

Introduced by Senator Benoit

February 17, 2009

An act to amend Section 12022.1 of the Penal Code, relating to punishment.

LEGISLATIVE COUNSEL'S DIGEST

SB 185, as amended, Benoit. Punishment: enhancements.

Existing law defines the felony offense for which a person has been released on bail or his or her own recognizance, or for which release on bail or his or her own recognizance has been revoked prior to final judgment, as a "primary offense," and defines an offense committed while so released as a "secondary offense." Under existing law, any person arrested for a secondary offense which was alleged to have been committed while that person was released from custody on a primary offense is subject to a penalty enhancement of an additional 2 years in state prison, as specified.

This bill would ~~redefine~~ *include within the definition of* "primary offense" ~~as a felony offense for which the person has been released from custody, other than on bail or on his or her own recognizance, prior to final judgment and completion of sentence for the offense sentencing.~~

By expanding the application of this enhancing allegation, 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 12022.1 of the Penal Code is amended
2 to read:

3 12022.1. (a) For the purposes of this section only:

4 (1) “Primary offense” means a felony offense for which a person
5 has been released from custody *on bail or on his or her own*
6 *recognizance* prior to the judgment becoming final, including the
7 disposition of any appeal, ~~and the person has not completed his or~~
8 ~~her sentence for the offense or for which release on bail or his or~~
9 *her own recognizance has been revoked*. In cases where the court
10 has granted a stay of execution of a county jail commitment or
11 state prison commitment, “primary offense” also means a felony
12 offense for which a person is out of custody during the period of
13 time between the pronouncement of judgment and the time the
14 person actually surrenders into custody or is otherwise returned
15 to custody. *“Primary offense” also means a felony offense for*
16 *which a person has been released from custody, other than on bail*
17 *or on his or her own recognizance, prior to sentencing.*

18 (2) “Secondary offense” means a felony offense alleged to have
19 been committed while the person is released from custody for a
20 primary offense.

21 (b) Any person arrested for a secondary offense which was
22 alleged to have been committed while that person was released
23 from custody on a primary offense shall be subject to a penalty
24 enhancement of an additional two years in state prison which shall
25 be served consecutive to any other term imposed by the court.

26 (c) The enhancement allegation provided in subdivision (b)
27 shall be pleaded in the information or indictment which alleges
28 the secondary offense, or in the information or indictment of the
29 primary offense if a conviction has already occurred in the
30 secondary offense, and shall be proved as provided by law. The
31 enhancement allegation may be pleaded in a complaint but need
32 not be proved at the preliminary hearing or grand jury hearing.

1 (d) Whenever there is a conviction for the secondary offense
2 and the enhancement is proved, and the person is sentenced on the
3 secondary offense prior to the conviction of the primary offense,
4 the imposition of the enhancement shall be stayed pending
5 imposition of the sentence for the primary offense. The stay shall
6 be lifted by the court hearing the primary offense at the time of
7 sentencing for that offense and shall be recorded in the abstract of
8 judgment. If the person is acquitted of the primary offense the stay
9 shall be permanent.

10 (e) If the person is convicted of a felony for the primary offense,
11 is sentenced to state prison for the primary offense, and is convicted
12 of a felony for the secondary offense, any state prison sentence
13 for the secondary offense shall be consecutive to the primary
14 sentence.

15 (f) If the person is convicted of a felony for the primary offense,
16 is granted probation for the primary offense, and is convicted of
17 a felony for the secondary offense, any state prison sentence for
18 the secondary offense shall be enhanced as provided in subdivision
19 (b).

20 (g) If the primary offense conviction is reversed on appeal, the
21 enhancement shall be suspended pending retrial of that felony.
22 Upon retrial and reconviction, the enhancement shall be reimposed.
23 If the person is no longer in custody for the secondary offense
24 upon reconviction of the primary offense, the court may, at its
25 discretion, reimpose the enhancement and order him or her
26 recommitted to custody.

27 SEC. 2. No reimbursement is required by this act pursuant to
28 Section 6 of Article XIII B of the California Constitution because
29 the only costs that may be incurred by a local agency or school
30 district will be incurred because this act creates a new crime or
31 infraction, eliminates a crime or infraction, or changes the penalty
32 for a crime or infraction, within the meaning of Section 17556 of
33 the Government Code, or changes the definition of a crime within
34 the meaning of Section 6 of Article XIII B of the California
35 Constitution.

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