

AMENDED IN SENATE JUNE 15, 1998
AMENDED IN ASSEMBLY MARCH 12, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1693

Introduced by Assembly Member Sweeney

January 26, 1998

An act to amend Section 12022.1 of the Penal Code, relating to punishment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1693, as amended, Sweeney. Punishment: enhancements.

Existing law defines the offense for which a person was released on bail on his or her own recognizance as a "primary offense," and the offense committed while so released as a "secondary offense." Under existing law, any person arrested for a secondary offense that was alleged to have been committed while that person was released from custody on a primary offense is subject to a penalty enhancement of an additional 2 years in state prison that shall be served consecutive to any other term imposed by the court. Existing law also requires pleading and proof of the enhancement allegation in the information or indictment that alleges the secondary offense and specifies that the enhancement allegation need not be proved at the preliminary hearing.

This bill additionally would require that the allegation be pleaded in the information or indictment of the primary

offense if a conviction has already occurred in the secondary offense and would specify that the allegation need not be proved at the grand jury hearing with respect to either offense. The bill also would require that the time a person is released from custody on bail include the period of time between the pronouncement of judgment—~~or grant of probation~~ and the time when the defendant actually surrenders or is otherwise returned to custody.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

1 SECTION 1. Section 12022.1 of the Penal Code is
 2 amended to read:
 3 12022.1. (a) For the purposes of this section only:
 4 (1) “Primary offense” means a felony offense for
 5 which a person has been released from custody on bail or
 6 on his or her own recognizance prior to the judgment
 7 becoming final, including the disposition of any appeal, or
 8 for which release on bail or his or her own recognizance
 9 has been revoked. In cases where the court has granted
 10 a stay of execution of a county jail commitment or state
 11 prison commitment, “primary offense” also means a
 12 felony offense for which a person is out of custody during
 13 the period of time between the pronouncement of
 14 judgment—~~or a grant of probation~~, and the time the person
 15 actually surrenders into custody or is otherwise returned
 16 to custody.
 17 (2) “Secondary offense” means a felony offense
 18 alleged to have been committed while the person is
 19 released from custody for a primary offense.
 20 (b) Any person arrested for a secondary offense which
 21 was alleged to have been committed while that person
 22 was released from custody on a primary offense shall be
 23 subject to a penalty enhancement of an additional two
 24 years in state prison which shall be served consecutive to
 25 any other term imposed by the court.
 26 (c) The enhancement allegation provided in
 27 subdivision (b) shall be pleaded in the information or



1 indictment which alleges the secondary offense, or in the
2 information or indictment of the primary offense if a
3 conviction has already occurred in the secondary offense,
4 and shall be proved as provided by law. The
5 enhancement allegation may be pleaded in a complaint
6 but need not be proved at the preliminary hearing or
7 grand jury hearing.

8 (d) Whenever there is a conviction for the secondary
9 offense and the enhancement is proved, and the person
10 is sentenced on the secondary offense prior to the
11 conviction of the primary offense, the imposition of the
12 enhancement shall be stayed pending imposition of the
13 sentence for the primary offense. The stay shall be lifted
14 by the court hearing the primary offense at the time of
15 sentencing for that offense and shall be recorded in the
16 abstract of judgment. If the person is acquitted of the
17 primary offense the stay shall be permanent.

18 (e) If the person is convicted of a felony for the
19 primary offense, is sentenced to state prison for the
20 primary offense, and is convicted of a felony for the
21 secondary offense, any state prison sentence for the
22 secondary offense shall be consecutive to the primary
23 sentence.

24 (f) If the person is convicted of a felony for the primary
25 offense, is granted probation for the primary offense, and
26 is convicted of a felony for the secondary offense, any
27 state prison sentence for the secondary offense shall be
28 enhanced as provided in subdivision (b).

29 (g) If the primary offense conviction is reversed on
30 appeal, the enhancement shall be suspended pending
31 retrial of that felony. Upon retrial and reconviction, the
32 enhancement shall be reimposed. If the person is no
33 longer in custody for the secondary offense upon
34 reconviction of the primary offense, the court may, at its
35 discretion, reimpose the enhancement and order him or
36 her recommitted to custody.

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