

AMENDED IN ASSEMBLY MARCH 26, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 998

Introduced by Assembly Member Garrick

February 22, 2007

An act to amend ~~Sections 489, 667.1, 1170.125, 1192.7~~ Section 666.5 of the Penal Code, and to amend Section 10851 of the Vehicle Code, relating to theft.

LEGISLATIVE COUNSEL'S DIGEST

AB 998, as amended, Garrick. Theft: motor vehicle: penalties.

Existing law punishes persons who have been previously convicted of specified motor vehicle violations with imprisonment in the state prison for 2, 3, or 4 years, or by a fine of \$10,000, or both fine and imprisonment. These violations include certain felony grand thefts of a motor vehicle.

This bill would apply those provisions to a person who has previously been convicted of one or more misdemeanor violations. The bill would also prohibit a person subject to punishment under the above provisions from being granted probation, except in unusual cases in which the court finds that the interests of justice would best be served by probation.

Existing law makes it a felony for a person to unlawfully take or steal, as described, an ambulance or a distinctively marked vehicle of a law enforcement agency or fire department, while the vehicle is on an emergency call and this fact is known to the person, or for a person to take a vehicle that has been modified for the use of a disabled veteran or any other disabled person and that displays a distinguishing license plate or placard and this fact is known or should reasonably have been known to the person.

This bill would delete the requirements that the status of the vehicle, as an ambulance, law enforcement agency or fire department vehicle, or vehicle of a disabled veteran or other person, be known to the person. The bill would additionally remove the requirement, with respect to a law enforcement agency or fire department vehicle, that the vehicle be in use on an emergency call. The bill would also provide enhanced prison sentences for persons who steal a motor vehicle under specified circumstances. By expanding the scope of existing crimes, the 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.

~~Existing law punishes grand theft as either a misdemeanor or a felony, unless the property taken is a firearm, then the grand theft is punishable as only a felony.~~

~~This bill would, in addition, punish grand theft of an automobile as only a felony.~~

~~Existing law, as amended by Proposition 21, of the March 7, 2000, statewide general election, categorizes specified felonies as a serious felony and imposes certain conditions and additional penalties for the conviction of a serious felony.~~

~~This bill would add the felony conviction of motor vehicle theft when the person has a prior felony conviction for motor vehicle theft to the list of specified serious felonies and would make conforming changes to related technical laws.~~

~~Existing law punishes the unlawful taking of a vehicle as either a felony or a misdemeanor.~~

~~This bill would make the unlawful taking of a vehicle punishable only as a felony.~~

~~By increasing the duties of local prosecutors, 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.~~

~~Proposition 21 permits the Legislature, by a vote of $\frac{2}{3}$ of the membership of each house and in accordance with specified procedures, to amend the provisions of the act.~~

Vote: $\frac{2}{3}$ -majority. 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 666.5 of the Penal Code is amended to*
2 *read:*

3 666.5. (a) Every person who, having been previously convicted
4 of a ~~felony~~ violation of Section 10851 of the Vehicle Code, or
5 ~~felony~~ grand theft involving an automobile in violation of
6 subdivision (d) of Section 487 or former subdivision (3) of Section
7 487, as that section read prior to being amended by Section 4 of
8 Chapter 1125 of the Statutes of 1993, or ~~felony~~ grand theft
9 involving a motor vehicle, as defined in Section 415 of the Vehicle
10 Code, any trailer, as defined in Section 630 of the Vehicle Code,
11 any special construction equipment, as defined in Section 565 of
12 the Vehicle Code, or any vessel, as defined in Section 21 of the
13 Harbors and Navigation Code in violation of former Section 487h,
14 or a felony violation of Section 496d regardless of whether or not
15 the person actually served a prior prison term for those offenses,
16 is subsequently convicted of any of these offenses shall be punished
17 by imprisonment in the state prison for two, three, or four years,
18 or a fine of ten thousand dollars (\$10,000), or both the fine and
19 the imprisonment.

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

23 (c) The existence of any fact ~~which~~ *that* would bring a person
24 under subdivision (a) shall be alleged in the information or
25 indictment and either admitted by the defendant in open court, or
26 found to be true by the jury trying the issue of guilt or by the court
27 where guilt is established by plea of guilty or nolo contendere or
28 by trial by the court sitting without a jury.

29 (d) *A person who is subject to punishment pursuant to this*
30 *section for previously having been convicted of two or more of the*
31 *offenses enumerated in subdivision (a), may be granted probation*
32 *only in the unusual case in which the interests of justice would be*

1 *best served by probation. If probation is granted pursuant to this*
2 *subdivision, the court shall specify on the record and shall enter*
3 *into the minutes the circumstances indicating that the interests of*
4 *justice would be best served by that disposition.*

5 *SEC. 2. Section 10851 of the Vehicle Code is amended to read:*

6 10851. (a) Any person who drives or takes a vehicle not his
7 or her own, without the consent of the owner thereof, and with
8 intent either to permanently or temporarily deprive the owner
9 thereof of his or her title to or possession of the vehicle, whether
10 with or without intent to steal the vehicle, or any person who is a
11 party or an accessory to or an accomplice in the driving or
12 unauthorized taking or stealing, is guilty of a public offense and,
13 upon conviction thereof, shall be punished by imprisonment in a
14 county jail for not more than one year or in the state prison or by
15 a fine of not more than five thousand dollars (\$5,000), or by both
16 the fine and imprisonment.

17 (b) If the vehicle *described in subdivision (a)* is (1) an
18 ambulance, as defined in subdivision (a) of Section 165, (2) a
19 distinctively marked vehicle of a law enforcement agency or fire
20 department, ~~taken while the ambulance or vehicle is on an~~
21 ~~emergency call and this fact is known to the person driving or~~
22 ~~taking, or any person who is party or an accessory to or an~~
23 ~~accomplice in the driving or unauthorized taking or stealing, or~~
24 (3) a vehicle ~~which~~ *that* has been modified for the use of a disabled
25 veteran or any other disabled person and ~~which~~ *that* displays a
26 distinguishing license plate or placard issued pursuant to Section
27 22511.5 or 22511.9 ~~and this fact is known or should reasonably~~
28 ~~have been known to the person driving or taking, or any person~~
29 ~~who is party or an accessory in the driving or unauthorized taking~~
30 ~~or stealing~~, the offense is a felony punishable by imprisonment in
31 the state prison for two, three, or four years or by a fine of not
32 more than ten thousand dollars (\$10,000), or by both the fine and
33 imprisonment.

34 (c) In any prosecution for a violation of subdivision (a) or (b),
35 the consent of the owner of a vehicle to its taking or driving shall
36 not in any case be presumed or implied because of the owner's
37 consent on a previous occasion to the taking or driving of the
38 vehicle by the same or a different person.

39 (d) The existence of any fact which makes subdivision (b)
40 applicable shall be alleged in the accusatory pleading, and either

1 admitted by the defendant in open court, or found to be true by the
2 jury trying the issue of guilt or by the court where guilt is
3 established by plea of guilty or nolo contendere or by trial by the
4 court sitting without a jury.

5 (e) Any person who has been convicted of one or more previous
6 felony violations of this section, or felony grand theft of a vehicle
7 in violation of subdivision (d) of Section 487 of the Penal Code,
8 former subdivision (3) of Section 487 of the Penal Code, as that
9 section read prior to being amended by Section 4 of Chapter 1125
10 of the Statutes of 1993, or Section 487h of the Penal Code, is
11 punishable as set forth in Section 666.5 of the Penal Code. The
12 existence of any fact that would bring a person under Section 666.5
13 of the Penal Code shall be alleged in the information or indictment
14 and either admitted by the defendant in open court, or found to be
15 true by the jury trying the issue of guilt or by the court where guilt
16 is established by plea of guilty or nolo contendere, or by trial by
17 the court sitting without a jury.

18 (f) *A person who violates subdivision (a), in addition to any*
19 *other penalties prescribed by law, is subject to an additional one*
20 *year of imprisonment in the state prison if any of the following*
21 *circumstances exist:*

22 (1) *The person is a principal or accessory to the taking of a*
23 *vehicle in exchange for consideration or for the purpose of sale*
24 *or transport of the vehicle or its components.*

25 (2) *The person is a principal or accessory to the taking of a*
26 *vehicle that, prior to its recovery, is used in the commission of an*
27 *offense that is a felony.*

28 (3) *The person is a principal or accessory to the taking of a*
29 *vehicle with the intent to use the vehicle in the commission of a*
30 *felony.*

31 (4) *The person is a principal or accessory to the taking of a*
32 *vehicle that, prior to its recovery, is the subject of a police pursuit.*

33 (g) *A person who violates subdivision (a) as a principal or*
34 *accessory to the taking of a vehicle that, prior to its recovery, is*
35 *involved in a collision, in addition to other penalties prescribed*
36 *by law, is subject to an additional one year of imprisonment in the*
37 *state prison and an additional and consecutive one year of*
38 *imprisonment in the state prison for each person, other than an*
39 *accessory, who suffers personal injury as a proximate cause of*
40 *that collision.*

1 (f)

2 (h) This section shall become operative on January 1, 1997.

3 SEC. 3. No reimbursement is required by this act pursuant to
4 Section 6 of Article XIII B of the California Constitution because
5 the only costs that may be incurred by a local agency or school
6 district will be incurred because this act creates a new crime or
7 infraction, eliminates a crime or infraction, or changes the penalty
8 for a crime or infraction, within the meaning of Section 17556 of
9 the Government Code, or changes the definition of a crime within
10 the meaning of Section 6 of Article XIII B of the California
11 Constitution.

12 SECTION 1. ~~Section 489 of the Penal Code is amended to~~
13 ~~read:~~

14 ~~489. Grand theft is punishable as follows:~~

15 ~~(a) When the grand theft involves the theft of a firearm or an~~
16 ~~automobile, by imprisonment in the state prison for 16 months, 2,~~
17 ~~or 3 years.~~

18 ~~(b) In all other cases, by imprisonment in a county jail not~~
19 ~~exceeding one year or in the state prison.~~

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

21 ~~667.1. Notwithstanding subdivision (h) of Section 667, for all~~
22 ~~offenses committed on or after the effective date of this act, all~~
23 ~~references to existing statutes in subdivisions (e) to (g), inclusive,~~
24 ~~of Section 667, are to those statutes as they existed on the effective~~
25 ~~date of this act, including amendments made to those statutes by~~
26 ~~the act that amended this section enacted during the 2006-2007~~
27 ~~Regular Session, and any prior amendments.~~

28 SEC. 3. ~~Section 1170.125 of the Penal Code is amended to~~
29 ~~read:~~

30 ~~1170.125. Notwithstanding Section 2 of Proposition 184, as~~
31 ~~adopted at the November 8, 1994, general election, for all offenses~~
32 ~~committed on or after the effective date of this act, all references~~
33 ~~to existing statutes in Section 1170.12 are to those statutes as they~~
34 ~~existed on the effective date of this act, including amendments~~
35 ~~made to those statutes by the act that amended this section enacted~~
36 ~~during the 2006-07 Regular Session and any prior amendments.~~

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

38 ~~1192.7. (a) (1) It is the intent of the Legislature that district~~
39 ~~attorneys prosecute violent sex crimes under statutes that provide~~
40 ~~sentencing under a "one strike," "three strikes" or habitual sex~~

1 offender statute instead of engaging in plea bargaining over those
2 offenses.

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

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

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

30 ~~(c) As used in this section, "serious felony" means any of the~~
31 ~~following:~~

32 ~~(1) Murder or voluntary manslaughter; (2) mayhem; (3) rape;~~
33 ~~(4) sodomy by force, violence, duress, menace, threat of great~~
34 ~~bodily injury, or fear of immediate and unlawful bodily injury on~~
35 ~~the victim or another person; (5) oral copulation by force, violence,~~
36 ~~duress, menace, threat of great bodily injury, or fear of immediate~~
37 ~~and unlawful bodily injury on the victim or another person; (6)~~
38 ~~lewd or lascivious act on a child under 14 years of age; (7) any~~
39 ~~felony punishable by death or imprisonment in the state prison for~~
40 ~~life; (8) any felony in which the defendant personally inflicts great~~

1 ~~bodily injury on any person, other than an accomplice, or any~~
2 ~~felony in which the defendant personally uses a firearm; (9)~~
3 ~~attempted murder; (10) assault with intent to commit rape or~~
4 ~~robbery; (11) assault with a deadly weapon or instrument on a~~
5 ~~peace officer; (12) assault by a life prisoner on a noninmate; (13)~~
6 ~~assault with a deadly weapon by an inmate; (14) arson; (15)~~
7 ~~exploding a destructive device or any explosive with intent to~~
8 ~~injure; (16) exploding a destructive device or any explosive causing~~
9 ~~bodily injury, great bodily injury, or mayhem; (17) exploding a~~
10 ~~destructive device or any explosive with intent to murder; (18) any~~
11 ~~burglary of the first degree; (19) robbery or bank robbery; (20)~~
12 ~~kidnapping; (21) holding of a hostage by a person confined in a~~
13 ~~state prison; (22) attempt to commit a felony punishable by death~~
14 ~~or imprisonment in the state prison for life; (23) any felony in~~
15 ~~which the defendant personally used a dangerous or deadly weapon;~~
16 ~~(24) selling, furnishing, administering, giving, or offering to sell,~~
17 ~~furnish, administer, or give to a minor any heroin, cocaine,~~
18 ~~phenylelidine (PCP), or any methamphetamine-related drug, as~~
19 ~~described in paragraph (2) of subdivision (d) of Section 11055 of~~
20 ~~the Health and Safety Code, or any of the precursors of~~
21 ~~methamphetamines, as described in subparagraph (A) of paragraph~~
22 ~~(1) of subdivision (f) of Section 11055 or subdivision (a) of Section~~
23 ~~11100 of the Health and Safety Code; (25) any violation of~~
24 ~~subdivision (a) of Section 289 where the act is accomplished~~
25 ~~against the victim's will by force, violence, duress, menace, or~~
26 ~~fear of immediate and unlawful bodily injury on the victim or~~
27 ~~another person; (26) grand theft involving a firearm; (27)~~
28 ~~carjacking; (28) any felony offense, which would also constitute~~
29 ~~a felony violation of Section 186.22; (29) assault with the intent~~
30 ~~to commit mayhem, rape, sodomy, or oral copulation, in violation~~
31 ~~of Section 220; (30) throwing acid or flammable substances, in~~
32 ~~violation of Section 244; (31) assault with a deadly weapon,~~
33 ~~firearm, machinegun, assault weapon, or semiautomatic firearm~~
34 ~~or assault on a peace officer or firefighter, in violation of Section~~
35 ~~245; (32) assault with a deadly weapon against a public transit~~
36 ~~employee, custodial officer, or school employee, in violation of~~
37 ~~Sections 245.2, 245.3, or 245.5; (33) discharge of a firearm at an~~
38 ~~inhabited dwelling, vehicle, or aircraft, in violation of Section 246;~~
39 ~~(34) commission of rape or sexual penetration in concert with~~
40 ~~another person, in violation of Section 264.1; (35) continuous~~

1 sexual abuse of a child, in violation of Section 288.5; (36) shooting
 2 from a vehicle, in violation of subdivision (c) or (d) of Section
 3 12034; (37) intimidation of victims or witnesses, in violation of
 4 Section 136.1; (38) criminal threats, in violation of Section 422;
 5 (39) any attempt to commit a crime listed in this subdivision other
 6 than an assault; (40) any violation of Section 12022.53; (41) a
 7 violation of subdivision (b) or (c) of Section 11418; (42) a violation
 8 of subdivision (a) of Section 666.5; and (43) any conspiracy to
 9 commit an offense described in this subdivision.

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

16 As used in this subdivision, the following terms have the
 17 following meanings:

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

23 (2) “Savings and loan association” means any federal savings
 24 and loan association and any “insured institution” as defined in
 25 Section 401 of the National Housing Act, as amended, and any
 26 federal credit union as defined in Section 2 of the Federal Credit
 27 Union Act.

28 (3) “Credit union” means any federal credit union and any
 29 state-chartered credit union the accounts of which are insured by
 30 the Administrator of the National Credit Union administration.

31 (e) The provisions of this section shall not be amended by the
 32 Legislature except by statute passed in each house by rolleall vote
 33 entered in the journal, two-thirds of the membership concurring,
 34 or by a statute that becomes effective only when approved by the
 35 electors.

36 SEC. 5. Section 10851 of the Vehicle Code is amended to read:

37 10851. (a) Any person who drives or takes a vehicle not his
 38 or her own, without the consent of the owner thereof, and with
 39 intent either to permanently or temporarily deprive the owner
 40 thereof of his or her title to or possession of the vehicle, whether

1 with or without intent to steal the vehicle, or any person who is a
2 party or an accessory to or an accomplice in the driving or
3 unauthorized taking or stealing, is guilty of a public offense and,
4 upon conviction thereof, shall be punished by imprisonment in the
5 state prison for 16 months, two, or three years, or by a fine of not
6 more than five thousand dollars (\$5,000), or by both the fine and
7 imprisonment.

8 (b) If the vehicle is (1) an ambulance, as defined in subdivision
9 (a) of Section 165, (2) a distinctively marked vehicle of a law
10 enforcement agency or fire department, taken while the ambulance
11 or vehicle is on an emergency call and this fact is known to the
12 person driving or taking, or any person who is party or an accessory
13 to or an accomplice in the driving or unauthorized taking or
14 stealing, or (3) a vehicle which has been modified for the use of a
15 disabled veteran or any other disabled person and which displays
16 a distinguishing license plate or placard issued pursuant to Section
17 22511.5 or 22511.9 and this fact is known or should reasonably
18 have been known to the person driving or taking, or any person
19 who is party or an accessory in the driving or unauthorized taking
20 or stealing, the offense is a felony punishable by imprisonment in
21 the state prison for two, three, or four years or by a fine of not
22 more than ten thousand dollars (\$10,000), or by both the fine and
23 imprisonment.

24 (c) In any prosecution for a violation of subdivision (a) or (b),
25 the consent of the owner of a vehicle to its taking or driving shall
26 not in any case be presumed or implied because of the owner's
27 consent on a previous occasion to the taking or driving of the
28 vehicle by the same or a different person.

29 (d) The existence of any fact which makes subdivision (b)
30 applicable shall be alleged in the accusatory pleading, and either
31 admitted by the defendant in open court, or found to be true by the
32 jury trying the issue of guilt or by the court where guilt is
33 established by plea of guilty or nolo contendere or by trial by the
34 court sitting without a jury.

35 (e) Any person who has been convicted of one or more previous
36 felony violations of this section, or felony grand theft of a vehicle
37 in violation of subdivision (d) of Section 487 of the Penal Code,
38 former subdivision (3) of Section 487 of the Penal Code, as that
39 section read prior to being amended by Section 4 of Chapter 1125
40 of the Statutes of 1993, or Section 487h of the Penal Code, is

1 punishable as set forth in Section 666.5 of the Penal Code. The
2 existence of any fact that would bring a person under Section 666.5
3 of the Penal Code shall be alleged in the information or indictment
4 and either admitted by the defendant in open court, or found to be
5 true by the jury trying the issue of guilt or by the court where guilt
6 is established by plea of guilty or nolo contendere, or by trial by
7 the court sitting without a jury.

8 (f) This section shall become operative on January 1, 1997.

9 SEC. 6. No reimbursement is required by this act pursuant to
10 Section 6 of Article XIII B of the California Constitution because
11 the only costs that may be incurred by a local agency or school
12 district will be incurred because this act creates a new crime or
13 infraction, eliminates a crime or infraction, or changes the penalty
14 for a crime or infraction, within the meaning of Section 17556 of
15 the Government Code, or changes the definition of a crime within
16 the meaning of Section 6 of Article XIII B of the California
17 Constitution.