

Assembly Bill No. 1693

CHAPTER 119

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

[Approved by Governor July 9, 1998. Filed with
Secretary of State July 10, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1693, 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 and the time when the defendant actually surrenders or is otherwise returned to custody.

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

SECTION 1. Section 12022.1 of the Penal Code is amended to read:

12022.1. (a) For the purposes of this section only:

(1) "Primary offense" means a felony offense for which a person has been released from custody on bail or on his or her own recognizance prior to the judgment becoming final, including the disposition of any appeal, or for which release on bail or his or her own recognizance has been revoked. In cases where the court has granted a stay of execution of a county jail commitment or state prison commitment, "primary offense" also means a felony offense for

which a person is out of custody during the period of time between the pronouncement of judgment and the time the person actually surrenders into custody or is otherwise returned to custody.

(2) “Secondary offense” means a felony offense alleged to have been committed while the person is released from custody for a primary offense.

(b) Any person arrested for a secondary offense which was alleged to have been committed while that person was released from custody on a primary offense shall be subject to a penalty enhancement of an additional two years in state prison which shall be served consecutive to any other term imposed by the court.

(c) The enhancement allegation provided in subdivision (b) shall be pleaded in the information or indictment which alleges the secondary offense, or in the information or indictment of the primary offense if a conviction has already occurred in the secondary offense, and shall be proved as provided by law. The enhancement allegation may be pleaded in a complaint but need not be proved at the preliminary hearing or grand jury hearing.

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

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

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

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

