

**ASSEMBLY BILL**

**No. 266**

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**Introduced by Assembly Member Cooper**

January 15, 2021

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

LEGISLATIVE COUNSEL'S DIGEST

AB 266, as introduced, Cooper. Violent felonies: hate crimes.

Existing law classifies certain felonies as violent felonies for purposes of various provisions of the Penal Code. Existing law imposes an additional one-year term for a sexually violent felony and a 3-year term for a violent felony for each prior separate prison term served for a violent felony.

This bill would additionally define felony hate crimes as a violent felony, as specified. By increasing the punishment for a crime, 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 667.5 of the Penal Code is amended to  
2 read:

1 667.5. Enhancement of prison terms for new offenses because  
 2 of prior prison terms shall be imposed as follows:

3 (a) ~~Where~~*If* one of the new offenses is one of the violent  
 4 felonies specified in subdivision (c), in addition to and consecutive  
 5 to any other prison terms therefor, the court shall impose a  
 6 three-year term for each prior separate prison term served by the  
 7 defendant ~~where~~*if* the prior offense was one of the violent felonies  
 8 specified in subdivision (c). However, ~~no~~*an* additional term shall  
 9 *not* be imposed under this subdivision for ~~any~~*a* prison term served  
 10 prior to a period of 10 years in which the defendant remained free  
 11 of both prison custody and the commission of an offense ~~which~~  
 12 *that* results in a felony conviction.

13 (b) Except ~~where~~*if* subdivision (a) applies, ~~where~~*if* the new  
 14 offense is ~~any~~*a* felony for which a prison sentence or a sentence  
 15 of imprisonment in a county jail under subdivision (h) of Section  
 16 1170 is imposed or is not suspended, in addition and consecutive  
 17 to any other sentence therefor, the court shall impose a one-year  
 18 term for each prior separate prison term for a sexually violent  
 19 offense as defined in subdivision (b) of Section 6600 of the Welfare  
 20 and Institutions Code, provided that ~~no~~*an* additional term shall  
 21 *not* be imposed under this subdivision for ~~any~~*a* prison term served  
 22 prior to a period of five years in which the defendant remained  
 23 free of both the commission of an offense ~~which~~*that* results in a  
 24 felony conviction, and prison custody or the imposition of a term  
 25 of jail custody imposed under subdivision (h) of Section 1170 or  
 26 any felony sentence that is not suspended.

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

- 32 (1) Murder or voluntary manslaughter.
- 33 (2) Mayhem.
- 34 (3) Rape as defined in paragraph (2) or (6) of subdivision (a)  
 35 of Section 261 or paragraph (1) or (4) of subdivision (a) of Section  
 36 262.
- 37 (4) Sodomy as defined in subdivision (c) or (d) of Section 286.
- 38 (5) Oral copulation as defined in subdivision (c) or (d) of Section  
 39 287 or of former Section 288a.

- 1 (6) Lewd or lascivious act as defined in subdivision (a) or (b)
- 2 of Section 288.
- 3 (7) Any felony punishable by death or imprisonment in the state
- 4 prison for life.
- 5 (8) Any felony in which the defendant inflicts great bodily injury
- 6 on any person other than an accomplice—~~which~~ *that* has been
- 7 charged and proved as provided for in Section 12022.7, 12022.8,
- 8 or 12022.9 on or after July 1, 1977, or as specified prior to July 1,
- 9 1977, in Sections 213, 264, and 461, or any felony in which the
- 10 defendant uses a firearm which use has been charged and proved
- 11 as provided in subdivision (a) of Section 12022.3, or Section
- 12 12022.5 or 12022.55.
- 13 (9) ~~Any robbery.~~ *Robbery.*
- 14 (10) Arson, in violation of subdivision (a) or (b) of Section 451.
- 15 (11) Sexual penetration as defined in subdivision (a) or (j) of
- 16 Section 289.
- 17 (12) Attempted murder.
- 18 (13) A violation of Section 18745, 18750, or 18755.
- 19 (14) Kidnapping.
- 20 (15) Assault with the intent to commit a specified felony, in
- 21 violation of Section 220.
- 22 (16) Continuous sexual abuse of a child, in violation of Section
- 23 288.5.
- 24 (17) Carjacking, as defined in subdivision (a) of Section 215.
- 25 (18) Rape, spousal rape, or sexual penetration, in concert, in
- 26 violation of Section 264.1.
- 27 (19) Extortion, as defined in Section 518,—~~which~~ *that* would
- 28 constitute a felony violation of Section 186.22.
- 29 (20) Threats to victims or witnesses, as defined in Section 136.1,
- 30 ~~which~~ *that* would constitute a felony violation of Section 186.22.
- 31 (21) ~~Any burglary.~~ *Burglary* of the first degree, as defined in
- 32 subdivision (a) of Section 460, wherein it is charged and proved
- 33 that another person, other than an accomplice, was present in the
- 34 residence during the commission of the burglary.
- 35 (22) Any violation of Section 12022.53.
- 36 (23) A violation of subdivision (b) or (c) of Section 11418. ~~The~~
- 37 ~~Legislature finds and declares that these specified crimes merit~~
- 38 ~~special consideration when imposing a sentence to display society's~~
- 39 ~~condemnation for these extraordinary crimes of violence against~~
- 40 ~~the person.~~

1 (24) Any felony violation of Section 422.7, or any felony for  
2 which an additional term was imposed pursuant to Section 422.75.

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

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

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

28 (g) A prior separate prison term for the purposes of this section  
29 shall mean a continuous completed period of prison incarceration  
30 imposed for the particular offense alone or in combination with  
31 concurrent or consecutive sentences for other crimes, including  
32 any reimprisonment on revocation of parole ~~which~~ that is not  
33 accompanied by a new commitment to prison, and including ~~any~~  
34 reimprisonment after an escape from incarceration.

35 (h) Serving a prison term includes any confinement time in ~~any~~  
36 a state prison or federal penal institution as punishment for  
37 commission of an offense, including confinement in a hospital or  
38 other institution or facility credited as service of prison time in the  
39 jurisdiction of the confinement.

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

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

11 (k) (1) Notwithstanding subdivisions (d) and (g) or any other  
12 ~~provision~~ of law, where one of the new offenses is committed  
13 while the defendant is temporarily removed from prison pursuant  
14 to Section 2690 or while the defendant is transferred to a  
15 community facility pursuant to Section 3416, 6253, or 6263, or  
16 while the defendant is on furlough pursuant to Section 6254, the  
17 defendant shall be subject to the full enhancements provided for  
18 in this section.

19 (2) This subdivision shall not apply when a full, separate, and  
20 consecutive term is imposed pursuant to any other provision of  
21 law.

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