

AMENDED IN SENATE APRIL 2, 2009

SENATE BILL

No. 440

Introduced by Senator Denham

February 26, 2009

An act to amend ~~Section 1170~~ Sections 667.5 and 1192.7 of the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

SB 440, as amended, Denham. Sentencing.

Existing law, as amended by Proposition 21, adopted March 7, 2000, and by Proposition 83, adopted November 7, 2006, provides for a list of crimes called "violent felonies" and "serious felonies." Other existing law provides specified enhancements to the punishments of certain repeat, state prison bound offenders with prior violent or serious felony convictions. The initiative statutes provide that any amendment of these provisions by the Legislature shall require a $\frac{2}{3}$ vote of the membership of each house.

This bill would add certain felonies to the list of violent felonies, the list of serious felonies, and to both lists, as specified.

By expanding the punishments for existing crimes, 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.

~~Existing law sets forth legislative findings establishing that the purpose of imprisonment for crimes is punishment and that this purpose~~

is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances.

~~This bill would make a technical, nonsubstantive change to those provisions.~~

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: ~~no~~^{yes}. State-mandated local program: ~~no~~^{yes}.

The people of the State of California do enact as follows:

1 SECTION 1. Section 667.5 of the Penal Code is amended to
2 read:

3 667.5. Enhancement of prison terms for new offenses because
4 of prior prison terms shall be imposed as follows:

5 (a) Where one of the new offenses is one of the violent felonies
6 specified in subdivision (c), in addition to and consecutive to any
7 other prison terms therefor, the court shall impose a three-year
8 term for each prior separate prison term served by the defendant
9 where the prior offense was one of the violent felonies specified
10 in subdivision (c). However, no additional term shall be imposed
11 under this subdivision for any prison term served prior to a period
12 of 10 years in which the defendant remained free of both prison
13 custody and the commission of an offense which results in a felony
14 conviction.

15 (b) Except where subdivision (a) applies, where the new offense
16 is any felony for which a prison sentence is imposed, in addition
17 and consecutive to any other prison terms therefor, the court shall
18 impose a one-year term for each prior separate prison term served
19 for any felony; provided that no additional term shall be imposed
20 under this subdivision for any prison term served prior to a period
21 of five years in which the defendant remained free of both prison
22 custody and the commission of an offense which results in a felony
23 conviction.

24 (c) For the purpose of this section, “violent felony” shall mean
25 any of the following:

26 (1) Murder or voluntary manslaughter.

27 (2) Mayhem.

28 (3) Rape as defined in paragraph (2) or (6) of subdivision (a)
29 of Section 261 or paragraph (1) or (4) of subdivision (a) of Section
30 262.

- 1 (4) Sodomy as defined in subdivision (c) or (d) of Section 286.
- 2 (5) Oral copulation as defined in subdivision (c) or (d) of Section
- 3 288a.
- 4 (6) Lewd or lascivious act as defined in subdivision (a) or (b)
- 5 of Section 288.
- 6 (7) Any felony punishable by death or imprisonment in the state
- 7 prison for life.
- 8 (8) Any felony in which the defendant inflicts great bodily injury
- 9 on any person other than an accomplice which has been charged
- 10 and proved as provided for in Section 12022.7, 12022.8, or 12022.9
- 11 on or after July 1, 1977, or as specified prior to July 1, 1977, in
- 12 Sections 213, 264, and 461, or any felony in which the defendant
- 13 uses a firearm which use has been charged and proved as provided
- 14 in subdivision (a) of Section 12022.3, or Section 12022.5 or
- 15 12022.55.
- 16 (9) Any robbery.
- 17 (10) Arson, in violation of subdivision (a) or (b) of Section 451.
- 18 (11) Sexual penetration as defined in subdivision (a) or (j) of
- 19 Section 289.
- 20 (12) Attempted murder.
- 21 (13) A violation of Section 12308, 12309, or 12310.
- 22 (14) Kidnapping.
- 23 (15) Assault with the intent to commit a specified felony, in
- 24 violation of Section 220.
- 25 (16) Continuous sexual abuse of a child, in violation of Section
- 26 288.5.
- 27 (17) Carjacking, as defined in subdivision (a) of Section 215.
- 28 (18) Rape, spousal rape, or sexual penetration, in concert, in
- 29 violation of Section 264.1.
- 30 (19) Extortion, as defined in Section 518, which would constitute
- 31 a felony violation of Section 186.22 of the Penal Code.
- 32 (20) Threats to victims or witnesses, as defined in Section 136.1,
- 33 which would constitute a felony violation of Section 186.22 of the
- 34 Penal Code.
- 35 (21) Any burglary of the first degree, as defined in subdivision
- 36 (a) of Section 460, wherein it is charged and proved that another
- 37 person, other than an accomplice, was present in the residence
- 38 during the commission of the burglary.
- 39 (22) Any violation of Section 12022.53.

(23) A violation of subdivision (b) or (c) of Section 11418. The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence to display society's condemnation for these extraordinary crimes of violence against the person.

(24) *Child abuse likely to produce great bodily injury or death, in violation of Section 273a.*

(25) *Physical child abuse, in violation of Section 273d.*

(26) *Killing, mutilating, or torturing a domestic animal, in violation of Section 597.*

(27) *Elder abuse for which the defendant was incarcerated in state prison, in violation of Section 368.*

(28) *Escape or attempted escape, by force or violence, in violation of subdivision (b) of Section 4532.*

(d) For the purposes of this section, the defendant shall be deemed to remain in prison custody for an offense until the official discharge from custody or until release on parole, whichever first occurs, including any time during which the defendant remains subject to reimprisonment for escape from custody or is reimprisoned on revocation of parole. The additional penalties provided for prior prison terms shall not be imposed unless they are charged and admitted or found true in the action for the new offense.

(e) The additional penalties provided for prior prison terms shall not be imposed for any felony for which the defendant did not serve a prior separate term in state prison.

(f) A prior conviction of a felony shall include a conviction in another jurisdiction for an offense which, if committed in California, is punishable by imprisonment in the state prison if the defendant served one year or more in prison for the offense in the other jurisdiction. A prior conviction of a particular felony shall include a conviction in another jurisdiction for an offense which includes all of the elements of the particular felony as defined under California law if the defendant served one year or more in prison for the offense in the other jurisdiction.

(g) A prior separate prison term for the purposes of this section shall mean a continuous completed period of prison incarceration imposed for the particular offense alone or in combination with concurrent or consecutive sentences for other crimes, including any reimprisonment on revocation of parole which is not

1 accompanied by a new commitment to prison, and including any
2 reimprisonment after an escape from incarceration.

3 (h) Serving a prison term includes any confinement time in any
4 state prison or federal penal institution as punishment for
5 commission of an offense, including confinement in a hospital or
6 other institution or facility credited as service of prison time in the
7 jurisdiction of the confinement.

8 (i) For the purposes of this section, a commitment to the State
9 Department of Mental Health as a mentally disordered sex offender
10 following a conviction of a felony, which commitment exceeds
11 one year in duration, shall be deemed a prior prison term.

12 (j) For the purposes of this section, when a person subject to
13 the custody, control, and discipline of the Director of Corrections
14 is incarcerated at a facility operated by the Department of the Youth
15 Authority, that incarceration shall be deemed to be a term served
16 in state prison.

17 (k) Notwithstanding subdivisions (d) and (g) or any other
18 provision of law, where one of the new offenses is committed
19 while the defendant is temporarily removed from prison pursuant
20 to Section 2690 or while the defendant is transferred to a
21 community facility pursuant to Section 3416, 6253, or 6263, or
22 while the defendant is on furlough pursuant to Section 6254, the
23 defendant shall be subject to the full enhancements provided for
24 in this section.

25 This subdivision shall not apply when a full, separate, and
26 consecutive term is imposed pursuant to any other provision of
27 law.

28 *SEC. 2. Section 1192.7 of the Penal Code is amended to read:*

29 1192.7. (a) (1) It is the intent of the Legislature that district
30 attorneys prosecute violent sex crimes under statutes that provide
31 sentencing under a “one strike,” “three strikes” or habitual sex
32 offender statute instead of engaging in plea bargaining over those
33 offenses.

34 (2) Plea bargaining in any case in which the indictment or
35 information charges any serious felony, any felony in which it is
36 alleged that a firearm was personally used by the defendant, or
37 any offense of driving while under the influence of alcohol, drugs,
38 narcotics, or any other intoxicating substance, or any combination
39 thereof, is prohibited, unless there is insufficient evidence to prove
40 the people’s case, or testimony of a material witness cannot be

1 obtained, or a reduction or dismissal would not result in a
2 substantial change in sentence.

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

13 (b) As used in this section "plea bargaining" means any
14 bargaining, negotiation, or discussion between a criminal
15 defendant, or his or her counsel, and a prosecuting attorney or
16 judge, whereby the defendant agrees to plead guilty or nolo
17 contendere, in exchange for any promises, commitments,
18 concessions, assurances, or consideration by the prosecuting
19 attorney or judge relating to any charge against the defendant or
20 to the sentencing of the defendant.

21 (c) As used in this section, "serious felony" means any of the
22 following:

23 (1) Murder or voluntary manslaughter; (2) mayhem; (3) rape;
24 (4) sodomy by force, violence, duress, menace, threat of great
25 bodily injury, or fear of immediate and unlawful bodily injury on
26 the victim or another person; (5) oral copulation by force, violence,
27 duress, menace, threat of great bodily injury, or fear of immediate
28 and unlawful bodily injury on the victim or another person; (6)
29 lewd or lascivious act on a child under 14 years of age; (7) any
30 felony punishable by death or imprisonment in the state prison for
31 life; (8) any felony in which the defendant personally inflicts great
32 bodily injury on any person, other than an accomplice, or any
33 felony in which the defendant personally uses a firearm; (9)
34 attempted murder; (10) assault with intent to commit rape or
35 robbery; (11) assault with a deadly weapon or instrument on a
36 peace officer; (12) assault by a life prisoner on a noninmate; (13)
37 assault with a deadly weapon by an inmate; (14) arson; (15)
38 exploding a destructive device or any explosive with intent to
39 injure; (16) exploding a destructive device or any explosive causing
40 bodily injury, great bodily injury, or mayhem; (17) exploding a

1 destructive device or any explosive with intent to murder; (18) any
2 burglary of the first degree; (19) robbery or bank robbery; (20)
3 kidnapping; (21) holding of a hostage by a person confined in a
4 state prison; (22) attempt to commit a felony punishable by death
5 or imprisonment in the state prison for life; (23) any felony in
6 which the defendant personally used a dangerous or deadly weapon;
7 (24) selling, furnishing, administering, giving, or offering to sell,
8 furnish, administer, or give to a minor any heroin, cocaine,
9 phencyclidine (PCP), or any methamphetamine-related drug, as
10 described in paragraph (2) of subdivision (d) of Section 11055 of
11 the Health and Safety Code, or any of the precursors of
12 methamphetamines, as described in subparagraph (A) of paragraph
13 (1) of subdivision (f) of Section 11055 or subdivision (a) of Section
14 11100 of the Health and Safety Code; (25) any violation of
15 subdivision (a) of Section 289 where the act is accomplished
16 against the victim's will by force, violence, duress, menace, or
17 fear of immediate and unlawful bodily injury on the victim or
18 another person; (26) grand theft involving a firearm; (27)
19 carjacking; (28) any felony offense, which would also constitute
20 a felony violation of Section 186.22; (29) assault with the intent
21 to commit mayhem, rape, sodomy, or oral copulation, in violation
22 of Section 220; (30) throwing acid or flammable substances, in
23 violation of Section 244; (31) assault with a deadly weapon,
24 firearm, machinegun, assault weapon, or semiautomatic firearm
25 or assault on a peace officer or firefighter, in violation of Section
26 245; (32) assault with a deadly weapon against a public transit
27 employee, custodial officer, or school employee, in violation of
28 Sections 245.2, 245.3, or 245.5; (33) discharge of a firearm at an
29 inhabited dwelling, vehicle, or aircraft, in violation of Section 246;
30 (34) commission of rape or sexual penetration in concert with
31 another person, in violation of Section 264.1; (35) continuous
32 sexual abuse of a child, in violation of Section 288.5; (36) shooting
33 from a vehicle, in violation of subdivision (c) or (d) of Section
34 12034; (37) intimidation of victims or witnesses, in violation of
35 Section 136.1; (38) criminal threats, in violation of Section 422;
36 (39) any attempt to commit a crime listed in this subdivision other
37 than an assault; (40) any violation of Section 12022.53; (41) a
38 violation of subdivision (b) or (c) of Section 11418; (42) *human*
39 *trafficking, in violation of Section 236.1; (43) child abuse likely*
40 *to produce great bodily injury or death, in violation of Section*

1 273a; (44) physical child abuse, in violation of Section 273d; (45)
2 killing, mutilating, or torturing a domestic animal, in violation of
3 Section 597; (46) stalking, in violation of Section 646.9; (47)
4 solicitation to commit murder, in violation of Section 653f; (48)
5 fleeing or attempting to elude a pursuing peace officer, in violation
6 of Section 2800.2 of the Vehicle Code; (49) willful flight or
7 attempting to elude a pursuing peace officer, in violation of Section
8 2800.3 of the Vehicle Code; (50) escape or attempted escape, by
9 force or violence, in violation of subdivision (b) of Section 4532;
10 (51) felon in possession of a firearm, in violation of Section 12021;
11 and ~~(42)~~ (52) any conspiracy to commit an offense described in
12 this subdivision.

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

19 As used in this subdivision, the following terms have the
20 following meanings:

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

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

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

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

39 SEC. 3. No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution because

1 *the only costs that may be incurred by a local agency or school*
2 *district will be incurred because this act creates a new crime or*
3 *infraction, eliminates a crime or infraction, or changes the penalty*
4 *for a crime or infraction, within the meaning of Section 17556 of*
5 *the Government Code, or changes the definition of a crime within*
6 *the meaning of Section 6 of Article XIII B of the California*
7 *Constitution.*

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10 **All matter omitted in this version of the bill**
11 **appears in the bill as introduced in the**
12 **Senate, February 26, 2009 (JR11)**
13