

AMENDED IN ASSEMBLY JANUARY 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 60

Introduced by Assembly Member Jeffries

(Principal coauthor: Assembly Member Nestande)

(Principal coauthors: Assembly Members Nestande, Knight, and Portantino)

(Principal coauthor: Senator Emmerson)

(Coauthors: Assembly Members ~~Cook and Miller~~ Conway, Cook, Donnelly, Halderman, Harkey, Miller, Nielsen, and Silva)

December 7, 2010

An act to amend ~~Section~~ Sections 667.1, 667.5, 1170.125, and 1192.7 of the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

AB 60, as amended, 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.

Existing law defines battery as any willful or unlawful use of force or violence upon the person of another. Existing law provides that battery committed against a custodial officer, firefighter, emergency medical technician, lifeguard, process server, traffic officer, or animal control officer engaged in the performance of his or her duties, as

specified, is punishable as a misdemeanor or a felony. Existing law provides that battery against a peace officer, as specified, is punishable as a misdemeanor or a felony.

This bill would add felony battery on a police officer, in violation of subdivision (c) of Section 243 of the Penal Code, against the above-named persons to the list of “serious felonies.” “serious felonies” and to the list of “violent felonies.”

Existing law specifies, for purposes of the sentence enhancements specified above, that the statutes comprising the lists of violent and serious felonies be interpreted as they existed at the time the provisions were enacted, including amendments made to those statutes during the 2005–06 Regular Session of the Legislature, as specified.

This bill would likewise require those statutes to be interpreted as they would be amended following the enactment of this bill for purposes of sentence enhancements.

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 667.1 of the Penal Code is amended to
- 2 read:
- 3 667.1. Notwithstanding subdivision (h) of Section 667, for all
- 4 offenses committed on or after the effective date of this act, all
- 5 references to existing statutes in subdivisions (c) to (g), inclusive,
- 6 of Section 667, are to those statutes as they existed on the effective
- 7 date of this act, including amendments made to those statutes by
- 8 the ~~act~~ acts enacted during the 2005–06 and 2011–12 Regular
- 9 ~~Session~~ Sessions of the Legislature that amended this section.
- 10 SEC. 2. Section 667.5 of the Penal Code, as amended by
- 11 Section 63 of Chapter 178 of the Statutes of 2010, is amended to
- 12 read:

1 667.5. Enhancement of prison terms for new offenses because
2 of prior prison terms shall be imposed as follows:

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

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

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

24 (1) Murder or voluntary manslaughter.

25 (2) Mayhem.

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

29 (4) Sodomy as defined in subdivision (c) or (d) of Section 286.

30 (5) Oral copulation as defined in subdivision (c) or (d) of Section
31 288a.

32 (6) Lewd or lascivious act as defined in subdivision (a) or (b)
33 of Section 288.

34 (7) Any felony punishable by death or imprisonment in the state
35 prison for life.

36 (8) Any felony in which the defendant inflicts great bodily injury
37 on any person other than an accomplice which has been charged
38 and proved as provided for in Section 12022.7, 12022.8, or 12022.9
39 on or after July 1, 1977, or as specified prior to July 1, 1977, in
40 Sections 213, 264, and 461, or any felony in which the defendant

1 uses a firearm which use has been charged and proved as provided
2 in subdivision (a) of Section 12022.3, or Section 12022.5 or
3 12022.55.
4 (9) Any robbery.
5 (10) Arson, in violation of subdivision (a) or (b) of Section 451.
6 (11) Sexual penetration as defined in subdivision (a) or (j) of
7 Section 289.
8 (12) Attempted murder.
9 (13) A violation of Section 18745, 18750, or 18755.
10 (14) Kidnapping.
11 (15) Assault with the intent to commit a specified felony, in
12 violation of Section 220.
13 (16) Continuous sexual abuse of a child, in violation of Section
14 288.5.
15 (17) Carjacking, as defined in subdivision (a) of Section 215.
16 (18) Rape, spousal rape, or sexual penetration, in concert, in
17 violation of Section 264.1.
18 (19) Extortion, as defined in Section 518, which would constitute
19 a felony violation of Section 186.22 of the Penal Code.
20 (20) Threats to victims or witnesses, as defined in Section 136.1,
21 which would constitute a felony violation of Section 186.22 of the
22 Penal Code.
23 (21) Any burglary of the first degree, as defined in subdivision
24 (a) of Section 460, wherein it is charged and proved that another
25 person, other than an accomplice, was present in the residence
26 during the commission of the burglary.
27 (22) Any violation of Section 12022.53.
28 (23) A violation of subdivision (b) or (c) of Section 11418. The
29 Legislature finds and declares that these specified crimes merit
30 special consideration when imposing a sentence to display society's
31 condemnation for these extraordinary crimes of violence against
32 the person.
33 (24) *Felony battery, in violation of subdivision (c) of Section*
34 *243.*
35 (d) For the purposes of this section, the defendant shall be
36 deemed to remain in prison custody for an offense until the official
37 discharge from custody or until release on parole, whichever first
38 occurs, including any time during which the defendant remains
39 subject to reimprisonment for escape from custody or is
40 reimprisoned on revocation of parole. The additional penalties

1 provided for prior prison terms shall not be imposed unless they
2 are charged and admitted or found true in the action for the new
3 offense.

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

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

16 (g) A prior separate prison term for the purposes of this section
17 shall mean a continuous completed period of prison incarceration
18 imposed for the particular offense alone or in combination with
19 concurrent or consecutive sentences for other crimes, including
20 any reimprisonment on revocation of parole which is not
21 accompanied by a new commitment to prison, and including any
22 reimprisonment after an escape from incarceration.

23 (h) Serving a prison term includes any confinement time in any
24 state prison or federal penal institution as punishment for
25 commission of an offense, including confinement in a hospital or
26 other institution or facility credited as service of prison time in the
27 jurisdiction of the confinement.

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

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

37 (k) Notwithstanding subdivisions (d) and (g) or any other
38 provision of law, where one of the new offenses is committed
39 while the defendant is temporarily removed from prison pursuant
40 to Section 2690 or while the defendant is transferred to a

1 community facility pursuant to Section 3416, 6253, or 6263, or
2 while the defendant is on furlough pursuant to Section 6254, the
3 defendant shall be subject to the full enhancements provided for
4 in this section.

5 This subdivision shall not apply when a full, separate, and
6 consecutive term is imposed pursuant to any other provision of
7 law.

8 *SEC. 3. Section 1170.125 of the Penal Code is amended to*
9 *read:*

10 1170.125. Notwithstanding Section 2 of Proposition 184, as
11 adopted at the November 8, 1994, general election, for all offenses
12 committed on or after the effective date of this act, all references
13 to existing statutes in Section 1170.12 are to those statutes as they
14 existed on the effective date of this act, including amendments
15 made to those statutes by the ~~act~~ *acts* enacted during the 2005–06
16 ~~and 2011–12 Regular Session~~ *Sessions of the Legislature* that
17 amended this section.

18 ~~SECTION 1.~~

19 *SEC. 4. Section 1192.7 of the Penal Code is amended to read:*

20 1192.7. (a) (1) It is the intent of the Legislature that district
21 attorneys prosecute violent sex crimes under statutes that provide
22 sentencing under a “one strike,” “three strikes” or habitual sex
23 offender statute instead of engaging in plea bargaining over those
24 offenses.

25 (2) Plea bargaining in any case in which the indictment or
26 information charges any serious felony, any felony in which it is
27 alleged that a firearm was personally used by the defendant, or
28 any offense of driving while under the influence of alcohol, drugs,
29 narcotics, or any other intoxicating substance, or any combination
30 thereof, is prohibited, unless there is insufficient evidence to prove
31 the people’s case, or testimony of a material witness cannot be
32 obtained, or a reduction or dismissal would not result in a
33 substantial change in sentence.

34 (3) If the indictment or information charges the defendant with
35 a violent sex crime, as listed in subdivision (c) of Section 667.61,
36 that could be prosecuted under Sections 269, 288.7, subdivisions
37 (b) through (i) of Section 667, Section 667.61, or 667.71, plea
38 bargaining is prohibited unless there is insufficient evidence to
39 prove the people’s case, or testimony of a material witness cannot
40 be obtained, or a reduction or dismissal would not result in a

1 substantial change in sentence. At the time of presenting the
2 agreement to the court, the district attorney shall state on the record
3 why a sentence under one of those sections was not sought.

4 (b) As used in this section “plea bargaining” means any
5 bargaining, negotiation, or discussion between a criminal
6 defendant, or his or her counsel, and a prosecuting attorney or
7 judge, whereby the defendant agrees to plead guilty or nolo
8 contendere, in exchange for any promises, commitments,
9 concessions, assurances, or consideration by the prosecuting
10 attorney or judge relating to any charge against the defendant or
11 to the sentencing of the defendant.

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

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

1 described in paragraph (2) of subdivision (d) of Section 11055 of
2 the Health and Safety Code, or any of the precursors of
3 methamphetamines, as described in subparagraph (A) of paragraph
4 (1) of subdivision (f) of Section 11055 or subdivision (a) of Section
5 11100 of the Health and Safety Code; (25) any violation of
6 subdivision (a) of Section 289 where the act is accomplished
7 against the victim's will by force, violence, duress, menace, or
8 fear of immediate and unlawful bodily injury on the victim or
9 another person; (26) grand theft involving a firearm; (27)
10 carjacking; (28) any felony offense, which would also constitute
11 a felony violation of Section 186.22; (29) assault with the intent
12 to commit mayhem, rape, sodomy, or oral copulation, in violation
13 of Section 220; (30) throwing acid or flammable substances, in
14 violation of Section 244; (31) assault with a deadly weapon,
15 firearm, machinegun, assault weapon, or semiautomatic firearm
16 or assault on a peace officer or firefighter, in violation of Section
17 245; (32) assault with a deadly weapon against a public transit
18 employee, custodial officer, or school employee, in violation of
19 Section 245.2, 245.3, or 245.5; (33) discharge of a firearm at an
20 inhabited dwelling, vehicle, or aircraft, in violation of Section 246;
21 (34) commission of rape or sexual penetration in concert with
22 another person, in violation of Section 264.1; (35) continuous
23 sexual abuse of a child, in violation of Section 288.5; (36) shooting
24 from a vehicle, in violation of subdivision (c) or (d) of Section
25 26100; (37) intimidation of victims or witnesses, in violation of
26 Section 136.1; (38) criminal threats, in violation of Section 422;
27 (39) any attempt to commit a crime listed in this subdivision other
28 than an assault; (40) any violation of Section 12022.53; (41) a
29 violation of subdivision (b) or (c) of Section 11418; (42) ~~battery~~
30 ~~on a police officer~~, *felony battery* in violation of subdivision (c)
31 of Section 243; and (43) any conspiracy to commit an offense
32 described in this subdivision.

33 (d) As used in this section, "bank robbery" means to take or
34 attempt to take, by force or violence, or by intimidation from the
35 person or presence of another any property or money or any other
36 thing of value belonging to, or in the care, custody, control,
37 management, or possession of, any bank, credit union, or any
38 savings and loan association.

39 As used in this subdivision, the following terms have the
40 following meanings:

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

6 (2) “Savings and loan association” means any federal savings
7 and loan association and any “insured institution” as defined in
8 Section 401 of the National Housing Act, as amended, and any
9 federal credit union as defined in Section 2 of the Federal Credit
10 Union Act.

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

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

19 ~~SEC. 2.~~

20 *SEC. 5.* 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.