

AMENDED IN ASSEMBLY APRIL 26, 2007

AMENDED IN ASSEMBLY APRIL 10, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 426

Introduced by Assembly Member Galgiani

February 16, 2007

An act to amend Sections 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 add *solicitation of murder* to the list of violent felonies, *would add human trafficking and solicitation of murder to the list of serious 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: 2/3. 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 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 any act enacted prior to or during the 2007–08 Regular Session
9 that amended this section.

10 SEC. 2. Section 667.5 of the Penal Code is amended to read:
11 667.5. Enhancement of prison terms for new offenses because
12 of prior prison terms shall be imposed as follows:
13 (a) Where one of the new offenses is one of the violent felonies
14 specified in subdivision (c), in addition and consecutive to any
15 other prison terms therefor, the court shall impose a three-year
16 term for each prior separate prison term served by the defendant
17 where the prior offense was one of the violent felonies specified
18 in subdivision (c). However, no additional term shall be imposed
19 under this subdivision for any prison term served prior to a period
20 of 10 years in which the defendant remained free of both prison
21 custody and the commission of an offense that results in a felony
22 conviction.

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

32 (c) For the purpose of this section, “violent felony” shall mean
33 any of the following:
34 (1) Murder or voluntary manslaughter.
35 (2) Mayhem.

- 1 (3) Rape as defined in paragraph (2) or (6) of subdivision (a)
- 2 of Section 261 or paragraph (1) or (4) of subdivision (a) of Section
- 3 262.
- 4 (4) Sodomy as defined in subdivision (c) or (d) of Section 286.
- 5 (5) Oral copulation as defined in subdivision (c) or (d) of Section
- 6 288a.
- 7 (6) Lewd or lascivious act as defined in subdivision (a) or (b)
- 8 of Section 288.
- 9 (7) Any felony punishable by death or imprisonment in the state
- 10 prison for life.
- 11 (8) Any felony in which the defendant inflicts great bodily injury
- 12 on any person other than an accomplice which has been charged
- 13 and proved as provided for in Section 12022.7, 12022.8, or 12022.9
- 14 on or after July 1, 1977, or as specified prior to July 1, 1977, in
- 15 Sections 213, 264, and 461, or any felony in which the defendant
- 16 uses a firearm which use has been charged and proved as provided
- 17 in subdivision (a) of Section 12022.3, or Section 12022.5 or
- 18 12022.55.
- 19 (9) Any robbery.
- 20 (10) Arson, in violation of subdivision (a) or (b) of Section 451.
- 21 (11) Sexual penetration as defined in subdivision (a) or (j) of
- 22 Section 289.
- 23 (12) Attempted murder.
- 24 (13) A violation of Section 12308, 12309, or 12310.
- 25 (14) Kidnapping.
- 26 (15) Assault with the intent to commit a specified felony, in
- 27 violation of Section 220.
- 28 (16) Continuous sexual abuse of a child, in violation of Section
- 29 288.5.
- 30 (17) Carjacking, as defined in subdivision (a) of Section 215.
- 31 (18) Rape, spousal rape, or sexual penetration, in concert, in
- 32 violation of Section 264.1.
- 33 (19) Extortion, as defined in Section 518, which would constitute
- 34 a felony violation of Section 186.22 of the Penal Code.
- 35 (20) Threats to victims or witnesses, as defined in Section 136.1,
- 36 which would constitute a felony violation of Section 186.22 of the
- 37 Penal Code.
- 38 (21) Any burglary of the first degree, as defined in subdivision
- 39 (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 or~~
 11 ~~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~~
 21 ~~Section 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)~~
 27 (24) Solicitation of murder, in violation of subdivision (b) of
 28 Section 653f.
 29 ~~(38) Any felony violation of Section 422.75.~~
 30 (d) For the purposes of this section, the defendant shall be
 31 deemed to remain in prison custody for an offense until the official
 32 discharge from custody or until release on parole, whichever first
 33 occurs, including any time during which the defendant remains
 34 subject to reimprisonment for escape from custody or is
 35 reimprisoned on revocation of parole. The additional penalties
 36 provided for prior prison terms shall not be imposed unless they
 37 are charged and admitted or found true in the action for the new
 38 offense.

1 (e) The additional penalties provided for prior prison terms shall
2 not be imposed for any felony for which the defendant did not
3 serve a prior separate term in state prison.

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

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

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

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

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

34 (k) Notwithstanding subdivisions (d) and (g) or any other
35 provision of law, where one of the new offenses is committed
36 while the defendant is temporarily removed from prison pursuant
37 to Section 2690 or while the defendant is transferred to a
38 community facility pursuant to Section 3416, 6253, or 6263, or
39 while the defendant is on furlough pursuant to Section 6254, the

1 defendant shall be subject to the full enhancements provided for
2 in this section.

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

6 SEC. 3. Section 1170.125 of the Penal Code is amended to
7 read:

8 1170.125. Notwithstanding Section 2 of Proposition 184, as
9 adopted at the November 8, 1994, general election, for all offenses
10 committed on or after the effective date of this act, all references
11 to existing statutes in Section 1170.12 are to those statutes as they
12 existed on the effective date of this act, including amendments
13 made to those statutes by any act enacted prior to or during the
14 2007–08 Regular Session that amended this section.

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

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

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

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

1 (b) As used in this section “plea bargaining” means any
2 bargaining, negotiation, or discussion between a criminal
3 defendant, or his or her counsel, and a prosecuting attorney or
4 judge, whereby the defendant agrees to plead guilty or nolo
5 contendere, in exchange for any promises, commitments,
6 concessions, assurances, or consideration by the prosecuting
7 attorney or judge relating to any charge against the defendant or
8 to the sentencing of the defendant.

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

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

1 (1) of subdivision (f) of Section 11055 or subdivision (a) of Section
2 11100 of the Health and Safety Code; (25) any violation of
3 subdivision (a) of Section 289 where the act is accomplished
4 against the victim's will by force, violence, duress, menace, or
5 fear of immediate and unlawful bodily injury on the victim or
6 another person; (26) grand theft involving a firearm; (27)
7 carjacking; (28) any felony offense, which would also constitute
8 a felony violation of Section 186.22; (29) assault with the intent
9 to commit mayhem, rape, sodomy, or oral copulation, in violation
10 of Section 220; (30) throwing acid or flammable substances, in
11 violation of Section 244; (31) assault with a deadly weapon,
12 firearm, machinegun, assault weapon, or semiautomatic firearm
13 or assault on a peace officer or firefighter, in violation of Section
14 245; (32) assault with a deadly weapon against a public transit
15 employee, custodial officer, or school employee, in violation of
16 Sections 245.2, 245.3, or 245.5; (33) discharge of a firearm at an
17 inhabited dwelling, vehicle, or aircraft, in violation of Section 246;
18 (34) commission of rape or sexual penetration in concert with
19 another person, in violation of Section 264.1; (35) continuous
20 sexual abuse of a child, in violation of Section 288.5; (36) shooting
21 from a vehicle, in violation of subdivision (c) or (d) of Section
22 12034; (37) intimidation of victims or witnesses, in violation of
23 Section 136.1; (38) criminal threats, in violation of Section 422;
24 (39) any attempt to commit a crime listed in this subdivision other
25 than an assault; (40) any violation of Section 12022.53; (41) a
26 violation of subdivision (b) or (c) of Section 11418; (42) *Human*
27 *trafficking as defined in Section 236.1*; (43) *Solicitation of murder,*
28 *in violation of subdivision (b) of Section 653f*; and ~~(42)~~ (44) any
29 conspiracy to commit an offense described in this subdivision.

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

36 As used in this subdivision, the following terms have the
37 following meanings:

38 (1) "Bank" means any member of the Federal Reserve System,
39 and any bank, banking association, trust company, savings bank,
40 or other banking institution organized or operating under the laws

1 of the United States, and any bank the deposits of which are insured
2 by the Federal Deposit Insurance Corporation.

3 (2) “Savings and loan association” means any federal savings
4 and loan association and any “insured institution” as defined in
5 Section 401 of the National Housing Act, as amended, and any
6 federal credit union as defined in Section 2 of the Federal Credit
7 Union Act.

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

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

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