

Penal Code section 666 amendment: three or more prior theft-related convictions now required to elevate petty theft to felony for many defendants

In addition to increasing sentences for certain sex offenses, Chelsea's Law, signed September 9, 2010, and effective immediately, provides petty theft is a felony only when the defendant has three or more prior theft-related convictions and was incarcerated for them, unless the defendant is required to register as a sex offender or has a serious or violent felony prior. The text of the entire bill is [here](#); excerpts on the change to section 666 are [here](#).

Counsel should review their Penal Code section 666 cases in which clients were convicted on the basis of one or two priors and act if it would be beneficial. They should keep in mind this amendment, if applicable, would change a section 666 felony to a misdemeanor and in some instances conceivably could require immediate steps to ensure meaningful relief. (See [ADI California Criminal Appellate Practice Manual](#), § 1.30 et seq., on Protecting the Client in Time-Sensitive Cases.)

Counsel should argue at least that the amendment applies to all cases not yet final for purposes of appellate review, under *In re Estrada* (1965) 63 Cal.2d 740, 748 (see *People v. Nasalga* (1996) 12 Cal.4th 784); this argument should distinguish *People v. Brown* (2012) 54 Cal.4th 314.¹ An argument that the law is fully retroactive would be based on *In re Kapperman* (1974) 11 Cal.3d 542, 546-550, and should consider both *Brown* and *People v. Floyd* (2003) 31 Cal.4th 179. (See *In re Chavez* (2004) 114 Cal.App.4th 989 [change from indeterminate to determinate sentence was correction of legislative oversight, intended to be fully retroactive]; see also *Way v. Superior Court (People)* (1977) 74 Cal.App.3d 165 [Legislature may retroactively change final judgments to determinate ones under general restructuring of sentencing system].)

The Fifth District Court of Appeal has found that the amendment is retroactive under *Estrada*. (*People v. Vinson* (2011) 193 Cal.App.4th 1190.)

¹Unlike *Brown*, this legislation arguably reflects a legislative determination that the former law was unduly punitive for current societal needs. Such a purpose remains a valid reason for applying *Estrada* retroactivity under *Brown*'s limitation of that case.