

**Introduced by Senator Knight**

February 22, 2002

An act to amend Section 12022.53 of the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

SB 1855, as introduced, Knight. Sentencing: firearms enhancements.

Existing law provides a scheme of sentencing enhancements for the use of a firearm, as specified, in the commission of specified felonies.

This bill would make a technical, nonsubstantive change to those provisions.

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 12022.53 of the Penal Code is amended
- 2 to read:
- 3 12022.53. (a) This section applies to the following felonies:
- 4 (1) Section 187 (murder).
- 5 (2) Section 203 or 205 (mayhem).
- 6 (3) Section 207, 209, or 209.5 (kidnapping).
- 7 (4) Section 211 (robbery).
- 8 (5) Section 215 (carjacking).
- 9 (6) Section 220 (assault with intent to commit a specified
- 10 felony).
- 11 (7) Subdivision (d) of Section 245 (assault with a firearm on a
- 12 peace officer or firefighter).



- 1 (8) Section 261 or 262 (rape).
- 2 (9) Section 264.1 (rape or sexual penetration in concert).
- 3 (10) Section 286 (sodomy).
- 4 (11) Section 288 or 288.5 (lewd act on a child).
- 5 (12) Section 288a (oral copulation).
- 6 (13) Section 289 (sexual penetration).
- 7 (14) Section 4500 (assault by a life prisoner).
- 8 (15) Section 4501 (assault by a prisoner).
- 9 (16) Section 4503 (holding a hostage by a prisoner).
- 10 (17) Any felony punishable by death or imprisonment in the
- 11 state prison for life.
- 12 (18) Any attempt to commit a crime listed in this subdivision
- 13 other than an assault.
- 14 (b) Notwithstanding any other provision of law, any person
- 15 who is convicted of a felony specified in subdivision (a), and who
- 16 in the commission of that felony personally used a firearm, shall
- 17 be punished by a term of imprisonment of 10 years in the state
- 18 prison, which that shall be imposed in addition and consecutive to
- 19 the punishment prescribed for that felony. The firearm need not be
- 20 operable or loaded for this enhancement to apply.
- 21 (c) Notwithstanding any other provision of law, any person
- 22 who is convicted of a felony specified in subdivision (a), and who
- 23 in the commission of that felony intentionally and personally
- 24 discharged a firearm, shall be punished by a term of imprisonment
- 25 of 20 years in the state prison, which shall be imposed in addition
- 26 and consecutive to the punishment prescribed for that felony.
- 27 (d) Notwithstanding any other provision of law, any person
- 28 who is convicted of a felony specified in subdivision (a) *of this*
- 29 *section*, Section 246, or subdivision (c) or (d) of Section 12034,
- 30 and who in the commission of that felony intentionally and
- 31 personally discharged a firearm and proximately caused great
- 32 bodily injury, as defined in Section 12022.7, or death, to any
- 33 person other than an accomplice, shall be punished by a term of
- 34 imprisonment of 25 years to life in the state prison, which shall be
- 35 imposed in addition and consecutive to the punishment prescribed
- 36 for that felony.
- 37 (e) (1) The enhancements specified in this section shall apply
- 38 to any person charged as a principal in the commission of an
- 39 offense that includes an allegation pursuant to this section when a



1 violation of both this section and subdivision (b) of Section 186.22  
2 are pled and proved.

3 (2) An enhancement for participation in a criminal street gang  
4 pursuant to Chapter 11 (commencing with Section 186.20) of Title  
5 7 of Part 1 shall not be imposed on a person in addition to an  
6 enhancement imposed pursuant to this subdivision, unless the  
7 person personally used or personally discharged a firearm in the  
8 commission of the offense.

9 (f) Only one additional term of imprisonment *shall be imposed*  
10 under this section ~~shall be imposed~~ per person for each crime. If  
11 more than one enhancement per person is found true under this  
12 section, the court shall impose upon that person the enhancement  
13 that provides the longest term of imprisonment. An enhancement  
14 involving a firearm specified in Section 12021.5, 12022, 12022.3,  
15 12022.4, 12022.5, or 12022.55 shall not be imposed on a person  
16 in addition to an enhancement imposed pursuant to this section. An  
17 enhancement for great bodily injury as defined in Section 12022.7,  
18 12022.8, or 12022.9 shall not be imposed on a person in addition  
19 to an enhancement imposed pursuant to subdivision (d).

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

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

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

33 (j) For the penalties in this section to apply, the existence of any  
34 fact required under subdivision (b), (c), or (d) shall be alleged in  
35 the information or indictment and either admitted by the defendant  
36 in open court or found to be true by the trier of fact. When an  
37 enhancement specified in this section has been admitted or found  
38 to be true, the court shall impose punishment pursuant to this  
39 section rather than imposing punishment authorized under any



1 other provision of law, unless another provision of law provides  
2 for a greater penalty or a longer term of imprisonment.

3 (k) When a person is found to have used or discharged a firearm  
4 in the commission of an offense that includes an allegation  
5 pursuant to this section and the firearm is owned by that person,  
6 a coparticipant, or a coconspirator, the court shall order that the  
7 firearm be deemed a nuisance and disposed of in the manner  
8 provided in Section 12028.

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

