

AMENDED IN ASSEMBLY MAY 3, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 50

Introduced by Assembly Member Leno

December 6, 2004

An act to amend ~~Section 667 of~~ Sections 667 and 1170.12 of, and to add Section 1170.05 to, the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

AB 50, as amended, Leno. Crimes.

Existing law, including 2 initiatives, 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. Upon a 2nd felony conviction, a defendant shall be punished for twice the term, as specified, and upon a 3rd felony conviction shall be punished for 25 years to life. The initiatives provide that their provisions may be amended by a 2/3 vote of each house of the Legislature.

This bill would prevent a defendant with 2 prior qualifying serious or violent felony convictions whose current offense is neither a serious or violent felony as defined, from receiving a Third Strike sentence of 25 years to life unless the current offense is a specified controlled substance offense, a felony sex offense, as specified, or possession of a firearm or deadly weapon. By imposing additional duties on prosecutors, the bill would impose a state-mandated local program.

This bill would also permit a defendant who meets specified criteria, and who was previously sentenced to at least 25 years to life, to make a motion for resentencing in accordance with these provisions.

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, 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: $\frac{2}{3}$. 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 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
- 6 offense committed in another jurisdiction which includes all of
- 7 the elements of any serious felony, shall receive, in addition to
- 8 the sentence imposed by the court for the present offense, a
- 9 five-year enhancement for each such prior conviction on charges
- 10 brought and tried separately. The terms of the present offense and
- 11 each enhancement shall run consecutively.
- 12 (2) This subdivision shall not be applied when the punishment
- 13 imposed under other provisions of law would result in a longer
- 14 term of imprisonment. There is no requirement of prior
- 15 incarceration or commitment for this subdivision to apply.
- 16 (3) The Legislature may increase the length of the
- 17 enhancement of sentence provided in this subdivision by a statute
- 18 passed by majority vote of each house thereof.

1 (4) As used in this subdivision, “serious felony” means a
2 serious felony listed in subdivision (c) of Section 1192.7.

3 (5) This subdivision shall not apply to a person convicted of
4 selling, furnishing, administering, or giving, or offering to sell,
5 furnish, administer, or give to a minor any
6 methamphetamine-related drug or any precursors of
7 methamphetamine unless the prior conviction was for a serious
8 felony described in subparagraph (24) of subdivision (c) of
9 Section 1192.7.

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

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

18 (1) There shall not be an aggregate term limitation for
19 purposes of consecutive sentencing for any subsequent felony
20 conviction.

21 (2) Probation for the current offense shall not be granted, nor
22 shall execution or imposition of the sentence be suspended for
23 any prior offense.

24 (3) The length of time between the prior felony conviction and
25 the current felony conviction shall not affect the imposition of
26 sentence.

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

33 (5) The total amount of credits awarded pursuant to Article 2.5
34 (commencing with Section 2930) of Chapter 7 of Title 1 of Part
35 3 shall not exceed one-fifth of the total term of imprisonment
36 imposed and shall not accrue until the defendant is physically
37 placed in the state prison.

38 (6) If there is a current conviction for more than one felony
39 count not committed on the same occasion, and not arising from
40 the same set of operative facts, the court shall sentence the

1 defendant consecutively on each count pursuant to subdivision
2 (e).

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

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

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

14 (1) Any offense defined in subdivision (c) of Section 667.5 as
15 a violent felony or any offense defined in subdivision (c) of
16 Section 1192.7 as a serious felony in this state. The
17 determination of whether a prior conviction is a prior felony
18 conviction for purposes of subdivisions (b) to (i), inclusive, shall
19 be made upon the date of that prior conviction and is not affected
20 by the sentence imposed unless the sentence automatically, upon
21 the initial sentencing, converts the felony to a misdemeanor.
22 None of the following dispositions shall affect the determination
23 that a prior conviction is a prior felony for purposes of
24 subdivisions (b) to (i), inclusive:

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

26 (B) The stay of execution of sentence.

27 (C) The commitment to the State Department of Health
28 Services as a mentally disordered sex offender following a
29 conviction of a felony.

30 (D) The commitment to the California Rehabilitation Center or
31 any other facility whose function is rehabilitative diversion from
32 the state prison.

33 (2) A conviction in another jurisdiction for an offense that, if
34 committed in California, is punishable by imprisonment in the
35 state prison. A prior conviction of a particular felony shall
36 include a conviction in another jurisdiction for an offense that
37 includes all of the elements of the particular felony as defined in
38 subdivision (c) of Section 667.5 or subdivision (c) of Section
39 1192.7.

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

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

5 (B) The prior offense is listed in subdivision (b) of Section
6 707 of the Welfare and Institutions Code or described in
7 paragraph (1) or (2) as a felony.

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

10 (D) The juvenile was adjudged a ward of the juvenile court
11 within the meaning of Section 602 of the Welfare and Institutions
12 Code because the person committed an offense listed in
13 subdivision (b) of Section 707 of the Welfare and Institutions
14 Code.

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

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

23 (2) (A) ~~If~~ *Except as provided in subparagraph (C), if* a
24 defendant has two or more prior felony convictions as defined in
25 subdivision (d) that have been pled and proved, the term for the
26 current felony conviction shall be an indeterminate term of life
27 imprisonment with a minimum term of the indeterminate
28 sentence calculated as the greater of:

29 (i) Three times the term otherwise provided as punishment for
30 each current felony conviction subsequent to the two or more
31 prior felony convictions.

32 (ii) Imprisonment in the state prison for 25 years.

33 (iii) The term determined by the court pursuant to Section
34 1170 for the underlying conviction, including any enhancement
35 applicable under Chapter 4.5 (commencing with Section 1170) of
36 Title 7 of Part 2, or any period prescribed by Section 190 or
37 3046.

38 (B) The indeterminate term described in subparagraph (A)
39 shall be served consecutive to any other term of imprisonment
40 for which a consecutive term may be imposed by law. Any other

1 term imposed subsequent to any indeterminate term described in
2 subparagraph (A) shall not be merged therein but shall
3 commence at the time the person would otherwise have been
4 released from prison.

5 *(C) If a defendant has two or more prior felony convictions as*
6 *defined in subdivision (d) that have been pled and proved, and*
7 *the current offense is not a felony described in paragraph (1) of*
8 *subdivision (d) of this section, the defendant shall be sentenced*
9 *pursuant to paragraph (1) of subdivision (e) of this section,*
10 *unless the prosecution pleads and proves any of the following*
11 *facts:*

12 *(i) The current offense is a controlled substance charge, in*
13 *which an allegation under Section 11370.4 or 11379.8 of the*
14 *Health and Safety Code was admitted or found true.*

15 *(ii) The current offense is a felony sex offense, as defined in*
16 *subdivision (d) of Section 261.5, Section 262, or in subparagraph*
17 *(A) of paragraph (2) of subdivision (a) of Section 290, except*
18 *Sections 266, 285, paragraph (1) of subdivision (b), paragraph*
19 *(e) of Section 286, or paragraph (1) of subdivision (b) of Section*
20 *288a.*

21 *(iii) The defendant possessed a firearm or, during the*
22 *commission of the current offense, was armed with a firearm or*
23 *deadly weapon.*

24 (f) (1) Notwithstanding any other law, subdivisions (b) to (i),
25 inclusive, shall be applied in every case in which a defendant has
26 a prior felony conviction as defined in subdivision (d). The
27 prosecuting attorney shall plead and prove each prior felony
28 conviction except as provided in paragraph (2).

29 (2) The prosecuting attorney may move to dismiss or strike a
30 prior felony conviction allegation in the furtherance of justice
31 pursuant to Section 1385, or if there is insufficient evidence to
32 prove the prior conviction. If upon the satisfaction of the court
33 that there is insufficient evidence to prove the prior felony
34 conviction, the court may dismiss or strike the allegation.

35 (g) Prior felony convictions shall not be used in plea
36 bargaining as defined in subdivision (b) of Section 1192.7. The
37 prosecution shall plead and prove all known prior felony
38 convictions and shall not enter into any agreement to strike or
39 seek the dismissal of any prior felony conviction allegation
40 except as provided in paragraph (2) of subdivision (f).

1 (h) All references to existing statutes in subdivisions (c) to (g),
2 inclusive, are to statutes as they existed on June 30, 1993.

3 (i) If any provision of subdivisions (b) to (h), inclusive, or the
4 application thereof to any person or circumstance is held invalid,
5 that invalidity shall not affect other provisions or applications of
6 those subdivisions which can be given effect without the invalid
7 provision or application, and to this end the provisions of those
8 subdivisions are severable.

9 (j) The provisions of this section shall not be amended by the
10 Legislature except by statute passed in each house by rollcall
11 vote entered in the journal, two-thirds of the membership
12 concurring, or by a statute that becomes effective only when
13 approved by the electors.

14 *SEC. 2. Section 1170.05 is added to the Penal Code, to read:*

15 *1170.05. (a) A person who is currently serving a term of*
16 *imprisonment for a felony, whether by virtue of a trial or a plea,*
17 *may make a written motion, within 2 years of January 1, 2006,*
18 *before the trial court that entered the judgment of conviction in*
19 *his or her case, for resentencing if all of the following apply:*

20 *(1) The person was sentenced pursuant to paragraph (2) of*
21 *subdivision (e) of Section 667, paragraph (2) of subdivision (c) of*
22 *Section 1170.12, or both, of the Penal Code, prior to the sections*
23 *being amended by this act.*

24 *(2) All of the person's currently charged felonies which*
25 *resulted in the conviction were felonies that are not described as*
26 *offenses eligible for punishment under paragraph (2) of*
27 *subdivision (e) of Section 667, paragraph (2) of subdivision (c) of*
28 *Section 1170.12, or both, as amended by the act that added this*
29 *section.*

30 *(3) The person has no prior felony conviction for murder,*
31 *manslaughter, rape, or other forcible sex offense, a lewd or*
32 *lascivious act with a child under 14 years of age, any crime*
33 *where Section 12022.7 has been pled and proved, or any crime*
34 *where Penal Code Sections 12022.5, 12022.53, or subdivision*
35 *(b) of Section 12022 has been pled and proved.*

36 *(b) The written motion for resentencing shall specify all the*
37 *currently charged felonies that resulted in the sentence under*
38 *paragraph (2) of subdivision (e) of Section 667, paragraph (2) of*
39 *subdivision (c) of Section 1170.12, or both, of the Penal Code*
40 *before the amendments by this act, and shall also specify all of*

1 *the prior convictions alleged and proved under subdivision (d) of*
2 *Section 667, subdivision (a) of Section 1170.12, or both, as*
3 *amended by the act that added this section.*

4 *(c) A person who meets the requirements of subdivision (a)*
5 *shall be entitled to representation by counsel to prepare a motion*
6 *under this section, and for the purposes of resentencing, trial, or*
7 *retrial. The person may request appointment of counsel by*
8 *sending a written request to the court.*

9 *(d) If the court determines that the person making the motion*
10 *for resentencing was sentenced pursuant to the Three Strikes*
11 *statute prior to the amendment by this act, and the person meets*
12 *the requirements of subdivision (a), the court shall order that*
13 *person to be resentenced in compliance with the sentencing laws*
14 *as amended by this act. Unless another law provides for a longer*
15 *sentence, the court may resentence the defendant as if the*
16 *defendant had been convicted of one prior violent or serious*
17 *felony.*

18 *(e) Under no circumstances may the person's resentencing*
19 *result in the person serving more time in custody than he or she*
20 *would have spent under the original sentence.*

21 *(f) Notwithstanding subdivision (b) of Section 977, the person*
22 *making the written motion for resentencing may waive his or her*
23 *appearance in court for the resentencing, provided that the*
24 *accusatory pleading is not amended at the resentencing, and that*
25 *no new trial or retrial of the individual will occur. The waiver*
26 *shall be in writing and signed by the defendant.*

27 *(g) A defendant who received a sentence which was doubled*
28 *due to having one serious or violent felony conviction shall not*
29 *be entitled to resentencing under this section.*

30 *(h) If the court that originally sentenced the defendant is not*
31 *available to resentence the defendant, the presiding judge may*
32 *designate another judge to hear the defendant's motion.*

33 *(i) Nothing in this section is intended to diminish or abrogate*
34 *any rights or remedies otherwise available to the defendant.*

35 *SEC. 3. Section 1170.12 of the Penal Code is amended to*
36 *read:*

37 *1170.12. (a) Notwithstanding any other provision of law, if a*
38 *defendant has been convicted of a felony and it has been pled and*
39 *proved that the defendant has one or more prior felony*

1 convictions, as defined in subdivision (b), the court shall adhere
2 to each of the following:

3 (1) There shall not be an aggregate term limitation for
4 purposes of consecutive sentencing for any subsequent felony
5 conviction.

6 (2) Probation for the current offense shall not be granted, nor
7 shall execution or imposition of the sentence be suspended for
8 any prior offense.

9 (3) The length of time between the prior felony conviction and
10 the current felony conviction shall not affect the imposition of
11 sentence.

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

18 (5) The total amount of credits awarded pursuant to Article 2.5
19 (commencing with Section 2930) of Chapter 7 of Title 1 of Part
20 3 shall not exceed one-fifth of the total term of imprisonment
21 imposed and shall not accrue until the defendant is physically
22 placed in the state prison.

23 (6) If there is a current conviction for more than one felony
24 count not committed on the same occasion, and not arising from
25 the same set of operative facts, the court shall sentence the
26 defendant consecutively on each count pursuant to this section.

27 (7) If there is a current conviction for more than one serious or
28 violent felony as described in paragraph (6) of this subdivision,
29 the court shall impose the sentence for each conviction
30 consecutive to the sentence for any other conviction for which
31 the defendant may be consecutively sentenced in the manner
32 prescribed by law.

33 (8) Any sentence imposed pursuant to this section will be
34 imposed consecutive to any other sentence which the defendant
35 is already serving, unless otherwise provided by law.

36 (b) Notwithstanding any other provision of law and for the
37 purposes of this section, a prior conviction of a felony shall be
38 defined as:

39 (1) Any offense defined in subdivision (c) of Section 667.5 as
40 a violent felony or any offense defined in subdivision (c) of

1 Section 1192.7 as a serious felony in this state. The
2 determination of whether a prior conviction is a prior felony
3 conviction for purposes of this section shall be made upon the
4 date of that prior conviction and is not affected by the sentence
5 imposed unless the sentence automatically, upon the initial
6 sentencing, converts the felony to a misdemeanor. None of the
7 following dispositions shall affect the determination that a prior
8 conviction is a prior felony for purposes of this section:

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

10 (B) The stay of execution of sentence.

11 (C) The commitment to the State Department of Health
12 Services as a mentally disordered sex offender following a
13 conviction of a felony.

14 (D) The commitment to the California Rehabilitation Center or
15 any other facility whose function is rehabilitative diversion from
16 the state prison.

17 (2) A conviction in another jurisdiction for an offense that, if
18 committed in California, is punishable by imprisonment in the
19 state prison. A prior conviction of a particular felony shall
20 include a conviction in another jurisdiction for an offense that
21 includes all of the elements of the particular felony as defined in
22 subdivision (c) of Section 667.5 or subdivision (c) of Section
23 1192.7.

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

26 (A) The juvenile was sixteen years of age or older at the time
27 he or she committed the prior offense, and

28 (B) The prior offense is

29 (i) listed in subdivision (b) of Section 707 of the Welfare and
30 Institutions Code, or

31 (ii) listed in this subdivision as a felony, and

32 (C) The juvenile was found to be a fit and proper subject to be
33 dealt with under the juvenile court law, and

34 (D) The juvenile was adjudged a ward of the juvenile court
35 within the meaning of Section 602 of the Welfare and Institutions
36 Code because the person committed an offense listed in
37 subdivision (b) of Section 707 of the Welfare and Institutions
38 Code.

39 (c) For purposes of this section, and in addition to any other
40 enhancements or punishment provisions which may apply, the

1 following shall apply where a defendant has a prior felony
2 conviction:

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

7 (2) (A) *Except as provided in subparagraph (C), if a*
8 *defendant has two or more prior felony convictions, as defined in*
9 *paragraph (1) of subdivision (b), that have been pled and proved,*
10 *the term for the current felony conviction shall be an*
11 *indeterminate term of life imprisonment with a minimum term of*
12 *the indeterminate sentence calculated as the greater of*

13 (i) *three times the term otherwise provided as punishment for*
14 *each current felony conviction subsequent to the two or more*
15 *prior felony convictions, or*

16 (ii) *twenty-five years or*

17 (iii) *the term determined by the court pursuant to Section 1170*
18 *for the underlying conviction, including any enhancement*
19 *applicable under Chapter 4.5 (commencing with Section 1170) of*
20 *Title 7 of Part 2, or any period prescribed by Section 190 or*
21 *3046.*

22 (B) *The indeterminate term described in subparagraph (A) of*
23 *paragraph (2) of this subdivision shall be served consecutive to*
24 *any other term of imprisonment for which a consecutive term*
25 *may be imposed by law. Any other term imposed subsequent to*
26 *any indeterminate term described in subparagraph (A) of*
27 *paragraph (2) of this subdivision shall not be merged therein but*
28 *shall commence at the time the person would otherwise have*
29 *been released from prison.*

30 (C) *If a defendant has two or more prior felony convictions as*
31 *defined in subdivision (b) that have been pled and proved, and*
32 *the current offense is not a felony described in paragraph (1) of*
33 *subdivision (b) of this section, the defendant shall be sentenced*
34 *pursuant to paragraph (1) of subdivision (c) of this section,*
35 *unless the prosecution pleads and proves any of the following*
36 *facts:*

37 (i) *The current offense is a controlled substance charge, in*
38 *which an allegation under Section 11370.4 or 11379.8 of the*
39 *Health and Safety Code was admitted or found true.*

1 (ii) *The current offense is a felony sex offense, as defined in*
2 *subdivision (d) of Section 261.5, Section 262, or in subparagraph*
3 *(A) of paragraph (2) of subdivision (a) of Section 290, except*
4 *Sections 266, 285, paragraph (1) of subdivision (b), paragraph*
5 *(e) of Section 286, or paragraph (1) of subdivision (b) of Section*
6 *288a.*

7 (iii) *The defendant possessed a firearm or, during the*
8 *commission of the current offense, was armed with a firearm or*
9 *deadly weapon.*

10 (d) (1) Notwithstanding any other provision of law, this
11 section shall be applied in every case in which a defendant has a
12 prior felony conviction as defined in this section. The
13 prosecuting attorney shall plead and prove each prior felony
14 conviction except as provided in paragraph (2).

15 (2) The prosecuting attorney may move to dismiss or strike a
16 prior felony conviction allegation in the furtherance of justice
17 pursuant to Section 1385, or if there is insufficient evidence to
18 prove the prior conviction. If upon the satisfaction of the court
19 that there is insufficient evidence to prove the prior felony
20 conviction, the court may dismiss or strike the allegation.

21 (e) Prior felony convictions shall not be used in plea
22 bargaining, as defined in subdivision (b) of Section 1192.7. The
23 prosecution shall plead and prove all known prior felony
24 convictions and shall not enter into any agreement to strike or
25 seek the dismissal of any prior felony conviction allegation
26 except as provided in paragraph (2) of subdivision (d).

27 *SEC. 4. No reimbursement is required by this act pursuant to*
28 *Section 6 of Article XIII B of the California Constitution because*
29 *the only costs that may be incurred by a local agency or school*
30 *district will be incurred because this act creates a new crime or*
31 *infraction, eliminates a crime or infraction, or changes the*
32 *penalty for a crime or infraction, within the meaning of Section*
33 *17556 of the Government Code, or changes the definition of a*
34 *crime within the meaning of Section 6 of Article XIII B of the*
35 *California Constitution.*

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**All matter omitted in this version of the bill
appears in the bill as introduced in
Assembly, December 6, 2004 (JR11)**

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