

AMENDED IN ASSEMBLY APRIL 10, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**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~~ 667.1, 667.5, 1170.125, and 1192.7 of the Penal Code, relating to felonies.

LEGISLATIVE COUNSEL'S DIGEST

AB 426, as amended, 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." *Under existing law, a person is subject to enhanced sentences if convicted of serious or violent felony, as specified.*

~~This bill would declare legislative intent to clarify which offenses are serious and violent and would make technical, nonsubstantive changes to existing law add to the list of violent felonies and would make conforming changes to related technical provisions.~~

*Because this bill would increase the duties of local officials, it would impose a state-mandated local program.*

*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~~<sup>2/3</sup>. Appropriation: no. Fiscal committee: ~~no~~<sup>yes</sup>.  
State-mandated local program: ~~no~~<sup>yes</sup>.

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

1     SECTION 1. Section 667.1 of the Penal Code is amended to  
2 read:

3     667.1. Notwithstanding subdivision (h) of Section 667, for all  
4 offenses committed on or after the effective date of this act, all  
5 references to existing statutes in subdivisions (c) to (g), inclusive,  
6 of Section 667, are to those statutes as they existed on the effective  
7 date of this act, including amendments made to those statutes by  
8 ~~the any act enacted prior to or during the 2005-06~~ 2007-08  
9 Regular Session that amended this section.

10    ~~SECTION 1.~~

11    SEC. 2. Section 667.5 of the Penal Code is amended to read:

12    667.5. Enhancement of prison terms for new offenses because  
13 of prior prison terms shall be imposed as follows:

14    (a) Where one of the new offenses is one of the violent felonies  
15 specified in subdivision (c), in addition and consecutive to any  
16 other prison terms therefor, the court shall impose a three-year  
17 term for each prior separate prison term served by the defendant  
18 where the prior offense was one of the violent felonies specified  
19 in subdivision (c). However, no additional term shall be imposed  
20 under this subdivision for any prison term served prior to a period  
21 of 10 years in which the defendant remained free of both prison  
22 custody and the commission of an offense that results in a felony  
23 conviction.

24    (b) Except where subdivision (a) applies, where the new offense  
25 is any felony for which a prison sentence is imposed, in addition  
26 and consecutive to any other prison terms therefor, the court shall  
27 impose a one-year term for each prior separate prison term served  
28 for any felony; provided that no additional term shall be imposed  
29 under this subdivision for any prison term served prior to a period  
30 of five years in which the defendant remained free of both prison  
31 custody and the commission of an offense which results in a felony  
32 conviction.

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

35    (1) Murder or voluntary manslaughter.

- 1 (2) Mayhem.
- 2 (3) Rape as defined in paragraph (2) or (6) of subdivision (a)
- 3 of Section 261 or paragraph (1) or (4) of subdivision (a) of Section
- 4 262.
- 5 (4) Sodomy as defined in subdivision (c) or (d) of Section 286.
- 6 (5) Oral copulation as defined in subdivision (c) or (d) of Section
- 7 288a.
- 8 (6) Lewd or lascivious act as defined in subdivision (a) or (b)
- 9 of Section 288.
- 10 (7) Any felony punishable by death or imprisonment in the state
- 11 prison for life.
- 12 (8) Any felony in which the defendant inflicts great bodily injury
- 13 on any person other than an accomplice which has been charged
- 14 and proved as provided for in Section 12022.7, 12022.8, or 12022.9
- 15 on or after July 1, 1977, or as specified prior to July 1, 1977, in
- 16 Sections 213, 264, and 461, or any felony in which the defendant
- 17 uses a firearm which use has been charged and proved as provided
- 18 in subdivision (a) of Section 12022.3, or Section 12022.5 or
- 19 12022.55.
- 20 (9) Any robbery.
- 21 (10) Arson, in violation of subdivision (a) or (b) of Section 451.
- 22 (11) Sexual penetration as defined in subdivision (a) or (j) of
- 23 Section 289.
- 24 (12) Attempted murder.
- 25 (13) A violation of Section 12308, 12309, or 12310.
- 26 (14) Kidnapping.
- 27 (15) Assault with the intent to commit a specified felony, in
- 28 violation of Section 220.
- 29 (16) Continuous sexual abuse of a child, in violation of Section
- 30 288.5.
- 31 (17) Carjacking, as defined in subdivision (a) of Section 215.
- 32 (18) Rape, spousal rape, or sexual penetration, in concert, in
- 33 violation of Section 264.1.
- 34 (19) Extortion, as defined in Section 518, which would constitute
- 35 a felony violation of Section 186.22 of the Penal Code.
- 36 (20) Threats to victims or witnesses, as defined in Section 136.1,
- 37 which would constitute a felony violation of Section 186.22 of the
- 38 Penal Code.
- 39 (21) Any burglary of the first degree, as defined in subdivision
- 40 (a) of Section 460, wherein it is charged and proved that another

- 1 person, other than an accomplice, was present in the residence  
 2 during the commission of the burglary.  
 3 (22) Any violation of Section 12022.53.  
 4 (23) A violation of subdivision (b) or (c) of Section 11418. The  
 5 Legislature finds and declares that these specified crimes merit  
 6 special consideration when imposing a sentence to display society’s  
 7 condemnation for these extraordinary crimes of violence against  
 8 the person.  
 9 (24) *Human trafficking, in violation of Section 236.1.*  
 10 (25) *Felony child abuse likely to produce great bodily injury*  
 11 *or death, as defined in subdivision (a) of Section 273a.*  
 12 (26) *Any felony violation of Section 266.*  
 13 (27) *Pimping a minor, as defined in subdivision (b) of Section*  
 14 *266h.*  
 15 (28) *Pandering a minor, as defined in subdivision (b) of Section*  
 16 *266i.*  
 17 (29) *Any violation of Section 266j.*  
 18 (30) *Any violation of Section 267.*  
 19 (31) *Any felony violation of Section 311.1.*  
 20 (32) *Any felony violation of subdivision (b), (c), or (d) of Section*  
 21 *311.2.*  
 22 (33) *Any felony violation of Section 311.3.*  
 23 (34) *Any felony violation of Section 311.4.*  
 24 (35) *Any felony violation of Section 646.9.*  
 25 (36) *Any felony violation of subdivision (b) of Section 368.*  
 26 (37) *Solicitation of murder, in violation of subdivision (b) of*  
 27 *Section 653f.*  
 28 (38) *Any felony violation of Section 422.75.*  
 29 (d) For the purposes of this section, the defendant shall be  
 30 deemed to remain in prison custody for an offense until the official  
 31 discharge from custody or until release on parole, whichever first  
 32 occurs, including any time during which the defendant remains  
 33 subject to reimprisonment for escape from custody or is  
 34 reimprisoned on revocation of parole. The additional penalties  
 35 provided for prior prison terms shall not be imposed unless they  
 36 are charged and admitted or found true in the action for the new  
 37 offense.  
 38 (e) The additional penalties provided for prior prison terms shall  
 39 not be imposed for any felony for which the defendant did not  
 40 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. 3. Section 1170.125 of the Penal Code is amended to*  
5 *read:*

6 1170.125. Notwithstanding Section 2 of Proposition 184, as  
7 adopted at the November 8, 1994, general election, for all offenses  
8 committed on or after the effective date of this act, all references  
9 to existing statutes in Section 1170.12 are to those statutes as they  
10 existed on the effective date of this act, including amendments  
11 made to those statutes by ~~the~~ any act enacted *prior to or* during  
12 ~~the 2005–06 2007–08~~ Regular Session that amended this section.

13 ~~SEC. 2.~~

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

15 1192.7. (a) (1) It is the intent of the Legislature that district  
16 attorneys prosecute violent sex crimes under statutes that provide  
17 sentencing under a “one strike,” “three strikes,” or habitual sex  
18 offender statute instead of engaging in plea bargaining over those  
19 offenses.

20 (2) Plea bargaining in any case in which the indictment or  
21 information charges any serious felony, any felony in which it is  
22 alleged that a firearm was personally used by the defendant, or  
23 any offense of driving while under the influence of alcohol, drugs,  
24 narcotics, or any other intoxicating substance, or any combination  
25 thereof, is prohibited, unless there is insufficient evidence to prove  
26 the people’s case, or testimony of a material witness cannot be  
27 obtained, or a reduction or dismissal would not result in a  
28 substantial change in sentence.

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

39 (b) As used in this section “plea bargaining” means any  
40 bargaining, negotiation, or discussion between a criminal

1 defendant, or his or her counsel, and a prosecuting attorney or  
2 judge, whereby the defendant agrees to plead guilty or nolo  
3 contendere, in exchange for any promises, commitments,  
4 concessions, assurances, or consideration by the prosecuting  
5 attorney or judge relating to any charge against the defendant or  
6 to the sentencing of the defendant.

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

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

1 subdivision (a) of Section 289 where the act is accomplished  
2 against the victim's will by force, violence, duress, menace, or  
3 fear of immediate and unlawful bodily injury on the victim or  
4 another person; (26) grand theft involving a firearm; (27)  
5 carjacking; (28) any felony offense, which would also constitute  
6 a felony violation of Section 186.22; (29) assault with the intent  
7 to commit mayhem, rape, sodomy, or oral copulation, in violation  
8 of Section 220; (30) throwing acid or flammable substances, in  
9 violation of Section 244; (31) assault with a deadly weapon,  
10 firearm, machinegun, assault weapon, or semiautomatic firearm  
11 or assault on a peace officer or firefighter, in violation of Section  
12 245; (32) assault with a deadly weapon against a public transit  
13 employee, custodial officer, or school employee, in violation of  
14 Sections 245.2, 245.3, or 245.5; (33) discharge of a firearm at an  
15 inhabited dwelling, vehicle, or aircraft, in violation of Section 246;  
16 (34) commission of rape or sexual penetration in concert with  
17 another person, in violation of Section 264.1; (35) continuous  
18 sexual abuse of a child, in violation of Section 288.5; (36) shooting  
19 from a vehicle, in violation of subdivision (c) or (d) of Section  
20 12034; (37) intimidation of victims or witnesses, in violation of  
21 Section 136.1; (38) criminal threats, in violation of Section 422;  
22 (39) any attempt to commit a crime listed in this subdivision other  
23 than an assault; (40) any violation of Section 12022.53; (41) a  
24 violation of subdivision (b) or (c) of Section 11418; and (42) any  
25 conspiracy to commit an offense described in this subdivision.

26 (d) As used in this section, "bank robbery" means to take or  
27 attempt to take, by force or violence, or by intimidation from the  
28 person or presence of another any property or money or any other  
29 thing of value belonging to, or in the care, custody, control,  
30 management, or possession of, any bank, credit union, or any  
31 savings and loan association.

32 As used in this subdivision, the following terms have the  
33 following meanings:

34 (1) "Bank" means any member of the Federal Reserve System,  
35 and any bank, banking association, trust company, savings bank,  
36 or other banking institution organized or operating under the laws  
37 of the United States, and any bank the deposits of which are insured  
38 by the Federal Deposit Insurance Corporation.

39 (2) "Savings and loan association" means any federal savings  
40 and loan association and any "insured institution" as defined in

1 Section 401 of the National Housing Act, as amended, and any  
2 federal credit union as defined in Section 2 of the Federal Credit  
3 Union Act.

4 (3) "Credit union" means any federal credit union and any  
5 state-chartered credit union the accounts of which are insured by  
6 the Administrator of the National Credit Union administration.

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

12 ~~SEC. 3. It is the intent of the Legislature to clarify which~~  
13 ~~offenses are violent or serious offenses and which offenses are,~~  
14 ~~therefore, nonviolent or nonserious offenses.~~

15 *SEC. 5. No reimbursement is required by this act pursuant to*  
16 *Section 6 of Article XIII B of the California Constitution because*  
17 *the only costs that may be incurred by a local agency or school*  
18 *district will be incurred because this act creates a new crime or*  
19 *infraction, eliminates a crime or infraction, or changes the penalty*  
20 *for a crime or infraction, within the meaning of Section 17556 of*  
21 *the Government Code, or changes the definition of a crime within*  
22 *the meaning of Section 6 of Article XIII B of the California*  
23 *Constitution.*