

AMENDED IN SENATE JUNE 4, 2002

AMENDED IN ASSEMBLY MAY 15, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2173**

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**Introduced by Assembly Member Wayne**

February 20, 2002

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An act to amend Sections 1170.1, 12022, 12022.5, 12022.53, 12022.55, 12022.7, and 12022.9 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 2173, as amended, Wayne. Sentencing: enhancements.

Existing law provides procedures for imposing consecutive sentences under specified circumstances, and for various sentence enhancements involving firearms.

This bill would recast those provisions.

The bill would set forth a general requirement that enhancements be in addition and consecutive to the offense, and that, where applicable, the middle term be imposed unless there are aggravating or mitigating circumstances. It would specifically make these general provisions applicable to indeterminate, as well as to determinate, sentences. It would eliminate various duplicative provisions.

The bill would eliminate certain enhancements where other provisions of law provide for duplicate or more severe enhancements.

The bill would make various clarifying changes and would make additional technical changes.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1170.1 of the Penal Code is amended to  
 2 read:

3 1170.1. (a) Except as otherwise provided by law, and subject  
 4 to Section 654, when any person is convicted of two or more  
 5 felonies, whether in the same proceeding or court or in different  
 6 proceedings or courts, and whether by judgment rendered by the  
 7 same or by a different court, and a consecutive term of  
 8 imprisonment is imposed under Sections 669 and 1170, the  
 9 aggregate term of imprisonment for all these convictions shall be  
 10 the sum of the principal term, the subordinate term, and any  
 11 additional term imposed for applicable enhancements for prior  
 12 convictions, prior prison terms, and Section 12022.1. The  
 13 principal term shall consist of the greatest term of imprisonment  
 14 imposed by the court for any of the crimes, including any term  
 15 imposed for applicable specific enhancements. The subordinate  
 16 term for each consecutive offense shall consist of one-third of the  
 17 middle term of imprisonment prescribed for each other felony  
 18 conviction for which a consecutive term of imprisonment is  
 19 imposed, and shall include one-third of the term imposed for any  
 20 specific enhancements applicable to those subordinate offenses.

21 (b) If a person is convicted of two or more violations of  
 22 kidnapping, as defined in Section 207, involving separate victims,  
 23 the subordinate term for each consecutive offense of kidnapping  
 24 shall consist of the full middle term and shall include the full term  
 25 imposed for specific enhancements applicable to those  
 26 subordinate offenses.

27 (c) In the case of any person convicted of one or more felonies  
 28 committed while the person is confined in a state prison or is  
 29 subject to reimprisonment for escape from custody and the law  
 30 either requires the terms to be served consecutively or the court  
 31 imposes consecutive terms, the term of imprisonment for all the  
 32 convictions that the person is required to serve consecutively shall  
 33 commence from the time the person would otherwise have been  
 34 released from prison. If the new offenses are consecutive with each  
 35 other, the principal and subordinate terms shall be calculated as



1 provided in subdivision (a). This subdivision shall be applicable  
2 in cases of convictions of more than one offense in the same or  
3 different proceedings.

4 (d) When the court imposes a prison sentence for a felony  
5 pursuant to Section 1170 or subdivision (b) of Section 1168, the  
6 court shall also impose, in addition and consecutive to the offense  
7 of which the person has been convicted, the additional terms  
8 provided for any applicable enhancements. If an enhancement is  
9 punishable by one of three terms, the court shall impose the middle  
10 term unless there are circumstances in aggravation or mitigation,  
11 and state the reasons for its sentence choice, other than the middle  
12 term, on the record at the time of sentencing. The court shall also  
13 impose any other additional term that the court determines in its  
14 discretion or as required by law shall run consecutive to the term  
15 imposed under Section 1170 or subdivision (b) of Section 1168. In  
16 considering the imposition of the additional term, the court shall  
17 apply the sentencing rules of the Judicial Council.

18 (e) All enhancements shall be alleged in the accusatory  
19 pleading and either admitted by the defendant in open court or  
20 found to be true by the trier of fact.

21 (f) When two or more enhancements may be imposed for being  
22 armed with or using a dangerous or deadly weapon or a firearm in  
23 the commission of a single offense, only the greatest of those  
24 enhancements shall be imposed for that offense. This subdivision  
25 shall not limit the imposition of any other enhancements  
26 applicable to that offense, including an enhancement for the  
27 infliction of great bodily injury.

28 (g) When two or more enhancements may be imposed for the  
29 infliction of great bodily injury on the same victim in the  
30 commission of a single offense, only the greatest of those  
31 enhancements shall be imposed for that offense. This subdivision  
32 shall not limit the imposition of any other enhancements  
33 applicable to that offense, including an enhancement for being  
34 armed with or using a dangerous or deadly weapon or a firearm.

35 (h) For any violation of an offense specified in Section 667.6,  
36 the number of enhancements that may be imposed shall not be  
37 limited, regardless of whether the enhancements are pursuant to  
38 this section, Section 667.6, or some other provision of law. Each  
39 of the enhancements shall be a full and separately served term.

40 SEC. 2. Section 12022 of the Penal Code is amended to read:



1 12022. (a) (1) Except as provided in subdivisions (c) and  
2 (d), any person who is armed with a firearm in the commission of  
3 a felony or attempted felony shall be punished by an additional and  
4 consecutive term of imprisonment in the state prison for one year,  
5 unless the arming is an element of that offense. This additional  
6 term shall apply to any person who is a principal in the commission  
7 of a felony or attempted felony if one or more of the principals is  
8 armed with a firearm, whether or not the person is personally  
9 armed with a firearm.

10 (2) Except as provided in subdivision (c), and notwithstanding  
11 subdivision (d), if the firearm is an assault weapon, as defined in  
12 Section 12276 or Section 12276.1, or a machinegun, as defined in  
13 Section 12200, the additional and consecutive term described in  
14 this subdivision shall be three years whether or not the arming is  
15 an element of the offense of which the person was convicted. The  
16 additional term provided in this paragraph shall apply to any  
17 person who is a principal in the commission of a felony or  
18 attempted felony if one or more of the principals is armed with an  
19 assault weapon or machinegun whether or not the person is  
20 personally armed with an assault weapon or machinegun.

21 (b) (1) Any person who personally uses a deadly or dangerous  
22 weapon in the commission of a felony or attempted felony shall be  
23 punished by an additional and consecutive term of imprisonment  
24 in the state prison for one year, unless use of a deadly or dangerous  
25 weapon is an element of that offense.

26 (2) If the person described in paragraph (1) has been convicted  
27 of carjacking or attempted carjacking, the additional term shall be  
28 one, two, or three years.

29 (3) When a person is found to have personally used a deadly or  
30 dangerous weapon in the commission of a felony or attempted  
31 felony as provided in this subdivision and the weapon is owned by  
32 that person, the court shall order that the weapon be deemed a  
33 nuisance and disposed of in the manner provided in Section 12028.

34 (c) Notwithstanding the enhancement set forth in subdivision  
35 (a), any person who is personally armed with a firearm in the  
36 commission of a violation or attempted violation of Section 11351,  
37 11351.5, 11352, 11366.5, 11366.6, 11378, 11378.5, 11379,  
38 11379.5, or 11379.6 of the Health and Safety Code, shall be  
39 punished by an additional and consecutive term of imprisonment  
40 in the state prison for three, four, or five years.



1 (d) Notwithstanding the enhancement set forth in subdivision  
2 (a), any person who is not personally armed with a firearm who,  
3 knowing that another principal is personally armed with a firearm,  
4 is a principal in the commission of an offense or attempted offense  
5 specified in subdivision (c), shall be punished by an additional *and*  
6 *consecutive* term of imprisonment in the state prison for one, two,  
7 or three years.

8 (e) For purposes of imposing an enhancement under Section  
9 1170.1, the ~~enhancement~~ *enhancements* under this section shall  
10 count as one, single enhancement.

11 (f) Notwithstanding any other provision of law, the ~~courts~~ *court*  
12 may strike the additional punishment for the ~~enhancement~~  
13 *enhancements* provided in subdivision (c) or (d) in an unusual case  
14 where the interests of justice would best be served, if the court  
15 specifies on the record and enters into the minutes the  
16 circumstances indicating that *the interests of justice* would best be  
17 served by that disposition.

18 SEC. 3. Section 12022.5 of the Penal Code is amended to  
19 read:

20 12022.5. (a) Except as provided in subdivision (b), any  
21 person who personally uses a firearm in the commission of a  
22 felony or attempted felony shall be punished by an additional and  
23 consecutive term of imprisonment in the state prison for 3, 4, or  
24 10 years, unless use of a firearm is an element of that offense.

25 (b) Notwithstanding subdivision (a), any person who  
26 personally uses an assault weapon, as specified in Section 12276  
27 or Section 12276.1, or a machinegun, as defined in Section 12200,  
28 in the commission of a felony or attempted felony, shall be  
29 punished by an additional and consecutive term of imprisonment  
30 in the state prison for 5, 6, or 10 years.

31 (c) Notwithstanding Section 1385 or any other provisions of  
32 law, the court shall not strike an allegation under this section or a  
33 finding bringing a person within the provisions of this section.

34 (d) Notwithstanding the limitation in subdivision (a) relating to  
35 being an element of the offense, the additional term provided by  
36 this section shall be imposed for any violation of Section 245 if a  
37 firearm is used, or for murder if the killing is perpetrated by means  
38 of shooting a firearm from a motor vehicle, intentionally at another  
39 person outside of the vehicle with the intent to inflict great bodily  
40 injury or death.



1 (e) When a person is found to have personally used a firearm,  
2 an assault weapon, or a machinegun in the commission of a felony  
3 or attempted felony as provided in this section and the firearm,  
4 assault weapon, or machinegun is owned by that person, the court  
5 shall order that the firearm be deemed a nuisance and disposed of  
6 in the manner provided in Section 12028.

7 (f) For purposes of imposing an enhancement under Section  
8 1170.1, the ~~enhancement~~ *enhancements* under this section shall  
9 count as one, single enhancement.

10 SEC. 4. Section 12022.53 of the Penal Code is amended to  
11 read:

12 12022.53. (a) This section applies to the following felonies:

13 (1) Section 187 (murder).

14 (2) Section 203 or 205 (mayhem).

15 (3) Section 207, 209, or 209.5 (kidnapping).

16 (4) Section 211 (robbery).

17 (5) Section 215 (carjacking).

18 (6) Section 220 (assault with intent to commit a specified  
19 felony).

20 (7) Subdivision (d) of Section 245 (assault with a firearm on a  
21 peace officer or firefighter).

22 (8) Section 261 or 262 (rape).

23 (9) Section 264.1 (rape or sexual penetration in concert).

24 (10) Section 286 (sodomy).

25 (11) Section 288 or 288.5 (lewd act on a child).

26 (12) Section 288a (oral copulation).

27 (13) Section 289 (sexual penetration).

28 (14) Section 4500 (assault by a life prisoner).

29 (15) Section 4501 (assault by a prisoner).

30 (16) Section 4503 (holding a hostage by a prisoner).

31 (17) Any felony punishable by death or imprisonment in the  
32 state prison for life.

33 (18) Any attempt to commit a crime listed in this subdivision  
34 other than an assault.

35 (b) Notwithstanding any other provision of law, any person  
36 who is convicted of a felony specified in subdivision (a), and who  
37 in the commission of that felony personally uses a firearm, shall  
38 be punished by an additional and consecutive term of  
39 imprisonment in the state prison for 10 years. The firearm need not  
40 be operable or loaded for this enhancement to apply.



1 (c) Notwithstanding any other provision of law, any person  
2 who is convicted of a felony specified in subdivision (a), and who  
3 in the commission of that felony intentionally and personally  
4 discharges a firearm, shall be punished by an additional and  
5 consecutive term of imprisonment in the state prison for 20 years.

6 (d) Notwithstanding any other provision of law, any person  
7 who is convicted of a felony specified in subdivision (a), Section  
8 246, or subdivision (c) or (d) of Section 12034, and who in the  
9 commission of that felony intentionally and personally discharges  
10 a firearm and proximately causes great bodily injury, as defined in  
11 Section 12022.7, or death, to any person other than an accomplice,  
12 shall be punished by an additional and consecutive term of  
13 imprisonment in the state prison for 25 years to life.

14 (e) (1) The enhancements provided in this section shall apply  
15 to any person who is a principal in the commission of an offense  
16 if both of the following are pled and proved:

17 (A) The person violated subdivision (b) of Section 186.22.

18 (B) Any principal in the offense committed any act specified in  
19 subdivision (b), (c), or (d).

20 (2) An enhancement for participation in a criminal street gang  
21 pursuant to Chapter 11 (commencing with Section 186.20) of Title  
22 7 of Part 1 shall not be imposed on a person in addition to an  
23 enhancement imposed pursuant to this subdivision, unless the  
24 person personally used or personally discharged a firearm in the  
25 commission of the offense.

26 (f) Only one additional term of imprisonment under this  
27 section shall be imposed per person for each crime. If more than  
28 one enhancement per person is found true under this section, the  
29 court shall impose upon that person the enhancement that provides  
30 the longest term of imprisonment. An enhancement involving a  
31 firearm specified in Section 12021.5, 12022, 12022.3, 12022.4, ~~or~~  
32 ~~12022.25~~ 12022.5, or 12022.55 shall not be imposed on a person  
33 in addition to an enhancement imposed pursuant to this section. An  
34 enhancement for great bodily injury as defined in Section 12022.7,  
35 12022.8, or 12022.9 shall not be imposed on a person in addition  
36 to an enhancement imposed pursuant to subdivision (d).

37 (g) Notwithstanding any other provision of law, probation shall  
38 not be granted to, nor shall the execution or imposition of sentence  
39 be suspended for, any person found to come within the provisions  
40 of this section.



1 (h) Notwithstanding Section 1385 or any other provision of  
2 law, the court shall not strike an allegation under this section or a  
3 finding bringing a person within the provisions of this section.

4 (i) The total amount of credits awarded pursuant to Article 2.5  
5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3  
6 or pursuant to Section 4019 or any other provision of law shall not  
7 exceed 15 percent of the total term of imprisonment imposed on  
8 a defendant upon whom a sentence is imposed pursuant to this  
9 section.

10 (j) For the penalties in this section to apply, the existence of any  
11 fact required under subdivision (b), (c), or (d) shall be alleged in  
12 the information or indictment and either admitted by the defendant  
13 in open court or found to be true by the trier of fact. When an  
14 enhancement specified in this section has been admitted or found  
15 to be true, the court shall impose punishment pursuant to this  
16 section rather than imposing punishment authorized under any  
17 other provision of law, unless another provision of law provides  
18 for a greater penalty or a longer term of imprisonment.

19 (k) When a person is found to have used or discharged a firearm  
20 in the commission of an offense that includes an allegation  
21 pursuant to this section and the firearm is owned by that person,  
22 a coparticipant, or a conspirator, the court shall order that the  
23 firearm be deemed a nuisance and disposed of in the manner  
24 provided in Section 12028.

25 (l) The enhancements specified in this section shall not apply  
26 to the lawful use or discharge of a firearm by a public officer, as  
27 provided in Section 196, or by any person in lawful self-defense,  
28 lawful defense of another, or lawful defense of property, as  
29 provided in Sections 197, 198, and 198.5.

30 SEC. 5. Section 12022.55 of the Penal Code is amended to  
31 read:

32 12022.55. Notwithstanding Section 12022.5, any person  
33 who, with the intent to inflict great bodily injury or death, inflicts  
34 great bodily injury, as defined in Section 12022.7, or causes the  
35 death of a person, other than an occupant of a motor vehicle, as a  
36 result of discharging a firearm from a motor vehicle in the  
37 commission of a felony or attempted felony, shall be punished by  
38 an additional and consecutive term of imprisonment in the state  
39 prison for 5, 6, or 10 years.



1 SEC. 6. Section 12022.7 of the Penal Code is amended to  
2 read:

3 12022.7. (a) Any person who personally inflicts great bodily  
4 injury on any person other than an accomplice in the commission  
5 of a felony or attempted felony shall be punished by an additional  
6 and consecutive term of imprisonment in the state prison for three  
7 years.

8 (b) Any person who personally inflicts great bodily injury on  
9 any person other than an accomplice in the commission of a felony  
10 or attempted felony which causes the victim to become comatose  
11 due to brain injury or to suffer paralysis of a permanent nature,  
12 shall be punished by an additional and consecutive term of  
13 imprisonment in the state prison for five years. As used in this  
14 subdivision, “paralysis” means a major or complete loss of motor  
15 function resulting from injury to the nervous system or to a  
16 muscular mechanism.

17 (c) Any person who personally inflicts great bodily injury on  
18 a person who is 70 years of age or older, other than an accomplice,  
19 in the commission of a felony or attempted felony shall be  
20 punished by an additional and consecutive term of imprisonment  
21 in the state prison for five years.

22 (d) Any person who personally inflicts great bodily injury on  
23 a child under the age of five years in the commission of a felony  
24 or attempted felony shall be punished by an additional and  
25 consecutive term of imprisonment in the state prison for four, five,  
26 or six years.

27 (e) Any person who personally inflicts great bodily injury  
28 under circumstances involving domestic violence in the  
29 commission of a felony or attempted felony shall be punished by  
30 an additional and consecutive term of imprisonment in the state  
31 prison for three, four, or five years. As used in this subdivision,  
32 “domestic violence” has the meaning provided in subdivision (b)  
33 of Section 13700.

34 (f) As used in this section, “great bodily injury” means a  
35 significant or substantial physical injury.

36 (g) This section shall not apply to murder or manslaughter or  
37 a violation of Section 451 or 452. Subdivisions (a), (b), (c), and (d)  
38 shall not apply if infliction of great bodily injury is an element of  
39 the offense.



1 (h) The court shall impose the additional terms of  
2 imprisonment under either subdivision (a), (b), (c), or (d), but may  
3 not impose more than one of those terms for the same offense.

4 SEC. 7. Section 12022.9 of the Penal Code is amended to  
5 read:

6 12022.9. Any person who, during the commission of a felony  
7 or attempted felony, knows or reasonably should know that the  
8 victim is pregnant, and who, with intent to inflict injury, and  
9 without the consent of the woman, personally inflicts injury upon  
10 a pregnant woman that results in the termination of the pregnancy  
11 shall be punished by an additional and consecutive term of  
12 imprisonment in the state prison for five years. The additional term  
13 provided in this subdivision shall not be imposed unless the fact  
14 of that injury is charged in the accusatory pleading and admitted  
15 or found to be true by the trier of fact.

16 Nothing in this section shall be construed as affecting the  
17 applicability of subdivision (a) of Section 187.

18 SEC. 8. The amendments to subdivisions (b) and (c) of  
19 Section 1170.1 of the Penal Code, in Section 1 of this act, are  
20 intended to be technical amendments only and are not intended to  
21 make any substantive changes to those subdivisions.

22 SEC. 9. The amendment to subdivision (g) of Section 1170.1  
23 of the Penal Code, in Section 1 of this act, is intended to clarify the  
24 application of that subdivision and conform the language of that  
25 subdivision to the decision of the Court of Appeal in *People v.*  
26 *Arndt* (1999) 76 Cal.App.4th 387, 398-399 (Discussion, Section  
27 3).

28 SEC. 10. In repealing the specific provisions relating to  
29 enhancements being imposed consecutively in paragraph (1) of  
30 subdivision (a), paragraph (1) of subdivision (b), and subdivision  
31 (c) of Section 12022 of the Penal Code, in Section 2 of this act,  
32 paragraph (1) of subdivision (a) and paragraph (2) of subdivision  
33 (b) of Section 12022.5 of the Penal Code, in Section 3 of this act,  
34 subdivisions (b), (c), and (d) of Section 12022.53 of the Penal  
35 Code, in Section 4 of this act, Section 12022.55 of the Penal Code,  
36 in Section 5 of this act, subdivisions (a), (b), (c), (d), and (e) of  
37 Section 12022.7 of the Penal Code, in Section 6 of this act, and in  
38 subdivision (a) of Section 12022.9 of the Penal Code, in Section  
39 7 of this act, it is the intent of the Legislature that the amended



1 general provision of subdivision (d) of Section 1170.1 of the Penal  
2 Code shall apply to the enhancements provided in those sections.

3 SEC. 11. In repealing the specific provisions relating to the  
4 middle term being imposed for enhancements in subdivisions (c)  
5 and (d) of Section 12022 of the Penal Code, in Section 2 of this act,  
6 and in subdivisions (d) and (e) of Section 12022.7 of the Penal  
7 Code, in Section 6 of this act, it is the intent of the Legislature that  
8 the amended general provision of subdivision (d) of Section  
9 1170.1 of the Penal Code shall apply to the enhancements provided  
10 in those sections.

11 SEC. 12. (a) In repealing the enhancement in paragraph (2)  
12 of subdivision (a) of Section 12022.5 of the Penal Code, in Section  
13 3 of this act, the Legislature recognizes that the conduct punished  
14 under that provision is now subject to greater punishment under  
15 subdivision (b) of Section 12022.53 of the Penal Code.

16 (b) In repealing the enhancement in paragraph (1) of  
17 subdivision (b) of Section 12022.5 of the Penal Code, in Section  
18 3 of this act, the Legislature recognizes that the conduct punished  
19 under that provision is now subject to greater punishment under  
20 subdivision (d) of Section 12022.53 of the Penal Code.

21 (c) In repealing the enhancement in subdivision (c) of Section  
22 12022.5 of the Penal Code, in Section 3 of this act, the Legislature  
23 recognizes that the conduct punished under that provision is now  
24 subject to the same punishment under subdivision (a) of Section  
25 12022.5 of the Penal Code.

26 (d) The repeal of those provisions of Section 12022.5 of the  
27 Penal Code described in subdivisions (a), (b), and (c) shall not be  
28 given any retroactive application, and shall not be construed to  
29 benefit any person who committed a crime or received an  
30 enhancement or any other punishment while those provisions were  
31 in effect.

32 SEC. 13. The amendments to subdivision (c) of Section  
33 12022.5 of the Penal Code, in Section 3 of this act, to prohibit  
34 striking the enhancement, are intended to be declaratory of  
35 existing law as contained in *People v. Thomas* (1992) 4 Cal.4th  
36 206, and *People v. Ledesma* (1997) 16 Cal.4th 90.

37 SEC. 14. The amendments to subdivision (d) of Section  
38 12022.5 of the Penal Code, in Section 3 of this act, are intended  
39 to be declaratory of existing law, and to conform the language of  
40 the statute to the decision of the California Supreme Court in



1 People v. Ledesma (1997) 16 Cal.4th 90, and the decisions of the  
2 Court of Appeal in People v. Moore (1986) 178 Cal.App.3d 898,  
3 People v. Martinez (1987) 194 Cal.App.3d 15, People v. Joachim  
4 (1995) 38 Cal.App.4th 1526, People v. Johnson (1996) 51  
5 Cal.App.4th 1329, 1332-1334 (Section II), and People v. Harper  
6 (2000) 82 Cal.App.4th 1413, 1416-1419 (Section III).

7 SEC. 15. In repealing the specific ~~provisions~~ *provision*  
8 relating to pleading enhancements in subdivision (g) of Section  
9 12022.7 of the Penal Code, in Section 6 of this act, it is not the  
10 intent of the Legislature to alter the application of the general  
11 provision of subdivision (e) of Section 1170.1 of the Penal Code  
12 to the enhancements provided in ~~those sections~~ *that section*.

13 SEC. 16. In repealing the enhancements in paragraphs (1) and  
14 (2) of subdivision (b) of Section 12022.9 of the Penal Code, in  
15 Section 7 of this act, the Legislature recognizes that the conduct  
16 punished under those provisions is now subject to greater  
17 punishment under subdivision (d) of Section 12022.53 of the  
18 Penal Code. The repeal of those provisions of Section 12022.9 of  
19 the Penal Code shall not be given any retroactive application, and  
20 shall not be construed to benefit any person who committed a  
21 crime or received an enhancement or any other punishment while  
22 those provisions were in effect.

