

AMENDED IN SENATE MAY 13, 2013

AMENDED IN SENATE MAY 7, 2013

AMENDED IN SENATE APRIL 1, 2013

**SENATE BILL**

**No. 644**

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**Introduced by Senator Cannella**

February 22, 2013

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An act to amend ~~Sections 1170.125, 1192.7, and Section 29800~~ of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

SB 644, as amended, Cannella. Firearms: felons in possession: serious felonies.

~~Existing law, as added by Proposition 8, adopted June 8, 1982, and amended by Proposition 21, adopted March 7, 2000, among other things, defines a serious felony. Existing law, also added by Proposition 8, and amended by Proposition 36, adopted November 6, 2012, commonly known as the Three Strikes law, requires increased penalties for certain recidivist offenders in addition to any other enhancement or penalty provisions that may apply, including individuals with current and prior convictions of a serious felony, as specified. The Three Strikes law specifies that references to code sections contained in the law, including references to the definition of a serious felony, are to those code sections as they existed on November 7, 2012. The Legislature may directly amend Proposition 8 and Proposition 21 by a statute passed in each house by a  $\frac{2}{3}$ -vote, or by a statute that becomes effective only when approved by the voters. The Legislature may directly amend Proposition 36 by a statute passed in each house by a  $\frac{2}{3}$ -vote and the Governor concurring, or with a majority vote to be placed on the next general~~

ballot, or by a statute that becomes effective when approved by a majority of the electors.

~~This bill would amend Proposition 21 to make the possession of a firearm by a felon a serious felony, as specified. The bill would specify that references to code sections contained in the Three Strikes law are to those code sections as they existed on January 1, 2014.~~

~~Because the bill would impose additional duties on local prosecutors and would increase incarceration periods at county jails for this offense, it would impose a state-mandated local program.~~

Existing law provides that any person convicted of a felony under the laws of the United States, the State of California, or any other state, and who owns, purchases, receives, or has in possession or under custody or control any firearm is guilty of a felony. Other existing law prescribes the punishment for that felony as imprisonment for a term of 16 months, or 2 or 3 years.

This bill would provide that the punishment for subsequent convictions of that felony would be imprisonment for a term of 4, 5, or 6 years. *By increasing the penalties for an existing crime, this bill would impose a state-mandated local program.* The bill would also make technical, nonsubstantive changes to this provision.

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:  $\frac{2}{3}$ -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 1170.125 of the Penal Code is amended~~
- 2     ~~to read:~~
- 3     ~~1170.125. Notwithstanding Section 2 of Proposition 184, as~~
- 4     ~~adopted at the November 8, 1994, general election, for all offenses~~
- 5     ~~committed on or after January 1, 2014, the references in Sections~~
- 6     ~~1170.12 and 1170.126 to other code sections are to those sections~~
- 7     ~~as they existed on January 1, 2014.~~
- 8     ~~SEC. 2. Section 1192.7 of the Penal Code is amended to read:~~
- 9     ~~1192.7. (a) (1) It is the intent of the Legislature that district~~
- 10    ~~attorneys prosecute violent sex crimes under statutes that provide~~

1 sentencing under a “one strike,” “three strikes,” or habitual sex  
2 offender statute instead of engaging in plea bargaining over those  
3 offenses.

4 (2) Plea bargaining in any case in which the indictment or  
5 information charges any serious felony, any felony in which it is  
6 alleged that a firearm was personally used by the defendant, or  
7 any offense of driving while under the influence of alcohol, drugs,  
8 narcotics, or any other intoxicating substance, or any combination  
9 thereof, is prohibited, unless there is insufficient evidence to prove  
10 the people’s case, or testimony of a material witness cannot be  
11 obtained, or a reduction or dismissal would not result in a  
12 substantial change in sentence.

13 (3) If the indictment or information charges the defendant with  
14 a violent sex crime, as listed in subdivision (e) of Section 667.61,  
15 that could be prosecuted under Sections 269, 288.7, subdivisions  
16 (b) through (i) of Section 667, Section 667.61, or 667.71, plea  
17 bargaining is prohibited unless there is insufficient evidence to  
18 prove the people’s case, or testimony of a material witness cannot  
19 be obtained, or a reduction or dismissal would not result in a  
20 substantial change in sentence. At the time of presenting the  
21 agreement to the court, the district attorney shall state on the record  
22 why a sentence under one of those sections was not sought.

23 (b) As used in this section “plea bargaining” means any  
24 bargaining, negotiation, or discussion between a criminal  
25 defendant, or his or her counsel, and a prosecuting attorney or  
26 judge, whereby the defendant agrees to plead guilty or nolo  
27 contendere, in exchange for any promises, commitments,  
28 concessions, assurances, or consideration by the prosecuting  
29 attorney or judge relating to any charge against the defendant or  
30 to the sentencing of the defendant.

31 (c) As used in this section, “serious felony” means any of the  
32 following:

33 (1) Murder or voluntary manslaughter; (2) mayhem; (3) rape;  
34 (4) sodomy by force, violence, duress, menace, threat of great  
35 bodily injury, or fear of immediate and unlawful bodily injury on  
36 the victim or another person; (5) oral copulation by force, violence,  
37 duress, menace, threat of great bodily injury, or fear of immediate  
38 and unlawful bodily injury on the victim or another person; (6)  
39 lewd or lascivious act on a child under 14 years of age; (7) any  
40 felony punishable by death or imprisonment in the state prison for

1 life; (8) any felony in which the defendant personally inflicts great  
2 bodily injury on any person, other than an accomplice, or any  
3 felony in which the defendant personally uses a firearm; (9)  
4 attempted murder; (10) assault with intent to commit rape or  
5 robbery; (11) assault with a deadly weapon or instrument on a  
6 peace officer; (12) assault by a life prisoner on a noninmate; (13)  
7 assault with a deadly weapon by an inmate; (14) arson; (15)  
8 exploding a destructive device or any explosive with intent to  
9 injure; (16) exploding a destructive device or any explosive causing  
10 bodily injury, great bodily injury, or mayhem; (17) exploding a  
11 destructive device or any explosive with intent to murder; (18) any  
12 burglary of the first degree; (19) robbery or bank robbery; (20)  
13 kidnapping; (21) holding of a hostage by a person confined in a  
14 state prison; (22) attempt to commit a felony punishable by death  
15 or imprisonment in the state prison for life; (23) any felony in  
16 which the defendant personally used a dangerous or deadly weapon;  
17 (24) selling, furnishing, administering, giving, or offering to sell,  
18 furnish, administer, or give to a minor any heroin, cocaine,  
19 phenylelidine (PCP), or any methamphetamine-related drug, as  
20 described in paragraph (2) of subdivision (d) of Section 11055 of  
21 the Health and Safety Code, or any of the precursors of  
22 methamphetamines, as described in subparagraph (A) of paragraph  
23 (1) of subdivision (f) of Section 11055 or subdivision (a) of Section  
24 11100 of the Health and Safety Code; (25) any violation of  
25 subdivision (a) of Section 289 where the act is accomplished  
26 against the victim's will by force, violence, duress, menace, or  
27 fear of immediate and unlawful bodily injury on the victim or  
28 another person; (26) grand theft involving a firearm; (27)  
29 earjacking; (28) any felony offense, which would also constitute  
30 a felony violation of Section 186.22; (29) assault with the intent  
31 to commit mayhem, rape, sodomy, or oral copulation, in violation  
32 of Section 220; (30) throwing acid or flammable substances, in  
33 violation of Section 244; (31) assault with a deadly weapon,  
34 firearm, machinegun, assault weapon, or semiautomatic firearm  
35 or assault on a peace officer or firefighter, in violation of Section  
36 245; (32) assault with a deadly weapon against a public transit  
37 employee, custodial officer, or school employee, in violation of  
38 Section 245.2, 245.3, or 245.5; (33) discharge of a firearm at an  
39 inhabited dwelling, vehicle, or aircraft, in violation of Section 246;  
40 (34) commission of rape or sexual penetration in concert with

1 another person, in violation of Section 264.1; (35) continuous  
 2 sexual abuse of a child, in violation of Section 288.5; (36) shooting  
 3 from a vehicle, in violation of subdivision (c) or (d) of Section  
 4 26100; (37) intimidation of victims or witnesses, in violation of  
 5 Section 136.1; (38) criminal threats, in violation of Section 422;  
 6 (39) any attempt to commit a crime listed in this subdivision other  
 7 than an assault; (40) any violation of Section 12022.53; (41) a  
 8 violation of subdivision (b) or (c) of Section 11418; (42) a violation  
 9 of paragraph (1) of subdivision (a) of Section 29800; and (43) any  
 10 conspiracy to commit an offense described in this subdivision.

11 (d) As used in this section, “bank robbery” means to take or  
 12 attempt to take, by force or violence, or by intimidation from the  
 13 person or presence of another any property or money or any other  
 14 thing of value belonging to, or in the care, custody, control,  
 15 management, or possession of, any bank, credit union, or any  
 16 savings and loan association.

17 As used in this subdivision, the following terms have the  
 18 following meanings:

19 (1) “Bank” means any member of the Federal Reserve System,  
 20 and any bank, banking association, trust company, savings bank,  
 21 or other banking institution organized or operating under the laws  
 22 of the United States, and any bank the deposits of which are insured  
 23 by the Federal Deposit Insurance Corporation.

24 (2) “Savings and loan association” means any federal savings  
 25 and loan association and any “insured institution” as defined in  
 26 Section 401 of the National Housing Act, as amended, and any  
 27 federal credit union as defined in Section 2 of the Federal Credit  
 28 Union Act.

29 (3) “Credit union” means any federal credit union and any  
 30 state-chartered credit union the accounts of which are insured by  
 31 the Administrator of the National Credit Union Administration.

32 (e) The provisions of this section shall not be amended by the  
 33 Legislature except by statute passed in each house by rolleall vote  
 34 entered in the journal, two-thirds of the membership concurring,  
 35 or by a statute that becomes effective only when approved by the  
 36 electors.

37 **SEC. 3.**

38 *SECTION 1.* Section 29800 of the Penal Code is amended to  
 39 read:

1 29800. (a) (1) Any person who has been convicted of a felony  
2 under the laws of the United States, the State of California, or any  
3 other state, government, or country and who owns, purchases,  
4 receives, or has in possession or under custody or control any  
5 firearm is guilty of a felony. If the person has previously been  
6 convicted of this offense, the person is guilty of a felony punishable  
7 by imprisonment for four, five, or six years.

8 (2) Any person who has been convicted of a misdemeanor  
9 violation of paragraph (2) of subdivision (a) of Section 245, a  
10 misdemeanor violation of Section 246, or a misdemeanor violation  
11 of subdivision (c) of Section 417 and who owns, purchases,  
12 receives, or has in possession or under custody or control any  
13 firearm is guilty of a felony.

14 (3) Any person who is addicted to the use of any narcotic drug  
15 and who owns, purchases, receives, or has in possession or under  
16 custody or control any firearm is guilty of a felony.

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

21 (b) Notwithstanding subdivision (a), any person who has been  
22 convicted of a felony or of an offense enumerated in Section 23515,  
23 when that conviction results from certification by the juvenile court  
24 for prosecution as an adult in an adult court under Section 707 of  
25 the Welfare and Institutions Code, and who owns or has in  
26 possession or under custody or control any firearm is guilty of a  
27 felony.

28 (c) Subdivision (a) shall not apply to a person who has been  
29 convicted of a felony under the laws of the United States unless  
30 either of the following criteria is satisfied:

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

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

36 ~~SEC. 4.~~

37 *SEC. 2.* No reimbursement is required by this act pursuant to  
38 Section 6 of Article XIII B of the California Constitution because  
39 the only costs that may be incurred by a local agency or school  
40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty  
2 for a crime or infraction, within the meaning of Section 17556 of  
3 the Government Code, or changes the definition of a crime within  
4 the meaning of Section 6 of Article XIII B of the California  
5 Constitution.

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