

SPECIAL DIRECTIVE 19-07

TO: ALL DISTRICT ATTORNEY PERSONNEL

FROM:  JOSEPH P. ESPOSITO
Chief Deputy District Attorney

SUBJECT: SENATE BILL 136 – PENAL CODE § 667.5(b) (“PRISON PRIORS”)
ELIMINATED

DATE: DECEMBER 9, 2019

Senate Bill (SB) 136 recently amended Penal Code (PC) § 667.5(b), to effectively eliminate one-year prison prior allegations, with one exception. Under the amended statute, prison priors for sexually violent offenses—as defined in Welfare and Institutions Code §6600(b)—remain in effect and are the only offenses that may still be alleged as PC § 667.5(b) prison priors. The amended statute goes into effect on January 1, 2020.

Paragraph one of Section 3.02.01 and paragraph two of Section 12.05.02 of the Legal Policies Manual (LPM) are amended to read as follows:

In all instances in which a third strike case is pursued as a second strike case, Penal Code § 667.5(b) priors shall be plead and proved or admitted only when the priors are for sexually violent offenses as defined in Welfare and Institution Code § 6600(b).

The amendment to PC § 667.5(b) will apply retroactively to all cases that are not final on appeal by January 1, 2020. (See *People v. Francis* (1969) 71 Cal.2d 66, 75–76; see generally *In re Estrada* (1965) 63 Cal.2d 740.) For cases still pending on appeal, appellate courts will remand those cases for resentencing in any case with a sentence that included a PC § 667.5(b) enhancement imposed under the current statute.

Prior to January 1, 2020, deputies should avoid taking admissions to PC § 667.5(b) allegations unless the priors are for a qualifying sexually violent offenses to avoid a future resentencing. Any defendant who has not been sentenced by December 31, 2019, may move to dismiss any PC § 667.5(b) that would not apply under the amended version of PC § 667.5(b).

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