

**Introduced by Senator Hayden**

December 7, 1998

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

LEGISLATIVE COUNSEL'S DIGEST

SB 79, as introduced, Hayden. Sentencing: prior convictions.

Existing law, amended by initiative statutes, specifies the punishment for persons who are convicted of a felony who have 2 or more prior violent or serious felony convictions. The initiative statutes provide that any amendment of their provisions by the Legislature shall require a 2/3 vote of the membership of each house.

This bill instead would provide that this punishment applies to persons who are convicted of a violent or serious felony who have 2 or more prior violent or serious felony convictions. Because it would amend initiative statutes, this bill requires a 2/3 vote.

Vote: 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



1 state or of any offense committed in another jurisdiction  
2 which includes all of the elements of any serious felony,  
3 shall receive, in addition to the sentence imposed by the  
4 court for the present offense, a five-year enhancement for  
5 each such prior conviction on charges brought and tried  
6 separately. The terms of the present offense and each  
7 enhancement shall run consecutively.

8 (2) This subdivision shall not be applied when the  
9 punishment imposed under other provisions of law would  
10 result in a longer term of imprisonment. There is no  
11 requirement of prior incarceration or commitment for  
12 this subdivision to apply.

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

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

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

25 (b) It is the intent of the Legislature in enacting  
26 subdivisions (b) to (i), inclusive, to ensure longer prison  
27 sentences and greater punishment for those who commit  
28 a felony and have been previously convicted of serious  
29 ~~and/or~~ *or* violent felony offenses.

30 (c) Notwithstanding any other law, if a defendant has  
31 been convicted of a felony and it has been pled and  
32 proved that the defendant has one or more prior felony  
33 convictions as defined in subdivision (d), the court shall  
34 adhere to each of the following:

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

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



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

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

11 (5) The total amount of credits awarded pursuant to  
12 Article 2.5 (commencing with Section 2930) of Chapter  
13 7 of Title 1 of Part 3 shall not exceed one-fifth of the total  
14 term of imprisonment imposed and shall not accrue until  
15 the defendant is physically placed in the state prison.

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

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

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

31 (d) Notwithstanding any other law and for the  
32 purposes of subdivisions (b) to (i), inclusive, a prior  
33 conviction of a felony shall be defined as *any of the*  
34 *following*:

35 (1) Any offense defined in subdivision (c) of Section  
36 667.5 as a violent felony or any offense defined in  
37 subdivision (c) of Section 1192.7 as a serious felony in this  
38 state. The determination of whether a prior conviction is  
39 a prior felony conviction for purposes of subdivisions (b)  
40 to (i), inclusive, shall be made upon the date of that prior



1 conviction and is not affected by the sentence imposed  
2 unless the sentence automatically, upon the initial  
3 sentencing, converts the felony to a misdemeanor. None  
4 of the following dispositions shall affect the  
5 determination that a prior conviction is a prior felony for  
6 purposes of subdivisions (b) to (i), inclusive:

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

9 (B) The stay of execution of sentence.

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

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

16 (2) A conviction in another jurisdiction for an offense  
17 that, if committed in California, is punishable by  
18 imprisonment in the state prison. A prior conviction of a  
19 particular felony shall include a conviction in another  
20 jurisdiction for an offense that includes all of the elements  
21 of the particular felony as defined in subdivision (c) of  
22 Section 667.5 or subdivision (c) of Section 1192.7.

23 (3) A prior juvenile adjudication shall constitute a  
24 prior felony conviction for purposes of sentence  
25 enhancement if *all of the following are true*:

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

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

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

33 (D) The juvenile was adjudged a ward of the juvenile  
34 court within the meaning of Section 602 of the Welfare  
35 and Institutions Code because the person committed an  
36 offense listed in subdivision (b) of Section 707 of the  
37 Welfare and Institutions Code.

38 (e) For purposes of subdivisions (b) to (i), inclusive,  
39 and in addition to any other enhancement or punishment



1 provisions which may apply, the following shall apply  
2 where a defendant has a prior felony conviction:

3 (1) If a defendant has one prior felony conviction that  
4 has been pled and proved, the determinate term or  
5 minimum term for an indeterminate term shall be twice  
6 the term otherwise provided as punishment for the  
7 current felony conviction.

8 (2) (A) If a defendant has *been convicted of a violent*  
9 *felony, as defined in subdivision (c) of Section 667.5, or a*  
10 *serious felony, as defined in subdivision (c) of Section*  
11 *1192.7, and has two or more prior felony convictions as*  
12 *defined in subdivision (d) that have been pled and*  
13 *proved, the term for the current felony conviction shall*  
14 *be an indeterminate term of life imprisonment with a*  
15 *minimum term of the indeterminate sentence calculated*  
16 *as the ~~greater~~ greatest of the following:*

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

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

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

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

34 (f) (1) Notwithstanding any other law, subdivisions  
35 (b) to (i), inclusive, shall be applied in every case in  
36 which a defendant has a prior felony conviction as  
37 defined in subdivision (d). The prosecuting attorney shall  
38 plead and prove each prior felony conviction except as  
39 provided in paragraph (2).



1 (2) The prosecuting attorney may move to dismiss or  
2 strike a prior felony conviction allegation in the  
3 furtherance of justice pursuant to Section 1385, or if there  
4 is insufficient evidence to prove the prior conviction. If  
5 upon the satisfaction of the court that there is insufficient  
6 evidence to prove the prior felony conviction, the court  
7 may dismiss or strike the allegation.

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

15 (h) All references to existing statutes in subdivisions  
16 (c) to (g), inclusive, are to statutes as they existed on June  
17 30, 1993.

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

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

30 SEC. 2. Section 1170.12 of the Penal Code is amended  
31 to read:

32 1170.12. (a) Notwithstanding any other provision of  
33 law, if a defendant has been convicted of a felony and it  
34 has been pled and proved that the defendant has one or  
35 more prior felony convictions, as defined in subdivision  
36 (b), the court shall adhere to each of the following:

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



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

4 (3) The length of time between the prior felony  
5 conviction and the current felony conviction shall not  
6 affect the imposition of sentence.

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

14 (5) The total amount of credits awarded pursuant to  
15 Article 2.5 (commencing with Section 2930) of Chapter  
16 7 of Title 1 of Part 3 shall not exceed one-fifth of the total  
17 term of imprisonment imposed and shall not accrue until  
18 the defendant is physically placed in the state prison.

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

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

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

34 (b) Notwithstanding any other provision of law and  
35 for the purposes of this section, a prior conviction of a  
36 felony shall be defined as *any of the following*:

37 (1) Any offense defined in subdivision (c) of Section  
38 667.5 as a violent felony or any offense defined in  
39 subdivision (c) of Section 1192.7 as a serious felony in this  
40 state. The determination of whether a prior conviction is



1 a prior felony conviction for purposes of this section shall  
2 be made upon the date of that prior conviction and is not  
3 affected by the sentence imposed unless the sentence  
4 automatically, upon the initial sentencing, converts the  
5 felony to a misdemeanor. None of the following  
6 dispositions shall affect the determination that a prior  
7 conviction is a prior felony for purposes of this section:

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

10 (B) The stay of execution of sentence.

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

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

17 (2) A conviction in another jurisdiction for an offense  
18 that, if committed in California, is punishable by  
19 imprisonment in the state prison. A prior conviction of a  
20 particular felony shall include a conviction in another  
21 jurisdiction for an offense that includes all of the elements  
22 of the particular felony as defined in subdivision (c) of  
23 Section 667.5 or subdivision (c) of Section 1192.7.

24 (3) A prior juvenile adjudication shall constitute a  
25 prior felony conviction for purposes of sentence  
26 enhancement if *all of the following are true*:

27 (A) The juvenile was sixteen years of age or older at  
28 the time he or she committed the prior offense, ~~and~~.

29 (B) The prior offense is

30 ~~(i)~~ listed in subdivision (b) of Section 707 of the  
31 Welfare and Institutions Code, or

32 ~~(ii)~~ listed in this subdivision as a felony, ~~and~~.

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

35 (D) The juvenile was adjudged a ward of the juvenile  
36 court within the meaning of Section 602 of the Welfare  
37 and Institutions Code because the person committed an  
38 offense listed in subdivision (b) of Section 707 of the  
39 Welfare and Institutions Code.



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

5 (1) If a defendant has one prior felony conviction that  
6 has been pled and proved, the determinate term or  
7 minimum term for an indeterminate term shall be twice  
8 the term otherwise provided as punishment for the  
9 current felony conviction.

10 (2) (A) If a defendant has *been convicted of a violent*  
11 *felony, as defined in subdivision (c) of Section 667.5, or a*  
12 *serious felony, as defined in subdivision (c) of Section*  
13 *1192.7, and has two or more prior felony convictions, as*  
14 *defined in paragraph (1) of subdivision (b), that have*  
15 *been pled and proved, the term for the current felony*  
16 *conviction shall be an indeterminate term of life*  
17 *imprisonment with a minimum term of the*  
18 *indeterminate sentence calculated as the ~~greater~~*  
19 *greatest of the following:*

20 (i) ~~three~~ *Three* times the term otherwise provided as  
21 punishment for each current felony conviction  
22 subsequent to the two or more prior felony convictions;  
23 ~~or~~

24 (ii) ~~twenty five years or~~ *Imprisonment in the state*  
25 *prison for 25 years.*

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

31 (B) The indeterminate term described in  
32 subparagraph (A) of paragraph (2) of this subdivision  
33 shall be served consecutive to any other term of  
34 imprisonment for which a consecutive term may be  
35 imposed by law. Any other term imposed subsequent to  
36 any indeterminate term described in subparagraph (A)  
37 of paragraph (2) of this subdivision shall not be merged  
38 therein but shall commence at the time the person would  
39 otherwise have been released from prison.



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

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

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

