

AMENDED IN ASSEMBLY JANUARY 7, 2008

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 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 *by* 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.

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

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

4 (c) The existence of any fact that would bring a person under
5 subdivision (a) shall be alleged in the information or indictment
6 and either admitted by the defendant in open court, or found to be
7 true by the jury trying the issue of guilt or by the court where guilt
8 is established by plea of guilty or nolo contendere or by trial by
9 the court sitting without a jury.

10 (d) A person who is subject to punishment pursuant to this
11 section for previously having been convicted of two or more of
12 the offenses enumerated in subdivision (a), may be granted
13 probation only in the unusual case in which the interests of justice
14 would be best served by probation. If probation is granted pursuant
15 to this subdivision, the court shall specify on the record and shall
16 enter into the minutes the circumstances indicating that the interests
17 of justice would be best served by that disposition.

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

19 10851. (a) Any person who drives or takes a vehicle not his
20 or her own, without the consent of the owner thereof, and with
21 intent either to permanently or temporarily deprive the owner
22 thereof of his or her title to or possession of the vehicle, whether
23 with or without intent to steal the vehicle, or any person who is a
24 party or an accessory to or an accomplice in the driving or
25 unauthorized taking or stealing, is guilty of a public offense and,
26 upon conviction thereof, shall be punished by imprisonment in a
27 county jail for not more than one year or in the state prison or by
28 a fine of not more than five thousand dollars (\$5,000), or by both
29 the fine and imprisonment.

30 (b) If the vehicle described in subdivision (a) is (1) an
31 ambulance, as defined in subdivision (a) of Section 165, (2) a
32 distinctively marked vehicle of a law enforcement agency or fire
33 department or (3) a vehicle that has been modified for the use of
34 a disabled veteran or any other disabled person and that displays
35 a distinguishing license plate or placard issued pursuant to Section
36 22511.5 or 22511.9, the offense is a felony punishable by
37 imprisonment in the state prison for two, three, or four years or by
38 a fine of not more than ten thousand dollars (\$10,000), or by both
39 the fine and imprisonment.

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

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

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

25 (f) A person who violates subdivision (a), in addition to any
 26 other penalties prescribed by law, is subject to an additional one
 27 year of imprisonment in the state prison if any of the following
 28 circumstances ~~exist~~ *exists*:

29 (1) The person ~~is a principal or accessory to the taking of~~ *takes*
 30 a vehicle in exchange for consideration or for the purpose of sale
 31 or transport of the vehicle or its components.

32 (2) The person ~~is a principal or accessory to the taking of~~ *takes*
 33 a vehicle that, prior to its recovery, is used in the commission of
 34 an offense that is a felony.

35 (3) The person ~~is a principal or accessory to the taking of~~ *takes*
 36 a vehicle with the intent to use the vehicle in the commission of a
 37 felony.

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

1 (g) A person who violates subdivision (a) ~~as a principal or~~
2 ~~accessory to the taking of~~ *by taking* a vehicle that, prior to its
3 recovery, is involved in a collision, in addition to other penalties
4 prescribed by law, is subject to an additional one year of
5 imprisonment in the state prison and an additional and consecutive
6 one year of imprisonment in the state prison for each ~~person, other~~
7 ~~than an accessory,~~ *victim* who suffers personal injury as a proximate
8 cause of that collision.

9 *(h) The enhancements in subdivisions (f) and (g) shall be alleged*
10 *in the accusatory pleading and either admitted by the defendant*
11 *in open court or found to be true by the trier of fact.*

12 ~~(h)~~

13 *(i) This section shall become operative on January 1, 1997.*

14 SEC. 3. No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution because
16 the only costs that may be incurred by a local agency or school
17 district will be incurred because this act creates a new crime or
18 infraction, eliminates a crime or infraction, or changes the penalty
19 for a crime or infraction, within the meaning of Section 17556 of
20 the Government Code, or changes the definition of a crime within
21 the meaning of Section 6 of Article XIII B of the California
22 Constitution.