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AMENDED IN ASSEMBLY MARCH 6, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 102

**Introduced by Assembly Members Cunneen, Alby, and
Kuehl**

**(Coauthors: Assembly Members Alquist, Ashburn, Brown,
Cardoza, Havice, Honda, Knox, Leach, Lempert, Margett,
Mazzoni, McClintock, Morrissey, Perata, Scott, Shelley,
Sweeney, and Wayne)**

**(Coauthors: Senators Alpert, Leslie, McPherson, O’Connell,
Rainey, Solis, and Watson)**

January 8, 1997

An act to amend Section 1170.1 of, and to add Section 667.14
to, the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL’S DIGEST

AB 102, as amended, Cunneen. Sentencing:
enhancements and aggravations: minors and pregnant
women.

(1) Existing law prescribes penalties for domestic violence offenses and provides enhancements to a state prison sentence, in addition and consecutive to the punishment prescribed for the underlying offense, where specified circumstances exist. Existing law provides for a general enhancement of 3 years for any person who, with the intent to inflict the injury, personally inflicts great bodily injury on any person other than an accomplice in the commission or attempted commission of a felony. It increases the enhancement to 3, 4, or 5 years under circumstances involving domestic violence in the commission or attempted commission of a felony.

This bill would provide for a one-year enhancement for a felony conviction for specified domestic violence offenses where either (1) the victim is or has been a member of the household of the minor or the defendant, or the victim is a marital or blood relative or has another specified relationship to the victim or minor, or (2) the offense contemporaneously occurred in the presence of, or was witnessed by, a minor. The bill would also provide for a mandatory jail term of at least 60 days, if the domestic violence offense committed under these circumstances is a misdemeanor, and an additional 60-day mandatory jail term if the misdemeanor currently requires a mandatory jail term. This bill would also give the court discretion upon good cause not to impose the mandatory term. Because this bill would increase the penalty for a crime, it would impose a state-mandated local program.

Existing law authorizes the imposition of the high term of imprisonment in the state prison where specified circumstances in aggravation of a crime exist.

This bill would recommend that the Judicial Council revise a specified court rule to add to the circumstances in aggravation of a crime that a temporary restraining order protecting the victim of the crime from the defendant was in effect.

(2) Existing law specifies procedures that govern the imposition of certain enhancements to felony sentences. These procedures include the requirements (a) that the court impose certain enhancements unless stricken by the court as provided by law, (b) that ~~when~~ *if* 2 or more ~~of certain~~



specified enhancements may be imposed for any single offense, only the greatest enhancement shall apply, except with regard to certain firearms and great bodily injury enhancements, for which one of each may be imposed, and (c) that certain enhancements *must* be pleaded and proven as provided by law.

This bill would extend application of these specified procedures to the enhancement proposed by this bill that is described in (1) above.

This bill would incorporate additional changes in Section 1170.1 of the Penal Code proposed by SB 271, to be operative if this bill and that bill are both enacted and become effective on or before January 1, 1998, and this bill is enacted last.

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 667.14 is added to the Penal
2 Code, to read:
3 667.14. (a) Any person who is convicted of
4 committing or attempting to commit a violation of
5 Section 243.4 or 245 where the victim is or has been a
6 member of the household of the minor, or the defendant
7 committing the assaultive or abusive conduct, or the
8 victim is a marital or blood relative of the minor or the
9 defendant, or the defendant or the victim has any of the
10 following relationships with the minor: natural parent,
11 adoptive parent, stepparent, or foster parent, or a
12 violation of Section 273.5 or 273.55, and the offense
13 contemporaneously occurred in the presence of, or was
14 witnessed by, a minor shall, in addition and consecutive
15 to the punishment prescribed for that offense, be
16 punished by an additional term of one year in the state



1 prison, if that offense is a felony, or a mandatory jail term
2 of at least 60 days, if that offense is a misdemeanor. If a
3 mandatory jail term is required for the underlying
4 misdemeanor offense, the 60-day mandatory jail term
5 provided in this subdivision shall be in addition and
6 consecutive to that term.

7 (b) The court, upon a showing of good cause, may find
8 that the mandatory minimum imprisonment required by
9 this section shall not be imposed.

10 SEC. 2. Section 1170.1 of the Penal Code is amended
11 to read:

12 1170.1. (a) Except as provided in subdivision (c) and
13 subject to Section 654, when any person is convicted of
14 two or more felonies, whether in the same proceeding or
15 court or in different proceedings or courts, and whether
16 by judgment rendered by the same or by a different
17 court, and a consecutive term of imprisonment is
18 imposed under Sections 669 and 1170, the aggregate term
19 of imprisonment for all these convictions shall be the sum
20 of the principal term, the subordinate term, and any
21 additional term imposed pursuant to Section 667, 667.5,
22 667.6, or 12022.1, and pursuant to Section 11370.2 of the
23 Health and Safety Code. The principal term shall consist
24 of the greatest term of imprisonment imposed by the
25 court for any of the crimes, including any enhancements
26 imposed pursuant to subdivision (c) of Section 186.10 or
27 Section 667.14, 667.15, 667.8, 667.83, 667.85, 12022, 12022.2,
28 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7,
29 12022.75, 12022.8, or 12022.9 of this code, and an
30 enhancement imposed pursuant to Section 11370.4 or
31 11379.8 of the Health and Safety Code. The subordinate
32 term for each consecutive offense which is not a “violent
33 felony” as defined in subdivision (c) of Section 667.5 shall
34 consist of one-third of the middle term of imprisonment
35 prescribed for each other felony conviction for an offense
36 that is not a violent felony for which a consecutive term
37 of imprisonment is imposed, and shall exclude any
38 enhancements. In no case shall the total of subordinate
39 terms for these consecutive offenses which are not
40 “violent felonies” as defined in subdivision (c) of Section



1 667.5 exceed five years. The subordinate term for each
2 consecutive offense which is a “violent felony” as defined
3 in subdivision (c) of Section 667.5, including those
4 offenses described in paragraph (8), (9), or (17) of
5 subdivision (c) of Section 667.5, shall consist of one-third
6 of the middle term of imprisonment prescribed for each
7 other felony conviction for an offense that is a violent
8 felony for which a consecutive term of imprisonment is
9 imposed, and shall include one-third of any
10 enhancements imposed pursuant to Section 667.14,
11 667.15, 667.8, 667.83, 667.85, 12022, 12022.2, 12022.4,
12 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9.

13 (b) (1) When a consecutive term of imprisonment is
14 imposed under Sections 669 and 1170 for two or more
15 convictions for kidnapping, as defined in Section 207,
16 involving separate victims or the same victim on separate
17 occasions, the aggregate term shall be calculated as
18 provided in subdivision (a), except that the subordinate
19 term for each subsequent kidnapping conviction shall
20 consist of the middle term for each kidnapping conviction
21 for which a consecutive term of imprisonment is imposed
22 and shall include one-third of any enhancements imposed
23 pursuant to Section 667.8, 667.83, 667.85, 12022, 12022.2,
24 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9.
25 The five-year limitation on the total of subordinate terms
26 provided in subdivision (a) shall not apply to subordinate
27 terms for second and subsequent convictions of
28 kidnapping, as defined in Section 207, involving separate
29 victims or the same victim on separate occasions.

30 (2) As used in this subdivision, “separate occasion”
31 means the defendant committed a second violation of
32 Section 207 involving the same victim after at least 24
33 hours elapsed following his or her release of the victim.

34 (c) In the case of any person convicted of one or more
35 felonies committed while the person is confined in a state
36 prison, or is subject to reimprisonment for escape from
37 custody and the law either requires the terms to be served
38 consecutively or the court imposes consecutive terms, the
39 term of imprisonment for all the convictions which the
40 person is required to serve consecutively shall commence



1 from the time the person would otherwise have been
2 released from prison. If the new offenses are consecutive
3 with each other, the principal and subordinate terms shall
4 be calculated as provided in subdivision (a), except that
5 the total of subordinate terms may exceed five years. This
6 subdivision shall be applicable in cases of convictions of
7 more than one offense in different proceedings, and
8 convictions of more than one offense in the same or
9 different proceedings.

10 (d) When the court imposes a prison sentence for a
11 felony pursuant to Section 1170, the court shall also
12 impose the additional terms provided in subdivision (c)
13 of Section 186.10 and Sections 667, 667.14, 667.15, 667.5,
14 667.8, 667.83, 667.85, 12022, 12022.1, 12022.2, 12022.4,
15 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, and 12022.9 of
16 this code, and the additional terms provided in Section
17 11370.2, 11370.4, or 11379.8 of the Health and Safety Code,
18 unless the additional punishment therefor is stricken
19 pursuant to subdivision (h). The court shall also impose
20 any other additional term which the court determines in
21 its discretion or as required by law shall run consecutive
22 to the term imposed under Section 1170. In considering
23 the imposition of the additional term, the court shall
24 apply the sentencing rules of the Judicial Council.

25 (e) When two or more enhancements under Sections
26 12022, 12022.4, 12022.5, 12022.55, 12022.7, and 12022.9 may
27 be imposed for any single offense, only the greatest
28 enhancement shall apply. However, in cases of lewd or
29 lascivious acts upon or with a child under the age of 14
30 years accomplished by means of force or fear, as
31 described in Section 288, kidnapping, as defined in
32 Section 207, sexual battery, as defined in Section 243.4,
33 spousal rape, as defined in Section 262, penetration of a
34 genital or anal opening by a foreign object, as defined in
35 Section 289, oral copulation, sodomy, robbery, carjacking,
36 rape or burglary, or attempted lewd or lascivious acts
37 upon or with a child under the age of 14 years
38 accomplished by means of force or fear, kidnapping,
39 sexual battery, spousal rape, penetration of a genital or
40 anal opening by a foreign object, oral copulation, sodomy,



1 robbery, carjacking, rape, murder, or burglary the court
2 may impose both (1) one enhancement for weapons as
3 provided in either Section 12022, 12022.4, or subdivision
4 (a) of, or paragraph (2) of subdivision (b) of, Section
5 12022.5 and (2) one enhancement for great bodily injury
6 as provided in either Section 12022.7 or 12022.9.

7 (f) The enhancements provided in subdivision (c) of
8 Section 186.10 and Sections 667, 667.14, 667.15, 667.5, 667.6,
9 667.8, 667.83, 667.85, 12022, 12022.1, 12022.2, 12022.3,
10 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75,
11 12022.8, and 12022.9 of this code, and in Section 11370.2,
12 11370.4, or 11379.8 of the Health and Safety Code, shall be
13 pleaded and proven as provided by law.

14 (g) (1) The term of imprisonment shall not exceed
15 twice the number of years imposed by the trial court as
16 the base term pursuant to subdivision (b) of Section 1170,
17 unless the defendant is convicted of a “violent felony” as
18 defined in subdivision (c) of Section 667.5, or a
19 consecutive sentence is being imposed pursuant to
20 subdivision (b) or (c) of this section, or an enhancement
21 is imposed pursuant to subdivision (c) of Section 186.10
22 or Section 667, 667.14, 667.15, 667.5, 667.8, 667.83, 667.85,
23 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7,
24 12022.75, or 12022.9 of this code, or an enhancement is
25 being imposed pursuant to Section 11370.2, 11370.4, or
26 11379.8 of the Health and Safety Code, or the defendant
27 is convicted of felony escape from an institution in which
28 he or she is lawfully confined.

29 (2) The term of imprisonment shall not exceed twice
30 the number of years imposed by the trial court as the base
31 term pursuant to subdivision (b) of Section 1170 unless an
32 enhancement is imposed pursuant to Section 12022.1 and
33 both the primary and secondary offenses specified in
34 Section 12022.1 are serious felonies as specified in
35 subdivision (c) of Section 1192.7.

36 (h) Notwithstanding any other law, the court may
37 strike the additional punishment for the enhancements
38 provided in subdivision (c) of Section 186.10 and Sections
39 667.14, 667.15, 667.5, 667.8, 667.83, 667.85, 12022, 12022.1,
40 12022.2, 12022.4, 12022.6, 12022.7, 12022.75, and 12022.9 of



1 this code, or the enhancements provided in Section
2 11370.2, 11370.4, or 11379.8 of the Health and Safety Code,
3 if it determines that there are circumstances in mitigation
4 of the additional punishment and states on the record its
5 reasons for striking the additional punishment.

6 (i) For any violation of paragraph (2), (3), or (6) of
7 subdivision (a) of Section 261, paragraph (1) or (4) of
8 subdivision (a) of Section 262, Section 264.1, subdivision
9 (b) of Section 288, subdivision (a) of Section 289, or
10 sodomy or oral copulation by force, violence, duress,
11 menace, or fear of immediate and unlawful bodily injury
12 on the victim or another person as provided in Section 286
13 or 288a, the number of enhancements which may be
14 imposed shall not be limited, regardless of whether the
15 enhancements are pursuant to this or some other section
16 of law. Each of the enhancements shall be a full and
17 separately served enhancement and shall not be merged
18 with any term or with any other enhancement.

19 *SEC. 2.5. Section 1170.1 of the Penal Code is amended*
20 *to read:*

21 1170.1. (a) Except as provided in ~~subdivision (e)~~
22 ~~subdivisions (b) and (c)~~, and subject to Section 654, when
23 any person is convicted of two or more felonies, whether
24 in the same proceeding or court or in different
25 proceedings or courts, and whether by judgment
26 rendered by the same or by a different court, and a
27 consecutive term of imprisonment is imposed under
28 Sections 669 and 1170, the aggregate term of
29 imprisonment for all these convictions shall be the sum of
30 the principal term, the subordinate term, and any
31 additional term imposed ~~pursuant to Section 667, 667.5,~~
32 ~~667.6, or 12022.1, and pursuant to Section 11370.2 of the~~
33 ~~Health and Safety Code for applicable enhancements for~~
34 ~~prior convictions, prior prison terms, and Section 12022.1.~~
35 The principal term shall consist of the greatest term of
36 imprisonment imposed by the court for any of the crimes,
37 including any ~~enhancements imposed pursuant to~~
38 ~~subdivision (e) of Section 186.10 or Section 667.15, 667.8,~~
39 ~~667.83, 667.85, 12022, 12022.2, 12022.3, 12022.4, 12022.5,~~
40 ~~12022.55, 12022.6, 12022.7, 12022.75, 12022.8, or 12022.9 of~~



1 ~~this code, and an enhancement imposed pursuant to~~
2 ~~Section 11370.4 or 11379.8 of the Health and Safety Code~~
3 ~~term imposed for applicable specific enhancements.~~ The
4 subordinate term for each consecutive offense which is
5 not a “violent felony” as defined in subdivision (e) of
6 ~~Section 667.5 shall consist of one-third of the middle term~~
7 ~~of imprisonment prescribed for each other felony~~
8 ~~conviction for an offense that is not a violent felony for~~
9 ~~which a consecutive term of imprisonment is imposed,~~
10 ~~and shall exclude any enhancements. In no case shall the~~
11 ~~total of subordinate terms for these consecutive offenses~~
12 ~~which are not “violent felonies” as defined in subdivision~~
13 ~~(e) of Section 667.5 exceed five years. The subordinate~~
14 ~~term for each consecutive offense which is a “violent~~
15 ~~felony” felony,” as defined in subdivision (c) of Section~~
16 ~~667.5, including those offenses described in paragraph~~
17 ~~(8), (9), or (17) shall consist of one-third of the middle~~
18 ~~term of imprisonment prescribed for each other felony~~
19 ~~conviction for an offense that is not a violent felony for~~
20 ~~which a consecutive term of imprisonment is imposed,~~
21 ~~and shall exclude any specific enhancements. Except as~~
22 ~~otherwise provided by law, the total of subordinate terms~~
23 ~~for those consecutive offenses that are not “violent~~
24 ~~felonies,” as defined in subdivision (c) of Section 667.5,~~
25 ~~shall not exceed five years. The subordinate term for each~~
26 ~~consecutive offense that is a “violent felony,” as defined~~
27 ~~in any paragraph of subdivision (c) of Section 667.5, shall~~
28 ~~consist of one-third of the middle term of imprisonment~~
29 ~~prescribed for each other felony conviction for an offense~~
30 ~~that is a violent felony for which a consecutive term of~~
31 ~~imprisonment is imposed, and shall include one-third of~~
32 ~~any enhancements imposed pursuant to Section 667.15,~~
33 ~~667.8, 667.83, 667.85, 12022, 12022.2, 12022.4, 12022.5,~~
34 ~~12022.55, 12022.7, 12022.75, or 12022.9 the term imposed~~
35 ~~for any specific enhancements applicable to those~~
36 ~~subordinate offenses.~~

37 (b) (1) ~~When a consecutive term of imprisonment is~~
38 ~~imposed under Sections 669 and 1170 for two or more~~
39 ~~convictions for kidnapping, as defined in Section 207 or~~
40 ~~208, involving separate victims or the same victim on~~



1 ~~separate occasions~~, the aggregate term shall be calculated
2 as provided in subdivision (a), except that the
3 subordinate term for each subsequent kidnapping
4 conviction shall consist of the *full* middle term for each
5 kidnapping conviction for which a consecutive term of
6 imprisonment is imposed and shall include ~~one-third of~~
7 ~~any enhancements imposed pursuant to Section 667.8,~~
8 ~~667.83, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55,~~
9 ~~12022.7, 12022.75, or 12022.9.~~ The five-year limitation on
10 the total of subordinate terms provided in subdivision (a)
11 shall not apply to subordinate terms for second and
12 subsequent convictions of kidnapping, as defined in
13 Section 207, involving separate victims or the same victim
14 ~~on separate occasions~~ *the full term imposed for specific*
15 *enhancements applicable to those subordinate offenses.*
16 *The total of the subordinate terms imposed pursuant to*
17 *this subdivision may exceed five years.*

18 (2) ~~As used in this subdivision, “separate occasion”~~
19 ~~means the defendant committed a second violation of~~
20 ~~Section 207 involving the same victim after at least 24~~
21 ~~hours elapsed following his or her release of the victim.~~

22 (c) In the case of any person convicted of one or more
23 felonies committed while the person is confined in a state
24 prison, or is subject to reimprisonment for escape from
25 custody and the law either requires the terms to be served
26 consecutively or the court imposes consecutive terms, the
27 term of imprisonment for all the convictions which the
28 person is required to serve consecutively shall commence
29 from the time the person would otherwise have been
30 released from prison. If the new offenses are consecutive
31 with each other, the principal and subordinate terms shall
32 be calculated as provided in subdivision (a), except that
33 the total of subordinate terms may exceed five years. This
34 subdivision shall be applicable in cases of convictions of
35 more than one offense in different proceedings, and
36 convictions of more than one offense in the same or
37 different proceedings.

38 (d) When the court imposes a prison sentence for a
39 felony pursuant to Section 1170, the court shall also
40 impose the additional terms provided ~~in subdivision (e)~~



1 of Section 186.10 and Sections 667, 667.15, 667.5, 667.8,
2 667.83, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.5,
3 12022.55, 12022.6, 12022.7, 12022.75, and 12022.9 of this
4 code, and the additional terms provided in Section
5 11370.2, 11370.4, or 11379.8 of the Health and Safety Code,
6 unless the additional punishment therefor is stricken
7 pursuant to subdivision (h) for any applicable
8 enhancements. The court shall also impose any other
9 additional term which that the court determines in its
10 discretion or as required by law shall run consecutive to
11 the term imposed under Section 1170. In considering the
12 imposition of the additional term, the court shall apply
13 the sentencing rules of the Judicial Council.

14 (e) *All enhancements shall be alleged in the*
15 *accusatory pleading and either admitted by the*
16 *defendant in open court or found to be true by the trier*
17 *of fact.*

18 (f) When two or more enhancements under Sections
19 12022, 12022.4, 12022.5, 12022.55, 12022.7, and 12022.9 may
20 be imposed for any may be imposed for being armed with
21 or using a dangerous or deadly weapon or a firearm in the
22 commission of a single offense, only the greatest
23 enhancement shall apply. However, in cases of lewd or
24 lascivious acts upon or with a child under the age of 14
25 years accomplished by means of force or fear, as
26 described in Section 288, kidnapping, as defined in
27 Section 207, sexual battery, as defined in Section 243.4,
28 spousal rape, as defined in Section 262, penetration of a
29 genital or anal opening by a foreign object, as defined in
30 Section 289, oral copulation, sodomy, robbery, carjacking,
31 rape or burglary, or attempted lewd or lascivious acts
32 upon or with a child under the age of 14 years
33 accomplished by means of force or fear, kidnapping,
34 sexual battery, spousal rape, penetration of a genital or
35 anal opening by a foreign object, oral copulation, sodomy,
36 robbery, carjacking, rape, murder, or burglary the court
37 may impose both (1) one enhancement for weapons as
38 provided in either Section 12022, 12022.4, or subdivision
39 (a) of, or paragraph (2) of subdivision (b) of, Section
40 12022.5 and (2) one enhancement for great bodily injury



1 ~~as provided in either Section 12022.7 or 12022.9 of those~~
2 ~~enhancements shall be imposed for that offense. This~~
3 ~~subdivision shall not limit the imposition of any other~~
4 ~~enhancements applicable to that offense, including an~~
5 ~~enhancement for the infliction of great bodily injury.~~

6 (g) ~~When two or more enhancements may be imposed~~
7 ~~for the infliction of great bodily injury in the commission~~
8 ~~of a single offense, only the greatest of those~~
9 ~~enhancements shall be imposed for that offense. This~~
10 ~~subdivision shall not limit the imposition of any other~~
11 ~~enhancements applicable to that offense, including an~~
12 ~~enhancement for being armed with or using a dangerous~~
13 ~~or deadly weapon or firearm.~~

14 ~~(f) The enhancements provided in subdivision (e) of~~
15 ~~Section 186.10 and Sections 667, 667.15, 667.5, 667.6, 667.8,~~
16 ~~667.83, 667.85, 12022, 12022.1, 12022.2, 12022.3, 12022.4,~~
17 ~~12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, and~~
18 ~~12022.9 of this code, and in Section 11370.2, 11370.4, or~~
19 ~~11379.8 of the Health and Safety Code, shall be pleaded~~
20 ~~and proven as provided by law.~~

21 ~~(g) (1) The term of imprisonment shall not exceed~~
22 ~~twice the number of years imposed by the trial court as~~
23 ~~the base term pursuant to subdivision (b) of Section 1170,~~
24 ~~unless the defendant stands convicted of a “violent~~
25 ~~felony” as defined in subdivision (c) of Section 667.5, or~~
26 ~~a consecutive sentence is being imposed pursuant to~~
27 ~~subdivision (b) or (c) of this section, or an enhancement~~
28 ~~is imposed pursuant to subdivision (c) of Section 186.10~~
29 ~~or Section 667, 667.15, 667.5, 667.8, 667.83, 667.85, 12022,~~
30 ~~12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7,~~
31 ~~12022.75, or 12022.9 of this code, or an enhancement is~~
32 ~~being imposed pursuant to Section 11370.2, 11370.4, or~~
33 ~~11379.8 of the Health and Safety Code, or the defendant~~
34 ~~stands convicted of felony escape from an institution in~~
35 ~~which he or she is lawfully confined.~~

36 ~~(2) The term of imprisonment shall not exceed twice~~
37 ~~the number of years imposed by the trial court as the base~~
38 ~~term pursuant to subdivision (b) of Section 1170 unless an~~
39 ~~enhancement is imposed pursuant to Section 12022.1 and~~
40 ~~both the primary and secondary offenses specified in~~



1 ~~Section 12022.1 are serious felonies as specified in~~
2 ~~subdivision (e) of Section 1192.7.~~

3 ~~(h) Notwithstanding any other law, the court may~~
4 ~~strike the additional punishment for the enhancements~~
5 ~~provided in subdivision (e) of Section 186.10 and Sections~~
6 ~~667.15, 667.5, 667.8, 667.83, 667.85, 12022, 12022.1, 12022.2,~~
7 ~~12022.4, 12022.6, 12022.7, 12022.75, and 12022.9 of this~~
8 ~~code, or the enhancements provided in Section 11370.2,~~
9 ~~11370.4, or 11379.8 of the Health and Safety Code, if it~~
10 ~~determines that there are circumstances in mitigation of~~
11 ~~the additional punishment and states on the record its~~
12 ~~reasons for striking the additional punishment.~~

13 ~~(i)~~
14 ~~(h) For any violation of paragraph (2), (3), or (6) of~~
15 ~~subdivision (a) of Section 261, paragraph (1) or (4) of~~
16 ~~subdivision (a) of Section 262, Section 264.1, subdivision~~
17 ~~(b) of Section 288, subdivision (a) of Section 289, or~~
18 ~~sodomy or oral copulation by force, violence, duress,~~
19 ~~menace, or fear of immediate and unlawful bodily injury~~
20 ~~on the victim or another person as provided in Section 286~~
21 ~~or 288a, the number of enhancements which may be~~
22 ~~imposed shall not be limited, regardless of whether the~~
23 ~~enhancements are pursuant to this section, Section 667.6,~~
24 ~~or some other section of law. Each of the enhancements~~
25 ~~shall be a full and separately served enhancement and~~
26 ~~shall not be merged with any term or with any other~~
27 ~~enhancement.~~

28 SEC. 3. The Legislature recommends that the Judicial
29 Council revise Rule 421 of the California Rules of Court
30 on or before June 1, 1998, to add provisions relating to
31 circumstances in aggravation, as follows:

32 (a) Facts relating to the crime, whether or not charged
33 or chargeable as enhancements, including the following
34 facts:

35 (1) The crime involved great violence, great bodily
36 harm, threat of great bodily harm, or other acts disclosing
37 a high degree of cruelty, viciousness, or callousness.

38 (2) The defendant was armed with or used a weapon
39 at the time of the commission of the crime.

40 (3) The victim was particularly vulnerable.



- 1 (4) The defendant induced others to participate in the
2 commission of the crime or occupied a position of
3 leadership or dominance over other participants in its
4 commission.
- 5 (5) The defendant induced a minor to commit or assist
6 in the commission of the crime.
- 7 (6) The defendant threatened witnesses, unlawfully
8 prevented or dissuaded witnesses from testifying,
9 suborned perjury, or in any other way illegally interfered
10 with the judicial process.
- 11 (7) The defendant was convicted of other crimes for
12 which consecutive sentences could have been imposed
13 but for which concurrent sentences are being imposed.
- 14 (8) The manner in which the crime was carried out
15 indicates planning, sophistication, or professionalism.
- 16 (9) The crime involved an attempted or actual taking
17 or damage of great monetary value.
- 18 (10) The crime involved a large quantity of
19 contraband.
- 20 (11) The defendant took advantage of a position of
21 trust or confidence to commit the offense.
- 22 (12) There was a temporary restraining order,
23 injunction, or other court order in effect, protecting the
24 victim of the crime from the defendant.
- 25 (13) The victim was pregnant at the time of the
26 offense, and the defendant knew or reasonably should
27 have known of the victim's condition.
- 28 (b) Facts relating to the defendant, including the
29 following facts:
 - 30 (1) The defendant has engaged in violent conduct
31 which indicates a serious danger to society.
 - 32 (2) The defendant's prior convictions as an adult or
33 sustained petitions in juvenile delinquency proceedings
34 are numerous or of increasing seriousness.
 - 35 (3) The defendant has served a prior prison term.
 - 36 (4) The defendant was on probation or parole when
37 the crime was committed.
 - 38 (5) The defendant's prior performance on probation
39 or parole was unsatisfactory.



1 (6) The defendant was subject to a temporary
2 restraining order that protected the victim of the crime
3 from the defendant.

4 SEC. 4. *Section 2.5 of this bill incorporates*
5 *amendments to Section 1170.1 of the Penal Code*
6 *proposed by both this bill and SB 721. It shall only become*
7 *operative if (1) both bills are enacted and become*
8 *effective on or before January 1, 1998, (2) each bill*
9 *amends Section 1170.1 of the Penal Code, and (3) this bill*
10 *is enacted after SB 721, in which case Section 2 of this bill*
11 *shall not become operative.*

12 SEC. 5. No reimbursement is required by this act
13 pursuant to Section 6 of Article XIII B of the California
14 Constitution because the only costs that may be incurred
15 by a local agency or school district will be incurred
16 because this act creates a new crime or infraction,
17 eliminates a crime or infraction, or changes the penalty
18 for a crime or infraction, within the meaning of Section
19 17556 of the Government Code, or changes the definition
20 of a crime within the meaning of Section 6 of Article
21 XIII B of the California Constitution.

22 Notwithstanding Section 17580 of the Government
23 Code, unless otherwise specified, the provisions of this act
24 shall become operative on the same date that the act
25 takes effect pursuant to the California Constitution.

