

ASSEMBLY BILL

No. 891

Introduced by Assembly Member Garrick

February 17, 2011

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 891, as introduced, 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 that 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 for previously having been convicted of 2 or more of the above offenses from being granted probation, except in unusual cases in which the court finds that the interests of justice would best be served by probation. By expanding the scope of a crime, the bill would impose a state-mandated local program.

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 ~~felony~~ violation of Section 10851 of the Vehicle Code, or
 5 ~~felony~~ grand theft involving an automobile in violation of
 6 subdivision (d) of Section 487 or former subdivision (3) of Section
 7 487, as that section read prior to being amended by Section 4 of
 8 Chapter 1125 of the Statutes of 1993, or ~~felony~~ grand theft
 9 involving a motor vehicle, as defined in Section 415 of the Vehicle
 10 Code, any trailer, as defined in Section 630 of the Vehicle Code,
 11 any special construction equipment, as defined in Section 565 of
 12 the Vehicle Code, or any vessel, as defined in Section 21 of the
 13 Harbors and Navigation Code in violation of former Section 487h,
 14 or a ~~felony~~ violation of Section 496d regardless of whether or not
 15 the person actually served a prior prison term for those offenses,
 16 is subsequently convicted of any of these offenses shall be punished
 17 by imprisonment in the state prison for two, three, or four years,
 18 or a fine of ten thousand dollars (\$10,000), or both the fine and
 19 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 ~~which~~ *that* would bring a person
5 under subdivision (a) shall be alleged in the information or
6 indictment and either admitted by the defendant in open court, or
7 found to be true by the jury trying the issue of guilt or by the court
8 where guilt is established by plea of guilty or nolo contendere or
9 by trial by 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 the*
12 *offenses enumerated in subdivision (a) may be granted probation*
13 *only in the unusual case in which the interests of justice would be*
14 *best served by probation. If probation is granted pursuant to this*
15 *subdivision, the court shall specify on the record and shall enter*
16 *into the minutes the circumstances indicating that the interests of*
17 *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, ~~taken while the ambulance or vehicle is on an~~
34 ~~emergency call and this fact is known to the person driving or~~
35 ~~taking, or any person who is party or an accessory to or an~~
36 ~~accomplice in the driving or unauthorized taking or stealing, or~~
37 (3) a vehicle ~~which~~ *that* has been modified for the use of a disabled
38 veteran or any other disabled person and ~~which~~ *that* displays a
39 distinguishing license plate or placard issued pursuant to Section
40 22511.5 or ~~22511.9~~ and this fact is known or should reasonably

1 ~~have been known to the person driving or taking, or any person~~
2 ~~who is party or an accessory in the driving or unauthorized taking~~
3 ~~or stealing, 22511.9, the offense is a felony punishable by~~
4 imprisonment in the state prison for two, three, or four years or by
5 a fine of not more than ten thousand dollars (\$10,000), or by both
6 the fine and imprisonment.

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

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

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

31 (f) ~~This section shall become operative on January 1, 1997. A~~
32 *person who violates subdivision (a), in addition to any other*
33 *penalties prescribed by law, is subject to an additional one year*
34 *of imprisonment in the state prison if any of the following*
35 *circumstances exists:*

36 (1) *The person takes a vehicle in exchange for consideration*
37 *or for the purpose of sale or transport of the vehicle or its*
38 *components.*

39 (2) *The person takes a vehicle that, prior to its recovery, is used*
40 *in the commission of an offense that is a felony.*

1 (3) *The person takes a vehicle with the intent to use the vehicle*
2 *in the commission of a felony.*

3 (4) *The person takes a vehicle that, prior to its recovery, is the*
4 *subject of a police pursuit.*

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

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

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