

AMENDED IN ASSEMBLY APRIL 21, 2025

CALIFORNIA LEGISLATURE—2025–26 REGULAR SESSION

ASSEMBLY BILL

No. 1279

Introduced by Assembly Member Sharp-Collins
(~~Coauthor: Assembly Member McKinnor~~)
(Coauthors: Assembly Members Bryan, Elhawary, Haney, and
McKinnor)

February 21, 2025

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 amended, 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

1 brought and tried separately. The terms of the present offense and
2 each enhancement shall run consecutively.

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

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

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

12 (5) This subdivision does not apply to a person convicted of
13 selling, furnishing, administering, or giving, or offering to sell,
14 furnish, administer, or give to a minor any
15 methamphetamine-related drug or any precursors of
16 methamphetamine unless the prior conviction was for a serious
17 felony described in subparagraph (24) of subdivision (c) of Section
18 1192.7.

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

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

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

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

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

37 (4) There shall not be a commitment to any other facility other
38 than the state prison. Diversion shall not be granted, nor shall the
39 defendant be eligible for commitment to a substance abuse
40 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.

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

(e) For purposes of subdivisions (b) to (i), inclusive, and in addition to any other enhancement or punishment provisions that 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 an indeterminate term described in subparagraph (A) shall not be merged therein but shall commence

1 at the time the person would otherwise have been released from
2 prison.

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

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

13 (ii) The current offense is a felony sex offense, defined in
14 subdivision (d) of Section 261.5 or former Section 262, or a felony
15 offense that results in mandatory registration as a sex offender
16 pursuant to subdivision (c) of Section 290 except for violations of
17 Sections 266 and 285, paragraph (1) of subdivision (b) and
18 subdivision (e) of Section 286, paragraph (1) of subdivision (b)
19 and subdivision (e) of Section 287, Section 311.11, and Section
20 314.

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

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

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

29 (II) Oral copulation with a child who is under 14 years of age
30 and more than 10 years younger than the defendant as defined by
31 Section 287 or former Section 288a, sodomy with another person
32 who is under 14 years of age and more than 10 years younger than
33 the defendant as defined by Section 286, or sexual penetration
34 with another person who is under 14 years of age and more than
35 10 years younger than the defendant, as defined by Section 289.

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

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

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

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

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

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

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

13 (2) The prosecuting attorney may move to dismiss or strike a
14 prior serious or violent felony conviction allegation in the
15 furtherance of justice pursuant to Section 1385, or if there is
16 insufficient evidence to prove the prior serious or violent felony
17 conviction. If upon the satisfaction of the court that there is
18 insufficient evidence to prove the prior serious or violent felony
19 conviction, the court may dismiss or strike the allegation. This
20 section shall not be read to alter a court's authority under Section
21 1385.

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

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

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

37 (j) The provisions of this section shall not be amended by the
38 Legislature except by statute passed in each house by rollcall vote
39 entered in the journal, two-thirds of the membership concurring,

1 or by a statute that becomes effective only when approved by the
2 electors.

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

4 1170.12. (a) Notwithstanding any other law, if a defendant
5 has been convicted of a felony and it has been pled and proved
6 that the defendant has one or more prior serious or violent felony
7 convictions, as defined in subdivision (b), the court shall adhere
8 to each of the following:

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

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

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

17 (4) There shall not be a commitment to any other facility other
18 than the state prison. Diversion shall not be granted nor shall the
19 defendant be eligible for commitment to a substance abuse
20 rehabilitation center.

21 (5) The total amount of credits awarded pursuant to Article 2.5
22 (commencing with Section 2930) of Chapter 7 of Title 1 of Part
23 3 shall not exceed one-fifth of the total term of imprisonment
24 imposed and shall not accrue until the defendant is physically
25 placed in the state prison.

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

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

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

38 (1) Any offense defined in subdivision (c) of Section 667.5 as
39 a violent felony or any offense defined in subdivision (c) of Section
40 1192.7 as a serious felony in this state. The determination of

1 whether a prior conviction is a prior serious or violent felony
2 conviction for purposes of this section shall be made upon the date
3 of that prior conviction and is not affected by the sentence imposed
4 unless the sentence automatically, upon the initial sentencing,
5 converts the felony to a misdemeanor. The following dispositions
6 shall not affect the determination that a prior serious or violent
7 conviction is a serious or violent felony for purposes of this section:

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

9 (B) The stay of execution of sentence.

10 (C) The commitment to the State Department of State Hospitals
11 as a mentally disordered sex offender following a conviction of a
12 felony.

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

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

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

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

31 (1) If a defendant has one prior serious or violent felony
32 conviction as defined in subdivision (b) 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 (b), that have been pled and proved, the
39 term for the current felony conviction shall be an indeterminate
40 term of life imprisonment with a minimum term of the

1 indeterminate sentence calculated as the greatest of any of the
2 following:

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) Twenty-five 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 felony described in paragraph (1)
22 of subdivision (b), the defendant shall be sentenced pursuant to
23 paragraph (1) of subdivision (c), 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 any felony offense that results
30 in mandatory registration as a sex offender pursuant to subdivision
31 (c) of Section 290 except for violations of Sections 266 and 285,
32 paragraph (1) of subdivision (b) and subdivision (e) of Section
33 286, paragraph (1) of subdivision (b) and subdivision (e) of Section
34 287, Section 314, and Section 311.11.

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

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

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

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

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

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

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

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

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

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

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

26 (2) The prosecuting attorney may move to dismiss or strike a
27 prior serious or violent felony conviction allegation in the
28 furtherance of justice pursuant to Section 1385, or if there is
29 insufficient evidence to prove the prior serious or violent
30 conviction. If upon the satisfaction of the court that there is
31 insufficient evidence to prove the prior serious or violent felony
32 conviction, the court may dismiss or strike the allegation. This
33 section does not alter a court’s authority under Section 1385.

34 (e) Prior serious or violent felony convictions shall not be used
35 in plea bargaining, as defined in subdivision (b) of Section 1192.7.
36 The prosecution shall plead and prove all known prior serious or
37 violent felony convictions and shall not enter into any agreement
38 to strike or seek the dismissal of any prior serious or violent felony
39 conviction allegation except as provided in paragraph (2) of
40 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 that 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.

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

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

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

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

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

(4) The petitioner's sentence was actually enhanced due to this prior ~~conviction~~ *juvenile adjudication* being found true.

(b) (1) The petition shall be filed with the court that sentenced the petitioner and served by the petitioner on the district attorney, or on the agency that prosecuted the petitioner, and on the attorney who represented the petitioner in the trial court, or on the public defender of the county where the petitioner was convicted. If the

1 judge that originally sentenced the petitioner is not available to
2 resentence the petitioner, the presiding judge shall designate
3 another judge to rule on the petition. The petition shall include all
4 of the following:

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

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

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

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

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

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

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

(2) At the hearing to determine whether the petitioner is entitled to relief, the burden of proof shall be on the prosecution to prove, beyond a reasonable doubt, that the petitioner is ineligible for resentencing. If the prosecution fails to sustain its burden of proof, the prior sentence shall be recalled and the petitioner shall be resentenced as described in paragraph (1). The prosecutor and the petitioner may rely only on the record of conviction in arguing the petitioner's eligibility for resentencing, but may offer new or additional evidence relating to the determination of a new sentence.

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

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

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

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

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