

Introduced by Senator Schiff

February 19, 1998

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1900, as introduced, Schiff. Sentencing.

(1) Under existing law, the subordinate term for each consecutive offense of which a defendant is convicted is 1/3 of the middle term of imprisonment prescribed, excluding any specific enhancements. The subordinate term for violent felonies includes 1/3 of the term prescribed for any applicable specific enhancements.

This bill would include in a sentence 1/3 of the term imposed for all specific enhancements applicable to any subordinate offense, whether or not a violent felony.

(2) Existing law limits the total of subordinate terms for offenses that are not violent felonies to 5 years, except as otherwise provided by law.

This bill would delete that limitation.

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

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

- 1 SECTION 1. Section 1170.1 of the Penal Code is
- 2 amended to read:
- 3 1170.1. (a) Except as provided in subdivisions (b)
- 4 and (c), and subject to Section 654, when any person is



1 convicted of two or more felonies, whether in the same
2 proceeding or court or in different proceedings or courts,
3 and whether by judgment rendered by the same or by a
4 different court, and a consecutive term of imprisonment
5 is imposed under Sections 669 and 1170, the aggregate
6 term of imprisonment for all these convictions shall be
7 the sum of the principal term, the subordinate term, and
8 any additional term imposed for applicable
9 enhancements for prior convictions, prior prison terms,
10 and Section 12022.1. The principal term shall consist of
11 the greatest term of imprisonment imposed by the court
12 for any of the crimes, including any term imposed for
13 applicable specific enhancements. The subordinate term
14 for each consecutive offense ~~which is not a “violent~~
15 ~~felony,” as defined in subdivision (c) of Section 667.5;~~
16 ~~shall consist of one-third of the middle term of~~
17 ~~imprisonment prescribed for each other felony~~
18 ~~conviction for an offense that is not a violent felony for~~
19 ~~which a consecutive term of imprisonment is imposed,~~
20 ~~and shall exclude any specific enhancements. Except as~~
21 ~~otherwise provided by law, the total of subordinate terms~~
22 ~~for those consecutive offenses which are not “violent~~
23 ~~felonies,” as defined in subdivision (c) of Section 667.5;~~
24 ~~shall not exceed five years. The subordinate term for each~~
25 ~~consecutive offense which is a “violent felony,” as defined~~
26 ~~in any paragraph of subdivision (c) of Section 667.5, shall~~
27 consist of one-third of the middle term of imprisonment
28 prescribed for each other felony conviction ~~for an offense~~
29 ~~that is a violent felony for which a consecutive term of~~
30 imprisonment is imposed, and shall include one-third of
31 the term imposed for any specific enhancements
32 applicable to those subordinate offenses.

33 (b) When a consecutive term of imprisonment is
34 imposed under Sections 669 and 1170 for two or more
35 convictions for kidnapping, as defined in Section 207 or
36 208, involving separate victims, the aggregate term shall
37 be calculated as provided in subdivision (a), except that
38 the subordinate term for each subsequent kidnapping
39 conviction shall consist of the full middle term for each
40 kidnapping conviction for which a consecutive term of



1 imprisonment is imposed and shall include the full term
2 imposed for specific enhancements applicable to those
3 subordinate offenses. The total of the subordinate terms
4 imposed pursuant to this subdivision may exceed five
5 years.

6 (c) In the case of any person convicted of one or more
7 felonies committed while the person is confined in a state
8 prison or is subject to reimprisonment for escape from
9 custody and the law either requires the terms to be served
10 consecutively or the court imposes consecutive terms, the
11 term of imprisonment for all the convictions which the
12 person is required to serve consecutively shall commence
13 from the time the person would otherwise have been
14 released from prison. If the new offenses are consecutive
15 with each other, the principal and subordinate terms shall
16 be calculated as provided in subdivision (a), except that
17 the total of subordinate terms may exceed five years. This
18 subdivision shall be applicable in cases of convictions of
19 more than one offense in different proceedings, and
20 convictions of more than one offense in the same or
21 different proceedings.

22 (d) When the court imposes a prison sentence for a
23 felony pursuant to Section 1170, the court shall also
24 impose the additional terms provided for any applicable
25 enhancements. The court shall also impose any other
26 additional term that the court determines in its discretion
27 or as required by law shall run consecutive to the term
28 imposed under Section 1170. In considering the
29 imposition of the additional term, the court shall apply
30 the sentencing rules of the Judicial Council.

31 (e) All enhancements shall be alleged in the
32 accusatory pleading and either admitted by the
33 defendant in open court or found to be true by the trier
34 of fact.

35 (f) When two or more enhancements may be imposed
36 for being armed with or using a dangerous or deadly
37 weapon or a firearm in the commission of a single offense,
38 only the greatest of those enhancements shall be imposed
39 for that offense. This subdivision shall not limit the
40 imposition of any other enhancements applicable to that



1 offense, including an enhancement for the infliction of
2 great bodily injury.

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

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

