

**ASSEMBLY BILL**

**No. 50**

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**Introduced by Assembly Member Leno**

December 6, 2004

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An act to amend Section 667 of the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

AB 50, as introduced, Leno. Crimes.

Existing law, added by initiative statute, requires that if a defendant has been convicted of a felony and it has been pled and proved that the defendant has one or more prior serious or violent felony convictions, as defined, then the court must adhere to specified sentence enhancements to be served consecutively and follow other specified sentencing restrictions.

This bill would make a technical, nonsubstantive change to the language of this provision.

The initiative statute provides that any amendment to its provisions by the Legislature shall require a 2/3 vote of the membership of each house.

Vote: 2/3. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

1 SECTION 1. Section 667 of the Penal Code is amended to  
2 read:  
3 667. (a) (1) In compliance with subdivision (b) of Section  
4 1385, any person convicted of a serious felony who previously  
5 has been convicted of a serious felony in this state or of any

1 offense committed in another jurisdiction which includes all of  
2 the elements of any serious felony, shall receive, in addition to  
3 the sentence imposed by the court for the present offense, a  
4 five-year enhancement for each such prior conviction on charges  
5 brought and tried separately. The terms of the present offense and  
6 each enhancement shall run consecutively.

7 (2) This subdivision shall not be applied when the punishment  
8 imposed under other provisions of law would result in a longer  
9 term of imprisonment. There is no requirement of prior  
10 incarceration or commitment for this subdivision to apply.

11 (3) The Legislature may increase the length of the  
12 enhancement of sentence provided in this subdivision by a statute  
13 passed by majority vote of each house thereof.

14 (4) As used in this subdivision, “serious felony” means a *any*  
15 serious felony listed in subdivision (c) of Section 1192.7.

16 (5) This subdivision shall not apply to a person convicted of  
17 selling, furnishing, administering, or giving, or offering to sell,  
18 furnish, administer, or give to a minor any  
19 methamphetamine-related drug or any precursors of  
20 methamphetamine unless the prior conviction was for a serious  
21 felony described in subparagraph (24) of subdivision (c) of  
22 Section 1192.7.

23 (b) It is the intent of the Legislature in enacting subdivisions  
24 (b) to (i), inclusive, to ensure longer prison sentences and greater  
25 punishment for those who commit a felony and have been  
26 previously convicted of serious and/or violent felony offenses.

27 (c) Notwithstanding any other law, if a defendant has been  
28 convicted of a felony and it has been pled and proved that the  
29 defendant has one or more prior felony convictions as defined in  
30 subdivision (d), the court shall adhere to each of the following:

31 (1) There shall not be an aggregate term limitation for  
32 purposes of consecutive sentencing for any subsequent felony  
33 conviction.

34 (2) Probation for the current offense shall not be granted, nor  
35 shall execution or imposition of the sentence be suspended for  
36 any prior offense.

37 (3) The length of time between the prior felony conviction and  
38 the current felony conviction shall not affect the imposition of  
39 sentence.

1 (4) There shall not be a commitment to any other facility other  
2 than the state prison. Diversion shall not be granted nor shall the  
3 defendant be eligible for commitment to the California  
4 Rehabilitation Center as provided in Article 2 (commencing with  
5 Section 3050) of Chapter 1 of Division 3 of the Welfare and  
6 Institutions Code.

7 (5) The total amount of credits awarded pursuant to Article 2.5  
8 (commencing with Section 2930) of Chapter 7 of Title 1 of Part  
9 3 shall not exceed one-fifth of the total term of imprisonment  
10 imposed and shall not accrue until the defendant is physically  
11 placed in the state prison.

12 (6) If there is a current conviction for more than one felony  
13 count not committed on the same occasion, and not arising from  
14 the same set of operative facts, the court shall sentence the  
15 defendant consecutively on each count pursuant to subdivision  
16 (e).

17 (7) If there is a current conviction for more than one serious or  
18 violent felony as described in paragraph (6), the court shall  
19 impose the sentence for each conviction consecutive to the  
20 sentence for any other conviction for which the defendant may be  
21 consecutively sentenced in the manner prescribed by law.

22 (8) Any sentence imposed pursuant to subdivision (e) will be  
23 imposed consecutive to any other sentence which the defendant  
24 is already serving, unless otherwise provided by law.

25 (d) Notwithstanding any other law and for the purposes of  
26 subdivisions (b) to (i), inclusive, a prior conviction of a felony  
27 shall be defined as:

28 (1) Any offense defined in subdivision (c) of Section 667.5 as  
29 a violent felony or any offense defined in subdivision (c) of  
30 Section 1192.7 as a serious felony in this state. The  
31 determination of whether a prior conviction is a prior felony  
32 conviction for purposes of subdivisions (b) to (i), inclusive, shall  
33 be made upon the date of that prior conviction and is not affected  
34 by the sentence imposed unless the sentence automatically, upon  
35 the initial sentencing, converts the felony to a misdemeanor.  
36 None of the following dispositions shall affect the determination  
37 that a prior conviction is a prior felony for purposes of  
38 subdivisions (b) to (i), inclusive:

39 (A) The suspension of imposition of judgment or sentence.

40 (B) The stay of execution of sentence.

1 (C) The commitment to the State Department of Health  
2 Services as a mentally disordered sex offender following a  
3 conviction of a felony.

4 (D) The commitment to the California Rehabilitation Center or  
5 any other facility whose function is rehabilitative diversion from  
6 the state prison.

7 (2) A conviction in another jurisdiction for an offense that, if  
8 committed in California, is punishable by imprisonment in the  
9 state prison. A prior conviction of a particular felony shall  
10 include a conviction in another jurisdiction for an offense that  
11 includes all of the elements of the particular felony as defined in  
12 subdivision (c) of Section 667.5 or subdivision (c) of Section  
13 1192.7.

14 (3) A prior juvenile adjudication shall constitute a prior felony  
15 conviction for purposes of sentence enhancement if:

16 (A) The juvenile was 16 years of age or older at the time he or  
17 she committed the prior offense.

18 (B) The prior offense is listed in subdivision (b) of Section  
19 707 of the Welfare and Institutions Code or described in  
20 paragraph (1) or (2) as a felony.

21 (C) The juvenile was found to be a fit and proper subject to be  
22 dealt with under the juvenile court law.

23 (D) The juvenile was adjudged a ward of the juvenile court  
24 within the meaning of Section 602 of the Welfare and Institutions  
25 Code because the person committed an offense listed in  
26 subdivision (b) of Section 707 of the Welfare and Institutions  
27 Code.

28 (e) For purposes of subdivisions (b) to (i), inclusive, and in  
29 addition to any other enhancement or punishment provisions  
30 which may apply, the following shall apply where a defendant  
31 has a prior felony conviction:

32 (1) If a defendant has one prior felony conviction that has been  
33 pled and proved, the determinate term or minimum term for an  
34 indeterminate term shall be twice the term otherwise provided as  
35 punishment for the current felony conviction.

36 (2) (A) If a defendant has two or more prior felony  
37 convictions as defined in subdivision (d) that have been pled and  
38 proved, the term for the current felony conviction shall be an  
39 indeterminate term of life imprisonment with a minimum term of  
40 the indeterminate sentence calculated as the greater of:

- 1 (i) Three times the term otherwise provided as punishment for  
2 each current felony conviction subsequent to the two or more  
3 prior felony convictions.
- 4 (ii) Imprisonment in the state prison for 25 years.
- 5 (iii) The term determined by the court pursuant to Section  
6 1170 for the underlying conviction, including any enhancement  
7 applicable under Chapter 4.5 (commencing with Section 1170) of  
8 Title 7 of Part 2, or any period prescribed by Section 190 or  
9 3046.
- 10 (B) The indeterminate term described in subparagraph (A)  
11 shall be served consecutive to any other term of imprisonment  
12 for which a consecutive term may be imposed by law. Any other  
13 term imposed subsequent to any indeterminate term described in  
14 subparagraph (A) shall not be merged therein but shall  
15 commence at the time the person would otherwise have been  
16 released from prison.
- 17 (f) (1) Notwithstanding any other law, subdivisions (b) to (i),  
18 inclusive, shall be applied in every case in which a defendant has  
19 a prior felony conviction as defined in subdivision (d). The  
20 prosecuting attorney shall plead and prove each prior felony  
21 conviction except as provided in paragraph (2).
- 22 (2) The prosecuting attorney may move to dismiss or strike a  
23 prior felony conviction allegation in the furtherance of justice  
24 pursuant to Section 1385, or if there is insufficient evidence to  
25 prove the prior conviction. If upon the satisfaction of the court  
26 that there is insufficient evidence to prove the prior felony  
27 conviction, the court may dismiss or strike the allegation.
- 28 (g) Prior felony convictions shall not be used in plea  
29 bargaining as defined in subdivision (b) of Section 1192.7. The  
30 prosecution shall plead and prove all known prior felony  
31 convictions and shall not enter into any agreement to strike or  
32 seek the dismissal of any prior felony conviction allegation  
33 except as provided in paragraph (2) of subdivision (f).
- 34 (h) All references to existing statutes in subdivisions (c) to (g),  
35 inclusive, are to statutes as they existed on June 30, 1993.
- 36 (i) If any provision of subdivisions (b) to (h), inclusive, or the  
37 application thereof to any person or circumstance is held invalid,  
38 that invalidity shall not affect other provisions or applications of  
39 those subdivisions which can be given effect without the invalid

1 provision or application, and to this end the provisions of those  
2 subdivisions are severable.  
3 (j) The provisions of this section shall not be amended by the  
4 Legislature except by statute passed in each house by rollcall  
5 vote entered in the journal, two-thirds of the membership  
6 concurring, or by a statute that becomes effective only when  
7 approved by the electors.