

ASSEMBLY BILL

No. 2481

Introduced by Assembly Member Lackey

February 19, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2481, as introduced, Lackey. Sentencing: enhancements: crossbows.

Existing law provides for specified enhancements for the use or discharge of a firearm, or discharge of a firearm that causes serious bodily injury or death, in connection with certain offenses, as specified.

This bill would also make those enhancements applicable if the weapon used or discharged is a crossbow. By expanding the scope of an enhancement, 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. This act shall be known and may be cited as the
- 2 Charles Emmanuel Briggs Memorial Act of 2016.

1 SEC. 2. Section 12022.53 of the Penal Code is amended to
2 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).

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

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

15 (10) Section 286 (sodomy).

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

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

18 (13) Section 289 (sexual penetration).

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

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

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

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

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

26 (b) Notwithstanding any other ~~provision of law, any~~ a person
27 who, in the commission of a felony specified in subdivision (a),
28 personally uses a ~~firearm, firearm or crossbow~~ shall be punished
29 by an additional and consecutive term of imprisonment in the state
30 prison for 10 years. The *firearm or crossbow* need not be operable
31 or loaded for this enhancement to apply.

32 (c) Notwithstanding any other ~~provision of law, any~~ person
33 who, in the commission of a felony specified in subdivision (a),
34 personally and intentionally discharges a ~~firearm, firearm or~~
35 *crossbow* shall be punished by an additional and consecutive term
36 of imprisonment in the state prison for 20 years.

37 (d) Notwithstanding any other ~~provision of law, any~~ person
38 who, in the commission of a felony specified in subdivision (a),
39 Section 246, or subdivision (c) or (d) of Section 26100, personally
40 and intentionally discharges a *firearm or crossbow* and proximately

1 causes great bodily injury, as defined in Section 12022.7, or death,
2 to any person other than an accomplice, shall be punished by an
3 additional and consecutive term of imprisonment in the state prison
4 for 25 years to life.

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

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

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

11 (2) An enhancement for participation in a criminal street gang
12 pursuant to Chapter 11 (commencing with Section 186.20) of Title
13 7 of Part 1 shall not be imposed on a person in addition to an
14 enhancement imposed pursuant to this subdivision, unless the
15 person personally used or personally discharged a firearm *or*
16 *crossbow* in the commission of the offense.

17 (f) Only one additional term of imprisonment under this section
18 shall be imposed per person for each crime. If more than one
19 enhancement per person is found true under this section, the court
20 shall impose upon that person the enhancement that provides the
21 longest term of imprisonment. An enhancement involving a firearm
22 specified in Section 12021.5, 12022, 12022.3, 12022.4, 12022.5,
23 or 12022.55 shall not be imposed on a person in addition to an
24 enhancement imposed pursuant to this section. An enhancement
25 for great bodily injury as defined in Section 12022.7, 12022.8, or
26 12022.9 shall not be imposed on a person in addition to an
27 enhancement imposed pursuant to subdivision (d).

28 (g) Notwithstanding any other ~~provision of~~ law, probation shall
29 not be granted to, nor shall the execution or imposition of sentence
30 be suspended for, any person found to come within the provisions
31 of this section.

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

35 (i) The total amount of credits awarded pursuant to Article 2.5
36 (commencing with Section 2930) of Chapter 7 of Title 1 of Part
37 3 or pursuant to Section 4019 or any other provision of law shall
38 not exceed 15 percent of the total term of imprisonment imposed
39 on a defendant upon whom a sentence is imposed pursuant to this
40 section.

1 (j) For the penalties in this section to apply, the existence of any
 2 fact required under subdivision (b), (c), or (d) shall be alleged in
 3 the accusatory pleading and either admitted by the defendant in
 4 open court or found to be true by the trier of fact. ~~When~~ *If* an
 5 enhancement specified in this section has been admitted or found
 6 to be true, the court shall impose punishment for that enhancement
 7 pursuant to this section rather than imposing punishment authorized
 8 under any other ~~provision of~~ law, unless another enhancement
 9 provides for a greater penalty or a longer term of imprisonment.

10 (k) ~~When~~ *If* a person is found to have used or discharged a
 11 firearm *or crossbow* in the commission of an offense that includes
 12 an allegation pursuant to this section and the firearm *or crossbow*
 13 is owned by that person, a coparticipant, or a coconspirator, the
 14 court shall order that the firearm *or crossbow* be deemed a nuisance
 15 and disposed of in the manner provided in Sections 18000 and
 16 18005.

17 (l) The enhancements specified in this section ~~shall~~ *do not* apply
 18 to the lawful use or discharge of a firearm *or crossbow* by a public
 19 officer, as provided in Section 196, or by any person in lawful
 20 self-defense, lawful defense of another, or lawful defense of
 21 property, as provided in Sections 197, 198, and 198.5.

22 (m) *For the purposes of this section, “crossbow” means any*
 23 *device that is designed to fire a bolt or arrow projectile by*
 24 *releasing a string or wire held at tension, including, but not limited*
 25 *to, crossbows, compound bows, and long bows.*

26 SEC. 3. No reimbursement is required by this act pursuant to
 27 Section 6 of Article XIII B of the California Constitution because
 28 the only costs that may be incurred by a local agency or school
 29 district will be incurred because this act creates a new crime or
 30 infraction, eliminates a crime or infraction, or changes the penalty
 31 for a crime or infraction, within the meaning of Section 17556 of
 32 the Government Code, or changes the definition of a crime within
 33 the meaning of Section 6 of Article XIII B of the California
 34 Constitution.