

Assembly Bill No. 102

CHAPTER 848

An act to add Section 1170.76 to the Penal Code, relating to sentencing.

[Approved by Governor October 9, 1997. Filed
with Secretary of State October 10, 1997.]

LEGISLATIVE COUNSEL'S DIGEST

AB 102, Cunneen. Sentencing: aggravation: minors and pregnant women.

(1) Existing law requires the court to consider circumstances in aggravation and circumstances in mitigation when determining whether to impose the lower or upper prison term of a specified triad of prison terms. The Rules of Court set forth specified circumstances in aggravation and mitigation that the court may consider.

This bill would require that in specified cases of domestic violence where the defendant is or has been a member of the household of a victim or the minor, or has some other specified relationship to the victim or minor, and the offense occurred in the presence of or was witnessed by the minor, the court shall consider this fact as a circumstance in aggravation of the crime.

(2) 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, and that the victim was pregnant at the time of the offense and the defendant knew or reasonably should have known of the victim's condition.

The people of the State of California do enact as follows:

SECTION 1. Section 1170.76 is added to the Penal Code, to read:

1170.76. The fact that a defendant who commits or attempts to commit a violation of Section 243.4, 245, 273.5, or 273.55, is or has been a member of the household of a minor or of the victim of the offense, or the defendant is a marital or blood relative of the minor or the victim, or the defendant or the victim is the natural parent, adoptive parent, stepparent, or foster parent of the minor, and the offense contemporaneously occurred in the presence of, or was witnessed by, the minor shall be considered a circumstance in aggravation of the crime in imposing a term under subdivision (b) of Section 1170.



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

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

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

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

(3) The victim was particularly vulnerable.

(4) The defendant induced others to participate in the commission of the crime or occupied a position of leadership or dominance over other participants in its commission.

(5) The defendant induced a minor to commit or assist in the commission of the crime.

(6) The defendant threatened witnesses, unlawfully prevented or dissuaded witnesses from testifying, suborned perjury, or in any other way illegally interfered with the judicial process.

(7) The defendant was convicted of other crimes for which consecutive sentences could have been imposed but for which concurrent sentences are being imposed.

(8) The manner in which the crime was carried out indicates planning, sophistication, or professionalism.

(9) The crime involved an attempted or actual taking or damage of great monetary value.

(10) The crime involved a large quantity of contraband.

(11) The defendant took advantage of a position of trust or confidence to commit the offense.

(12) There was a temporary restraining order, injunction, or other court order in effect, protecting the victim of the crime from the defendant.

(13) The victim was pregnant at the time of the offense, and the defendant knew or reasonably should have known of the victim's condition.

(b) Facts relating to the defendant, including the following facts:

(1) The defendant has engaged in violent conduct which indicates a serious danger to society.

(2) The defendant's prior convictions as an adult or sustained petitions in juvenile delinquency proceedings are numerous or of increasing seriousness.

(3) The defendant has served a prior prison term.

(4) The defendant was on probation or parole when the crime was committed.

(5) The defendant's prior performance on probation or parole was unsatisfactory.



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

(c) Any other facts statutorily declared to be circumstances in aggravation.

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