

AMENDED IN ASSEMBLY MAY 12, 2014
AMENDED IN ASSEMBLY MARCH 28, 2014
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2479

Introduced by Assembly Member Bradford

February 21, 2014

An act to amend Section 17 of the Penal Code, relating to felonies.

LEGISLATIVE COUNSEL'S DIGEST

AB 2479, as amended, Bradford. Crimes: nonviolent felonies.

Existing law provides that a crime punishable with death, by imprisonment in the state prison, or by imprisonment in a county jail for more than one year is a felony and all other offenses, except those that are classified as infractions, are misdemeanors. Existing law further provides that a crime that is punishable, in the discretion of the court, as a felony or as a misdemeanor is a misdemeanor under certain circumstances, including when the court grants a defendant probation without imposing a sentence and, at the time of granting probation or on application of the defendant or probation officer thereafter, the court declares the offense to be a misdemeanor.

~~This bill would require, upon application of a defendant, a felony offense to be deemed a misdemeanor for all purposes, except as specified, if the court finds that certain circumstances apply, including that the defendant was not imprisoned in the state prison for the offense, the offense for which the defendant was convicted was not one of several specified controlled substance offenses, and was not robbery, burglary, or possession of a firearm by a felon or person addicted to narcotics, the offense does not require registration as a sex offender, the defendant~~

~~is not currently charged with and has not been convicted of an offense in the preceding 5 years, except as specified, and the defendant presents clear and convincing evidence that he or she has been rehabilitated.~~

This bill would require the court, when a defendant has not been convicted of any new offenses within a period of 5 years following release from custody, is not currently subject to probation or mandatory supervision, and upon application by the defendant, to declare the felony that is the subject of the application to be a misdemeanor. These provisions would not apply if the felony is a violent felony, a serious felony, or an offense that requires a person to register as a sex offender.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17 of the Penal Code is amended to read:

2 17. (a) A felony is a crime that is punishable with death, by
3 imprisonment in the state prison, or notwithstanding any other
4 provision of law, by imprisonment in a county jail under the
5 provisions of subdivision (h) of Section 1170. Every other crime
6 or public offense is a misdemeanor except those offenses that are
7 classified as infractions.

8 (b) When a crime is punishable, in the discretion of the court,
9 either by imprisonment in the state prison or imprisonment in a
10 county jail under the provisions of subdivision (h) of Section 1170,
11 or by fine or imprisonment in the county jail, it is a misdemeanor
12 for all purposes under the following circumstances:

13 (1) After a judgment imposing a punishment other than
14 imprisonment in the state prison or imprisonment in a county jail
15 under the provisions of subdivision (h) of Section 1170.

16 (2) When the court, upon committing the defendant to the
17 Division of Juvenile Justice, designates the offense to be a
18 misdemeanor.

19 (3) When the court grants probation to a defendant without
20 imposition of sentence and at the time of granting probation, or
21 on application of the defendant or probation officer thereafter, the
22 court declares the offense to be a misdemeanor.

23 (4) When the prosecuting attorney files in a court having
24 jurisdiction over misdemeanor offenses a complaint specifying
25 that the offense is a misdemeanor, unless the defendant at the time

1 of his or her arraignment or plea objects to the offense being made
2 a misdemeanor, in which event the complaint shall be amended
3 to charge the felony and the case shall proceed on the felony
4 complaint.

5 (5) When, at or before the preliminary examination or prior to
6 filing an order pursuant to Section 872, the magistrate determines
7 that the offense is a misdemeanor, in which event the case shall
8 proceed as if the defendant had been arraigned on a misdemeanor
9 complaint.

10 (6) *When a defendant has not been convicted of any new offenses*
11 *within a period of five years following release from custody and*
12 *is not currently subject to probation or mandatory supervision*
13 *pursuant to subdivision (h) of Section 1170, on application of the*
14 *defendant, the court shall declare the offense to be a misdemeanor.*
15 *This paragraph does not apply to violent felonies listed in Section*
16 *667.5, serious felonies listed in Section 1192.7, or offenses that*
17 *require a person to register as a sex offender pursuant to Section*
18 *290.*

19 (c) When a defendant is committed to the Division of Juvenile
20 Justice for a crime punishable, in the discretion of the court, either
21 by imprisonment in the state prison or imprisonment in a county
22 jail under the provisions of subdivision (h) of Section 1170, or by
23 fine or imprisonment in a county jail not exceeding one year, the
24 offense shall, upon the discharge of the defendant from the Division
25 of Juvenile Justice, thereafter be deemed a misdemeanor for all
26 purposes.

27 ~~(d) (1) When a defendant is convicted of a felony offense, the~~
28 ~~offense shall, on application of the defendant, thereafter be deemed~~
29 ~~a misdemeanor for all purposes, except as specified in paragraph~~
30 ~~(2), if the court finds that all of the following circumstances apply:~~

31 ~~(A) The defendant was not imprisoned in the state prison for~~
32 ~~the offense.~~

33 ~~(B) The offense for which the defendant was convicted is not~~
34 ~~a violation of subdivision (a) of Section 11350, or Section 11351,~~
35 ~~11351.5, 11358, 11359, or 11360 of the Health and Safety Code,~~
36 ~~or a violation of Section 211, 459, or 29800 of this code.~~

37 ~~(C) The offense for which the defendant was convicted does~~
38 ~~not require him or her to register as a sex offender pursuant to~~
39 ~~Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1.~~

1 ~~(D) The defendant is not currently charged with the commission~~
2 ~~of any offense, and has not been convicted of an offense in the~~
3 ~~preceding five years, except the offense to be deemed a~~
4 ~~misdemeanor pursuant to this subdivision, a misdemeanor that~~
5 ~~does not involve moral turpitude, a misdemeanor driving offense,~~
6 ~~or an infraction.~~

7 ~~(E) The defendant presents clear and convincing evidence that~~
8 ~~he or she has been rehabilitated.~~

9 ~~(2) The reduction of a conviction from a felony to a~~
10 ~~misdemeanor pursuant to this subdivision shall not prohibit its use~~
11 ~~as a prior felony conviction in any future criminal proceeding~~
12 ~~against the defendant, including, but not limited to, a sentencing~~
13 ~~hearing.~~

14 ~~(e)~~

15 ~~(d) A violation of any code section listed in Section 19.8 is an~~
16 ~~infraction subject to the procedures described in Sections 19.6 and~~
17 ~~19.7 when:~~

18 ~~(1) The prosecutor files a complaint charging the offense as an~~
19 ~~infraction unless the defendant, at the time he or she is arraigned,~~
20 ~~after being informed of his or her rights, elects to have the case~~
21 ~~proceed as a misdemeanor, or;~~

22 ~~(2) The court, with the consent of the defendant, determines~~
23 ~~that the offense is an infraction in which event the case shall~~
24 ~~proceed as if the defendant had been arraigned on an infraction~~
25 ~~complaint.~~

26 ~~(f)~~

27 ~~(e) Nothing in this section authorizes a judge to relieve a~~
28 ~~defendant of the duty to register as a sex offender pursuant to~~
29 ~~Section 290 if the defendant is charged with an offense for which~~
30 ~~registration as a sex offender is required pursuant to Section 290,~~
31 ~~and for which the trier of fact has found the defendant guilty.~~