

ASSEMBLY BILL

No. 60

Introduced by Assembly Member Jeffries
(Principal coauthor: Assembly Member Nestande)
(Principal coauthor: Senator Emmerson)
(Coauthors: Assembly Members Cook and Miller)

December 7, 2010

An act to amend Section 1192.7 of the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

AB 60, as introduced, Jeffries. 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 battery on a police officer, in violation of subdivision (c) of Section 243 of the Penal Code, to the list of “serious felonies.”

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.

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 1192.7 of the Penal Code is amended to
2 read:

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

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

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

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

1 attorney or judge relating to any charge against the defendant or
2 to the sentencing of the defendant.

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

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

1 carjacking; (28) any felony offense, which would also constitute
2 a felony violation of Section 186.22; (29) assault with the intent
3 to commit mayhem, rape, sodomy, or oral copulation, in violation
4 of Section 220; (30) throwing acid or flammable substances, in
5 violation of Section 244; (31) assault with a deadly weapon,
6 firearm, machinegun, assault weapon, or semiautomatic firearm
7 or assault on a peace officer or firefighter, in violation of Section
8 245; (32) assault with a deadly weapon against a public transit
9 employee, custodial officer, or school employee, in violation of
10 Section 245.2, 245.3, or 245.5; (33) discharge of a firearm at an
11 inhabited dwelling, vehicle, or aircraft, in violation of Section 246;
12 (34) commission of rape or sexual penetration in concert with
13 another person, in violation of Section 264.1; (35) continuous
14 sexual abuse of a child, in violation of Section 288.5; (36) shooting
15 from a vehicle, in violation of subdivision (c) or (d) of Section
16 26100; (37) intimidation of victims or witnesses, in violation of
17 Section 136.1; (38) criminal threats, in violation of Section 422;
18 (39) any attempt to commit a crime listed in this subdivision other
19 than an assault; (40) any violation of Section 12022.53; (41) a
20 violation of subdivision (b) or (c) of Section 11418; (42) *battery*
21 *on a police officer, in violation of subdivision (c) of Section 243;*
22 *and* ~~(42)~~ (43) any conspiracy to commit an offense described in
23 this subdivision.

24 (d) As used in this section, “bank robbery” means to take or
25 attempt to take, by force or violence, or by intimidation from the
26 person or presence of another any property or money or any other
27 thing of value belonging to, or in the care, custody, control,
28 management, or possession of, any bank, credit union, or any
29 savings and loan association.

30 As used in this subdivision, the following terms have the
31 following meanings:

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

37 (2) “Savings and loan association” means any federal savings
38 and loan association and any “insured institution” as defined in
39 Section 401 of the National Housing Act, as amended, and any

1 federal credit union as defined in Section 2 of the Federal Credit
2 Union Act.

3 (3) "Credit union" means any federal credit union and any
4 state-chartered credit union the accounts of which are insured by
5 the Administrator of the National Credit Union administration.

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

11 SEC. 2. No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution because
13 the only costs that may be incurred by a local agency or school
14 district will be incurred because this act creates a new crime or
15 infraction, eliminates a crime or infraction, or changes the penalty
16 for a crime or infraction, within the meaning of Section 17556 of
17 the Government Code, or changes the definition of a crime within
18 the meaning of Section 6 of Article XIII B of the California
19 Constitution.