

**ASSEMBLY BILL**

**No. 38**

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**Introduced by Assembly Member Lackey**

December 2, 2024

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An act to amend Section 667.5 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL’S DIGEST

AB 38, as introduced, Lackey. Crimes: serious and violent felonies.

Existing law classifies certain criminal offenses as a “violent felony” for the purposes of various provisions of the Penal Code, including sentencing enhancements for prior convictions, as well as numerous other provisions.

Existing law includes among the list of violent felonies rape accomplished against a person’s will by means of force, violence, duress, menace, or fear, or rape accomplished against the victim’s will by threat of violent retaliation, but does not include rape of a person unable to give consent due to disability, rape under false pretenses, or rape accomplished by threat of incarceration, arrest, or deportation.

This bill would also include specified crimes involving the rape or sexual assault of a minor who has a developmental disability in the list of violent felonies. By expanding the scope of an 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:*

SECTION 1. Section 667.5 of the Penal Code is amended to read:

667.5. Enhancement of prison terms for new offenses because of prior prison terms shall be imposed as follows:

(a) If one of the new offenses is one of the violent felonies specified in subdivision (c), in addition to and consecutive to any other prison terms therefor, the court shall impose a three-year term for each prior separate prison term served by the defendant when the prior offense was one of the violent felonies specified in subdivision (c). However, an additional term shall not be imposed pursuant to this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense that results in a felony conviction.

(b) Except when subdivision (a) applies, if the new offense is any felony for which a prison sentence or a sentence of imprisonment in a county jail under subdivision (h) of Section 1170 is imposed or is not suspended, in addition and consecutive to any other sentence therefor, the court shall impose a one-year term for each prior separate prison term for a sexually violent offense as defined in subdivision (b) of Section 6600 of the Welfare and Institutions Code, provided that an additional term shall not be imposed under this subdivision for any prison term served prior to a period of five years in which the defendant remained free of both the commission of an offense that results in a felony conviction, and prison custody or the imposition of a term of jail custody imposed under subdivision (h) of Section 1170 or any felony sentence that is not suspended.

(c) The Legislature finds and declares that the following specified crimes merit special consideration when imposing a sentence to display society's condemnation for these extraordinary crimes of violence against the person. For the purpose of this section, "violent felony" means any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

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

1 (4) Sodomy as defined in subdivision (c) or (d) of Section 286.

2 (5) Oral copulation as defined in subdivision (c) or (d) of Section  
3 287 or of former Section 288a.

4 (6) Lewd or lascivious act as defined in subdivision (a) or (b)  
5 of Section 288.

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

8 (8) Any felony in which the defendant inflicts great bodily injury  
9 on a person other than an accomplice, which has been charged and  
10 proved as provided for in Section 12022.7, 12022.8, or 12022.9  
11 on or after July 1, 1977, or as specified prior to July 1, 1977, in  
12 Sections 213, 264, and 461, or any felony in which the defendant  
13 uses a firearm which use has been charged and proved as provided  
14 in subdivision (a) of Section 12022.3, or Section 12022.5 or  
15 12022.55.

16 (9) Any robbery.

17 (10) Arson, in violation of subdivision (a) or (b) of Section 451.

18 (11) Sexual penetration as defined in subdivision (a) or (j) of  
19 Section 289.

20 (12) Attempted murder.

21 (13) A violation of Section 18745, 18750, or 18755.

22 (14) Kidnapping.

23 (15) Assault with the intent to commit a specified felony, in  
24 violation of Section 220.

25 (16) Continuous sexual abuse of a child, in violation of Section  
26 288.5.

27 (17) Carjacking, as defined in subdivision (a) of Section 215.

28 (18) Rape or sexual penetration, in concert, in violation of  
29 Section 264.1.

30 (19) Extortion, as defined in Section 518, which would constitute  
31 a felony violation of Section 186.22.

32 (20) Threats to victims or witnesses, as defined in Section 136.1,  
33 which would constitute a felony violation of Section 186.22.

34 (21) Any burglary of the first degree, as defined in subdivision  
35 (a) of Section 460, wherein it is charged and proved that another  
36 person, other than an accomplice, was present in the residence  
37 during the commission of the burglary.

38 (22) Any violation of Section 12022.53.

39 (23) A violation of subdivision (b) or (c) of Section 11418.

(24) Rape as defined in paragraph (3) of subdivision (a) of Section 261, wherein it is pleaded and proved that the defendant caused the intoxication by administering a controlled substance to the victim without their consent and with the intent to sexually assault the victim.

(25) *A violation of paragraph (1) of subdivision (a) of Section 261, subdivision (g) or (h) of Section 286, subdivision (g) or (h) of Section 287, or subdivision (b) or (c) of Section 289, wherein it is pleaded and proved that the victim is a minor who has a developmental disability.*

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

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

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

(g) A prior separate prison term for the purposes of this section shall mean a continuous completed period of prison incarceration imposed for the particular offense alone or in combination with concurrent or consecutive sentences for other crimes, including any reimprisonment on revocation of parole that is not

1 accompanied by a new commitment to prison, and including any  
2 reimprisonment after an escape from incarceration.

3 (h) Serving a prison term includes any confinement time in any  
4 state prison or federal penal institution as punishment for  
5 commission of an offense, including confinement in a hospital or  
6 other institution or facility credited as service of prison time in the  
7 jurisdiction of the confinement.

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

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

18 (k) (1) Notwithstanding subdivisions (d) and (g) or any other  
19 law, when one of the new offenses is committed while the  
20 defendant is temporarily removed from prison pursuant to Section  
21 2690 or while the defendant is transferred to a community facility  
22 pursuant to Section 3416, 6253, or 6263, or while the defendant  
23 is on furlough pursuant to Section 6254, the defendant shall be  
24 subject to the full enhancements provided for in this section.

25 (2) This subdivision does not apply when a full, separate, and  
26 consecutive term is imposed pursuant to any other law.

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.