

AMENDED IN SENATE MAY 17, 2012

AMENDED IN SENATE MARCH 26, 2012

AMENDED IN ASSEMBLY JANUARY 26, 2012

AMENDED IN ASSEMBLY JANUARY 4, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 327

Introduced by Assembly Members Davis and Mitchell

February 10, 2011

An act to amend Sections 667, 667.1, 1170.12, and 1170.125 of the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

AB 327, as amended, Davis. Sentencing: Three Strikes.

Existing law, contained in 2 initiative statutes, commonly known as the Three Strikes law, requires increased penalties for certain recidivist offenders in addition to any other enhancement or penalty provisions that may apply. Existing law requires that if a defendant has 2 or more prior violent or serious felony convictions, the term for the current felony conviction shall be an indeterminate term of imprisonment in the state prison for life with a minimum term to be served, as specified.

This bill would provide that a defendant who has 2 or more prior violent or serious felony convictions shall receive the enhanced indeterminate life sentence only if the defendant's current conviction is for a serious or violent felony, as defined.

The bill would provide that it would become effective only when submitted to, and approved by, the voters, and would require the Secretary of State to submit the measure to the voters at the November

4, 2014, statewide general election, *unless an initiative measure amending these provisions is approved by the voters at the November 6, 2012, statewide general election, in which case the bill would provide that the Secretary of State shall not submit the measure to the voters at the November 4, 2014, statewide general election.*

Vote: majority. Appropriation: no. Fiscal committee: yes.

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 offense
6 committed in another jurisdiction that includes all of the elements
7 of any serious felony, shall receive, in addition to the sentence
8 imposed by the court for the present offense, a five-year
9 enhancement for each such prior conviction on charges brought
10 and tried separately. The terms of the present offense and each
11 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 enhancement
17 of sentence provided in this subdivision by a statute passed by
18 majority vote of each house thereof.

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

21 (5) This subdivision shall not apply to a person convicted of
22 selling, furnishing, administering, or giving, or offering to sell,
23 furnish, administer, or give to a minor any
24 methamphetamine-related drug or any precursors of
25 methamphetamine unless the prior conviction was for a serious
26 felony described in subparagraph (24) of subdivision (c) of Section
27 1192.7.

28 (b) It is the intent of the Legislature in enacting subdivisions
29 (b) to (i), inclusive, to ensure longer prison sentences and greater

1 punishment for those who commit a felony and have been
2 previously convicted of serious and/or violent felony offenses.

3 (c) Notwithstanding any other law, if a defendant has been
4 convicted of a felony and it has been pled and proved that the
5 defendant has one or more prior serious or violent felony
6 convictions as defined in subdivision (d), the court shall adhere to
7 each of the following:

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

10 (2) Probation for the current offense shall not be granted, nor
11 shall execution or imposition of the sentence be suspended for any
12 prior offense.

13 (3) The length of time between the prior serious or violent felony
14 conviction and the current felony conviction shall not affect the
15 imposition of sentence.

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

22 (5) The total amount of credits awarded pursuant to Article 2.5
23 (commencing with Section 2930) of Chapter 7 of Title 1 of Part
24 3 shall not exceed one-fifth of the total term of imprisonment
25 imposed and shall not accrue until the defendant is physically
26 placed in the state prison.

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

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

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

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

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

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

(B) The stay of execution of sentence.

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

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

(2) A prior conviction in another jurisdiction for an offense that, if committed in California, is punishable by imprisonment in the state prison shall constitute a prior conviction of a particular serious or violent felony if the prior conviction in the other jurisdiction is for an offense that includes all of the elements of the particular violent felony as defined in subdivision (c) of Section 667.5 or serious felony as defined in subdivision (c) of Section 1192.7.

(3) A prior juvenile adjudication shall constitute a prior serious or violent felony conviction for purposes of sentence enhancement if:

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

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

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

1 (D) The juvenile was adjudged a ward of the juvenile court
2 within the meaning of Section 602 of the Welfare and Institutions
3 Code because the person committed an offense listed in subdivision
4 (b) of Section 707 of the Welfare and Institutions Code.

5 (e) For purposes of subdivisions (b) to (i), inclusive, and in
6 addition to any other enhancement or punishment provisions which
7 may apply, the following shall apply where a defendant has one
8 or more prior serious or violent felony convictions:

9 (1) If a defendant has one prior serious or violent felony
10 conviction, that has been pled and proved, the determinate term
11 or minimum term for an indeterminate term shall be twice the term
12 otherwise provided as punishment for the current felony conviction.

13 (2) (A) Except as provided in subparagraph (C), if a defendant
14 has two or more prior serious or violent felony convictions, as
15 defined in subdivision (d), that have been pled and proved, the
16 term for a current felony conviction shall be an indeterminate term
17 of life imprisonment with a minimum term of the indeterminate
18 sentence calculated as the greatest of:

19 (i) Three times the term otherwise provided as punishment for
20 each current felony conviction subsequent to the two or more prior
21 serious or violent felony convictions.

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

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

27 (B) The indeterminate term described in subparagraph (A) shall
28 be served consecutive to any other term of imprisonment for which
29 a consecutive term may be imposed by law. Any other term
30 imposed subsequent to any indeterminate term described in
31 subparagraph (A) shall not be merged therein but shall commence
32 at the time the person would otherwise have been released from
33 prison.

34 (C) If a defendant has two or more prior serious or violent felony
35 convictions, as defined in subdivision (d), that have been pled and
36 proved, and the current offense is not a serious or violent felony,
37 as defined in subdivision (d), the defendant shall be sentenced
38 pursuant to paragraph (1) of subdivision (e), unless the prosecution
39 pleads and proves any of the following:

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

4 (ii) The current offense is a felony sex offense, as defined in
5 subdivision (d) of Section 261.5 or Section 262, except for Sections
6 266 and 285, paragraph (1) of subdivision (b) and subdivision (e)
7 of Section 286, and paragraph (1) of subdivision (b) and
8 subdivision (e) of Section 288a.

9 (iii) During the commission of the current offense, the defendant
10 used a firearm, was armed with a firearm or deadly weapon, or
11 intended to cause great bodily injury to another person.

12 (iv) The defendant suffered a prior conviction, as defined in
13 subdivision (d), for any of the following serious or violent felonies:

14 (I) A sexually violent offense as defined in subdivision (b) of
15 Section 6600 of the Welfare and Institutions Code.

16 (II) Oral copulation, as defined in Section 288a, with a child
17 who is under 14 years of age, and who is more than 10 years
18 younger than the defendant; sodomy, as defined in Section 286,
19 with a child who is under 14 years of age, and who is more than
20 10 years younger than the defendant; or sexual penetration, as
21 defined in Section 289, with a child who is under 14 years of age,
22 and who is more than 10 years younger than the defendant.

23 (III) A lewd or lascivious act involving a child under 14 years
24 of age in violation of Section 288.

25 (IV) An offense described in Sections 187 to 191.5, inclusive.

26 (V) Any serious or violent felony offense punishable by life
27 imprisonment or death.

28 (f) (1) Notwithstanding any other law, subdivisions (b) to (i),
29 inclusive, shall be applied in every case in which a defendant has
30 a prior serious or violent felony conviction as defined in
31 subdivision (d). The prosecuting attorney shall plead and prove
32 each prior serious or violent felony conviction except as provided
33 in paragraph (2).

34 (2) The prosecuting attorney may move to dismiss or strike a
35 prior serious or violent felony conviction allegation in the
36 furtherance of justice pursuant to Section 1385, or if there is
37 insufficient evidence to prove the prior serious or violent
38 conviction. If upon the satisfaction of the court that there is
39 insufficient evidence to prove the prior felony conviction, the court
40 may dismiss or strike the allegation.

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

(h) All references to existing statutes in subdivisions (c) to (g), inclusive, are to statutes as they existed on November 4, 2014.

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

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

SEC. 2. Section 667.1 of the Penal Code is amended to read:
667.1. Notwithstanding subdivision (h) of Section 667, for all offenses committed on or after the effective date of this act, all references to existing statutes in subdivisions (c) to (g), inclusive, of Section 667, are to those statutes as they existed on November 4, 2014.

SEC. 3. Section 1170.12 of the Penal Code is amended to read:
1170.12. (a) Notwithstanding any other provision of law, 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 in subdivision (b), the court shall adhere to each of the following:

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

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

(3) The length of time between the prior serious or violent felony conviction and the current felony conviction shall not affect the imposition of sentence.

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

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

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

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

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

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

(1) Any offense defined in subdivision (c) of Section 667.5 as a violent felony or any offense defined in subdivision (c) of Section 1192.7 as a serious felony in this state. The determination of whether a prior conviction is a prior serious or violent felony conviction for purposes of this section shall be made upon the date of that prior conviction and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor. None of the following dispositions shall affect the determination that a prior conviction is a prior serious or violent felony for purposes of this section:

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

(B) The stay of execution of sentence.

1 (C) The commitment to the State Department of Mental Health
2 as a mentally disordered sex offender following a conviction of a
3 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 prior conviction in another jurisdiction for an offense that,
8 if committed in California, is punishable by imprisonment in the
9 state prison shall constitute a prior conviction of a particular serious
10 or violent felony if the prior conviction in the other jurisdiction
11 for an offense that includes all of the elements of the particular
12 violent felony as defined in subdivision (c) of Section 667.5 or
13 serious felony as defined in subdivision (c) of Section 1192.7.

14 (3) A prior juvenile adjudication shall constitute a prior serious
15 or violent felony conviction for purposes of sentence enhancement
16 if both of the following apply:

17 (A) The juvenile was 16 years of age or older at the time he or
18 she committed the prior offense, and the prior offense is listed
19 either in subdivision (b) of Section 707 of the Welfare and
20 Institutions Code, in this subdivision as a serious or violent felony.

21 (B) The juvenile was found to be a fit and proper subject to be
22 dealt with under the juvenile court law, and he or she was adjudged
23 a ward of the juvenile court within the meaning of Section 602 of
24 the Welfare and Institutions Code because he or she committed
25 an offense listed in subdivision (b) of Section 707 of the Welfare
26 and Institutions Code.

27 (c) For purposes of this section, and in addition to any other
28 enhancements or punishment provisions which may apply, the
29 following shall apply where a defendant has one or more prior
30 serious or violent felony convictions:

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

36 (2) (A) Except as provided in subparagraph (C), if a defendant
37 has two or more prior serious or violent felony convictions, as
38 defined in subdivision (b), that have been pled and proved, the
39 term for the current felony conviction shall be an indeterminate

1 term of life imprisonment with a minimum term of the
2 indeterminate sentence calculated as the greatest of:

3 (i) Three times the term otherwise provided as punishment for
4 each current felony conviction subsequent to the two or more prior
5 serious or violent felony convictions.

6 (ii) Twenty-five years.

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

11 (B) The indeterminate term described in subparagraph (A) of
12 paragraph (2) of this subdivision shall be served consecutive to
13 any other term of imprisonment for which a consecutive term may
14 be imposed by law. Any other term imposed subsequent to any
15 indeterminate term described in subparagraph (A) of paragraph
16 (2) of this subdivision shall not be merged therein but shall
17 commence at the time the person would otherwise have been
18 released from prison.

19 (C) If a defendant has two or more prior serious or violent felony
20 convictions, as defined in subdivision (b), that have been pled and
21 proved, and the current offense is not a serious or violent felony,
22 as described in paragraph (1) of subdivision (b), the defendant
23 shall be sentenced pursuant to paragraph (1) of subdivision (c),
24 unless the prosecution pleads and proves any of the following:

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

28 (ii) The current offense is a felony sex offense, as defined in
29 subdivision (d) of Section 261.5 or Section 262, except for Sections
30 266 and 285, paragraph (1) of subdivision (b) and subdivision (e)
31 of Section 286, and paragraph (1) of subdivision (b) and
32 subdivision (e) of Section 288a.

33 (iii) During the commission of the current offense, the defendant
34 used a firearm, was armed with a firearm or deadly weapon, or
35 intended to cause great bodily injury to another person.

36 (iv) The defendant suffered a prior conviction for any of the
37 following serious or violent felonies:

38 (I) A sexually violent offense, as defined in subdivision (b) of
39 Section 6600 of the Welfare and Institutions Code.

1 (II) Oral copulation, as defined in Section 288a, with a child
2 who is under 14 years of age, and who is more than 10 years
3 younger than the defendant; sodomy, as defined in Section 286,
4 with a child who is under 14 years of age, and who is more than
5 10 years younger than the defendant; or sexual penetration, as
6 defined in Section 289, with a child who is under 14 years of age,
7 and who is more than 10 years younger than the defendant.

8 (III) A lewd or lascivious act involving a child under 14 years
9 of age in violation of Section 288.

10 (IV) An offense described in Sections 187 to 191.5, inclusive.

11 (V) Any serious or violent felony offense punishable by life
12 imprisonment or death.

13 (d) (1) Notwithstanding any other provision of law, this section
14 shall be applied in every case in which a defendant has one or more
15 prior serious or violent felony convictions, as defined in this
16 section. The prosecuting attorney shall plead and prove each prior
17 serious or violent felony conviction except as provided in paragraph
18 (2).

19 (2) The prosecuting attorney may move to dismiss or strike a
20 prior serious or violent felony conviction allegation in the
21 furtherance of justice pursuant to Section 1385, or if there is
22 insufficient evidence to prove the prior serious or violent
23 conviction. If upon the satisfaction of the court that there is
24 insufficient evidence to prove the prior serious or violent felony
25 conviction, the court may dismiss or strike the allegation.

26 (e) Prior serious or violent felony convictions shall not be used
27 in plea bargaining, as defined in subdivision (b) of Section 1192.7.
28 The prosecution shall plead and prove all known prior serious or
29 violent felony convictions and shall not enter into any agreement
30 to strike or seek the dismissal of any prior serious or violent felony
31 conviction allegation except as provided in paragraph (2) of
32 subdivision (d).

33 (f) If any provision of subdivisions (a) to (e), inclusive, or the
34 application thereof to any person or circumstance is held invalid,
35 that invalidity shall not affect other provisions or applications of
36 those subdivisions that can be given effect without the invalid
37 provision or application, and to this end the provisions of those
38 subdivisions are severable.

39 (g) The provisions of this section shall not be amended by the
40 Legislature except by statute passed in each house by rollcall vote

1 entered in the journal, two-thirds of the membership concurring,
2 or by a statute that becomes effective only when approved by the
3 electors.

4 SEC. 4. 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 November 4, 2014.

11 SEC. 5. This act is an exercise of the public power of the people
12 of the State of California for the protection of the health, safety,
13 and welfare of the people of the State of California, and shall be
14 liberally construed to effectuate those purposes.

15 SEC. 6. If any provision of this act, or the application thereof
16 to any person or circumstance, is held invalid, that invalidity shall
17 not affect any other provision or application of this act, which can
18 be given effect without the invalid provision or application in order
19 to effectuate the purposes of this act. To this end, the provisions
20 of this act are severable.

21 SEC. 7. (a) Sections 1 to 6, inclusive, of this act affect initiative
22 statutes, and shall become effective only when submitted to, and
23 approved by, the voters of California, pursuant to subdivision (c)
24 of Section 10 of Article II of the California Constitution.

25 (b) ~~The~~ (1) *Except as provided in paragraph (2), the Secretary*
26 *of State shall submit Sections 1 to 6, inclusive, of this act to the*
27 *voters for approval at the November 4, 2014, statewide general*
28 *election.*

29 (2) *If an initiative measure amending Section 667 or 1170.12*
30 *of the Penal Code is approved by the voters at the November 6,*
31 *2012, statewide general election, the Secretary of State shall not*
32 *submit Sections 1 to 6, inclusive, of this act to the voters for*
33 *approval at the November 4, 2014, statewide general election.*