

GENERAL OFFICE MEMORANDUM 17-142

TO: ALL DISTRICT ATTORNEY PERSONNEL

FROM: JOHN K. SPILLANE 
Chief Deputy District Attorney

SUBJECT: COURT DISCRETION TO STRIKE OR DISMISS GUN
ALLEGATIONS

DATE: NOVEMBER 20, 2017

Under current law, the court may not strike an enhancement for the defendant's personal use of a firearm during the commission of a crime. (Penal Code, §§ 12022.5, subd. (c); 12022.53, subd. (h).) Effective January 1, 2018, amendments to these sections will now allow the court, in its discretion, to strike or dismiss a firearm-use enhancement at the time of sentencing.

Most likely, these new amendments will apply retroactively to all sentences that are not yet final on appeal, regardless of the sentencing date. (See *People v. Francis* (1969) 71 Cal.2d 66, 75–76; see generally *In re Estrada* (1965) 63 Cal.2d 740.) Appellate courts will therefore remand for resentencing any case with a previously imposed mandatory firearm-use allegation. The sentencing court will then decide whether or not to strike or dismiss the allegation.

For the remainder of the year, in pending cases where a firearm use allegation is alleged, deputies should ask the sentencing court to make a record as to whether it would strike a firearm-use allegation, assuming it had the discretion to do so. If the court indicates it would not strike the allegation, then there will be no need to continue sentencing until after January 1, 2018. If the court indicates it would strike the allegation, then sentencing should be continued until after January 1, 2018.

(A GOM with further specifics and analyses of changes in the law to §§ 12022.5, subd. (c) and 12022.53, subd. (h) will be issued later this year.)

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