

ASSEMBLY BILL

No. 2447

Introduced by Assembly Members Wright and Washington
(Coauthors: Assembly Members Cedillo, Vincent, and
Wesson)
(Coauthors: Senators Hughes and Murray)

February 24, 2000

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2447, as introduced, R. Wright. Sentencing: 3 strikes.

(1) Existing law, added by 2 initiative statutes, prescribes an indeterminate term enhancement of life imprisonment for any person convicted of a felony who has 2 or more prior violent or serious felony convictions, as defined. Existing law provides that the minimum term of this enhancement shall be served consecutively and is 3 times the term otherwise provided for the current offense, 25 years, or the term calculated by the court pursuant to existing determinate sentencing provisions, whichever is greater. These initiative statutes provide that any amendment of their provisions shall require a $\frac{2}{3}$ vote of the membership of each house.

(2) This bill would provide that this enhancement shall apply only if a defendant's current conviction is for a violent or serious felony or offense, as defined.

Vote: $\frac{2}{3}$. 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
 2 amended to read:

3 667. (a) (1) In compliance with subdivision (b) of
 4 Section 1385, any person convicted of a serious felony who
 5 previously has been convicted of a serious felony in this
 6 state or of any offense committed in another jurisdiction
 7 ~~which~~ *that* includes all of the elements of any serious
 8 felony, shall receive, in addition to the sentence imposed
 9 by the court for the present offense, a five-year
 10 enhancement for each such prior conviction on charges
 11 brought and tried separately. The terms of the present
 12 offense and each enhancement shall run consecutively.

13 (2) This subdivision shall not be applied when the
 14 punishment imposed under other provisions of law would
 15 result in a longer term of imprisonment. There is no
 16 requirement of prior incarceration or commitment for
 17 this subdivision to apply.

18 (3) The Legislature may increase the length of the
 19 enhancement of sentence provided in this subdivision by
 20 a statute passed by majority vote of each house thereof.

21 (4) As used in this subdivision, "serious felony" means
 22 a serious felony listed in subdivision (c) of Section 1192.7.

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

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

35 (c) Notwithstanding any other law, if a defendant has
 36 been convicted of a felony and it has been pled and
 37 proved that the defendant has one or more prior felony



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

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

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

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

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

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

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

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

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



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

4 (1) Any offense defined in subdivision (c) of Section
5 667.5 as a violent felony or any offense defined in
6 subdivision (c) of Section 1192.7 as a serious felony in this
7 state. The determination of whether a prior conviction is
8 a prior felony conviction for purposes of subdivisions (b)
9 to (i), inclusive, shall be made upon the date of that prior
10 conviction and is not affected by the sentence imposed
11 unless the sentence automatically, upon the initial
12 sentencing, converts the felony to a misdemeanor. None
13 of the following dispositions shall affect the
14 determination that a prior conviction is a prior felony for
15 purposes of subdivisions (b) to (i), inclusive:

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

18 (B) The stay of execution of sentence.

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

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

25 (2) A conviction in another jurisdiction for an offense
26 that, if committed in California, is punishable by
27 imprisonment in the state prison. A prior conviction of a
28 particular felony shall include a conviction in another
29 jurisdiction for an offense that includes all of the elements
30 of the particular felony as defined in subdivision (c) of
31 Section 667.5 or subdivision (c) of Section 1192.7.

32 (3) A prior juvenile adjudication shall constitute a
33 prior felony conviction for purposes of sentence
34 enhancement if:

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

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



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

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

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

12 (1) If a defendant has one prior felony conviction that
13 has been pled and proved, the determinate term or
14 minimum term for an indeterminate term shall be twice
15 the term otherwise provided as punishment for the
16 current felony conviction.

17 (2) (A) If a defendant has two or more prior felony
18 convictions as defined in subdivision (d) that have been
19 pled and proved, *and if the defendant's current*
20 *conviction is for a violent felony or offense as defined in*
21 *subdivision (c) of Section 667.5, or a serious felony or*
22 *offense as defined in subdivision (c) of Section 1192.7,* the
23 term for the current felony conviction shall be an
24 indeterminate term of life imprisonment with a
25 minimum term of the indeterminate sentence calculated
26 as the greater of:

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

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

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

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



1 subparagraph (A) shall not be merged therein but shall
2 commence at the time the person would otherwise have
3 been released from prison.

4 (f) (1) Notwithstanding any other law, subdivisions
5 (b) to (i), inclusive, shall be applied in every case in
6 which a defendant has a prior felony conviction as
7 defined in subdivision (d). The prosecuting attorney shall
8 plead and prove each prior felony conviction except as
9 provided in paragraph (2).

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

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

24 (h) All references to existing statutes in subdivisions
25 (c) to (g), inclusive, are to statutes as they existed on June
26 30, 1993.

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

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

39 SEC. 2. Section 1170.12 of the Penal Code is amended
40 to read:



1 1170.12. (a) Notwithstanding any other provision of
2 law, if a defendant has been convicted of a felony and it
3 has been pled and proved that the defendant has one or
4 more prior felony convictions, as defined in subdivision
5 (b), the court shall adhere to each of the following:

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

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

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

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

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

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

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

38 (8) Any sentence imposed pursuant to this section will
39 be imposed consecutive to any other sentence which the



1 defendant is already serving, unless otherwise provided
2 by law.

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

6 (1) Any offense defined in subdivision (c) of Section
7 667.5 as a violent felony or any offense defined in
8 subdivision (c) of Section 1192.7 as a serious felony in this
9 state. The determination of whether a prior conviction is
10 a prior felony conviction for purposes of this section shall
11 be made upon the date of that prior conviction and is not
12 affected by the sentence imposed unless the sentence
13 automatically, upon the initial sentencing, converts the
14 felony to a misdemeanor. None of the following
15 dispositions shall affect the determination that a prior
16 conviction is a prior felony for purposes of this section:

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

19 (B) The stay of execution of sentence.

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

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

26 (2) A conviction in another jurisdiction for an offense
27 that, if committed in California, is punishable by
28 imprisonment in the state prison. A prior conviction of a
29 particular felony shall include a conviction in another
30 jurisdiction for an offense that includes all of the elements
31 of the particular felony as defined in subdivision (c) of
32 Section 667.5 or subdivision (c) of Section 1192.7.

33 (3) A prior juvenile adjudication shall constitute a
34 prior felony conviction for purposes of sentence
35 enhancement if:

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

38 (B) The prior offense is

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



1 (ii) listed in this subdivision as a felony, and
2 (C) The juvenile was found to be a fit and proper
3 subject to be dealt with under the juvenile court law, and

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

9 (c) For purposes of this section, and in addition to any
10 other enhancements or punishment provisions which
11 may apply, the following shall apply where a defendant
12 has a prior felony conviction:

13 (1) If a defendant has one prior felony conviction that
14 has been pled and proved, the determinate term or
15 minimum term for an indeterminate term shall be twice
16 the term otherwise provided as punishment for the
17 current felony conviction.

18 (2) (A) If a defendant has two or more prior felony
19 convictions, as defined in paragraph (1) of subdivision
20 (b), that have been pled and proved, *and if the*
21 *defendant's current conviction is for a violent felony or*
22 *offense as defined in subdivision (c) of Section 667.5, or*
23 *a serious felony or offense as defined in subdivision (c) of*
24 *Section 1192.7*, the term for the current felony conviction
25 shall be an indeterminate term of life imprisonment with
26 a minimum term of the indeterminate sentence
27 calculated as the greater of

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

32 (ii) twenty-five years or

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

38 (B) The indeterminate term described in
39 subparagraph (A) of paragraph (2) of this subdivision
40 shall be served consecutive to any other term of



1 imprisonment for which a consecutive term may be
2 imposed by law. Any other term imposed subsequent to
3 any indeterminate term described in subparagraph (A)
4 of paragraph (2) of this subdivision shall not be merged
5 therein but shall commence at the time the person would
6 otherwise have been released from prison.

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

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

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

