

GENERAL OFFICE MEMORANDUM 18-154

TO: ALL DISTRICT ATTORNEY PERSONNEL

FROM: JOHN K. SPILLANE 
Chief Deputy District Attorney

SUBJECT: THE EFFECT OF ASSEMBLY BILL NO. 1941 ON WOBBLER
OFFENSES/REDUCTION OF FELONIES TO MISDEMEANORS
UNDER PENAL CODE § 17, SUBDIVISION (B)

DATE: NOVEMBER 28, 2018

Penal Code (PC) section 17, subdivision (b), addresses wobbler offenses: crimes that are punishable, in the discretion of the court, as either felonies or misdemeanors. The subsections of PC § 17(b) detail the circumstances under which a wobbler becomes a misdemeanor, as opposed to remaining a felony. This memorandum specifically addresses the impact of newly enacted Assembly Bill (AB) 1941, which modifies PC § 17(b)(3).¹ The legislation goes into effect on January 1, 2019.

Penal Code § 17(b)(3) Prior to the Passage of AB 1941

Prior to the passage of AB 1941, PC § 17(b)(3) provided as follows: A wobbler is a misdemeanor for all purposes “[w]hen the Court grants probation to a defendant [on a wobbler offense] *without imposition of sentence* and at the time of granting probation, or upon the application of the defendant or probation officer thereafter, the court declares the offense to be a misdemeanor.” (Emphasis added.) Therefore, when a defendant was sentenced to state prison or to county jail pursuant to PC § 1170(h), or when such sentence was imposed but its execution was suspended and defendant was placed on felony probation, that wobbler offense remained a felony and was not reducible to a misdemeanor. By contrast, when the imposition of sentence was suspended and a defendant was granted felony probation on a wobbler offense, the court could elect to exercise its discretion and reduce the felony to a misdemeanor pursuant to PC § 17(b)(3) upon successful completion of probation.

Penal Code § 17(b)(3) After the Passage of AB 1941

AB 1941 modified PC § 17(b)(3) by eliminating the language “...*without imposition of sentence*.” (Emphasis added.) The effect of this modification is that when a defendant is now placed on felony probation on a wobbler offense, and the trial court imposes but stays execution of a state prison sentence or its equivalent under PC § 1170(h), the court may exercise discretion to reduce the conviction to a misdemeanor under PC § 17(b)(3). Of course, such a conviction is

¹ AB 1941 does not address or modify any other portion of section 17(b).

only eligible for reduction if the defendant successfully completes probation and sentence is never actually executed.

Effect on Enhancements and Allegations

Generally, any enhancements or allegations based on the wobbler offense being a felony conviction will no longer apply after reduction, as the case becomes a misdemeanor for all purposes going forward. However, when an allegation or enhancement that makes a wobbler offense a strike is admitted or found true and the defendant is granted felony probation under PC § 17(b)(3), the court's reduction of the underlying wobbler offense to a misdemeanor will not alter the status of the offense as a prior felony conviction for purposes of the Three Strikes law if the defendant were to commit a felony offense in the future. (*People v. Feyrer* (2010) 48 Cal.4th 426.) Likewise, the reduction of a wobbler offense to a misdemeanor does not authorize "a judge to relieve a defendant of the duty to register as a sex offender pursuant to Section 290 if the defendant is charged with an offense for which registration as a sex offender is required pursuant to section 290, and for which the trier of fact has found the defendant guilty." (PC §17, subd. (e); see *People v. Kennedy* (2011) 194 Cal.App.4th 1484.)

Purpose

The change to PC § 17(b)(3) was made to remedy a perceived inequity in the law that allowed defendants who had imposition of their sentences suspended the opportunity to have their wobbler convictions reduced, but did not provide the same benefit to a defendant whose prison sentence was imposed with execution suspended no matter how diligently he or she complied with the terms of probation. This result was not only deemed inequitable, but also deprived the trial court of a powerful tool to incentivize defendants to successfully complete probation and rehabilitate themselves.

Retroactivity

The legislative intent is to enable the court to reward a convicted defendant who has demonstrated that he or she is rehabilitated and may be applied retroactively upon petition of a defendant or probation officer, even after the defendant's term of probation has expired. Thus, the word "thereafter" in PC § 17(b)(3) should not be unduly restricted to the probationary period, as there is even greater reason to reward a convicted defendant who has continued to demonstrate his or her rehabilitation long after the probationary period has expired. (*Meyer v. Superior Court* (1966) 247 Cal.App.2d 133.)

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