

ASSEMBLY BILL

No. 477

Introduced by Assembly Member Cohn

February 21, 2001

An act to amend Section 667.5 of the Penal Code, relating to violent felonies.

LEGISLATIVE COUNSEL'S DIGEST

AB 477, as introduced, Cohn. Violent felonies.

Under existing law, certain crimes are deemed violent felonies. Existing law provides for a sentence enhancement of 3 years in addition to and consecutive to any other prison term imposed for each prior separate prison term served by the defendant for commission of a specified violent felony when the new offense is a specified violent felony.

Existing law requires that reunification services be provided to the parent of a child who is removed from his or her custody on the basis of abuse or neglect. These services need not be provided under certain circumstances, including where the court has found by clear and convincing evidence that the parent or guardian of the child has been convicted of a violent felony.

This bill would include infliction of a corporal injury resulting in traumatic condition upon a spouse, former spouse, cohabitant, former cohabitant, or person with whom the defendant has had a child as a violent felony. Because this bill would change the definition of a crime, the commission of which makes one eligible for sentence enhancements, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Because the section that would be amended by this bill was amended by an initiative that permits further amendment by the Legislature by a 2/3 vote, the bill would require a 2/3 vote for enactment.

Vote: 2/3. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. Section 667.5 of the Penal Code is amended to
2 read:

3 667.5. Enhancement of prison terms for new offenses because
4 of prior prison terms shall be imposed as follows:

5 (a) Where one of the new offenses is one of the violent felonies
6 specified in subdivision (c), in addition to and consecutive to any
7 other prison terms therefor, the court shall impose a three-year
8 term for each prior separate prison term served by the defendant
9 where the prior offense was one of the violent felonies specified
10 in subdivision (c). However, no additional term shall be imposed
11 under this subdivision for any prison term served prior to a period
12 of 10 years in which the defendant remained free of both prison
13 custody and the commission of an offense which results in a felony
14 conviction.

15 (b) Except where subdivision (a) applies, where the new
16 offense is any felony for which a prison sentence is imposed, in
17 addition and consecutive to any other prison terms therefor, the
18 court shall impose a one-year term for each prior separate prison
19 term served for any felony; provided that no additional term shall
20 be imposed under this subdivision for any prison term served prior
21 to a period of five years in which the defendant remained free of
22 both prison custody and the commission of an offense which
23 results in a felony conviction.

24 (c) For the purpose of this section, “violent felony” shall mean
25 any of the following:

- 26 (1) Murder or voluntary manslaughter.
- 27 (2) Mayhem.



- 1 (3) Rape as defined in paragraph (2) or (6) of subdivision (a)
2 of Section 261 or paragraph (1) or (4) of subdivision (a) of Section
3 262.
- 4 (4) Sodomy by force, violence, duress, menace, or fear of
5 immediate and unlawful bodily injury on the victim or another
6 person.
- 7 (5) Oral copulation by force, violence, duress, menace, or fear
8 of immediate and unlawful bodily injury on the victim or another
9 person.
- 10 (6) Lewd acts on a child under the age of 14 years as defined
11 in Section 288.
- 12 (7) Any felony punishable by death or imprisonment in the
13 state prison for life.
- 14 (8) Any felony in which the defendant inflicts great bodily
15 injury on any person other than an accomplice which has been
16 charged and proved as provided for in Section 12022.7 or 12022.9
17 on or after July 1, 1977, or as specified prior to July 1, 1977, in
18 Sections 213, 264, and 461, or any felony in which the defendant
19 uses a firearm which use has been charged and proved as provided
20 in Section 12022.5, or 12022.55.
- 21 (9) Any robbery.
- 22 (10) Arson, in violation of subdivision (a) or (b) of Section 451.
- 23 (11) The offense defined in subdivision (a) of Section 289
24 where the act is accomplished against the victim's will by force,
25 violence, duress, menace, or fear of immediate and unlawful
26 bodily injury on the victim or another person.
- 27 (12) Attempted murder.
- 28 (13) A violation of Section 12308, 12309, or 12310.
- 29 (14) Kidnapping.
- 30 (15) Assault with the intent to commit mayhem, rape, sodomy,
31 or oral copulation, in violation of Section 220.
- 32 (16) Continuous sexual abuse of a child, in violation of Section
33 288.5.
- 34 (17) Carjacking, as defined in subdivision (a) of Section 215.
- 35 (18) A violation of Section 264.1.
- 36 (19) Extortion, as defined in Section 518, which would
37 constitute a felony violation of Section 186.22 of the Penal Code.
- 38 (20) Threats to victims or witnesses, as defined in Section
39 136.1, which would constitute a felony violation of Section 186.22
40 of the Penal Code.



1 (21) Any burglary of the first degree, as defined in subdivision
2 (a) of Section 460, wherein it is charged and proved that another
3 person, other than an accomplice, was present in the residence
4 during the commission of the burglary.

5 (22) *A violation of Section 273.5.*

6 (23) Any violation of Section 12022.53.

7 The Legislature finds and declares that these specified crimes
8 merit special consideration when imposing a sentence to display
9 society's condemnation for these extraordinary crimes of violence
10 against the person.

11 (d) For the purposes of this section, the defendant shall be
12 deemed to remain in prison custody for an offense until the official
13 discharge from custody or until release on parole, whichever first
14 occurs, including any time during which the defendant remains
15 subject to reimprisonment for escape from custody or is
16 reimprisoned on revocation of parole. The additional penalties
17 provided for prior prison terms shall not be imposed unless they
18 are charged and admitted or found true in the action for the new
19 offense.

20 (e) The additional penalties provided for prior prison terms
21 shall not be imposed for any felony for which the defendant did not
22 serve a prior separate term in state prison.

23 (f) A prior conviction of a felony shall include a conviction in
24 another jurisdiction for an offense which, if committed in
25 California, is punishable by imprisonment in the state prison if the
26 defendant served one year or more in prison for the offense in the
27 other jurisdiction. A prior conviction of a particular felony shall
28 include a conviction in another jurisdiction for an offense which
29 includes all of the elements of the particular felony as defined
30 under California law if the defendant served one year or more in
31 prison for the offense in the other jurisdiction.

32 (g) A prior separate prison term for the purposes of this section
33 shall mean a continuous completed period of prison incarceration
34 imposed for the particular offense alone or in combination with
35 concurrent or consecutive sentences for other crimes, including
36 any reimprisonment on revocation of parole which is not
37 accompanied by a new commitment to prison, and including any
38 reimprisonment after an escape from incarceration.

39 (h) Serving a prison term includes any confinement time in any
40 state prison or federal penal institution as punishment for



1 commission of an offense, including confinement in a hospital or
2 other institution or facility credited as service of prison time in the
3 jurisdiction of the confinement.

4 (i) For the purposes of this section, a commitment to the State
5 Department of Mental Health as a mentally disordered sex
6 offender following a conviction of a felony, which commitment
7 exceeds one year in duration, shall be deemed a prior prison term.

8 (j) For the purposes of this section, when a person subject to the
9 custody, control, and discipline of the Director of Corrections is
10 incarcerated at a facility operated by the Department of the Youth
11 Authority, that incarceration shall be deemed to be a term served
12 in state prison.

13 (k) Notwithstanding subdivisions (d) and (g) or any other
14 provision of law, where one of the new offenses is committed
15 while the defendant is temporarily removed from prison pursuant
16 to Section 2690 or while the defendant is transferred to a
17 community facility pursuant to Section 3416, 6253, or 6263, or
18 while the defendant is on furlough pursuant to Section 6254, the
19 defendant shall be subject to the full enhancements provided for
20 in this section.

21 This subdivision shall not apply when a full, separate, and
22 consecutive term is imposed pursuant to any other provision of
23 law.

24 SEC. 2. No reimbursement is required by this act pursuant to
25 Section 6 of Article XIII B of the California Constitution because
26 the only costs that may be incurred by a local agency or school
27 district will be incurred because this act creates a new crime or
28 infraction, eliminates a crime or infraction, or changes the penalty
29 for a crime or infraction, within the meaning of Section 17556 of
30 the Government Code, or changes the definition of a crime within
31 the meaning of Section 6 of Article XIII B of the California
32 Constitution.

