

**ASSEMBLY BILL**

**No. 197**

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**Introduced by Assembly Member Kiley**

January 19, 2017

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An act to amend Sections 667.1, 667.5, and 1170.125 of the Penal Code, relating to violent felonies.

LEGISLATIVE COUNSEL'S DIGEST

AB 197, as introduced, Kiley. Violent felonies.

Existing law, as amended by Proposition 21 as approved by the voters at the March 7, 2000, statewide primary election and by Proposition 83 of the November 7, 2006, statewide general election, classifies certain felonies as violent felonies for purposes of various provisions of the Penal Code. Existing law imposes an additional one-year term for a felony and a 3-year term for a violent felony for each prior separate prison term served for a violent felony. Existing law, as added by Proposition 184, adopted November 8, 1994, and amended by Proposition 36, adopted November 6, 2012, commonly known as the Three Strikes Law, also imposes additional years of imprisonment in state prison on a person who commits a violent felony and has been convicted of, or who has a prior conviction for, a violent felony. The Legislature may amend the above-specified initiative statutes by a statute passed in each house by a  $\frac{2}{3}$  vote.

This bill would additionally define as violent felonies child abduction, providing a child under 16 years of age for purposes of a lewd act, abduction of a minor for purposes of prostitution, child abuse, sodomy with a minor, oral copulation of a minor, contact with a minor to commit specified offenses, arranging a meeting with a minor for lewd purposes, employing a minor to produce sexual matter, elder and dependent adult

abuse, false imprisonment of an elder or dependent adult, and animal abuse, as specified, thereby amending Proposition 36 by adding to the list of violent felonies that can be prosecuted as a 3rd strike. By changing the definition of a crime, this bill 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. (a) Notwithstanding subdivision (h) of Section 667,  
 4 for all offenses committed on or after November 7, 2012, *but before*  
 5 *January 1, 2018*, all references to existing statutes in subdivisions  
 6 (c) to (g), inclusive, of Section 667, are to those statutes as they  
 7 ~~existed~~ *read* on November 7, 2012.  
 8 (b) *Notwithstanding subdivision (h) of Section 667, for all*  
 9 *offenses committed on or after January 1, 2018, all references to*  
 10 *existing statutes in subdivisions (c) to (g), inclusive, of Section*  
 11 *667, are to those statutes as they read on January 1, 2018.*  
 12 SEC. 2. Section 667.5 of the Penal Code is amended to read:  
 13 667.5. Enhancement of prison terms for new offenses because  
 14 of prior prison terms shall be imposed as follows:  
 15 (a) ~~Where~~ *If* one of the new offenses is one of the violent  
 16 felonies specified in subdivision (c), in addition ~~to~~ and consecutive  
 17 to any other prison terms therefor, the court shall impose a  
 18 three-year term for each prior separate prison term served by the  
 19 defendant ~~where~~ *if* the prior offense was one of the violent felonies  
 20 specified in subdivision (c). However, no additional term shall be  
 21 imposed under this subdivision for any prison term served prior  
 22 to a period of 10 years in which the defendant remained free of  
 23 both prison custody and the commission of an offense which results  
 24 in a felony conviction.

1 (b) Except ~~where~~ *if* subdivision (a) applies, ~~where~~ *if* the new  
2 offense is any felony for which a prison sentence or a sentence of  
3 imprisonment in a county jail under subdivision (h) of Section  
4 1170 is imposed or is not suspended, in addition and consecutive  
5 to any other sentence therefor, the court shall impose a one-year  
6 term for each prior separate prison term or county jail term imposed  
7 under subdivision (h) of Section 1170 or ~~when~~ *if the* sentence is  
8 not suspended for any ~~felony~~; ~~provided that no felony.~~ An additional  
9 term shall *not* be imposed under this subdivision for any prison  
10 term or county jail term imposed under subdivision (h) of Section  
11 1170 or ~~when~~ *if the* sentence is not suspended prior to a period of  
12 five years in which the defendant remained free of both the  
13 commission of an offense which results in a felony conviction,  
14 and prison custody or the imposition of a term of jail custody  
15 imposed under subdivision (h) of Section 1170 or any felony  
16 sentence that is not suspended. A term imposed under ~~the~~  
17 ~~provisions of~~ paragraph (5) of subdivision (h) of Section 1170,  
18 wherein a portion of the term is suspended by the court to allow  
19 mandatory supervision, shall qualify as a prior county jail term for  
20 the purposes of the one-year enhancement.

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

23 (1) Murder or voluntary manslaughter.

24 (2) Mayhem.

25 (3) Rape as defined in paragraph (2) or (6) of subdivision (a)  
26 of Section 261 or paragraph (1) or (4) of subdivision (a) of Section  
27 262.

28 (4) Sodomy as defined in *paragraph (2) of subdivision (b) of,*  
29 *or subdivision (c) or (d) of,* Section 286.

30 (5) Oral copulation as defined in *paragraph (2) of subdivision*  
31 *(b) of, or subdivision (c) or (d) of,* Section 288a.

32 (6) Lewd or lascivious act as defined in subdivision (a) or (b)  
33 of Section ~~288~~. 288, *or as defined in paragraph (1) of subdivision*  
34 *(c) of Section 288 if a felony.*

35 (7) Any felony punishable by death or imprisonment in the state  
36 prison for life.

37 (8) Any felony in which the defendant inflicts great bodily injury  
38 on any person other than an accomplice which has been charged  
39 and proved as provided for in Section 12022.7, 12022.8, or 12022.9  
40 on or after July 1, 1977, or as specified prior to July 1, 1977, in

- 1 Sections 213, 264, and 461, or any felony in which the defendant
- 2 uses a firearm which use has been charged and proved as provided
- 3 in subdivision (a) of Section 12022.3, or Section 12022.5 or
- 4 12022.55.
- 5 (9) Any robbery.
- 6 (10) Arson, in violation of subdivision (a) or (b) of Section 451.
- 7 (11) Sexual penetration as defined in subdivision (a) or (j) of
- 8 Section 289.
- 9 (12) Attempted murder.
- 10 (13) A violation of Section 18745, 18750, or 18755.
- 11 (14) Kidnapping.
- 12 (15) Assault with the intent to commit a specified felony, in
- 13 violation of Section 220.
- 14 (16) Continuous sexual abuse of a child, in violation of Section
- 15 288.5.
- 16 (17) Carjacking, as defined in subdivision (a) of Section 215.
- 17 (18) Rape, spousal rape, or sexual penetration, in concert, in
- 18 violation of Section 264.1.
- 19 (19) Extortion, as defined in Section 518, which would constitute
- 20 a felony violation of Section 186.22.
- 21 (20) Threats to victims or witnesses, as defined in Section 136.1,
- 22 which would constitute a felony violation of Section 186.22.
- 23 (21) Any burglary of the first degree, as defined in subdivision
- 24 (a) of Section 460, wherein it is charged and proved that another
- 25 person, other than an accomplice, was present in the residence
- 26 during the commission of the burglary.
- 27 (22) Any violation of Section 12022.53.
- 28 (23) *Child abduction in violation of Section 278 or 278.5.*
- 29 (24) *Provision or transportation of a child under 16 years of*
- 30 *age for the purpose of any lewd or lascivious act in violation of*
- 31 *Section 266j.*
- 32 (25) *Abduction of a minor for purposes of prostitution in*
- 33 *violation of Section 267.*
- 34 (26) *Child abuse or endangerment in violation of subdivision*
- 35 *(a) of Section 273a.*
- 36 (27) *Contacting or communicating with a minor in violation of*
- 37 *Section 288.3.*
- 38 (28) *Arranging a meeting with a minor or person believed to*
- 39 *be a minor in violation of Section 288.4, if a felony.*

1 (29) *Employing or using a minor in violation of Section 311.4,*  
2 *if a felony.*

3 (30) *Harming or endangering an elder or dependent adult in*  
4 *violation of paragraph (1) of subdivision (b) of Section 368, if a*  
5 *felony.*

6 (31) *False imprisonment of an elder or dependent adult in*  
7 *violation of subdivision (f) of Section 368.*

8 (32) *Animal abuse in violation of subdivision (a) of Section 597,*  
9 *if a felony.*

10 ~~(23)~~

11 (33) A violation of subdivision (b) or (c) of Section 11418. ~~The~~  
12 *The Legislature finds and declares that these specified crimes*  
13 *merit special consideration when imposing a sentence to display*  
14 *society's condemnation for these extraordinary crimes of violence*  
15 *against the person.*

16 (d) For the purposes of this section, the defendant shall be  
17 deemed to remain in prison custody for an offense until the official  
18 discharge from custody, including any period of mandatory  
19 supervision, or until release on parole or postrelease community  
20 supervision, whichever first occurs, including any time during  
21 which the defendant remains subject to reimprisonment or custody  
22 in county jail for escape from custody or is reimprisoned on  
23 revocation of parole or postrelease community supervision. The  
24 additional penalties provided for prior prison terms shall not be  
25 imposed unless they are charged and admitted or found true in the  
26 action for the new offense.

27 (e) The additional penalties provided for prior prison terms shall  
28 not be imposed for any felony for which the defendant did not  
29 serve a prior separate term in state prison or in county jail under  
30 subdivision (h) of Section 1170.

31 (f) A prior conviction of a felony shall include a conviction in  
32 another jurisdiction for an offense which, if committed in  
33 California, is punishable by imprisonment in the state prison or in  
34 county jail under subdivision (h) of Section 1170 if the defendant  
35 served one year or more in prison for the offense in the other  
36 jurisdiction. A prior conviction of a particular felony shall include  
37 a conviction in another jurisdiction for an offense which includes  
38 all of the elements of the particular felony as defined under  
39 California law if the defendant served one year or more in prison  
40 for the offense in the other jurisdiction.

1 (g) A prior separate prison term for the purposes of this section  
2 shall mean a continuous completed period of prison incarceration  
3 imposed for the particular offense alone or in combination with  
4 concurrent or consecutive sentences for other crimes, including  
5 any reimprisonment on revocation of parole which is not  
6 accompanied by a new commitment to prison, and including any  
7 reimprisonment after an escape from incarceration.

8 (h) Serving a prison term includes any confinement time in any  
9 state prison or federal penal institution as punishment for  
10 commission of an offense, including confinement in a hospital or  
11 other institution or facility credited as service of prison time in the  
12 jurisdiction of the confinement.

13 (i) For the purposes of this section, a commitment to the State  
14 Department of Mental Health, or its successor the State Department  
15 of State Hospitals, as a mentally disordered sex offender following  
16 a conviction of a felony, which commitment exceeds one year in  
17 duration, shall be deemed a prior prison term.

18 (j) For the purposes of this section, when a person subject to  
19 the custody, control, and discipline of the Secretary of the  
20 Department of Corrections and Rehabilitation is incarcerated at a  
21 facility operated by the Division of Juvenile Justice, that  
22 incarceration shall be deemed to be a term served in state prison.

23 (k) (1) Notwithstanding subdivisions (d) and (g) or any other  
24 provision of law, where one of the new offenses is committed  
25 while the defendant is temporarily removed from prison pursuant  
26 to Section 2690 or while the defendant is transferred to a  
27 community facility pursuant to Section 3416, 6253, or 6263, or  
28 while the defendant is on furlough pursuant to Section 6254, the  
29 defendant shall be subject to the full enhancements provided for  
30 in this section.

31 (2) This subdivision ~~shall~~ *does not apply when if* a full, separate,  
32 and consecutive term is imposed pursuant to any other provision  
33 of law.

34 SEC. 3. Section 1170.125 of the Penal Code is amended to  
35 read:

36 1170.125. (a) Notwithstanding Section 2 of Proposition 184,  
37 as adopted at the November 8, 1994, General Election, for all  
38 offenses committed on or after November 7, 2012, *but before*  
39 *January 1, 2018*, all references to existing statutes in Sections

1 1170.12 and 1170.126 are to those sections as they ~~existed~~ read  
2 on November 7, 2012.

3 *(b) Notwithstanding Section 2 of Proposition 184, as adopted*  
4 *at the November 8, 1994, General Election, for all offenses*  
5 *committed on or after January 1, 2018, all references to existing*  
6 *statutes in Sections 1170.12 and 1170.126 are to those sections*  
7 *as they read on January 1, 2018.*

8 SEC. 4. No reimbursement is required by this act pursuant to  
9 Section 6 of Article XIII B of the California Constitution because  
10 the only costs that may be incurred by a local agency or school  
11 district will be incurred because this act creates a new crime or  
12 infraction, eliminates a crime or infraction, or changes the penalty  
13 for a crime or infraction, within the meaning of Section 17556 of  
14 the Government Code, or changes the definition of a crime within  
15 the meaning of Section 6 of Article XIII B of the California  
16 Constitution.