

AMENDED IN ASSEMBLY APRIL 18, 2007

AMENDED IN ASSEMBLY MARCH 26, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 676

Introduced by Assembly Member Tran

February 21, 2007

An act to amend Sections 653.75, 667.1, 1170.125, and 1192.7 of, and to amend, renumber, and add Section 4504 of, the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 676, as amended, Tran. Serious felonies: penalty enhancement.

Existing law, as added and amended by various initiative acts, provides that certain felonies are serious felonies, and provides for enhanced sentences for persons convicted or previously convicted of violent felonies.

This bill would add a felony committed by an inmate for the benefit of, at the direction of, or in association with, a *criminal street* gang, as defined, to the list of serious felonies. Because the bill would amend provisions of initiative acts that permit amendment by the Legislature only by a $\frac{2}{3}$ vote of each house, the bill would require that vote for enactment.

This bill would provide that an inmate who commits a felony for the benefit of, at the direction of, or in association with, a *criminal street* gang, as defined, shall be sentenced to twice the punishment that is otherwise prescribed for the felony, unless another provision of law would prescribe a higher sentence. The bill would further provide that any person who provides an inmate with a weapon, cell phone, or other

~~instrument~~ *item of contraband* that is used in such a felony shall be deemed a ~~principal~~ *principal* in the crime and be subject to the same penalties as that inmate.

The bill would make related and conforming changes.

Because the bill would change the definition of certain crimes, it 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.

Vote: $\frac{2}{3}$. 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 653.75 of the Penal Code is amended to
2 read:

3 653.75. Any person who commits any public offense while in
4 custody in any local detention facility, as defined in Section 6031.4,
5 or any state prison, as defined in Section 4504, is guilty of a crime.
6 That crime shall be punished as provided in the section prescribing
7 the punishment for that public offense, or in Section 4504.

8 SEC. 2. Section 667.1 of the Penal Code is amended to read:

9 667.1. Notwithstanding subdivision (h) of Section 667, for all
10 offenses committed on or after the effective date of this act, all
11 references to existing statutes in subdivisions (c) to (g), inclusive,
12 of Section 667, are to those statutes as they existed on the effective
13 date of this act, including amendments made to those statutes by
14 the act enacted during the 2007–08 Regular Session that amended
15 this section.

16 SEC. 3. Section 1170.125 of the Penal Code is amended to
17 read:

18 1170.125. Notwithstanding Section 2 of Proposition 184, as
19 adopted at the November 8, 1994, general election, for all offenses
20 committed on or after the effective date of this act, all references
21 to existing statutes in Section 1170.12 are to those statutes as they
22 existed on the effective date of this act, including amendments
23 made to those statutes by the act enacted during the 2007–08
24 Regular Session that amended this section.

1 SEC. 4. Section 1192.7 of the Penal Code is amended to read:

2 1192.7. (a) (1) It is the intent of the Legislature that district
3 attorneys prosecute violent sex crimes under statutes that provide
4 sentencing under a “one strike,” “three strikes” or habitual sex
5 offender statute instead of engaging in plea bargaining over those
6 offenses.

7 (2) Plea bargaining in any case in which the indictment or
8 information charges any serious felony, any felony in which it is
9 alleged that a firearm was personally used by the defendant, or
10 any offense of driving while under the influence of alcohol, drugs,
11 narcotics, or any other intoxicating substance, or any combination
12 thereof, is prohibited, unless there is insufficient evidence to prove
13 the people’s case, or testimony of a material witness cannot be
14 obtained, or a reduction or dismissal would not result in a
15 substantial change in sentence.

16 (3) If the indictment or information charges the defendant with
17 a violent sex crime, as listed in subdivision (c) of Section 667.61,
18 that could be prosecuted under Sections 269, 288.7, subdivisions
19 (b) through (i) of Section 667, Section 667.61, or 667.71, plea
20 bargaining is prohibited unless there is insufficient evidence to
21 prove the people’s case, or testimony of a material witness cannot
22 be obtained, or a reduction or dismissal would not result in a
23 substantial change in sentence. At the time of presenting the
24 agreement to the court, the district attorney shall state on the record
25 why a sentence under one of those sections was not sought.

26 (b) As used in this section “plea bargaining” means any
27 bargaining, negotiation, or discussion between a criminal
28 defendant, or his or her counsel, and a prosecuting attorney or
29 judge, whereby the defendant agrees to plead guilty or nolo
30 contendere, in exchange for any promises, commitments,
31 concessions, assurances, or consideration by the prosecuting
32 attorney or judge relating to any charge against the defendant or
33 to the sentencing of the defendant.

34 (c) As used in this section, “serious felony” means any of the
35 following:

36 (1) Murder or voluntary manslaughter; (2) mayhem; (3) rape;
37 (4) sodomy by force, violence, duress, menace, threat of great
38 bodily injury, or fear of immediate and unlawful bodily injury on
39 the victim or another person; (5) oral copulation by force, violence,
40 duress, menace, threat of great bodily injury, or fear of immediate

1 and unlawful bodily injury on the victim or another person; (6)
2 lewd or lascivious act on a child under 14 years of age; (7) any
3 felony punishable by death or imprisonment in the state prison for
4 life; (8) any felony in which the defendant personally inflicts great
5 bodily injury on any person, other than an accomplice, or any
6 felony in which the defendant personally uses a firearm; (9)
7 attempted murder; (10) assault with intent to commit rape or
8 robbery; (11) assault with a deadly weapon or instrument on a
9 peace officer; (12) assault by a life prisoner on a noninmate; (13)
10 assault with a deadly weapon by an inmate; (14) arson; (15)
11 exploding a destructive device or any explosive with intent to
12 injure; (16) exploding a destructive device or any explosive causing
13 bodily injury, great bodily injury, or mayhem; (17) exploding a
14 destructive device or any explosive with intent to murder; (18) any
15 burglary of the first degree; (19) robbery or bank robbery; (20)
16 kidnapping; (21) holding of a hostage by a person confined in a
17 state prison; (22) attempt to commit a felony punishable by death
18 or imprisonment in the state prison for life; (23) any felony in
19 which the defendant personally used a dangerous or deadly weapon;
20 (24) selling, furnishing, administering, giving, or offering to sell,
21 furnish, administer, or give to a minor any heroin, cocaine,
22 phencyclidine (PCP), or any methamphetamine-related drug, as
23 described in paragraph (2) of subdivision (d) of Section 11055 of
24 the Health and Safety Code, or any of the precursors of
25 methamphetamines, as described in subparagraph (A) of paragraph
26 (1) of subdivision (f) of Section 11055 or subdivision (a) of Section
27 11100 of the Health and Safety Code; (25) any violation of
28 subdivision (a) of Section 289 where the act is accomplished
29 against the victim's will by force, violence, duress, menace, or
30 fear of immediate and unlawful bodily injury on the victim or
31 another person; (26) grand theft involving a firearm; (27)
32 carjacking; (28) any felony offense, which would also constitute
33 a felony violation of Section 186.22; (29) assault with the intent
34 to commit mayhem, rape, sodomy, or oral copulation, in violation
35 of Section 220; (30) throwing acid or flammable substances, in
36 violation of Section 244; (31) assault with a deadly weapon,
37 firearm, machinegun, assault weapon, or semiautomatic firearm
38 or assault on a peace officer or firefighter, in violation of Section
39 245; (32) assault with a deadly weapon against a public transit
40 employee, custodial officer, or school employee, in violation of

1 Sections 245.2, 245.3, or 245.5; (33) discharge of a firearm at an
2 inhabited dwelling, vehicle, or aircraft, in violation of Section 246;
3 (34) commission of rape or sexual penetration in concert with
4 another person, in violation of Section 264.1; (35) continuous
5 sexual abuse of a child, in violation of Section 288.5; (36) shooting
6 from a vehicle, in violation of subdivision (c) or (d) of Section
7 12034; (37) intimidation of victims or witnesses, in violation of
8 Section 136.1; (38) criminal threats, in violation of Section 422;
9 (39) any attempt to commit a crime listed in this subdivision other
10 than an assault; (40) any violation of Section 12022.53; (41) a
11 violation of subdivision (b) or (c) of Section 11418; (42) a felony
12 conviction that results in a sentence imposed pursuant to Section
13 4504; and (43) any conspiracy to commit an offense described in
14 this subdivision.

15 (d) As used in this section, “bank robbery” means to take or
16 attempt to take, by force or violence, or by intimidation from the
17 person or presence of another any property or money or any other
18 thing of value belonging to, or in the care, custody, control,
19 management, or possession of, any bank, credit union, or any
20 savings and loan association.

21 As used in this subdivision, the following terms have the
22 following meanings:

23 (1) “Bank” means any member of the Federal Reserve System,
24 and any bank, banking association, trust company, savings bank,
25 or other banking institution organized or operating under the laws
26 of the United States, and any bank the deposits of which are insured
27 by the Federal Deposit Insurance Corporation.

28 (2) “Savings and loan association” means any federal savings
29 and loan association and any “insured institution” as defined in
30 Section 401 of the National Housing Act, as amended, and any
31 federal credit union as defined in Section 2 of the Federal Credit
32 Union Act.

33 (3) “Credit union” means any federal credit union and any
34 state-chartered credit union the accounts of which are insured by
35 the Administrator of the National Credit Union Administration.

36 (e) The provisions of this section shall not be amended by the
37 Legislature except by statute passed in each house by rollcall vote
38 entered in the journal, two-thirds of the membership concurring,
39 or by a statute that becomes effective only when approved by the
40 electors.

1 SEC. 5. Section 4504 of the Penal Code is amended and
2 renumbered to read:

3 4505. For purposes of this chapter:

4 (a) A person is deemed confined in a “state prison” if he is
5 confined, by order made pursuant to law, in any of the prisons and
6 institutions under the jurisdiction of the Department of Corrections
7 and Rehabilitation, regardless of the purpose of that confinement
8 and regardless of the validity of the order directing that
9 confinement, until a judgment of a competent court setting aside
10 that order becomes final.

11 (b) A person is deemed “confined in” a prison although, at the
12 time of the offense, he is temporarily outside its walls or bounds
13 for the purpose of serving on a work detail or for the purpose of
14 confinement in a local correctional institution pending trial or for
15 any other purpose for which a prisoner may be allowed temporarily
16 outside the walls or bounds of the prison, but a prisoner who has
17 been released on parole is not deemed “confined in” a prison for
18 purposes of this chapter.

19 SEC. 6. Section 4504 is added to the Penal Code, to read:

20 4504. (a) Any inmate who commits a felony for the benefit
21 of, at the direction of, or in association with, a *criminal street gang*,
22 as defined in ~~Section 3000 of Title 15 of the California Code of~~
23 ~~Regulations, Section 186.22~~, shall be sentenced to twice the
24 punishment that is otherwise prescribed for the felony, unless
25 another provision of law would prescribe a higher sentence.

26 (b) Any person who provides an inmate with a weapon, cell
27 phone, or other ~~instrument~~ *item of contraband* that is used in a
28 felony described in subdivision (a) shall be deemed a ~~principle in~~
29 ~~the crime principal~~, *as defined in Section 31*, and be subject to the
30 same penalties as that inmate, *even if the person does not*
31 *specifically intend for the weapon, cell phone, or other item of*
32 *contraband to be used in the commission of a crime.*

33 SEC. 7. No reimbursement is required by this act pursuant to
34 Section 6 of Article XIII B of the California Constitution because
35 the only costs that may be incurred by a local agency or school
36 district will be incurred because this act creates a new crime or
37 infraction, eliminates a crime or infraction, or changes the penalty
38 for a crime or infraction, within the meaning of Section 17556 of
39 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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