

AMENDED IN SENATE SEPTEMBER 3, 1999

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 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. Crimes enhancements.

(1) 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.

(2) 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 ~~if~~ 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.

(3) 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.

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

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

1 SECTION 1. Section 667.9 of the Penal Code is
2 amended to read:
3 667.9. (a) Any person who commits one or more of
4 the crimes specified in subdivision (c) against a person
5 who is 65 years of age or older, or against a person who is
6 blind, deaf, developmentally disabled, a paraplegic, or a
7 quadriplegic, or against a person who is under the age of
8 14 years, and that disability or condition is known or
9 reasonably should be known to the person committing
10 the crime, shall receive a one-year enhancement for each
11 violation .



1 (b) Any person who commits a violation of subdivision
2 (a) and who has a prior conviction for any of the offenses
3 specified in subdivision (c), shall receive a two-year
4 enhancement for each violation in addition to the
5 sentence provided under Section 667.

6 (c) Subdivisions (a) and (b) apply to the following
7 crimes:

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

9 (2) Kidnapping, in violation of Section 207, 209, or
10 209.5.

11 (3) Robbery, in violation of Section 211.

12 (4) Carjacking, in violation of Section 215.

13 (5) Rape, in violation of paragraph (2) or (6) of
14 subdivision (a) of Section 261.

15 (6) Spousal rape, in violation of paragraph (1) or (4)
16 of subdivision (a) of Section 262.

17 (7) Rape, spousal rape, or sexual penetration in
18 concert, in violation of Section 264.1.

19 (8) Sodomy, in violation of paragraph (2) or (3) of
20 subdivision (c), or subdivision (d), of Section 286.

21 (9) Oral copulation, in violation of paragraph (2) or
22 (3) of subdivision (c), or subdivision (d), of Section 288a.

23 (10) Sexual penetration, in violation of subdivision (a)
24 of Section 289.

25 (11) Burglary of the first degree, as defined in Section
26 460, in violation of Section 459.

27 (d) As used in this section, “developmentally
28 disabled” means a severe, chronic disability of a person,
29 which is all of the following:

30 (1) Attributable to a mental or physical impairment or
31 a combination of mental and physical impairments.

32 (2) Likely to continue indefinitely.

33 (3) Results in substantial functional limitation in three
34 or more of the following areas of life activity:

35 (A) Self-care.

36 (B) Receptive and expressive language.

37 (C) Learning.

38 (D) Mobility.

39 (E) Self-direction.

40 (F) Capacity for independent living.



1 (G) Economic self-sufficiency.

2 ~~SEC. 2.—Section 667.10 of the Penal Code is repealed.~~

3 ~~SEC. 3.—~~

4 ~~SEC. 2.~~ (a) In deleting the reference to Section 667
5 in subdivision (a) of Section 667.9 of the Penal Code, the
6 Legislature recognizes that subdivision (a) does not
7 require a prior conviction and that the reference to
8 Section 667 is, therefore, surplusage.

9 (b) In repealing the specific provision in subdivision
10 (d) of Section 667.9 of the Penal Code, it is not the intent
11 of the Legislature to alter the application of the general
12 provision of subdivision (e) of Section 1170.1 of the Penal
13 Code to the enhancements provided in that section.

14 ~~(c) In repealing Section 667.10 of the Penal Code, the~~
15 ~~Legislature recognizes that the conduct punished under~~
16 ~~that provision will be subject to punishment under the~~
17 ~~amended provision of Section 667.9 of the Penal Code.~~
18 ~~The repeal of Section 667.10 shall not be given any~~
19 ~~retroactive application, and shall not be construed to~~
20 ~~benefit any person who committed a crime or received~~
21 ~~an enhancement or any other punishment while that~~
22 ~~provision was in effect.~~

23 ~~SEC. 4.~~

24 ~~SEC. 3.~~ No reimbursement is required by this act
25 pursuant to Section 6 of Article XIII B of the California
26 Constitution because the only costs that may be incurred
27 by a local agency or school district will be incurred
28 because this act creates a new crime or infraction,
29 eliminates a crime or infraction, or changes the penalty
30 for a crime or infraction, within the meaning of Section
31 17556 of the Government Code, or changes the definition
32 of a crime within the meaning of Section 6 of Article
33 XIII B of the California Constitution.

