

**ASSEMBLY BILL**

**No. 1751**

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**Introduced by Assembly Member Ammiano**

February 8, 2010

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1751, as introduced, Ammiano. Sentencing: prior felony conviction: prior juvenile adjudication.

Existing law, including law added by an initiative act that requires amendments to its provisions to be approved by  $\frac{2}{3}$  of the membership of both houses of the Legislature, commonly known as the Three Strikes law, provides for increased penalties for certain recidivist offenders. In particular, it provides that, in addition to any other enhancement or penalty provisions that may apply, (1) if a defendant has one prior felony conviction, as defined, the determinate term, or minimum term for an indeterminate term, shall be twice the term otherwise provided as punishment for the current conviction, and (2) if a defendant has 2 or more prior 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 of the greatest of (A) 3 times the term otherwise provided as punishment for each current felony conviction subsequent to the 2 or more prior felony convictions, (B) imprisonment in the state prison for 25 years, or (C) the term determined by the court for the underlying conviction, including any applicable enhancement or punishment provisions. "Prior conviction for a felony" is defined, for purposes of the Three Strikes law, to include a prior juvenile adjudication, as specified.

This bill would delete a prior juvenile adjudication from the definition of “prior conviction of a felony” for purposes of the Three Strikes law.

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 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 which 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  
30 punishment for those who commit a felony and have been  
31 previously convicted of serious and/or violent felony offenses.

32 (c) Notwithstanding any other law, if a defendant has been  
33 convicted of a felony and it has been pled and proved that the

1 defendant has one or more prior felony convictions as defined in  
2 subdivision (d), the court shall adhere to each of the following:

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

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

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

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

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

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

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

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

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

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

1 whether a prior conviction is a prior felony conviction for purposes  
 2 of subdivisions (b) to (i), inclusive, shall be made upon the date  
 3 of that prior conviction and is not affected by the sentence imposed  
 4 unless the sentence automatically, upon the initial sentencing,  
 5 converts the felony to a misdemeanor. None of the following  
 6 dispositions shall affect the determination that a prior conviction  
 7 is a prior felony for purposes of subdivisions (b) to (i), inclusive:  
 8 (A) The suspension of imposition of judgment or sentence.  
 9 (B) The stay of execution of sentence.  
 10 (C) The commitment to the State Department of *Mental Health*  
 11 ~~Services~~ as a mentally disordered sex offender following a  
 12 conviction of a felony.  
 13 (D) The commitment to the California Rehabilitation Center or  
 14 any other facility whose function is rehabilitative diversion from  
 15 the state prison.  
 16 (2) A conviction in another jurisdiction for an offense that, if  
 17 committed in California, is punishable by imprisonment in the  
 18 state prison. A prior conviction of a particular felony shall include  
 19 a conviction in another jurisdiction for an offense that includes all  
 20 of the elements of the particular felony as defined in subdivision  
 21 (c) of Section 667.5 or subdivision (c) of Section 1192.7.  
 22 ~~(3) A prior juvenile adjudication shall constitute a prior felony~~  
 23 ~~conviction for purposes of sentence enhancement if:~~  
 24 ~~(A) The juvenile was 16 years of age or older at the time he or~~  
 25 ~~she committed the prior offense.~~  
 26 ~~(B) The prior offense is listed in subdivision (b) of Section 707~~  
 27 ~~of the Welfare and Institutions Code or described in paragraph (1)~~  
 28 ~~or (2) as a felony.~~  
 29 ~~(C) The juvenile was found to be a fit and proper subject to be~~  
 30 ~~dealt with under the juvenile court law.~~  
 31 ~~(D) The juvenile was adjudged a ward of the juvenile court~~  
 32 ~~within the meaning of Section 602 of the Welfare and Institutions~~  
 33 ~~Code because the person committed an offense listed in subdivision~~  
 34 ~~(b) of Section 707 of the Welfare and Institutions Code.~~  
 35 (e) For purposes of subdivisions (b) to (i), inclusive, and in  
 36 addition to any other enhancement or punishment provisions which  
 37 may apply, the following shall apply where a defendant has a prior  
 38 felony conviction:  
 39 (1) If a defendant has one prior felony conviction that has been  
 40 pled and proved, the determinate term or minimum term for an

1 indeterminate term shall be twice the term otherwise provided as  
2 punishment for the current felony conviction.

3 (2) (A) If a defendant has two or more prior felony convictions  
4 as defined in subdivision (d) that have been pled and proved, the  
5 term for the current felony conviction shall be an indeterminate  
6 term of life imprisonment with a minimum term of the  
7 indeterminate sentence calculated as the greater of *the following*:

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

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

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

16 (B) The indeterminate term described in subparagraph (A) shall  
17 be served consecutive to any other term of imprisonment for which  
18 a consecutive term may be imposed by law. Any other term  
19 imposed subsequent to any indeterminate term described in  
20 subparagraph (A) shall not be merged therein but shall commence  
21 at the time the person would otherwise have been released from  
22 prison.

23 (f) (1) Notwithstanding any other law, subdivisions (b) to (i),  
24 inclusive, shall be applied in every case in which a defendant has  
25 a prior felony conviction as defined in subdivision (d). The  
26 prosecuting attorney shall plead and prove each prior felony  
27 conviction except as provided in paragraph (2).

28 (2) The prosecuting attorney may move to dismiss or strike a  
29 prior felony conviction allegation in the furtherance of justice  
30 pursuant to Section 1385, or if there is insufficient evidence to  
31 prove the prior conviction. If upon the satisfaction of the court that  
32 there is insufficient evidence to prove the prior felony conviction,  
33 the court may dismiss or strike the allegation.

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

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

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

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

14 SEC. 2. Section 1170.12 of the Penal Code is amended to read:  
15 1170.12. (a) Notwithstanding any other provision of law, if a  
16 defendant has been convicted of a felony and it has been pled and  
17 proved that the defendant has one or more prior felony convictions,  
18 as defined in subdivision (b), the court shall adhere to each of the  
19 following:

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

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

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

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

34 (5) The total amount of credits awarded pursuant to Article 2.5  
35 (commencing with Section 2930) of Chapter 7 of Title 1 of Part  
36 3 shall not exceed one-fifth of the total term of imprisonment  
37 imposed and shall not accrue until the defendant is physically  
38 placed in the state prison.

39 (6) If there is a current conviction for more than one felony  
40 count not committed on the same occasion, and not arising from

1 the same set of operative facts, the court shall sentence the  
2 defendant consecutively on each count pursuant to this section.

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

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

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

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

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

25 (B) The stay of execution of sentence.

26 (C) The commitment to the State Department of *Mental Health*  
27 ~~Services~~ as a mentally disordered sex offender following a  
28 conviction of a felony.

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

32 (2) A conviction in another jurisdiction for an offense that, if  
33 committed in California, is punishable by imprisonment in the  
34 state prison. A prior conviction of a particular felony shall include  
35 a conviction in another jurisdiction for an offense that includes all  
36 of the elements of the particular felony as defined in subdivision  
37 (c) of Section 667.5 or subdivision (c) of Section 1192.7.

38 ~~(3) A prior juvenile adjudication shall constitute a prior felony~~  
39 ~~conviction for purposes of sentence enhancement if:~~

1     (A) ~~The juvenile was sixteen years of age or older at the time~~  
 2 ~~he or she committed the prior offense, and~~  
 3     (B) ~~The prior offense is~~  
 4     ~~(i) listed in subdivision (b) of Section 707 of the Welfare and~~  
 5 ~~Institutions Code, or~~  
 6     ~~(ii) listed in this subdivision as a felony, and~~  
 7     (C) ~~The juvenile was found to be a fit and proper subject to be~~  
 8 ~~dealt with under the juvenile court law, and~~  
 9     (D) ~~The juvenile was adjudged a ward of the juvenile court~~  
 10 ~~within the meaning of Section 602 of the Welfare and Institutions~~  
 11 ~~Code because the person committed an offense listed in subdivision~~  
 12 ~~(b) of Section 707 of the Welfare and Institutions Code.~~  
 13     (c) For purposes of this section, and in addition to any other  
 14 enhancements or punishment provisions which may apply, the  
 15 following shall apply where a defendant has a prior felony  
 16 conviction:  
 17     (1) If a defendant has one prior felony conviction that has been  
 18 pled and proved, the determinate term or minimum term for an  
 19 indeterminate term shall be twice the term otherwise provided as  
 20 punishment for the current felony conviction.  
 21     (2) (A) If a defendant has two or more prior felony convictions,  
 22 as defined in paragraph (1) of subdivision (b), that have been pled  
 23 and proved, the term for the current felony conviction shall be an  
 24 indeterminate term of life imprisonment with a minimum term of  
 25 the indeterminate sentence calculated as the greater of *the*  
 26 *following*:  
 27     (i) ~~three~~ *Three* times the term otherwise provided as punishment  
 28 for each current felony conviction subsequent to the two or more  
 29 prior felony convictions, ~~or~~.  
 30     (ii) ~~twenty-five~~ *Twenty-five* years ~~or~~.  
 31     (iii) ~~the~~ *The* term determined by the court pursuant to Section  
 32 1170 for the underlying conviction, including any enhancement  
 33 applicable under Chapter 4.5 (commencing with Section 1170) of  
 34 Title 7 of Part 2, or any period prescribed by Section 190 or 3046.  
 35     (B) The indeterminate term described in subparagraph (A) of  
 36 paragraph (2) of this subdivision shall be served consecutive to  
 37 any other term of imprisonment for which a consecutive term may  
 38 be imposed by law. Any other term imposed subsequent to any  
 39 indeterminate term described in subparagraph (A) of paragraph  
 40 (2) of this subdivision shall not be merged therein but shall

1 commence at the time the person would otherwise have been  
2 released from prison.

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

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

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

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