

Introduced by Senator Denham

February 9, 2006

An act to amend Sections 666.5 and 1203.06 of the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

SB 1262, as introduced, Denham. Sentencing: theft: prior conviction.

Existing law punishes a subsequent conviction for theft of a motor vehicle as a felony.

This bill would prohibit probation for a subsequent conviction of motor vehicle theft.

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 666.5 of the Penal Code is amended to
2 read:
3 666.5. (a) Every person who, having been previously
4 convicted of a felony violation of Section 10851 of the Vehicle
5 Code, or felony grand theft involving an automobile in violation
6 of subdivision (d) of Section 487 or former subdivision (3) of
7 Section 487, as that section read prior to being amended by
8 Section 4 of Chapter 1125 of the Statutes of 1993, or felony
9 grand theft involving a motor vehicle, as defined in Section 415
10 of the Vehicle Code, any trailer, as defined in Section 630 of the
11 Vehicle Code, any special construction equipment, as defined in
12 Section 565 of the Vehicle Code, or any vessel, as defined in
13 Section 21 of the Harbors and Navigation Code in violation of

1 former Section 487h, or a felony violation of Section 496d
2 regardless of whether or not the person actually served a prior
3 prison term for those offenses, is subsequently convicted of any
4 of these offenses shall be punished by imprisonment in the state
5 prison for two, three, or four years, or a fine of ten thousand
6 dollars (\$10,000), or both the fine and the imprisonment.

7 (b) For the purposes of this section, the terms “special
8 construction equipment” and “vessel” are limited to motorized
9 vehicles and vessels.

10 (c) The existence of any fact which would bring a person
11 under subdivision (a) shall be alleged in the information or
12 indictment and either admitted by the defendant in open court, or
13 found to be true by the jury trying the issue of guilt or by the
14 court where guilt is established by plea of guilty or nolo
15 contendere or by trial by the court sitting without a jury. *When*
16 *alleged and proven, probation shall be denied.*

17 SEC. 2. Section 1203.06 of the Penal Code is amended to
18 read:

19 1203.06. Notwithstanding Section 1203:

20 (a) Probation shall not be granted to, nor shall the execution or
21 imposition of sentence be suspended for, any of the following
22 persons:

23 (1) Any person who personally used a firearm during the
24 commission or attempted commission of any of the following
25 crimes:

26 (A) Murder.

27 (B) Robbery, in violation of Section 211.

28 (C) Kidnapping, in violation of Section 207.

29 (D) Kidnapping in violation of Section 209.

30 (E) Burglary of the first degree, as defined in Section 460.

31 (F) Except as provided in Section 1203.065, rape in violation
32 of paragraph (2) of subdivision (a) of Section 261.

33 (G) Assault with intent to commit rape or sodomy, in violation
34 of Section 220.

35 (H) Escape, in violation of Section 4530 or 4532.

36 (I) Carjacking, in violation of Section 215.

37 (J) Any person convicted of aggravated mayhem in violation
38 of Section 205.

39 (K) Torture, in violation of Section 206.

40 (L) Kidnapping, in violation of Section 209.5.

1 (M) A felony violation of Section 136.1 or 137.

2 (2) Any person previously convicted of a felony specified in
3 subparagraphs (A) to (L), inclusive, of paragraph (1), or assault
4 with intent to commit murder under former Section 217, who is
5 convicted of a subsequent felony and who was personally armed
6 with a firearm at any time during its commission or attempted
7 commission or was unlawfully armed with a firearm at the time
8 of his or her arrest for the subsequent felony.

9 (3) Aggravated arson, in violation of Section 451.5.

10 (4) *Any person punished pursuant to Section 666.5.*

11 (b) (1) The existence of any fact which would make a person
12 ineligible for probation under subdivision (a) shall be alleged in
13 the accusatory pleading, and either admitted by the defendant in
14 open court, or found to be true by the jury trying the issue of
15 guilt, by the court where guilt is established by plea of guilty or
16 nolo contendere, or by trial by the court sitting without a jury.

17 (2) This subdivision does not prohibit the adjournment of
18 criminal proceedings pursuant to Division 6 (commencing with
19 Section 6000) of the Welfare and Institutions Code.

20 (3) As used in subdivision (a), “used a firearm” means to
21 display a firearm in a menacing manner, to intentionally fire it, or
22 to intentionally strike or hit a human being with it.

23 (4) As used in subdivision (a), “armed with a firearm” means
24 to knowingly carry a firearm as a means of offense or defense.

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