

AMENDED IN SENATE APRIL 13, 2000

AMENDED IN SENATE APRIL 3, 2000

SENATE BILL

No. 1539

Introduced by Senator Lewis

February 17, 2000

~~An act to amend Section 12022.53 of the Penal Code, relating to sentencing.~~ *An act to add Section 13519.05 to the Penal Code, relating to peace officer training.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1539, as amended, Lewis. ~~Sentencing: enhancements for use of firearms~~ *Peace officer training: stalking.*

Existing law establishes a Commission on Peace Officer Standards and Training that among other things, establishes levels of standards and training for peace officers, as specified.

This bill would, in addition, require the commission to implement, by January 1, 2003, a course or courses of instruction for the training of peace officers in the handling of, and responding to, stalking complaints. The course or courses would be mandatory for peace officers, as specified.

By imposing additional training requirements on local law enforcement entities, 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do

not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~Existing law, the so-called “10-20-life” statute, provides that where the offender commits one or more specified felonies; a sentence enhancement of 10 years, 20 years, and 25 years to life in prison, is imposed for personally using a firearm; discharging a firearm, and discharging a firearm causing serious injury or death, as specified, respectively.~~

~~This bill would provide that principals convicted under these provisions who do not personally use a firearm but knew or should have known that a principal was armed in the commission of the specified felony, would be subject to a sentence enhancement of 2, 5, or 10 years, respectively, in parallel to the circumstances for sentencing described above.~~

~~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. Section 12022.53 of the Penal Code is~~
- 2 ~~SECTION 1. Section 13519.05 is added to the Penal~~
- 3 ~~Code, to read:~~
- 4 ~~13519.05. (a) The commission shall implement by~~
- 5 ~~January 1, 2003, a course or courses of instruction for the~~
- 6 ~~training of law enforcement officers in California in the~~
- 7 ~~handling of stalking complaints and also shall develop~~
- 8 ~~guidelines for law enforcement response to stalking. The~~
- 9 ~~course or courses of instruction and the guidelines shall~~
- 10 ~~stress enforcement of criminal laws in stalking situations,~~
- 11 ~~availability of civil remedies and community resources,~~



1 and protection of the victim. Where appropriate, the
2 training presenters shall include stalking experts with
3 expertise in the delivery of direct services to victims of
4 stalking.

5 (b) (1) As used in this section, “law enforcement
6 officer” means any officer or employee of a local police
7 department or sheriff’s office, any peace officer of the
8 Department of Parks and Recreation, as defined in
9 subdivision (f) of Section 830.2, any peace officer of the
10 University of California Police Department, as defined in
11 subdivision (b) of Section 830.2, any peace officer of the
12 California State University Police Departments, as
13 defined in subdivision (c) of Section 830.2, a peace officer,
14 as defined in subdivision (d) of Section 830.31, or a peace
15 officer as defined in subdivisions (a) and (b) of Section
16 830.32.

17 (2) As used in this section, “stalking” means the
18 offense defined in Section 646.9.

19 (c) The course of basic training for law enforcement
20 officers shall, no later than January 1, 2003, include
21 adequate instruction in the handling of stalking
22 complaints.

23 (d) (1) All law enforcement officers who have
24 received their basic training before January 1, 2003, shall
25 participate in supplementary training on stalking
26 subjects, as prescribed and certified by the commission.

27 (2) Except as provided in paragraph (3), the training
28 specified in paragraph (1) shall be completed no later
29 than January 1, 2006.

30 (3) The training for peace officers of the Department
31 of Parks and Recreation, as defined in subdivision (g) of
32 Section 830.2, shall be completed no later than January 1,
33 2007.

34 (4) Local law enforcement agencies are encouraged to
35 include, as a part of their advanced officer training
36 program, periodic updates and training on stalking. The
37 commission shall assist where possible.

38 (e) (1) The course of instruction, the learning and
39 performance objectives, the standards for the training,
40 and the guidelines shall be developed by the commission



1 *in consultation with appropriate groups and individuals*
2 *having an interest and expertise in the field of stalking.*

3 (2) *The commission, in consultation with these groups*
4 *and individuals, shall review existing training programs to*
5 *determine in what ways stalking training might be*
6 *included as a part of ongoing programs.*

7 (f) *Each law enforcement officer below the rank of*
8 *supervisor who is assigned to patrol duties and would*
9 *normally respond to stalking calls or incidents of stalking*
10 *shall complete, every two years, an updated course of*
11 *instruction on stalking that is developed according to the*
12 *standards and guidelines developed pursuant to*
13 *subdivision (d). The instruction required pursuant to this*
14 *subdivision shall be funded from existing resources*
15 *available for the training required pursuant to this*
16 *section. It is the intent of the Legislature not to increase*
17 *the annual training costs of local government entities.*

18 SEC. 2. *Notwithstanding Section 17610 of the*
19 *Government Code, if the Commission on State Mandates*
20 *determines that this act contains costs mandated by the*
21 *state, reimbursement to local agencies and school*
22 *districts for those costs shall be made pursuant to Part 7*
23 *(commencing with Section 17500) of Division 4 of Title*
24 *2 of the Government Code. If the statewide cost of the*
25 *claim for reimbursement does not exceed one million*
26 *dollars (\$1,000,000), reimbursement shall be made from*
27 *the State Mandates Claims Fund.*

28 ~~amended to read:~~

29 ~~12022.53. (a) This section applies to the following~~
30 ~~felonies:~~

31 ~~(1) Section 187 (murder).~~

32 ~~(2) Sections 203 and 205 (mayhem).~~

33 ~~(3) Sections 207, 209, and 209.5 (kidnapping).~~

34 ~~(4) Section 211 (robbery).~~

35 ~~(5) Section 215 (carjacking).~~

36 ~~(6) Section 220 (assault with intent to commit a~~
37 ~~specified felony).~~

38 ~~(7) Subdivision (d) of Section 245 (assault with a~~
39 ~~firearm on a peace officer or firefighter).~~

40 ~~(8) Sections 261 and 262 (rape).~~



- 1 ~~(9) Section 264.1 (rape or penetration by a foreign~~
2 ~~object in concert).~~
- 3 ~~(10) Section 286 (sodomy).~~
- 4 ~~(11) Sections 288 and 288.5 (lewd act on a child).~~
- 5 ~~(12) Section 288a (oral copulation).~~
- 6 ~~(13) Section 289 (penetration by a foreign object).~~
- 7 ~~(14) Section 4500 (assault by life prisoner).~~
- 8 ~~(15) Section 4501 (assault by prisoner).~~
- 9 ~~(16) Section 4503 (holding a hostage by prisoner).~~
- 10 ~~(17) Any felony punishable by death or imprisonment~~
11 ~~in the state prison for life.~~
- 12 ~~(18) Any attempt to commit a crime listed in this~~
13 ~~subdivision other than an assault.~~
- 14 ~~(b) (1) Notwithstanding any other provision of law,~~
15 ~~any person who is convicted of a felony specified in~~
16 ~~subdivision (a), and who in the commission of that felony~~
17 ~~personally used a firearm, shall be punished by a term of~~
18 ~~imprisonment of 10 years in the state prison, which shall~~
19 ~~be imposed in addition and consecutive to the~~
20 ~~punishment prescribed for that felony. The firearm need~~
21 ~~not be operable or loaded for this enhancement to apply.~~
- 22 ~~(2) Notwithstanding any other provision of law, any~~
23 ~~person convicted as a principal in the commission of a~~
24 ~~felony specified in subdivision (a), where the person~~
25 ~~knew or should have known that a principal was armed~~
26 ~~in the commission of the felony, and where another~~
27 ~~principal personally used a firearm in the commission of~~
28 ~~that felony, shall be punished by a term of imprisonment~~
29 ~~of two years in the state prison, which shall be imposed in~~
30 ~~addition and consecutive to the punishment prescribed~~
31 ~~for that felony.~~
- 32 ~~(c) (1) Notwithstanding any other provision of law,~~
33 ~~any person who is convicted of a felony specified in~~
34 ~~subdivision (a), and who in the commission of that felony~~
35 ~~intentionally and personally discharged a firearm, shall~~
36 ~~be punished by a term of imprisonment of 20 years in the~~
37 ~~state prison, which shall be imposed in addition and~~
38 ~~consecutive to the punishment prescribed for that felony.~~
- 39 ~~(2) Notwithstanding any other provision of law, any~~
40 ~~person convicted as a principal in the commission of a~~



1 ~~felony specified in subdivision (a), where the person~~
2 ~~knew or should have known that a principal was armed~~
3 ~~in the commission of the felony, and where another~~
4 ~~principal intentionally and personally discharged a~~
5 ~~firearm in the commission of that felony, shall be~~
6 ~~punished by a term of imprisonment of five years in the~~
7 ~~state prison, which shall be imposed in addition and~~
8 ~~consecutive to the punishment prescribed for that felony.~~

9 ~~(d) (1) Notwithstanding any other provision of law,~~
10 ~~any person who is convicted of a felony specified in~~
11 ~~subdivision (a), Section 246, or subdivision (e) or (d) of~~
12 ~~Section 12034, and who in the commission of that felony~~
13 ~~intentionally and personally discharged a firearm and~~
14 ~~proximately caused great bodily injury, as defined in~~
15 ~~Section 12022.7, or death, to any person other than an~~
16 ~~accomplice, shall be punished by a term of imprisonment~~
17 ~~of 25 years to life in the state prison, which shall be~~
18 ~~imposed in addition and consecutive to the punishment~~
19 ~~prescribed for that felony.~~

20 ~~(2) Notwithstanding any other provision of law, any~~
21 ~~person convicted as a principal in the commission of a~~
22 ~~felony specified in subdivision (a), where the person~~
23 ~~knew or should have known that a principal was armed~~
24 ~~in the commission of the felony, and where another~~
25 ~~principal intentionally and personally discharged a~~
26 ~~firearm and proximately caused great bodily injury, as~~
27 ~~defined in Section 12022.7, or death, to any person other~~
28 ~~than an accomplice, in the commission of that felony, shall~~
29 ~~be punished by a term of imprisonment of 10 years in the~~
30 ~~state prison, which shall be imposed in addition and~~
31 ~~consecutive to the punishment prescribed for that felony.~~

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

38 ~~(2) An enhancement for participation in a criminal~~
39 ~~street gang pursuant to Chapter 11 (commencing with~~
40 ~~Section 186.20) of Title 7 of Part 1, shall not be imposed~~



1 on a person in addition to an enhancement imposed
2 pursuant to this subdivision, unless the person personally
3 used or personally discharged a firearm in the
4 commission of the offense.

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

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

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

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

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



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

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

10 (l) The enhancements specified in this section shall
11 not apply to the lawful use or discharge of a firearm by a
12 public officer, as provided in Section 196, or by any person
13 in lawful self defense, lawful defense of another, or lawful
14 defense of property, as provided in Sections 197, 198, and
15 198.5.

16 SEC. 2. No reimbursement is required by this act
17 pursuant to Section 6 of Article XIII B of the California
18 Constitution because the only costs that may be incurred
19 by a local agency or school district will be incurred
20 because this act creates a new crime or infraction,
21 eliminates a crime or infraction, or changes the penalty
22 for a crime or infraction, within the meaning of Section
23 17556 of the Government Code, or changes the definition
24 of a crime within the meaning of Section 6 of Article
25 XIII B of the California Constitution.

