

ASSEMBLY BILL

No. 1321

Introduced by Assembly Member Jones

February 22, 2013

An act to amend Sections 1170.125 and 1192.7 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 1321, as introduced, Jones. Serious felonies.

Existing law, as added by Proposition 8, adopted June 8, 1982, and amended by Proposition 21, adopted March 7, 2000, among other things, defines a serious felony. Existing law, also added by Proposition 8, adopted June 8, 1982, and amended by Proposition 36, adopted November 6, 2012, commonly known as the Three Strikes Law, requires increased penalties for certain recidivist offenders in addition to any other enhancement or penalty provisions that may apply, including individuals with current and prior convictions of a serious felony, as specified. Existing law, the Three Strikes Law, specifies that references to code sections contained in the law, including references to the definition of a serious felony, are to those statutes as they existed on November 7, 2012. The Legislature may directly amend Proposition 8 and Proposition 21 by a statute passed in each house by a $\frac{2}{3}$ vote, or by a statute that becomes effective only when approved by the voters. The Legislature may directly amend Proposition 36 by a statute passed in each house by a $\frac{2}{3}$ vote and the Governor concurring, or with a majority vote to be placed on the next general ballot, or by a statute that becomes effective when approved by a majority of the electors.

This bill would add certain felonies, including threatening a witness and human trafficking, to the definition of a serious felony, as specified.

The bill would specify that references to code sections contained in the Three Strikes Law are to those statutes as they exist January 1, 2014. Because the bill would impose additional duties on local prosecutors, and because it would expand the punishments for existing crimes, it 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 1170.125 of the Penal Code is amended
2 to read:
3 1170.125. Notwithstanding Section 2 of Proposition 184, as
4 adopted at the November 8, 1994, General Election, for all offenses
5 committed on or after ~~November 7, 2012~~, January 1, 2014, all
6 references to existing statutes in Sections 1170.12 and 1170.126
7 are to those sections as they existed on ~~November 7, 2012~~ January
8 1, 2014.
- 9 SEC. 2. Section 1192.7 of the Penal Code is amended to read:
10 1192.7. (a) (1) It is the intent of the Legislature that district
11 attorneys prosecute violent sex crimes under statutes that provide
12 sentencing under a “one strike,” “three strikes” or habitual sex
13 offender statute instead of engaging in plea bargaining over those
14 offenses.
- 15 (2) Plea bargaining in any case in which the indictment or
16 information charges any serious felony, any felony in which it is
17 alleged that a firearm was personally used by the defendant, or
18 any offense of driving while under the influence of alcohol, drugs,
19 narcotics, or any other intoxicating substance, or any combination
20 thereof, is prohibited, unless there is insufficient evidence to prove
21 the people’s case, or testimony of a material witness cannot be
22 obtained, or a reduction or dismissal would not result in a
23 substantial change in sentence.
- 24 (3) If the indictment or information charges the defendant with
25 a violent sex crime, as listed in subdivision (c) of Section 667.61,

1 that could be prosecuted under Sections 269, 288.7, subdivisions
2 (b) through (i) of Section 667, Section 667.61, or 667.71, plea
3 bargaining is prohibited unless there is insufficient evidence to
4 prove the people’s case, or testimony of a material witness cannot
5 be obtained, or a reduction or dismissal would not result in a
6 substantial change in sentence. At the time of presenting the
7 agreement to the court, the district attorney shall state on the record
8 why a sentence under one of those sections was not sought.

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

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

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

1 or imprisonment in the state prison for life; (23) any felony in
2 which the defendant personally used a dangerous or deadly weapon;
3 (24) selling, furnishing, administering, giving, or offering to sell,
4 furnish, administer, or give to a minor any heroin, cocaine,
5 phencyclidine (PCP), or any methamphetamine-related drug, as
6 described in paragraph (2) of subdivision (d) of Section 11055 of
7 the Health and Safety Code, or any of the precursors of
8 methamphetamines, as described in subparagraph (A) of paragraph
9 (1) of subdivision (f) of Section 11055 or subdivision (a) of Section
10 11100 of the Health and Safety Code; (25) any violation of
11 subdivision (a) of Section 289 where the act is accomplished
12 against the victim's will by force, violence, duress, menace, or
13 fear of immediate and unlawful bodily injury on the victim or
14 another person; (26) grand theft involving a firearm; (27)
15 carjacking; (28) any felony offense, which would also constitute
16 a felony violation of Section 186.22; (29) assault with the intent
17 to commit mayhem, rape, sodomy, or oral copulation, in violation
18 of Section 220; (30) throwing acid or flammable substances, in
19 violation of Section 244; (31) assault with a deadly weapon,
20 firearm, machinegun, assault weapon, or semiautomatic firearm
21 or assault on a peace officer or firefighter, in violation of Section
22 245; (32) assault with a deadly weapon against a public transit
23 employee, custodial officer, or school employee, in violation of
24 Section 245.2, 245.3, or 245.5; (33) discharge of a firearm at an
25 inhabited dwelling, vehicle, or aircraft, in violation of Section 246;
26 (34) commission of rape or sexual penetration in concert with
27 another person, in violation of Section 264.1; (35) continuous
28 sexual abuse of a child, in violation of Section 288.5; (36) shooting
29 from a vehicle, in violation of subdivision (c) or (d) of Section
30 26100; (37) intimidation of victims or witnesses, in violation of
31 Section 136.1; (38) *threatening a witness, informant, or victim or*
32 *his or her immediate family in violation of Section 139 or 140;*
33 (39) criminal threats, in violation of Section 422; ~~(39) (40)~~ any
34 attempt to commit a crime listed in this subdivision other than an
35 assault; ~~(40) (41)~~ any violation of Section 12022.53; ~~(41) (42)~~ a
36 violation of subdivision (b) or (c) of Section 11418; ~~and (42) (43)~~
37 any conspiracy to commit an offense described in this subdivision;
38 (44) *human trafficking in violation of Section 236.1;* (45) *child*
39 *abuse likely to result in great bodily harm in violation of*
40 *subdivision (a) of Section 273a or child abuse in violation of*

1 Section 273d; (46) stalking in violation of Section 646.9; (47)
 2 solicitation to commit murder or a designated sexual assault in
 3 violation of subdivision (b) or (c) of Section 653f; (48) taking a
 4 hostage to prevent arrest or to use as a shield in violation of
 5 Section 210.5; (49) a felony in which a hate crime enhancement
 6 pursuant to Section 422.75 is pled and proved; (50) violation of
 7 Section 18715, 18720, 18725, 18730, or subdivision (a) or (d) of
 8 Section 11418, relating to destructive devices; (51) threatening to
 9 use a weapon of mass destruction in violation of Section 11418.5;
 10 (52) possession of restricted biological agents in violation of
 11 Section 11419; (53) exploding a destructive device to terrorize in
 12 violation of Section 11413; (54) felony elder abuse in violation of
 13 Section 368; (55) a felony violation of fleeing or evading a
 14 pursuing peace officer in violation of Section 2800.2, 2800.3, or
 15 2800.4 of the Vehicle Code; (56) manufacturing a controlled
 16 substance in violation of Section 11379.6 of the Health and Safety
 17 Code; (57) a felony where a loss of over two hundred thousand
 18 dollars (\$200,000) is proved, as provided in paragraphs (2), (3),
 19 and (4) of subdivision (a) of Section 12022.6; (58) possession of
 20 a firearm by a person who has a prior specified felony in violation
 21 of Section 29900; (59) lynching in violation of Section 405b; and
 22 (60) street gang recruiting in violation of Section 186.26.

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

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

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

36 (2) “Savings and loan association” means any federal savings
 37 and loan association and any “insured institution” as defined in
 38 Section 401 of the National Housing Act, as amended, and any
 39 federal credit union as defined in Section 2 of the Federal Credit
 40 Union Act.

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

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

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