

AMENDED IN ASSEMBLY APRIL 8, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 313

Introduced by Assembly Member Zettel

February 8, 1999

~~An act to add Section 3494.5 to the Civil Code, relating to nuisance. An act to amend Section 667.9 of, and to repeal Section 667.10 of, the Penal Code, relating to criminal enhancements.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 313, as amended, Zettel. ~~Public nuisance: sealed affidavits~~ Crimes enhancements.

Existing law provides for a one-year sentence enhancement if certain crimes are committed against a person 65 years of age or older, or against a person who is blind, a paraplegic, or a quadriplegic, or a person who is under the age of 14 years.

This bill would also provide for that enhancement if the crime is committed against a person who is deaf or developmentally disabled. It would revise the list of crimes that are subject to that enhancement, among other things, to include penetration of the genital or anal opening of another by force of violence.

Existing law provides that any person who has a prior conviction of any of the above-mentioned offenses who commits one of those crimes against a person who is 65 years of age or older, or against a person who is blind, deaf, developmentally disabled, a paraplegic, or a quadriplegic, or

against a person who is under the age of 14 years shall receive a 2-year enhancement.

This bill would provide for the 2-year enhancement if the person is convicted of one of those crimes and has a previous conviction of one of those crimes against a person 65 years of age or older; or against a person who is blind, deaf, developmentally disabled, a paraplegic, or a quadriplegic, or against a person who is under the age of 14 years.

This bill would eliminate a separate provision for an enhancement for convictions involving penetration of the genital or anal opening of a person who is 65 years of age or older or who is blind, deaf, developmentally disabled, a paraplegic, or a quadriplegic, or against a person who is under the age of 14 years where the person had been previously convicted of that crime.

The bill would set forth a statement of intent.

By imposing new enhancements on existing crimes, this bill would impose a state-mandated local program.

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.

~~Existing law authorizes a public prosecutor to bring a civil action to abate a public nuisance, as defined.~~

~~This bill would provide that any initial pleading for a temporary restraining order or preliminary injunction to abate a public nuisance may be supported by affidavits filed under seal if the pleading is filed by a public prosecutor; the action is to abate a public nuisance based upon street gang activity, and the affiant fears for his or her safety and requests his or her statement and identity to be sealed.~~

~~The bill would further provide that if an affidavit is filed under seal pursuant to this bill, the court shall keep the affidavit sealed, unless the interests of justice require unsealing upon proceedings for a permanent injunction or other further proceedings. Before unsealing the affidavit, the court would be required to give notice to the prosecutor and to the affiant, and may take the testimony of the affiant in~~



camera prior to unsealing. Testimony taken in camera would be required to remain sealed unless good cause appears to unseal that testimony. If the initial pleading is uncontested and the court thereafter issues a permanent order, the affidavit would be required to remain sealed.

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

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

1 SECTION 1. ~~Section 3494.5 is added to the Civil Code,~~
2 ~~to read:~~

3 3494.5. (a) Any initial pleading for a temporary
4 restraining order or preliminary injunction to abate a
5 public nuisance, as defined in Section 3480, may be
6 supported by affidavits filed under seal if all of the
7 following conditions exist:

8 (1) The pleading is filed by a public prosecutor.

9 (2) The action is to abate a public nuisance based upon
10 street gang activity.

11 (3) The affiant fears for his or her safety and requests
12 his or her statement and identity to be sealed.

13 (b) If an affidavit is filed under seal pursuant to this
14 section, the court shall keep the affidavit sealed unless the
15 interests of justice require unsealing upon proceedings
16 for a permanent injunction or other further proceedings.
17 Before unsealing such an affidavit, the court shall give
18 notice to the prosecutor and to the affiant. The court may
19 take the testimony of the affiant in camera prior to
20 unsealing. Testimony taken in camera shall remain sealed
21 unless good cause appears to unseal that testimony. If the
22 initial pleading is uncontested and the court thereafter
23 issues a permanent order, the affidavit shall remain
24 sealed.

25 SECTION 1. Section 667.9 of the Penal Code is
26 amended to read:

27 667.9. (a) Any person who commits one or more of
28 the crimes ~~listed~~ *specified* in subdivision (c) against a
29 person who is 65 years of age or older, or against a person
30 who is blind, deaf, developmentally disabled, a



1 paraplegic, or a quadriplegic, or against a person who is
2 under the age of 14 years, and that disability or condition
3 is known or reasonably should be known to the person
4 committing the crime, shall receive a one-year
5 enhancement for each violation ~~in addition to the~~
6 ~~sentence provided under Section 667.~~

7 (b) Any person who *commits a violation of subdivision*
8 *(a) and who* has a prior conviction for any of the offenses
9 *listed specified* in subdivision (c), ~~and who commits one~~
10 ~~or more of the crimes listed in that subdivision against a~~
11 ~~person who is 65 years of age or older, or against a person~~
12 ~~who is blind, deaf, developmentally disabled, a~~
13 ~~paraplegic, or a quadriplegic, or against a person who is~~
14 ~~under the age of 14 years, and that disability or condition~~
15 ~~is known or reasonably should be known to the person~~
16 ~~committing the crime,~~ shall receive a two-year
17 enhancement for each violation in addition to the
18 sentence provided under Section 667.

19 (c) Subdivisions (a) and (b) apply to the following
20 crimes:

21 ~~(1) Robbery, in violation of Section 211.~~

22 ~~(2) Kidnapping, in violation of Section 207.~~

23 ~~(3) Kidnapping, in violation of Section 209.~~

24 ~~(4) Rape by force, violence, or fear of immediate and~~
25 ~~unlawful bodily injury on the victim or another person in~~
26 ~~violation of paragraph (2) or (6) of subdivision (a) of~~
27 ~~Section 261 or paragraph (1) or (4) of subdivision (a) of~~
28 ~~Section 262.~~

29 ~~(5) Sodomy or oral copulation by force, violence,~~
30 ~~duress, menace, or fear of immediate and unlawful bodily~~
31 ~~injury on the victim or another person in violation of~~
32 ~~Section 286 or 288a.~~

33 ~~(6) Mayhem, as defined in Section 203.~~

34 ~~(7) Carjacking, in violation of Section 215.~~

35 ~~(8) Kidnapping, in violation of Section 209.5.~~

36 ~~(9) Burglary of the first degree, as defined in Section~~
37 ~~460.~~

38 ~~(1) Mayhem, in violation of Section 203 or 205.~~

39 ~~(2) Kidnapping, in violation of Section 207, 209, or~~
40 ~~209.5.~~



- 1 (3) *Robbery, in violation of Section 211.*
- 2 (4) *Carjacking, in violation of Section 215.*
- 3 (5) *Rape, in violation of paragraph (2) or (6) of*
- 4 *subdivision (a) of Section 261.*
- 5 (6) *Spousal rape, in violation of paragraph (1) or (4)*
- 6 *of subdivision (a) of Section 262.*
- 7 (7) *Rape, spousal rape, or sexual penetration in*
- 8 *concert, in violation of Section 264.1.*
- 9 (8) *Sodomy, in violation of paragraph (2) or (3) of*
- 10 *subdivision (c), or subdivision (d), of Section 286.*
- 11 (9) *Oral copulation, in violation of paragraph (2) or*
- 12 *(3) of subdivision (c), or subdivision (d), of Section 288a.*
- 13 (10) *Sexual penetration, in violation of subdivision (a)*
- 14 *of Section 289.*
- 15 (11) *Burglary of the first degree, as defined in Section*
- 16 *460, in violation of Section 459.*
- 17 ~~(d) The existence of any fact which would bring a~~
- 18 ~~person under subdivision (a) or (b) shall be alleged in the~~
- 19 ~~information or indictment and either admitted by the~~
- 20 ~~defendant in open court, or found to be true by the jury~~
- 21 ~~trying the issue of guilt or by the court where guilt is~~
- 22 ~~established by plea of guilty or nolo contendere or by trial~~
- 23 ~~by the court sitting without a jury.~~
- 24 ~~(e) As used in this section, “developmentally disabled”~~
- 25 ~~means a severe, chronic disability of a person, which is all~~
- 26 ~~of the following:~~
- 27 (1) *Attributable to a mental or physical impairment or*
- 28 *a combination of mental and physical impairments.*
- 29 (2) *Likely to continue indefinitely.*
- 30 (3) *Results in substantial functional limitation in three*
- 31 *or more of the following areas of life activity:*
- 32 (A) *Self-care.*
- 33 (B) *Receptive and expressive language.*
- 34 (C) *Learning.*
- 35 (D) *Mobility.*
- 36 (E) *Self-direction.*
- 37 (F) *Capacity for independent living.*
- 38 (G) *Economic self-sufficiency.*
- 39 *SEC. 2. Section 667.10 of the Penal Code is repealed.*



1 ~~667.10. (a) Any person who has a prior conviction of~~
2 ~~the offense set forth in Section 289 and who commits that~~
3 ~~crime against a person who is 65 years of age or older, or~~
4 ~~against a person who is blind, deaf, developmentally~~
5 ~~disabled, as defined in subdivision (d) of Section 667.9, a~~
6 ~~paraplegic, or a quadriplegic, or against a person who is~~
7 ~~under the age of 14 years, and that disability or condition~~
8 ~~is known or reasonably should be known to the person~~
9 ~~committing the crime, shall receive a two-year~~
10 ~~enhancement for each violation in addition to the~~
11 ~~sentence provided under Section 289.~~

12 ~~(b) The existence of any fact which would bring a~~
13 ~~person under subdivision (a) shall be alleged in the~~
14 ~~information or indictment and either admitted by the~~
15 ~~defendant in open court, or found to be true by the jury~~
16 ~~trying the issue of guilt or by the court where guilt is~~
17 ~~established by plea of guilty or nolo contendere or by trial~~
18 ~~by the court sitting without a jury.~~

19 *SEC. 3. (a) In deleting the reference to Section 667*
20 *in subdivision (a) of Section 667.9 of the Penal Code, the*
21 *Legislature recognizes that subdivision (a) does not*
22 *require a prior conviction and that the reference to*
23 *Section 667 is, therefore, surplusage.*

24 *(b) In repealing the specific provision in subdivision*
25 *(d) of Section 667.9 of the Penal Code, it is not the intent*
26 *of the Legislature to alter the application of the general*
27 *provision of subdivision (e) of Section 1170.1 of the Penal*
28 *Code to the enhancements provided in that section.*

29 *(c) In repealing Section 667.10 of the Penal Code, the*
30 *Legislature recognizes that the conduct punished under*
31 *that provision will be subject to punishment under the*
32 *amended provision of Section 667.9 of the Penal Code.*
33 *The repeal of Section 667.10 shall not be given any*
34 *retroactive application, and shall not be construed to*
35 *benefit any person who committed a crime or received*
36 *an enhancement or any other punishment while that*
37 *provision was in effect.*

38 *SEC. 4. No reimbursement is required by this act*
39 *pursuant to Section 6 of Article XIII B of the California*
40 *Constitution because the only costs that may be incurred*



1 *by a local agency or school district will be incurred*
2 *because this act creates a new crime or infraction,*
3 *eliminates a crime or infraction, or changes the penalty*
4 *for a crime or infraction, within the meaning of Section*
5 *17556 of the Government Code, or changes the definition*
6 *of a crime within the meaning of Section 6 of Article*
7 *XIII B of the California Constitution.*

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