

## Assembly Bill No. 4

### CHAPTER 503

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

[Approved by Governor September 25, 1997. Filed  
with Secretary of State September 26, 1997.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 4, Bordonaro. Sentencing: firearms.

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 convicted of a specified felony who was charged as a principal in the commission of the offense and personally used a firearm during the commission of the offense 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 to any person other than an accomplice 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.

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.

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

SECTION 1. The Legislature finds and declares that substantially longer prison sentences must be imposed on felons who use firearms in the commission of their crimes, in order to protect our citizens and to deter violent crime.

SEC. 2. This act shall be known and may be cited as the Sandy Peters Memorial Act.

SEC. 3. Section 12022.53 is added to the Penal Code, to read:

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

- (1) Section 187 (murder).
- (2) Sections 203 and 205 (mayhem).
- (3) Sections 207, 208, 209, and 209.5 (kidnapping).
- (4) Section 211 (robbery).
- (5) Section 215 (carjacking).
- (6) Section 220 (assault with intent to commit a specified felony).
- (7) Subdivision (d) of Section 245 (assault with a firearm on a peace officer or firefighter).
- (8) Sections 261 and 262 (rape).
- (9) Section 264.1 (rape or penetration by a foreign object in concert).
- (10) Section 286 (sodomy).
- (11) Sections 288 and 288.5 (lewd act on a child).
- (12) Section 288a (oral copulation).
- (13) Section 289 (penetration by a foreign object).
- (14) Section 4500 (assault by life prisoner).
- (15) Section 4501 (assault by prisoner).
- (16) Section 4503 (holding a hostage by prisoner).
- (17) Any felony punishable by death or imprisonment in the state prison for life.
- (18) Any attempt to commit a crime listed in this subdivision other than an assault.

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

(c) Notwithstanding any other provision of law, any person who is convicted of a felony specified in subdivision (a), and who in the commission of that felony intentionally and personally discharged a



firearm, shall be punished by a term of imprisonment of 20 years in the state prison, which shall be imposed in addition and consecutive to the punishment prescribed for that felony.

(d) Notwithstanding any other provision of law, any person who is convicted of a felony specified in subdivision (a), Section 246, or subdivision (c) or (d) of Section 12034, and who in the commission of that felony intentionally and personally discharged a firearm and proximately caused great bodily injury, as defined in Section 12022.7, to any person other than an accomplice, shall be punished by a term of imprisonment of 25 years to life in the state prison, which shall be imposed in addition and consecutive to the punishment prescribed for that felony.

(e) (1) The enhancements specified in this section shall apply to any person charged as a principal in the commission of an offense that includes an allegation pursuant to this section when a violation of both this section and subdivision (b) of Section 186.22 are pled and proved.

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

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

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

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

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



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

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

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

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

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

