

Introduced by Senator BenoitFebruary 17, 2009

An act to amend Section 12022.1 of the Penal Code, relating to punishment.

LEGISLATIVE COUNSEL'S DIGEST

SB 185, as introduced, Benoit. Punishment: enhancements.

Existing law defines the felony offense for which a person has been released on bail or his or her own recognizance, or for which release on bail or his or her own recognizance has been revoked prior to final judgment, as a "primary offense," and defines an offense committed while so released as a "secondary offense." Under existing law, any person arrested for a secondary offense which was alleged to have been committed while that person was released from custody on a primary offense is subject to a penalty enhancement of an additional 2 years in state prison, as specified.

This bill would redefine "primary offense" as a felony offense for which the person has been released from custody prior to final judgment and completion of sentence for the offense.

By expanding the application of this enhancing allegation, 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.

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 12022.1 of the Penal Code is amended
2 to read:

3 12022.1. (a) For the purposes of this section only:

4 (1) “Primary offense” means a felony offense for which a person
5 has been released from custody ~~on bail or on his or her own~~
6 ~~recognizance~~ prior to the judgment becoming final, including the
7 disposition of any appeal, ~~or for which release on bail or his or her~~
8 ~~own recognizance has been revoked~~ *and the person has not*
9 *completed his or her sentence for the offense.* In cases where the
10 court has granted a stay of execution of a county jail commitment
11 or state prison commitment, “primary offense” also means a felony
12 offense for which a person is out of custody during the period of
13 time between the pronouncement of judgment and the time the
14 person actually surrenders into custody or is otherwise returned
15 to custody.

16 (2) “Secondary offense” means a felony offense alleged to have
17 been committed while the person is released from custody for a
18 primary offense.

19 (b) Any person arrested for a secondary offense which was
20 alleged to have been committed while that person was released
21 from custody on a primary offense shall be subject to a penalty
22 enhancement of an additional two years in state prison which shall
23 be served consecutive to any other term imposed by the court.

24 (c) The enhancement allegation provided in subdivision (b)
25 shall be pleaded in the information or indictment which alleges
26 the secondary offense, or in the information or indictment of the
27 primary offense if a conviction has already occurred in the
28 secondary offense, and shall be proved as provided by law. The
29 enhancement allegation may be pleaded in a complaint but need
30 not be proved at the preliminary hearing or grand jury hearing.

31 (d) Whenever there is a conviction for the secondary offense
32 and the enhancement is proved, and the person is sentenced on the
33 secondary offense prior to the conviction of the primary offense,
34 the imposition of the enhancement shall be stayed pending
35 imposition of the sentence for the primary offense. The stay shall
36 be lifted by the court hearing the primary offense at the time of
37 sentencing for that offense and shall be recorded in the abstract of

1 judgment. If the person is acquitted of the primary offense the stay
2 shall be permanent.

3 (e) If the person is convicted of a felony for the primary offense,
4 is sentenced to state prison for the primary offense, and is convicted
5 of a felony for the secondary offense, any state prison sentence
6 for the secondary offense shall be consecutive to the primary
7 sentence.

8 (f) If the person is convicted of a felony for the primary offense,
9 is granted probation for the primary offense, and is convicted of
10 a felony for the secondary offense, any state prison sentence for
11 the secondary offense shall be enhanced as provided in subdivision
12 (b).

13 (g) If the primary offense conviction is reversed on appeal, the
14 enhancement shall be suspended pending retrial of that felony.
15 Upon retrial and reconviction, the enhancement shall be reimposed.
16 If the person is no longer in custody for the secondary offense
17 upon reconviction of the primary offense, the court may, at its
18 discretion, reimpose the enhancement and order him or her
19 recommitted to custody.

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

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