

Senate Bill No. 1850

CHAPTER 208

An act to amend Sections 1238 and 1466 of the Penal Code, relating to criminal procedure.

[Approved by Governor July 20, 1998. Filed with Secretary of State July 21, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1850, Schiff. Criminal procedure: appeals by the people.

Under existing law, the people are authorized to appeal from a judgment or order of an inferior court with respect to felonies, misdemeanors, or infractions, only in certain limited cases.

This bill would revise certain of those provisions by making technical or clarifying changes.

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

SECTION 1. Section 1238 of the Penal Code is amended to read:

1238. (a) An appeal may be taken by the people from any of the following:

(1) An order setting aside all or any portion of the indictment, information, or complaint.

(2) An order sustaining a demurrer to all or any portion of the indictment, accusation, or information.

(3) An order granting a new trial.

(4) An order arresting judgment.

(5) An order made after judgment, affecting the substantial rights of the people.

(6) An order modifying the verdict or finding by reducing the degree of the offense or the punishment imposed or modifying the offense to a lesser offense.

(7) An order dismissing a case prior to trial made upon motion of the court pursuant to Section 1385 whenever such order is based upon an order granting the defendant's motion to return or suppress property or evidence made at a special hearing as provided in this code.

(8) An order or judgment dismissing or otherwise terminating all or any portion of the action including such an order or judgment after a verdict or finding of guilty or an order or judgment entered before the defendant has been placed in jeopardy or where the defendant has waived jeopardy.

(9) An order denying the motion of the people to reinstate the complaint or a portion thereof pursuant to Section 871.5.



(10) The imposition of an unlawful sentence, whether or not the court suspends the execution of the sentence, except that portion of a sentence imposing a prison term which is based upon a court's choice that a term of imprisonment (A) be the upper, middle, or lower term, unless the term selected is not set forth in an applicable statute, or (B) be consecutive or concurrent to another term of imprisonment, unless an applicable statute requires that the term be consecutive. As used in this paragraph, "unlawful sentence" means the imposition of a sentence not authorized by law or the imposition of a sentence based upon an unlawful order of the court which strikes or otherwise modifies the effect of an enhancement or prior conviction.

(b) If, pursuant to paragraph (8) of subdivision (a), the people prosecute an appeal to decision, or any review of such decision, it shall be binding upon them and they shall be prohibited from refileing the case which was appealed.

(c) When an appeal is taken pursuant to paragraph (7) of subdivision (a), the court may review the order granting the defendant's motion to return or suppress property or evidence made at a special hearing as provided in this code.

(d) Nothing contained in this section shall be construed to authorize an appeal from an order granting probation. Instead, the people may seek appellate review of any grant of probation, whether or not the court imposes sentence, by means of a petition for a writ of mandate or prohibition which is filed within 60 days after probation is granted. The review of any grant of probation shall include review of any order underlying the grant of probation.

SEC. 2. Section 1466 of the Penal Code is amended to read:

1466. (a) An appeal may be taken from a judgment or order of an inferior court, in an infraction or misdemeanor case, to the superior court of the county in which the inferior court is located, in the following cases:

(1) By the people:

(A) From an order recusing the district attorney or city attorney pursuant to Section 1424.

(B) From an order or judgment dismissing or otherwise terminating all or any portion of the action, including such an order or judgment, entered after a verdict or finding of guilty or a verdict or judgment entered before the defendant has been placed in jeopardy or where the defendant has waived jeopardy.

(C) From an order sustaining demurrer to any portion of the complaint or pleading.

(D) From an order granting a new trial.

(E) From an order arresting judgment.

(F) From any order made after judgment affecting the substantial rights of the people.



(G) From the imposition of an unlawful sentence, whether or not the court suspends the execution of sentence. As used in this subparagraph, “unlawful sentence” means the imposition of a sentence not authorized by law or the imposition of a sentence based upon an unlawful order of the court that strikes or otherwise modifies the effect of an enhancement or prior conviction. A defendant shall have the right to counsel in the people’s appeal of an unlawful sentence under the same circumstances that he or she would have a right to counsel under subdivision (a) of Section 1238.

(H) Nothing in this section shall be construed to authorize an appeal from an order granting probation. Instead, the people may seek appellate review of any grant of probation, whether or not the court imposes sentence, by means of a petition for a writ of mandate or prohibition that is filed within 60 days after probation is granted. The review of any grant of probation shall include review of any order underlying the grant of probation.

(2) By the defendant:

(A) From a final judgment of conviction. A sentence, an order granting probation, a conviction in a case in which before final judgment the defendant is committed for insanity or is given an indeterminate commitment as a mentally disordered sex offender, or the conviction of a defendant committed for controlled substance addiction shall be deemed to be a final judgment within the meaning of this section. Upon appeal from a final judgment or an order granting probation the court may review any order denying a motion for a new trial.

(B) From any order made after judgment affecting his or her substantial rights.

(b) An appeal from the judgment or appealable order of an inferior court in a felony case is to the court of appeal for the district in which the court is located.

