

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 ~~Section 530.5~~ Sections 1170.125, 1192.7, and 29800 of the Penal Code, relating to ~~identity theft~~ firearms.

LEGISLATIVE COUNSEL'S DIGEST

SB 644, as amended, Cannella. ~~Identity theft.~~ *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, adopted June 8, 1982, 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. Existing law, 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, as specified, 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 increase the punishment for that felony imprisonment for a term of 4, 5, or 6 years.*

*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.*

~~Existing law provides that every person who willfully obtains personal identifying information, as defined, of another person, and uses that information for an unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, real property, or medical information without the consent of that person, is guilty of a public offense.~~

~~This bill would make technical, nonsubstantive changes to that provision.~~

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: no. Fiscal committee: ~~no~~<sup>yes</sup>. State-mandated local program: ~~no~~<sup>yes</sup>.

*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 ~~November 7, 2012,~~ *all January 1, 2014, the*
- 6     *references to existing statutes in Sections 1170.12 and 1170.126*

1 *to other code sections* are to those sections as they existed on  
2 ~~November 7, 2012.~~ *January 1, 2014.*

3 *SEC. 2. Section 1192.7 of the Penal Code is amended to read:*

4 1192.7. (a) (1) It is the intent of the Legislature that district  
5 attorneys prosecute violent sex crimes under statutes that provide  
6 sentencing under a “one strike,” “three strikes” or habitual sex  
7 offender statute instead of engaging in plea bargaining over those  
8 offenses.

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

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

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

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

38 (1) Murder or voluntary manslaughter; (2) mayhem; (3) rape;  
39 (4) sodomy by force, violence, duress, menace, threat of great  
40 bodily injury, or fear of immediate and unlawful bodily injury on

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

1 245; (32) assault with a deadly weapon against a public transit  
2 employee, custodial officer, or school employee, in violation of  
3 Section 245.2, 245.3, or 245.5; (33) discharge of a firearm at an  
4 inhabited dwelling, vehicle, or aircraft, in violation of Section 246;  
5 (34) commission of rape or sexual penetration in concert with  
6 another person, in violation of Section 264.1; (35) continuous  
7 sexual abuse of a child, in violation of Section 288.5; (36) shooting  
8 from a vehicle, in violation of subdivision (c) or (d) of Section  
9 26100; (37) intimidation of victims or witnesses, in violation of  
10 Section 136.1; (38) criminal threats, in violation of Section 422;  
11 (39) any attempt to commit a crime listed in this subdivision other  
12 than an assault; (40) any violation of Section 12022.53; (41) a  
13 violation of subdivision (b) or (c) of Section 11418; *(42) a violation*  
14 *of paragraph (1) of subdivision (a) of Section 29800;* and ~~(42)~~ (43)  
15 any conspiracy to commit an offense described in this subdivision.

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

22 As used in this subdivision, the following terms have the  
23 following meanings:

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

29 (2) “Savings and loan association” means any federal savings  
30 and loan association and any “insured institution” as defined in  
31 Section 401 of the National Housing Act, as amended, and any  
32 federal credit union as defined in Section 2 of the Federal Credit  
33 Union Act.

34 (3) “Credit union” means any federal credit union and any  
35 state-chartered credit union the accounts of which are insured by  
36 the Administrator of the National Credit Union administration.

37 (e) The provisions of this section shall not be amended by the  
38 Legislature except by statute passed in each house by rollcall vote  
39 entered in the journal, two-thirds of the membership concurring,

1 or by a statute that becomes effective only when approved by the  
2 electors.

3 *SEC. 3. Section 29800 of the Penal Code is amended to read:*

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

10 (2) *Any person who has been convicted of an offense enumerated*  
11 *in subdivision (a), (b), or (d) of Section 23515, or who is addicted*  
12 *to the use of any narcotic drug, and who owns, purchases, receives,*  
13 *or has in possession or under custody or control any firearm is*  
14 *guilty of a felony.*

15 ~~(2)~~

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

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

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

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

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

35 *SEC. 4. No reimbursement is required by this act pursuant to*  
36 *Section 6 of Article XIII B of the California Constitution because*  
37 *the only costs that may be incurred by a local agency or school*  
38 *district will be incurred because this act creates a new crime or*  
39 *infraction, eliminates a crime or infraction, or changes the penalty*  
40 *for a crime or infraction, within the meaning of Section 17556 of*

1 *the Government Code, or changes the definition of a crime within*  
2 *the meaning of Section 6 of Article XIII B of the California*  
3 *Constitution.*

4 SECTION 1. ~~Section 530.5 of the Penal Code is amended to~~  
5 ~~read:~~

6 ~~530.5.—(a) Every person who willfully obtains personal~~  
7 ~~identifying information, as defined in subdivision (b) of Section~~  
8 ~~530.55, of another person, and uses that information for an~~  
9 ~~unlawful purpose, including to obtain, or attempt to obtain, credit,~~  
10 ~~goods, services, real property, or medical information without the~~  
11 ~~consent of that person, is guilty of a public offense, and upon~~  
12 ~~conviction therefor, shall be punished by a fine, by imprisonment~~  
13 ~~in a county jail not to exceed one year, or by both a fine and~~  
14 ~~imprisonment, or by imprisonment pursuant to subdivision (h) of~~  
15 ~~Section 1170.~~

16 ~~(b) In a case in which a person willfully obtains personal~~  
17 ~~identifying information of another person, uses that information~~  
18 ~~to commit a crime in addition to a violation of subdivision (a), and~~  
19 ~~is convicted of that crime, the court records shall reflect that the~~  
20 ~~person whose identity was falsely used to commit the crime did~~  
21 ~~not commit the crime.~~

22 ~~(c) (1) Every person who, with the intent to defraud, acquires~~  
23 ~~or retains possession of the personal identifying information, as~~  
24 ~~defined in subdivision (b) of Section 530.55, of another person is~~  
25 ~~guilty of a public offense, and upon conviction therefor, shall be~~  
26 ~~punished by a fine, by imprisonment in a county jail not to exceed~~  
27 ~~one year, or by both a fine and imprisonment.~~

28 ~~(2) Every person who, with the intent to defraud, acquires or~~  
29 ~~retains possession of the personal identifying information, as~~  
30 ~~defined in subdivision (b) of Section 530.55, of another person,~~  
31 ~~and who has previously been convicted of a violation of this~~  
32 ~~section, upon conviction therefor shall be punished by a fine, by~~  
33 ~~imprisonment in a county jail not to exceed one year, or by both~~  
34 ~~a fine and imprisonment, or by imprisonment pursuant to~~  
35 ~~subdivision (h) of Section 1170.~~

36 ~~(3) Every person who, with the intent to defraud, acquires or~~  
37 ~~retains possession of the personal identifying information, as~~  
38 ~~defined in subdivision (b) of Section 530.55, of 10 or more other~~  
39 ~~persons is guilty of a public offense, and upon conviction therefor,~~  
40 ~~shall be punished by a fine, by imprisonment in a county jail not~~

1 to exceed one year, or by both a fine and imprisonment, or by  
2 imprisonment pursuant to subdivision (h) of Section 1170.  
3 (d) (1) Every person who, with the intent to defraud, sells,  
4 transfers, or conveys the personal identifying information, as  
5 defined in subdivision (b) of Section 530.55, of another person is  
6 guilty of a public offense, and upon conviction therefor, shall be  
7 punished by a fine, by imprisonment in a county jail not to exceed  
8 one year, or by both a fine and imprisonment, or by imprisonment  
9 pursuant to subdivision (h) of Section 1170.  
10 (2) Every person who, with actual knowledge that the personal  
11 identifying information, as defined in subdivision (b) of Section  
12 530.55, of a specific person will be used to commit a violation of  
13 subdivision (a), sells, transfers, or conveys that same personal  
14 identifying information is guilty of a public offense, and upon  
15 conviction therefor, shall be punished by a fine, by imprisonment  
16 pursuant to subdivision (h) of Section 1170, or by both a fine and  
17 imprisonment.  
18 (e) Every person who commits mail theft, as defined in Section  
19 1708 of Title 18 of the United States Code, is guilty of a public  
20 offense, and upon conviction therefor shall be punished by a fine,  
21 by imprisonment in a county jail not to exceed one year, or by both  
22 a fine and imprisonment. Prosecution under this subdivision shall  
23 not limit or preclude prosecution under any other provision of law,  
24 including, but not limited to, subdivisions (a) to (c), inclusive, of  
25 this section.  
26 (f) An interactive computer service or access software provider,  
27 as defined in subsection (f) of Section 230 of Title 47 of the United  
28 States Code, shall not be liable under this section unless the service  
29 or provider acquires, transfers, sells, conveys, or retains possession  
30 of personal information with the intent to defraud.