

Assembly Bill No. 1808

CHAPTER 689

An act to amend Sections 1170.1 and 1385 of, and to repeal Section 1170.95 of, the Penal Code, relating to sentencing.

[Approved by Governor September 25, 2000. Filed
with Secretary of State September 27, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1808, Wayne. Sentencing.

(1) Existing law relating to sentencing provides that, with limited exceptions, when any person is convicted of 2 or more felonies and a consecutive term of imprisonment is imposed, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, as defined, and any additional term imposed for applicable enhancements. Existing law provides that the subordinate term includes enhancements in the case of a violent felony, but not generally in other cases.

This bill would provide that the "subordinate term" includes enhancements in all cases.

(2) Existing law relating to sentencing provides that the number of enhancements that may be imposed shall not be limited for specified sex offenses.

This bill would provide that an unlimited number of enhancements may be imposed for a broader number of sex offenses.

(3) Existing law provides that a judge or magistrate may, in furtherance of justice, order an action to be dismissed. Existing law provides that this provision does not authorize a judge to strike any prior conviction of a serious felony for purposes of enhancement of a sentence under a specified provision of law.

This bill would provide that if the court has the authority under the above provision to strike or dismiss an enhancement, the court may instead strike the additional punishment for that enhancement in the furtherance of justice. This bill would provide that this provision does not authorize the court to strike the additional punishment for any enhancement that cannot be stricken or dismissed under the above provision.

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

SECTION 1. Section 1170.1 of the Penal Code is amended to read:

1170.1. (a) Except as otherwise provided by law, and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings



or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed for applicable enhancements for prior convictions, prior prison terms, and Section 12022.1. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any term imposed for applicable specific enhancements. The subordinate term for each consecutive offense shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for which a consecutive term of imprisonment is imposed, and shall include one-third of the term imposed for any specific enhancements applicable to those subordinate offenses.

(b) When a consecutive term of imprisonment is imposed under Sections 669 and 1170 for two or more convictions for kidnapping, as defined in Section 207, involving separate victims, the aggregate term shall be calculated as provided in subdivision (a), except that the subordinate term for each subordinate kidnapping conviction shall consist of the full middle term for each kidnapping conviction for which a consecutive term of imprisonment is imposed and shall include the full term imposed for specific enhancements applicable to those subordinate offenses.

(c) In the case of any person convicted of one or more felonies committed while the person is confined in a state prison or is subject to reimprisonment for escape from custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all the convictions that the person is required to serve consecutively shall commence from the time the person would otherwise have been released from prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a). This subdivision shall be applicable in cases of convictions of more than one offense in different proceedings, and convictions of more than one offense in the same or different proceedings.

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



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

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

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

(h) For any violation of an offense specified in Section 667.6, the number of enhancements that may be imposed shall not be limited, regardless of whether the enhancements are pursuant to this section, Section 667.6, or some other provision of law. Each of the enhancements shall be a full and separately served term.

SEC. 2. Section 1170.95 of the Penal Code is repealed.

SEC. 3. Section 1385 of the Penal Code is amended to read:

1385. (a) The judge or magistrate may, either of his or her own motion or upon the application of the prosecuting attorney, and in furtherance of justice, order an action to be dismissed. The reasons for the dismissal must be set forth in an order entered upon the minutes. No dismissal shall be made for any cause which would be ground of demurrer to the accusatory pleading.

(b) This section does not authorize a judge to strike any prior conviction of a serious felony for purposes of enhancement of a sentence under Section 667.

(c) (1) If the court has the authority pursuant to subdivision (a) to strike or dismiss an enhancement, the court may instead strike the additional punishment for that enhancement in the furtherance of justice in compliance with subdivision (a).

(2) This subdivision does not authorize the court to strike the additional punishment for any enhancement that cannot be stricken or dismissed pursuant to subdivision (a).

