

**ASSEMBLY BILL**

**No. 1279**

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**Introduced by Assembly Member Sharp-Collins  
(Coauthor: Assembly Member McKinnor)**

February 21, 2025

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An act to amend Sections 667 and 1170.12 of, and to add Section 1170.96 to, the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 1279, as introduced, Sharp-Collins. Criminal procedure: sentencing.

Existing law, added by Proposition 184, approved at the November 8, 1994, statewide general election, and amended by the Three Strikes Reform Act of 2012, approved as Proposition 36 at the November 6, 2012, statewide general election, commonly known as the Three Strikes Law, imposes additional years of imprisonment in state prison on a person who commits a serious or violent felony and has been convicted of, or who has a prior conviction for, a serious or violent felony. A prior juvenile adjudication constitutes a prior serious or violent felony conviction for purposes of this sentence enhancement if the juvenile was 16 years of age at the time and other requirements are met. The Legislature may directly amend these initiatives by a statute passed in each house by a  $\frac{2}{3}$  vote, or by a statute that becomes effective only when approved by the voters.

This bill would amend those initiative statutes by prohibiting a prior juvenile adjudication or a prior conviction for an offense that occurred before the person was 18 years of age from being considered a prior serious or violent felony conviction for purposes of sentence enhancement. The bill would provide a means of vacating a prior

juvenile adjudication or conviction enhancement and resentencing a defendant on any remaining counts, as specified. By requiring the participation of district attorneys and public defenders in the resentencing process, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

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

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) Youth adjudicated in juvenile court are fundamentally  
4 different from adults in their decisionmaking, culpability, and  
5 capacity for rehabilitation, as recognized by existing laws,  
6 including California's youth offender parole hearings.

7 (b) Enhancements based on juvenile adjudications  
8 disproportionately impact individuals who were not afforded the  
9 same procedural safeguards as adult convictions.

10 (c) The purpose of this act is to promote fairness, public safety,  
11 and rehabilitation by clarifying that juvenile adjudications may  
12 not be used as prior serious or violent felony convictions for the  
13 purpose of sentence enhancements.

14 SEC. 2. Section 667 of the Penal Code is amended to read:

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

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

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

8 (4) As used in this subdivision, “serious felony” means a serious  
9 felony listed in subdivision (c) of Section 1192.7.

10 (5) This subdivision does not apply to a person convicted of  
11 selling, furnishing, administering, or giving, or offering to sell,  
12 furnish, administer, or give to a minor any  
13 methamphetamine-related drug or any precursors of  
14 methamphetamine unless the prior conviction was for a serious  
15 felony described in subparagraph (24) of subdivision (c) of Section  
16 1192.7.

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

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

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

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

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

35 (4) There shall not be a commitment to any other facility other  
36 than the state prison. Diversion shall not be granted, nor shall the  
37 defendant be eligible for commitment to ~~the California~~  
38 ~~Rehabilitation Center as provided in Article 2 (commencing with~~  
39 ~~Section 3050) of Chapter 1 of Division 3 of the Welfare and~~  
40 ~~Institutions Code; a substance abuse rehabilitation center.~~

(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) A sentence imposed pursuant to subdivision (e) shall be imposed consecutive to any other sentence that 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) An offense defined in subdivision (c) of Section 667.5 as a violent felony or an 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 State Hospitals 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.

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

8 ~~(3) A prior juvenile adjudication constitutes a prior serious or~~  
9 ~~violent felony conviction for purposes of sentence enhancement~~  
10 ~~if it meets all of the following:~~

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

13 ~~(B) The prior offense is listed in subdivision (b) of Section 707~~  
14 ~~of the Welfare and Institutions Code or described in paragraph (1)~~  
15 ~~or (2) as a serious or violent felony.~~

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

18 ~~(D) The juvenile was adjudged a ward of the juvenile court~~  
19 ~~within the meaning of Section 602 of the Welfare and Institutions~~  
20 ~~Code because the person committed an offense listed in subdivision~~  
21 ~~(b) of Section 707 of the Welfare and Institutions Code.~~

22 *(3) Notwithstanding paragraphs (1) and (2), a prior juvenile*  
23 *adjudication or a prior conviction for an offense committed when*  
24 *the person was less than 18 years of age shall not constitute a*  
25 *prior serious or violent felony conviction for the purposes of this*  
26 *section.*

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

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

36 (2) (A) Except as provided in subparagraph (C), if a defendant  
37 has two or more prior serious or violent felony convictions as  
38 defined in subdivision (d) that have been pled and proved, the term  
39 for the current felony conviction shall be an indeterminate term

1 of life imprisonment with a minimum term of the indeterminate  
2 sentence calculated as the greatest of:

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

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

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

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

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

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

28 (ii) The current offense is a felony sex offense, defined in  
29 subdivision (d) of Section 261.5 or former Section 262, or a felony  
30 offense that results in mandatory registration as a sex offender  
31 pursuant to subdivision (c) of Section 290 except for violations of  
32 Sections 266 and 285, paragraph (1) of subdivision (b) and  
33 subdivision (e) of Section 286, paragraph (1) of subdivision (b)  
34 and subdivision (e) of Section ~~288a~~, 287, Section 311.11, and  
35 Section 314.

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 3. Section 1170.12 of the Penal Code is amended to read:

1170.12. (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~~; *a substance abuse rehabilitation center*.

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

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

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

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

18 (1) Any offense defined in subdivision (c) of Section 667.5 as  
19 a violent felony or any offense defined in subdivision (c) of Section  
20 1192.7 as a serious felony in this state. The determination of  
21 whether a prior conviction is a prior serious or violent felony  
22 conviction for purposes of this section shall be made upon the date  
23 of that prior conviction and is not affected by the sentence imposed  
24 unless the sentence automatically, upon the initial sentencing,  
25 converts the felony to a misdemeanor. The following dispositions  
26 shall not affect the determination that a prior serious or violent  
27 conviction is a serious or violent felony for purposes of this section:

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

29 (B) The stay of execution of sentence.

30 (C) The commitment to the State Department of State Hospitals  
31 as a mentally disordered sex offender following a conviction of a  
32 felony.

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

36 (2) A prior conviction in another jurisdiction for an offense that,  
37 if committed in California, is punishable by imprisonment in the  
38 state prison constitutes a prior conviction of a particular serious  
39 or violent felony if the prior conviction in the other jurisdiction is  
40 for an offense that includes all of the elements of the particular

1 violent felony as defined in subdivision (c) of Section 667.5 or  
2 serious felony as defined in subdivision (c) of Section 1192.7.

3 ~~(3) A prior juvenile adjudication constitutes a prior serious or~~  
4 ~~violent felony conviction for the purposes of sentence enhancement~~  
5 ~~if it meets all of the following criteria:~~

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

8 ~~(B) The prior offense is either of the following:~~

9 ~~(i) Listed in subdivision (b) of Section 707 of the Welfare and~~  
10 ~~Institutions Code.~~

11 ~~(ii) Listed in this subdivision as a serious or violent felony.~~

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

14 ~~(D) The juvenile was adjudged a ward of the juvenile court~~  
15 ~~within the meaning of Section 602 of the Welfare and Institutions~~  
16 ~~Code because the person committed an offense listed in subdivision~~  
17 ~~(b) of Section 707 of the Welfare and Institutions Code.~~

18 ~~(3) Notwithstanding paragraphs (1) and (2), a prior juvenile~~  
19 ~~adjudication or a prior conviction for an offense committed when~~  
20 ~~the person was less than 18 years of age shall not constitute a~~  
21 ~~prior serious or violent felony conviction for the purposes of this~~  
22 ~~section.~~

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

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

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

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

4 (ii) Twenty-five years.

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

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

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

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

26 (ii) The current offense is a felony sex offense, defined in  
27 subdivision (d) of Section 261.5, or any felony offense that results  
28 in mandatory registration as a sex offender pursuant to subdivision  
29 (c) of Section 290 except for violations of Sections 266 and 285,  
30 paragraph (1) of subdivision (b) and subdivision (e) of Section  
31 286, paragraph (1) of subdivision (b) and subdivision (e) of Section  
32 287, Section 314, and Section 311.11.

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

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

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

(II) Oral copulation with a child who is under 14 years of age, and 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 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 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 does not 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

1 circumstance is held invalid, that invalidity does not affect other  
2 provisions or applications of those subdivisions that can be given  
3 effect without the invalid provision or application, and to this end  
4 the provisions of those subdivisions are severable.

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

10 SEC. 4. Section 1170.96 is added to the Penal Code, to read:

11 1170.96. (a) A person convicted of a felony who had their  
12 sentence enhanced because of a prior juvenile adjudication or a  
13 conviction for an offense committed when the person was less  
14 than 18 years of age may file a petition with the court that  
15 sentenced the petitioner to have the petitioner's prior conviction  
16 enhancement vacated and to be resentenced on any remaining  
17 counts when all of the following conditions apply:

18 (1) A complaint, information, or indictment was filed against  
19 the petitioner that alleged the petitioner had suffered a prior  
20 conviction under subdivision (c) of Section 1192.7 or subdivision  
21 (c) of Section 667.5 or alleged pursuant to paragraph (3) of  
22 subdivision (d) of Section 667 or paragraph (3) of subdivision (b)  
23 of Section 1170.12.

24 (2) The offense underlying the prior conviction or juvenile  
25 adjudication alleged occurred when the petitioner was less than  
26 18 years of age.

27 (3) The fact of the prior conviction alleged was either admitted  
28 or found to be true by a judge or jury after a conviction on the  
29 underlying charge or charges in the complaint, information, or  
30 indictment.

31 (4) The petitioner's sentence was actually enhanced due to this  
32 prior conviction being found true.

33 (b) (1) The petition shall be filed with the court that sentenced  
34 the petitioner and served by the petitioner on the district attorney,  
35 or on the agency that prosecuted the petitioner, and on the attorney  
36 who represented the petitioner in the trial court, or on the public  
37 defender of the county where the petitioner was convicted. If the  
38 judge that originally sentenced the petitioner is not available to  
39 resentence the petitioner, the presiding judge shall designate

1 another judge to rule on the petition. The petition shall include all  
2 of the following:

3 (A) A declaration by the petitioner that they are eligible for  
4 relief under this section, based on all of the requirements of  
5 subdivision (a).

6 (B) The superior court case number and year of the petitioner's  
7 conviction.

8 (C) Whether the petitioner requests the appointment of counsel.

9 (2) If any of the information required by this subdivision is  
10 missing from the petition and cannot be readily ascertained by the  
11 court, the court may deny the petition without prejudice to the  
12 filing of another petition and advise the petitioner that the matter  
13 cannot be considered without the missing information.

14 (c) The court shall review the petition and determine if the  
15 petitioner has made a prima facie showing that the petitioner is  
16 eligible for relief pursuant to this section. If the court determines  
17 that a prima facie case has been made and the petitioner has  
18 requested counsel, the court shall appoint counsel to represent the  
19 petitioner. If the court determines that a prima facie case has not  
20 been made and the petitioner has requested counsel, the court may,  
21 in its discretion, appoint counsel for the purpose of investigating  
22 the petitioner's eligibility for relief pursuant to this section and to  
23 represent the petitioner in attendant proceedings.

24 (d) If the court determines that the petitioner has made a prima  
25 facie showing that they are eligible for relief pursuant to this  
26 section, the court shall issue an order to show cause why relief  
27 should not be granted. The prosecutor shall file and serve a  
28 response within 60 days of service of the petition and the petitioner  
29 may file and serve a reply within 30 days after the prosecutor  
30 response is served.

31 (e) (1) Within 60 days after the order to show cause has issued,  
32 the court shall hold a hearing to determine whether to recall the  
33 sentence and resentence the petitioner on any remaining counts  
34 and enhancements, excluding the enhancement imposed as a result  
35 of a juvenile adjudication or conviction as described in subdivision  
36 (a), provided that the new sentence is not greater than the initial  
37 sentence.

38 (2) At the hearing to determine whether the petitioner is entitled  
39 to relief, the burden of proof shall be on the prosecution to prove,  
40 beyond a reasonable doubt, that the petitioner is ineligible for

1 resentencing. If the prosecution fails to sustain its burden of proof,  
2 the prior sentence shall be recalled and the petitioner shall be  
3 resentenced as described in paragraph (1). The prosecutor and the  
4 petitioner may rely only on the record of conviction in arguing the  
5 petitioner's eligibility for resentencing, but may offer new or  
6 additional evidence relating to the determination of a new sentence.

7 (3) If the court determines that the petitioner is eligible for relief  
8 and the prosecutor does not object, it may grant relief without a  
9 hearing on the order to show cause and instead proceed directly  
10 to a resentencing hearing.

11 (f) Any deadline prescribed by this section shall be extended  
12 by the court upon a showing of good cause.

13 (g) This section does not diminish or abrogate any rights or  
14 remedies otherwise available to the petitioner.

15 (h) A person who is resentenced pursuant to this section shall  
16 be given credit for time served. The judge may order the petitioner  
17 to be subject to parole supervision for up to three years following  
18 the completion of the sentence.

19 SEC. 5. If the Commission on State Mandates determines that  
20 this act contains costs mandated by the state, reimbursement to  
21 local agencies and school districts for those costs shall be made  
22 pursuant to Part 7 (commencing with Section 17500) of Division  
23 4 of Title 2 of the Government Code.