

AMENDED IN SENATE MARCH 18, 1999

**SENATE BILL**

**No. 116**

**Introduced by Senator Johnson**  
*(Coauthor: Senator Rainey)*

December 17, 1998

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An act to amend Section 836.6 of, and to add Section 4532.5 to, the Penal Code, relating to escape from custody.

LEGISLATIVE COUNSEL'S DIGEST

SB 116, as amended, Johnson. Crimes: escape from custody.

(1) Existing law prohibits any person who is *arrested and booked for, charged with, or convicted of, a misdemeanor or felony, and confined in a county or state correctional facility as specified, or in the lawful custody of any officer or person, or authorized for temporary release as specified,* from escaping from that confinement, ~~or failing to return to confinement subsequent to an authorized temporary release or custody.~~ Existing law punishes escape from confinement pursuant to a charge or conviction for a misdemeanor by imprisonment in the state prison for one year and one day, or in a county jail not exceeding one year, and imposes increased penalties if the escape or attempt to escape is by force or violence. A conviction for escape from confinement pursuant to a charge or conviction for a felony is punishable by imprisonment in the state prison for 16 months, *or 2 or 3 years,* to be served consecutively, or in a county jail not to exceed one year, and increased penalties are imposed if the escape or attempt to escape is by force or violence.

This bill would ~~make it a crime for~~ *provide that* any person charged with the commission of a felony or a misdemeanor, who, prior to being remanded into custody, and while attending a proceeding at which he or she is ordered to be remanded into custody, ~~to escape, or attempt escapes, or attempts to escape, from being remanded into custody.~~ ~~Under the bill, if the escape or attempt to escape is not by force or violence, it would be punishable,~~ *shall be punished* by imprisonment in the state prison for ~~a term of~~ one year and one day, or in a county jail not exceeding one year. If the escape or attempt to escape is *committed* by force or violence, the person ~~is guilty of a felony, punishable~~ *shall be punished* by imprisonment in the state prison for two, four, or six years, or in a county jail not exceeding one year. By creating a new crime, this bill would impose a state-mandated local program.

(2) *Under existing law, any person who is remanded by a magistrate or judge of any court in this state to the custody of a sheriff, marshal, or other police agency, who thereafter escapes or attempts to escape from that custody is guilty of a misdemeanor; or when the escape or attempted escape is by force or violence and the person proximately causes a peace officer serious bodily injury, a felony or a misdemeanor.*

*This bill would repeal this provision, but would declare that the Legislature recognizes that the conduct punished under this provision is punished under the provisions of existing law and of this bill described in (1).*

(3) 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 836.6 of the Penal Code is*  
 2 *amended to read:*



1 836.6. (a) ~~It is unlawful for any person who is~~  
2 ~~remanded by a magistrate or judge of any court in this~~  
3 ~~state to the custody of a sheriff, marshal, or other police~~  
4 ~~agency, to thereafter escape or attempt to escape from~~  
5 ~~that custody.~~

6 ~~(b)~~ It is unlawful for any person who has been lawfully  
7 arrested by any peace officer and who knows, or by the  
8 exercise of reasonable care should have known, that he or  
9 she has been so arrested, to thereafter escape or attempt  
10 to escape from that peace officer.

11 ~~(c)~~  
12 (b) Any person who violates subdivision (a) ~~or (b)~~ is  
13 guilty of a misdemeanor, punishable by imprisonment in  
14 a county jail not to exceed one year. However, if the  
15 escape or attempted escape is by force or violence, and  
16 the person proximately causes a peace officer serious  
17 bodily injury, the person shall be punished by  
18 imprisonment in the state prison for two, three, or four  
19 years, or by imprisonment in a county jail not to exceed  
20 one year.

21 SEC. 2. Section 4532.5 is added to the Penal Code, to  
22 read:

23 4532.5. (a) ~~Every~~ *Except as provided in subdivision*  
24 *(b), every* person charged with the commission of a  
25 felony or a misdemeanor, who, prior to being remanded  
26 into custody, and while attending a proceeding at which  
27 he or she is ordered by the court to be remanded into  
28 custody, escapes, or attempts to escape, from being  
29 remanded into custody, ~~is guilty of a felony and, if the~~  
30 ~~escape or attempt to escape was not by force or violence,~~  
31 ~~is punishable shall be punished~~ by imprisonment in the  
32 state prison for a *determinate* term of one year and one  
33 day, or in a county jail not exceeding one year.

34 (b) If the escape or attempt to escape described in  
35 subdivision (a) is *committed* by force or violence, the  
36 person ~~is guilty of a felony, punishable shall be punished~~  
37 by imprisonment in the state prison for two, four, or six  
38 years or in a county jail not exceeding one year.

39 ~~(c) The term of imprisonment in the state prison or~~  
40 ~~confinement in a county jail for a violation of this section~~



1 ~~shall be served consecutively with any term imposed~~  
2 ~~upon the conviction for the underlying crime for which~~  
3 ~~the person was charged.~~

4 (c) *When the term of confinement for the escape or*  
5 *attempted escape is served in the state prison, it shall be*  
6 *served consecutively to any other term of imprisonment.*  
7 When the term of confinement for the escape or  
8 attempted escape is to be served in a county jail, it shall  
9 commence from the time the prisoner otherwise would  
10 have been discharged from jail.

11 ~~SEC. 2.~~

12 *SEC. 3. In deleting subdivision (a) of Section 836.6 of*  
13 *the Penal Code, in Section 1 of this act, the Legislature*  
14 *recognizes that the conduct punished under that*  
15 *provision is punishable under Section 4532 or 4532.5 of the*  
16 *Penal Code. The deletion of subdivision (a) of Section*  
17 *836.6 of the Penal Code shall not be given any retroactive*  
18 *application, and shall not be construed to benefit any*  
19 *person who committed or was convicted of, a violation of*  
20 *that section.*

21 *SEC. 4. No reimbursement is required by this act*  
22 *pursuant to Section 6 of Article XIII B of the California*  
23 *Constitution because the only costs that may be incurred*  
24 *by a local agency or school district will be incurred*  
25 *because this act creates a new crime or infraction,*  
26 *eliminates a crime or infraction, or changes the penalty*  
27 *for a crime or infraction, within the meaning of Section*  
28 *17556 of the Government Code, or changes the definition*  
29 *of a crime within the meaning of Section 6 of Article*  
30 *XIII B of the California Constitution.*

31 ~~Notwithstanding Section 17580 of the Government~~  
32 ~~Code, unless otherwise specified, the provisions of this act~~  
33 ~~shall become operative on the same date that the act~~  
34 ~~takes effect pursuant to the California Constitution.~~

