3: Eligibility by Offense Type and Time Served (mix of lower-level offenses)**

Offense Type	Served 10 Years or More		Served 7 Years or More		All	
	Frequency	Percentage of Total Prison Population Originating in LAC*	Frequency	Percentage of Total Prison Population Originating in LAC*	Frequency	Percentage of Total Prison Population Originating in LAC*
Drug Offenses	132	0.45%	158	0.53%	461	1.56%
Residential Burglaries	476	1.61%	688	2.33%	1,643	5.56%
Robberies	2,045	6.92%	2,828	9.57%	5,297	17.92%
Residential Burglaries & Robberies	2,521	8.53%	3,516	11.90%	6,940	23.48%
Non-Sex Offenses	12,393	41.93%	15,618	52.84%	26,029	88.07%
Non-Murder & Non-Sex Offenses	5,731	19.39%	7,937	26.85%	17,048	57.68%
All Non-Violent, Non-Serious, Non-Sex Crimes	527	1.78%	644	2.18%	2,236	7.57%
All Non-Non-Non Crimes (with Residential Burglaries)	1,003	3.39%	1,332	4.51%	3,879	13.12%
All Non-Non-Non Crimes (with Res. Burglaries & Robberies)	3,048	10.31%	4,160	14.07%	9,176	31.05%
All Incarcerated*	14,463	48.93%	18,167	61.47%	29,556	100.00%

\*The total prison population originating in LAC in this table excludes all LWOP and condemned cases.

## **B. Background on Our Incarceration Crisis**

Our ballooning prison population [did not result from an increase in crime](#). In fact, our crime rate has declined dramatically since the early 1990's. Rather, [harsher sentencing laws like](#) Life Without the Possibility of Parole, an increase in mandatory minimum sentences for indeterminate sentences, Three Strikes sentencing, and requirements that that restrict people to complete 85% of their imposed time now keep people in prison for longer than ever before, long after they pose any safety risk to their community.

There are currently [more people serving life sentences](#) in America than were locked up in prison at all during the 1970s. [One in seven](#) people behind bars is serving a life sentence.

California has led the way in this explosion. We had [23,000 people](#) incarcerated in 1980. By 2000, [we had over 160,000](#) people. By 2010 we had 164,000. In the last 10 years, spurred by a [United States Supreme Court decision](#) holding that California's overcrowded prisons constituted cruel and unusual punishment, as well as by a growing public awareness that we are incarcerating too many people for too long, we have moved to reduce our prison population. However, we have five times as many people incarcerated as we had in 1980.

California spent [a shocking \\$15.7 billion on prisons in 2019-2020](#). This represents 7.4% of all state funds. This is occurring while people are sleeping in our streets, our parks are trash-ridden, our schools are in need of repair, our once-free public universities are underfunded and tuition rises, people are hungry, and we need major infrastructure repair to even do things like provide clean water to the people of California.

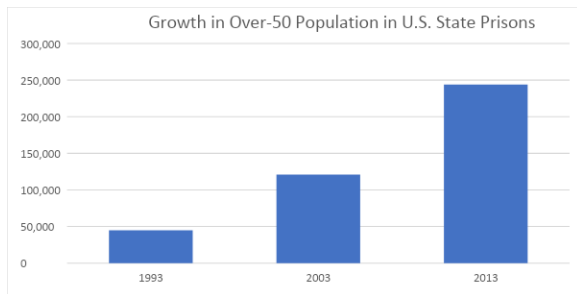
In Los Angeles County alone we currently have almost 30,000 people in CDCR.

Nationally, our criminal justice policies have disproportionately impacted minority populations. 60% of people in prison are Black, despite making up just 13% of the population. One out of every five Black persons behind bars has a life sentence.

**Almost 93% of people sent to prison from Los Angeles County are Black people and people of color.** Black people are approximately 9% of Los Angeles's population. They constitute 38% of Los Angeles's state prison population. We can no longer deny that our system of hyper-criminalization and incarceration is anything other than racist.

The incarceration rate of women [is also on the rise](#). In 1980, there were 13,206 women in prison; in 2017, there were 111,360.

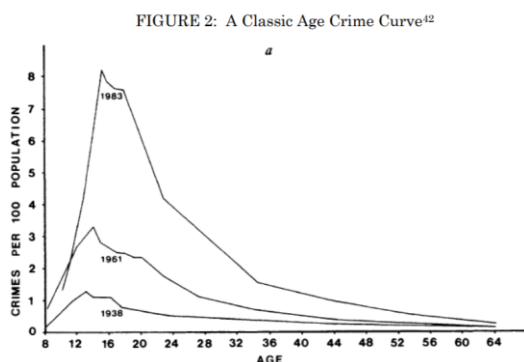
Harsh sentencing laws have also meant that the prison population is old. If we continue at current rates, [one in three people behind bars](#) in state prisons will be over 50 by 2030. In 1993, there were 45,000 people over 50 in U.S. state prisons. Twenty years later, there were 243,800. The growth in the aging prison population has continued. Since 1999, New York has decreased its prison population by 30 percent [but during that same time span saw a doubling](#) of its over 50 population. Between 2001 and 2014, [29,500 people over 55](#) died in federal and state prisons.



Current estimates show that the U.S. spends upwards of \$16 billion a year to care for its elderly population. In 2013 in Virginia, **nearly half of the Department of Corrections budget** for prisoner health care went to caring for the elderly.

### **Recidivism and the Age-Crime Curve**

Research consistently shows that individuals age out of crime, even those convicted of the most serious offenses. By the time individuals reach their thirties, their odds of committing future crimes drop dramatically. Much of this is due to neurological changes, which take place in profound ways up until an individual turns 26. The prefrontal cortex, which is highly involved in executive functioning and behavior control, continues to develop until age 26, making it harder for young people to make what adults consider logical and appropriate decisions.



Given these changes, it makes little sense to sentence children and adolescents to lengthy terms of incarceration without any meaningful opportunity for review, as the odds are extremely high that those children can be rehabilitated and reenter society.

Likewise, incarcerating an aging population makes little penological sense. Those aged 50-64 have [far lower recidivism rates](#) than the national average: seven percent compared to 43.3 percent. And those over 54 have just a four percent recidivism rate. In other words, we are spending billions to lock up people, 96% of whom will not even commit a technical violation once released.

### **Jurisdictions that allow for a “second look” or increased parole opportunities**

“Look back” provisions allow sentenced individuals to petition for a reduced sentence after they have shown meaningful signs of rehabilitation that indicate an ability to return to society. While several jurisdictions have parole eligibility, only California has enacted a robust “look back” Act thus far. Delaware has implemented one to address those sentenced under habitual offender laws.

**Federal:** Los Angeles Congresswoman Karen Bass and United States Senator Cory Booker introduced a bill for people serving in federal prison to reevaluate cases involving people [over 50 years old and for those who have served at least ten years of a sentence](#), creating a rebuttable presumption of release for those over 50.

**District of Columbia:** Recently, the District of Columbia passed Second Look Sentencing for youths. This month, the Council [is poised to expand this second look resentencing](#) to all who were under the age of 25 at the time of the crime.

**Oregon:** in January 2020, [Oregon's Second Look Resentencing](#), for minors [SB 1008](#) goes into effect.

**Florida:** Florida allows a second look for children who were sentenced as adults for offenses committed before their 18<sup>th</sup> birthday.

**Delaware:** People convicted before their 18th birthday of a first-degree murder may petition for modification after 30 years, and after 20 years for any other offense.

**Colorado:** Senate Bill 16-180 requires the Department of Corrections (DOC) to create a program for kids sentenced as adults for a felony and presumes release upon participation after 3 years.

**California:** has made many of its recent changes retroactive, including resentencing for those convicted of a third strike, Proposition 47, SB 1437, Penal Code section 1170, subsection (d), among others. California also [provides automatic parole review](#) when a person commits the crime before the age of 26 and has served 15, 20, or 25 years, depending on the controlling offense. California has also expanded elderly parole this year with [AB 3234](#) so that people who are 50 and have served at least 20 years are eligible for parole consideration.

***The policies of this Special Directive supersede any contradictory language of the Legal Policies Manual.***


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# EXHIBIT C

SPECIAL DIRECTIVE 20-08.1

TO: ALL DEPUTY DISTRICT ATTORNEYS

FROM: GEORGE GASCÓN   
District Attorney

SUBJECT: FURTHER CLARIFICATION OF SPECIAL DIRECTIVE 20-08

DATE: DECEMBER 15, 2020

This Special Directive is intended to further supplement the language provided in SD 20-08, Section II concerning Pending Cases, issued on December 7, 2020. The introduction of that Special Directive states, "...sentence enhancements or other sentencing allegations, including under the Three Strikes law, shall not be filed in any cases and shall be withdrawn in pending matters." The language is clear that this policy is intended to put an end to the practice of alleging strike priors and all other special allegations in accordance with the constitutional authority granted solely to prosecutors across the state of California.

If a pending matter has strike priors alleged or enhancements/allegations (pursuant to SD 20-08) deputies shall make the following record:

"The People move to dismiss and withdraw any strike prior (or other enhancement) in this case. We submit that punishment provided within the sentencing triad of the substantive charge(s) in this case are sufficient to protect public safety and serve justice. Penal Code section 1385 authorizes the People to seek dismissal of all strike prior(s) (or other enhancements) when in the interests of justice. Supreme Court authority directs this Court to determine those interests by balancing the rights of the defendant and those of society 'as represented by the People.' The California Constitution and State Supreme Court precedent further vest the District Attorney with sole authority to determine whom to charge, what charges to file and pursue, and what punishment to seek. That power cannot be stripped from the District Attorney by the Legislature, Judiciary, or voter initiative without amending the California Constitution. It is the position of this office that Penal Code section 1170.12(d)(2) and Penal Code 667(f)(1) are unconstitutional and infringe on this authority. Additional punishment provided by sentencing enhancements or special allegations provide no deterrent effect or public safety benefit of incapacitation--in fact, the opposite may be true, wasting critical financial state and local resources."

**Legal authority:** *People v. Superior Court (Romero)* (1996) 13 Cal. 4th 497, 530 ("[T]he language of [section 1385], 'furtherance of justice,' requires consideration both of the constitutional rights of the defendant, and *the interests of society represented by the People*, in determining whether there should be a dismissal." (emphasis in original); *Dix v. Superior Court* (1991) 53 Cal. 3d at 451.

Furthermore, if a court refuses to dismiss the prior strike allegations or other enhancements/allegations based on the People's oral request, the DDA shall seek leave of the court to file an amended charging document pursuant to Penal Code section 1009.


If a court further refuses to accept an amended charging document pursuant to Penal Code section 1009, the DDA shall provide the following information to their head deputy: Case number, date of hearing, name of the bench officer and the court's justification for denying the motion (if any). The DDA shall stipulate to any stay of proceedings if requested by the defense.

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## EXHIBIT D

SPECIAL DIRECTIVE 20-08.2

TO: ALL DEPUTY DISTRICT ATTORNEYS

FROM: GEORGE GASCÓN   
District Attorney

SUBJECT: AMENDMENT TO SPECIAL DIRECTIVE 20-08

DATE: DECEMBER 18, 2020

This Office is committed to eliminating mass incarceration and fostering rehabilitation for those charged with crimes. As such, this Office will not pursue prior strike enhancements, gang enhancements, special circumstances enhancements, out on bail/O.R. enhancements, or Penal Code section 12022.53 enhancements. After listening to the community, victims, and my deputy district attorneys, I have reevaluated Special Directive 20-08 and hereby amend it to allow enhanced sentences in cases involving the most vulnerable victims and in specified extraordinary circumstances. These exceptions shall be narrowly construed.

Effective immediately, Special Directive 20-08 is amended as follows:

The following sentence enhancements and allegations shall not be pursued in any case and shall be withdrawn in pending matters:

- Any prior-strike enhancements (Penal Code section 667(d), 667(e), 1170.12(a) and 1170.12(c)) will not be used for sentencing and shall be dismissed or withdrawn from the charging document. This includes second strikes and any strikes arising from a juvenile adjudication;
- Any Prop 8 or “5-year prior” enhancements (Penal Code section 667(a)(1)) and “three-year prior” enhancements (Penal Code section 667.5(a)) will not be used for sentencing and shall be dismissed or withdrawn from the charging document;
- STEP Act enhancements (“gang enhancements”) (Penal Code section 186.22 et. seq.) will not be used for sentencing and shall be dismissed or withdrawn from the charging document;
- Special circumstances allegations resulting in an LWOP sentence shall not be filed, will not be used for sentencing, and shall be dismissed or withdrawn from the charging document;
- Violations of bail or O.R. release (Penal Code section 12022.1) shall not be filed as part of any new offense;
- Firearm allegations pursuant to Penal Code section 12022.53 shall not be filed, will not be used for sentencing, and will be dismissed or withdrawn from the charging document.

However, where appropriate, the following allegations, enhancements and alternative sentencing schemes may be pursued:

- Hate Crime allegations, enhancements or alternative sentencing schemes pursuant to Penal Code sections 422.7 and 422.75;
- Elder and Dependent Adult Abuse allegations, enhancements, or alternative sentencing schemes pursuant to Penal Code sections 667.9, 368(b)(2)/12022.7(c);
- Child Physical Abuse allegations, enhancements or alternative sentencing schemes pursuant to Penal Code sections 12022.7(d), 12022.9, and 12022.95;
- Child and Adult Sexual Abuse allegations, enhancements or alternative sentencing schemes pursuant to Penal Code sections 667.61, 667.8(b), 667.9, 667.10 ,667.15, 674, 675, 12022.7(d), 12022.8(b), and 12022.85(b)(2);
- Human Sex Trafficking allegations, enhancements or alternative sentencing schemes pursuant to Penal Code sections 236.4(b) and 236.4(c);
- Financial crime allegations, enhancements or alternative sentencing schemes where the amount of financial loss or impact to the victim is significant, the conduct impacts a vulnerable victim population or to effectuate Penal Code section 186.11;
- Other than the enhancement or allegation prohibitions previously listed, enhancements or allegations may be filed in cases involving the following extraordinary circumstances with written Bureau Director approval upon written recommendation by the Head Deputy:
  - Where the physical injury personally inflicted upon the victim is extensive; or
  - Where the type of weapon or manner in which a deadly or dangerous weapon including firearms is used exhibited an extreme and immediate threat to human life;

Facts or circumstances that are sufficient to meet the legal definition of great bodily injury or use of a deadly or dangerous weapon alone are insufficient to warrant extraordinary circumstances. The written request and approval must be placed in the case file.

### CASE SETTLEMENT

The following directives cover case settlement.

1. If the charged offense(s) is probation-eligible, probation shall be the presumptive offer.
  - a. Appropriate deviations from this presumption are as follows:
    - i. If the charged offense(s) is probation-eligible, and extraordinary circumstances exist, the Deputy District Attorney may file the basis and recommendation for a deviation in writing to their Head Deputy and the appropriate Bureau Director. Upon written approval from the Bureau Director, the Deputy District Attorney may offer a state prison sentence in accordance with this policy. The written basis for the deviation, recommendation, and approval shall be kept in the case file.
    - ii. If, but for the terms of this directive, the People could have reasonably alleged an enhancement, and defendant's conduct would have therefore been ineligible for probation, Deputy District Attorneys may file a

recommendation for a deviation in writing to their Head Deputy. Upon written approval from the Head Deputy, the Deputy District Attorney may offer a state prison sentence pursuant to the sentencing triad of the substantive offense(s). The written basis for the deviation, recommendation, and approval shall be kept in the case file.

2. If the charged offense(s) is not probation eligible, the presumptive sentence shall be the low term.
  - a. When deviating from the low term the deputy shall document the supporting reasons in the case file.

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## EXHIBIT E



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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 115

HON. MARK S. ARNOLD, JUDGE

PEOPLE OF THE STATE OF CALIFORNIA, )  
 )  
 PLAINTIFF, )  
 )  
 VS. )  
 )  
 RUDY DOMINGUEZ, )  
 )  
 )  
 DEFENDANT. )  
 )  
 \_\_\_\_\_ )

SUPERIOR COURT  
NO. BA466952-01

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TUESDAY, DECEMBER 15, 2020

FOR THE PLAINTIFF: OFFICE OF THE DISTRICT ATTORNEY  
BY: JEFFREY HERRING, DEPUTY  
211 WEST TEMPLE STREET  
SUITE 200  
LOS ANGELES, CALIFORNIA 90012

FOR THE DEFENDANT: OFFICE OF THE PUBLIC DEFENDER  
BY: TRACI BLACKBURN, DEPUTY  
19-513 CRIMINAL COURTS BUILDING  
210 WEST TEMPLE STREET  
LOS ANGELES, CALIFORNIA 90012

CATHERINE A. ZINK, #9242  
OFFICIAL REPORTER

1 CASE NUMBER: BA466952-01  
2 CASE NAME: PEOPLE VS. RUDY DOMINGUEZ  
3 LOS ANGELES, CALIFORNIA TUESDAY, DECEMBER 15, 2020  
4 DEPARTMENT 115 HON. MARK S. ARNOLD, JUDGE  
5 REPORTER: CATHERINE A. ZINK, CSR #9242  
6 TIME: 2:50 P.M.  
7

8 APPEARANCES:

9 THE DEFENDANT IS PRESENT IN COURT WITH COUNSEL,  
10 TRACI BLACKBURN, BAR PANEL ATTORNEY,  
11 THE PEOPLE ARE REPRESENTED BY  
12 JEFFREY HERRING, DEPUTY DISTRICT ATTORNEY.  
13

14 THE COURT: WE'LL GO ON THE RECORD IN RUDY  
15 DOMINGUEZ, BA466952.

16 WE HAVE A NEW DEFENSE COUNSEL?

17 MS. BLACKBURN: YES. TRACI BLACKBURN, DEPUTY  
18 PUBLIC DEFENDER, ON BEHALF OF MR. DOMINGUEZ. HE'S  
19 PRESENT IN CUSTODY.

20 THE COURT: MR. HERRING IS HERE FOR THE PEOPLE.

21 WE'RE AT ZERO OF 60 TODAY.

22 MR. HERRING: YES, YOUR HONOR. THE PEOPLE HAVE A  
23 MOTION.

24 THE COURT: WHAT'S THAT?

25 MR. HERRING: CONSISTENT -- EXCUSE ME. AT THE  
26 DIRECTION OF THE LOS ANGELES COUNTY DISTRICT ATTORNEY, IN  
27 ACCORDANCE WITH SPECIAL DIRECTIVE 20-08 CONCERNING  
28 ENHANCEMENTS AND ALLEGATIONS, AND IN THE INTEREST OF

1 JUSTICE, THE PEOPLE HEREBY MOVE TO DISMISS ALL ALLEGED  
2 SENTENCING ENHANCEMENTS NAMED IN THE INFORMATION --  
3 EXCUSE ME -- IN THE INFORMATION FOR ALL COUNTS. IN  
4 ADDITION, WE MOVE TO DISMISS ANY SPECIAL CIRCUMSTANCES  
5 NAMED IN THE INFORMATION AT THIS POINT, IN THE INTEREST  
6 OF JUSTICE, YOUR HONOR.

7 THE COURT: AND THE INTEREST OF JUSTICE IS MET HOW?

8 MR. HERRING: YOUR HONOR, I BELIEVE IT'S THE NEW  
9 D.A.'S POSITION -- THE D.A.'S OFFICE POSITION THAT  
10 EXTENDED PRISON SENTENCES IN LOS ANGELES COUNTY ARE FAR  
11 TOO LONG; THAT THEY ARE COSTLY AND INEFFECTIVE AND HARM  
12 PEOPLE IN UNDERSERVED COMMUNITIES.

13 THE COURT: HAVE YOU CONSULTED WITH THE VICTIM'S  
14 FAMILY ON THIS?

15 MR. HERRING: I HAVE DISCUSSED WHAT THE D.A.'S  
16 POSITION IS WITH THE FAMILY, YES.

17 THE COURT: AND WHAT DO THEY SAY -- ARE THEY  
18 PRESENT IN COURT?

19 MR. HERRING: THEY ARE PRESENT IN COURT.

20 THE COURT: ARE ALL THESE FOUR PEOPLE -- ARE THEY  
21 ALL --

22 MR. HERRING: THEY'RE THE VICTIM'S FAMILY, YES,  
23 YOUR HONOR.

24 THE COURT: WHAT IS YOUR NAME, SIR?

25 THE WITNESS: HERNAN ROJO.

26 THE COURT: SPELL YOUR NAME.

27 THE WITNESS: HERNAN ROJO.

28 THE COURT: MR. ROJO?

1           HERNAN ROJO:   YES.

2           THE COURT:   DID MR. HERRING TELL YOU WHAT THE  
3   PEOPLE ARE ASKING, TO DISMISS THE SPECIAL CIRCUMSTANCES  
4   AND DISMISS ALL OF THESE SENTENCING ALLEGATIONS?

5           HERNAN ROJO:   YES.

6           THE COURT:   HOW DO YOU FEEL ABOUT THAT?

7           HERNAN ROJO:   I DON'T KNOW.

8           THE COURT:   YOU DON'T KNOW?

9           HERNAN ROJO:   WELL...

10          THE COURT:   WHAT'S THIS MAN'S NAME IN THE FRONT  
11   ROW?

12          FERNANDO ROJO:   FERNANDO ROJO.

13          MR. HERRING:   SENIOR.

14          THE COURT:   THIS IS THE VICTIM'S FATHER?

15          MR. HERRING:   YES.

16          THE COURT:   MR. ROJO, DID MR. HERRING DISCUSS WITH  
17   YOU WHAT THEIR INTENT IS TODAY?

18          FERNANDO ROJO:   WHAT DID YOU SAY?

19          THE COURT:   DID YOU SPEAK WITH MR. HERRING TODAY?

20          FERNANDO ROJO:   YES.

21          THE COURT:   DO YOU NEED TO SPEAK WITH AN  
22   INTERPRETER?

23          FERNANDO ROJO:   YES.

24          THE COURT:   I'M SORRY, I DIDN'T KNOW THAT.

25                       DID MR. HERRING TELL YOU THAT HE WANTS TO  
26   COME INTO THE COURTROOM AND DISMISS THE FIREARM  
27   ALLEGATIONS AND THE SPECIAL CIRCUMSTANCES ALLEGATIONS AS  
28   TO THE MAN WHO IS ACCUSED OF KILLING YOUR SON?

1 FERNANDO ROJO: THIS IS FOR ME?

2 THE COURT: YES.

3 FERNANDO ROJO: I DIDN'T UNDERSTAND VERY WELL.

4 THE COURT: WHAT'S THE YOUNG GIRL'S NAME, THE LADY  
5 IN THE FRONT ROW -- OR SECOND ROW?

6 AMERICA ROJO: AMERICA ROJO.

7 THE COURT: DID YOU NEED THE INTERPRETER, MS. ROJO?

8 ARE YOU RELATED TO THE DECEASED?

9 AMERICA ROJO: YES.

10 THE COURT: HOW?

11 AMERICA ROJO: HE'S MY BROTHER. HE'S MY BROTHER.

12 THE COURT: DID MR. HERRING ADVISE YOU OF WHAT HE'S  
13 SEEKING TODAY?

14 AMERICA ROJO: YES.

15 THE COURT: WHAT DO YOU THINK ABOUT THAT?

16 AMERICA ROJO: ABOUT THE GUN, RIGHT?

17 THE COURT: I CAN'T HEAR YOU.

18 AMERICA ROJO: ABOUT THE GUN?

19 THE COURT: ABOUT DISMISSING THE FIREARM  
20 ALLEGATIONS, DISMISSING THE SPECIAL CIRCUMSTANCES, AND  
21 DISMISSING THE GANG ALLEGATIONS AS WELL.

22 AMERICA ROJO: IS THAT WHERE THEY -- IS THAT LIKE  
23 THEY TAKE YEARS AWAY FROM US?

24 THE COURT: I JUST CAN'T HEAR HER.

25 MR. HERRING: SHE'S ASKING IF THEY TAKE YEARS AWAY  
26 FROM HIM.

27 THE COURT: IF HE'S FOUND GUILTY AND THOSE  
28 ALLEGATIONS WERE TRUE, YES. IT WOULD REDUCE HIS SENTENCE

1       SIGNIFICANTLY.  A LOT.  BY A LOT OF YEARS.

2               AMERICA ROJO:  WELL, I FEEL LIKE -- WELL, I FEEL  
3       LIKE IT'S NOT FAIR IF HE DOESN'T -- I THINK IT'S NOT FAIR  
4       IF HE DOESN'T SERVE AS MUCH YEARS.

5               THE COURT:  I CAN'T HEAR YOU.  CAN YOU SPEAK  
6       LOUDER?

7               SO WHAT DO YOU THINK ABOUT ELIMINATING ALL  
8       OF THESE ALLEGATIONS THAT MR. HERRING'S OFFICE IS LOOKING  
9       TO ELIMINATE?

10              AMERICA ROJO:  I'M SORRY, I DON'T THINK IT'S FAIR.

11              THE COURT:  DO YOU UNDERSTAND WHAT I'M ASKING YOU?

12              AMERICA ROJO:  YEAH.

13              THE COURT:  ARE YOU ABLE TO TELL ME?

14                      ARE YOU CRYING?

15                      WHY ARE YOU CRYING?

16                      I'M GOING TO MAKE THIS EASIER, I'M GOING TO  
17       COME DOWN.

18                      WHY ARE YOU CRYING?

19              AMERICA ROJO:  BECAUSE...

20              THE COURT:  WHY ARE YOU CRYING?

21              AMERICA ROJO:  I JUST FEEL THAT WE NEED JUSTICE AND  
22       HE NEEDS -- IT'S JUST NOT FAIR THAT HE -- IF HE DOESN'T  
23       GET AS MUCH YEARS.

24              THE COURT:  SO YOU DON'T WANT TO SEE THESE THINGS  
25       GET DISMISSED?

26              AMERICA ROJO:  NO.

27              THE COURT:  OKAY.  THANK YOU.

28                      WHO'S THE LADY?

1 AMERICA ROJO: THAT'S MY MOM.

2 MR. HERRING: DOES YOUR MOM NEED THE INTERPRETER?

3 THE COURT: MA'AM, CAN YOU COME UP HERE JUST SO  
4 EVERYONE DOESN'T HAVE TO YELL?

5 WHAT'S YOUR NAME?

6 TERESA ROJO: TERESA ROJO.

7 THE COURT: MRS. ROJO, DID MR. HERRING, THE D.A.,  
8 DID HE TELL YOU TODAY WHAT HE IS LOOKING TO DO BY  
9 DISMISSING THE GUN ALLEGATIONS AND THE GANG ALLEGATIONS  
10 AND THE SPECIAL CIRCUMSTANCES ALLEGATION?

11 TERESA ROJO: YES.

12 THE COURT: WHAT DO YOU THINK ABOUT THAT? HOW DO  
13 YOU FEEL ABOUT THAT?

14 TERESA ROJO: WELL, IT'S NOT FAIR THAT THEY WOULD  
15 LOWER MANY YEARS. TO ME IT DOESN'T SEEM FAIR BECAUSE --  
16 BECAUSE SOMEBODY WHO IS DOING HARM TO PEOPLE, THEY SHOULD  
17 PAY.

18 THE COURT: THANK YOU FOR COMING IN TODAY.

19 ALL RIGHT. DO YOU HAVE ANYTHING ELSE TO  
20 ADD, MR. HERRING?

21 MR. HERRING: NO.

22 THE COURT: ALL RIGHT.

23 I'VE GOT A DEFINITION OF WHAT THE INTEREST  
24 OF JUSTICE MEANS PURSUANT TO PENAL CODE SECTION 1385.  
25 AND THE CASE OF *PEOPLE VERSUS ORIN*, O-R-I-N, IS A 1975  
26 CASE, 13 CAL.3D. 937. AT 945 THE COURT SAYS "IN  
27 FURTHERANCE OF JUSTICE" MEANS, AT THE VERY LEAST, THE  
28 REASON FOR DISMISSAL MUST MOTIVATE A REASONABLE JUDGE.

1                   ORIN SAYS, AT PAGE 945, WHEN DETERMINING IF  
2 A DISMISSAL FURTHERS THE INTEREST OF JUSTICE, THE COURT  
3 MUST CONSIDER THE INTERESTS OF SOCIETY, AS WELL AS THE  
4 DEFENDANT'S CONSTITUTIONAL RIGHTS. SOCIETY HAS AN  
5 INTEREST IN THE FAIR PROSECUTION OF PROPERLY ALLEGED  
6 CRIMES AND ENHANCEMENTS. GENERALLY, IF COURTS TERMINATED  
7 PROSECUTIONS OF CRIMES OR ENHANCEMENTS UNDER PENAL CODE  
8 SECTION 1385 WITHOUT ADEQUATE REASON, IT WOULD FRUSTRATE  
9 THE ORDERLY AND EFFECTIVE OPERATION OF OUR CRIMINAL  
10 JUSTICE PROCEDURE AS ENVISIONED BY THE LEGISLATURE.

11                   AND THAT QUOTE IS FROM PAGE 947 OF ORIN.

12                   THE PEOPLE ARE REQUIRED TO COMPLY WITH  
13 MARSY'S LAW. THEY APPARENTLY HAVE. I HAVE LISTENED TO  
14 THE DECEASED'S MOTHER AND SISTER.

15                   IS THERE ANY REASON, OTHER THAN THIS SPECIAL  
16 DIRECTIVE, THAT IS THE GENESIS OF YOUR MOTION?

17                   IS THERE ANYTHING ELSE, ANY PROOF PROBLEMS  
18 OR EVIDENCE ISSUES, ANYTHING LIKE THAT?

19                   MR. HERRING: THERE ARE NO PROBLEMS WITH PROOF WITH  
20 THIS CASE, YOUR HONOR. THERE ARE LEGALLY COGNIZABLE  
21 MITIGATING FACTORS THAT INCLUDE LACK OF A CRIMINAL RECORD  
22 AND YOUNG AGE FOR THE DEFENDANT. ASIDE FROM THAT, I  
23 BELIEVE THAT IT IS MY DUTY TO PUT FORTH THE POLICIES THAT  
24 ARE IN THE SPECIAL DIRECTIVE.

25                   THE COURT: ALL RIGHT.

26                   WELL, I HAVEN'T HEARD -- I DON'T BELIEVE  
27 THAT YOUR STATED REASONS JUSTIFY DISMISSAL IN THE  
28 INTEREST OF JUSTICE.



1 MS. BLACKBURN: MAY I BE HEARD?

2 THE COURT: JUST A MINUTE.

3 FIRST OF ALL, THE DEFENSE DOESN'T HAVE A  
4 VOICE IN PENAL CODE SECTION 1385, IT'S MADE BY THE COURT  
5 OR IT'S MADE BY THE PEOPLE. I WILL GIVE YOU A CHANCE.

6 SENTENCING ENHANCEMENTS CAN BE DISMISSED  
7 WHEN THEY ARE FIREARM ALLEGATIONS UNDER PENAL CODE  
8 SECTION 12022.5 SUBDIVISION (C), AND IN THIS CASE I THINK  
9 IT WOULD BE PENAL CODE SECTION 12022.53 SUBDIVISION (H).  
10 BUT BOTH OF THOSE SUBSECTIONS SAY THEY ALLOW FOR SUCH  
11 DISMISSALS AT THE TIME OF SENTENCING.

12 IT MAY VERY WELL BE THAT THE LACK OF RECORD  
13 AND THE YOUNG AGE, THAT MIGHT BE, AT THE TIME OF  
14 SENTENCING, JUSTIFICATION FOR STRIKING AN ENHANCEMENT.

15 WHAT WOULD YOU LIKE TO SAY, MS. BLACKBURN?

16 MS. BLACKBURN: I WOULD LIKE TO SAY THAT THE  
17 DISTRICT ATTORNEY IN THIS CASE HAS INDICATED THAT THERE  
18 AREN'T ANY PROOF PROBLEMS, BUT I WOULD ARGUE THE NATURAL  
19 AND PROBABLE CONSEQUENCES THEORY OF AIDING AND ABETTING A  
20 GANG MURDER IS NOT HERE, SIGNIFICANTLY HAMPERS THE  
21 PEOPLE'S ABILITY IT PROVE --

22 THE COURT: THEY'RE NOT GOING TO GET THAT  
23 INSTRUCTION.

24 MS. BLACKBURN: I THINK THERE ARE ISSUES IN THAT  
25 FIRST DEGREE MURDER INSTRUCTION. I THINK THAT THERE ARE  
26 ISSUES WITH THE CASE THAT I THINK HE HAS BROUGHT UP: MY  
27 CLIENT'S YOUTH, HIS COMPLETE LACK OF RECORD, HIS FAMILY  
28 HISTORY, AND THOSE ARE THINGS THAT I THINK HE COULD

1       ARTICULATE.

2                   BUT MORE IMPORTANTLY, EVEN IN THE CITE THAT  
3       THIS COURT HAS INDICATED IS THAT THE COURT CANNOT STRIKE  
4       THESE IN THE INTEREST OF JUSTICE, BUT THE DISTRICT  
5       ATTORNEY'S OFFICE IS THE CHARGING AGENCY.

6           THE COURT:   RIGHT.

7           MS. BLACKBURN:   SO WHEN THE COURT HAS THE CASE  
8       BEFORE IT, THE COURT CAN'T DISMISS THESE --

9           THE COURT:   THE COURT WHAT?

10          MS. BLACKBURN:   THE COURT CANNOT, OR SHOULD NOT  
11       EVEN, ACCORDING TO THIS CASE, DISMISS ANY ALLEGATIONS  
12       UNLESS THEY FIND IT IN THE INTEREST OF JUSTICE.   BUT I  
13       DON'T THINK THE COURT IS HAMPERED BY THE ORIGINAL  
14       CHARGING DECISIONS OF THE DISTRICT ATTORNEY'S OFFICE.

15                   IT'S BEEN MY EXPERIENCE, AND I'M SURE YOURS,  
16       OVER 25 YEARS, THAT EVEN AS CASES ARE CHARGED ORIGINALLY,  
17       THERE ARE ALWAYS ALTERATIONS.   HAVING THE COURT DECIDE  
18       THAT THE PEOPLE OF THE STATE OF CALIFORNIA CANNOT CHANGE  
19       THE CHARGING DOCUMENT IS NOT WHAT THAT CASE HOLDS.   IT  
20       HOLDS THAT ONCE THEY ARE CHARGED, THE COURT CANNOT STEP  
21       IN AND INTERPRET THAT THERE IS NO -- AND CHANGE THOSE  
22       WITHOUT THE INTEREST OF JUSTICE BEING SERVED.

23                   I UNDERSTAND THAT THE FAMILY IS VERY UPSET,  
24       AND I UNDERSTAND AND I BELIEVE THAT THEY SHOULD BE.   BUT  
25       I DON'T THINK THAT THAT'S THE END OF THE INQUIRY, AND I  
26       DON'T THINK THAT'S WHAT THE COURT'S BEING ASKED TO DO.

27                   THE CHARGING ORGANIZATION -- THE CHARGING  
28       AGENCY HAS DECIDED NOT TO CHARGE THIS CASE THIS WAY.

1 THEY'VE CHARGED CASES FOR MANY YEARS IN WHATEVER WAY THEY  
2 DECIDED AND NOW THEIR POLICIES HAVE CHANGED. AND FOR THE  
3 COURT TO STEP IN, I DON'T THINK THAT'S WHAT THAT CASE  
4 STANDS FOR. IF AT THE END OF THE CASE THE CHARGING  
5 AGENCY -- JUST AS THE COURT CAN'T ADD CHARGES --

6 THE COURT: RIGHT.

7 MS. BLACKBURN: -- RIGHT? IF THE CHARGING AGENCY  
8 SAYS THAT THEY WANT TO DELETE THE CHARGES, I THINK THAT'S  
9 WITHIN THEIR PURVIEW. FOR THE COURT TO STEP IN AND SAY  
10 THEY WON'T DO IT IS SEPARATE AND APART FROM WHAT I THINK  
11 THE *ORIN* CASE IS TALKING ABOUT.

12 THE COURT: BUT 1385 SAYS I CAN'T DISMISS UNLESS  
13 IT'S IN THE INTEREST OF JUSTICE.

14 MS. BLACKBURN: I THINK THAT CASE IS TALKING ABOUT  
15 DURING THE PENDENCY OF THE COURT, NOT SEPARATE AND APART  
16 FROM THE CHARGING DECISIONS OF THE PROSECUTING AGENCY.

17 THE COURT: SAY THAT AGAIN.

18 MS. BLACKBURN: I THINK IT'S SEPARATE AND APART  
19 FROM THE CHARGING DECISIONS OF THE PROSECUTING AGENCY.  
20 THE COURT IS BOUND BY WHAT THE PROSECUTING AGENCY  
21 CHARGES, UNLESS IN THE INTEREST OF JUSTICE.

22 THE COURT: RIGHT.

23 MS. BLACKBURN: WE HAVE NOW SEEN CHANGES IN THE  
24 LAW. FOR EXAMPLE, FOR MANY YEARS THE D.A. WOULD CHARGE A  
25 10, 20, LIFE ALLEGATION UNDER 12022.53 AND THE COURT WAS  
26 NOT ABLE TO JUST -- THE COURT WAS UNABLE TO DISMISS.  
27 THEY HAD NO AUTHORITY AND THEY HAD NO ABILITY TO DO THAT.  
28 THAT HAS NOW CHANGED. THE COURTS HAVE SAID IN THE

1 INTEREST OF JUSTICE, IF THE COURT FINDS THAT TO BE TRUE,  
2 THEY CAN DISMISS THE ALLEGATION.

3 BUT THE REVERSE HAS NEVER BEEN TRUE, THAT  
4 THE COURT CAN STAND IN THE WAY OF THE CHARGING AGENCY  
5 DISMISSING ALLEGATIONS -- NOT ALLEGATIONS THAT HAVE BEEN  
6 PROVEN AT TRIAL, BUT DURING THE PENDENCY OF THE CASE --  
7 THE COURT CAN SAY I HAVE NOW BECOME THE CHARGING AGENCY  
8 AND I'M STANDING IN THEIR STEAD AND OVERRULING THEIR  
9 CHARGING DECISIONS. THE INTEREST OF JUSTICE IS FOR  
10 DISMISSAL IF THE COURT IS OUTSIDE OF WHAT THE CHARGING  
11 AGENCY HAS DECIDED THEY WANT TO DO.

12 I THINK THEY'RE VERY DIFFERENT THINGS. I  
13 THINK THE CASE VERY STRONGLY -- OR THE CASE LAW HAS  
14 PROVEN THAT.

15 THE COURT: WHAT CASE LAW?

16 MS. BLACKBURN: ANY CASE LAW.

17 THE COURT: TELL ME. TELL ME ANY CASE THAT SAYS IF  
18 THE PEOPLE MOVE TO DISMISS AN ALLEGATION, IPSO FACTO THE  
19 JUDGE HAS TO DO IT. WHAT CASE STANDS FOR THAT?

20 MS. BLACKBURN: I'LL FIND YOU A CASE, YOUR HONOR.

21 THE COURT: YOU FIND ME A CASE THAT SAYS THAT IF  
22 THEY MOVE TO DISMISS AN ALLEGATION OR A CHARGE, THAT THAT  
23 IN AND OF ITSELF JUSTIFIES DISMISSAL.

24 MS. BLACKBURN: HOW, SHORT OF A TRIAL, WOULD THE  
25 COURT KNOW OR UNDERSTAND THE ORIGINAL CHARGING INTENT OF  
26 THE PROSECUTING AGENCY?

27 THE COURT: HOW WHAT?

28 MS. BLACKBURN: HOW, SHORT OF A TRIAL, WOULD THE

1 COURT UNDERSTAND THE ORIGINAL MOTIVATION AND INTENT OF  
2 THE PROSECUTING AGENCY, WITHOUT PROOF, THAT THESE ARE  
3 THEREFORE JUST AND THAT THEY CAN'T REDUCE -- THEY CAN'T  
4 DISMISS THEM WHEN THE CHARGING AGENCY SAYS THAT THEY  
5 BELIEVE IT BE TRUE.

6 THE COURT: I'VE LISTENED TO WHAT HIS REASON IS AS  
7 TO WHY HE'S COME FORWARD WITH THIS MOTION FOR DISMISSAL.

8 MS. BLACKBURN: BUT HAVE YOU -- HAD THERE EVER BEEN  
9 A DETERMINATION THAT THE ORIGINAL REASON FOR CHARGING  
10 THIS CASE THE WAY THEY DID WERE VALID?

11 THE COURT: THAT'S FOR A TRIAL. IF YOU THINK THAT  
12 THE EVIDENCE WAS INSUFFICIENT, FILE A 995 MOTION.

13 MS. BLACKBURN: IT'S NOT INSUFFICIENT, I'M SAYING  
14 WHETHER OR NOT IT'S JUST OR IN THE INTEREST OF JUSTICE.

15 THE COURT: ALL RIGHT.

16 MS. BLACKBURN, YOU ARE VERY ARTICULATE AND I  
17 DON'T KNOW YOU, BUT YOU APPEAR TO ME TO BE A VERY, VERY  
18 GOOD LAWYER. YOU AND I DON'T SEE IT THE SAME WAY. I  
19 DON'T THINK IT RISES TO THE LEVEL OF THE INTEREST OF  
20 JUSTICE. AS I SAID BEFORE, IT MAY VERY WELL BECOME  
21 RELEVANT AT THE TIME OF SENTENCING.

22 FOR NOW, AT THIS POINT, WITHOUT PREJUDICE,  
23 YOUR MOTION, MR. HERRING, IS DENIED.

24 MS. BLACKBURN: YOUR HONOR, CAN WE SET THIS CASE  
25 FOR --

26 THE COURT: YES.

27 MS. BLACKBURN: -- THE 28TH?

28 THE COURT: HAVE YOU TALKED NO MR. HERRING ABOUT A

1 FUTURE DATE?

2 MS. BLACKBURN: NO. MR. HERRING IS NOT THE  
3 ATTORNEY OF RECORD ON THIS CASE, IT WAS MR. TRUJILLO. WE  
4 HAD DISCUSSED DISPOSITION. I THOUGHT THAT'S WHAT WE WERE  
5 GOING TO DO TODAY. I WOULD ASK FOR THE 28TH.

6 THE COURT: 28TH OF DECEMBER?

7 MR. HERRING: IT'S NEWS TO ME THAT I'M NOT THE  
8 ATTORNEY OF RECORD ON THIS CASE.

9 THE COURT: NO, I THINK SHE MEANS THE DEFENSE  
10 ATTORNEY.

11 MR. HERRING: NO.

12 MS. BLACKBURN: NO, NO. I'M THE DEFENSE ATTORNEY.  
13 I'M SORRY.

14 THERE'S AN OFFER THAT WAS CONVEYED TO ME,  
15 THAT I CONVEYED TO MR. DOMINGUEZ, AND --

16 THE COURT: FROM WHO?

17 MS. BLACKBURN: FROM MR. --

18 MR. HERRING: I BELIEVE IT WAS MARIO TRUJILLO.  
19 THAT'S WHAT I'VE BEEN TOLD.

20 I'VE ALSO BEEN TOLD FROM A SEPARATE SET OF  
21 SUPERVISORS THERE IS NO OFFER, AND THAT'S WHY WE'RE IN A  
22 CONUNDRUM TODAY.

23 THE COURT: WELL, THEN EVERYBODY NEEDS TO BE HERE  
24 ON THE NEXT DAY BECAUSE AS FAR AS I KNOW, YOU'RE THE  
25 REPRESENTATIVE OF THE PEOPLE. I'VE NEVER SEEN -- WHO DID  
26 THE OFFER COME FROM?

27 MS. BLACKBURN: MR. TRUJILLO.

28 THE COURT: TRUJILLO? I DON'T KNOW WHO THAT IS.

1 MS. BLACKBURN: HE'S IN CHARGE OF SPECIAL  
2 CIRCUMSTANCES. AT LEAST WAS IN CONTACT WITH  
3 MS. BLACKNELL PRIOR TO THIS DATE AND CONVEYED AN OFFER,  
4 WHICH I CONVEYED TO MY CLIENT. SO IT'S NEWS TO ME  
5 THAT --

6 THE COURT: WHAT WAS THE OFFER?

7 MS. BLACKBURN: SEVEN YEARS.

8 IT'S NEWS TO ME THAT WE DIDN'T HAVE AN  
9 OFFER, BUT I THINK WE DO NEED TO GET ON THE SAME PAGE.

10 THE COURT: ALL RIGHT. AND SO YOU'RE ASKING FOR  
11 12-28?

12 MS. BLACKBURN: YES, PLEASE.

13 THE COURT: IS THAT OKAY?

14 THE CLERK: YES, YOUR HONOR.

15 THE COURT: DO WE WANT TO TRAIL WITHIN THE PERIOD  
16 OR DO YOU WANT TO MAKE IT ANOTHER ZERO OF 60?

17 MS. BLACKBURN: TRAIL WITHIN THE PERIOD FOR NOW.

18 THE COURT: SO THAT'S GOING TO BE 13 OF 60.

19 MS. BLACKBURN: THANK YOU.

20 THE COURT: ALL RIGHT. ANYTHING ELSE?

21 DOES HE NEED ANY MEDICAL ORDERS, ANYTHING  
22 ELSE WE NEED TO DO, MR. BLACKBURN?

23 MS. BLACKBURN: NO, I THINK WE'RE DONE.

24 THE COURT: ANYTHING ELSE TO TODAY, MR. HERRING?

25 MR. HERRING: NO, THANK YOU.

26 THE COURT: SEE YOU ON THE 28TH.

27 (PROCEEDINGS IN THE ABOVE-ENTITLED  
28 MATTER WERE CONCLUDED.)

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

3 DEPARTMENT 115

HON. MARK S. ARNOLD, JUDGE

4  
5 PEOPLE OF THE STATE OF CALIFORNIA, )

6 PLAINTIFF, )

NO. BA466952-01

7 VS. )

REPORTER'S  
CERTIFICATE

8 RUDY DOMINGUEZ, )

9 DEFENDANT. )

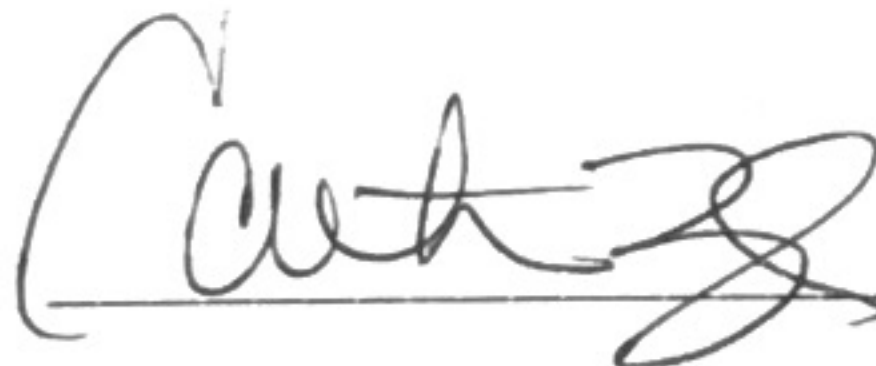
10  
11 STATE OF CALIFORNIA )

) SS

12 COUNTY OF LOS ANGELES )

13 I, CATHERINE A. ZINK, CSR #9242, OFFICIAL REPORTER  
14 FOR THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR  
15 THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE  
16 FORGOING PAGES 1 THROUGH 14 COMPRISE A FULL, TRUE, AND  
17 CORRECT TRANSCRIPT OF THE PROCEEDINGS AND TESTIMONY  
18 TAKEN IN THE ABOVE-ENTITLED MATTER ON DECEMBER 15, 2020.  
19  
20  
21

22 DATED THIS 21ST DAY OF DECEMBER, 2020.  
23

24  
25 

, CSR #9242

26 CATHERINE ZINK, OFFICIAL REPORTER  
27  
28



## EXHIBIT F

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

3 DEPARTMENT 125

HON. LAURA F. PRIVER, JUDGE

4 PEOPLE OF THE STATE OF CALIFORNIA, )

5 PLAINTIFF, )

6 VS. )

7 VICTOR MACHUCA, )

8 DEFENDANT. )

SUPERIOR COURT  
NO. BA477781

10  
11 REPORTER'S TRANSCRIPT OF PROCEEDINGS

12 THURSDAY, DECEMBER 10, 2020

13  
14  
15 APPEARANCES:

16 FOR THE PLAINTIFF:

OFFICE OF THE DISTRICT ATTORNEY  
BY: MEGAN LOEBL, DEPUTY  
211 WEST TEMPLE STREET  
LOS ANGELES, CALIFORNIA 90012

19 FOR THE DEFENDANT:

ALEX KESSEL  
ATTORNEY AT LAW  
15910 VENTURA BOULEVARD  
SUITE 1030  
ENCINO, CALIFORNIA 91436

25 CANDACE J. HENRY, #9311  
26 OFFICIAL REPORTER  
27  
28

1 CASE NAME: PEOPLE VS. VICTOR MACHUCA  
2 CASE NUMBER: BA477781  
3 LOS ANGELES, CALIFORNIA THURSDAY, DECEMBER 10, 2020  
4 DEPARTMENT 125 HON. LAURA F. PRIVER, JUDGE  
5 REPORTER: CANDACE J. HENRY, CSR #9311  
6 TIME: 9:46 A.M.  
7

8 APPEARANCES:

9 ALEX R. KESSEL, ATTORNEY AT LAW, FOR THE  
10 DEFENDANT; MEGAN LOEBL, DEPUTY DISTRICT ATTORNEY,  
11 FOR THE PEOPLE OF THE STATE OF CALIFORNIA;  
12

13 THE COURT: MR. MACHUCA. HE'S PRESENT IN COURT  
14 WITH COUNSEL. PEOPLE ARE REPRESENTED.

15 STATE YOUR APPEARANCES.

16 MR. KESSEL: GOOD MORNING TO THE COURT.  
17 ALEX KESSEL FOR THE DEFENDANT.

18 MS. LOEBL: GOOD MORNING, YOUR HONOR. MEGAN LOEBL  
19 FOR THE PEOPLE. WE'RE ZERO OF 45.

20 MR. KESSEL: WE'RE MAKING PROGRESS TOWARD A  
21 DISPOSITION. I DON'T THINK WE HAVE ONE NOW. I CAN SAY  
22 THAT, YOUR HONOR. THERE'S A FEW OTHER THINGS THAT WE  
23 NEED TO DISCUSS. IT WOULD BE MY REQUEST, AND I DON'T  
24 THINK THE D.A. HAS ANY OPPOSITION, TO SET ANOTHER  
25 PRETRIAL.

26 MS. LOEBL: YES.

27 MR. KESSEL: I DON'T THINK IT'S THE RIGHT TIME TO  
28 TRY SOMETHING RIGHT NOW JUST PERSONALLY, YOUR HONOR, BUT

1 I DON'T THINK -- I DON'T THINK BOTH SIDES ARE PUSHING  
2 TOWARD A TRIAL.

3 THE COURT: WHAT'S YOUR ACTUAL REQUEST? WHAT DATE  
4 IS YOUR ACTUAL REQUEST?

5 MR. KESSEL: OKAY. THANK YOU.

6 THE COURT: I DON'T KNOW. IT DEPENDS ON WHAT IT  
7 IS AND HOW MUCH TIME YOU WANT, BUT WE'RE ZERO OF 45 SO  
8 YOU'RE ALREADY INTO NEXT YEAR.

9 MS. LOEBL: THE PEOPLE ALSO HAVE SOME MOTIONS TO  
10 MAKE ON THIS CASE TODAY, YOUR HONOR.

11 THE COURT: OKAY. WELL, YOU CAN MAKE WHATEVER  
12 MOTIONS YOU WANT, BUT I'M GOING TO INDICATE TO YOU THAT  
13 THE COURT MAY NOT GRANT THEM.

14 MR. KESSEL?

15 MR. KESSEL: YOUR HONOR, JANUARY 28TH ZERO OF 30.  
16 IF THE COURT CAN ACCOMMODATE US.

17 THE COURT: WE CAN ACCOMMODATE THAT BUT YOU NEED  
18 TO KNOW THAT'S THE LAST PRETRIAL.

19 MS. LOEBL: DID YOU SAY THE 28TH?

20 MR. KESSEL: JANUARY 28TH. DOES THAT WORK FOR  
21 YOU, MEGAN?

22 MS. LOEBL: THAT'S FINE.

23 THE COURT: AND IT NEEDS TO EITHER JUST BE  
24 DISPOSED OF OR GO WITHIN THE PERIOD. OKAY? BECAUSE  
25 FROM 2019, I APPRECIATE -- BUT RIGHT NOW, IT'S THE  
26 HOLIDAYS, COVID IS SPIKING -- THERE'S LOTS OF ISSUES, I  
27 GUESS. I UNDERSTAND WHY YOU WOULDN'T WANT TO GO OUT TO  
28 TRIAL RIGHT NOW, BUT I THINK YOU HAVE TO EITHER TRY IT

1 OR DISPOSE OF IT.

2 MR. KESSEL: THIS HAS BEEN AN UNUSUAL YEAR.

3 THE COURT: THAT'S WHY YOU'VE GOTTEN ALL YOUR  
4 MOTIONS GRANTED IN THIS COURT.

5 MR. KESSEL: AND IN OTHER COURTS. YOU'RE RIGHT.

6 THE COURT: YOU'RE AHEAD; RIGHT? THERE'S A --

7 MR. KESSEL: I'M GOING TO SHUT UP.

8 THE COURT: I'LL START WITH THAT.

9 THEN I'LL HEAR WHAT YOU NEED TO SAY,  
10 MS. LOEBL.

11 MS. LOEBL: THANK YOU.

12 THE COURT: SIR, DO YOU AGREE TO THE DATE OF  
13 JANUARY 28TH WITH THE UNDERSTANDING YOU'LL HAVE YOUR  
14 TRIAL ON THAT DATE OR WITHIN 30 CALENDAR DAYS?

15 THE DEFENDANT: YES, YOUR HONOR.

16 THE COURT: OKAY. COUNSEL JOIN?

17 MR. KESSEL: YES, YOUR HONOR.

18 THE COURT: ALL RIGHT. GIVE ME ONE SECOND,  
19 MS. LOEBL. I LEFT SOMETHING ON MY DESK.

20 MS. LOEBL: NO PROBLEM. THANK YOU, YOUR HONOR.

21  
22 (PAUSE IN THE PROCEEDINGS.)

23  
24 THE COURT: ALL RIGHT. YOU MAY BE HEARD.

25 MS. LOEBL: THANK YOU, YOUR HONOR. THE PEOPLE ARE  
26 MAKING A MOTION TODAY TO DISMISS THE ALLEGATIONS FOR  
27 THIS CASE IN VIOLATION OF PENAL CODE SECTION 12202.53(D)  
28 AS WELL AS PENAL CODE SECTION 667.5 SUBSECTION (B) FOR

1 THE GUN ENHANCEMENT AS WELL AS THE ONE-YEAR PRIORS  
2 PURSUANT TO A SPECIAL DIRECTIVE SENT DOWN FROM  
3 GEORGE GASCON.

4 MR. KESSEL: JUDGE, JUST ON THE 667(B) ONE-YEAR  
5 PRIOR, THAT'S BEEN ABROGATED BY THE LEGISLATOR ANYWAY,  
6 THERE IS NO ONE-YEAR PRIORS ANYMORE.

7 THE COURT: I WILL GRANT THE 667.5(B) BECAUSE  
8 THAT, I AGREE WITH YOU, WAS A LEGISLATIVE CHANGE. OKAY.

9 MR. KESSEL: I'M SORRY?

10 THE COURT: THAT WAS A LEGISLATIVE CHANGE. AND I  
11 WILL GRANT THE MOTION AS IT RELATES TO THE 667.5(B).

12 WITH REGARD TO THE 12022.53 ALLEGATION, THE  
13 COURT WILL POINT OUT THAT THE STATUTE ITSELF DOES NOT  
14 ALLOW YOU TO DISMISS THAT EXCEPT AT THE TIME OF  
15 SENTENCE. AND IT IS NOT THE TIME OF SENTENCING. SO  
16 THAT'S THE LEGAL REASON STATUTORILY.

17 WITH REGARD TO CASE LAW, THE COURT WILL  
18 INDICATE TO THE PEOPLE, AND I ONE HUNDRED PERCENT  
19 APPRECIATE THAT THE DIRECTIVE IS THE DIRECTIVE AND YOU  
20 FEEL OBLIGATED -- YOU INDIVIDUAL DEPUTIES FEEL OBLIGATED  
21 TO FOLLOW THE DIRECTIVES.

22 HOWEVER, THIS COURT DOES NOT BELIEVE THAT  
23 THE PEOPLE ARE ENTITLED TO ABANDON THE PROSECUTION OF  
24 THESE ALLEGATIONS THAT IS BASED UPON A DIRECTIVE. I  
25 DON'T THINK -- I THINK YOU HAVE AN ETHICAL DUTY AND  
26 OBLIGATION TO PURSUE JUSTICE AND TO PURSUE THE  
27 ALLEGATIONS THAT YOU BELIEVE YOU CAN PROVE BEYOND A  
28 REASONABLE DOUBT; RIGHT?

1                   SO, ALSO, THE DIRECTIVE IS NOT A  
2       LEGISLATIVE CHANGE.   UNLIKE THE 667.5(B)(1), IT DOES NOT  
3       HAVE THE AUTHORITY IN LAW THAT ALLOWS YOU REALLY TO ACT  
4       IN THIS FASHION.   I UNDERSTAND IT CAME FROM THE TOP.   I  
5       UNDERSTAND WHY YOU'RE MAKING THE MOTION, BUT THE COURT  
6       WILL DENY THE MOTION AS TO EACH AND EVERY ONE OF THE  
7       OTHER ALLEGATIONS.   YOU HAVE AN ETHICAL DUTY TO DO YOUR  
8       JOB AND PROCEED WITH PROSECUTION.   YOU SHOULD NOT BE  
9       ALLOWED TO ABANDON THE PROSECUTION AT THIS JUNCTURE.

10                   THE COURT WILL CITE THE CASE OF *PEOPLE*  
11       *VERSUS ROMAN*, IT'S 92 CAL.APP.4TH, 141, WHICH DEALS WITH  
12       SPECIAL DIRECTIVES AS IT RELATES TO A CHANGE IN  
13       ADMINISTRATION IN THE D.A.'S OFFICE.

14                   MR. KESSEL:   JUDGE, JUST SINCE IT AFFECTS MY  
15       CLIENT, OBVIOUSLY, THE PEOPLE'S MOTION, I JUST WANTED TO  
16       ADD, OBVIOUSLY, I DON'T KNOW IF IT'S ABANDONING  
17       PROSECUTION.   IT'S -- THE D.A. IS AN EXECUTIVE BRANCH  
18       WHICH TYPICALLY DECIDES WHAT TO PURSUE AND, ULTIMATELY,  
19       WITH THE COURT'S PERMISSION IN A SENSE, WHAT TO OFFER.  
20       AND I SEE IT MORE AS A PROSECUTORIAL DECISION AS THE  
21       EXECUTIVE BRANCH WHAT TO PURSUE AND NOT TO PURSUE WHICH  
22       IS WITHIN THE REALM OF THAT BRANCH, YOUR HONOR.

23                   SO I JUST WANT TO INDICATE, FOR WHATEVER  
24       IT'S WORTH, I DON'T KNOW IF IT'S ABANDONMENT OF THE LAW  
25       OR THE CASE VERSES A DECISION ABOUT WHAT IS APPROPRIATE  
26       TO CHARGE, WHICH IS DONE ON A DAILY BASIS.   IT ALSO  
27       DECIDES WHAT'S APPROPRIATE TO CHARGE.

28                   THE COURT:   THE COURT UNDERSTANDS THE ROLE OF THE

1 D.A. IN TERMS OF THEIR FILING AUTHORITY AND CHOICE WHAT  
2 TO FILE -- THEY CHOOSE TO FILE. ALL RIGHT? I CAN'T  
3 ORDER THEM TO FILE SOMETHING. BUT IN THIS CASE, THEY  
4 CHOSE TO FILE THIS. AND A CHANGE OF ADMINISTRATION  
5 DOESN'T CHANGE THAT. AND, YOU KNOW, THE LAW REQUIRES  
6 CERTAIN THINGS AS WELL THAT IS NOT A DIRECTIVE -- CHANGE  
7 IN ADMINISTRATION.

8 MR. KESSEL: RIGHT. AND, YOU KNOW, 90 PERCENT OF  
9 THE PLEA BARGAIN ENHANCEMENTS ARE DROPPED. THE CASES  
10 THAT YOU SAY CANNOT BE PURSUED BEYOND A REASONABLE  
11 DOUBT, CHARGES FOR PLEA BARGAIN IS DROPPED AND DISMISSED  
12 AND STRICKEN ALL THE TIME, NOTWITHSTANDING THERE MIGHT  
13 BE EVIDENTIARY SUPPORT FOR THOSE.

14 THE COURT: I PERFECTLY WELL UNDERSTAND THAT. AND  
15 THE COURT UNDERSTANDS THAT YOU AND YOUR -- ON BEHALF OF  
16 YOUR CLIENT, AND THE PEOPLE ON BEHALF OF THEIR -- THE  
17 STATE OF CALIFORNIA, THE PEOPLE THEY REPRESENT, HAVE AN  
18 ABSOLUTE RIGHT, OBLIGATION REALLY, TO TALK ABOUT AND SEE  
19 IF YOU CAN RESOLVE THE CASE SHORT OF TRIAL.

20 IF YOU COME UP WITH A DISPOSITION, THE  
21 COURT CAN EITHER CHOOSE TO ACCEPT THAT DISPOSITION AS  
22 FAIR AND JUST OR NOT; RIGHT? AND, NORMALLY, THE COURT  
23 -- YOU KNOW, I'VE ACCEPTED MANY DISPOSITIONS. I DON'T  
24 THINK IN TERMS OF ANY OF YOUR CLIENTS HAVE I EVER, EVER  
25 SAID NO. OKAY?

26 MR. KESSEL: RIGHT.

27 THE COURT: BUT THE COURT HAS TO BELIEVE THAT THE  
28 DISPOSITION IS FAIR AND JUST AND CONFORMS WITH THE LAW;



1 RIGHT?

2 AND I'LL ALSO POINT OUT THE COURT FEELS  
3 THAT WHERE THE DIRECTIVE FAILS, IF YOU WILL, IS IN  
4 PROTECTING THE RIGHTS OF VICTIMS. AND THE VICTIMS OF  
5 THE STATE OF CALIFORNIA HAVE A CONSTITUTIONAL RIGHT TO  
6 BE HEARD IN ALL PROSECUTIONS. AND I DON'T -- I DON'T  
7 HAVE ANY INFORMATION ABOUT THE VICTIMS IN THIS CASE OR  
8 HOW THEY FEEL ABOUT THIS MOTION. AND THIS COURT WILL  
9 CONTINUE TO ACCEPT DISPOSITIONS AND PLEA AGREEMENTS THAT  
10 IT FEELS ARE APPROPRIATE AND JUST.

11 MR. KESSEL: UNDERSTOOD. WELL, WE'RE STILL  
12 WORKING ON A DISPOSITION, YOUR HONOR.

13 SO YOUR HONOR ALREADY SET THE DATE OF THE  
14 28TH?

15 THE COURT: YES. AND I TOOK THE TIME WAIVER.

16 MR. KESSEL: YOU DID.

17 THE COURT: DID YOU JOIN IN THIS TIME WAIVER?

18 MR. KESSEL: YES.

19 MS. LOEBL: I BELIEVE SO.

20 THE COURT: THANK YOU.

21 MR. KESSEL: THANK YOU, YOUR HONOR.

22 HAVE A NICE DAY AND HOLIDAYS IF I DON'T SEE  
23 YOU.

24 THE COURT: OKAY.

25  
26 (AT 9:55 A.M., AN ADJOURNMENT WAS TAKEN  
27 UNTIL THURSDAY, JANUARY 28, 2021,  
28 DEPARTMENT 125 AT 8:30 A.M.)

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

3 DEPARTMENT 125

HON. LAURA F. PRIVER, JUDGE

4  
5 PEOPLE OF THE STATE OF CALIFORNIA, )

6 PLAINTIFF, ) NO. BA477781

7 VS. )

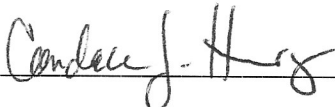
) REPORTER'S  
) CERTIFICATE

8 VICTOR MACHUCA, )

9 DEFENDANT. )  
10 \_\_\_\_\_ )

11  
12 I, CANDACE J. HENRY, CSR #9311, OFFICIAL REPORTER  
13 OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF  
14 LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES  
15 1 THROUGH 7 COMPRISE A FULL, TRUE, AND CORRECT  
16 TRANSCRIPT OF THE PROCEEDINGS AND TESTIMONY TAKEN IN THE  
17 MATTER OF THE ABOVE-ENTITLED CAUSE ON THURSDAY,  
18 DECEMBER 10, 2020.

19 DATED THIS 14TH DAY OF DECEMBER, 2020.

20  
21  , CSR #9311  
22 \_\_\_\_\_  
23 OFFICIAL REPORTER  
24  
25  
26  
27  
28

## EXHIBIT G

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

3 DEPARTMENT 125

HON. LAURA F. PRIVER, JUDGE

4 PEOPLE OF THE STATE OF CALIFORNIA, )

5 PLAINTIFF, )

6 VS. )

7 THOMAS HELO, )

8 DEFENDANT. )

SUPERIOR COURT  
NO. PA090826

ORIGINAL

10  
11 REPORTER'S TRANSCRIPT OF PROCEEDINGS

12 THURSDAY, DECEMBER 10, 2020

13  
14  
15 APPEARANCES:

16 FOR THE PLAINTIFF:

OFFICE OF THE DISTRICT ATTORNEY  
BY: JANE BROWNSTONE, DEPUTY  
211 WEST TEMPLE STREET  
LOS ANGELES, CALIFORNIA 90012

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19 FOR THE DEFENDANT:

HEDDING LAW FIRM  
BY: RONALD HEDDING  
16000 VENTURA BOULEVARD  
SUITE 1208  
ENCINO, CALIFORNIA 91436

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24  
25 CANDACE J. HENRY, #9311  
26 OFFICIAL REPORTER  
27  
28

1 CASE NAME: PEOPLE VS. THOMAS HELO  
2 CASE NUMBER: PA090826  
3 LOS ANGELES, CALIFORNIA THURSDAY, DECEMBER 10, 2020  
4 DEPARTMENT 125 HON. LAURA F. PRIVER, JUDGE  
5 REPORTER: CANDACE J. HENRY, CSR #9311  
6 TIME: 9:14 A.M.  
7

8 APPEARANCES:

9 RONALD HEDDING, ATTORNEY AT LAW, FOR THE  
10 DEFENDANT; JANE BROWNSTONE, DEPUTY DISTRICT  
11 ATTORNEY, FOR THE PEOPLE OF THE STATE OF  
12 CALIFORNIA;  
13

14 THE COURT: ALL RIGHT. NUMBER THREE ON THE  
15 COURT'S CALENDAR. MR. HELO IS PRESENT IN COURT IN  
16 CUSTODY WITH COUNSEL. PEOPLE ARE REPRESENTED.

17 STATE YOUR APPEARANCES.

18 MR. HEDDING: GOOD MORNING, YOUR HONOR.  
19 RONALD HEDDING ON HIS BEHALF.

20 MS. BROWNSTONE: GOOD MORNING, YOUR HONOR.  
21 JANE BROWNSTONE, DEPUTY DISTRICT ATTORNEY, FOR THE  
22 PEOPLE.

23 THE COURT: IT'S HERE FOR PRETRIAL. WHAT ARE YOU  
24 -- WHAT WOULD YOU LIKE TO DO?

25 MS. BROWNSTONE: YOUR HONOR, THE DISTRICT  
26 ATTORNEY, GASCON ISSUED SPECIAL DIRECTIVE 20-08 STATING  
27 THAT OUR OFFICE WILL NO LONGER BE PROCEEDING ON  
28 ALLEGATIONS AND SENTENCE ENHANCEMENTS. THERE IS A GREAT

1 BODILY INJURY ENHANCEMENT ATTACHED TO THIS CASE.

2 PURSUANT TO MARCY'S LAW, I SPOKE TO THE  
3 VICTIM. AND THE VICTIM -- WELL, THE VICTIM'S MOTHER ON  
4 BEHALF OF THE VICTIM.

5 THE COURT: ALL RIGHT.

6 MS. BROWNSTONE: THE VICTIM'S MOTHER INDICATED  
7 THAT EVEN THOUGH THIS CASE IS OVER TWO YEARS OLD, HER  
8 FAMILY IS STILL SUFFERING THE RAMIFICATIONS OF THIS  
9 CASE. AND THAT HER SON RECENTLY LOST HIS JOB DUE TO THE  
10 PHYSICAL EFFECTS OF THIS ACCIDENT WHERE THE DEFENDANT  
11 MOWED DOWN THE VICTIM ON FOOT WHILE IN THE CAR.

12 PURSUANT TO SPECIAL DIRECTIVE 20-08, I  
13 WOULD MAKE A MOTION TO REQUEST THE COURT TO DISMISS THE  
14 GREAT BODILY INJURY.

15 THE COURT: THAT REQUEST IS DENIED, ESPECIALLY IN  
16 LIGHT OF THE FACT THAT THE VICTIMS ARE OBJECTING TO  
17 THIS.

18 THE PEOPLE HAVE FILED THIS ALLEGATION AND  
19 THE COURT BELIEVES YOU CANNOT ABANDON THE PROSECUTION OF  
20 THIS MATTER AT THIS TIME BASED UPON CHANGE OF  
21 ADMINISTRATION IN THE D.A.'S OFFICE. THE COURT IS NOT  
22 GOING TO ALLOW -- I DON'T THINK IT'S JUST IF THE VICTIMS  
23 ARE OBJECTING. AND I THINK IT'S INAPPROPRIATE.

24 AND I ALSO THINK THAT ALTHOUGH I UNDERSTAND  
25 YOU'RE OPERATING UNDER YOUR DIRECTIVES, I THINK IT'S  
26 UNETHICAL. SO THE COURT IS RELYING UPON *PEOPLE VERSUS*  
27 *ROMAN* WHICH IS FOUND AT 92 CAL.APP.4TH, 141, WHICH  
28 INDICATES THAT CHANGE IN ADMINISTRATION, NEW DIRECTIVE,

1 IS NOT A CHANGE IN THE LAW. AND THAT YOU SHOULD NOT  
2 ABANDON THE PROSECUTION BASED UPON NEW DIRECTIVE. IT'S  
3 NOT A LEGISLATIVE CHANGE. SO THAT REQUEST IS DENIED.

4 MR. HEDDING: YOUR HONOR, WITH THE COURT'S  
5 PERMISSION, CAN WE SET THE MATTER FOR ONE MORE PRETRIAL  
6 DATE? I'M REQUESTING, IF IT'S A GOOD DATE FOR THE  
7 COURT, 1/21.

8 THE COURT: ONE TWENTY-ONE.

9 THE CLERK: YOUR HONOR, WE HAVE ANOTHER WHEELCHAIR  
10 ALREADY ON THAT DATE.

11 THE COURT: WE SET IT YESTERDAY. DO YOU HAVE A  
12 DIFFERENT DATE AROUND THERE? JUST NOT THAT DATE.

13 MR. HEDDING: HOW ABOUT 1/25?

14 THE CLERK: THAT'S FINE.

15 THE COURT: OKAY. THAT WORKS FOR US. THANK YOU.

16 MR. HEDDING: THANK YOU.

17 THE COURT: I'M SORRY ABOUT THAT, BUT, YOU KNOW,  
18 WITH THE WHEELCHAIRS, WE HAVE TO MANAGE.

19 MR. HEDDING: NO PROBLEM.

20 THE COURT: SO YOU WANT TO MAKE THAT ZERO OF 30?

21 MR. HEDDING: THAT'S FINE, YOUR HONOR.

22 THE COURT: MR. HELO, DO YOU AGREE TO THE DATE OF  
23 JANUARY 25TH WITH THE UNDERSTANDING YOU'LL HAVE YOUR  
24 JURY TRIAL ON THAT DATE OR WITHIN 30 CALENDAR DAYS?

25 THE DEFENDANT: YES, YOUR HONOR.

26 THE COURT: JOIN?

27 MR. HEDDING: YES.

28 THE COURT: OKAY. THAT WILL BE THE ORDER.

1 MR. HEDDING: THANK YOU.

2 THE COURT: THANK YOU.

3  
4 (AT 9:17 A.M., AN ADJOURNMENT WAS TAKEN  
5 UNTIL MONDAY, JANUARY 25, 2020,  
6 DEPARTMENT 125 AT 8:30 A.M.)  
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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 FOR THE COUNTY OF LOS ANGELES  
3 DEPARTMENT 125 HON. LAURA F. PRIVER, JUDGE  
4

5 PEOPLE OF THE STATE OF CALIFORNIA, )  
6 PLAINTIFF, ) NO. PA090826  
7 VS. ) REPORTER'S  
8 THOMAS HELO, ) CERTIFICATE  
9 DEFENDANT. )  
10 \_\_\_\_\_ )  
11

12 I, CANDACE J. HENRY, CSR #9311, OFFICIAL REPORTER  
13 OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF  
14 LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES  
15 1 THROUGH 4 COMPRISE A FULL, TRUE, AND CORRECT  
16 TRANSCRIPT OF THE PROCEEDINGS AND TESTIMONY TAKEN IN THE  
17 MATTER OF THE ABOVE-ENTITLED CAUSE ON THURSDAY,  
18 DECEMBER 10, 2020.

19 DATED THIS 14TH DAY OF DECEMBER, 2020.  
20

21 Candace J. Henry, CSR #9311  
22 OFFICIAL REPORTER  
23  
24  
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26  
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## EXHIBIT H

SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT                      HON. DOUGLAS SORTINO, JUDGE PRESIDING

THE PEOPLE OF THE STATE OF CALIFORNIA, )  
 )  
 PLAINTIFF, )

VS.

CASE NO. KA120979-01

01) FRANKY PROVENCIO,  
DEFENDANT.

REPORTER'S TRANSCRIPT OF COURT PROCEEDINGS

DECEMBER 16, 2020

APPEARANCES:

FOR PLAINTIFF:                   GEORGE GASCON, DISTRICT ATTORNEY  
BY:   YOOBIN KANG-HERNANDEZ, DEPUTY  
211 WEST TEMPLE STREET, SUITE 200  
LOS ANGELES, CALIFORNIA 90012

FOR DEFENDANT: RICARDO GARCIA, PUBLIC DEFENDER  
BY: ANNA ARMENTA-RIGOR  
210 WEST TEMPLE STREET, 19TH FLOOR  
LOS ANGELES, CALIFORNIA 90012

JILL PINCIN, CSR #10135  
OFFICIAL REPORTER

1 CASE NAME: PEOPLE VS. PROVENCIO  
2 CASE NUMBER: KA120979-01  
3 LOS ANGELES, CALIFORNIA HON. DOUGLAS SORTINO, JUDGE  
4 DEPT. EA-N DECEMBER 16, 2020  
5 REPORTER: JILL PINCIN, CSR #10135  
6 TIME: A.M. SESSION

7  
8 APPEARANCES:

9 DEFENDANT PROVENCIO, PRESENT IN  
10 COURT, IN CUSTODY, BEING REPRESENTED BY  
11 ANNA ARMENTA-RIGOR, DEPUTY PUBLIC DEFENDER;  
12 YOOBIN KANG-HERNANDEZ, DEPUTY DISTRICT ATTORNEY,  
13 REPRESENTING THE PEOPLE OF THE STATE OF CALIFORNIA.

14  
15 THE COURT: PEOPLE VS. FRANKY PROVENCIO, CASE  
16 NUMBER KA120979. MS. KANG-HERNANDEZ FOR THE PEOPLE.  
17 MS. ARMENTA-RIGOR FOR THE DEFENDANT.

18 THE DEFENDANT IS PRESENT 0 OF 60 FOR  
19 TRIAL. THE PEOPLE HAVE FILED, TODAY'S DATE, A PEOPLE'S  
20 MOTION TO DISMISS ALL THE ALLEGATIONS ALLEGED IN THE CASE,  
21 WHICH WOULD BE A 12022.7 ON COUNT 2, WHICH IS A 23153; A  
22 PRIOR DUI FROM 2019 UNDER 23152(F).

23 IS THAT THE VARIOUS -- IS THAT ALL THE  
24 ALLEGATIONS THAT ARE INVOLVED IN THIS CASE,  
25 MS. KANG-HERNANDEZ?

26 MS. KANG-HERNANDEZ: YES, YOUR HONOR. SO IT WOULD  
27 JUST BE THE GBI ALLEGATION AS TO COUNT 2. AND I WOULD LIKE  
28 TO STATE ON THE RECORD --

THE COURT: WHAT ABOUT COUNT 1? IT'S CHARGED AS A MURDER. NOTHING IS GOING TO HAPPEN TO THAT; RIGHT?

MS. KANG-HERNANDEZ: YES.

THE COURT: THIS IS A WATSON MURDER, BASED UPON THE  
PRIOR?

MS. KANG-HERNANDEZ: YES, YOUR HONOR. HOWEVER, COUNT 1 GOES TO THE DECEASED VICTIM, JULIENNE. COUNT 2 IS A SEPARATE VICTIM, WHICH IS HIS FATHER. HE'S PRESENT IN THE COURT AND WOULD LIKE TO BE HEARD BY THE COURT PURSUANT TO MARSY'S LAW.

THE COURT: THAT'S FINE.

WHAT WERE THE INJURIES TO THE VICTIM  
IN COUNT 2?

MS. KANG-HERNANDEZ: HE WAS IN A COMA FOR TWO WEEKS, AND MORE, AND HE IS PERMANENTLY DISABLED.

THE COURT: DISABLED IN WHAT MANNER?

MS. KANG-HERNANDEZ: HE WILL BE ABLE TO TELL YOU  
THAT, YOUR HONOR.

THE COURT: AND YOU'RE SEEKING TO STRIKE THE PRIOR  
DUI, WHICH IS ONLY FROM 2019?

MS. KANG-HERNANDEZ: NO, YOUR HONOR. I AM NOT  
SEEKING TO --

THE COURT: JUST THE GBI ALLEGATION?

MS. KANG-HERNANDEZ: YES, YOUR HONOR. THE ORDER FROM THE D.A. ONLY ASKS ME TO STRIKE THE ENHANCEMENTS AS IT IS ALLEGED IN COUNT 2.

THE COURT: OKAY.

YOU FILED A DOCUMENT TODAY'S DATE -- A

1 WRITTEN DOCUMENT TO DISMISS THE GBI ALLEGATION. IT RECITES  
2 MR. GASCON'S DIRECTIVE, 20 - 08. CORRECT ME IF I'M WRONG; MY  
3 UNDERSTANDING, THOUGH, IS THAT THAT DIRECTIVE APPLIES TO ALL  
4 FELONY CASES AND ENHANCEMENTS, REGARDLESS OF THE PARTICULAR  
5 FACTS AND CIRCUMSTANCES OF THE CASE OR OF THE INDIVIDUAL  
6 DEFENDANT.

7 IS THAT CORRECT?

8 MS. KANG-HERNANDEZ: THAT IS CORRECT, YOUR HONOR.  
9 HOWEVER, THERE IS A CAVEAT WHEN THE CHARGE ITSELF REQUIRES  
10 THE PRIOR TO BE ALLEGED AS A DUI WITH A PRIOR, THAT IT HAS AN  
11 EXCEPTION. THAT IS MY UNDERSTANDING.

12 THE COURT: ALL RIGHT.

13 BUT IN TERMS OF THE GBI ALLEGATION,  
14 YOU'RE SEEKING TO DISMISS THAT PURSUANT TO THE SPECIAL  
15 DIRECTIVE; AND IT APPEARS, BASED UPON YOUR MOTION THAT YOU  
16 HAVE FILED, WHICH INCLUDES IT AS AN EXHIBIT, THAT THIS IS A  
17 BLANKET DIRECTIVE DIRECTED TO ALL D.A.'S TO STRIKE ANY STRIKE  
18 PRIORS OR ANY ENHANCEMENTS WITHOUT REGARD TO THE INDIVIDUAL  
19 FACTS AND CIRCUMSTANCES OF THE INDIVIDUAL CASE, OR OF THE  
20 INDIVIDUAL DEFENDANT; AND THAT IS BEING MADE AS A REQUEST  
21 PURSUANT TO 1385, IN THE INTEREST OF JUSTICE.

22 IS THAT CORRECT?

23 MS. KANG-HERNANDEZ: THAT IS CORRECT.

24 THE COURT: ALL RIGHT.

25 I'LL HEAR FROM THE VICTIM WHO IS THE  
26 SUBJECT OF THE DUI.

27 MS. KANG-HERNANDEZ: THAT IS MR. PETER GEORGE.

28 THE BAILIFF: YOU KNOW WHAT? I'LL HAVE HIM STAND

1       HERE.

2               THE COURT:   ALL RIGHT.

3                       MR. GEORGE, YOU WERE IN THE VEHICLE WHEN  
4       THE ACCIDENT OCCURRED?

5               THE WITNESS:   YES.

6               THE COURT:   AND YOU WERE INJURED?

7               THE WITNESS:   YES.

8               THE COURT:   HOW LONG WERE YOU IN A COMA?

9               THE WITNESS:   TWO WEEKS.

10              THE COURT:   DO YOU HAVE ANY REMAINING OR LASTING  
11       INJURIES FROM THIS INCIDENT?

12              THE WITNESS:   TWO STROKES, AND EVERY BONE IN MY  
13       LEFT LEG WAS BROKEN.

14              THE COURT:   YOU'VE YOU HAD TWO STROKES BECAUSE OF  
15       THE TIME IN THE COMA?

16              THE WITNESS:   YES, BECAUSE OF THE ACCIDENT.

17              THE COURT:   YOU HAD HEAD INJURIES?

18              THE WITNESS:   YEAH.   I HAD A CONCUSSION.

19              THE COURT:   I'M NOT MEANING TO BE DEMEANING TO YOU.  
20       I'M JUST TRYING TO GET THIS ON THE RECORD.

21              THE WITNESS:   NO, NO, NO.

22              THE COURT:   SO YOU HAD HEAD INJURIES AND BROKEN  
23       BONES IN YOUR LEGS?

24              THE WITNESS:   YEAH.   EVERY BONE IN MY LEFT LEG  
25       BROKE; TIBIA, FIBULA, CALCANEUS.

26              THE COURT:   ANY LONG-TERM MENTAL ISSUES BECAUSE OF  
27       THE STROKES?

28              THE WITNESS:   WELL, NO.   THEY SAY YOU HAVE TO WAIT

1 FOR THREE YEARS TO KNOW WHERE YOU'RE AT.

2 THE COURT: OKAY.

3 SO AT THIS POINT, YOU'RE NOT SURE, BUT  
4 YOUR HOPEFUL?

5 THE WITNESS: TRYING TO BE, YEAH.

6 THE COURT: HOW ABOUT ANY PHYSICAL INCAPACITY FROM  
7 THE INJURIES TO THE LEG?

8 THE WITNESS: I'LL LIMP FOR THE REST OF MY LIFE,  
9 AND I'LL HAVE POST-TRAUMATIC ARTHRITIS, BECAUSE OF THE INJURY  
10 TO THE CALCANEUS.

11 THE COURT: BECAUSE OF THE DAMAGE TO THE BONE AND  
12 THE JOINT, YOU'RE LIKELY TO HAVE ARTHRITIS?

13 THE WITNESS: YEAH. IMMEDIATELY.

14 THE COURT: ANYTHING ELSE YOU WANT TO TELL ME ABOUT  
15 THE INJURIES YOU SUFFERED?

16 THE WITNESS: YEAH. MY STERNUM BROKE, AND DAMAGE  
17 TO THE HEART.

18 THE COURT: IS THE DAMAGE TO YOUR HEART LONG TERM?

19 THE WITNESS: LOOKS LIKE IT.

20 THE COURT: ALL RIGHT.

21 HAS IT CAUSED YOU ANY INABILITY TO  
22 PERFORM WORK OR ANY OTHER ACTIVITIES THAT YOU USED TO  
23 PERFORM?

24 THE WITNESS: YEAH.

25 THE COURT: WHAT'S THAT?

26 THE WITNESS: I CAN'T WALK VERY FAR. AND THE  
27 MENTAL STUFF, WITH STROKES -- I CAN'T REMEMBER EVERYTHING. I  
28 USED TO HAVE A PHOTOGRAPHIC MEMORY.



1 THE COURT: ALL RIGHT.

2 MISTER -- OR JULIENNE G., THE PERSON YOU  
3 WERE WITH, WHO WAS KILLED; WHAT WAS YOUR RELATIONSHIP TO THAT  
4 PERSON?

5 THE WITNESS: I WAS HIS FATHER.

6 THE COURT: THIS WAS YOUR CHILD?

7 THE WITNESS: YES.

8 THE COURT: HOW OLD WAS YOUR CHILD?

9 THE WITNESS: HE WAS SIX.

10 THE COURT: I AM TERRIBLY SORRY. MY SYMPATHIES TO  
11 YOU. I DON'T MEAN THAT IN ANY WAY OTHER THAN WITH GREAT  
12 SINCERITY. I'M REALLY SORRY. I CANNOT EVEN IMAGINE WHAT  
13 YOU'RE GOING THROUGH.

14 ANYTHING ELSE YOU WANT TO ADD?

15 WHAT WAS THE BLOOD ALCOHOL IN THIS CASE,  
16 MS. KANG-HERNANDEZ?

17 MS. KANG-HERNANDEZ: YOUR HONOR, THIS IS  
18 METHAMPHETAMINE CASE.

19 THE COURT: DRIVING WHILE UNDER THE INFLUENCE OF  
20 DRUGS?

21 MS. KANG-HERNANDEZ: YES, YOUR HONOR.

22 THE COURT: HAVE THE PEOPLE DONE A FINAL ANALYSIS?  
23 IS IT A BLOOD SAMPLE?

24 MS. KANG-HERNANDEZ: YES, YOUR HONOR.

25 THE COURT: DO YOU KNOW WHAT THE LEVEL OF  
26 METHAMPHETAMINE WAS?

27 MS. KANG-HERNANDEZ: OFF THE TOP OF MY HEAD, IT'S  
28 IN THE HUNDREDS.

1 THE COURT: ALL RIGHT.

2 ANYTHING ELSE YOU'D LIKE TO ADD,

3 MS. ARMENTA-RIGOR?

4 MS. ARMENTA-RIGOR: NO.

5 THE COURT: ALL RIGHT.

6 MOTION IS DENIED. THIS REQUEST IS NOT  
7 MADE -- IT MAY BE FACIALLY MADE IN THE INTEREST OF JUSTICE,  
8 BUT MR. GASCON'S DIRECTIVE IS A BLANKET DIRECTIVE THAT  
9 APPLIES TO ALL CASES AND ALL CIRCUMSTANCES, REGARDLESS OF THE  
10 DEFENDANT, OR THE FACTS AND CIRCUMSTANCES OF THE CASE. IT  
11 DOES NOT INDIVIDUALIZE THE CASES PURSUANT TO THEIR FACTS AND  
12 CIRCUMSTANCES, OR INDIVIDUALIZE THE DEFENDANT, IN TERMS OF  
13 HIS PRIOR HISTORY. I THINK UNDER THOSE CIRCUMSTANCES, IT IS  
14 NOT A SUFFICIENT BASIS UNDER 1385 TO ARTICULATE OR SUPPORT A  
15 FINDING OF A DISMISSAL IN THE INTEREST OF JUSTICE.

16 ADDITIONALLY, I WOULD INDICATE THAT IN  
17 THIS CASE, HE HAS A PRIOR ALCOHOL OR DRUG RELATED DRIVING  
18 CONVICTION WHICH AGGRAVATES THIS CASE. ONE VICTIM, A CHILD,  
19 WAS KILLED. MR. GEORGE, THE FATHER, IS AT LEAST SOMEWHAT  
20 PERMANENTLY DISABLED.

21 FOR ALL THOSE REASONS, LOOKING AT THE  
22 FACTS OF THE CASE, IT IS NOT IN THE INTEREST OF JUSTICE TO  
23 STRIKE ANY ALLEGATION OR ENHANCEMENT. AND MR. GASCON'S  
24 DIRECTIVE, IN MY OPINION, ON ITS FACE, IS INSUFFICIENT TO  
25 PROVIDE THAT; AND IN FACT, IS CONTRARY TO WHAT THE FACTS AND  
26 CIRCUMSTANCES ARE AS DESCRIBED BY MS. KANG-HERNANDEZ AND WHAT  
27 MR. GEORGE INDICATED. THE MOTION WILL BE DENIED.

28 MS. KANG-HERNANDEZ: YOUR HONOR, I MUST STATE ON

1 THE RECORD, PER THE DIRECTIVE, THAT THE D.D.A. IS ORDERED,  
2 AND I QUOTE, "THE SPECIAL DIRECTIVE THAT THE D.D.A., UPON THE  
3 COURT'S UNWILLINGNESS TO DISMISS THE ENHANCEMENT, THAT THE  
4 D.D.A. SHALL SEEK LEAVE OF THE COURT TO FILE AN AMENDED  
5 CHARGING DOCUMENT PURSUANT TO PENAL CODE SECTION 1009.

6 THE COURT: 1009 INDICATES AS FOLLOWS:

7 AN INDICTMENT, ACCUSATION OR INFORMATION  
8 MAY BE AMENDED BY THE DISTRICT ATTORNEY, AND AN AMENDED  
9 COMPLAINT MAY BE FILED BY THE PROSECUTING ATTORNEY WITHOUT  
10 LEAVE OF COURT AT ANY TIME BEFORE THE DEFENDANT PLEADS, OR A  
11 MERGE TO THE ORIGINAL PLEADING IS SUSTAINED.

12 THE COURT IN WHICH AN ACTION IS PENDING  
13 MAY ORDER OR PERMIT AN AMENDMENT OR INDICTMENT ACCUSATION OR  
14 INFORMATION, OR THE FILING OF AN AMENDED COMPLAINT, QUOTE,  
15 FOR ANY DEFECT OR INSUFFICIENCY AT ANY STAGE OF THE  
16 PROCEEDINGS.

17 HE'S ALREADY ENTERED A PLEA, WHICH I  
18 THINK ELIMINATES YOUR RIGHT WITHOUT LEAVE OF THE COURT TO  
19 FILE AN AMENDED CHARGING DOCUMENT IN THIS CASE, WHICH WAS THE  
20 INFORMATION. I SUPPOSE I CAN'T STOP YOU FROM FILING AN  
21 AMENDED INFORMATION, BUT ONCE FILED, I CAN REFUSE TO ACCEPT  
22 IT OR ARRAIGN THE DEFENDANT ON IT, UNLESS THE PURPOSE OF THE  
23 AMENDED DOCUMENT IS TO CORRECT, QUOTE, A DEFECT OR  
24 INSUFFICIENCY.

25 IS THERE ANY DEFECT OR INSUFFICIENCY IN  
26 THE CURRENT INFORMATION THAT YOU ARE SEEKING TO REMEDY WITH  
27 AN AMENDED INFORMATION?

28 MS. KANG-HERNANDEZ: AS AN OFFICER OF THE COURT,

1 NO.

2 THE COURT: ALL RIGHT.

3 ANYTHING YOU WANT TO ADD,

4 MS. AMENTA-RIGOR?

5 MS. ARMENTA-RIGOR: NO.

6 THE COURT: THE CLERK HAS ADVISED ME THAT I CANNOT  
7 PREVENT THE D.A. FROM FILING THAT DOCUMENT. SO FILE IT, IF  
8 YOU WISH TO. BUT I WILL NOT ACCEPT IT, NOR WILL I ARRAIGN  
9 THE DEFENDANT ON IT, IN LIGHT OF THE FACT THAT YOUR  
10 STATEMENT, AS AN OFFICER OF THE COURT, THE PURPOSE OF IT IS  
11 NOT TO REMEDY ANY DEFECT OR INSUFFICIENCY. SO FILE IT, IF  
12 YOU NEED TO. I WILL NOT ACCEPT IT ON THE CURRENT RECORD, NOR  
13 WILL I ARRAIGN THE DEFENDANT ON IT ON THE CURRENT RECORD.  
14 THAT REQUEST IS DENIED.

15 MS. KANG-HERNANDEZ: MAY I RETURN THE SDT DOCUMENTS  
16 TO THE COURT FILE?

17 THE COURT: YES.

18 WHAT DO YOU WANT TO DO ABOUT A TRIAL  
19 DATE?

20 MS. ARMENTA-RIGOR: YOUR HONOR, REQUESTING ONE  
21 FURTHER PRETRIAL DATE IN FEBRUARY.

22 THE COURT: ALL RIGHT.

23 WHEN DO YOU WANT TO COME BACK?

24 MS. ARMENTA-RIGOR: CAN WE HAVE FEBRUARY 18TH?

25 THE COURT: GIVE ME ONE SECOND. THE 18TH IS HEAVY.  
26 CAN WE DO THE 17TH?

27 MS. ARMENTA-RIGOR: YES.

28 THE COURT: ALL RIGHT. FEBRUARY 17TH.

1 MR. PROVENCIO, YOU HAVE A RIGHT TO TRIAL  
2 WITHIN 60 DAYS. DO YOU GIVE THAT RIGHT UP AND AGREE IT MAY  
3 GO TO FEBRUARY 16TH, OR WITHIN 60 -- FEBRUARY 17. DO YOU  
4 GIVE UP YOUR RIGHT TO TRIAL WITHIN OF 60 DAYS, AND AGREE IT  
5 CAN GO TO FEBRUARY 17TH OR WITHIN 60 DAYS?

6 THE DEFENDANT: YES.

7 THE COURT: COUNSEL JOIN?

8 MS. ARMENTA-RIGOR: YES.

9 THE COURT: 0 OF 60 ON THE 17TH.

10 AND MR. GEORGE, MY SYMPATHIES TO YOU AND  
11 YOUR FAMILY.

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14 **(MATTER WAS CONCLUDED)**  
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# EXHIBIT I



# George Gascón's plans to overhaul prosecutions meet early resistance from judges, others

On his first day in office, Los Angeles County Dist. Atty. George Gascón announced [sweeping changes](#) that he promised would dramatically alter how justice is delivered in the county.

But in the week since his heady proclamations, Gascón's reform plans have been met with resistance from judges, his own prosecutors and crime victims, who are challenging both the ethics of his vision and whether he has the authority to carry out one of its main components.

That Gascón has run into pushback comes as no surprise, as a clash between his progressive agenda and more traditional law enforcement strategies seemed inevitable. But the friction has heated up with startling speed and intensity, affording the district attorney no honeymoon period as he tries to reimagine how an office that files more than 100,000 criminal cases each year carries out its mission.

Gascón has succeeded in quickly locking in several significant policy changes, including barring prosecutors from seeking the death penalty or trying juveniles as adults. And defendants facing a number of misdemeanor crimes can now avoid prosecutions by enrolling in diversion programs. Starting in January, prosecutors will no longer be allowed to seek cash bails.

But his attempt to eliminate sentencing enhancements has met significant resistance. Enhancements can add several years to prison terms for defendants who meet certain conditions, such as being ex-felons or gang members, or those who committed hate crimes or attack police.

Gascón has long argued that penalties for underlying crimes are significant

on their own and that sentencing enhancements lead to excessive prison terms that disproportionately affect Black and Latino defendants, while not deterring crime.

“People that commit a crime ... they are going to face accountability. And that accountability will be proportionate to the crime,” he said.

“Enhancements do not have anything to do with accountability.”

Gascón, however, relented somewhat Friday. In a memo to prosecutors, he reinstated the use of sentencing enhancements “in cases involving the most vulnerable victims and in specified extraordinary circumstances,” according to a copy of the memo obtained by The Times.

Prosecutors now are allowed to seek enhancements in hate-motivated attacks, cases of elder and child abuse, sex abuse and sex trafficking, the memo said. With the approval of a supervisor, enhancements can also be sought in cases where a victim suffers “extensive” physical injuries or a weapon is used in a way that threatens a victim’s life during a crime, according to interim Chief Deputy Dist. Atty. Joseph Iniguez.

The backtracking came a day after Gascón vowed at a news conference that he would not relax the policy banning sentencing enhancements because he worried doing so would give prosecutors too much latitude to seek excessive prison terms.

That hardline stance softened after a meeting Thursday night with members of the LGBTQ community and experts on hate crimes, according to Brian Levin, director of the Center for the Study of Hate and Extremism at Cal State San Bernardino, who attended the meeting.

Through the first two weeks of his term, judges have emerged as a significant roadblock to Gascón’s enhancement policies.

After a deputy district attorney sought to dismiss an enhancement against a

defendant with a prior felony conviction last week, Superior Court Judge Alison Estrada said the prosecutor had “no independent authority” to do so unless the dismissal was in the interest of justice or due to a lack of evidence.

When the prosecutor said he was only acting on Gascón’s order, Estrada denied the motion, drawing a cheer from two LAPD detectives sitting in the back of the courtroom. Judges in other courthouses around the county, including Long Beach, Inglewood and the Antelope Valley, have made similar decisions, attorneys said.

Gascón tried to fashion a workaround to the judges’ objections Tuesday, instructing prosecutors to tell judges that dismissing enhancements is, in fact, in the interest of justice because the sentences imposed for the underlying crimes are “sufficient to protect public safety.”

If a judge still refuses, the order directs prosecutors to file amended charging documents that do not include the sentencing enhancements, according to a copy of the order reviewed by The Times. Gascón also wants prosecutors to alert their supervisors when a judge refuses to throw out an enhancement.

Some prosecutors have raised objections as well, questioning the ethics of Gascón’s order that they say requires them to make representations in court that they don’t believe in.

Deputy Dist. Atty. Richard Ceballos, who is prosecuting a group charged in [a series of brutal stabbings of transgender women](#) and made an [unsuccessful bid](#) for D.A., asked a judge to dismiss hate crime enhancements in the case Tuesday, but refused to say doing so would be in the interest of justice. The judge ultimately blocked the motion to dismiss.

“He clearly has a right to make these motions,” Ceballos said of Gascón. “We have to follow them; however, we cannot represent to the court that it is in

the interest of justice if we don't believe it. That would violate the rules of professional responsibility."

On Wednesday, Gascón scoffed at that idea.

"What we're doing is certainly not unlawful and not unethical. Prosecutors are sworn to follow the directives of the elected D.A. as long as he or she is working within the law, and I firmly believe that I am," he said.

In a bruising race against longtime Dist. Atty. Jackie Lacey, Gascón was clear that if he won the election he intended to overhaul criminal justice in L.A. County. He earned the enthusiastic backing of L.A.'s increasingly powerful progressive bloc and received major financial backing from wealthy supporters of criminal justice reform.

Now he is under pressure to deliver on his promises as some victims' rights activists and law enforcement officials are pushing back. Gascón said Wednesday he understands the changes he's making have unnerved some prosecutors in his office.

"When you have such a radical change within a line of work and within an organization, there is going to be a lot of uneasiness and there are going to be people that feel very unsettled by this," he said. "The one thing I'm convinced of is that the men and women of the L.A. D.A.'s office came into work for the same reasons I did 40 years ago. To make sure that our communities are protected."

The union representing rank-and-file deputy district attorneys — one of many [law enforcement unions that spent millions opposing Gascón's candidacy](#) — issued a memo this week expressing concern that some of the district attorney's directives would require prosecutors "to violate the law and our duty of candor to the court" and expressed concern that some would face discipline or termination.

Those fears were fueled when Gascón disciplined the head prosecutor in the Compton courthouse, Richard Doyle, after he refused an order to withdraw charges against a man who had participated in recent protests against police.

Doyle, according to two law enforcement officials with knowledge of the situation, was issued a letter of reprimand last week for refusing to dismiss the case against Emanuel Padilla, who was charged with [attempting to derail a city commuter train during a protest by dragging metal cables](#) across the train's tracks. The charge carried a maximum sentence of life in prison.

In one of his first acts as district attorney, Gascón [ordered charges against Padilla to be dropped](#).

Max Szabo, a spokesman for Gascón's transition team, said video of the incident made it clear there was insufficient evidence to support the charges against Padilla.

"The video evidence we have seen does not show Mr. Padilla placing, dropping or otherwise putting any object in the path of a train," he said, adding that many sheriff's deputies were at the protest and did not see reason to arrest Padilla.

After Doyle refused to dismiss the case, a member of Gascón's executive team appeared in Compton to drop the charges, according to the officials, who spoke on the condition of anonymity because they were not authorized to speak to the media.

Szabo declined to comment further because the issue was a personnel matter. Attempts to contact Doyle were not successful.

A Google document seeking to collect information on "non-compliant" deputy district attorneys also circulated in recent days. The document was reviewed by The Times last week, and several public defenders confirmed

they had received the link as well.

Both a spokeswoman for the public defender's office and Szabo said no one in their offices had created the document. The link was disabled shortly after The Times began asking questions about it.

The fight over sentencing enhancements underscores the challenges Gascón faces as he tries to address what he and others say are deep-seated inequities that have arisen out of the office's long-running focus on seeking heavy sentences on behalf of crime victims.

Gascón and his supporters point to research that shows enhancements disproportionately affect Black and Latino communities and have questioned whether they serve any public safety purpose.

Roughly 90% of defendants from L.A. County sent to prison under sentencing enhancements were people of color, said Michael Romano, director of the Three Strikes Project at Stanford Law School and chair of Gov. Gavin Newsom's penal code revision committee.

## **Advertisement**

People convicted of serious violence such as murder or attempted murder will receive lengthy prison sentences that make enhancements unnecessary, Romano said. The men accused of attacking the transgender women, for example, face multiple charges of attempted murder, which could carry a sentence of life in prison. The hate crime enhancements they each face would add a maximum of three years each to a sentence.

"In many, many cases, the enhancement results in a sentence that is far longer than the underlying criminal conduct, and it becomes the tail wagging the dog," Romano said. "There is still ample room to impose long sentences in crimes, especially violent crimes."

*Times staff writer Matt Hamilton contributed to this report.*



## EXHIBIT J



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Unconstitutional or Preempted Limitation Recognized by [People v. Strike](#), Cal.App. 4 Dist., Feb. 11, 2020

[West's Annotated California Codes](#)

[Penal Code \(Refs & Annos\)](#)

[Part 1. Of Crimes and Punishments \(Refs & Annos\)](#)

[Title 7. Of Crimes Against Public Justice \(Refs & Annos\)](#)

[Chapter 11. Street Terrorism Enforcement and Prevention Act \(Refs & Annos\)](#)

West's Ann.Cal.Penal Code § 186.22

§ 186.22. Participation in criminal street gang; penalty

Effective: January 1, 2018

[Currentness](#)

<Section operative until Jan. 1, 2022. See, also, [§ 186.22](#) operative Jan. 1, 2022.>

(a) Any person who actively participates in any criminal street gang with knowledge that its members engage in, or have engaged in, a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or two or three years.

(b)(1) Except as provided in paragraphs (4) and (5), any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished as follows:

(A) Except as provided in subparagraphs (B) and (C), the person shall be punished by an additional term of two, three, or four years at the court's discretion.

(B) If the felony is a serious felony, as defined in [subdivision \(c\) of Section 1192.7](#), the person shall be punished by an additional term of five years.

(C) If the felony is a violent felony, as defined in [subdivision \(c\) of Section 667.5](#), the person shall be punished by an additional term of 10 years.

(2) If the underlying felony described in paragraph (1) is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school-related programs or when minors are using the facility, that fact shall be a circumstance in aggravation of the crime in imposing a term under paragraph (1).

(3) The court shall select the sentence enhancement that, in the court's discretion, best serves the interests of justice and shall state the reasons for its choice on the record at the time of the sentencing in accordance with the provisions of [subdivision \(d\) of Section 1170.1](#).

(4) Any person who is convicted of a felony enumerated in this paragraph committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, be sentenced to an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greater of:

(A) The term determined by the court pursuant to [Section 1170](#) for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with [Section 1170](#)) of Title 7 of Part 2, or any period prescribed by [Section 3046](#), if the felony is any of the offenses enumerated in subparagraph (B) or (C) of this paragraph.

(B) Imprisonment in the state prison for 15 years, if the felony is a home invasion robbery, in violation of [subparagraph \(A\) of paragraph \(1\) of subdivision \(a\) of Section 213](#); carjacking, as defined in [Section 215](#); a felony violation of [Section 246](#); or a violation of [Section 12022.55](#).

(C) Imprisonment in the state prison for seven years, if the felony is extortion, as defined in [Section 519](#); or threats to victims and witnesses, as defined in [Section 136.1](#).

(5) Except as provided in paragraph (4), any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life shall not be paroled until a minimum of 15 calendar years have been served.

(c) If the court grants probation or suspends the execution of sentence imposed upon the defendant for a violation of subdivision (a), or in cases involving a true finding of the enhancement enumerated in subdivision (b), the court shall require that the defendant serve a minimum of 180 days in a county jail as a condition thereof.

(d) Any person who is convicted of a public offense punishable as a felony or a misdemeanor, which is committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall be punished by imprisonment in a county jail not to exceed one year, or by imprisonment in a state prison for one, two, or three years, provided that any person sentenced to imprisonment in the county jail shall be imprisoned for a period not to exceed one year, but not less than 180 days, and shall not be eligible for release upon completion of sentence, parole, or any other basis, until he or she has served 180 days. If the court grants probation or suspends the execution of sentence imposed upon the defendant, it shall require as a condition thereof that the defendant serve 180 days in a county jail.

(e) As used in this chapter, “pattern of criminal gang activity” means the commission of, attempted commission of, conspiracy to commit, or solicitation of, sustained juvenile petition for, or conviction of two or more of the following offenses, provided at least one of these offenses occurred after the effective date of this chapter and the last of those offenses occurred within three years after a prior offense, and the offenses were committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in [Section 245](#).

- (2) Robbery, as defined in Chapter 4 (commencing with [Section 211](#)) of Title 8.
- (3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with [Section 187](#)) of Title 8.
- (4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in [Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code](#).
- (5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in [Section 246](#).
- (6) Discharging or permitting the discharge of a firearm from a motor vehicle, as defined in [subdivisions \(a\) and \(b\) of Section 12034](#) until January 1, 2012, and, on or after that date, [subdivisions \(a\) and \(b\) of Section 26100](#).
- (7) Arson, as defined in Chapter 1 (commencing with [Section 450](#)) of Title 13.
- (8) The intimidation of witnesses and victims, as defined in [Section 136.1](#).
- (9) Grand theft, as defined in [subdivision \(a\) or \(c\) of Section 487](#).
- (10) Grand theft of any firearm, vehicle, trailer, or vessel.
- (11) Burglary, as defined in [Section 459](#).
- (12) Rape, as defined in [Section 261](#).
- (13) Looting, as defined in [Section 463](#).
- (14) Money laundering, as defined in [Section 186.10](#).
- (15) Kidnapping, as defined in [Section 207](#).
- (16) Mayhem, as defined in [Section 203](#).
- (17) Aggravated mayhem, as defined in [Section 205](#).
- (18) Torture, as defined in [Section 206](#).

- (19) Felony extortion, as defined in [Sections 518 and 520](#).
  - (20) Felony vandalism, as defined in [paragraph \(1\) of subdivision \(b\) of Section 594](#).
  - (21) Carjacking, as defined in [Section 215](#).
  - (22) The sale, delivery, or transfer of a firearm, as defined in [Section 12072](#) until January 1, 2012, and, on or after that date, Article 1 (commencing with [Section 27500](#)) of Chapter 4 of Division 6 of Title 4 of Part 6.
  - (23) Possession of a pistol, revolver, or other firearm capable of being concealed upon the person in violation of [paragraph \(1\) of subdivision \(a\) of Section 12101](#) until January 1, 2012, and, on or after that date, [Section 29610](#).
  - (24) Threats to commit crimes resulting in death or great bodily injury, as defined in [Section 422](#).
  - (25) Theft and unlawful taking or driving of a vehicle, as defined in [Section 10851 of the Vehicle Code](#).
  - (26) Felony theft of an access card or account information, as defined in [Section 484e](#).
  - (27) Counterfeiting, designing, using, or attempting to use an access card, as defined in [Section 484f](#).
  - (28) Felony fraudulent use of an access card or account information, as defined in [Section 484g](#).
  - (29) Unlawful use of personal identifying information to obtain credit, goods, services, or medical information, as defined in [Section 530.5](#).
  - (30) Wrongfully obtaining Department of Motor Vehicles documentation, as defined in [Section 529.7](#).
  - (31) Prohibited possession of a firearm in violation of [Section 12021](#) until January 1, 2012, and on or after that date, Chapter 2 (commencing with [Section 29800](#)) of Division 9 of Title 4 of Part 6.
  - (32) Carrying a concealed firearm in violation of [Section 12025](#) until January 1, 2012, and, on or after that date, [Section 25400](#).
  - (33) Carrying a loaded firearm in violation of [Section 12031](#) until January 1, 2012, and, on or after that date, [Section 25850](#).
- (f) As used in this chapter, “criminal street gang” means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (25), inclusive, or (31) to (33), inclusive, of subdivision (e), having a common name or

common identifying sign or symbol, and whose members individually or collectively engage in, or have engaged in, a pattern of criminal gang activity.

(g) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(h) Notwithstanding any other law, for each person committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities for a conviction pursuant to subdivision (a) or (b) of this section, the offense shall be deemed one for which the state shall pay the rate of 100 percent of the per capita institutional cost of the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, pursuant to former Section 912.5 of the Welfare and Institutions Code.

(i) In order to secure a conviction or sustain a juvenile petition, pursuant to subdivision (a) it is not necessary for the prosecution to prove that the person devotes all, or a substantial part, of his or her time or efforts to the criminal street gang, nor is it necessary to prove that the person is a member of the criminal street gang. Active participation in the criminal street gang is all that is required.

(j) A pattern of gang activity may be shown by the commission of one or more of the offenses enumerated in paragraphs (26) to (30), inclusive, of subdivision (e), and the commission of one or more of the offenses enumerated in paragraphs (1) to (25), inclusive, or (31) to (33), inclusive, of subdivision (e). A pattern of gang activity cannot be established solely by proof of commission of offenses enumerated in paragraphs (26) to (30), inclusive, of subdivision (e), alone.

(k) This section shall remain in effect only until January 1, 2022, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2022, deletes or extends that date.

#### **Credits**

(Added by Stats.1989, c. 930, § 5.1, operative Jan. 1, 1993. Amended by Stats.1991, c. 201 (A.B.1135), § 1, operative Jan. 1, 1993; Stats.1991, c. 661 (A.B.1866), § 2, operative Jan. 1, 1993; Stats.1993, c. 601 (S.B.724), § 1; Stats.1993, c. 610 (A.B.6), § 3, eff. Oct. 1, 1993; Stats.1993, c. 611 (S.B.60), § 3, eff. Oct. 1, 1993; Stats.1993, c. 1125 (A.B.1630), § 3; Stats.1994, c. 47 (S.B.480), § 1, eff. April 19, 1994; Stats.1994, c. 451 (A.B.2470), § 1; Stats.1995, c. 377 (S.B.1095), § 2; Stats.1996, c. 630 (S.B.1701), § 1; Stats.1996, c. 873 (S.B.318), § 1; Stats.1996, c. 982 (A.B.2035), § 1; Stats.1997, c. 500 (S.B.940), § 2; Initiative Measure (Prop. 21, § 4, approved March 7, 2000, eff. March 8, 2000); Stats.2001, c. 854 (S.B.205), § 22; Stats.2005, c. 482 (S.B.444), § 1; Stats.2006, c. 596 (S.B.1222), § 1; Stats.2009, c. 171 (S.B.150), § 1; Stats.2010, c. 256 (A.B.2263), § 1; Stats.2011, c. 15 (A.B.109), § 275, eff. April 4, 2011, operative Oct. 1, 2011; Stats.2011, c. 39 (A.B.117), § 6, eff. June 30, 2011, operative Oct. 1, 2011; Stats.2011, c. 361 (S.B.576), § 1, eff. Sept. 29, 2011; Stats.2013, c. 508 (S.B.463), § 1; Stats.2016, c. 887 (S.B.1016), § 1, eff. Jan. 1, 2017; Stats.2017, c. 561 (A.B.1516), § 178, eff. Jan. 1, 2018.)

#### **Editors' Notes**

#### **REPEAL**

<For repeal of this section, see its terms.>

[Notes of Decisions \(959\)](#)

West's Ann. Cal. Penal Code § 186.22, CA PENAL § 186.22

Current with all laws through Ch. 372 of 2020 Reg.Sess.

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[Title 8. Of Crimes Against the Person](#)

[Chapter 1. Homicide \(Refs & Annos\)](#)

West's Ann.Cal.Penal Code § 190.1

§ 190.1. Death penalty cases; procedures

[Currentness](#)

A case in which the death penalty may be imposed pursuant to this chapter shall be tried in separate phases as follows:

(a) The question of the defendant's guilt shall be first determined. If the trier of fact finds the defendant guilty of first degree murder, it shall at the same time determine the truth of all special circumstances charged as enumerated in [Section 190.2](#) except for a special circumstance charged pursuant to [paragraph \(2\) of subdivision \(a\) of Section 190.2](#) where it is alleged that the defendant had been convicted in a prior proceeding of the offense of murder in the first or second degree.

(b) If the defendant is found guilty of first degree murder and one of the special circumstances is charged pursuant to [paragraph \(2\) of subdivision \(a\) of Section 190.2](#) which charges that the defendant had been convicted in a prior proceeding of the offense of murder of the first or second degree, there shall thereupon be further proceedings on the question of the truth of such special circumstance.

(c) If the defendant is found guilty of first degree murder and one or more special circumstances as enumerated in [Section 190.2](#) has been charged and found to be true, his sanity on any plea of not guilty by reason of insanity under [Section 1026](#) shall be determined as provided in [Section 190.4](#). If he is found to be sane, there shall thereupon be further proceedings on the question of the penalty to be imposed. Such proceedings shall be conducted in accordance with the provisions of [Section 190.3](#) and [190.4](#).

**Credits**

(Added by § 4 of Initiative Measure approved Nov. 7, 1978, eff. Nov. 8, 1978.)

[Notes of Decisions \(242\)](#)

West's Ann. Cal. Penal Code § 190.1, CA PENAL § 190.1

Current with all laws through Ch. 372 of 2020 Reg.Sess.





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[Title 8. Of Crimes Against the Person](#)

[Chapter 1. Homicide \(Refs & Annos\)](#)

West's Ann.Cal.Penal Code § 190.2

§ 190.2. Death penalty or life imprisonment without parole; special circumstances

Effective: January 1, 2019

[Currentness](#)

(a) The penalty for a defendant who is found guilty of murder in the first degree is death or imprisonment in the state prison for life without the possibility of parole if one or more of the following special circumstances has been found under [Section 190.4](#) to be true:

(1) The murder was intentional and carried out for financial gain.

(2) The defendant was convicted previously of murder in the first or second degree. For the purpose of this paragraph, an offense committed in another jurisdiction, which if committed in California would be punishable as first or second degree murder, shall be deemed murder in the first or second degree.

(3) The defendant, in this proceeding, has been convicted of more than one offense of murder in the first or second degree.

(4) The murder was committed by means of a destructive device, bomb, or explosive planted, hidden, or concealed in any place, area, dwelling, building, or structure, and the defendant knew, or reasonably should have known, that his or her act or acts would create a great risk of death to one or more human beings.

(5) The murder was committed for the purpose of avoiding or preventing a lawful arrest, or perfecting or attempting to perfect, an escape from lawful custody.

(6) The murder was committed by means of a destructive device, bomb, or explosive that the defendant mailed or delivered, attempted to mail or deliver, or caused to be mailed or delivered, and the defendant knew, or reasonably should have known, that his or her act or acts would create a great risk of death to one or more human beings.

(7) The victim was a peace officer, as defined in [Section 830.1](#), [830.2](#), [830.3](#), [830.31](#), [830.32](#), [830.33](#), [830.34](#), [830.35](#), [830.36](#), [830.37](#), [830.4](#), [830.5](#), [830.6](#), [830.10](#), [830.11](#), or [830.12](#), who, while engaged in the course of the performance of his or her duties, was intentionally killed, and the defendant knew, or reasonably should have known, that the victim was a peace officer

engaged in the performance of his or her duties; or the victim was a peace officer, as defined in the above-enumerated sections, or a former peace officer under any of those sections, and was intentionally killed in retaliation for the performance of his or her official duties.

(8) The victim was a federal law enforcement officer or agent who, while engaged in the course of the performance of his or her duties, was intentionally killed, and the defendant knew, or reasonably should have known, that the victim was a federal law enforcement officer or agent engaged in the performance of his or her duties; or the victim was a federal law enforcement officer or agent, and was intentionally killed in retaliation for the performance of his or her official duties.

(9) The victim was a firefighter, as defined in [Section 245.1](#), who, while engaged in the course of the performance of his or her duties, was intentionally killed, and the defendant knew, or reasonably should have known, that the victim was a firefighter engaged in the performance of his or her duties.

(10) The victim was a witness to a crime who was intentionally killed for the purpose of preventing his or her testimony in any criminal or juvenile proceeding, and the killing was not committed during the commission or attempted commission, of the crime to which he or she was a witness; or the victim was a witness to a crime and was intentionally killed in retaliation for his or her testimony in any criminal or juvenile proceeding. As used in this paragraph, “juvenile proceeding” means a proceeding brought pursuant to [Section 602](#) or [707 of the Welfare and Institutions Code](#).

(11) The victim was a prosecutor or assistant prosecutor or a former prosecutor or assistant prosecutor of any local or state prosecutor's office in this or any other state, or of a federal prosecutor's office, and the murder was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.

(12) The victim was a judge or former judge of any court of record in the local, state, or federal system in this or any other state, and the murder was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.

(13) The victim was an elected or appointed official or former official of the federal government, or of any local or state government of this or any other state, and the killing was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.

(14) The murder was especially heinous, atrocious, or cruel, manifesting exceptional depravity. As used in this section, the phrase “especially heinous, atrocious, or cruel, manifesting exceptional depravity” means a conscienceless or pitiless crime that is unnecessarily torturous to the victim.

(15) The defendant intentionally killed the victim by means of lying in wait.

(16) The victim was intentionally killed because of his or her race, color, religion, nationality, or country of origin.

(17) The murder was committed while the defendant was engaged in, or was an accomplice in, the commission of, attempted commission of, or the immediate flight after committing, or attempting to commit, the following felonies:

- (A) Robbery in violation of [Section 211](#) or [212.5](#).
- (B) Kidnapping in violation of [Section 207](#), [209](#), or [209.5](#).
- (C) Rape in violation of [Section 261](#).
- (D) Sodomy in violation of [Section 286](#).
- (E) The performance of a lewd or lascivious act upon the person of a child under the age of 14 years in violation of [Section 288](#).
- (F) Oral copulation in violation of [Section 287](#) or former Section 288a.
- (G) Burglary in the first or second degree in violation of [Section 460](#).
- (H) Arson in violation of [subdivision \(b\) of Section 451](#).
- (I) Train wrecking in violation of [Section 219](#).
- (J) Mayhem in violation of [Section 203](#).
- (K) Rape by instrument in violation of [Section 289](#).
- (L) Carjacking, as defined in [Section 215](#).
- (M) To prove the special circumstances of kidnapping in subparagraph (B), or arson in subparagraph (H), if there is specific intent to kill, it is only required that there be proof of the elements of those felonies. If so established, those two special circumstances are proven even if the felony of kidnapping or arson is committed primarily or solely for the purpose of facilitating the murder.
- (18) The murder was intentional and involved the infliction of torture.
- (19) The defendant intentionally killed the victim by the administration of poison.
- (20) The victim was a juror in any court of record in the local, state, or federal system in this or any other state, and the murder was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.

(21) The murder was intentional and perpetrated by means of discharging a firearm from a motor vehicle, intentionally at another person or persons outside the vehicle with the intent to inflict death. For purposes of this paragraph, “motor vehicle” means any vehicle as defined in [Section 415 of the Vehicle Code](#).

(22) The defendant intentionally killed the victim while the defendant was an active participant in a criminal street gang, as defined in [subdivision \(f\) of Section 186.22](#), and the murder was carried out to further the activities of the criminal street gang.

(b) Unless an intent to kill is specifically required under subdivision (a) for a special circumstance enumerated therein, an actual killer, as to whom the special circumstance has been found to be true under [Section 190.4](#), need not have had any intent to kill at the time of the commission of the offense which is the basis of the special circumstance in order to suffer death or confinement in the state prison for life without the possibility of parole.

(c) Every person, not the actual killer, who, with the intent to kill, aids, abets, counsels, commands, induces, solicits, requests, or assists any actor in the commission of murder in the first degree shall be punished by death or imprisonment in the state prison for life without the possibility of parole if one or more of the special circumstances enumerated in subdivision (a) has been found to be true under [Section 190.4](#).

(d) Notwithstanding subdivision (c), every person, not the actual killer, who, with reckless indifference to human life and as a major participant, aids, abets, counsels, commands, induces, solicits, requests, or assists in the commission of a felony enumerated in paragraph (17) of subdivision (a) which results in the death of some person or persons, and who is found guilty of murder in the first degree therefor, shall be punished by death or imprisonment in the state prison for life without the possibility of parole if a special circumstance enumerated in paragraph (17) of subdivision (a) has been found to be true under [Section 190.4](#).

The penalty shall be determined as provided in this section and [Sections 190.1, 190.3, 190.4, and 190.5](#).

#### Credits

(Added by § 6 of Initiative Measure approved Nov. 7, 1978, eff. Nov. 8, 1978. Amended by [Stats.1989, c. 1165, § 16, \(Prop.114\) approved June 5, 1990](#), eff. June 6, 1990; [Initiative Measure \(Prop.115\), approved June 5, 1990](#), eff. June 6, 1990; [Stats.1995, c. 477 \(S.B.32\), § 1 \(Prop. 195, approved March 26, 1996, eff. March 27, 1996\)](#); [Stats.1995, c. 478 \(S.B.9\), § 2 \(Prop. 196, approved March 26, 1996, eff. March 27, 1996\)](#); [Stats.1998, c. 629, § 2 \(Prop. 18, approved March 7, 2000, eff. March 8, 2000\)](#); [Initiative Measure \(Prop. 21, § 11, approved March 7, 2000, eff. March 8, 2000\)](#); [Stats.2018, c. 423 \(S.B.1494\), § 43, eff. Jan. 1, 2019](#).)

#### Editors' Notes

#### VALIDITY

*Terms of subd. (a)(14) of this section (“heinous, atrocious, or cruel” special circumstances) were held unconstitutionally vague in the case of [People v. Sanders \(1990\) 273 Cal.Rptr. 537, 51 Cal.3d 471, 797 P.2d 561](#), certiorari denied [111 S.Ct. 2249, 114 L.Ed.2d 490](#), rehearing denied [112 S.Ct. 13, 115 L.Ed.2d 1098](#).*

#### [Notes of Decisions \(2720\)](#)

West's Ann. Cal. Penal Code § 190.2, CA PENAL § 190.2

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KeyCite Red Flag - Severe Negative Treatment

Unconstitutional or Preempted Unconstitutional as Applied by [Belmontes v. Woodford](#), 9th Cir.(Cal.), July 15, 2003

[West's Annotated California Codes](#)

[Penal Code \(Refs & Annos\)](#)

[Part 1. Of Crimes and Punishments \(Refs & Annos\)](#)

[Title 8. Of Crimes Against the Person](#)

[Chapter 1. Homicide \(Refs & Annos\)](#)

West's Ann.Cal.Penal Code § 190.3

§ 190.3. Determination of death penalty or life imprisonment;  
evidence of aggravating and mitigating circumstances; considerations

[Currentness](#)

If the defendant has been found guilty of murder in the first degree, and a special circumstance has been charged and found to be true, or if the defendant may be subject to the death penalty after having been found guilty of violating [subdivision \(a\) of Section 1672 of the Military and Veterans Code](#) or [Sections 37, 128, 219, or 4500](#) of this code, the trier of fact shall determine whether the penalty shall be death or confinement in state prison for a term of life without the possibility of parole. In the proceedings on the question of penalty, evidence may be presented by both the people and the defendant as to any matter relevant to aggravation, mitigation, and sentence including, but not limited to, the nature and circumstances of the present offense, any prior felony conviction or convictions whether or not such conviction or convictions involved a crime of violence, the presence or absence of other criminal activity by the defendant which involved the use or attempted use of force or violence or which involved the express or implied threat to use force or violence, and the defendant's character, background, history, mental condition and physical condition.

However, no evidence shall be admitted regarding other criminal activity by the defendant which did not involve the use or attempted use of force or violence or which did not involve the express or implied threat to use force or violence. As used in this section, criminal activity does not require a conviction.

However, in no event shall evidence of prior criminal activity be admitted for an offense for which the defendant was prosecuted and acquitted. The restriction on the use of this evidence is intended to apply only to proceedings pursuant to this section and is not intended to affect statutory or decisional law allowing such evidence to be used in any other proceedings.

Except for evidence in proof of the offense or special circumstances which subject a defendant to the death penalty, no evidence may be presented by the prosecution in aggravation unless notice of the evidence to be introduced has been given to the defendant within a reasonable period of time as determined by the court, prior to trial. Evidence may be introduced without such notice in rebuttal to evidence introduced by the defendant in mitigation.

The trier of fact shall be instructed that a sentence of confinement to state prison for a term of life without the possibility of parole may in future after sentence is imposed, be commuted or modified to a sentence that includes the possibility of parole by the Governor of the State of California.

In determining the penalty, the trier of fact shall take into account any of the following factors if relevant:

- (a) The circumstances of the crime of which the defendant was convicted in the present proceeding and the existence of any special circumstances found to be true pursuant to [Section 190.1](#).
- (b) The presence or absence of criminal activity by the defendant which involved the use or attempted use of force or violence or the express or implied threat to use force or violence.
- (c) The presence or absence of any prior felony conviction.
- (d) Whether or not the offense was committed while the defendant was under the influence of extreme mental or emotional disturbance.
- (e) Whether or not the victim was a participant in the defendant's homicidal conduct or consented to the homicidal act.
- (f) Whether or not the offense was committed under circumstances which the defendant reasonably believed to be a moral justification or extenuation for his conduct.
- (g) Whether or not defendant acted under extreme duress or under the substantial domination of another person.
- (h) Whether or not at the time of the offense the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect, or the affects of intoxication.
- (i) The age of the defendant at the time of the crime.
- (j) Whether or not the defendant was an accomplice to the offense and his participation in the commission of the offense was relatively minor.
- (k) Any other circumstance which extenuates the gravity of the crime even though it is not a legal excuse for the crime.

After having heard and received all of the evidence, and after having heard and considered the arguments of counsel, the trier of fact shall consider, take into account and be guided by the aggravating and mitigating circumstances referred to in this section, and shall impose a sentence of death if the trier of fact concludes that the aggravating circumstances outweigh the mitigating circumstances. If the trier of fact determines that the mitigating circumstances outweigh the aggravating circumstances the trier of fact shall impose a sentence of confinement in state prison for a term of life without the possibility of parole.

#### **Credits**

(Added by § 8 of Initiative Measure approved Nov. 7, 1978, eff. Nov. 8, 1978.)

[Notes of Decisions \(7973\)](#)

West's Ann. Cal. Penal Code § 190.3, CA PENAL § 190.3

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Title 8. Of Crimes Against the Person  
Chapter 1. Homicide (Refs & Annos)

West's Ann.Cal.Penal Code § 190.4

§ 190.4. Special findings on truth of each alleged special  
circumstance; penalty hearing; application for modification

Currentness

(a) Whenever special circumstances as enumerated in [Section 190.2](#) are alleged and the trier of fact finds the defendant guilty of first degree murder, the trier of fact shall also make a special finding on the truth of each alleged special circumstance. The determination of the truth of any or all of the special circumstances shall be made by the trier of fact on the evidence presented at the trial or at the hearing held pursuant to [Subdivision \(b\) of Section 190.1](#).

In case of a reasonable doubt as to whether a special circumstance is true, the defendant is entitled to a finding that is not true. <sup>1</sup> The trier of fact shall make a special finding that each special circumstance charged is either true or not true. Whenever a special circumstance requires proof of the commission or attempted commission of a crime, such crime shall be charged and proved pursuant to the general law applying to the trial and conviction of the crime.

If the defendant was convicted by the court sitting without a jury, the trier of fact shall be a jury unless a jury is waived by the defendant and by the people, in which case the trier of fact shall be the court. If the defendant was convicted by a plea of guilty, the trier of fact shall be a jury unless a jury is waived by the defendant and by the people.

If the trier of fact finds that any one or more of the special circumstances enumerated in [Section 190.2](#) as charged is true, there shall be a separate penalty hearing, and neither the finding that any of the remaining special circumstances charged is not true, nor if the trier of fact is a jury, the inability of the jury to agree on the issue of the truth or untruth of any of the remaining special circumstances charged, shall prevent the holding of a separate penalty hearing.

In any case in which the defendant has been found guilty by a jury, and the jury has been unable to reach an unanimous verdict that one or more of the special circumstances charged are true, and does not reach a unanimous verdict that all the special circumstances charged are not true, the court shall dismiss the jury and shall order a new jury impaneled to try the issues, but the issue of guilt shall not be tried by such jury, nor shall such jury retry the issue of the truth of any of the special circumstances which were found by an unanimous verdict of the previous jury to be untrue. If such new jury is unable to reach the unanimous verdict that one or more of the special circumstances it is trying are true, the court shall dismiss the jury and in the court's discretion shall either order a new jury impaneled to try the issues the previous jury was unable to reach the unanimous verdict on, or impose a punishment of confinement in state prison for a term of 25 years.

(b) If defendant was convicted by the court sitting without a jury the trier of fact at the penalty hearing shall be a jury unless a jury is waived by the defendant and the people, in which case the trier of fact shall be the court. If the defendant was convicted by a plea of guilty, the trier of fact shall be a jury unless a jury is waived by the defendant and the people.

If the trier of fact is a jury and has been unable to reach a unanimous verdict as to what the penalty shall be, the court shall dismiss the jury and shall order a new jury impaneled to try the issue as to what the penalty shall be. If such new jury is unable to reach a unanimous verdict as to what the penalty shall be, the court in its discretion shall either order a new jury or impose a punishment of confinement in state prison for a term of life without the possibility of parole.

(c) If the trier of fact which convicted the defendant of a crime for which he may be subject to the death penalty was a jury, the same jury shall consider any plea of not guilty by reason of insanity pursuant to [Section 1026](#), the truth of any special circumstances which may be alleged, and the penalty to be applied, unless for good cause shown the court discharges that jury in which case a new jury shall be drawn. The court shall state facts in support of the finding of good cause upon the record and cause them to be entered into the minutes.

(d) In any case in which the defendant may be subject to the death penalty, evidence presented at any prior phase of the trial, including any proceeding under a plea of not guilty by reason of insanity pursuant to [Section 1026](#) shall be considered an any subsequent phase of the trial, if the trier of fact of the prior phase is the same trier of fact at the subsequent phase.

(e) In every case in which the trier of fact has returned a verdict or finding imposing the death penalty, the defendant shall be deemed to have made an application for modification of such verdict or finding pursuant to [Subdivision 7 of Section 11](#).<sup>2</sup> In ruling on the application, the judge shall review the evidence, consider, take into account, and be guided by the aggravating and mitigating circumstances referred to in [Section 190.3](#), and shall make a determination as to whether the jury's findings and verdicts that the aggravating circumstances outweigh the mitigating circumstances are contrary to law or the evidence presented. The judge shall state on the record the reasons for his findings.

The judge shall set forth the reasons for his ruling on the application and direct that they be entered on the Clerk's minutes. The denial of the modification of the death penalty verdict pursuant to [subdivision \(7\) of Section 1181](#) shall be reviewed on the defendant's automatic appeal pursuant to [subdivision \(b\) of Section 1239](#). The granting of the application shall be reviewed on the People's appeal pursuant to paragraph (6).

#### Credits

(Added by § 10 of Initiative Measure approved Nov. 7, 1978, eff. Nov. 8, 1978.)

[Notes of Decisions \(804\)](#)

#### Footnotes

<sup>1</sup> So in copy. Probably should read "...that it is not true."

<sup>2</sup> Probably should read "Section 1181".

West's Ann. Cal. Penal Code § 190.4, CA PENAL § 190.4

Current with all laws through Ch. 372 of 2020 Reg.Sess.



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Unconstitutional or Preempted Limited on Constitutional Grounds by [People v. Gutierrez](#), Cal., May 05, 2014

[West's Annotated California Codes](#)

[Penal Code \(Refs & Annos\)](#)

[Part 1. Of Crimes and Punishments \(Refs & Annos\)](#)

[Title 8. Of Crimes Against the Person](#)

[Chapter 1. Homicide \(Refs & Annos\)](#)

West's Ann.Cal.Penal Code § 190.5

§ 190.5. Penalty for persons under 18; imposition of death penalty prohibited

[Currentness](#)

(a) Notwithstanding any other provision of law, the death penalty shall not be imposed upon any person who is under the age of 18 at the time of the commission of the crime. The burden of proof as to the age of such person shall be upon the defendant.

(b) The penalty for a defendant found guilty of murder in the first degree, in any case in which one or more special circumstances enumerated in [Section 190.2](#) or [190.25](#) has been found to be true under [Section 190.4](#), who was 16 years of age or older and under the age of 18 years at the time of the commission of the crime, shall be confinement in the state prison for life without the possibility of parole or, at the discretion of the court, 25 years to life.

(c) The trier of fact shall determine the existence of any special circumstance pursuant to the procedure set forth in [Section 190.4](#).

**Credits**

(Added by § 12 of Initiative Measure approved Nov. 7, 1978, eff. Nov. 8, 1978. Amended by [Initiative Measure \(Prop.115\)](#), approved June 5, 1990, eff. June 6, 1990.)

[Notes of Decisions \(92\)](#)

West's Ann. Cal. Penal Code § 190.5, CA PENAL § 190.5

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Unconstitutional or Preempted Prior Version Held Unconstitutional as Applied by [Pinkston v. Lamarque](#), N.D.Cal., Feb. 18, 2003

[West's Annotated California Codes](#)

[Penal Code \(Refs & Annos\)](#)

[Part 1. Of Crimes and Punishments \(Refs & Annos\)](#)

[Title 16. General Provisions](#)

West's Ann.Cal.Penal Code § 667

§ 667. Habitual criminals; enhancement of sentence; amendment of section

Effective: January 1, 2020

[Currentness](#)

(a)(1) Any person convicted of a serious felony who previously has been convicted of a serious felony in this state or of any offense committed in another jurisdiction which includes all of the elements of any serious felony, shall receive, in addition to the sentence imposed by the court for the present offense, a five-year enhancement for each such prior conviction on charges brought and tried separately. The terms of the present offense and each enhancement shall run consecutively.

(2) This subdivision shall not be applied when the punishment imposed under other provisions of law would result in a longer term of imprisonment. There is no requirement of prior incarceration or commitment for this subdivision to apply.

(3) The Legislature may increase the length of the enhancement of sentence provided in this subdivision by a statute passed by majority vote of each house thereof.

(4) As used in this subdivision, “serious felony” means a serious felony listed in [subdivision \(c\) of Section 1192.7](#).

(5) This subdivision does not apply to a person convicted of selling, furnishing, administering, or giving, or offering to sell, furnish, administer, or give to a minor any methamphetamine-related drug or any precursors of methamphetamine unless the prior conviction was for a serious felony described in subparagraph (24) of [subdivision \(c\) of Section 1192.7](#).

(b) It is the intent of the Legislature in enacting subdivisions (b) to (i), inclusive, to ensure longer prison sentences and greater punishment for those who commit a felony and have been previously convicted of one or more serious or violent felony offenses.

(c) Notwithstanding any other law, if a defendant has been convicted of a felony and it has been pled and proved that the defendant has one or more prior serious or violent felony convictions as defined in subdivision (d), the court shall adhere to each of the following:

(1) There shall not be an aggregate term limitation for purposes of consecutive sentencing for any subsequent felony conviction.

- (2) Probation for the current offense shall not be granted, nor shall execution or imposition of the sentence be suspended for any prior offense.
- (3) The length of time between the prior serious or violent felony conviction and the current felony conviction shall not affect the imposition of sentence.
- (4) There shall not be a commitment to any other facility other than the state prison. Diversion shall not be granted nor shall the defendant be eligible for commitment to the California Rehabilitation Center as provided in [Article 2 \(commencing with Section 3050\) of Chapter 1 of Division 3 of the Welfare and Institutions Code](#).
- (5) The total amount of credits awarded pursuant to Article 2.5 (commencing with [Section 2930](#)) of Chapter 7 of Title 1 of Part 3 shall not exceed one-fifth of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison.
- (6) If there is a current conviction for more than one felony count not committed on the same occasion, and not arising from the same set of operative facts, the court shall sentence the defendant consecutively on each count pursuant to subdivision (e).
- (7) If there is a current conviction for more than one serious or violent felony as described in paragraph (6), the court shall impose the sentence for each conviction consecutive to the sentence for any other conviction for which the defendant may be consecutively sentenced in the manner prescribed by law.
- (8) Any sentence imposed pursuant to subdivision (e) will be imposed consecutive to any other sentence which the defendant is already serving, unless otherwise provided by law.
- (d) Notwithstanding any other law and for the purposes of subdivisions (b) to (i), inclusive, a prior conviction of a serious or violent felony shall be defined as:
- (1) Any offense defined in [subdivision \(c\) of Section 667.5](#) as a violent felony or any offense defined in [subdivision \(c\) of Section 1192.7](#) as a serious felony in this state. The determination of whether a prior conviction is a prior felony conviction for purposes of subdivisions (b) to (i), inclusive, shall be made upon the date of that prior conviction and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor. The following dispositions shall not affect the determination that a prior conviction is a prior felony for purposes of subdivisions (b) to (i), inclusive:
- (A) The suspension of imposition of judgment or sentence.
- (B) The stay of execution of sentence.
- (C) The commitment to the State Department of Health Care Services as a mentally disordered sex offender following a conviction of a felony.

(D) The commitment to the California Rehabilitation Center or any other facility whose function is rehabilitative diversion from the state prison.

(2) A prior conviction in another jurisdiction for an offense that, if committed in California, is punishable by imprisonment in the state prison constitutes a prior conviction of a particular serious or violent felony if the prior conviction in the other jurisdiction is for an offense that includes all of the elements of a particular violent felony as defined in [subdivision \(c\) of Section 667.5](#) or serious felony as defined in [subdivision \(c\) of Section 1192.7](#).

(3) A prior juvenile adjudication constitutes a prior serious or violent felony conviction for purposes of sentence enhancement if:

(A) The juvenile was 16 years of age or older at the time the juvenile committed the prior offense.

(B) The prior offense is listed in [subdivision \(b\) of Section 707 of the Welfare and Institutions Code](#) or described in paragraph (1) or (2) as a serious or violent felony.

(C) The juvenile was found to be a fit and proper subject to be dealt with under the juvenile court law.

(D) The juvenile was adjudged a ward of the juvenile court within the meaning of [Section 602 of the Welfare and Institutions Code](#) because the person committed an offense listed in [subdivision \(b\) of Section 707 of the Welfare and Institutions Code](#).

(e) For purposes of subdivisions (b) to (i), inclusive, and in addition to any other enhancement or punishment provisions which may apply, the following apply if a defendant has one or more prior serious or violent felony convictions:

(1) If a defendant has one prior serious or violent felony conviction as defined in subdivision (d) that has been pled and proved, the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current felony conviction.

(2)(A) Except as provided in subparagraph (C), if a defendant has two or more prior serious or violent felony convictions as defined in subdivision (d) that have been pled and proved, the term for the current felony conviction shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greatest of:

(i) Three times the term otherwise provided as punishment for each current felony conviction subsequent to the two or more prior serious or violent felony convictions.

(ii) Imprisonment in the state prison for 25 years.

(iii) The term determined by the court pursuant to [Section 1170](#) for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with [Section 1170](#)) of Title 7 of Part 2, or any period prescribed by [Section 190](#) or [3046](#).

(B) The indeterminate term described in subparagraph (A) shall be served consecutive to any other term of imprisonment for which a consecutive term may be imposed by law. Any other term imposed subsequent to any indeterminate term described in subparagraph (A) shall not be merged therein but shall commence at the time the person would otherwise have been released from prison.

(C) If a defendant has two or more prior serious or violent felony convictions as defined in [subdivision \(c\) of Section 667.5](#) or [subdivision \(c\) of Section 1192.7](#) that have been pled and proved, and the current offense is not a serious or violent felony as defined in subdivision (d), the defendant shall be sentenced pursuant to paragraph (1) of subdivision (e) unless the prosecution pleads and proves any of the following:

(i) The current offense is a controlled substance charge, in which an allegation under [Section 11370.4](#) or [11379.8 of the Health and Safety Code](#) was admitted or found true.

(ii) The current offense is a felony sex offense, defined in [subdivision \(d\) of Section 261.5](#) or [Section 262](#), or any felony offense that results in mandatory registration as a sex offender pursuant to [subdivision \(c\) of Section 290](#) except for violations of [Sections 266 and 285, paragraph \(1\) of subdivision \(b\) and subdivision \(e\) of Section 286, paragraph \(1\) of subdivision \(b\) and subdivision \(e\) of Section 288a, Section 311.11, and Section 314.](#)

(iii) During the commission of the current offense, the defendant used a firearm, was armed with a firearm or deadly weapon, or intended to cause great bodily injury to another person.

(iv) The defendant suffered a prior serious or violent felony conviction, as defined in subdivision (d) of this section, for any of the following felonies:

(I) A “sexually violent offense” as defined in [subdivision \(b\) of Section 6600 of the Welfare and Institutions Code](#).

(II) Oral copulation with a child who is under 14 years of age, and who is more than 10 years younger than the defendant as defined by [Section 288a](#), sodomy with another person who is under 14 years of age and more than 10 years younger than the defendant as defined by [Section 286](#), or sexual penetration with another person who is under 14 years of age, and who is more than 10 years younger than the defendant, as defined by [Section 289](#).

(III) A lewd or lascivious act involving a child under 14 years of age, in violation of [Section 288](#).

(IV) Any homicide offense, including any attempted homicide offense, defined in [Sections 187 to 191.5](#), inclusive.

(V) Solicitation to commit murder as defined in [Section 653f](#).

(VI) Assault with a machine gun on a peace officer or firefighter, as defined in [paragraph \(3\) of subdivision \(d\) of Section 245](#).

(VII) Possession of a weapon of mass destruction, as defined in [paragraph \(1\) of subdivision \(a\) of Section 11418](#).

(VIII) Any serious or violent felony offense punishable in California by life imprisonment or death.

(f)(1) Notwithstanding any other law, subdivisions (b) to (i), inclusive, shall be applied in every case in which a defendant has one or more prior serious or violent felony convictions as defined in subdivision (d). The prosecuting attorney shall plead and prove each prior serious or violent felony conviction except as provided in paragraph (2).

(2) The prosecuting attorney may move to dismiss or strike a prior serious or violent felony conviction allegation in the furtherance of justice pursuant to [Section 1385](#), or if there is insufficient evidence to prove the prior serious or violent felony conviction. If upon the satisfaction of the court that there is insufficient evidence to prove the prior serious or violent felony conviction, the court may dismiss or strike the allegation. This section shall not be read to alter a court's authority under [Section 1385](#).

(g) Prior serious or violent felony convictions shall not be used in plea bargaining as defined in [subdivision \(b\) of Section 1192.7](#). The prosecution shall plead and prove all known prior felony serious or violent convictions and shall not enter into any agreement to strike or seek the dismissal of any prior serious or violent felony conviction allegation except as provided in paragraph (2) of subdivision (f).

(h) All references to existing statutes in subdivisions (c) to (g), inclusive, are to statutes as they existed on November 7, 2012.

(i) If any provision of subdivisions (b) to (h), inclusive, or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of those subdivisions which can be given effect without the invalid provision or application, and to this end the provisions of those subdivisions are severable.

(j) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

#### Credits

(Added by Initiative Measure, approved by the people, June 8, 1982. Amended by Stats.1986, c. 85, § 1.5, eff. May 6, 1986; Stats.1989, c. 1043, § 1; Stats.1994, c. 12 (A.B.971), § 1, eff. March 7, 1994; Initiative Measure (Prop. 36, § 2, approved Nov. 6, 2012, eff. Nov. 7, 2012); Stats.2018, c. 423 (S.B.1494), § 64, eff. Jan. 1, 2019; Stats.2018, c. 1013 (S.B.1393), § 1, eff. Jan. 1, 2019; Stats.2019, c. 497 (A.B.991), § 195, eff. Jan. 1, 2020.)

#### [Notes of Decisions \(1607\)](#)

West's Ann. Cal. Penal Code § 667, CA PENAL § 667  
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Proposed Legislation

West's Annotated California Codes

Penal Code (Refs & Annos)

Part 1. Of Crimes and Punishments (Refs & Annos)

Title 16. General Provisions

West's Ann.Cal.Penal Code § 667.5

§ 667.5. Prior prison terms; enhancement of prison terms for new offenses

Effective: January 1, 2020

[Currentness](#)

Enhancement of prison terms for new offenses because of prior prison terms shall be imposed as follows:

(a) Where one of the new offenses is one of the violent felonies specified in subdivision (c), in addition to and consecutive to any other prison terms therefor, the court shall impose a three-year term for each prior separate prison term served by the defendant where the prior offense was one of the violent felonies specified in subdivision (c). However, no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(b) Except where subdivision (a) applies, where the new offense is any felony for which a prison sentence or a sentence of imprisonment in a county jail under [subdivision \(h\) of Section 1170](#) is imposed or is not suspended, in addition and consecutive to any other sentence therefor, the court shall impose a one-year term for each prior separate prison term for a sexually violent offense as defined in [subdivision \(b\) of Section 6600 of the Welfare and Institutions Code](#), provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of five years in which the defendant remained free of both the commission of an offense which results in a felony conviction, and prison custody or the imposition of a term of jail custody imposed under [subdivision \(h\) of Section 1170](#) or any felony sentence that is not suspended.

(c) For the purpose of this section, “violent felony” shall mean any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape as defined in [paragraph \(2\) or \(6\) of subdivision \(a\) of Section 261](#) or [paragraph \(1\) or \(4\) of subdivision \(a\) of Section 262](#).

(4) Sodomy as defined in [subdivision \(c\) or \(d\) of Section 286](#).

- (5) Oral copulation as defined in [subdivision \(c\) or \(d\) of Section 287](#) or of former Section 288a.
- (6) Lewd or lascivious act as defined in [subdivision \(a\) or \(b\) of Section 288](#).
- (7) Any felony punishable by death or imprisonment in the state prison for life.
- (8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in [Section 12022.7](#), [12022.8](#), or [12022.9](#) on or after July 1, 1977, or as specified prior to July 1, 1977, in [Sections 213](#), [264](#), and [461](#), or any felony in which the defendant uses a firearm which use has been charged and proved as provided in [subdivision \(a\) of Section 12022.3](#), or [Section 12022.5](#) or [12022.55](#).
- (9) Any robbery.
- (10) Arson, in violation of [subdivision \(a\) or \(b\) of Section 451](#).
- (11) Sexual penetration as defined in [subdivision \(a\) or \(j\) of Section 289](#).
- (12) Attempted murder.
- (13) A violation of [Section 18745](#), [18750](#), or [18755](#).
- (14) Kidnapping.
- (15) Assault with the intent to commit a specified felony, in violation of [Section 220](#).
- (16) Continuous sexual abuse of a child, in violation of [Section 288.5](#).
- (17) Carjacking, as defined in [subdivision \(a\) of Section 215](#).
- (18) Rape, spousal rape, or sexual penetration, in concert, in violation of [Section 264.1](#).
- (19) Extortion, as defined in [Section 518](#), which would constitute a felony violation of [Section 186.22](#).
- (20) Threats to victims or witnesses, as defined in [Section 136.1](#), which would constitute a felony violation of [Section 186.22](#).
- (21) Any burglary of the first degree, as defined in [subdivision \(a\) of Section 460](#), wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.

(22) Any violation of [Section 12022.53](#).

(23) A violation of [subdivision \(b\)](#) or [\(c\) of Section 11418](#). The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence to display society's condemnation for these extraordinary crimes of violence against the person.

(d) For the purposes of this section, the defendant shall be deemed to remain in prison custody for an offense until the official discharge from custody, including any period of mandatory supervision, or until release on parole or postrelease community supervision, whichever first occurs, including any time during which the defendant remains subject to reimprisonment or custody in county jail for escape from custody or is reimprisoned on revocation of parole or postrelease community supervision. The additional penalties provided for prior prison terms shall not be imposed unless they are charged and admitted or found true in the action for the new offense.

(e) The additional penalties provided for prior prison terms shall not be imposed for any felony for which the defendant did not serve a prior separate term in state prison or in county jail under [subdivision \(h\) of Section 1170](#).

(f) A prior conviction of a felony shall include a conviction in another jurisdiction for an offense which, if committed in California, is punishable by imprisonment in the state prison or in county jail under [subdivision \(h\) of Section 1170](#) if the defendant served one year or more in prison for the offense in the other jurisdiction. A prior conviction of a particular felony shall include a conviction in another jurisdiction for an offense which includes all of the elements of the particular felony as defined under California law if the defendant served one year or more in prison for the offense in the other jurisdiction.

(g) A prior separate prison term for the purposes of this section shall mean a continuous completed period of prison incarceration imposed for the particular offense alone or in combination with concurrent or consecutive sentences for other crimes, including any reimprisonment on revocation of parole which is not accompanied by a new commitment to prison, and including any reimprisonment after an escape from incarceration.

(h) Serving a prison term includes any confinement time in any state prison or federal penal institution as punishment for commission of an offense, including confinement in a hospital or other institution or facility credited as service of prison time in the jurisdiction of the confinement.

(i) For the purposes of this section, a commitment to the State Department of Mental Health, or its successor the State Department of State Hospitals, as a mentally disordered sex offender following a conviction of a felony, which commitment exceeds one year in duration, shall be deemed a prior prison term.

(j) For the purposes of this section, when a person subject to the custody, control, and discipline of the Secretary of the Department of Corrections and Rehabilitation is incarcerated at a facility operated by the Division of Juvenile Justice, that incarceration shall be deemed to be a term served in state prison.

(k)(1) Notwithstanding subdivisions (d) and (g) or any other provision of law, where one of the new offenses is committed while the defendant is temporarily removed from prison pursuant to [Section 2690](#) or while the defendant is transferred to a

community facility pursuant to [Section 3416](#), [6253](#), or [6263](#), or while the defendant is on furlough pursuant to [Section 6254](#), the defendant shall be subject to the full enhancements provided for in this section.

(2) This subdivision shall not apply when a full, separate, and consecutive term is imposed pursuant to any other provision of law.

#### Credits

(Added by Stats.1976, c. 1139, p. 5137, § 268, operative July 1, 1977. Amended by Stats.1977, c. 2, p. 4, § 1, eff. Dec. 16, 1976, operative July 1, 1977; Stats.1977, c. 165, p. 644, § 13, eff. June 29, 1977, operative July 1, 1977; Stats.1980, c. 587, p. 1596, § 3; Stats.1983, c. 229, § 1; Stats.1985, c. 402, § 1; Stats.1986, c. 645, § 1; [Stats.1987, c. 611, § 1](#); [Stats.1988, c. 70, § 1](#); [Stats.1988, c. 89, § 1.5](#); [Stats.1988, c. 432, § 1](#); [Stats.1988, c. 1484, § 1](#); [Stats.1988, c. 1487, § 1.1](#); [Stats.1989, c. 1012, § 1](#); [Stats.1990, c. 18 \(A.B.662\), § 1](#); [Stats.1991, c. 451 \(A.B.1393\), § 1](#); [Stats.1993, c. 162 \(A.B.112\), § 3](#); [Stats.1993, c. 298 \(A.B.31\), § 2](#); [Stats.1993, c. 610 \(A.B.6\), § 10](#), eff. Oct. 1, 1993; [Stats.1993, c. 611 \(S.B.60\), § 11](#), eff. Oct. 1, 1993; [Stats.1994, c. 1188 \(S.B.59\), § 6](#); [Stats.1997, c. 371 \(A.B.793\), § 1](#); [Stats.1997, c. 504 \(A.B.115\), § 2](#); Initiative Measure (Prop.21, § 15, approved March 7, 2000, eff. March 8, 2000); [Stats.2002, c. 606 \(A.B.1838\), § 2](#), eff. Sept. 17, 2002; [Stats.2006, c. 337 \(S.B.1128\), § 30](#), eff. Sept. 20, 2006; Initiative Measure (Prop. 83, § 9, approved Nov. 7, 2006, eff. Nov. 8, 2006); [Stats.2010, c. 178 \(S.B.1115\), § 63](#), operative Jan. 1, 2012; [Stats.2011, c. 15 \(A.B.109\), § 443](#), eff. April 4, 2011, operative Jan. 1, 2012; [Stats.2011, c. 39 \(A.B.117\), § 23](#), eff. June 30, 2011, operative Jan. 1, 2012; [Stats.2011-2012, 1st Ex.Sess., c. 12 \(A.B.17\), § 10](#), eff. Sept. 21, 2011, operative Jan. 1, 2012; [Stats.2012, c. 24 \(A.B.1470\), § 19](#), eff. June 27, 2012; [Stats.2012, c. 43 \(S.B.1023\), § 22](#), eff. June 27, 2012; [Stats.2014, c. 442 \(S.B.1465\), § 10](#), eff. Sept. 18, 2014; [Stats.2018, c. 423 \(S.B.1494\), § 65](#), eff. Jan. 1, 2019; [Stats.2019, c. 590 \(S.B.136\), § 1](#), eff. Jan. 1, 2020.)

#### Editors' Notes

### LAW REVISION COMMISSION COMMENTS

#### 2010 Amendment

Subdivision (c) of Section 667.5 is amended to reflect nonsubstantive reorganization of the statutes governing control of deadly weapons.

For guidance in applying this section, see [Section 16015](#) (determining existence of prior conviction). [38 Cal.L.Rev.Comm. Reports 217 (2009)].

#### [Notes of Decisions \(544\)](#)

West's Ann. Cal. Penal Code § 667.5, CA PENAL § 667.5

Current with all laws through Ch. 372 of 2020 Reg.Sess.

West's Annotated California Codes

Penal Code (Refs & Annos)

Part 2. Of Criminal Procedure

Title 6. Pleadings and Proceedings Before Trial (Refs & Annos)

Chapter 3. Demurrer and Amendment (Refs & Annos)

West's Ann.Cal.Penal Code § 1009

§ 1009. Amendment of accusatory pleading before plea or sustaining of demurrer; subsequent amendments; resubmission or new information; pleading to amendment; amendments not permitted; verification

Currentness

An indictment, accusation or information may be amended by the district attorney, and an amended complaint may be filed by the prosecuting attorney, without leave of court at any time before the defendant pleads or a demurrer to the original pleading is sustained. The court in which an action is pending may order or permit an amendment of an indictment, accusation or information, or the filing of an amended complaint, for any defect or insufficiency, at any stage of the proceedings, or if the defect in an indictment or information be one that cannot be remedied by amendment, may order the case submitted to the same or another grand jury, or a new information to be filed. The defendant shall be required to plead to such amendment or amended pleading forthwith, or, at the time fixed for pleading, if the defendant has not yet pleaded and the trial or other proceeding shall continue as if the pleading had been originally filed as amended, unless the substantial rights of the defendant would be prejudiced thereby, in which event a reasonable postponement, not longer than the ends of justice require, may be granted. An indictment or accusation cannot be amended so as to change the offense charged, nor an information so as to charge an offense not shown by the evidence taken at the preliminary examination. A complaint cannot be amended to charge an offense not attempted to be charged by the original complaint, except that separate counts may be added which might properly have been joined in the original complaint. The amended complaint must be verified but may be verified by some person other than the one who made oath to the original complaint.

**Credits**

(Enacted in 1872. Amended by Code Am.1880, c. 47, p. 18, § 49; Stats.1935, c. 657, p. 1813, § 2; Stats.1951, c. 1674, p. 3842, § 77; [Stats.1998, c. 931 \(S.B.2139\), § 383, eff. Sept. 28, 1998.](#))

**Editors' Notes**

**LAW REVISION COMMISSION COMMENTS**

1998 Amendment

Section 1009 is amended to accommodate unification of the municipal and superior courts in a county. [Cal. Const. art. VI, § 5\(e\)](#). Cf. [Section 691](#) & Comment. [28 Cal.L.Rev.Comm. Reports 51 (1998)].

[Notes of Decisions \(318\)](#)

West's Ann. Cal. Penal Code § 1009, CA PENAL § 1009  
Current with all laws through Ch. 372 of 2020 Reg.Sess.

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Unconstitutional or Preempted Prior Version Held Unconstitutional as Applied by [Pinkston v. Lamarque](#), N.D.Cal., Feb. 18, 2003

[West's Annotated California Codes](#)

[Penal Code \(Refs & Annos\)](#)

[Part 2. Of Criminal Procedure](#)

[Title 7. Of Proceedings After the Commencement of the Trial and Before Judgment](#)

[Chapter 4.5. Trial Court Sentencing \(Refs & Annos\)](#)

[Article 1. Initial Sentencing \(Refs & Annos\)](#)

West's Ann.Cal.Penal Code § 1170.12

§ 1170.12. Aggregate and consecutive terms for multiple convictions; prior conviction as prior felony; commitment and other enhancements or punishment. <sup>1</sup>

Effective: January 1, 2020

[Currentness](#)

(a) Notwithstanding any other law, if a defendant has been convicted of a felony and it has been pled and proved that the defendant has one or more prior serious or violent felony convictions, as defined in subdivision (b), the court shall adhere to each of the following:

(1) There shall not be an aggregate term limitation for purposes of consecutive sentencing for any subsequent felony conviction.

(2) Probation for the current offense shall not be granted, nor shall execution or imposition of the sentence be suspended for any prior offense.

(3) The length of time between the prior serious or violent felony conviction and the current felony conviction shall not affect the imposition of sentence.

(4) There shall not be a commitment to any other facility other than the state prison. Diversion shall not be granted nor shall the defendant be eligible for commitment to the California Rehabilitation Center as provided in [Article 2 \(commencing with Section 3050\) of Chapter 1 of Division 3 of the Welfare and Institutions Code](#).

(5) The total amount of credits awarded pursuant to Article 2.5 (commencing with [Section 2930](#)) of Chapter 7 of Title 1 of Part 3 shall not exceed one-fifth of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison.

(6) If there is a current conviction for more than one felony count not committed on the same occasion, and not arising from the same set of operative facts, the court shall sentence the defendant consecutively on each count pursuant to this section.

(7) If there is a current conviction for more than one serious or violent felony as described in subdivision (b), the court shall impose the sentence for each conviction consecutive to the sentence for any other conviction for which the defendant may be consecutively sentenced in the manner prescribed by law.

(b) Notwithstanding any other law and for the purposes of this section, a prior serious or violent conviction of a felony is defined as:

(1) Any offense defined in [subdivision \(c\) of Section 667.5](#) as a violent felony or any offense defined in [subdivision \(c\) of Section 1192.7](#) as a serious felony in this state. The determination of whether a prior conviction is a prior serious and/or violent felony conviction for purposes of this section shall be made upon the date of that prior conviction and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor. The following dispositions shall not affect the determination that a prior serious or violent conviction is a serious or violent felony for purposes of this section:

(A) The suspension of imposition of judgment or sentence.

(B) The stay of execution of sentence.

(C) The commitment to the State Department of Health Services as a mentally disordered sex offender following a conviction of a felony.

(D) The commitment to the California Rehabilitation Center or any other facility whose function is rehabilitative diversion from the state prison.

(2) A prior conviction in another jurisdiction for an offense that, if committed in California, is punishable by imprisonment in the state prison constitutes a prior conviction of a particular serious or violent felony if the prior conviction in the other jurisdiction is for an offense that includes all of the elements of the particular violent felony as defined in [subdivision \(c\) of Section 667.5](#) or serious felony as defined in [subdivision \(c\) of Section 1192.7](#).

(3) A prior juvenile adjudication constitutes a prior serious or violent felony conviction for the purposes of sentence enhancement if:

(A) The juvenile was 16 years of age or older at the time the juvenile committed the prior offense, and

(B) The prior offense is

(i) listed in [subdivision \(b\) of Section 707 of the Welfare and Institutions Code](#), or

(ii) listed in this subdivision as a serious or violent felony, and



(C) The juvenile was found to be a fit and proper subject to be dealt with under the juvenile court law, and

(D) The juvenile was adjudged a ward of the juvenile court within the meaning of [Section 602 of the Welfare and Institutions Code](#) because the person committed an offense listed in [subdivision \(b\) of Section 707 of the Welfare and Institutions Code](#).

(c) For purposes of this section, and in addition to any other enhancements or punishment provisions which may apply, the following apply if a defendant has one or more prior serious or violent felony convictions:

(1) If a defendant has one prior serious or violent felony conviction as defined in subdivision (b) that has been pled and proved, the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current felony conviction.

(2)(A) Except as provided in subparagraph (C), if a defendant has two or more prior serious or violent felony convictions, as defined in subdivision (b), that have been pled and proved, the term for the current felony conviction shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greatest of:

(i) three times the term otherwise provided as punishment for each current felony conviction subsequent to the two or more prior serious or violent felony convictions, or

(ii) twenty-five years or

(iii) the term determined by the court pursuant to [Section 1170](#) for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with [Section 1170](#)) of Title 7 of Part 2, or any period prescribed by [Section 190](#) or [3046](#).

(B) The indeterminate term described in subparagraph (A) of paragraph (2) of this subdivision shall be served consecutive to any other term of imprisonment for which a consecutive term may be imposed by law. Any other term imposed subsequent to any indeterminate term described in subparagraph (A) of paragraph (2) of this subdivision shall not be merged therein but shall commence at the time the person would otherwise have been released from prison.

(C) If a defendant has two or more prior serious or violent felony convictions as defined in [subdivision \(c\) of Section 667.5](#) or [subdivision \(c\) of Section 1192.7](#) that have been pled and proved, and the current offense is not a felony described in paragraph (1) of subdivision (b) of this section, the defendant shall be sentenced pursuant to paragraph (1) of subdivision (c) of this section, unless the prosecution pleads and proves any of the following:

(i) The current offense is a controlled substance charge, in which an allegation under [Section 11370.4](#) or [11379.8 of the Health and Safety Code](#) was admitted or found true.

(ii) The current offense is a felony sex offense, defined in [subdivision \(d\) of Section 261.5](#) or [Section 262](#), or any felony offense that results in mandatory registration as a sex offender pursuant to [subdivision \(c\) of Section 290](#) except for violations of

Sections 266 and 285, paragraph (1) of subdivision (b) and subdivision (e) of Section 286, paragraph (1) of subdivision (b) and subdivision (e) of Section 287, Section 314, and Section 311.11.

(iii) During the commission of the current offense, the defendant used a firearm, was armed with a firearm or deadly weapon, or intended to cause great bodily injury to another person.

(iv) The defendant suffered a prior conviction, as defined in subdivision (b) of this section, for any of the following serious or violent felonies:

(I) A “sexually violent offense” as defined by subdivision (b) of Section 6600 of the Welfare and Institutions Code.

(II) Oral copulation with a child who is under 14 years of age, and who is more than 10 years younger than the defendant as defined by Section 287 or former Section 288a, sodomy with another person who is under 14 years of age and more than 10 years younger than the defendant as defined by Section 286 or sexual penetration with another person who is under 14 years of age, and who is more than 10 years younger than the defendant, as defined by Section 289.

(III) A lewd or lascivious act involving a child under 14 years of age, in violation of Section 288.

(IV) Any homicide offense, including any attempted homicide offense, defined in Sections 187 to 191.5, inclusive.

(V) Solicitation to commit murder as defined in Section 653f.

(VI) Assault with a machinegun on a peace officer or firefighter, as defined in paragraph (3) of subdivision (d) of Section 245.

(VII) Possession of a weapon of mass destruction, as defined in paragraph (1) of subdivision (a) of Section 11418.

(VIII) Any serious or violent felony offense punishable in California by life imprisonment or death.

(d)(1) Notwithstanding any other law, this section shall be applied in every case in which a defendant has one or more prior serious and/or violent felony convictions as defined in this section. The prosecuting attorney shall plead and prove each prior serious or violent felony conviction except as provided in paragraph (2).

(2) The prosecuting attorney may move to dismiss or strike a prior serious or violent felony conviction allegation in the furtherance of justice pursuant to Section 1385, or if there is insufficient evidence to prove the prior serious or violent conviction. If upon the satisfaction of the court that there is insufficient evidence to prove the prior serious or violent felony conviction, the court may dismiss or strike the allegation. This section shall not be read to alter a court's authority under Section 1385.

(e) Prior serious or violent felony convictions shall not be used in plea bargaining, as defined in subdivision (b) of Section 1192.7. The prosecution shall plead and prove all known prior serious or violent felony convictions and shall not enter into

any agreement to strike or seek the dismissal of any prior serious or violent felony conviction allegation except as provided in paragraph (2) of subdivision (d).

(f) If any provision of [subdivisions \(a\) to \(e\), inclusive, or of Section 1170.126](#), or the application thereof to any person or circumstance is held invalid, that invalidity does not affect other provisions or applications of those subdivisions which can be given effect without the invalid provision or application, and to this end the provisions of those subdivisions are severable.

(g) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

#### **Credits**

(Added by [Initiative Measure \(Prop. 184, § 1, approved Nov. 8, 1994\)](#). Amended by [Initiative Measure \(Prop. 36, § 4, approved Nov. 6, 2012, eff. Nov. 7, 2012\)](#); [Stats.2018, c. 423 \(S.B.1494\), § 85, eff. Jan. 1, 2019](#); [Stats.2019, c. 497 \(A.B.991\), § 204, eff. Jan. 1, 2020](#).)

[Notes of Decisions \(576\)](#)

#### **Footnotes**

<sup>1</sup> Section caption supplied by Stats.2019, c. 497 (S.B.991).  
West's Ann. Cal. Penal Code § 1170.12, CA PENAL § 1170.12  
Current with all laws through Ch. 372 of 2020 Reg.Sess.

West's Annotated California Codes  
Penal Code (Refs & Annos)  
Part 2. Of Criminal Procedure  
Title 10. Miscellaneous Proceedings  
Chapter 8. Dismissal of the Action for Want of Prosecution or Otherwise (Refs & Annos)

West's Ann.Cal.Penal Code § 1385

§ 1385. Dismissal on judge or magistrate's own motion or application of prosecuting attorney;  
statement of reasons; ground of demurrer; authority to strike or dismiss enhancement

Effective: January 1, 2019

[Currentness](#)

(a) The judge or magistrate may, either of his or her own motion or upon the application of the prosecuting attorney, and in furtherance of justice, order an action to be dismissed. The reasons for the dismissal shall be stated orally on the record. The court shall also set forth the reasons in an order entered upon the minutes if requested by either party or in any case in which the proceedings are not being recorded electronically or reported by a court reporter. A dismissal shall not be made for any cause that would be ground of demurrer to the accusatory pleading.

(b)(1) If the court has the authority pursuant to subdivision (a) to strike or dismiss an enhancement, the court may instead strike the additional punishment for that enhancement in the furtherance of justice in compliance with subdivision (a).

(2) This subdivision does not authorize the court to strike the additional punishment for any enhancement that cannot be stricken or dismissed pursuant to subdivision (a).

**Credits**

(Enacted in 1872. Amended by Stats.1951, c. 1674, p. 3857, § 141; Stats.1980, c. 938, § 7; Stats.1986, c. 85, § 2, eff. May 6, 1986; [Stats.2000, c. 689 \(A.B.1808\), § 3](#); [Stats.2014, c. 137 \(S.B.1222\), § 1, eff. Jan. 1, 2015](#); [Stats.2018, c. 1013 \(S.B.1393\), § 2, eff. Jan. 1, 2019](#).)

[Notes of Decisions \(891\)](#)

West's Ann. Cal. Penal Code § 1385, CA PENAL § 1385  
Current with all laws through Ch. 372 of 2020 Reg.Sess.

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Penal Code (Refs & Annos)

Part 2. Of Criminal Procedure

Title 10. Miscellaneous Proceedings

Chapter 8. Dismissal of the Action for Want of Prosecution or Otherwise (Refs & Annos)

West's Ann.Cal.Penal Code § 1385.1

§ 1385.1. Special circumstances; strike or dismissal; prohibition

[Currentness](#)

Notwithstanding [Section 1385](#) or any other provision of law, a judge shall not strike or dismiss any special circumstance which is admitted by a plea of guilty or nolo contendere or is found by a jury or court as provided in [Sections 190.1](#) to [190.5](#), inclusive.

**Credits**

(Added by [Initiative Measure \(Prop. 115\)](#), approved [June 5, 1990](#), eff. June 6, 1990.)

[Notes of Decisions \(4\)](#)

West's Ann. Cal. Penal Code § 1385.1, CA PENAL § 1385.1

Current with all laws through Ch. 372 of 2020 Reg.Sess.

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Penal Code (Refs & Annos)

Part 2. Of Criminal Procedure

Title 10. Miscellaneous Proceedings

Chapter 8. Dismissal of the Action for Want of Prosecution or Otherwise (Refs & Annos)

West's Ann.Cal.Penal Code § 1386

§ 1386. Nolle prosequi abolished

[Currentness](#)

The entry of a nolle prosequi is abolished, and neither the Attorney General nor the district attorney can discontinue or abandon a prosecution for a public offense, except as provided in Section 1385.

**Credits**

(Enacted in 1872. Amended by [Stats.1987, c. 828, § 93.](#))

[Notes of Decisions \(5\)](#)

West's Ann. Cal. Penal Code § 1386, CA PENAL § 1386

Current with all laws through Ch. 372 of 2020 Reg.Sess.

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West's Annotated California Codes  
Penal Code (Refs & Annos)  
Part 1. Of Crimes and Punishments (Refs & Annos)  
Title 8. Of Crimes Against the Person  
Chapter 1. Homicide (Refs & Annos)

West's Ann.Cal.Penal Code § 190.25

§ 190.25. Murder of transportation personnel; penalty; special circumstances

[Currentness](#)

(a) The penalty for a defendant found guilty of murder in the first degree shall be confinement in state prison for a term of life without the possibility of parole in any case in which any of the following special circumstances has been charged and specially found under [Section 190.4](#), to be true: the victim was the operator or driver of a bus, taxicab, streetcar, cable car, trackless trolley, or other motor vehicle operated on land, including a vehicle operated on stationary rails or on a track or rail suspended in the air, used for the transportation of persons for hire, or the victim was a station agent or ticket agent for the entity providing such transportation, who, while engaged in the course of the performance of his or her duties was intentionally killed, and such defendant knew or reasonably should have known that such victim was the operator or driver of a bus, taxicab, streetcar, cable car, trackless trolley, or other motor vehicle operated on land, including a vehicle operated on stationary rails or on a track or rail suspended in the air, used for the transportation of persons for hire, or was a station agent or ticket agent for the entity providing such transportation, engaged in the performance of his or her duties.

(b) Every person whether or not the actual killer found guilty of intentionally aiding, abetting, counseling, commanding, inducing, soliciting, requesting, or assisting any actor in the commission of murder in the first degree shall suffer confinement in state prison for a term of life without the possibility of parole, in any case in which one or more of the special circumstances enumerated in subdivision (a) of this section has been charged and specially found under [Section 190.4](#) to be true.

(c) Nothing in this section shall be construed to prohibit the charging or finding of any special circumstance pursuant to [Sections 190.1](#), [190.2](#), [190.3](#), [190.4](#), and [190.5](#).

**Credits**

(Added by Stats.1982, c. 172, p. 548, § 1, eff. April 27, 1982.)

[Notes of Decisions \(2\)](#)

West's Ann. Cal. Penal Code § 190.25, CA PENAL § 190.25  
Current with all laws through Ch. 372 of 2020 Reg.Sess.

West's Annotated California Codes

Penal Code (Refs & Annos)

Part 4. Prevention of Crimes and Apprehension of Criminals (Refs & Annos)

Title 2. Sentence Enhancements (Refs & Annos)

West's Ann.Cal.Penal Code § 12022.1

§ 12022.1. Felony committed while released on bail or recognizance;  
primary offense and secondary offense; additional punishment

Effective: January 1, 2014

[Currentness](#)

(a) For the purposes of this section only:

(1) "Primary offense" means a felony offense for which a person has been released from custody on bail or on his or her own recognizance prior to the judgment becoming final, including the disposition of any appeal, or for which release on bail or his or her own recognizance has been revoked. In cases where the court has granted a stay of execution of a county jail commitment or state prison commitment, "primary offense" also means a felony offense for which a person is out of custody during the period of time between the pronouncement of judgment and the time the person actually surrenders into custody or is otherwise returned to custody.

(2) "Secondary offense" means a felony offense alleged to have been committed while the person is released from custody for a primary offense.

(b) Any person arrested for a secondary offense that was alleged to have been committed while that person was released from custody on a primary offense shall be subject to a penalty enhancement of an additional two years, which shall be served consecutive to any other term imposed by the court.

(c) The enhancement allegation provided in subdivision (b) shall be pleaded in the information or indictment which alleges the secondary offense, or in the information or indictment of the primary offense if a conviction has already occurred in the secondary offense, and shall be proved as provided by law. The enhancement allegation may be pleaded in a complaint but need not be proved at the preliminary hearing or grand jury hearing.

(d) Whenever there is a conviction for the secondary offense and the enhancement is proved, and the person is sentenced on the secondary offense prior to the conviction of the primary offense, the imposition of the enhancement shall be stayed pending imposition of the sentence for the primary offense. The stay shall be lifted by the court hearing the primary offense at the time of sentencing for that offense and shall be recorded in the abstract of judgment. If the person is acquitted of the primary offense the stay shall be permanent.

(e) If the person is convicted of a felony for the primary offense, is sentenced to state prison for the primary offense, and is convicted of a felony for the secondary offense, any sentence for the secondary offense shall be consecutive to the primary



sentence and the aggregate term shall be served in the state prison, even if the term for the secondary offense specifies imprisonment in county jail pursuant to [subdivision \(h\) of Section 1170](#).

(f) If the person is convicted of a felony for the primary offense, is granted probation for the primary offense, and is convicted of a felony for the secondary offense, any sentence for the secondary offense shall be enhanced as provided in subdivision (b).

(g) If the primary offense conviction is reversed on appeal, the enhancement shall be suspended pending retrial of that felony. Upon retrial and reconviction, the enhancement shall be reimposed. If the person is no longer in custody for the secondary offense upon reconviction of the primary offense, the court may, at its discretion, reimpose the enhancement and order him or her recommitted to custody.

#### **Credits**

(Added by [Stats.2010, c. 711 \(S.B.1080\)](#), § 5, operative Jan. 1, 2012. Amended by [Stats.2012, c. 43 \(S.B.1023\)](#), § 62, eff. June 27, 2012; [Stats.2013, c. 76 \(A.B.383\)](#), § 167.)

#### **Editors' Notes**

#### **LAW REVISION COMMISSION COMMENTS**

2010 Addition

Section 12022.1 continues former Section 12022.1 without change. [38 Cal.L.Rev.Comm. Reports 217 (2009)].

#### [Notes of Decisions \(105\)](#)

West's Ann. Cal. Penal Code § 12022.1, CA PENAL § 12022.1  
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Unconstitutional or Preempted Limitation Recognized by [People v. Fuimaono](#), Cal.App. 3 Dist., Feb. 08, 2019

[West's Annotated California Codes](#)

[Penal Code \(Refs & Annos\)](#)

[Part 4. Prevention of Crimes and Apprehension of Criminals \(Refs & Annos\)](#)

[Title 2. Sentence Enhancements \(Refs & Annos\)](#)

West's Ann.Cal.Penal Code § 12022.53

§ 12022.53. Sentence enhancements for persons convicted of enumerated felonies who use firearm in commission of the crime; limitations

Effective: January 1, 2019

[Currentness](#)

(a) This section applies to the following felonies:

- (1) [Section 187](#) (murder).
- (2) [Section 203](#) or [205](#) (mayhem).
- (3) [Section 207](#), [209](#), or [209.5](#) (kidnapping).
- (4) [Section 211](#) (robbery).
- (5) [Section 215](#) (carjacking).
- (6) [Section 220](#) (assault with intent to commit a specified felony).
- (7) [Subdivision \(d\) of Section 245](#) (assault with a firearm on a peace officer or firefighter).
- (8) [Section 261](#) or [262](#) (rape).
- (9) [Section 264.1](#) (rape or sexual penetration in concert).
- (10) [Section 286](#) (sodomy).
- (11) [Section 287](#) or former Section 288a (oral copulation).

(12) [Section 288](#) or [288.5](#) (lewd act on a child).

(13) [Section 289](#) (sexual penetration).

(14) [Section 4500](#) (assault by a life prisoner).

(15) [Section 4501](#) (assault by a prisoner).

(16) [Section 4503](#) (holding a hostage by a prisoner).

(17) Any felony punishable by death or imprisonment in the state prison for life.

(18) Any attempt to commit a crime listed in this subdivision other than an assault.

(b) Notwithstanding any other provision of law, any person who, in the commission of a felony specified in subdivision (a), personally uses a firearm, shall be punished by an additional and consecutive term of imprisonment in the state prison for 10 years. The firearm need not be operable or loaded for this enhancement to apply.

(c) Notwithstanding any other provision of law, any person who, in the commission of a felony specified in subdivision (a), personally and intentionally discharges a firearm, shall be punished by an additional and consecutive term of imprisonment in the state prison for 20 years.

(d) Notwithstanding any other provision of law, any person who, in the commission of a felony specified in [subdivision \(a\)](#), [Section 246](#), or [subdivision \(c\) or \(d\) of Section 26100](#), personally and intentionally discharges a firearm and proximately causes great bodily injury, as defined in [Section 12022.7](#), or death, to any person other than an accomplice, shall be punished by an additional and consecutive term of imprisonment in the state prison for 25 years to life.

(e)(1) The enhancements provided in this section shall apply to any person who is a principal in the commission of an offense if both of the following are pled and proved:

(A) The person violated [subdivision \(b\) of Section 186.22](#).

(B) Any principal in the offense committed any act specified in subdivision (b), (c), or (d).

(2) An enhancement for participation in a criminal street gang pursuant to Chapter 11 (commencing with [Section 186.20](#)) of Title 7 of Part 1 shall not be imposed on a person in addition to an enhancement imposed pursuant to this subdivision, unless the person personally used or personally discharged a firearm in the commission of the offense.

(f) Only one additional term of imprisonment under this section shall be imposed per person for each crime. If more than one enhancement per person is found true under this section, the court shall impose upon that person the enhancement that provides the longest term of imprisonment. An enhancement involving a firearm specified in [Section 12021.5](#), [12022](#), [12022.3](#), [12022.4](#), [12022.5](#), or [12022.55](#) shall not be imposed on a person in addition to an enhancement imposed pursuant to this section. An enhancement for great bodily injury as defined in [Section 12022.7](#), [12022.8](#), or [12022.9](#) shall not be imposed on a person in addition to an enhancement imposed pursuant to subdivision (d).

(g) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person found to come within the provisions of this section.

(h) The court may, in the interest of justice pursuant to [Section 1385](#) and at the time of sentencing, strike or dismiss an enhancement otherwise required to be imposed by this section. The authority provided by this subdivision applies to any resentencing that may occur pursuant to any other law.

(i) The total amount of credits awarded pursuant to Article 2.5 (commencing with [Section 2930](#)) of Chapter 7 of Title 1 of Part 3 or pursuant to [Section 4019](#) or any other provision of law shall not exceed 15 percent of the total term of imprisonment imposed on a defendant upon whom a sentence is imposed pursuant to this section.

(j) For the penalties in this section to apply, the existence of any fact required under subdivision (b), (c), or (d) shall be alleged in the accusatory pleading and either admitted by the defendant in open court or found to be true by the trier of fact. When an enhancement specified in this section has been admitted or found to be true, the court shall impose punishment for that enhancement pursuant to this section rather than imposing punishment authorized under any other provision of law, unless another enhancement provides for a greater penalty or a longer term of imprisonment.

(k) When a person is found to have used or discharged a firearm in the commission of an offense that includes an allegation pursuant to this section and the firearm is owned by that person, a coparticipant, or a coconspirator, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided in [Sections 18000](#) and [18005](#).

(l) The enhancements specified in this section shall not apply to the lawful use or discharge of a firearm by a public officer, as provided in [Section 196](#), or by any person in lawful self-defense, lawful defense of another, or lawful defense of property, as provided in [Sections 197](#), [198](#), and [198.5](#).

#### Credits

(Added by [Stats.2010, c. 711 \(S.B.1080\)](#), § 5, operative Jan. 1, 2012. Amended by [Stats.2017, c. 682 \(S.B.620\)](#), § 2, eff. Jan. 1, 2018; [Stats.2018, c. 423 \(S.B.1494\)](#), § 114, eff. Jan. 1, 2019.)

#### Editors' Notes

#### LAW REVISION COMMISSION COMMENTS

2010 Addition

Section 12022.53 continues former Section 12022.53 without change, except that subdivision (d) is revised to correct a cross-reference to former Section 12034(c)-(d) and subdivision (k) is revised to correct a cross-reference to former Section 12028.

See also [Section 12001](#) (“firearm” defined). [38 Cal.L.Rev.Comm. Reports 217 (2009)].

[Notes of Decisions \(324\)](#)

West's Ann. Cal. Penal Code § 12022.53, CA PENAL § 12022.53

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