

AMENDED IN ASSEMBLY APRIL 28, 1997  
AMENDED IN ASSEMBLY APRIL 9, 1997  
AMENDED IN ASSEMBLY FEBRUARY 19, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

**ASSEMBLY BILL**

**No. 4**

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**Introduced by Assembly Member Bordonaro**

(Principal coauthor: Senator Hurtt)

**(Coauthors: Assembly Members Ashburn, Baldwin, Battin, Baugh, Bowler, Cunneen, Goldsmith, House, Leach, Margett, McClintock, Miller, Morrissey, Morrow, Prenter, Richter, Runner, Takasugi, Thompson, and Wayne)**

(Coauthors: Senators Haynes, McPherson, Monteith, Mountjoy, O’Connell, and Rainey)

December 2, 1996

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

LEGISLATIVE COUNSEL’S DIGEST

AB 4, as amended, Bordonaro. Sentencing: firearms.

~~(1) Under~~

*Under* existing law, any person who is armed with a firearm in the commission or attempted commission of a felony shall be punished, in addition to the punishment prescribed for the felony, by an additional term of one year. If the firearm with which he or she is armed is an assault weapon, the additional term is 3 years.

Under existing law, any person who uses a firearm in the commission or attempted commission of a felony shall be punished by an additional 3, 4, or 10 years. If the felony is a carjacking or attempted carjacking, the additional term is 4, 5, or 10 years. If the person uses an assault weapon, the additional term is 5, 6, or 10 years. Existing law sets forth additional enhancements under other specified circumstances.

This bill would provide that, notwithstanding any other law, a person who is charged as a principal in the commission of an offense who is armed with or uses a firearm during the commission of specified felonies shall be punished by an additional term of 10 years in the state prison, to be imposed consecutive to the punishment prescribed for the felony. If the firearm is intentionally discharged under those circumstances, the person would be punished by an additional term of 20 years in the state prison, to be imposed consecutive to the punishment prescribed for the felony. If great bodily injury was proximately caused as a result of the firearm being discharged under those circumstances, the person would be punished by an additional term of 25 years to life in the state prison, to be imposed consecutive to the punishment prescribed for the felony. By increasing the penalty for existing crimes, the bill would impose a state-mandated local program.

This bill would provide that it shall not apply to the use or discharge of a firearm by a police officer or by a person in lawful self-defense or defense of others or property or in the actual but unreasonable belief in the necessity to defend against great bodily injury or death.

~~(2) Under existing law, the juvenile court may find that a minor who is adjudged a ward of the court who has committed a criminal offense is not a fit and proper subject to be dealt with under the juvenile court law, based upon evaluation of specified criteria.~~

~~This bill would provide that if a perpetrator subject to the provisions in (1) above is 14 to 17 years of age, inclusive, he or she is presumed to be unfit to be dealt with under the juvenile court law for those purposes, and would thereby subject juvenile perpetrators to the provisions of the bill. By making~~



~~existing crimes applicable to a new category of persons, the 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. The Legislature finds and declares that  
2 substantially longer and mandatory prison sentences  
3 must be imposed on felons who use firearms in the  
4 commission of their crimes, in order to protect our  
5 citizens and to deter violent crime.

6 SEC. 2. Section 12022.53 is added to the Penal Code,  
7 to read:

8 12022.53. (a) This section applies to the following  
9 felonies:

- 10 (1) Section 187 (murder).
- 11 (2) Subdivision (a) of Section 192 (voluntary  
12 manslaughter).
- 13 (3) Sections 203 and 205 (mayhem).
- 14 (4) Sections 207, 208, 209, and 209.5 (kidnapping).
- 15 (5) Section 211 (robbery).
- 16 (6) Section 215 (carjacking).
- 17 (7) Section 220 (assault with intent to commit a  
18 specified felony).
- 19 (8) Subdivision (d) of Section 245 (assault with a  
20 firearm on a peace officer or firefighter).
- 21 (9) Section 261 and 262 (rape).
- 22 (10) Section 264.1 (rape or penetration by a foreign  
23 object in concert).
- 24 (11) Section 286 (sodomy).
- 25 (12) Sections 288 and 288.5 (lewd act on a child).
- 26 (13) Section 288a (oral copulation).
- 27 (14) Section 289 (penetration by a foreign object).



1 (15) Section 451 (arson).

2 (16) Section 459 involving a first-degree burglary.

3 (17) Section 4500 (assault by life prisoner).

4 (18) Section 4501 (assault by prisoner).

5 (19) Section 4503 (holding a hostage by prisoner).

6 (20) Any felony punishable by death or imprisonment  
7 in the state prison for life.

8 (21) Any attempt to commit a crime listed in this  
9 subdivision other than an assault.

10 (b) Notwithstanding any other provision of law, any  
11 person who is convicted of a felony specified in  
12 subdivision (a), and who in the commission of that felony  
13 was armed with or used a firearm, shall be punished by  
14 a term of imprisonment of 10 years in the state prison,  
15 which shall be imposed in addition and consecutive to the  
16 punishment prescribed for that felony. The firearm need  
17 not be operable or loaded for this enhancement to apply.

18 (c) Notwithstanding any other provision of law, any  
19 person who is convicted of a felony specified in  
20 subdivision (a), and who in the commission of that felony  
21 intentionally discharged a firearm, shall be punished by  
22 a term of imprisonment of 20 years in the state prison,  
23 which shall be imposed in addition and consecutive to the  
24 punishment prescribed for that felony.

25 (d) Notwithstanding any other provision of law, any  
26 person who is convicted of a felony specified in  
27 subdivision (a) ~~or a violation of Section 245, Section 246,~~  
28 or subdivision (b), (c), or (d) of Section 12034, and who  
29 in the commission of that felony intentionally discharged  
30 a firearm and proximately caused great bodily injury, as  
31 defined in Section 12022.7, to any other person, shall be  
32 punished by a term of imprisonment of 25 years to life in  
33 the state prison, which shall be imposed in addition and  
34 consecutive to the punishment prescribed for that felony.

35 (e) The enhancements specified in this section shall  
36 apply to any person charged as a principal in the  
37 commission of an offense that includes an allegation  
38 pursuant to this section.

39 (f) Only one additional term of imprisonment under  
40 this section shall be imposed per person for each crime.



1 If more than one enhancement per person is found true  
2 under this section, the court shall impose upon that  
3 person the enhancement that provides the longest term  
4 of imprisonment. An enhancement involving a firearm  
5 specified in Section 12022, 12022.3, 12022.4, 12022.5, or  
6 12022.55 shall not be imposed on a person in addition to  
7 an enhancement imposed pursuant to this section.

8 (g) The additional terms provided in this section shall  
9 not be limited by any other provision of law.

10 (h) Notwithstanding any other provision of law,  
11 probation shall not be granted to, nor shall the execution  
12 or imposition of sentence be suspended for, any person  
13 found to come within the provisions of this section. There  
14 shall not be a commitment to any facility other than a  
15 state prison.

16 (i) Notwithstanding Section 1385 or any other  
17 provision of law, the court shall not strike an allegation  
18 under this section or a finding bringing a person within  
19 the provisions of this section.

20 (j) Any offense that includes an allegation pursuant to  
21 this section shall constitute a “violent felony” within the  
22 meaning of subdivision (c) of Section 667.5 and a “serious  
23 felony” within the meaning of subdivision (c) of Section  
24 1192.7.

25 ~~(k) Any minor alleged to be a person described in~~  
26 ~~Section 602 of the Welfare and Institutions Code by~~  
27 ~~reason of an offense that includes an allegation pursuant~~  
28 ~~to this section who is 14 years of age or older at the time~~  
29 ~~he or she committed the offense shall be presumed unfit~~  
30 ~~to be dealt with under the juvenile court law pursuant to~~  
31 ~~Section 707 of the Welfare and Institutions Code.~~

32 ~~(l)~~

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

39 ~~(m)~~

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

12 ~~(n)~~

13 (m) When a person is found to have been armed with,  
14 or to have used or discharged, a firearm in the commission  
15 of an offense that includes an allegation pursuant to this  
16 section and the firearm is owned by that person, a  
17 coparticipant, or a coconspirator, the court shall order  
18 that the firearm be deemed a nuisance and disposed of in  
19 the manner provided in Section 12028.

20 ~~(o)~~

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

27 ~~(p)~~

28 (o) The enhancements specified in this section shall  
29 not apply to any person who displays or discharges a  
30 firearm in the actual but unreasonable belief in the  
31 necessity to defend against imminent peril to life or great  
32 bodily injury.

33 SEC. 3. No reimbursement is required by this act  
34 pursuant to Section 6 of Article XIII B of the California  
35 Constitution because the only costs that may be incurred  
36 by a local agency or school district will be incurred  
37 because this act creates a new crime or infraction,  
38 eliminates a crime or infraction, or changes the penalty  
39 for a crime or infraction, within the meaning of Section  
40 17556 of the Government Code, or changes the definition



1 of a crime within the meaning of Section 6 of Article  
2 XIII B of the California Constitution.  
3 Notwithstanding Section 17580 of the Government  
4 Code, unless otherwise specified, the provisions of this act  
5 shall become operative on the same date that the act  
6 takes effect pursuant to the California Constitution.

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