

Consideration of Arrests and/or Convictions¹ in Hiring² Classified Employees

OFFENSES	Conviction and none of the other columns apply	Conviction dismissed - Penal Code § 1203.4 ³	Conviction dismissed - Penal Code § 1203.4a ⁴		Conviction dismissed - Penal Code § 1210.1	Conviction rehab'd - cert. of rehab and pardon ^{5, 6}	Conviction rehab'd - judicial finding of rehab ⁷	Conviction rehab'd - Gov. Board determin. of rehab ⁸	Conviction subject to the process and jurisdiction of juvenile court law ⁹
Violent Felony ¹⁰	Must	Must	N/A		N/A	May*	Must	N/A	Cannot
Serious Felony ¹¹	Must	Must	N/A		N/A	May*	May* ¹²	N/A	Cannot
Sex Offense ^{13 14}	Must	See footnotes ^{15, 16}	Misd.	Felony	N/A	Must	Must	N/A	Cannot
			May	N/A					
Controlled Substance ¹⁷	Must	May	May	N/A	Cannot	May	May	May	Cannot
All other offenses	May ¹⁸	May	May	N/A	Cannot	May	May	N/A	Cannot

MUST CONSIDER CONVICTION	Prohibited from hiring, unless other exceptions to general hiring prohibition for the offense apply.
MAY CONSIDER CONVICTION	May hire, can consider the conviction before hiring. May be prohibited from using conviction to deny employment if adverse impact would result. ¹⁹
CANNOT CONSIDER CONVICTION	May hire, and cannot use the conviction to deny employment.

* The conviction cannot be the sole basis for not hiring. (Ed. Code, § 45122.1, subd. (e) and (f).)

¹ A conviction includes a conviction by a jury, a plea of guilty, or a plea of *nolo contendere* (no contest).

² Employers are now prohibited from utilizing certain forms of criminal history in employment decisions. (2 CCR, § 11017.1, subds. (a), (c)(1); Labor Code, § 432.7.)

³ Ed. Code, § 44008 provides that a termination of probation and dismissal of an accusation or information pursuant to Penal Code section 1203.4 shall not have any effect.

⁴ These may be considered per the exception in Labor Code, § 432.7(m).

⁵ Ed. Code, § 45122.1, subd. (e).

⁶ Note: If "pardon" in this sense means "judicially dismissed" these might not be considerable per 2 CCR, § 11017.1, subd. (b)(3).

⁷ Ed. Code, § 45122.1, subd. (f).

⁸ Note: Must be rehabilitated for at least five (5) years.

⁹ Any record concerning or related to an arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while a person was subject to the process and jurisdiction of juvenile court law, may not be considered as a factor in hiring. (2 CCR, § 11017.1, subd. (b)(4); Labor Code, § 432.7.)

¹⁰ Applies even if offense is from a different jurisdiction but, if it had been committed in California, would have been punishable as a violent or serious felony. (Ed. Code, §§ 45122.1, subd. (a), 45122.2, subd. (b).) Penal Code section 667.5, subdivision (c) defines what constitutes a violent felony for the purpose of this determination.

¹¹ Ed. Code, § 45122.1, subd. (a). Penal Code section 1192.7, subdivision (c) defines what constitutes a serious felony for the purpose of this determination.

¹² Person must prove to the sentencing court, by clear and convincing evidence, that he or she has been rehabilitated for the purposes of school employment for at least one (1) year. Serious felony must not also constitute a violent felony. (Ed. Code, § 44830.1, subd. (g).) (Ed. Code, § 45122.1, subd. (f).)

¹³ Ed. Code, § 45123, subd. (a). Education Code section 44010 defines what constitutes a sex offense for the purpose of this determination.

¹⁴ School districts are prohibited from employing sexually violent predators ("SVP"). (Ed. Code, § 45124.) Designation of an individual as an SVP is not a conviction but a psychiatric determination rendered by a court. As a practical matter, a conviction for a sex offense usually precedes this determination. If a court reverses its SVP determination, the previous SVP determination is no longer a bar to employment. However, school districts should consider any sex offense conviction using the chart above and separately consider an SVP determination if it is not reversed.

¹⁵ As a general rule, a school district may not employ persons who have been convicted of a sex offense, unless the conviction is "reversed and the person is acquitted of the offense in a new trial or the charges against him or her are dismissed." (Ed. Code, § 45123.)

¹⁶ The following felonies cannot be dismissed pursuant to Penal Code section 1203.4: Penal Code §§ 286, subd. (c); 288; 288a, subd. (c); 288.5; 289, subd. (j); 311.1; 311.2; 311.3; 311.11; 261.5, subd. (d). (Id. at subd. (b).)

¹⁷ Ed. Code, § 45123, subd. (b). Education Code section 44011 defines what constitutes a prohibited controlled substance offense.

¹⁸ Non-felony conviction for possession of marijuana that is two or more years old may NOT be considered. (2 CCR, § subd. (b)(5).)

¹⁹ Employers are prohibited from utilizing this conviction in employment decision, if doing so would have an adverse impact on applicant on a protected basis enumerated in the law (e.g., race, color, or national origin, etc.) that the employer cannot prove is job-related and consistent with business necessity. (See 2 CCR, § 11017.1 for specific criteria.)

Consideration of Convictions¹ in Hiring² Certificated Employees

OFFENSES	Conviction and none of the other columns apply	Conviction followed by dismissal under Penal Code § 1203.4 ³	Conviction followed by dismissal under Penal Code § 1203.4a ⁴		Conviction followed by dismissal under Penal Code § 1210.1	Conviction with Certificate of Rehabilitation and Pardon	Conviction with subsequent judicial finding of rehabilitation	Conviction was subject to the process and jurisdiction of juvenile court law ⁵
Violent Felony ⁶	Must	May	N/A		N/A	May*	Must	Cannot
Serious Felony ⁷	Must	May	N/A		N/A	May*	May ^{8*}	Cannot
Sex Offense ⁹	Must	See footnotes ^{10, 11}	Misdemeanor May	Felony N/A	N/A	Must	Must	Cannot
Controlled Substance ¹²	Must	May	May	N/A	Cannot	May	May	Cannot
All other offenses	May ¹³	May	May	May	Cannot	May	May	Cannot

MUST CONSIDER CONVICTION	Prohibited from hiring, unless other exceptions to general hiring prohibition for the offense apply.
MAY CONSIDER CONVICTION	May hire, may consider the conviction before hiring. May be prohibited from using conviction to deny employment if adverse impact would result. ¹⁴
CANNOT CONSIDER CONVICTION	May hire, and cannot use the conviction to deny employment.

* The conviction cannot be the sole basis for not hiring. (Ed. Code, § 44830.1, subd. (f) and (g).)

¹ A conviction includes a conviction by a jury, a plea of guilty, or a plea of *nolo contendere* (no contest).

² Employers are now prohibited from utilizing certain forms of criminal history in employment decisions. (2 CCR, § 11017.1, subd. (a); Labor Code, § 432.7.)

³ Ed. Code, § 44008 provides that a termination of probation and dismissal of an accusation or information pursuant to Penal Code section 1203.4 shall not have any effect.

⁴ These may be considered per the exception in Labor Code, § 432.7(m).

⁵ Any record concerning or related to an arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while a person was subject to the process and jurisdiction of juvenile court law, may not be considered as a factor in hiring. (2 CCR., § 11017.1, subd. (b)(4); Labor Code, § 432.7.)

⁶ A violent felony is any felony listed in Penal Code section 667.5. (Ed. Code, § 44830.1, subd. (c)(1).)

⁷ A serious felony is any felony listed in Penal Code section 1192.7. (Ed. Code, § 44830.1, subd. (c)(1).)

⁸ Person must prove to the sentencing court, by clear and convincing evidence, that he or she has been rehabilitated for the purposes of school employment for at least one (1) year. Serious felony must not also constitute a violent felony. (Ed. Code, § 44830.1, subd. (g).)

⁹ See what constitutes a sex offense in Education Code section 44010.

¹⁰ As a general rule, a school district may not employ persons who have been convicted of a sex offense, unless the conviction is “reversed and the person is acquitted of the offense in a new trial or the charges against him or her are dismissed.” (Ed. Code, § 44836.) However, if the victim was a minor, the district may not employ the person even if there is a dismissal under section 1203.4 of the Penal Code. (Id.)

¹¹ The following felonies cannot be dismissed pursuant to Penal Code section 1203.4: Penal Code §§ 286, subd. (c); 288; 288a, subd. (c); 288.5; 289, subd. (j); 311.1; 311.2; 311.3; 311.11; 261.5, subd. (d). (Id. at subd. (b).)

¹² See what constitutes a prohibited controlled substance offense in Education Code section 44011.

¹³ Non-felony conviction for possession of marijuana that is two or more years old may NOT be considered. (2 CCR, § subd (b)(5).)

¹⁴ Employers are prohibited from utilizing this conviction in employment decision, if doing so would have an adverse impact on applicant on a protected basis enumerated in the law (e.g., race, color, or national origin, etc.) that the employer cannot prove is job-related and consistent with business necessity. (See 2 CCR, § 11017.1 for specific criteria.)

STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
Bureau of Criminal Information and Analysis
P.O. Box 903417
Sacramento, CA 94203-4170

DATE: 10/05/2017

CALIFORNIA UNION SCH DST
123 CALIFORNIA ROAD
BIG CITY CA 90000

RE: DOJ INFORMATION FURNISHED PURSUANT TO AN APPLICANT
FINGERPRINT SUBMISSION

* This information is for OFFICIAL USE ONLY *
Unauthorized use is a criminal offense.

Based upon a fingerprint search of records contained in the Bureau of Criminal Information and Analysis files, this response contains all information meeting dissemination criteria pursuant to California law.

Our records indicate you have requested, or are statutorily mandated to receive, subsequent arrest notification service from the Department of Justice. Therefore, you will be advised of subsequent arrests for this individual. Pursuant to Section 11105.2 of the California Penal Code, your agency is required to notify the Department of Justice when it no longer has a legitimate interest in this subject, (i.e., the applicant is no longer, or was never employed; his/her license or certification is denied or revoked; or he/she is no longer eligible to renew or reinstate the license or certificate).

APP ORI: AD999
APP NAME: JOHN SMITH
APP TYPE: CREDENTIALLED SCHOOL EMP
APP TITLE: STUDENT TEACHER
APP SERVICE REQUESTED: CA/
OCA:
SID: A039293124
DOB: 07/09/1984
SSN: 123456789
CDL: E20101010
ATI: G200000A0
OATI:
DATE SUBMITTED: 10/05/2017
SCN #: 924B2310321

APP ADDRESS: 1234 VALLEY ROAD BIG CITY CA 90000

COURT:
20091210 CASCWALNUT CREEK
001:01,14325252,9,001
SEE COMMENT FOR CHARGE TOC:N
DISPO: CONVICTED-PROB/JAIL

CONV STATUS: MISDEMEANOR TOS:5
COM:: 459-460(B) PC - BURGLARY: SECOND DEGREE
002:
SEE COMMENT FOR CHARGE TOC:N
DISPO: CONVICTED - PROB/JAIL
CONV STATUS: MISDEMEANOR TOS:5
COM::CHRG 459-460(B) PC - BURGLARY: SECOND DEGREE
003:
466 PC-POSSESS/ETC BURGLARY TOOLS TOC: M
DISPO: CONVICTED-PROB/JAIL
CONV STATUS: MISDEMEANOR TOS:4

* * * *

COURT:
20050910 CACMLODI
001: 422333M
484 PC-THEFT TOC:M
DISPO: CONVICTED-PROB/JAIL
CONV STATUS: MISDEMEANOR

* * * *

COURT:
20080810 CASCMCSACRAMENTO
001: 97M14539
647(B) PC-DISORDERLY CONDUCT: PROSTITUTION TOC:M
DISPO: CONVICTED- PROB/JAIL
CONV STATUS: MISDEMEANOR TOS:4

* * * *

COURT:
20070104 CAMCSTOCKTON
001: 4109991
484(A) PC-PETTY THEFT TOC: M
DISPO: CONVICTED - PROBATION
CONV STATUS: MISDEMEANOR

20150810 DISPO: CONV SET ASIDE & DISM 1203.4/1203.4A PC
COM: COURT CASE NUMBER 4109991

* * * *

COURT:
19860809 CASCMCSACRAMENTO
001: 41241081010
653.22(A) PC - LOITER: INTENT: PROSTITUTION TOC: M
DISPO: CONVICTED - PROB/JAIL
CONV STATUS: MISDEMENAOR TOS: 4

***THIS ENTRY NOT SUBSTANTIATED BY VERIFIED FINGERPRINTS ***

* * * END OF MESSAGE * * *

If the applicant wishes to obtain a copy of his/her criminal history record, he/she should either contact the Department of Justice Record Review Office at (916) 227-3835 or access the required forms at www.aq.ca.gov/fingerprints/security.php.



EDUCATION CODE - EDC

TITLE 2. ELEMENTARY AND SECONDARY EDUCATION [33000 - 64100] (*Title 2 enacted by Stats. 1976, Ch. 1010.*)

DIVISION 3. LOCAL ADMINISTRATION [35000 - 45500] (*Division 3 enacted by Stats. 1976, Ch. 1010.*)

PART 25. EMPLOYEES [44000 - 45500] (*Part 25 enacted by Stats. 1976, Ch. 1010.*)

CHAPTER 1. Employees [44000 - 44114] (*Chapter 1 enacted by Stats. 1976, Ch. 1010.*)

ARTICLE 1. General Provisions [44000 - 44020] (*Article 1 enacted by Stats. 1976, Ch. 1010.*)

“Sex offense,” as used in Sections 44020, 44237, 44346, 44425, 44436, 44836, and 45123, means any one or more of the offenses listed below:

44010.

- (a) An offense defined in Section 220, 261, 261.5, 262, or 288.2, subdivision (c) of Section 290, Section 311.2, 313.1, or 647b, or subdivision (a) or (d) of Section 647, of the Penal Code.
- (b) An offense defined in former subdivision (5) of former Section 647 of the Penal Code repealed by Chapter 560 of the Statutes of 1961, or any offense defined in former subdivision (2) of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961, if the offense defined in those sections was committed before September 15, 1961, to the same extent that an offense committed before that date was a sex offense for the purposes of this section before September 15, 1961.
- (c) An offense defined in Section 314 of the Penal Code committed on or after September 15, 1961.
- (d) An offense defined in former subdivision (1) of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961 committed on or after September 7, 1955, and before September 15, 1961.
- (e) An offense involving lewd and lascivious conduct under Section 272 of the Penal Code committed on or after September 15, 1961.
- (f) An offense involving lewd and lascivious conduct under former Section 702 of the Welfare and Institutions Code repealed by Chapter 1616 of the Statutes of 1961, if that offense was committed before September 15, 1961, to the same extent that an offense committed before that date was a sex offense for the purposes of this section before September 15, 1961.
- (g) An offense defined in Section 286 or 288a of the Penal Code before the effective date of the amendment of either section enacted at the 1975–76 Regular Session of the Legislature committed before the effective date of the amendment.
- (h) An attempt to commit any of the offenses specified in this section.
- (i) An offense committed or attempted in any other state or against the laws of the United States that, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.
- (j) A conviction for an offense resulting in the requirement to register as a sex offender pursuant to Section 290 of the Penal Code.
- (k) Commitment as a mentally disordered sex offender under former Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, as repealed by Chapter 928 of the Statutes of 1981.

(Amended by Stats. 2018, Ch. 92, Sec. 50. (SB 1289) Effective January 1, 2019.)

State of California

EDUCATION CODE

Section 44830.1

44830.1. (a) In addition to any other prohibition or provision, no person who has been convicted of a violent or serious felony shall be hired by a school district in a position requiring certification qualifications or supervising positions requiring certification qualifications. A school district shall not retain in employment a current certificated employee who has been convicted of a violent or serious felony, and who is a temporary employee, a substitute employee, or a probationary employee serving before March 15 of the employee's second probationary year. If any conviction is reversed and the formerly convicted person is acquitted of the offense in a new trial, or the charges are dismissed, this section does not prohibit his or her employment thereafter.

(b) This section applies to any violent or serious offense which, if committed in this state, would have been punishable as a violent or serious felony.

(c) (1) For purposes of this section, a violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal Code and a serious felony is any felony listed in subdivision (c) of Section 1192.7 of the Penal Code.

(2) For purposes of this section, a plea of nolo contendere to a serious or violent felony constitutes a conviction.

(3) For purposes of this section, the term "school district" has the same meaning as defined in Section 41302.5.

(d) When the governing board of any school district requests a criminal record summary of a temporary, substitute, or probationary certificated employee, two fingerprint cards, bearing the legible rolled and flat impressions of the person's fingerprints together with a personal description and the fee, shall be submitted, by any means authorized by the Department of Justice, to the Department of Justice.

(e) When the Department of Justice ascertains that an individual who is an applicant for employment by a school district has been convicted of a violent or serious felony, or for purposes of implementing the prohibitions set forth in Section 44836, any sex offense, as defined in Section 44010, or any controlled substance offense, as defined in Section 44011, the department shall notify the school district of the criminal information pertaining to the applicant. The notification shall be delivered by telephone or electronic mail to the school district. The notification to the school district shall cease to be made once the statewide electronic fingerprinting network is returning responses within three working days. The Department of Justice shall send by first-class mail or electronic mail a copy of the criminal information to the Commission on Teacher Credentialing. The Department of Justice may charge a reasonable fee to cover the costs associated with processing, reviewing, and supplying the criminal

record summary required by this section. In no event shall the fee exceed the actual costs incurred by the department.

(f) Notwithstanding subdivision (a), a person shall not be denied employment or terminated from employment solely on the basis that the person has been convicted of a violent or serious felony if the person has obtained a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(g) Notwithstanding subdivision (f), a person shall not be denied employment or terminated from employment solely on the basis that the person has been convicted of a serious felony that is not also a violent felony if that person can prove to the sentencing court of the offense in question, by clear and convincing evidence, that he or she has been rehabilitated for the purposes of school employment for at least one year. If the offense in question occurred outside this state, then the person may seek a finding of rehabilitation from the court in the school district in which he or she is a resident.

(h) Notwithstanding any other provision of law, when the Department of Justice notifies a school district by telephone or electronic mail that a current temporary employee, substitute employee, or probationary employee serving before March 15 of the employee's second probationary year, has been convicted of a violent or serious felony, that employee shall immediately be placed on leave without pay. When the school district receives written electronic notification of the fact of conviction from the Department of Justice, the employee shall be terminated automatically and without regard to any other procedure for termination specified in this code or school district procedures unless the employee challenges the record of the Department of Justice and the Department of Justice withdraws in writing its notification to the school district. Upon receipt of written withdrawal of notification from the Department of Justice, the employee shall immediately be reinstated with full restoration of salary and benefits for the period of time from the suspension without pay to the reinstatement.

(i) An employer shall request subsequent arrest service from the Department of Justice as provided under Section 11105.2 of the Penal Code.

(j) Notwithstanding Section 47610, this section applies to a charter school.

(k) This section shall not apply to a certificated employee who applies to renew his or her credential when both of the following conditions have been met:

(1) The employee's original application for credential was accompanied by that person's fingerprints.

(2) The employee has either been continuously employed in one or more public school districts since the issuance or last renewal of his or her credential or his or her credential has not expired between renewals.

(l) Nothing in this section shall prohibit a county superintendent of schools from issuing a temporary certificate to any person described in paragraph (1) or (2) of subdivision (k).

(m) This section shall not prohibit a school district from hiring a certificated employee who became a permanent employee of another school district as of October 1, 1997.

(n) All information obtained from the Department of Justice is confidential. Every agency handling Department of Justice information shall ensure the following:

(1) No recipient may disclose its contents or provide copies of information.

(2) Information received shall be stored in a locked file separate from other files, and shall only be accessible to the custodian of records.

(3) Information received shall be destroyed upon the hiring determination in accordance with subdivision (a) of Section 708 of Title 11 of the California Code of Regulations.

(4) Compliance with destruction, storage, dissemination, auditing, backgrounding, and training requirements as set forth in Sections 700 through 708 inclusive, of Title 11 of the California Code of Regulations and Section 11077 of the Penal Code governing the use and security of criminal offender record information is the responsibility of the entity receiving the information from the Department of Justice.

(Amended by Stats. 1998, Ch. 840, Sec. 6. Effective September 25, 1998.)

State of California

EDUCATION CODE

Section 44836

44836. (a) (1) The governing board of a school district shall not employ or retain in employment persons in public school service who have been convicted, or who have been convicted following a plea of nolo contendere to charges, of any sex offense as defined in Section 44010.

(2) If a person's conviction of a sex offense as defined in Section 44010 is reversed and the person is acquitted of the offense in a new trial or the charges against him or her are dismissed, this section does not prohibit his or her employment thereafter. If the dismissal was pursuant to Section 1203.4 of the Penal Code and the victim of the sex offense was a minor, this section does prohibit the person's employment.

(b) (1) The governing board of a school district also shall not employ or retain in employment persons in public school service who have been convicted of any controlled substance offense as defined in Section 44011.

(2) If a person's conviction for a controlled substance offense as defined in Section 44011 is reversed and the person is acquitted of the offense in a new trial or the charges against him or her are dismissed, this section does not prohibit his or her employment thereafter.

(c) Notwithstanding subdivision (b), the governing board of a school district may employ a person convicted of a controlled substance offense in a position requiring certification qualifications if that person holds an appropriate credential issued by the Commission on Teacher Credentialing.

(Amended by Stats. 1998, Ch. 840, Sec. 8. Effective September 25, 1998.)



PENAL CODE - PEN

PART 1. OF CRIMES AND PUNISHMENTS [25 - 680.4] (Part 1 enacted 1872.)

TITLE 16. GENERAL PROVISIONS [654 - 678] (Title 16 enacted 1872.)

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

667.5. (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.

(Amended by Stats. 2019, Ch. 590, Sec. 1. (SB 136) Effective January 1, 2020. Note: This section was amended on March 7, 2000, by initiative Prop. 21, and on Nov. 7, 2006, by initiative Prop. 83.)

State of California

PENAL CODE

Section 1192.7

1192.7. (a) (1) It is the intent of the Legislature that district attorneys prosecute violent sex crimes under statutes that provide sentencing under a “one strike,” “three strikes” or habitual sex offender statute instead of engaging in plea bargaining over those offenses.

(2) Plea bargaining in any case in which the indictment or information charges any serious felony, any felony in which it is alleged that a firearm was personally used by the defendant, or any offense of driving while under the influence of alcohol, drugs, narcotics, or any other intoxicating substance, or any combination thereof, is prohibited, unless there is insufficient evidence to prove the people’s case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence.

(3) If the indictment or information charges the defendant with a violent sex crime, as listed in subdivision (c) of Section 667.61, that could be prosecuted under Sections 269, 288.7, subdivisions (b) through (i) of Section 667, Section 667.61, or 667.71, plea bargaining is prohibited unless there is insufficient evidence to prove the people’s case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence. At the time of presenting the agreement to the court, the district attorney shall state on the record why a sentence under one of those sections was not sought.

(b) As used in this section “plea bargaining” means any bargaining, negotiation, or discussion between a criminal defendant, or his or her counsel, and a prosecuting attorney or judge, whereby the defendant agrees to plead guilty or nolo contendere, in exchange for any promises, commitments, concessions, assurances, or consideration by the prosecuting attorney or judge relating to any charge against the defendant or to the sentencing of the defendant.

(c) As used in this section, “serious felony” means any of the following:

(1) Murder or voluntary manslaughter; (2) mayhem; (3) rape; (4) sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (5) oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (6) lewd or lascivious act on a child under 14 years of age; (7) any felony punishable by death or imprisonment in the state prison for life; (8) any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm; (9) attempted murder; (10) assault with intent to commit rape or robbery; (11) assault with a deadly weapon or instrument on a

peace officer; (12) assault by a life prisoner on a noninmate; (13) assault with a deadly weapon by an inmate; (14) arson; (15) exploding a destructive device or any explosive with intent to injure; (16) exploding a destructive device or any explosive causing bodily injury, great bodily injury, or mayhem; (17) exploding a destructive device or any explosive with intent to murder; (18) any burglary of the first degree; (19) robbery or bank robbery; (20) kidnapping; (21) holding of a hostage by a person confined in a state prison; (22) attempt to commit a felony punishable by death or imprisonment in the state prison for life; (23) any felony in which the defendant personally used a dangerous or deadly weapon; (24) selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug, as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code; (25) any violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; (26) grand theft involving a firearm; (27) carjacking; (28) any felony offense, which would also constitute a felony violation of Section 186.22; (29) assault with the intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220; (30) throwing acid or flammable substances, in violation of Section 244; (31) assault with a deadly weapon, firearm, machinegun, assault weapon, or semiautomatic firearm or assault on a peace officer or firefighter, in violation of Section 245; (32) assault with a deadly weapon against a public transit employee, custodial officer, or school employee, in violation of Section 245.2, 245.3, or 245.5; (33) discharge of a firearm at an inhabited dwelling, vehicle, or aircraft, in violation of Section 246; (34) commission of rape or sexual penetration in concert with another person, in violation of Section 264.1; (35) continuous sexual abuse of a child, in violation of Section 288.5; (36) shooting from a vehicle, in violation of subdivision (c) or (d) of Section 26100; (37) intimidation of victims or witnesses, in violation of Section 136.1; (38) criminal threats, in violation of Section 422; (39) any attempt to commit a crime listed in this subdivision other than an assault; (40) any violation of Section 12022.53; (41) a violation of subdivision (b) or (c) of Section 11418; and (42) any conspiracy to commit an offense described in this subdivision.

(d) As used in this section, "bank robbery" means to take or attempt to take, by force or violence, or by intimidation from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association.

As used in this subdivision, the following terms have the following meanings:

(1) "Bank" means any member of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized or operating under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

(2) “Savings and loan association” means any federal savings and loan association and any “insured institution” as defined in Section 401 of the National Housing Act, as amended, and any federal credit union as defined in Section 2 of the Federal Credit Union Act.

(3) “Credit union” means any federal credit union and any state-chartered credit union the accounts of which are insured by the Administrator of the National Credit Union administration.

(e) 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.

(Amended by Stats. 2010, Ch. 178, Sec. 73. (SB 1115) Effective January 1, 2011. Operative January 1, 2012, by Sec. 107 of Ch. 178. Note: This section was added on June 8, 1982, by initiative Prop. 8, and amended on March 7, 2000, by initiative Prop. 21.)