

**Introduced by Senator Karnette**

January 25, 1999

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An act to amend Sections 12022.7 and 12022.9 of, and to repeal Section 12022.8 of, the Penal Code, relating to criminal sentencing enhancements.

LEGISLATIVE COUNSEL'S DIGEST

SB 226, as introduced, Karnette. Sentencing enhancements.

Existing law requires the court to impose a specified increased term of imprisonment upon any person who personally inflicts great bodily injury, as defined, upon any other person in the commission or attempted commission of a felony in addition to the punishment proscribed for the offense for which the person was convicted. If the person is found to have personally inflicted great bodily injury upon the victim, the increased punishment is 3 years; if in addition, the victim becomes comatose due to brain injury, suffers permanent paralysis, is 70 years of age or older, or is pregnant and the injury results in the termination of the pregnancy, the increased punishment is 5 years. If the person is found to have personally inflicted great bodily injury under circumstances involving domestic violence, the additional term of imprisonment is 3, 4, or 5 years; and if the person inflicts great bodily injury on any victim in the commission or attempted commission of specified sex offenses, the additional term of imprisonment is 5 years.

This bill would instead increase the additional term of imprisonment under the above provisions by authorizing the



court to impose 3, 5, or 7 years of imprisonment upon any person who personally inflicts great bodily injury upon any other person. This bill also would make technical changes that consolidate other provisions of law or delete language that is duplicative of other provisions of law.

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

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

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

3 12022.7. (a) Any person who personally inflicts great  
4 bodily injury on any person other than an accomplice in  
5 the commission or attempted commission of a felony  
6 shall, in addition and consecutive to the punishment  
7 prescribed for the ~~felony or attempted felony~~ offense of  
8 which ~~he or she~~ *the person* has been convicted, be  
9 punished by an additional term of *imprisonment in the*  
10 *state prison for three, five, or seven* years, unless infliction  
11 of great bodily injury is an element of ~~the~~ *that* offense of  
12 ~~which he or she is convicted.~~

13 (b) ~~Any person found to have inflicted great bodily~~  
14 ~~injury pursuant to subdivision (a) which causes the victim~~  
15 ~~to become comatose due to brain injury or to suffer~~  
16 ~~paralysis, as defined in Section 12022.9, of a permanent~~  
17 ~~nature, shall be punished by an additional and~~  
18 ~~consecutive term of five years.~~

19 (c) ~~Any person who personally inflicts great bodily~~  
20 ~~injury on another person who is 70 years of age or older~~  
21 ~~other than an accomplice in the commission or attempted~~  
22 ~~commission of a felony shall, in addition and consecutive~~  
23 ~~to the punishment prescribed for the felony or attempted~~  
24 ~~felony of which he or she has been convicted, be punished~~  
25 ~~by an additional term of five years, unless infliction of~~  
26 ~~great bodily injury is an element of the offense of which~~  
27 ~~he or she is convicted.~~

28 (d) ~~Any person who personally inflicts great bodily~~  
29 ~~injury under circumstances involving domestic violence~~  
30 ~~in the commission or attempted commission of a felony~~



1 shall, in addition and consecutive to the punishment  
2 prescribed for the felony or attempted felony of which he  
3 or she has been convicted, be punished by an additional  
4 term of three, four, or five years. The court shall order  
5 imposition of *impose* the middle term unless there are  
6 circumstances in aggravation or mitigation. The court  
7 shall state ~~its~~ *the* reasons for its enhancement choice on  
8 the record at the time of sentencing. ~~As used in this~~  
9 section, “domestic violence” has the meaning provided in  
10 subdivision (b) of Section 13700.

11 (e)

12 (c) As used in this section, “great bodily injury” means  
13 a significant or substantial physical injury.

14 (f)

15 (d) This section shall not apply to murder or  
16 manslaughter or a violation of Section 451 or 452. The  
17 additional term provided in this section shall not be  
18 imposed unless the fact of great bodily injury is charged  
19 in the accusatory pleading and admitted or found to be  
20 true by the trier of fact.

21 (g) The court shall impose the additional terms of  
22 imprisonment under either subdivision (a), (b), or (c),  
23 but may not impose more than one of those terms for the  
24 same offense.

25 SEC. 2. Section 12022.8 of the Penal Code is repealed.

26 ~~12022.8. Any person who inflicts great bodily injury,~~  
27 ~~as defined in Section 12022.7, on any victim in a violation~~  
28 ~~or attempted violation of paragraph (2), (3), or (6) of~~  
29 ~~subdivision (a) of Section 261, paragraph (1) or (4) of~~  
30 ~~subdivision (a) of Section 262, Section 264.1, subdivision~~  
31 ~~(b) of Section 288, subdivision (a) of Section 289, or~~  
32 ~~sodomy or oral copulation by force, violence, duress,~~  
33 ~~menace, or fear of immediate and unlawful bodily injury~~  
34 ~~on the victim or another person as provided in Section 286~~  
35 ~~or 288a shall receive a five-year enhancement for each~~  
36 ~~such violation in addition to the sentence provided for the~~  
37 ~~felony conviction.~~

38 SEC. 3. Section 12022.9 of the Penal Code is amended  
39 to read:



1 12022.9. ~~(a)~~ Any person who, during the commission  
2 or attempted commission of a felony, knows or reasonably  
3 should know that the victim is pregnant, and who, with  
4 intent to inflict injury, and without the consent of the  
5 woman, personally inflicts injury upon a pregnant woman  
6 that results in the termination of the pregnancy shall, in  
7 addition and consecutive to the punishment prescribed  
8 by the felony or attempted felony of which the person has  
9 been convicted, be punished by an additional term of five  
10 years in the state prison. The additional term provided in  
11 this subdivision shall not be imposed unless the fact of that  
12 injury is charged in the accusatory pleading and admitted  
13 or found to be true by the trier of fact.

14 Nothing in this subdivision shall be construed as  
15 affecting the applicability of subdivision (a) of Section  
16 187 of the Penal Code.

17 ~~(b) (1) Any person convicted of a violation of~~  
18 ~~subdivision (e) of Section 12034 shall, in addition and~~  
19 ~~consecutive to the punishment for that violation, be~~  
20 ~~punished by an additional term of four years, if as a result~~  
21 ~~of the defendant personally and willfully and maliciously~~  
22 ~~discharging the firearm, the victim suffers paralysis or~~  
23 ~~paraparesis of a major body part, including, but not~~  
24 ~~limited to, the entire hand or foot.~~

25 ~~(2) Any person convicted of a violation of Section 246~~  
26 ~~shall, in addition and consecutive to the punishment for~~  
27 ~~that violation, be punished by an additional term of four~~  
28 ~~years, if as a result of the defendant personally and~~  
29 ~~willfully and maliciously discharging the firearm at an~~  
30 ~~occupied motor vehicle from another motor vehicle, the~~  
31 ~~victim suffers paralysis or paraparesis of a major body~~  
32 ~~part, including, but not limited to, the entire hand or foot.~~

33 ~~(3) For purposes of this subdivision:~~

34 ~~(A) "Paralysis" means a major or complete loss of~~  
35 ~~motor function resulting from injury to the nervous~~  
36 ~~system or to a muscular mechanism.~~

37 ~~(B) "Paraparesis" means a significant weakness of a~~  
38 ~~major body part, including, but not limited to, the entire~~  
39 ~~hand or foot, causing the extremity to be functionally~~



1 ~~impaired and rendered useless to assist with one of the~~  
2 ~~basic skills in life such as eating or walking.~~

3 ~~(C) The additional term provided in this section shall~~  
4 ~~not be imposed unless the fact of the injury is charged in~~  
5 ~~an accusatory pleading and admitted or found to be true~~  
6 ~~by the trier of fact.~~

7 SEC. 4. In repealing the enhancements in  
8 subdivisions (b), (c), and (d) of Section 12022.7 and in  
9 Section 12022.8 the Legislature recognizes that the  
10 conduct punished under those provisions will be subject  
11 to punishment under the amended general provision of  
12 Section 12022.7. The repeal of those provisions of Sections  
13 12022.7 and 12022.8 shall not be given any retroactive  
14 application, and shall not be construed to benefit any  
15 person who committed a crime or received an  
16 enhancement or any other punishment while those  
17 provisions were in effect.

18 SEC. 5. In repealing subdivision (f) and subdivision  
19 (g) of Section 12022.7, it is not the intent of the  
20 Legislature to alter the application of the general  
21 provisions of subdivisions (e) and (g) of Section 1170.1 to  
22 the enhancement provided in Section 12022.7.

23 SEC. 6. In repealing the enhancements in paragraphs  
24 (1) and (2) of subdivision (b) of Section 12022.9, the  
25 Legislature recognizes that the conduct punished under  
26 those provisions is now subject to greater punishment  
27 under subdivision (d) of Section 12022.53. The repeal of  
28 those provisions of Section 12022.9 shall not be given any  
29 retroactive application, and shall not be construed to  
30 benefit any person who committed a crime or received  
31 an enhancement or any other punishment while those  
32 provisions were in effect.

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