

**ASSEMBLY BILL**

**No. 426**

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**Introduced by Assembly Member Galgiani**

February 16, 2007

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An act to amend Sections 667.5 and 1192.7 of the Penal Code, relating to felonies.

LEGISLATIVE COUNSEL'S DIGEST

AB 426, as introduced, Galgiani. Felonies: serious and violent.

Existing law, as amended by Proposition 83 of the November 7, 2006, statewide general election, classifies listed felonies as "violent felonies." Existing law, as amended by Proposition 21, of the March 7, 2000, statewide election, also classifies listed felonies as "serious felonies."

This bill would declare legislative intent to clarify which offenses are serious and violent and would make technical, nonsubstantive changes to existing law.

Vote: majority. 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 667.5 of the Penal Code is amended to
- 2 read:
- 3 667.5. Enhancement of prison terms for new offenses because
- 4 of prior prison terms shall be imposed as follows:
- 5 (a) Where one of the new offenses is one of the violent felonies
- 6 specified in subdivision (c), in addition to and consecutive to any
- 7 other prison terms therefor, the court shall impose a three-year
- 8 term for each prior separate prison term served by the defendant

1 where the prior offense was one of the violent felonies specified  
2 in subdivision (c). However, no additional term shall be imposed  
3 under this subdivision for any prison term served prior to a period  
4 of 10 years in which the defendant remained free of both prison  
5 custody and the commission of an offense ~~which~~ *that* results in a  
6 felony conviction.

7 (b) Except where subdivision (a) applies, where the new offense  
8 is any felony for which a prison sentence is imposed, in addition  
9 and consecutive to any other prison terms therefor, the court shall  
10 impose a one-year term for each prior separate prison term served  
11 for any felony; provided that no additional term shall be imposed  
12 under this subdivision for any prison term served prior to a period  
13 of five years in which the defendant remained free of both prison  
14 custody and the commission of an offense which results in a felony  
15 conviction.

16 (c) For the purpose of this section, “violent felony” shall mean  
17 any of the following:

18 (1) Murder or voluntary manslaughter.

19 (2) Mayhem.

20 (3) Rape as defined in paragraph (2) or (6) of subdivision (a)  
21 of Section 261 or paragraph (1) or (4) of subdivision (a) of Section  
22 262.

23 (4) Sodomy as defined in subdivision (c) or (d) of Section 286.

24 (5) Oral copulation as defined in subdivision (c) or (d) of Section  
25 288a.

26 (6) Lewd or lascivious act as defined in subdivision (a) or (b)  
27 of Section 288.

28 (7) Any felony punishable by death or imprisonment in the state  
29 prison for life.

30 (8) Any felony in which the defendant inflicts great bodily injury  
31 on any person other than an accomplice which has been charged  
32 and proved as provided for in Section 12022.7, 12022.8, or 12022.9  
33 on or after July 1, 1977, or as specified prior to July 1, 1977, in  
34 Sections 213, 264, and 461, or any felony in which the defendant  
35 uses a firearm which use has been charged and proved as provided  
36 in subdivision (a) of Section 12022.3, or Section 12022.5 or  
37 12022.55.

38 (9) Any robbery.

39 (10) Arson, in violation of subdivision (a) or (b) of Section 451.

- 1 (11) Sexual penetration as defined in subdivision (a) or (j) of  
2 Section 289.
- 3 (12) Attempted murder.
- 4 (13) A violation of Section 12308, 12309, or 12310.
- 5 (14) Kidnapping.
- 6 (15) Assault with the intent to commit a specified felony, in  
7 violation of Section 220.
- 8 (16) Continuous sexual abuse of a child, in violation of Section  
9 288.5.
- 10 (17) Carjacking, as defined in subdivision (a) of Section 215.
- 11 (18) Rape, spousal rape, or sexual penetration, in concert, in  
12 violation of Section 264.1.
- 13 (19) Extortion, as defined in Section 518, which would constitute  
14 a felony violation of Section 186.22 of the Penal Code.
- 15 (20) Threats to victims or witnesses, as defined in Section 136.1,  
16 which would constitute a felony violation of Section 186.22 of the  
17 Penal Code.
- 18 (21) Any burglary of the first degree, as defined in subdivision  
19 (a) of Section 460, wherein it is charged and proved that another  
20 person, other than an accomplice, was present in the residence  
21 during the commission of the burglary.
- 22 (22) Any violation of Section 12022.53.
- 23 (23) A violation of subdivision (b) or (c) of Section 11418. The  
24 Legislature finds and declares that these specified crimes merit  
25 special consideration when imposing a sentence to display society's  
26 condemnation for these extraordinary crimes of violence against  
27 the person.
- 28 (d) For the purposes of this section, the defendant shall be  
29 deemed to remain in prison custody for an offense until the official  
30 discharge from custody or until release on parole, whichever first  
31 occurs, including any time during which the defendant remains  
32 subject to reimprisonment for escape from custody or is  
33 reimprisoned on revocation of parole. The additional penalties  
34 provided for prior prison terms shall not be imposed unless they  
35 are charged and admitted or found true in the action for the new  
36 offense.
- 37 (e) The additional penalties provided for prior prison terms shall  
38 not be imposed for any felony for which the defendant did not  
39 serve a prior separate term in state prison.

1 (f) A prior conviction of a felony shall include a conviction in  
2 another jurisdiction for an offense which, if committed in  
3 California, is punishable by imprisonment in the state prison if the  
4 defendant served one year or more in prison for the offense in the  
5 other jurisdiction. A prior conviction of a particular felony shall  
6 include a conviction in another jurisdiction for an offense which  
7 includes all of the elements of the particular felony as defined  
8 under California law if the defendant served one year or more in  
9 prison for the offense in the other jurisdiction.

10 (g) A prior separate prison term for the purposes of this section  
11 shall mean a continuous completed period of prison incarceration  
12 imposed for the particular offense alone or in combination with  
13 concurrent or consecutive sentences for other crimes, including  
14 any reimprisonment on revocation of parole which is not  
15 accompanied by a new commitment to prison, and including any  
16 reimprisonment after an escape from incarceration.

17 (h) Serving a prison term includes any confinement time in any  
18 state prison or federal penal institution as punishment for  
19 commission of an offense, including confinement in a hospital or  
20 other institution or facility credited as service of prison time in the  
21 jurisdiction of the confinement.

22 (i) For the purposes of this section, a commitment to the State  
23 Department of Mental Health as a mentally disordered sex offender  
24 following a conviction of a felony, which commitment exceeds  
25 one year in duration, shall be deemed a prior prison term.

26 (j) For the purposes of this section, when a person subject to  
27 the custody, control, and discipline of the Director of Corrections  
28 is incarcerated at a facility operated by the Department of the Youth  
29 Authority, that incarceration shall be deemed to be a term served  
30 in state prison.

31 (k) Notwithstanding subdivisions (d) and (g) or any other  
32 provision of law, where one of the new offenses is committed  
33 while the defendant is temporarily removed from prison pursuant  
34 to Section 2690 or while the defendant is transferred to a  
35 community facility pursuant to Section 3416, 6253, or 6263, or  
36 while the defendant is on furlough pursuant to Section 6254, the  
37 defendant shall be subject to the full enhancements provided for  
38 in this section.

1 This subdivision shall not apply when a full, separate, and  
2 consecutive term is imposed pursuant to any other provision of  
3 law.

4 SEC. 2. Section 1192.7 of the Penal Code is amended to read:

5 1192.7. (a) (1) It is the intent of the Legislature that district  
6 attorneys prosecute violent sex crimes under statutes that provide  
7 sentencing under a “one strike,” “~~three strikes~~ *strikes*,” or habitual  
8 sex offender statute instead of engaging in plea bargaining over  
9 those offenses.

10 (2) Plea bargaining in any case in which the indictment or  
11 information charges any serious felony, any felony in which it is  
12 alleged that a firearm was personally used by the defendant, or  
13 any offense of driving while under the influence of alcohol, drugs,  
14 narcotics, or any other intoxicating substance, or any combination  
15 thereof, is prohibited, unless there is insufficient evidence to prove  
16 the people’s case, or testimony of a material witness cannot be  
17 obtained, or a reduction or dismissal would not result in a  
18 substantial change in sentence.

19 (3) If the indictment or information charges the defendant with  
20 a violent sex crime, as listed in subdivision (c) of Section 667.61,  
21 that could be prosecuted under Sections 269, 288.7, subdivisions  
22 (b) through (i) of Section 667, Section 667.61, or 667.71, plea  
23 bargaining is prohibited unless there is insufficient evidence to  
24 prove the people’s case, or testimony of a material witness cannot  
25 be obtained, or a reduction or dismissal would not result in a  
26 substantial change in sentence. At the time of presenting the  
27 agreement to the court, the district attorney shall state on the record  
28 why a sentence under one of those sections was not sought.

29 (b) As used in this section “plea bargaining” means any  
30 bargaining, negotiation, or discussion between a criminal  
31 defendant, or his or her counsel, and a prosecuting attorney or  
32 judge, whereby the defendant agrees to plead guilty or nolo  
33 contendere, in exchange for any promises, commitments,  
34 concessions, assurances, or consideration by the prosecuting  
35 attorney or judge relating to any charge against the defendant or  
36 to the sentencing of the defendant.

37 (c) As used in this section, “serious felony” means any of the  
38 following:

- 39 (1) Murder or voluntary manslaughter; (2) mayhem; (3) rape;  
40 (4) sodomy by force, violence, duress, menace, threat of great

1   bodily injury, or fear of immediate and unlawful bodily injury on  
2   the victim or another person; (5) oral copulation by force, violence,  
3   duress, menace, threat of great bodily injury, or fear of immediate  
4   and unlawful bodily injury on the victim or another person; (6)  
5   lewd or lascivious act on a child under 14 years of age; (7) any  
6   felony punishable by death or imprisonment in the state prison for  
7   life; (8) any felony in which the defendant personally inflicts great  
8   bodily injury on any person, other than an accomplice, or any  
9   felony in which the defendant personally uses a firearm; (9)  
10  attempted murder; (10) assault with intent to commit rape or  
11  robbery; (11) assault with a deadly weapon or instrument on a  
12  peace officer; (12) assault by a life prisoner on a noninmate; (13)  
13  assault with a deadly weapon by an inmate; (14) arson; (15)  
14  exploding a destructive device or any explosive with intent to  
15  injure; (16) exploding a destructive device or any explosive causing  
16  bodily injury, great bodily injury, or mayhem; (17) exploding a  
17  destructive device or any explosive with intent to murder; (18) any  
18  burglary of the first degree; (19) robbery or bank robbery; (20)  
19  kidnapping; (21) holding of a hostage by a person confined in a  
20  state prison; (22) attempt to commit a felony punishable by death  
21  or imprisonment in the state prison for life; (23) any felony in  
22  which the defendant personally used a dangerous or deadly weapon;  
23  (24) selling, furnishing, administering, giving, or offering to sell,  
24  furnish, administer, or give to a minor any heroin, cocaine,  
25  phencyclidine (PCP), or any methamphetamine-related drug, as  
26  described in paragraph (2) of subdivision (d) of Section 11055 of  
27  the Health and Safety Code, or any of the precursors of  
28  methamphetamines, as described in subparagraph (A) of paragraph  
29  (1) of subdivision (f) of Section 11055 or subdivision (a) of Section  
30  11100 of the Health and Safety Code; (25) any violation of  
31  subdivision (a) of Section 289 where the act is accomplished  
32  against the victim's will by force, violence, duress, menace, or  
33  fear of immediate and unlawful bodily injury on the victim or  
34  another person; (26) grand theft involving a firearm; (27)  
35  carjacking; (28) any felony offense, which would also constitute  
36  a felony violation of Section 186.22; (29) assault with the intent  
37  to commit mayhem, rape, sodomy, or oral copulation, in violation  
38  of Section 220; (30) throwing acid or flammable substances, in  
39  violation of Section 244; (31) assault with a deadly weapon,  
40  firearm, machinegun, assault weapon, or semiautomatic firearm

1 or assault on a peace officer or firefighter, in violation of Section  
2 245; (32) assault with a deadly weapon against a public transit  
3 employee, custodial officer, or school employee, in violation of  
4 Sections 245.2, 245.3, or 245.5; (33) discharge of a firearm at an  
5 inhabited dwelling, vehicle, or aircraft, in violation of Section 246;  
6 (34) commission of rape or sexual penetration in concert with  
7 another person, in violation of Section 264.1; (35) continuous  
8 sexual abuse of a child, in violation of Section 288.5; (36) shooting  
9 from a vehicle, in violation of subdivision (c) or (d) of Section  
10 12034; (37) intimidation of victims or witnesses, in violation of  
11 Section 136.1; (38) criminal threats, in violation of Section 422;  
12 (39) any attempt to commit a crime listed in this subdivision other  
13 than an assault; (40) any violation of Section 12022.53; (41) a  
14 violation of subdivision (b) or (c) of Section 11418; and (42) any  
15 conspiracy to commit an offense described in this subdivision.

16 (d) As used in this section, “bank robbery” means to take or  
17 attempt to take, by force or violence, or by intimidation from the  
18 person or presence of another any property or money or any other  
19 thing of value belonging to, or in the care, custody, control,  
20 management, or possession of, any bank, credit union, or any  
21 savings and loan association.

22 As used in this subdivision, the following terms have the  
23 following meanings:

24 (1) “Bank” means any member of the Federal Reserve System,  
25 and any bank, banking association, trust company, savings bank,  
26 or other banking institution organized or operating under the laws  
27 of the United States, and any bank the deposits of which are insured  
28 by the Federal Deposit Insurance Corporation.

29 (2) “Savings and loan association” means any federal savings  
30 and loan association and any “insured institution” as defined in  
31 Section 401 of the National Housing Act, as amended, and any  
32 federal credit union as defined in Section 2 of the Federal Credit  
33 Union Act.

34 (3) “Credit union” means any federal credit union and any  
35 state-chartered credit union the accounts of which are insured by  
36 the Administrator of the National Credit Union administration.

37 (e) The provisions of this section shall not be amended by the  
38 Legislature except by statute passed in each house by rollcall vote  
39 entered in the journal, two-thirds of the membership concurring,

1 or by a statute that becomes effective only when approved by the  
2 electors.

3 SEC. 3. It is the intent of the Legislature to clarify which  
4 offenses are violent or serious offenses and which offenses are,  
5 therefore, nonviolent or nonserious offenses.

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