

Introduced by Senator CogdillFebruary 20, 2008

An act to amend Sections 1203.067, 12021, 12022.3, and 12022.8 of the Penal Code, relating to sex offenders.

LEGISLATIVE COUNSEL'S DIGEST

SB 1302, as introduced, Cogdill. Sex offenders.

Existing law provides that for persons convicted of certain felony sex offenses, the court must meet certain requirements before the person may be granted probation.

This bill would add the offense of continuous sexual abuse of a child to the list of offenses that are subject to these provisions.

By changing the punishment for an existing crime, this bill would impose a state-mandated local program.

Existing law provides that any person convicted of specified misdemeanors who, within 10 years of the conviction, owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm, is guilty of a public offense, as specified.

This bill would add the offense of sexual battery, as specified, to the list of disqualifying misdemeanors.

By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

Existing law provides sentencing enhancements for persons who commit or attempt to commit specified sex offenses while armed with or using a deadly weapon or firearm.

This bill would additionally apply this enhancement to persons who commit assault with the intent to commit certain sex offenses while armed with or using these weapons.

By expanding the scope of an existing sentencing enhancement, this bill would impose a state-mandated local program.

Existing law provides a sentencing enhancement for persons who inflict great bodily injury on victims in the commission or attempted commission of specified sex offenses.

This bill would additionally apply this enhancement to persons who inflict great bodily injury in the commission of assault with the intent to commit certain sex offenses.

By expanding the scope of an existing sentencing enhancement, 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: majority. 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 1203.067 of the Penal Code is amended
2 to read:

3 1203.067. (a) Notwithstanding any other law, before probation
4 may be granted to any person convicted of a felony specified in
5 Section 261, 262, 264.1, 286, 288, 288a, 288.5, or 289, who is
6 eligible for probation, the court shall do all of the following:

7 (1) Order the defendant evaluated pursuant to Section 1203.03,
8 or similar evaluation by the county probation department.

9 (2) Conduct a hearing at the time of sentencing to determine if
10 probation of the defendant would pose a threat to the victim. The
11 victim shall be notified of the hearing by the prosecuting attorney
12 and given an opportunity to address the court.

13 (3) Order any psychiatrist or psychologist appointed pursuant
14 to Section 288.1 to include a consideration of the threat to the
15 victim and the defendant’s potential for positive response to
16 treatment in making his or her report to the court. Nothing in this
17 section shall be construed to require the court to order an
18 examination of the victim.

19 (b) If a defendant is granted probation pursuant to subdivision
20 (a), the court shall order the defendant to be placed in an

1 appropriate treatment program designed to deal with child
2 molestation or sexual offenders, if an appropriate program is
3 available in the county.

4 (c) Any defendant ordered to be placed in a treatment program
5 pursuant to subdivision (b) shall be responsible for paying the
6 expense of his or her participation in the treatment program as
7 determined by the court. The court shall take into consideration
8 the ability of the defendant to pay, and no defendant shall be denied
9 probation because of his or her inability to pay.

10 SEC. 2. Section 12021 of the Penal Code is amended to read:

11 12021. (a) (1) Any person who has been convicted of a felony
12 under the laws of the United States, the State of California, or any
13 other state, government, or country or of an offense enumerated
14 in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted
15 to the use of any narcotic drug, and who owns, purchases, receives,
16 or has in his or her possession or under his or her custody or control
17 any firearm is guilty of a felony.

18 (2) Any person who has two or more convictions for violating
19 paragraph (2) of subdivision (a) of Section 417 and who owns,
20 purchases, receives, or has in his or her possession or under his or
21 her custody or control any firearm is guilty of a felony.

22 (b) Notwithstanding subdivision (a), any person who has been
23 convicted of a felony or of an offense enumerated in Section
24 12001.6, when that conviction results from certification by the
25 juvenile court for prosecution as an adult in an adult court under
26 Section 707 of the Welfare and Institutions Code, and who owns
27 or has in his or her possession or under his or her custody or control
28 any firearm is guilty of a felony.

29 (c) (1) Except as provided in subdivision (a) or paragraph (2)
30 of this subdivision, any person who has been convicted of a
31 misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140,
32 subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28,
33 240, 241, 242, 243, 243.4, 244.5, 245, 245.5, 246.3, 247, 273.5,
34 273.6, 417, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision
35 (b) or (d) of Section 12034, Section 12040, subdivision (b) of
36 Section 12072, subdivision (a) of former Section 12100, Section
37 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the
38 Welfare and Institutions Code, any firearm-related offense pursuant
39 to Sections 871.5 and 1001.5 of the Welfare and Institutions Code,
40 or of the conduct punished in paragraph (3) of subdivision (g) of

1 Section 12072, and who, within 10 years of the conviction, owns,
2 purchases, receives, or has in his or her possession or under his or
3 her custody or control, any firearm is guilty of a public offense,
4 which shall be punishable by imprisonment in a county jail not
5 exceeding one year or in the state prison, by a fine not exceeding
6 one thousand dollars (\$1,000), or by both that imprisonment and
7 fine. The court, on forms prescribed by the Department of Justice,
8 shall notify the department of persons subject to this subdivision.
9 However, the prohibition in this paragraph may be reduced,
10 eliminated, or conditioned as provided in paragraph (2) or (3).

11 (2) Any person employed as a peace officer described in Section
12 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment
13 or livelihood is dependent on the ability to legally possess a
14 firearm, who is subject to the prohibition imposed by this
15 subdivision because of a conviction under Section 273.5, 273.6,
16 or 646.9, may petition the court only once for relief from this
17 prohibition. The petition shall be filed with the court in which the
18 petitioner was sentenced. If possible, the matter shall be heard
19 before the same judge who sentenced the petitioner. Upon filing
20 the petition, the clerk of the court shall set the hearing date and
21 shall notify the petitioner and the prosecuting attorney of the date
22 of the hearing. Upon making each of the following findings, the
23 court may reduce or eliminate the prohibition, impose conditions
24 on reduction or elimination of the prohibition, or otherwise grant
25 relief from the prohibition as the court deems appropriate:

26 (A) Finds by a preponderance of the evidence that the petitioner
27 is likely to use a firearm in a safe and lawful manner.

28 (B) Finds that the petitioner is not within a prohibited class as
29 specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1,
30 and the court is not presented with any credible evidence that the
31 petitioner is a person described in Section 8100 or 8103 of the
32 Welfare and Institutions Code.

33 (C) (i) Finds that the petitioner does not have a previous
34 conviction under this subdivision no matter when the prior
35 conviction occurred.

36 (ii) In making its decision, the court shall consider the
37 petitioner's continued employment, the interest of justice, any
38 relevant evidence, and the totality of the circumstances. The court
39 shall require, as a condition of granting relief from the prohibition
40 under this section, that the petitioner agree to participate in

1 counseling as deemed appropriate by the court. Relief from the
2 prohibition shall not relieve any other person or entity from any
3 liability that might otherwise be imposed. It is the intent of the
4 Legislature that courts exercise broad discretion in fashioning
5 appropriate relief under this paragraph in cases in which relief is
6 warranted. However, nothing in this paragraph shall be construed
7 to require courts to grant relief to any particular petitioner. It is
8 the intent of the Legislature to permit persons who were convicted
9 of an offense specified in Section 273.5, 273.6, or 646.9 to seek
10 relief from the prohibition imposed by this subdivision.

11 (3) Any person who is subject to the prohibition imposed by
12 this subdivision because of a conviction of an offense prior to that
13 offense being added to paragraph (1) may petition the court only
14 once for relief from this prohibition. The petition shall be filed
15 with the court in which the petitioner was sentenced. If possible,
16 the matter shall be heard before the same judge that sentenced the
17 petitioner. Upon filing the petition, the clerk of the court shall set
18 the hearing date and notify the petitioner and the prosecuting
19 attorney of the date of the hearing. Upon making each of the
20 following findings, the court may reduce or eliminate the
21 prohibition, impose conditions on reduction or elimination of the
22 prohibition, or otherwise grant relief from the prohibition as the
23 court deems appropriate:

24 (A) Finds by a preponderance of the evidence that the petitioner
25 is likely to use a firearm in a safe and lawful manner.

26 (B) Finds that the petitioner is not within a prohibited class as
27 specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1,
28 and the court is not presented with any credible evidence that the
29 petitioner is a person described in Section 8100 or 8103 of the
30 Welfare and Institutions Code.

31 (C) (i) Finds that the petitioner does not have a previous
32 conviction under this subdivision, no matter when the prior
33 conviction occurred.

34 (ii) In making its decision, the court may consider the interest
35 of justice, any relevant evidence, and the totality of the
36 circumstances. It is the intent of the Legislature that courts exercise
37 broad discretion in fashioning appropriate relief under this
38 paragraph in cases in which relief is warranted. However, nothing
39 in this paragraph shall be construed to require courts to grant relief
40 to any particular petitioner.

1 (4) Law enforcement officials who enforce the prohibition
2 specified in this subdivision against a person who has been granted
3 relief pursuant to paragraph (2) or (3) shall be immune from any
4 liability for false arrest arising from the enforcement of this
5 subdivision unless the person has in his or her possession a certified
6 copy of the court order that granted the person relief from the
7 prohibition. This immunity from liability shall not relieve any
8 person or entity from any other liability that might otherwise be
9 imposed.

10 (d) (1) Any person who, as an express condition of probation,
11 is prohibited or restricted from owning, possessing, controlling,
12 receiving, or purchasing a firearm and who owns, purchases,
13 receives, or has in his or her possession or under his or her custody
14 or control, any firearm but who is not subject to subdivision (a) or
15 (c) is guilty of a public offense, which shall be punishable by
16 imprisonment in a county jail not exceeding one year or in the
17 state prison, by a fine not exceeding one thousand dollars (\$1,000),
18 or by both that imprisonment and fine. The court, on forms
19 provided by the Department of Justice, shall notify the department
20 of persons subject to this subdivision. The notice shall include a
21 copy of the order of probation and a copy of any minute order or
22 abstract reflecting the order and conditions of probation.

23 (2) For any person who is subject to subdivision (a), (b), or (c),
24 the court shall, at the time judgment is imposed, provide on a form
25 supplied by the Department of Justice, a notice to the defendant
26 prohibited by this section from owning, purchasing, receiving,
27 possessing or having under his or her custody or control, any
28 firearm. The notice shall inform the defendant of the prohibition
29 regarding firearms and include a form to facilitate the transfer of
30 firearms. Failure to provide the notice shall not be a defense to a
31 violation of this section.

32 (e) Any person who (1) is alleged to have committed an offense
33 listed in subdivision (b) of Section 707 of the Welfare and
34 Institutions Code, an offense described in subdivision (b) of Section
35 1203.073, any offense enumerated in paragraph (1) of subdivision
36 (c), or any offense described in subdivision (a) of Section 12025,
37 subdivision (a) of Section 12031, or subdivision (a) of Section
38 12034, and (2) is subsequently adjudged a ward of the juvenile
39 court within the meaning of Section 602 of the Welfare and
40 Institutions Code because the person committed an offense listed

1 in subdivision (b) of Section 707 of the Welfare and Institutions
2 Code, an offense described in subdivision (b) of Section 1203.073,
3 any offense enumerated in paragraph (1) of subdivision (c), or any
4 offense described in subdivision (a) of Section 12025, subdivision
5 (a) of Section 12031, or subdivision (a) of Section 12034, shall
6 not own, or have in his or her possession or under his or her
7 custody or control, any firearm until the age of 30 years. A
8 violation of this subdivision shall be punishable by imprisonment
9 in a county jail not exceeding one year or in the state prison, by a
10 fine not exceeding one thousand dollars (\$1,000), or by both that
11 imprisonment and fine. The juvenile court, on forms prescribed
12 by the Department of Justice, shall notify the department of persons
13 subject to this subdivision. Notwithstanding any other law, the
14 forms required to be submitted to the department pursuant to this
15 subdivision may be used to determine eligibility to acquire a
16 firearm.

17 (f) Subdivision (a) shall not apply to a person who has been
18 convicted of a felony under the laws of the United States unless
19 either of the following criteria is satisfied:

20 (1) Conviction of a like offense under California law can only
21 result in imposition of felony punishment.

22 (2) The defendant was sentenced to a federal correctional facility
23 for more than 30 days, or received a fine of more than one thousand
24 dollars (\$1,000), or received both punishments.

25 (g) (1) Every person who purchases or receives, or attempts to
26 purchase or receive, a firearm knowing that he or she is prohibited
27 from doing so by a temporary restraining order or injunction issued
28 pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure,
29 a protective order as defined in Section 6218 of the Family Code,
30 a protective order issued pursuant to Section 136.2 or 646.91 of
31 this code, or a protective order issued pursuant to Section 15657.03
32 of the Welfare and Institutions Code, is guilty of a public offense,
33 which shall be punishable by imprisonment in a county jail not
34 exceeding one year or in the state prison, by a fine not exceeding
35 one thousand dollars (\$1,000), or by both that imprisonment and
36 fine.

37 (2) Every person who owns or possesses a firearm knowing that
38 he or she is prohibited from doing so by a temporary restraining
39 order or injunction issued pursuant to Section 527.6 or 527.8 of
40 the Code of Civil Procedure, a protective order as defined in

1 Section 6218 of the Family Code, a protective order issued pursuant
2 to Section 136.2 or 646.91 of this code, or a protective order issued
3 pursuant to Section 15657.03 of the Welfare and Institutions Code,
4 is guilty of a public offense, which shall be punishable by
5 imprisonment in a county jail not exceeding one year, by a fine
6 not exceeding one thousand dollars (\$1,000), or by both that
7 imprisonment and fine.

8 (3) The Judicial Council shall provide notice on all protective
9 orders that the respondent is prohibited from owning, possessing,
10 purchasing, receiving, or attempting to purchase or receive a
11 firearm while the protective order is in effect. The order shall also
12 state that the firearm shall be relinquished to the local law
13 enforcement agency for that jurisdiction or sold to a licensed gun
14 dealer, and that proof of surrender or sale shall be filed within a
15 specified time of receipt of the order. The order shall state the
16 penalties for a violation of the prohibition. The order shall also
17 state on its face the expiration date for relinquishment.

18 (4) If probation is granted upon conviction of a violation of this
19 subdivision, the court shall impose probation consistent with
20 Section 1203.097.

21 (h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is
22 justifiable where all of the following conditions are met:

23 (A) The person found the firearm or took the firearm from a
24 person who was committing a crime against him or her.

25 (B) The person possessed the firearm no longer than was
26 necessary to deliver or transport the firearm to a law enforcement
27 agency for that agency's disposition according to law.

28 (C) If the firearm was transported to a law enforcement agency,
29 it was transported in accordance with paragraph (18) of subdivision
30 (a) of Section 12026.2.

31 (D) If the firearm is being transported to a law enforcement
32 agency, the person transporting the firearm has given prior notice
33 to the law enforcement agency that he or she is transporting the
34 firearm to the law enforcement agency for disposition according
35 to law.

36 (2) Upon the trial for violating subdivision (a), (b), (c), (d), or
37 (e), the trier of fact shall determine whether the defendant was
38 acting within the provisions of the exemption created by this
39 subdivision.

1 (3) The defendant has the burden of proving by a preponderance
2 of the evidence that he or she comes within the provisions of the
3 exemption created by this subdivision.

4 (i) Subject to available funding, the Attorney General, working
5 with the Judicial Council, the California Alliance Against Domestic
6 Violence, prosecutors, and law enforcement, probation, and parole
7 officers, shall develop a protocol for the implementation of the
8 provisions of this section. The protocol shall be designed to
9 facilitate the enforcement of restrictions on firearm ownership,
10 including provisions for giving notice to defendants who are
11 restricted, provisions for informing those defendants of the
12 procedures by which defendants shall dispose of firearms when
13 required to do so, provisions explaining how defendants shall
14 provide proof of the lawful disposition of firearms, and provisions
15 explaining how defendants may obtain possession of seized
16 firearms when legally permitted to do so pursuant to this section
17 or any other provision of law. The protocol shall be completed on
18 or before January 1, 2005.

19 SEC. 3. Section 12022.3 of the Penal Code is amended to read:

20 12022.3. For each violation of *Section 220 involving a specified*
21 *sexual offense, or for each violation or attempted violation of*
22 *Section 261, 262, 264.1, 286, 288, 288a, or 289, and in addition*
23 *to the sentence provided, any person shall receive the following:*

24 (a) A 3-, 4-, or 10-year enhancement if the person uses a firearm
25 or a deadly weapon in the commission of the violation.

26 (b) A one-, two-, or five-year enhancement if the person is armed
27 with a firearm or a deadly weapon. ~~The court shall order the middle~~
28 ~~term unless there are circumstances in aggravation or mitigation.~~
29 ~~The court shall state the reasons for its enhancement choice on the~~
30 ~~record at the time of the sentence.~~

31 SEC. 4. Section 12022.8 of the Penal Code is amended to read:

32 12022.8. Any person who inflicts great bodily injury, as defined
33 in Section 12022.7, on any victim in a violation of *Section 220*
34 *involving a specified sexual offense, or a violation or attempted*
35 *violation of paragraph (2), (3), or (6) of subdivision (a) of Section*
36 *261, paragraph (1) or (4) of subdivision (a) of Section 262, Section*
37 *264.1, subdivision (b) of Section 288, subdivision (a) of Section*
38 *289, or sodomy or oral copulation by force, violence, duress,*
39 *menace, or fear of immediate and unlawful bodily injury on the*
40 *victim or another person as provided in Section 286 or 288a shall*

1 receive a five-year enhancement for each ~~such~~ violation in addition
2 to the sentence provided for the felony conviction.

3 SEC. 5. No reimbursement is required by this act pursuant to
4 Section 6 of Article XIII B of the California Constitution because
5 the only costs that may be incurred by a local agency or school
6 district will be incurred because this act creates a new crime or
7 infraction, eliminates a crime or infraction, or changes the penalty
8 for a crime or infraction, within the meaning of Section 17556 of
9 the Government Code, or changes the definition of a crime within
10 the meaning of Section 6 of Article XIII B of the California
11 Constitution.