

Memorandum 2000-85

Criminal Sentencing

The Commission is proposing to reorganize statutes providing sentence enhancements for crimes involving weapons and injuries, without changing their substance. A preliminary staff draft of proposed legislation is attached. A disposition table showing the relationship between existing law and the proposed law is also attached. In preparing the preliminary staff draft, a number of issues arose. These issues are discussed below. If the Commission approves the preliminary staff draft (with any necessary changes), the next step will be to prepare a draft tentative recommendation for the Commission's consideration.

Except as otherwise indicated, all statutory references in this memorandum are to the Penal Code.

LOCATION OF NEW PROVISIONS

The numbering scheme in the Penal Code is tightly-packed, with little room for insertion of new material. This makes it difficult to find a suitable location for the new provisions, which under the preliminary staff draft comprise more than 40 sections. If this project is successful and the Commission decides to expand the scope of the reorganization to include other types of sentencing provisions, the space constraints would be even more problematic.

The most logical location for the new provisions would be immediately following the determinate sentencing law (Sections 1170-1170.95). However, there are only three numbers available there — 1171-1173. These might be adequate if decimal extensions are used, e.g., Sections 1171.010-1173.990. However, there is another problem with this location. The provisions would have to be grouped as a chapter, with only articles available for further organizational subdivision. Thus, weapon enhancements could be divided from injury enhancements as separate articles, but these articles could not be further subdivided (unless we are willing to invent "sub-articles," which the Commission has been reluctant to do in the past). This organizational constraint

would be even more of a problem if the project is later expanded to include other types of sentencing provisions.

In light of these constraints, the preliminary staff draft locates the new provisions at the end of the Penal Code, in a new part. This would provide ample room for section numbering and organizational subdivision. **The staff recommends this approach.**

PROPOSED STRUCTURE

The Penal Code is divided into the following subdivisions, in descending order: part, title, chapter, article. The preliminary staff draft establishes the proposed law as “Part 6. Sentencing,” with the following organizational structure:

Title

In the proposed law, Title 1 is “Sentence Enhancements.” This title contains all of the material that we are presently working with. If, at some point in the future, the Commission decides to extend the scope of this project to include other sentencing provisions (e.g., fines), one or more new titles could be added to the part. Ample room has been left between the current end of the Penal Code (Section 15003) and the beginning of Title 1 (Section 17000), so that titles can be inserted ahead of the sentence enhancements title if that is desirable.

Chapters

Title 1 is divided into three chapters: “1. General Provisions,” “2. Weapon Enhancements,” and “3. Injury Enhancements.” Some enhancement provisions include both weapons and injuries as elements of the enhancement. Somewhat arbitrarily, the staff has located these in the “Weapon Enhancements” chapter. This alone is probably adequate. Presumably, in a case involving firearms and injuries, a district attorney would look in both chapters to see if there is an applicable enhancement. However, the proposed law could provide more guidance by including a section in the “Injury Enhancements” chapter that does nothing but provide a cross-reference to appropriate sections in the “Weapons Enhancement” chapter. For example:

17405. (a) It is the intent of the Legislature that this section serve merely as a nonsubstantive comparative reference of current sentence enhancement provisions that relate to both weapons and

injuries. Nothing in this section shall have any substantive effect on the application of any sentence enhancement. It is the intent of the Legislature to amend this section as necessary to accurately reflect current sentence enhancement provisions.

(b) A crime involving both a weapon and an injury may be subject to a sentence enhancement under the following provisions:

- (1) Section 17320
- (2) Section 17330
- (3) Section 17335
- (4) Section 17340.

Comment. Section 17405 is new. Subdivision (a) is comparable to the first two paragraphs of Section 666.7.

A catalog of this type is prone to inaccuracy, especially over time. Nonetheless, it could be a useful resource. **The staff recommends** that such a provision be added to the proposed law, perhaps with a note asking for input as to whether the provision would be helpful.

Articles

The weapons enhancements chapter is divided into two articles: “Enhancement for Possession or Provision of Weapon” and “Enhancement for Use of Weapon.” This is a logical distinction that should help practitioners locate applicable enhancements more easily. **The staff recommends** this approach.

The staff did not find a way to usefully subdivide the injury enhancement provisions. There are a number of possible organizing principles — e.g., severity of injury, character of the victim, or nature of the underlying crime. The staff found that none of these approaches yielded any clear organizational advantage. The preliminary staff draft organizes the injury enhancements into a single article, with the sequence of the sections reflecting a rough thematic grouping (e.g., sections relating to injury of a child are adjacent to each other). **The staff is** open to suggested alternatives.

Sections

For the most part, long sections have been broken up. This is consistent with the Commission’s and the Legislature’s preference for short sections (which are easier to read and amend). Also, in the case of a section containing a number of separate enhancements, it allows for these separate enhancements to be assigned to different organizational subdivisions based on their character. For example: existing Section 12022(a)(1) provides an enhancement for being “armed” with a

firearm. This paragraph was placed in the article “Enhancement for Possession or Provision of Weapon” as proposed Section 171500. Existing Section 12022(b)(1) provides an enhancement for “personally use” of a dangerous or deadly weapon. This paragraph was placed in the article “Enhancement for Use of Weapon” as proposed Section 17300(a). **The staff recommends** this approach.

GENERAL PROVISIONS

Chapter 1 of the proposed law includes certain general provisions. Two of these are discussed below (the definition of “great bodily injury” is discussed under “Generalization” below):

Statement of Purpose

Proposed Section 17000 provides:

17000. (a) The purpose of this title is to provide a single location for sentence enhancements relating to weapons and injuries. This will make it easier for prosecutors, defense attorneys, and judges to determine which of the numerous enhancement provisions apply in a particular case.

(b) In draft legislation prepared by the Legislative Counsel, sentence enhancements relating to weapons or injuries shall be located in this title.

(c) A failure to locate a sentence enhancement relating to weapons or injuries in this title has no effect on the validity or meaning of the sentence enhancement.

Comment. Section 17000 is new. It clarifies the purpose of this title and the Legislative Counsel’s responsibility for maintaining this title as the repository of sentence enhancements relating to weapons and injuries.

This section has two purposes: (1) to require the placement of future sentence enhancement provisions into the new title, and (2) to make clear that a failure to do so does not affect the validity of a misplaced enhancement. Subdivision (b) may be unnecessary. The existence of a clear organizational scheme, combined with the statement of purpose in subdivision (a) should be enough to indicate proper placement of future enhancements. **The staff recommends** that a provision along these lines be included in the proposed law, perhaps without subdivision (b).

Continuation of Existing Law

Proposed Section 17005 provides:

17005. A provision of this title, insofar as it is substantially the same as a previously existing provision relating to the same subject matter, shall be construed as a restatement and continuation thereof and not as a new enactment, and a reference in a statute to the provision of this part shall be deemed to include a reference to the previously existing provision unless a contrary intent appears.

Comment. Section 17005 is a standard type of provision in the codes. See, e.g., Corp. Code § 2; Fam. Code § 2; Prob. Code § 2(a). See also Gov't Code §§ 9604 (construction of restatements and continuations), 9605 (construction of amended statutory provision). The last clause makes clear that a statutory reference to a new provision of this title includes a reference to the former law from which it is drawn. Cf. Gov't Code § 9604 (reference to previously existing provision deemed reference to restatement or continuation).

A number of terms and phrases are used in the Comments to the sections of this title to indicate the sources of the sections and to describe how they compare with prior law. The following discussion is intended to provide guidance in interpreting the terminology most commonly used in the Comments.

(1) *Continues without change.* A new provision “continues” a former provision “without change” if the two provisions are identical or nearly so. In some cases, there may be insignificant technical differences, such as where a typographical error or punctuation is corrected without a change in meaning. Some Comments may describe the relationship by simply stating that a new provision “continues” or is “the same as” a former provision,

(2) *Continues without substantive change.* A new provision “continues” a former provision “without substantive change” if the substantive law remains the same, but the language differs to an insignificant degree. This may include revision of language to make a statute gender-neutral.

(3) *Restates without substantive change.* A new provision “restates” a former provision “without substantive change” if the substantive law remains the same but the language differs to a significant degree. Some Comments may describe the new provision as being the “same in substance.”

☞ **Note.** Other terminology commonly used in Law Revision Commission Comments is described in paragraphs (4)-(11), below. Because this title is a nonsubstantive compilation of existing statutes, it is likely that this Comment terminology will be used sparingly, if at all.

(4) *Exceptions, additions, omissions.* If part of a former provision is “continued” or “restated,” the Comment may say that the former provision is continued or restated, but also note the specific differences as “exceptions to,” “additions to,” or “omissions from” the former provision.

(5) *Generalizes, broadens, restates in general terms.* A new provision may be described as “generalizing,” “broadening,” or “restating in general terms” a provision of prior law. This description means that a limited rule has been expanded to cover a broader class of cases.

(6) *Supersedes, replaces.* A provision “supersedes” or “replaces” a former provision if the new provision deals with the same subject as the former provision, but treats it in a significantly different manner.

(7) *New.* A provision is described as “new” where it has no direct source in prior statutes.

(8) *Drawn from, similar to, consistent with.* A variety of terms are used to indicate a source for a new provision, typically a source other than California statutes. For example, a provision may be “drawn from” a uniform act, model code, or the statutes of another state. In these cases, it may be useful to consult any available commentary or interpretation of the source from which the new provision is drawn for background information.

(9) *Codifies.* A Comment may state that a new provision “codifies” a case-law rule that has not previously been enacted into statutory law.

(10) *Makes clear, clarifies.* A new provision may be described as “making clear” a particular rule or “clarifying” a rule as a way of emphasizing the rule, particularly if the situation under prior law was doubtful or contradictory.

(11) *Statement in Comment that section is “comparable” to another section.* A Comment may state that a provision is “comparable” to another provision. If the Comment to a section notes that another section is “comparable,” that does not mean that the other section is the same or substantially the same. The statement is included in the Comment so that the statute user is alerted to the other section and can review the cases under that section for possible use in interpreting the section containing the statement in the Comment.

As the Comment indicates, this is a common type of provision in new codes. Considering that this project is similar to creation of a new code, in that it collects and reorganizes existing provisions, without changing their substance, the staff believes that a section along these lines would be useful. It would help allay concern that the reorganization itself might result in substantive change to the reorganized provisions.

The section also provides an opportunity to set out the Commission's standard "Comment Comment," explaining what our Comment terminology means. As the Note indicates, some of the standard terminology is unlikely to be used in a nonsubstantive project like this one. **The staff recommends** that a provision along these lines be included in the proposed law.

REDUNDANCY

Certain provisions in the affected sections appear to be redundant. In the preliminary staff draft these provisions have been eliminated. Comments following the relevant sections identify the eliminated provisions and staff notes specifically request input on whether the change is appropriate. The types of redundant provisions eliminated in the staff draft are discussed below:

Single Greatest Enhancement Rule

Section 1170.1(f)-(g) provide as follows:

(f) When two or more enhancements may be imposed for being armed with or using a dangerous or deadly weapon or a firearm in the commission of a single offense, only the greatest of those enhancements shall be imposed for that offense. This subdivision shall not limit the imposition of any other enhancements applicable to that offense, including an enhancement for the infliction of great bodily injury.

(g) When two or more enhancements may be imposed for the infliction of great bodily injury in the commission of a single offense, only the greatest of those enhancements shall be imposed for that offense. This subdivision shall not limit the imposition of any other enhancements applicable to that offense, including an enhancement for being armed with or using a dangerous or deadly weapon or a firearm.

In other words, a person can only receive one enhancement (the greatest) per offense for being armed with or using a dangerous or deadly weapon or firearm, and can only receive one enhancement (the greatest) per offense for infliction of great bodily injury. However, a person can receive both a weapon enhancement and an injury enhancement, if both are applicable.

Many of the sentence enhancement provisions include provisions that appear to be redundant with respect to Section 1170.1(f) or (g) (note that these subdivisions have been relocated to the new title — see proposed Sections 17100 and 17400). These redundant provisions are of three types:

(1) Provisions That Restate the Rule

Some provisions restate the substance of Section 1170.1(f) or (g). For example, Section 12022.53(f) provides:

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 subdivision (d).

These provisions appear to be redundant and are not continued in the preliminary staff draft. See the notes following existing Sections 368, 12022.53, and 12022.7.

(2) Provisions That Are Expressly Subordinate or Superior To Other Enhancement Provisions

Some provisions include language to make clear that the enhancement provided by that provision is subordinate or superior to an enhancement provided in another provision. For example, Section 12022(a)(1) provides “Except as provided in subdivisions (c) and (d)...” and subdivisions (c) and (d) then echo back “Notwithstanding the enhancement set forth in subdivision (a)...” In each case, it is the greater enhancement that is superior. Thus, these references appear to be redundant and are not continued in the preliminary staff draft. See the notes following existing Health and Safety Code Section 11379.9; Sections 550, 600, 12022, 12022.5, and 12022.55

(3) Provisions That “Count as One, Single Enhancement”

Section 12022(e) and 12022.5(f) both provide:

For purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as one, single enhancement.

The intended meaning of this provision is unclear. The staff could only find two cases considering the meaning of the provision. In *People v. King*, 5 Cal. 4th 59

(1993), the supreme court reversed the *Culbreth* rule that only a single weapons use enhancement could apply to a single “occasion,” regardless of how many crimes were committed and how many victims were involved on that occasion. The court rejected the assertion that the Legislature had ratified *Culbreth* by adding subdivision (f) to Section 12022.5 (*id.* at 76):

It is not readily apparent exactly what was meant by subdivision (f) of section 12022.5. The Attorney General argues that it was the result of “poor drafting,” in that it was supposed to have been deleted from the bill when other portions to which it related were deleted. We need not resolve the point, nor need we decide what, if anything, subdivision (f) does do; it suffices to determine what it does not do — it does not codify *Culbreth*. If the Legislature had intended to adopt the *Culbreth* rule, surely it would have found a less obscure way to signal that intent.

In *People v. Jones*, 82 Cal. App. 4th 485 (2000), the court interpreted Section 12022.5(f) as reiterating the single greatest enhancement rule:

Appellant used both a dangerous or deadly weapon (a knife) and a handgun in the commission of the crime charged in count 8. Section 1170.1 permits the appellant’s sentence to be enhanced with only the firearm use allegation because that is the greater enhancement.

Our reading of Penal Code Section 1170.1 is consistent with similar weapons enhancement statutes. For Example, Penal Code Section 12022.5, subdivision (f) — relating to use of a firearm during the commission of a crime — provides: “For purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as one, single enhancement.” Thus, if appellant had used a machine gun, an assault weapon and a handgun, he could still only receive a single sentence enhancement under Section 12022.5. Section 1170.1 mirrors this limitation when a defendant is armed with a firearm and some other type of dangerous or deadly weapon, such as a knife.

Under the *Jones* court’s interpretation, Section 12022.5(f) is simply a reiteration of the single greatest enhancement limitation. If this is correct, then the provision is redundant and can be eliminated. Under the Attorney General’s characterization in *King*, the provision is a defective remnant of an earlier draft that should not have been enacted. The preliminary staff draft does not continue the provisions. See the notes following Sections 12022 and 12022.5.

Pleading Rule

Section 1170.1(e) provides as follows:

All enhancements shall be alleged in the accusatory pleading and either admitted by the defendant in open court or found to be true by the trier of fact.

Many of the sentence enhancement provisions include similar language. For example, Section 12022.53(j) provides:

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.

Despite the slight differences in phrasing, the staff believes that these restatements are redundant. In the preliminary staff draft, these provisions are not continued. See the notes following existing Sections 451.1, 452.1, 550, 12022.4, 12022.53, 12022.7, 12022.9, and 12022.95.

GENERALIZATION

Certain provisions recur frequently and should perhaps be generalized to apply to all provisions in proposed legislation. These recurring provisions are discussed below:

Definition of “Great Bodily Injury”

Section 12022.7(a) enhances the sentence of a person who has inflicted great bodily injury in the commission or attempted commission of a felony. The term “great bodily injury” is defined in Section 12022.7(e), as follows:

As used in this section, “great bodily injury” means a significant or substantial physical injury.

A number of sentence enhancement provisions incorporate this definition by reference. See Health & Safety Code § 11379.7; §§ 368, 600, 12022.53, 12022.55, 12022.8. Other enhancement provisions use the phrase without reference to any definition. See Health & Safety Code § 11379.9, 25189.5, 25189.7; §§ 347, 451.1, 452.1, 12022.5.

In the preliminary staff draft, the definition of “great bodily injury” is established as a separate section, applicable to the entire title. See proposed Section 17050. This change has two consequences:

- (1) The statutory cross-references to Section 12022.7(e) would no longer be necessary and could be deleted (as they are in the preliminary staff draft). These would be technical and nonsubstantive changes.
- (2) The definition would apply to those enhancement provisions that currently use the term without defining it. The staff believes that this would also be a nonsubstantive change. Apparently, every section that defines the phrase does so either with a definition identical to that provided in Section 12202.7 or by incorporating Section 12022.7(e) by reference. The few cases that discuss the meaning of “great bodily injury” with respect to sections that do not define the term, reach a definition that is substantively identical to Section 12022.7(e). California jury instructions relating to “great bodily injury” all use a definition that is substantively identical to Section 12022.7(e). Adding a generally applicable definition would be helpful in that it would eliminate any implication that the enhancement sections that do not define “great bodily injury” intend a different meaning from those that do define it.

The staff recommends that the definition of “great bodily injury” be generalized as proposed in the preliminary staff draft.

Weapon Nuisance Provision

Section 12022(b)(3) provides as follows:

When a person is found to have personally used a deadly or dangerous weapon in the commission or attempted commission of a felony as provided in this subdivision and the weapon is owned by that person, the court shall order that the weapon be deemed a nuisance and disposed of in the manner provided in Section 12028.

Section 12028 provides for confiscation and eventual resale or destruction of weapons deemed a nuisance. Provisions similar to Section 12022(b)(3) exist in Section 12022.5(e) and 12022.53(k).

In the preliminary staff draft, the weapon nuisance provisions are generalized as proposed Section 17105:

When a person is found to have used a deadly or dangerous weapon in the commission or attempted commission of a felony, resulting in an enhancement pursuant to this title, and the weapon is owned by that person, the court shall order that the weapon be deemed a nuisance and disposed of in the manner provided in Section 12028.

Comment. Section 17105 generalizes former Section 12022(b)(3), 12022.5(e), 12022.53(k). This is consistent with other sections providing for confiscation of a weapon used in a crime. See Sections 188.22a(f), 245e(d), 245.3, 417.6, 833.5(e), 12028, 12028.5(e), 12036(c).

As the note following proposed Section 17105 points out, the generalized provision would apply to weapon enhancements under Sections 12022.3(a) (use of firearm or deadly weapon in sex offense), 12022.55 (discharge of weapon from motor vehicle causing great bodily injury or death), and 12022.9 (willful and malicious discharge of weapon resulting in paralysis or paraparesis).

There is no obvious justification for confiscating a weapon used by its owner in some felonies, but not in others. This is especially true considering that existing application of the nuisance rule doesn't relate to the severity of the crime. For example, if a person uses a deadly weapon in commission of a generic felony and receives a one-year sentence enhancement under Section 12022(b)(1), the weapon would be confiscated. If the crime involved is rape and the person receives a more severe three-, four-, or ten-year enhancement under Section 12022.3(a), the weapon would apparently not be confiscated. This inconsistency makes no sense and is probably inadvertent.

As a general principle, the Commission decided against making any substantive changes to the sentencing law in the course of this project, in order to avoid the type of political quagmire that has sunk similar efforts to rationalize the sentencing laws. The change discussed above would be a minor substantive change. The staff has proposed the change only because it seems unobjectionable. **The staff** would like to receive input, particularly from the consultants on this project, as to whether this change is likely to result in political opposition. If so, it would probably be best to remove this provision and continue existing law on this point.

Middle Term Presumption

A number of enhancements provide a three-tiered range of additional penalties. For example, Section 12022.3(b), provides for a one-, two-, or five-year enhancement. Many of these provisions expressly require that the middle tier be applied unless there are circumstances in aggravation or mitigation. Again, Section 12022.3(b) provides:

The court shall order the middle term unless there are circumstances in aggravation or mitigation. The court shall state the

reasons for its enhancement choice on the record at the time of the sentence.

However, there are also many three-tiered enhancements that do not contain the middle term presumption language. See, e.g., § 12022.3(a). This inconsistency could create an implication that enhancements lacking the middle term presumption language are not subject to the presumption. This implication is incorrect.

Section 1170(b) provides in part:

When a judgment of imprisonment is imposed and the statute specifies three possible terms, the court shall order imposition of the middle term, unless there are circumstances in aggravation or mitigation of the crime. ... The court shall set forth on the record the facts and reasons for imposing the upper or lower term.

Section 1170(b) governs sentencing for both substantive offenses and enhancements. *People v. Hall*, 8 Cal. 4th 950 (1994). The matter is also governed by California Rule of Court 428(b), which provides:

When the defendant is subject to an enhancement that was charged and found true for which three possible terms are specified by statute, the middle term shall be imposed unless there are circumstances in aggravation or mitigation or unless, under statutory discretion, the judge strikes the additional term for the enhancement.

The upper term may be imposed for an enhancement based on any of the circumstances in aggravation enumerated in these rules or, under rule 408, any other reasonable circumstances in aggravation that are present. The lower term may be imposed based upon any of the circumstances in mitigation enumerated in these rules or, under rule 408, any other reasonable circumstances in mitigation that are present.

Advisory Committee Comment. Subdivision (b) is intended to apply whether or not the statute expressly makes the middle term the presumptive term for the enhancement.

Based on Section 1170(b) and Rule 428(b), the enhancement-specific middle term presumption provisions appear to be redundant. These redundant provisions could be deleted, with appropriate cross-references placed in the comments (as is proposed for other redundant provisions, as discussed above). Alternatively, the redundant provisions could be replaced with a general middle term presumption rule along the following lines:

17010. Middle term presumption

When the defendant is subject to an enhancement that was charged and found true for which three possible terms are specified by statute, the middle term shall be imposed unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of the sentence.

Comment. Section 17010 generalizes provisions requiring that the middle term of three possible terms be applied except in cases of aggravation or mitigation. See former sections 12021.5(a)-(b), 12022(c)-(d), 12022.2(a)-(b), 12022.3(b), 12022.4, 12022.5(a)(2) & (c), 12022.7(d). See also Section 1170(b); California Rules of Court Rule 428(b).

A generalized provision of this sort would itself be redundant but could help clarify the rule. **The staff is inclined** toward adding a provision along the lines proposed above.

MISCELLANEOUS TECHNICAL ISSUES

External Cross-References

In light of the renumbering involved in the proposed law, it is necessary to correct statutory cross-references to the renumbered provisions. This has been done in the sections that are included in the preliminary staff draft. It has not yet been done for sections that are not included in the preliminary staff draft. Once the numbering in the proposed law is finalized, the staff will do a comprehensive search for cross-references to the renumbered sections and will correct them. **No action is required at this time.**

Scope of Proposed Legislation

Most of the enhancements included in the preliminary staff draft clearly relate to weapons and injuries. However, there are a few borderline cases, which may or may not be appropriate for inclusion in the proposed law. As a general matter, the staff is inclined to include these borderline cases in the proposed law. The question of whether an enhancement provision is sufficiently related to injuries or weapons is merely organizational — no substantive consequences attach. Inclusion of the borderline cases would probably improve their accessibility. These are discussed below:

Armor-Piercing Ammunition

Section 12022.2(a) provides:

Any person who, while armed with a firearm in the commission or attempted commission of any felony, has in his or her immediate possession ammunition for the firearm designed primarily to penetrate metal or armor, shall upon conviction of that felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony, be punished by an additional term of 3, 4, or 10 years. The court shall order the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of the sentence.

Is ammunition by itself a weapon? Perhaps not, but it is an essential element of a firearm, and **the staff is inclined** to include this provision in the proposed law.

Body Vest

Section 12022.2(b)-(c) provide:

(b) Any person who wears a body vest in the commission or attempted commission of a violent offense, as defined in subdivision (b) of Section 12021.1, shall, upon conviction of that felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one, two, or five years. The court shall order the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of the sentence.

(c) As used in this section, "body vest" means any bullet-resistant material intended to provide ballistic and trauma protection for the wearer.

Is a body vest a weapon? One dictionary defines "weapon" thus:

1: Something (as a club, knife, or gun) used to injury, defeat or destroy. 2: A means of contending against another.

Merriam-Webster's Collegiate Dictionary 1338 (10th ed. 1999). Body armor is arguably a means of contending against another. It certainly facilitates the use of weapons, by providing the wearer with protection from reciprocal use. **The staff is inclined** to include this provision in the proposed law.

Forced Administration of Controlled Substance

Section 12022.75 provides:

Any person who, for the purpose of committing a felony, administers by injection, inhalation, ingestion, or any other means, any controlled substance listed in Section 11054, 11055, 11056, 11057, or 11058 of the Health and Safety Code, against the victim's will by means of force, violence, or fear of immediate and unlawful bodily injury to the victim or another person, shall, in addition and consecutive to the penalty provided for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of three years.

Is the forced administration of a drug an injury? It may do no lasting physical harm, but it is certainly a wrong, and is a profound intrusion on a person's bodily integrity. **The staff is inclined** to include this provision in the proposed law.

Sex Offense By Person Who Knows He or She has AIDS

Section 12022.85 provides:

(a) Any person who violates one or more of the offenses listed in subdivision (b) with knowledge that he or she has acquired immune deficiency syndrome (AIDS) or with the knowledge that he or she carries antibodies of the human immunodeficiency virus at the time of the commission of those offenses, shall receive a three-year enhancement for each violation in addition to the sentence provided under those sections.

(b) Subdivision (a) applies to the following crimes:

(1) Rape in violation of Section 261.

(2) Unlawful intercourse with a person under 18 years of age in violation of Section 261.5.

(3) Rape of a spouse in violation of Section 262.

(4) Sodomy in violation of Section 286.

(5) Oral copulation in violation of Section 288a.

(c) For purposes of proving the knowledge requirement of this section, the prosecuting attorney may use test results received under subdivision (c) of Section 1202.1 or subdivision (g) of Section 1202.6.

Is mere exposure to HIV by itself an injury? Again, it is a wrong and a violation of personal integrity, regardless of whether AIDS is actually contracted by the victim. **The staff is inclined** to include this provision in the proposed law.

Redrafting

Occasionally, one subdivision of a section will incorporate part of the substance of another. If these subdivisions are separated (in the course of breaking up a section that contains multiple enhancements), the subdivision that incorporates another should be rewritten to include the incorporated material. This is done in proposed Sections 17155 and 17455. These changes should be nonsubstantive. Nonetheless, notes following the sections point out the change and ask for input on whether there are any substantive consequences. **No action is required at this time.**

DISRUPTION OF EXISTING SCHEMES

The approach described above collects all weapons and injury enhancements in a single location. In a number of cases this means moving an enhancement that is currently located near the offense that it enhances. For example, Section 593a provides:

593a. (a) Every person who maliciously drives or places, in any tree, saw-log, shingle-bolt, or other wood, any iron, steel, ceramic, or other substance sufficiently hard to injure saws, knowing that the tree is intended to be harvested or that the saw-log, shingle-bolt, or other wood is intended to be manufactured into any kind of lumber or other wood product, is guilty of a felony.

(b) Any person who violates subdivision (a) and causes bodily injury to another person other than an accomplice shall, in addition and consecutive to the punishment prescribed for that felony, be punished by an additional prison term of three years.

Subdivision (a) establishes the substantive offense; subdivision (b) the enhancement. In the preliminary staff draft, subdivision (b) is deleted and added as proposed Section 17530. While locating all injury enhancements in a single location theoretically makes them easier to find, in this case it might have the opposite effect. Existing 593a provides the elements of the crime, the basic penalty, and the possible enhancement all in one place. Under our scheme, a prosecutor would need to read 593a to determine the basic penalty and then search the injury enhancement sections to determine whether any are applicable. The Commission's Comment would direct the reader to the new section, but not all statutory compilations reproduce Commission Comments. Thus, our reorganization might make it easier to overlook the enhancement.

The problem described above does not apply to general or “omnibus” enhancement provisions. For example, Section 12022.5(a)(1) provides an enhancement for use of a firearm in commission of *any* felony. Section 12022.53(b) provides enhancement for use of a firearm in the commission of any of sixteen specified felonies. In both cases, there is no existing proximity between the location of the enhancement and the substantive offense it enhances. The accessibility of these types of enhancement provisions could be improved by relocating them.

In light of the problem described above, the Commission should consider the following alternatives to the approach set out in the preliminary staff draft:

- (1) *Exclude enhancements that are located near the substantive offense that they enhance.* This would mean leaving about a third of the weapons and injury enhancements in their current location. This would preserve the benefit of the existing location of these provisions while achieving some of the benefit of reorganization and centralization of the remaining enhancement provisions.
- (2) *Add statutory cross-references.* Thus, in Section 593a, a new subdivision (b) could be added along the following lines: “Violation of subdivision (a) may result in a sentence enhancement pursuant to Section 17530.” This would allow all sentence enhancements to be reorganized and centralized, while avoiding the possibility that the enhancement would be overlooked by a person reading Section 593a. If this approach is taken, the Commission should decide whether to refer only to the provision that was relocated, or to instead refer to any enhancement provisions that apply. For example, if tree-spiking results in great bodily injury, the general enhancement for infliction of great bodily injury in commission of a felony would apply (Section 12202.7(a)). An alternative would be to refer to the title as a whole, e.g., “Violation of subdivision (a) may result in a sentence enhancement pursuant to Title 1 (commencing with Section 17000) of Part 6.”
- (3) *Abandon the reorganization effort.* All of the weapon and injury enhancements that are not located near the offenses that they enhance, are instead located in a narrow range of sections (Sections 12021.5-12022.95). This means that existing law already has the organization proposed in alternative (1) above: about a third of weapon and injury enhancements are near the offenses they enhance, the remainder are in a single location. It isn’t clear that reorganizing and relocating the latter class of enhancements would be worth the effort involved.

Of these three alternatives, **the staff** finds the second most attractive. It appears to offer the advantages of reorganization and centralization without increasing the likelihood that enhancements will be overlooked. However, it would be very helpful to receive input from the consultants on these alternatives, as it is judges, prosecutors, and defense attorneys who will need to work with whatever organizational scheme is adopted.

Respectfully submitted,

Brian Hebert
Staff Counsel

SENTENCE ENHANCEMENTS FOR WEAPONS AND INJURIES

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PROPOSED LEGISLATION

Penal Code §§ 17000-17555 (added). Sentencing

SEC. ____ . Part 6 (commencing with Section 17000) is added to the Penal Code, to read:

PART 6 . SENTENCING

TITLE 1 . SENTENCE ENHANCEMENTS

CHAPTER 1. GENERAL PROVISIONS

Article 1. Purpose of Title

Penal Code § 17000. Purpose of title

17000. (a) The purpose of this title is to provide a single location for sentence enhancements relating to weapons and injuries. This will make it easier for prosecutors, defense attorneys, and judges to determine which of the numerous enhancement provisions apply in a particular case.

(b) In draft legislation prepared by the Legislative Counsel, sentence enhancements relating to weapons or injuries shall be located in this title.

(c) A failure to locate a sentence enhancement relating to weapons or injuries in this title has no effect on the validity or meaning of the sentence enhancement.

Comment. Section 17000 is new. It clarifies the purpose of this title and the Legislative Counsel’s responsibility for maintaining this title as the repository of sentence enhancements relating to weapons and injuries.

Penal Code § 17005. Continuation of existing statutes

17005. A provision of this title, insofar as it is substantially the same as a previously existing provision relating to the same subject matter, shall be construed as a restatement and continuation thereof and not as a new enactment, and a reference in a statute to the provision of this part shall be deemed to include a reference to the previously existing provision unless a contrary intent appears.

Comment. Section 17005 is a standard type of provision in the codes. See, e.g., Corp. Code § 2; Fam. Code § 2; Prob. Code § 2(a). See also Gov’t Code §§ 9604 (construction of restatements and continuations), 9605 (construction of amended statutory provision). The last clause makes clear that a statutory reference to a new provision of this title includes a reference to the former law from which it is drawn. Cf. Gov’t Code § 9604 (reference to previously existing provision deemed reference to restatement or continuation).

A number of terms and phrases are used in the Comments to the sections of this title to indicate the sources of the sections and to describe how they compare with prior law. The following discussion is intended to provide guidance in interpreting the terminology most commonly used in the Comments.

(1) *Continues without change.* A new provision “continues” a former provision “without change” if the two provisions are identical or nearly so. In some cases, there may be insignificant

1 technical differences, such as where a typographical error or punctuation is corrected without a
2 change in meaning. Some Comments may describe the relationship by simply stating that a new
3 provision “continues” or is “the same as” a former provision,

4 (2) *Continues without substantive change.* A new provision “continues” a former provision
5 “without substantive change” if the substantive law remains the same, but the language differs to
6 an insignificant degree. This may include revision of language to make a statute gender-neutral.

7 (3) *Restates without substantive change.* A new provision “restates” a former provision
8 “without substantive change” if the substantive law remains the same but the language differs to a
9 significant degree. Some Comments may describe the new provision as being the “same in
10 substance.”

11 ☞ **Note.** Other terminology commonly used in Law Revision Commission Comments is
12 described in paragraphs (4)-(11), below. Because this title is a nonsubstantive compilation of
13 existing statutes, it is likely that this Comment terminology will be used sparingly, if at all.

14 (4) *Exceptions, additions, omissions.* If part of a former provision is “continued” or “restated,”
15 the Comment may say that the former provision is continued or restated, but also note the specific
16 differences as “exceptions to,” “additions to,” or “omissions from” the former provision.

17 (5) *Generalizes, broadens, restates in general terms.* A new provision may be described as
18 “generalizing,” “broadening,” or “restating in general terms” a provision of prior law. This
19 description means that a limited rule has been expanded to cover a broader class of cases.

20 (6) *Supersedes, replaces.* A provision “supersedes” or “replaces” a former provision if the new
21 provision deals with the same subject as the former provision, but treats it in a significantly
22 different manner.

23 (7) *New.* A provision is described as “new” where it has no direct source in prior statutes.

24 (8) *Drawn from, similar to, consistent with.* A variety of terms are used to indicate a source for
25 a new provision, typically a source other than California statutes. For example, a provision may
26 be “drawn from” a uniform act, model code, or the statutes of another state. In these cases, it may
27 be useful to consult any available commentary or interpretation of the source from which the new
28 provision is drawn for background information.

29 (9) *Codifies.* A Comment may state that a new provision “codifies” a case-law rule that has not
30 previously been enacted into statutory law.

31 (10) *Makes clear, clarifies.* A new provision may be described as “making clear” a particular
32 rule or “clarifying” a rule as a way of emphasizing the rule, particularly if the situation under
33 prior law was doubtful or contradictory.

34 (11) *Statement in Comment that section is “comparable” to another section.* A Comment may
35 state that a provision is “comparable” to another provision. If the Comment to a section notes that
36 another section is “comparable,” that does not mean that the other section is the same or
37 substantially the same. The statement is included in the Comment so that the statute user is alerted
38 to the other section and can review the cases under that section for possible use in interpreting the
39 section containing the statement in the Comment.

40 Article 2. Definitions

41 Penal Code § 17050. Great bodily injury

42 17050. As used in this title, “great bodily injury” means a significant or
43 substantial physical injury.

44 **Comment.** Section 17050 generalizes former Section 12022.7(e). This definition is consistent
45 with judicial interpretation of the phrase “great bodily injury” in statutes that do not define the
46 term. See, e.g., *People v. Richardson*, 23 Cal. App. 3d 403, 100 Cal. Rptr. 251 (1972), *People v.*
47 *Wells*, 14 Cal. App. 3d 348, 92 Cal. Rptr. 191 (1971). The definition is also consistent with
48 California jury instructions relating to statutes that use but do not define the phrase “great bodily

1 injury.” See Cal. Jury Instr. Crim. §§ 7.35, 9.36.5, 9.94, 12.55.7, 14.80, 14.82, 16.013 (6th ed.
2 2000).

3 CHAPTER 2. WEAPON ENHANCEMENTS

4 Article 1. General Provisions

5 **Penal Code § 17100. Limit on multiple enhancements**

6 17100. When two or more enhancements may be imposed for being armed with
7 or using a dangerous or deadly weapon or a firearm in the commission of a single
8 offense, only the greatest of those enhancements shall be imposed for that offense.
9 This section shall not limit the imposition of any other enhancements applicable to
10 that offense, including an enhancement for the infliction of great bodily injury.

11 **Comment.** Section 17100 continues Section 1170.1(f) without substantive change.

12 **Penal Code § 17105. Firearm deemed nuisance**

13 17105. When a person is found to have used a deadly or dangerous weapon in
14 the commission or attempted commission of a felony, resulting in an enhancement
15 pursuant to this title, and the weapon is owned by that person, the court shall order
16 that the weapon be deemed a nuisance and disposed of in the manner provided in
17 Section 12028.

18 **Comment.** Section 17105 generalizes former Section 12022(b)(3), 12022.5(e), 12022.53(k).
19 This is consistent with other sections providing for confiscation of a weapon used in a crime. See
20 Sections 188.22a(f), 245e(d), 245.3, 417.6, 833.5(e), 12028, 12028.5(e), 12036(c).

21  **Staff Note.** The nuisance provision found in Section 12022(b)(3), 12022.5(e), and
22 12022.53(k) has been generalized. The nuisance rule would then apply to weapon enhancements
23 under Sections 12022.3(a) (use of firearm or deadly weapon in sex offense), 12022.55 (discharge
24 of weapon from motor vehicle causing great bodily injury or death), and 12022.9 (wilfull and
25 malicious discharge of weapon resulting in paralysis or paraparesis). The Commission would like
26 to receive input on the merit of making this change.

27 Article 2. Enhancement for Possession or Provision of Weapon

28 **Penal Code § 17150. Armed with firearm in commission of felony**

29 17150. (a) Any person who is armed with a firearm in the commission or
30 attempted commission of a felony shall, upon conviction of that felony or
31 attempted felony, in addition and consecutive to the punishment prescribed for the
32 felony or attempted felony of which he or she has been convicted, be punished by
33 an additional term of one year, unless the arming is an element of the offense of
34 which he or she was convicted. This additional term shall apply to any person who
35 is a principal in the commission or attempted commission of a felony if one or
36 more of the principals is armed with a firearm, whether or not the person is
37 personally armed with a firearm.

1 **Comment.** Section 17150 is added as part of a nonsubstantive reorganization of sentence
2 enhancements for crimes that involve a weapon. The section continues former Section
3 12022(a)(1) without substantive change.

4 **Penal Code § 17155. Armed with assault weapon or machine gun in commission of felony**

5 17155. Any person who is armed with an assault weapon, as defined in Section
6 12276 or Section 12276.1, or a machinegun, as defined in Section 12200, in the
7 commission or attempted commission of a felony shall, upon conviction of that
8 felony or attempted felony, in addition and consecutive to the punishment
9 prescribed for the felony or attempted felony of which he or she has been
10 convicted, be punished by an additional term of three years, whether or not the
11 arming is an element of the offense of which he or she was convicted. The
12 additional term provided in this paragraph shall apply to any person who is a
13 principal in the commission or attempted commission of a felony if one or more of
14 the principals is armed with an assault weapon or machinegun whether or not the
15 person is personally armed with an assault weapon or machinegun.

16 **Comment.** Section 17155 is added as part of a nonsubstantive reorganization of sentence
17 enhancements for crimes that involve a weapon. The section restates former Section 12022(a)(2)
18 without substantive change. The first sentence incorporates part of former Section 12022(a)(1)
19 that is implicitly incorporated in former Section 12022(a)(2).

20  **Staff Note.** The first sentence has been restated to incorporate substantive elements from
21 Section 12022(a)(1), which are implicitly incorporated in Section 12022(a)(2). The Commission
22 would like to receive input on whether this is a substantive change.

23 **Penal Code § 17160. Possession of armor-piercing ammunition in commission of felony**

24 17160. Any person who, while armed with a firearm in the commission or
25 attempted commission of any felony, has in his or her immediate possession
26 ammunition for the firearm designed primarily to penetrate metal or armor, shall
27 upon conviction of that felony or attempted felony, in addition and consecutive to
28 the punishment prescribed for the felony or attempted felony, be punished by an
29 additional term of 3, 4, or 10 years. The court shall order the middle term unless
30 there are circumstances in aggravation or mitigation. The court shall state the
31 reasons for its enhancement choice on the record at the time of the sentence.

32 **Comment.** Section 17160 is added as part of a nonsubstantive reorganization of sentence
33 enhancements for crimes that involve a weapon. The section continues former Section 12022.2(a)
34 without substantive change.

35 **Penal Code § 17165. Body vest worn in commission of felony**

36 17165. (a) Any person who wears a body vest in the commission or attempted
37 commission of a violent offense, as defined in subdivision (b) of Section 12021.1,
38 shall, upon conviction of that felony or attempted felony, in addition and
39 consecutive to the punishment prescribed for the felony or attempted felony of
40 which he or she has been convicted, be punished by an additional term of one, two,
41 or five years. The court shall order the middle term unless there are circumstances

1 in aggravation or mitigation. The court shall state the reasons for its enhancement
2 choice on the record at the time of the sentence.

3 (b) As used in this section, “body vest” means any bullet-resistant material
4 intended to provide ballistic and trauma protection for the wearer.

5 **Comment.** Section 17165 is added as part of a nonsubstantive reorganization of sentence
6 enhancements for crimes that involve a weapon. The section continues former Section
7 12022.2(b)-(c) without substantive change. Former subdivisions (b) and (c) have been
8 redesignated as (a) and (b) respectively.

9 **Penal Code § 17170. Furnishing firearm in furtherance of felony**

10 17170. Any person who, during the commission or attempted commission of a
11 felony, furnishes or offers to furnish a firearm to another for the purpose of aiding,
12 abetting, or enabling that person or any other person to commit a felony shall, in
13 addition and consecutive to the punishment prescribed by the felony or attempted
14 felony of which the person has been convicted, be punished by an additional term
15 of one, two, or three years in the state prison. The court shall order the middle term
16 unless there are circumstances in aggravation or mitigation. The court shall state
17 the reasons for its enhancement choice on the record at the time of the sentence.

18 **Comment.** Section 17170 is added as part of a nonsubstantive reorganization of sentence
19 enhancements for crimes that involve a weapon. The section continues former Section 12022.4
20 without substantive change.

21 **Penal Code § 17175. Unlawful provision of weapon used in commission of felony**

22 17175. If both of the following circumstances apply, an additional term of
23 imprisonment in the state prison for one, two, or three years shall be imposed in
24 addition and consecutive to the sentence prescribed.

25 (a) A violation of paragraph (2) of subdivision (a) or subdivision (b) of Section
26 12072.

27 (b) The firearm transferred in violation of paragraph (2) of subdivision (a) or
28 subdivision (b) of Section 12072 is used in the subsequent commission of a felony
29 for which a conviction is obtained and the prescribed sentence is imposed.

30 **Comment.** Section 17175 is added as part of a nonsubstantive reorganization of sentence
31 enhancements for crimes that involve a weapon. The section continues former Section
32 12072(g)(4) without substantive change.

33 **Penal Code § 17180. Carrying firearm in commission of street gang crime**

34 17180. (a) Every person who carries a loaded or unloaded firearm on his or her
35 person, or in a vehicle, during the commission or attempted commission of any
36 street gang crimes described in subdivision (a) or (b) of Section 186.22, shall,
37 upon conviction of the felony or attempted felony, be punished by an additional
38 term of imprisonment in the state prison for one, two, or three years in the court’s
39 discretion. The court shall impose the middle term unless there are circumstances
40 in aggravation or mitigation. The court shall state the reasons for its enhancement
41 choice on the record at the time of sentence.

1 (b) Every person who carries a loaded or unloaded firearm together with a
2 detachable shotgun magazine, a detachable pistol magazine, a detachable
3 magazine, or a belt-feeding device on his or her person, or in a vehicle, during the
4 commission or attempted commission of any street gang crimes described in
5 subdivision (a) or (b) of Section 186.22, shall, upon conviction of the felony or
6 attempted felony, be punished by an additional term of imprisonment in the state
7 prison for two, three, or four years in the court's discretion. The court shall impose
8 the middle term unless there are circumstances in aggravation or mitigation. The
9 court shall state the reasons for its enhancement choice on the record at the time of
10 sentence.

11 (c) As used in this section, the following definitions shall apply:

12 (1) "Detachable magazine" means a device that is designed or redesigned to do
13 all of the following:

14 (A) To be attached to a rifle that is designed or redesigned to fire ammunition.

15 (B) To be attached to, and detached from, a rifle that is designed or redesigned to
16 fire ammunition.

17 (C) To feed ammunition continuously and directly into the loading mechanism
18 of a rifle that is designed or redesigned to fire ammunition.

19 (2) "Detachable pistol magazine" means a device that is designed or redesigned
20 to do all of the following:

21 (A) To be attached to a semiautomatic firearm that is not a rifle or shotgun that is
22 designed or redesigned to fire ammunition.

23 (B) To be attached to, and detached from, a firearm that is not a rifle or shotgun
24 that is designed or redesigned to fire ammunition.

25 (C) To feed ammunition continuously and directly into the loading mechanism
26 of a firearm that is not a rifle or a shotgun that is designed or redesigned to fire
27 ammunition.

28 (3) "Detachable shotgun magazine" means a device that is designed or
29 redesigned to do all of the following:

30 (A) To be attached to a firearm that is designed or redesigned to fire a fixed
31 shotgun shell through a smooth or rifled bore.

32 (B) To be attached to, and detached from, a firearm that is designed or
33 redesigned to fire a fixed shotgun shell through a smooth bore.

34 (C) To feed fixed shotgun shells continuously and directly into the loading
35 mechanism of a firearm that is designed or redesigned to fire a fixed shotgun shell.

36 (4) "Belt-feeding device" means a device that is designed or redesigned to
37 continuously feed ammunition into the loading mechanism of a machinegun or a
38 semiautomatic firearm.

39 (5) "Rifle" shall have the same meaning as specified in paragraph (20) of
40 subdivision (c) of Section 12020.

41 (6) "Shotgun" shall have the same meaning as specified in paragraph (21) of
42 subdivision (c) of Section 12020.

1 **Comment.** Section 17180 is added as part of a nonsubstantive reorganization of sentence
2 enhancements for crimes that involve a weapon. The section continues former Section 12021.5
3 without change.

4 **Penal Code § 17185. Armed with firearm in commission of drug offenses**

5 17185. (a) Any person who is personally armed with a firearm in the
6 commission or attempted commission of a violation of Section 11351, 11351.5,
7 11352, 11366.5, 11366.6, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the
8 Health and Safety Code, shall, upon conviction of that offense and in addition and
9 consecutive to the punishment prescribed for that offense of which he or she has
10 been convicted, be punished by an additional term of imprisonment in the state
11 prison for three, four, or five years in the court's discretion. The court shall order
12 the middle term unless there are circumstances in aggravation or mitigation. The
13 court shall state the reasons for its enhancement choice on the record at the time of
14 the sentence.

15 (b) Any person who is not personally armed with a firearm who, knowing that
16 another principal is personally armed with a firearm, is a principal in the
17 commission or attempted commission of an offense specified in subdivision (a),
18 shall, upon conviction of that offense, be punished by an additional term of one,
19 two, or three years in the court's discretion. The court shall order the middle term
20 unless there are circumstances in aggravation or mitigation. The court shall state
21 the reasons for its enhancement choice on the record at the time of the sentence.

22 (c) Notwithstanding any other provision of law, the court may strike the
23 additional punishment for the enhancements provided in subdivision (a) or (b) in
24 an unusual case where the interests of justice would best be served, if the court
25 specifies on the record and enters into the minutes the circumstances indicating
26 that the interests of justice would best be served by that disposition.

27 **Comment.** Section 17185 is added as part of a nonsubstantive reorganization of sentence
28 enhancements for crimes that involve a weapon. The section continues former Section 12022(c)-
29 (d), (f) without substantive change.

30 **Penal Code § 17190. Armed with firearm or deadly weapon in commission of sexual offenses**

31 17190. For each violation or attempted violation of Section 261, 262, 264.1, 286,
32 288, 288a, or 289, and in addition to the sentence provided, any person shall
33 receive a one-, two-, or five-year enhancement if the person is armed with a
34 firearm or a deadly weapon. The court shall order the middle term unless there are
35 circumstances in aggravation or mitigation. The court shall state the reasons for its
36 enhancement choice on the record at the time of the sentence.

37 **Comment.** Section 17190 is added as part of a nonsubstantive reorganization of sentence
38 enhancements for crimes that involve a weapon. The section continues former Section 12022.3(b)
39 without substantive change.

40 **Penal Code § 17195. Unlawful provision of assault weapon to minor**

41 17195. In addition and consecutive to the punishment imposed under subdivision
42 (a) of Section 12280, any person who transfers, lends, sells, or gives any assault

1 weapon to a minor in violation of subdivision (a) of Section 12280 shall receive an
2 enhancement of one year.

3 **Comment.** Section 17195 is added as part of a nonsubstantive reorganization of sentence
4 enhancements for crimes that involve a weapon. The section continues former Section
5 12280(a)(2) without substantive change.

6 Article 2. Enhancement for Use of Weapon

7 **Penal Code § 17300. Use of deadly or dangerous weapon in commission of felony**

8 17300. (a) Any person who personally uses a deadly or dangerous weapon in the
9 commission or attempted commission of a felony shall, upon conviction of that
10 felony or attempted felony, in addition and consecutive to the punishment
11 prescribed for the felony or attempted felony of which he or she has been
12 convicted, be punished by an additional term of one year, unless use of a deadly or
13 dangerous weapon is an element of the offense of which he or she was convicted.

14 (b) If the person described in subdivision (a) has been convicted of carjacking or
15 attempted carjacking, the additional term shall be one, two, or three years.

16 **Comment.** Section 17300 is added as part of a nonsubstantive reorganization of sentence
17 enhancements for crimes that involve a weapon. The section continues former Section
18 12022(b)(1)-(2) without substantive change. Former subdivisions (b)(1) & (2) have been
19 redesignated as subdivisions (a) and (b) respectively.

20 **Penal Code § 17305. Personal use of firearm in commission of felony**

21 17305. (a) Any person who personally uses a firearm in the commission or
22 attempted commission of a felony shall, upon conviction of that felony or
23 attempted felony, in addition and consecutive to the punishment prescribed for the
24 felony or attempted felony of which he or she has been convicted, be punished by
25 an additional term of imprisonment in the state prison for 3, 4, or 10 years, unless
26 use of a firearm is an element of the offense of which he or she was convicted.

27 (b) If the person described in subdivision (a) has been convicted of carjacking or
28 attempted carjacking, the additional term shall be 4, 5, or 10 years. The court shall
29 order imposition of the middle term unless there are circumstances in aggravation
30 or mitigation. The court shall state its reasons for its enhancement choice on the
31 record at the time of sentencing.

32 (c) The additional term provided by this section may be imposed in cases of
33 assault with a firearm under paragraph (2) of subdivision (a) of Section 245, or
34 assault with a deadly weapon which is a firearm under Section 245, or murder if
35 the killing was perpetrated by means of shooting a firearm from a motor vehicle,
36 intentionally at another person outside of the vehicle with the intent to inflict great
37 bodily injury or death.

38 **Comment.** Section 17305 is added as part of a nonsubstantive reorganization of sentence
39 enhancements for crimes that involve a weapon. The section continues former Section 12022.5(a)
40 & (d) without substantive change. Former subdivisions (b)(1), (b)(2), and (d) have been
41 redesignated as subdivisions (a), (b), and (c) respectively.

1 **Penal Code § 17310. Personal use of assault weapon or machine gun in commission of felony**

2 17310. (a) Any person who personally uses an assault weapon, as specified in
3 Section 12276 or Section 12276.1, or a machinegun, as defined in Section 12200,
4 in the commission or attempted commission of a felony, shall, upon conviction of
5 that felony or attempted felony, in addition and consecutive to the sentence
6 prescribed for the felony or attempted felony, be punished by an additional term of
7 imprisonment in the state prison for 5, 6, or 10 years.

8 (b) The additional term provided by this section may be imposed in cases of
9 assault with a firearm under paragraph (2) of subdivision (a) of Section 245, or
10 assault with a deadly weapon which is a firearm under Section 245, or murder if
11 the killing was perpetrated by means of shooting a firearm from a motor vehicle,
12 intentionally at another person outside of the vehicle with the intent to inflict great
13 bodily injury or death.

14 **Comment.** Section 17310 is added as part of a nonsubstantive reorganization of sentence
15 enhancements for crimes that involve a weapon. The section continues former Section
16 12022.5(b)(2) & (d) without substantive change.

17 **Penal Code § 17315. Personal use of firearm in commission of drug offenses**

18 17315. (a) Any person who personally uses a firearm in the commission or
19 attempted commission of a violation of Section 11351, 11351.5, 11352, 11366.5,
20 11366.6, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety
21 Code, shall, upon conviction of that offense and in addition and consecutive to the
22 punishment prescribed for the offense of which he or she has been convicted, be
23 punished by an additional term of imprisonment in the state prison for 3, 4, or 10
24 years in the court's discretion. The court shall order the imposition of the middle
25 term unless there are circumstances in aggravation or mitigation. The court shall
26 state the reasons for its enhancement choice on the record.

27 (b) The additional term provided by this section may be imposed in cases of
28 assault with a firearm under paragraph (2) of subdivision (a) of Section 245, or
29 assault with a deadly weapon which is a firearm under Section 245, or murder if
30 the killing was perpetrated by means of shooting a firearm from a motor vehicle,
31 intentionally at another person outside of the vehicle with the intent to inflict great
32 bodily injury or death.

33 **Comment.** Section 17315 is added as part of a nonsubstantive reorganization of sentence
34 enhancements for crimes that involve a weapon. The section continues former Section 12022.5(c)
35 without substantive change.

36 **Penal Code § 17320. Use of weapon in commission of specified violent offenses**

37 17320. (a) This section applies to the following felonies:

- 38 (1) Section 187 (murder).
- 39 (2) Sections 203 and 205 (mayhem).
- 40 (3) Sections 207, 209, and 209.5 (kidnapping).
- 41 (4) Section 211 (robbery).
- 42 (5) Section 215 (carjacking).

- 1 (6) Section 220 (assault with intent to commit a specified felony).
- 2 (7) Subdivision (d) of Section 245 (assault with a firearm on a peace officer or
- 3 firefighter).
- 4 (8) Sections 261 and 262 (rape).
- 5 (9) Section 264.1 (rape or penetration by a foreign object in concert).
- 6 (10) Section 286 (sodomy).
- 7 (11) Sections 288 and 288.5 (lewd act on a child).
- 8 (12) Section 288a (oral copulation).
- 9 (13) Section 289 (penetration by a foreign object).
- 10 (14) Section 4500 (assault by life prisoner).
- 11 (15) Section 4501 (assault by prisoner).
- 12 (16) Section 4503 (holding a hostage by prisoner).
- 13 (17) Any felony punishable by death or imprisonment in the state prison for life.
- 14 (18) Any attempt to commit a crime listed in this subdivision other than an
- 15 assault.
- 16 (b) Notwithstanding any other provision of law, any person who is convicted of
- 17 a felony specified in subdivision (a), and who in the commission of that felony
- 18 personally used a firearm, shall be punished by a term of imprisonment of 10 years
- 19 in the state prison, which shall be imposed in addition and consecutive to the
- 20 punishment prescribed for that felony. The firearm need not be operable or loaded
- 21 for this enhancement to apply.
- 22 (c) Notwithstanding any other provision of law, any person who is convicted of a
- 23 felony specified in subdivision (a), and who in the commission of that felony
- 24 intentionally and personally discharged a firearm, shall be punished by a term of
- 25 imprisonment of 20 years in the state prison, which shall be imposed in addition
- 26 and consecutive to the punishment prescribed for that felony.
- 27 (d) Notwithstanding any other provision of law, any person who is convicted of
- 28 a felony specified in subdivision (a), Section 246, or subdivision (c) or (d) of
- 29 Section 12034, and who in the commission of that felony intentionally and
- 30 personally discharged a firearm and proximately caused great bodily injury or
- 31 death to any person other than an accomplice, shall be punished by a term of
- 32 imprisonment of 25 years to life in the state prison, which shall be imposed in
- 33 addition and consecutive to the punishment prescribed for that felony.
- 34 (e)(1) The enhancements specified in this section shall apply to any person
- 35 charged as a principal in the commission of an offense that includes an allegation
- 36 pursuant to this section when a violation of both this section and subdivision (b) of
- 37 Section 186.22 are pled and proved.
- 38 (2) An enhancement for participation in a criminal street gang pursuant to
- 39 Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1, shall not be
- 40 imposed on a person in addition to an enhancement imposed pursuant to this
- 41 subdivision, unless the person personally used or personally discharged a firearm
- 42 in the commission of the offense.

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

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

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

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

16 **Comment.** Section 17320 is added as part of a nonsubstantive reorganization of sentence
17 enhancements for crimes that involve a weapon. The section continues former Section 12022.53
18 without substantive change.

19 The phrase “ as defined in Section 12022.7” is unnecessary and is not continued in subdivision
20 (d). See Section 17050 (“great bodily injury” defined).

21 **Penal Code § 17325. Use of firearm or deadly weapon in commission of sexual offenses**

22 17325. For each violation or attempted violation of Section 261, 262, 264.1, 286,
23 288, 288a, or 289, and in addition to the sentence provided, any person shall
24 receive a 3-, 4-, or 10-year enhancement if the person uses a firearm or a deadly
25 weapon in the commission of the violation.

26 **Comment.** Section 17325 is added as part of a nonsubstantive reorganization of sentence
27 enhancements for crimes that involve a weapon. The section continues former Section 12022.3(a)
28 without substantive change.

29 **Penal Code § 17330. Discharge of firearm at an occupied vehicle, resulting in great bodily**
30 **injury or death**

31 17330. (a) Any person who is convicted of a felony or an attempt to commit a
32 felony, including murder or attempted murder, in which that person discharged a
33 firearm at an occupied motor vehicle which caused great bodily injury or death to
34 the person of another, shall, upon conviction of that felony or attempted felony, in
35 addition and consecutive to the sentence prescribed for the felony or attempted
36 felony, be punished by an additional term of imprisonment in the state prison for
37 5, 6, or 10 years.

38 (b) The additional term provided by this section may be imposed in cases of
39 assault with a firearm under paragraph (2) of subdivision (a) of Section 245, or
40 assault with a deadly weapon which is a firearm under Section 245, or murder if
41 the killing was perpetrated by means of shooting a firearm from a motor vehicle,

1 intentionally at another person outside of the vehicle with the intent to inflict great
2 bodily injury or death.

3 **Comment.** Section 17330 is added as part of a nonsubstantive reorganization of sentence
4 enhancements for crimes that involve a weapon. The section continues former Section
5 12022.5(b)(1) & (d) without substantive change. See Section 17050 (“great bodily injury”
6 defined).

7 **Penal Code § 17335. Discharge of firearm from vehicle resulting in GBI or death**

8 17335. Any person who, with the intent to inflict great bodily injury or death,
9 inflicts great bodily injury or causes the death of a person, other than an occupant
10 of a motor vehicle, as a result of discharging a firearm from a motor vehicle in the
11 commission of a felony or attempted felony, shall, upon conviction of the felony
12 or attempted felony, in addition and consecutive to the punishment prescribed for
13 the felony or attempted felony of which he or she has been convicted, be punished
14 by an additional term of imprisonment in the state prison for 5, 6, or 10 years.

15 **Comment.** Section 17335 is added as part of a nonsubstantive reorganization of sentence
16 enhancements for crimes that involve a weapon. The section continues former Section 12022.55
17 without substantive change.

18 The phrase “ as defined in Section 12022.7” is unnecessary and is not continued. See Section
19 17050 (“great bodily injury” defined).

20 **Penal Code § 17340. Discharge of firearm from vehicle that results in paralysis or**
21 **paraparesis of victim**

22 17340. (a) Any person convicted of a violation of subdivision (c) of Section
23 12034 shall, in addition and consecutive to the punishment for that violation, be
24 punished by an additional term of four years, if as a result of the defendant
25 personally and willfully and maliciously discharging the firearm, the victim suffers
26 paralysis or paraparesis of a major body part, including, but not limited to, the
27 entire hand or foot.

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

34 (c) For purposes of this subdivision:

35 (1) “Paralysis” means a major or complete loss of motor function resulting from
36 injury to the nervous system or to a muscular mechanism.

37 (2) “Paraparesis” means a significant weakness of a major body part, including,
38 but not limited to, the entire hand or foot, causing the extremity to be functionally
39 impaired and rendered useless to assist with one of the basic skills in life such as
40 eating or walking.

41 **Comment.** Section 17340 is added as part of a nonsubstantive reorganization of sentence
42 enhancements for crimes that involve a weapon. The section continues former Section 12022.9(b)

1 without substantive change. Former subdivisions (b)(1), (2), and (3) have been redesignated as
2 subdivisions (a), (b), and (c) respectively.

3 CHAPTER 3. INJURY ENHANCEMENTS

4 Article 1. General Provisions

5 **Penal Code § 17400. Limit on multiple enhancements**

6 17400. When two or more enhancements may be imposed for the infliction of
7 great bodily injury in the commission of a single offense, only the greatest of those
8 enhancements shall be imposed for that offense. This section shall not limit the
9 imposition of any other enhancements applicable to that offense, including an
10 enhancement for being armed with or using a dangerous or deadly weapon or a
11 firearm.

12 **Comment.** Section 17400 continues Section 1170.1(g) without substantive change.

13 Article 2. Enhancements for Injury

14 **Penal Code § 17450. Infliction of great bodily injury in commission of felony**

15 17450. (a) Any person who personally inflicts great bodily injury on any person
16 other than an accomplice in the commission or attempted commission of a felony
17 shall, in addition and consecutive to the punishment prescribed for the felony or
18 attempted felony of which he or she has been convicted, be punished by an
19 additional term of three years, unless infliction of great bodily injury is an element
20 of the offense of which he or she is convicted.

21 (b) This section shall not apply to murder or manslaughter or a violation of
22 Section 451 or 452.

23 **Comment.** Section 17450 is added as part of a nonsubstantive reorganization of sentence
24 enhancements for crimes that cause an injury. The section continues former Section 12022.7(a) &
25 (f) without substantive change. See Section 17050 (“great bodily injury” defined).

26 **Penal Code § 17455. Infliction of great bodily injury causing coma or paralysis**

27 17455. (a) Any person who personally inflicts great bodily injury on any person
28 other than an accomplice in the commission or attempted commission of a felony
29 which causes the victim to become comatose due to brain injury or to suffer
30 paralysis, as defined in Section 17340, of a permanent nature, shall be punished by
31 an additional and consecutive term of five years.

32 (b) This section shall not apply to murder or manslaughter or a violation of
33 Section 451 or 452.

34 **Comment.** Section 17455 is added as part of a nonsubstantive reorganization of sentence
35 enhancements for crimes that cause an injury. Subdivision (a) restates former Section 12022.7(b)
36 without substantive change. The subdivision restates part of former Section 12022.7(a) that was
37 incorporated by reference in former Section 12022.7(b). Subdivision (b) continues former Section
38 12022.7(f) without substantive change. See Section 17050 (“great bodily injury” defined).

1 ☞ **Staff Note.** Subdivision (a) restates elements of Section 12022.7(a) that are expressly
2 incorporated in Section 12022.7(b). The Commission would like to receive input on whether this
3 is a substantive change.

4 **Penal Code § 17460. Infliction of great bodily injury on person 70 years of age or older**

5 17460. (a) Any person who personally inflicts great bodily injury on another
6 person who is 70 years of age or older other than an accomplice in the commission
7 or attempted commission of a felony shall, in addition and consecutive to the
8 punishment prescribed for the felony or attempted felony of which he or she has
9 been convicted, be punished by an additional term of five years, unless infliction
10 of great bodily injury is an element of the offense of which he or she is convicted.

11 (b) This section shall not apply to murder or manslaughter or a violation of
12 Section 451 or 452.

13 **Comment.** Section 17460 is added as part of a nonsubstantive reorganization of sentence
14 enhancements for crimes that cause an injury. The section continues former Section 12022.7(c) &
15 (f) without substantive change. See Section 17050 (“great bodily injury” defined).

16 **Penal Code § 17465. Elder abuse resulting in great bodily injury or death**

17 17465. (a) If in the commission of an offense described in subdivision (b) of
18 Section 368, the victim suffers great bodily injury, the defendant shall receive an
19 additional term in the state prison as follows:

20 (1) Three years if the victim is under 70 years of age.

21 (2) Five years if the victim is 70 years of age or older.

22 (b) If in the commission of an offense described in subdivision (b) of Section
23 368, the defendant proximately causes the death of the victim, the defendant shall
24 receive an additional term in the state prison as follows:

25 (1) Five years if the victim is under 70 years of age.

26 (2) Seven years if the victim is 70 years of age or older.

27 **Comment.** Section 17465 is added as part of a nonsubstantive reorganization of sentence
28 enhancements for crimes that cause an injury. Subdivisions (a) and (b) continue the former
29 subdivision (b)(2)-(3) of Section 368 without substantive change.

30 The phrase “as defined in Section 12022.7” is unnecessary and is not continued in subdivision
31 (a). See Section 17050 (“great bodily injury” defined).

32 **Penal Code § 17470. Intentional infliction of injury upon pregnant woman causing**
33 **termination of pregnancy**

34 17470. (a) Any person who, during the commission or attempted commission of
35 a felony, knows or reasonably should know that the victim is pregnant, and who,
36 with intent to inflict injury, and without the consent of the woman, personally
37 inflicts injury upon a pregnant woman that results in the termination of the
38 pregnancy shall, in addition and consecutive to the punishment prescribed by the
39 felony or attempted felony of which the person has been convicted, be punished by
40 an additional term of five years in the state prison.

41 (b) Nothing in this section shall be construed as affecting the applicability of
42 subdivision (a) of Section 187 of the Penal Code.

1 **Comment.** Section 17470 is added as part of a nonsubstantive reorganization of sentence
2 enhancements for crimes that cause an injury. The section continues former Section 12022.9(a)
3 without substantive change. The paragraphs have been designated as subdivisions.

4 **Penal Code § 17475. Infliction of great bodily injury involving domestic violence**

5 17475. (a) Any person who personally inflicts great bodily injury under
6 circumstances involving domestic violence in the commission or attempted
7 commission of a felony shall, in addition and consecutive to the punishment
8 prescribed for the felony or attempted felony of which he or she has been
9 convicted, be punished by an additional term of three, four, or five years. The
10 court shall order imposition of the middle term unless there are circumstances in
11 aggravation or mitigation. The court shall state its reasons for its enhancement
12 choice on the record at the time of sentencing. As used in this section, “domestic
13 violence” has the meaning provided in subdivision (b) of Section 13700.

14 (b) This section shall not apply to murder or manslaughter or a violation of
15 Section 451 or 452.

16 **Comment.** Section 17475 is added as part of a nonsubstantive reorganization of sentence
17 enhancements for crimes that cause an injury. The section continues former Section 12022.7(d) &
18 (f) without substantive change. See Section 17050 (“great bodily injury” defined).

19 **Penal Code § 17480. Willful harm or injury resulting in death of child**

20 17480. Any person convicted of a violation of Section 273a, who under
21 circumstances or conditions likely to produce great bodily harm or death, willfully
22 causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain
23 or injury that results in death, or having the care or custody of any child, under
24 circumstances likely to produce great bodily harm or death, willfully causes or
25 permits that child to be injured or harmed, and that injury or harm results in death,
26 shall receive a four-year enhancement for each violation, in addition to the
27 sentence provided for that conviction. Nothing in this paragraph shall be construed
28 as affecting the applicability of subdivision (a) of Section 187 or Section 192.

29 **Comment.** Section 17480 is added as part of a nonsubstantive reorganization of sentence
30 enhancements for crimes that cause an injury. The section continues former Section 12022.95
31 without substantive change.

32 **Penal Code § 17485. Child abuse involving female genital mutilation**

33 17485. (a) If the act constituting a felony violation of subdivision (a) of Section
34 273a was female genital mutilation, as defined in subdivision (b), the defendant
35 shall be punished by an additional term of imprisonment in the state prison for one
36 year, in addition and consecutive to the punishment prescribed by Section 273a.

37 (b) “Female genital mutilation” means the excision or infibulation of the labia
38 majora, labia minora, clitoris, or vulva, performed for nonmedical purposes.

39 (c) Nothing in this section shall preclude prosecution under Section 203, 205, or
40 206 or any other provision of law.

1 **Comment.** Section 17485 is added as part of a nonsubstantive reorganization of sentence
2 enhancements for crimes that cause an injury. The section continues former Section 273.4 without
3 substantive change.

4 **Penal Code § 17490. Controlled substance manufacture resulting in great bodily injury to**
5 **child**

6 17490. Any person convicted of a violation of, or of an attempt to violate,
7 subdivision (a) of Section 11379.6 or Section 11383 of the Health and Safety
8 Code, as those sections relate to methamphetamine or phencyclidine, where the
9 commission of the crime causes any child under 16 years of age to suffer great
10 bodily injury, shall, in addition and consecutive to the punishment prescribed for
11 the felony of which he or she has been convicted, be punished by an additional
12 term of five years in the state prison.

13 **Comment.** Section 17490 is added as part of a nonsubstantive reorganization of sentence
14 enhancements for crimes that cause an injury. The section continues former Health & Safety
15 Code § 11379.7(b) without substantive change.

16 The phrase “ as defined in Section 12022.7” in former Health & Safety Code § 11379.7(d) is
17 unnecessary and is not continued. See Section 17050 (“great bodily injury” defined).

18 **Penal Code § 17495. Controlled substance manufacture resulting in death or great bodily**
19 **injury**

20 17495. (a) Any person convicted of a violation of, or of an attempt to violate,
21 subdivision (a) of Section 11379.6 or Section 11383 of the Health and Safety
22 Code, as those sections relate to methamphetamine or phencyclidine, when the
23 commission or attempted commission of the offense causes the death or great
24 bodily injury of another person other than an accomplice, shall, in addition and
25 consecutive to any other punishment authorized by law, be punished by an
26 additional term of one year in the state prison for each death or injury.

27 (b) Nothing in this section shall preclude prosecution under both this section and
28 Section 187, 192, or 12022.7, or any other provision of law. However, a person
29 who is punished under another provision of law for causing death or great bodily
30 injury as described in subdivision (a) shall not receive an additional term of
31 imprisonment under this section.

32 **Comment.** Section 17495 is added as part of a nonsubstantive reorganization of sentence
33 enhancements for crimes that cause an injury. The section continues former Health & Safety
34 Code § 11379.9 without substantive change. See Section 17050 (“great bodily injury” defined).

35 ☞ **Staff Notes.** Health and Safety Code Section 11379.7(b) currently refers to “Section 187, 192,
36 or 12022.7.” These are Penal Code provisions and should have been identified as such. This is not
37 a problem in the proposed law, as it is not necessary to specify the code when referring to a
38 section of the same code.

39 **Penal Code § 17500. Poisoning resulting in great bodily injury or possibility of death**

40 17500. Any violation of subdivision (a) of Section 347 involving the use of a
41 poison or harmful substance which may cause death if ingested or which causes
42 the infliction of great bodily injury on any person shall be punished by an
43 additional term of three years.

1 **Comment.** Section 17500 is added as part of a nonsubstantive reorganization of sentence
2 enhancements for crimes that cause an injury. The section continues the former second paragraph
3 of Section 347(a) without substantive change. See Section 17050 (“great bodily injury” defined).

4 **Penal Code § 17505. Forced ingestion of controlled substance**

5 17505. Any person who, for the purpose of committing a felony, administers by
6 injection, inhalation, ingestion, or any other means, any controlled substance listed
7 in Section 11054, 11055, 11056, 11057, or 11058 of the Health and Safety Code,
8 against the victim’s will by means of force, violence, or fear of immediate and
9 unlawful bodily injury to the victim or another person, shall, in addition and
10 consecutive to the penalty provided for the felony or attempted felony of which he
11 or she has been convicted, be punished by an additional term of three years.

12 **Comment.** Section 17505 is added as part of a nonsubstantive reorganization of sentence
13 enhancements for crimes that cause an injury. The section continues former Section 12022.75
14 without substantive change.

15 **Penal Code § 17510. Infliction of great bodily injury in commission of certain sexual**
16 **offenses**

17 17510. Any person who inflicts great bodily injury on any victim in a violation
18 or attempted violation of paragraph (2), (3), or (6) of subdivision (a) of Section
19 261, paragraph (1) or (4) of subdivision (a) of Section 262, Section 264.1,
20 subdivision (b) of Section 288, subdivision (a) of Section 289, or sodomy or oral
21 copulation by force, violence, duress, menace, or fear of immediate and unlawful
22 bodily injury on the victim or another person as provided in Section 286 or 288a
23 shall receive a five-year enhancement for each such violation in addition to the
24 sentence provided for the felony conviction.

25 **Comment.** Section 17510 is added as part of a nonsubstantive reorganization of sentence
26 enhancements for crimes that cause an injury. The section continues former Section 12022.8
27 without substantive change.

28 The phrase “ as defined in Section 12022.7” is unnecessary and is not continued. See Section
29 17050 (“great bodily injury” defined).

30 **Penal Code § 17515. Commission of certain sexual offenses by person who knows he or she**
31 **has AIDS**

32 17515. (a) Any person who violates one or more of the offenses listed in
33 subdivision (b) with knowledge that he or she has acquired immune deficiency
34 syndrome (AIDS) or with the knowledge that he or she carries antibodies of the
35 human immunodeficiency virus at the time of the commission of those offenses,
36 shall receive a three-year enhancement for each violation in addition to the
37 sentence provided under those sections.

38 (b) Subdivision (a) applies to the following crimes:

39 (1) Rape in violation of Section 261.

40 (2) Unlawful intercourse with a person under 18 years of age in violation of
41 Section 261.5.

42 (3) Rape of a spouse in violation of Section 262.

1 (4) Sodomy in violation of Section 286.

2 (5) Oral copulation in violation of Section 288a.

3 (c) For purposes of proving the knowledge requirement of this section, the
4 prosecuting attorney may use test results received under subdivision (c) of Section
5 1202.1 or subdivision (g) of Section 1202.6.

6 **Comment.** Section 17515 is added as part of a nonsubstantive reorganization of sentence
7 enhancements for crimes that cause an injury. The section continues former Section 12022.85
8 without change.

9 **Penal Code § 17520. Arson resulting in great bodily injury**

10 17520. Notwithstanding any other law, any person who is convicted of a felony
11 violation of Section 451 shall be punished by a three-, four-, or five-year
12 enhancement if one or more of the following circumstances is found to be true:

13 (a) A firefighter, peace officer, or other emergency personnel suffered great
14 bodily injury as a result of the offense. The additional term provided by this
15 subdivision shall be imposed whenever applicable, including any instance in
16 which there is a violation of subdivision (a) of Section 451.

17 (b) The defendant proximately caused great bodily injury to more than one
18 victim in any single violation of Section 451. The additional term provided by this
19 subdivision shall be imposed whenever applicable, including any instance in
20 which there is a violation of subdivision (a) of Section 451.

21 **Comment.** Section 17520 is added as part of a nonsubstantive reorganization of sentence
22 enhancements for crimes that cause an injury. The section continues former Section 451.1(a)(2)-
23 (3) without substantive change. See Section 17050 (“great bodily injury” defined).

24 **Penal Code § 17525. Aggravated arson resulting in great bodily injury**

25 17525. (a) Notwithstanding any other law, any person who is convicted of a
26 felony violation of Section 452 shall be punished by a one-, two-, or three-year
27 enhancement for each of the following circumstances that is found to be true:

28 (a) A firefighter, peace officer, or other emergency personnel suffered great
29 bodily injury as a result of the offense. The additional term provided by this
30 subdivision shall be imposed whenever applicable, including any instance in
31 which there is a violation of subdivision (a) of Section 452.

32 (b) The defendant proximately caused great bodily injury to more than one
33 victim in any single violation of Section 452. The additional term provided by this
34 subdivision shall be imposed whenever applicable, including any instance in
35 which there is a violation of subdivision (a) of Section 452.

36 (b) The additional term specified in subdivision (a) shall not be imposed unless
37 the existence of any fact required under this section shall be alleged in the
38 accusatory pleading and either admitted by the defendant in open court or found to
39 be true by the trier of fact.

40 **Comment.** Section 17525 is added as part of a nonsubstantive reorganization of sentence
41 enhancements for crimes that cause an injury. The section continues former Section 452.1(a)(2)-
42 (3) & (b) without substantive change. See Section 17050 (“great bodily injury” defined).

1 **Penal Code § 17530. Saw-wood spiking resulting in bodily injury**

2 17530. Any person who violates section 593a and causes bodily injury to
3 another person other than an accomplice shall, in addition and consecutive to the
4 punishment prescribed for that felony, be punished by an additional prison term of
5 three years.

6 **Comment.** Section 17530 is added as part of a nonsubstantive reorganization of sentence
7 enhancements for crimes that cause an injury. The section continues former Section 593a(b)
8 without substantive change.

9 **Penal Code § 17535. Unlawful disposal, transport, or treatment of hazardous waste**
10 **resulting in great bodily injury or probability of death**

11 17535. Any person convicted of violating subdivision (b), (c), or (d) of Section
12 25189.5 of the Health and Safety Code, where the act that caused the violation
13 caused great bodily injury, or caused a substantial probability that death could
14 result, may be punished by imprisonment in the state prison for one, two, or three
15 years, in addition and consecutive to the term specified in subdivision (b), (c), or
16 (d) of Section 25189.5 of the Health and Safety Code, and may be fined up to two
17 hundred fifty thousand dollars (\$250,000) for each day of violation. For the
18 purposes of this section, “each day of violation” has the meaning provided in
19 subdivision (f) of Section 25189.5 of the Health and Safety Code,

20 **Comment.** Section 17535 is added as part of a nonsubstantive reorganization of sentence
21 enhancements for crimes that cause an injury. The section continues the substance of the former
22 second sentence of Health & Safety Code § 25189.5(e) without substantive change. See Section
23 17050 (“great bodily injury” defined).

24 **Penal Code § 17540. Unlawful disposal, transport, or treatment of hazardous waste**
25 **resulting in great bodily injury or probability of death**

26 17540. Any person convicted of violating subdivision (b) of Section 25189.7 of
27 the Health and Safety Code, where the act that caused the violation caused great
28 bodily injury, or caused a substantial probability that death could result, may be
29 punished by imprisonment in the state prison for one, two, or three years, in
30 addition and consecutive to the term specified in subdivision (b) of Section
31 25189.7 of the Health and Safety Code, and may be fined up to two hundred fifty
32 thousand dollars (\$250,000) for each day of violation.

33 **Comment.** Section 17540 is added as part of a nonsubstantive reorganization of sentence
34 enhancements for crimes that cause an injury. The section continues the substance of the former
35 second sentence of Health & Safety Code § 25189.7(c) without substantive change. See Section
36 17050 (“great bodily injury” defined).

37 **Penal Code § 17545. Injuries caused while driving in violation of certain sections**

38 17545. (a) Any person who proximately causes bodily injury or death to more
39 than one victim in any one instance of driving in violation of Section 23153 of this
40 code or in violation of Section 191.5 of, or paragraph (3) of subdivision (c) of
41 Section 192 of, the Penal Code, shall, upon a felony conviction, and
42 notwithstanding subdivision (g) of Section 1170.1 of the Penal Code, receive an

1 enhancement of one year in the state prison for each additional injured victim. The
2 enhanced sentence provided for in this section shall not be imposed unless the fact
3 of the bodily injury to each additional victim is charged in the accusatory pleading
4 and admitted or found to be true by the trier of fact. The maximum number of one
5 year enhancements which may be imposed pursuant to this section is three.

6 (b) Notwithstanding any other provision of law, the court may strike the
7 enhancements provided in this section if it determines that there are circumstances
8 in mitigation of the additional punishment and states on the record its reasons for
9 striking the additional punishment.

10 **Comment.** Section 17545 is added as part of a nonsubstantive reorganization of sentence
11 enhancements for crimes that cause an injury. The section continues former Vehicle Code Section
12 23558 without substantive change. The paragraphs have been designated as subdivisions.

13 **Penal Code § 17550. Staged accident resulting in serious bodily injury**

14 17550. (a) Any person who violates paragraph (3) of subdivision (a) of Section
15 550 shall receive a two-year enhancement for each person other than an
16 accomplice who suffers serious bodily injury resulting from the vehicular collision
17 or accident in a violation of paragraph (3) of subdivision (a).

18 (b) This section shall not be construed to preclude the applicability of any other
19 provision of criminal law or equitable remedy that applies or may apply to any act
20 committed or alleged to have been committed by a person.

21 **Comment.** Section 17550 is added as part of a nonsubstantive reorganization of sentence
22 enhancements for crimes that cause an injury. The section continues former Section 550(g)-(h)
23 without substantive change.

24 **Penal Code § 17555. Injury to police dog or horse**

25 17555. (a) Any person who, in violation of section 600, and with intent to inflict
26 injury or death, personally causes the death, destruction, or serious physical injury
27 including bone fracture, loss or impairment of function of any bodily member,
28 wounds requiring extensive suturing, or serious crippling, of any horse or dog,
29 shall, upon conviction of a felony under section 600, in addition and consecutive
30 to the punishment prescribed for the felony, be punished by an additional term of
31 imprisonment in the state prison for one year.

32 (b) Any person who, in violation of section 600, and with the intent to inflict
33 such injury, personally causes great bodily injury to any person not an accomplice,
34 shall, upon conviction of a felony under section 600, in addition and consecutive
35 to the punishment prescribed for the felony, be punished by an additional term of
36 imprisonment in the state prison for two years unless the conduct described in this
37 subdivision is an element of any other offense of which the person is convicted.

38 **Comment.** Section 17555 is added as part of a nonsubstantive reorganization of sentence
39 enhancements for crimes that cause an injury. The section continues former Section 600(c)-(d)
40 without substantive change.

41 The phrase “ as defined in Section 12022.7” is unnecessary and is not continued in subdivision
42 (b). See Section 17050 (“great bodily injury” defined).

CONFORMING REVISIONS AND REPEALS

Health & Safety Code § 11379.7 (amended). Specified violations involving methamphetamine or phencyclidine

SEC. ____. Section 11379.7 of the Health and Safety Code is amended to read:

11379.7. (a) Except as provided in subdivision (b) ~~Section 17490 of the Penal Code~~, any person convicted of a violation of subdivision (a) of Section 11379.6 or Section 11383, or of an attempt to violate subdivision (a) of Section 11379.6 or Section 11383, as those sections relate to methamphetamine or phencyclidine, when the commission or attempted commission of the crime occurs in a structure where any child under 16 years of age is present, shall, in addition and consecutive to the punishment prescribed for the felony of which he or she has been convicted, be punished by an additional term of two years in the state prison.

~~(b) Any person convicted of a violation of subdivision (a) of Section 11379.6 or Section 11383, or of an attempt to violate subdivision (a) of Section 11379.6 or Section 11383, as those sections relate to methamphetamine or phencyclidine, where the commission of the crime causes any child under 16 years of age to suffer great bodily injury, shall, in addition and consecutive to the punishment prescribed for the felony of which he or she has been convicted, be punished by an additional term of five years in the state prison.~~

(c) As used in this section, “structure” means any house, apartment building, shop, warehouse, barn, building, vessel, railroad car, cargo container, motor vehicle, housecar, trailer, trailer coach, camper, mine, floating home, or other enclosed structure capable of holding a child and manufacturing equipment.

~~(d) As used in this section, “great bodily injury” has the same meaning as defined in Section 12022.7 of the Penal Code.~~

Comment. Section 11379.7 is amended as part of a nonsubstantive reorganization of sentence enhancements for crimes that cause an injury. Subdivision (b) is continued without substantive change in Penal Code Section 17490.

Subdivision (d) is unnecessary and is not continued. See Penal Code Section 17050 (“great bodily injury” defined).

Health & Safety Code § 11379.9 (repealed). Death or great bodily injury resulting from manufacture of methamphetamine or phencyclidine

SEC. ____. Section 11379.9 of the Health and Safety Code is repealed.

~~11379.9. (a) Except as provided by Section 11379.7, any person convicted of a violation of, or of an attempt to violate, subdivision (a) of Section 11379.6 or Section 11383, as those sections relate to methamphetamine or phencyclidine, when the commission or attempted commission of the offense causes the death or great bodily injury of another person other than an accomplice, shall, in addition and consecutive to any other punishment authorized by law, be punished by an additional term of one year in the state prison for each death or injury.~~

~~(b) Nothing in this section shall preclude prosecution under both this section and Section 187, 192, or 12022.7, or any other provision of law. However, a person~~

1 ~~who is punished under another provision of law for causing death or great bodily~~
2 ~~injury as described in subdivision (a) shall not receive an additional term of~~
3 ~~imprisonment under this section.~~

4 **Comment.** Section 11379.9 is repealed as part of a nonsubstantive reorganization of sentence
5 enhancements for crimes that cause an injury. The section is continued without substantive
6 change in Penal Code Section 17495.

7 The introductory clauses of subdivision (a) is redundant and is not continued. This is a
8 nonsubstantive change.

9 ☞ **Staff Note.** The introductory clause of subdivision (a) appears to be redundant in light of the
10 general rule provided in proposed Section 17400 and has been deleted. The Commission would
11 like to receive input on whether deletion of this clause would have any substantive effect.

12 **Health & Safety Code § 25189.5 (amended). Unauthorized disposal, or treatment of**
13 **hazardous waste**

14 SEC. _____. Section 25189.5 of the Health and Safety Code is amended to read:

15 25189.5. (a) The disposal of any hazardous waste, or the causing thereof, is
16 prohibited when the disposal is at a facility which does not have a permit from the
17 department issued pursuant to this chapter, or at any point which is not authorized
18 according to this chapter.

19 (b) Any person who is convicted of knowingly disposing or causing the disposal
20 of any hazardous waste, or who reasonably should have known that he or she was
21 disposing or causing the disposal of any hazardous waste, at a facility which does
22 not have a permit from the department issued pursuant to this chapter, or at any
23 point which is not authorized according to this chapter shall, upon conviction, be
24 punished by imprisonment in a county jail for not more than one year or by
25 imprisonment in the state prison.

26 (c) Any person who knowingly transports or causes the transportation of
27 hazardous waste, or who reasonably should have known that he or she was causing
28 the transportation of any hazardous waste, to a facility which does not have a
29 permit from the department issued pursuant to this chapter, or at any point which
30 is not authorized according to this chapter, shall, upon conviction, be punished by
31 imprisonment in a county jail for not more than one year or by imprisonment in
32 the state prison.

33 (d) Any person who knowingly treats or stores any hazardous waste at a facility
34 which does not have a permit from the department issued pursuant to this chapter,
35 or at any point which is not authorized according to this chapter, shall, upon
36 conviction, be punished by imprisonment in a county jail for not more than one
37 year or by imprisonment in the state prison.

38 (e) The court also shall impose upon a person convicted of violating subdivision
39 (b), (c), or (d), a fine of not less than five thousand dollars (\$5,000) nor more than
40 one hundred thousand dollars (\$100,000) for each day of violation, except as
41 further provided in this subdivision. ~~If the act which violated subdivision (b), (c),~~
42 ~~or (d) caused great bodily injury, or caused a substantial probability that death~~
43 ~~could result, the person convicted of violating subdivision (b), (c), or (d) may be~~

1 ~~punished by imprisonment in the state prison for one, two, or three years, in~~
2 ~~addition and consecutive to the term specified in subdivision (b), (c), or (d), and~~
3 ~~may be fined up to two hundred fifty thousand dollars (\$250,000) for each day of~~
4 ~~violation section 17535 of the Penal Code.~~

5 (f) For purposes of this section, except as otherwise provided in this subdivision,
6 “each day of violation” means each day on which a violation continues. In any
7 case where a person has disposed or caused the disposal of any hazardous waste in
8 violation of this section, each day that the waste remains disposed of in violation
9 of this section and the person has knowledge thereof is a separate additional
10 violation, unless the person has filed a report of the disposal with the department
11 and is complying with any order concerning the disposal issued by the department,
12 a hearing officer, or court of competent jurisdiction.

13 **Comment.** Section 25189.5 is amended as part of a nonsubstantive reorganization of sentence
14 enhancements for crimes that cause an injury. The former second sentence of subdivision (e) is
15 continued without substantive change in Penal Code Section 17535.

16 **Health & Safety Code § 25189.7 (amended). Burning or incineration at unpermitted facility**
17 **or unauthorized point**

18 SEC. ____. Section 25189.7 of the Health and Safety Code is amended to read:

19 25189.7. (a) The burning or incineration of any hazardous waste, or the causing
20 thereof, is prohibited when the burning or incineration is at a facility which does
21 not have a permit from the department issued pursuant to this chapter, or at any
22 point which is not authorized according to this chapter.

23 (b) Any person who is convicted of knowingly burning or incinerating, or
24 causing the burning or incineration of, any hazardous waste, or who reasonably
25 should have known that he or she was burning or incinerating, or causing the
26 burning or incineration of, any hazardous waste, at a facility which does not have a
27 permit from the department issued pursuant to this chapter, or at any point which
28 is not authorized according to this chapter, shall, upon conviction, be punished by
29 imprisonment in a county jail for not more than one year or by imprisonment in
30 the state prison.

31 (c) ~~The court also shall impose upon a person convicted of violating subdivision~~
32 ~~(b) a fine of not less than five thousand dollars (\$5,000) nor more than one~~
33 ~~hundred thousand dollars (\$100,000) for each day of violation, except as otherwise~~
34 ~~provided in this subdivision. If the act which violated subdivision (b) caused great~~
35 ~~bodily injury or caused a substantial probability that death could result, the person~~
36 ~~convicted of violating subdivision (b) may be punished by imprisonment in the~~
37 ~~state prison for one, two, or three years, in addition and consecutive to the term~~
38 ~~specified in subdivision (b), and may be fined up to two hundred fifty thousand~~
39 ~~dollars (\$250,000) for each day of violation Section 17540 of the Penal Code.~~

40 **Comment.** Section 25189.7 is amended as part of a nonsubstantive reorganization of sentence
41 enhancements for crimes that cause an injury. The former second sentence of subdivision (c) is
42 continued without substantive change in Penal Code Section 17540.

1 **Penal Code § 273.4 (repealed). Female genital mutilation**

2 SEC. _____. Section 273.4 of the Penal Code is repealed.

3 ~~273.4. (a) If the act constituting a felony violation of subdivision (a) of Section~~
4 ~~273a was female genital mutilation, as defined in subdivision (b), the defendant~~
5 ~~shall be punished by an additional term of imprisonment in the state prison for one~~
6 ~~year, in addition and consecutive to the punishment prescribed by Section 273a.~~

7 ~~(b) “Female genital mutilation” means the excision or infibulation of the labia~~
8 ~~majora, labia minora, clitoris, or vulva, performed for nonmedical purposes.~~

9 ~~(c) Nothing in this section shall preclude prosecution under Section 203, 205, or~~
10 ~~206 or any other provision of law.~~

11 **Comment.** Section 273.4 is repealed as part of a nonsubstantive reorganization of sentence
12 enhancements for crimes that cause an injury. The section is continued without substantive
13 change in Penal Code Section 17485.

14 **Penal Code § 347 (amended). Poisoning or adulterating food, drink, medicine,**
15 **pharmaceutical products, spring, well, or reservoir**

16 SEC. _____. Section 347 of the Penal Code is amended to read:

17 347. (a) Every person who willfully mingles any poison or harmful substance
18 with any food, drink, medicine, or pharmaceutical product or who willfully places
19 any poison or harmful substance in any spring, well, reservoir, or public water
20 supply, where the person knows or should have known that the same would be
21 taken by any human being to his or her injury, is guilty of a felony punishable by
22 imprisonment in the state prison for two, four, or five years.

23 ~~Any violation of this subdivision involving the use of a poison or harmful~~
24 ~~substance which may cause death if ingested or which causes the infliction of great~~
25 ~~bodily injury on any person shall be punished by an additional term of three years.~~

26 (b) Any person who maliciously informs any other person that a poison or other
27 harmful substance has been or will be placed in any food, drink, medicine,
28 pharmaceutical product, or public water supply, knowing that such report is false,
29 is guilty of a crime punishable by imprisonment in the state prison, or by
30 imprisonment in the county jail not to exceed one year.

31 (c) The court may impose the maximum fine for each item tampered with in
32 violation of subdivision (a).

33 **Comment.** Section 347 is amended as part of a nonsubstantive reorganization of sentence
34 enhancements for crimes that cause an injury. The former second paragraph of subdivision (a) is
35 continued without substantive change in Section 17500.

36 **Penal Code § 368 (amended). Abuse of elder or dependent adult**

37 SEC. _____. Section 368 of the Penal Code is amended to read:

38 368. (a) The Legislature finds and declares that crimes against elders and
39 dependent adults are deserving of special consideration and protection, not unlike
40 the special protections provided for minor children, because elders and dependent
41 adults may be confused, on various medications, mentally or physically impaired,

1 or incompetent, and therefore less able to protect themselves, to understand or
2 report criminal conduct, or to testify in court proceedings on their own behalf.

3 (b)(1) Any person who, under circumstances or conditions likely to produce
4 great bodily harm or death, willfully causes or permits any elder or dependent
5 adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or
6 inflicts thereon unjustifiable physical pain or mental suffering, or having the care
7 or custody of any elder or dependent adult, willfully causes or permits the person
8 or health of the elder or dependent adult to be injured, or willfully causes or
9 permits the elder or dependent adult to be placed in a situation in which his or her
10 person or health is endangered, is punishable by imprisonment in a county jail not
11 exceeding one year, or in the state prison for two, three, or four years.

12 ~~(2) If in the commission of an offense described in paragraph (1), the victim~~
13 ~~suffers great bodily injury, as defined in subdivision (e) of Section 12022.7, the~~
14 ~~defendant shall receive an additional term in the state prison as follows:~~

15 ~~(A) Three years if the victim is under 70 years of age.~~

16 ~~(B) Five years if the victim is 70 years of age or older.~~

17 ~~(3) If in the commission of an offense described in paragraph (1), the defendant~~
18 ~~proximately causes the death of the victim, the defendant shall receive an~~
19 ~~additional term in the state prison as follows:~~

20 ~~(A) Five years if the victim is under 70 years of age.~~

21 ~~(B) Seven years if the victim is 70 years of age or older.~~

22 (c) Any person who, under circumstances or conditions other than those likely to
23 produce great bodily harm or death, willfully causes or permits any elder or
24 dependent adult, with knowledge that he or she is an elder or a dependent adult, to
25 suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having
26 the care or custody of any elder or dependent adult, willfully causes or permits the
27 person or health of the elder or dependent adult to be injured or willfully causes or
28 permits the elder or dependent adult to be placed in a situation in which his or her
29 person or health may be endangered, is guilty of a misdemeanor.

30 (d) Any person who is not a caretaker who violates any provision of law
31 proscribing theft or embezzlement, with respect to the property of an elder or
32 dependent adult, and who knows or reasonably should know that the victim is an
33 elder or dependent adult, is punishable by imprisonment in a county jail not
34 exceeding one year, or in the state prison for two, three, or four years, when the
35 money, labor, or real or personal property taken is of a value exceeding four
36 hundred dollars (\$400); and by a fine not exceeding one thousand dollars (\$1,000),
37 by imprisonment in a county jail not exceeding one year, or by both that fine and
38 imprisonment, when the money, labor, or real or personal property taken is of a
39 value not exceeding four hundred dollars (\$400).

40 (e) Any caretaker of an elder or a dependent adult who violates any provision of
41 law proscribing theft or embezzlement, with respect to the property of that elder or
42 dependent adult, is punishable by imprisonment in a county jail not exceeding one
43 year, or in the state prison for two, three, or four years when the money, labor, or

1 real or personal property taken is of a value exceeding four hundred dollars (\$400),
2 and by a fine not exceeding one thousand dollars (\$1,000), by imprisonment in a
3 county jail not exceeding one year, or by both that fine and imprisonment, when
4 the money, labor, or real or personal property taken is of a value not exceeding
5 four hundred dollars (\$400).

6 (f) Any person who commits the false imprisonment of an elder or dependent
7 adult by the use of violence, menace, fraud, or deceit is punishable by
8 imprisonment in the state prison for two, three, or four years.

9 (g) As used in this section, “elder” means any person who is 65 years of age or
10 older.

11 (h) As used in this section, “dependent adult” means any person who is between
12 the ages of 18 and 64, who has physical or mental limitations which restrict his or
13 her ability to carry out normal activities or to protect his or her rights, including,
14 but not limited to, persons who have physical or developmental disabilities or
15 whose physical or mental abilities have diminished because of age. “Dependent
16 adult” includes any person between the ages of 18 and 64 who is admitted as an
17 inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and
18 1250.3 of the Health and Safety Code.

19 (i) As used in this section, “caretaker” means any person who has the care,
20 custody, or control of, or who stands in a position of trust with, an elder or a
21 dependent adult.

22 (j) Nothing in this section shall preclude prosecution under both this section and
23 Section 187 or 12022.7 or any other provision of law. ~~However, a person shall not~~
24 ~~receive an additional term of imprisonment under both paragraphs (2) and (3) of~~
25 ~~subdivision (b) for any single offense, nor shall a person receive an additional term~~
26 ~~of imprisonment under both Section 12022.7 and paragraph (2) or (3) of~~
27 ~~subdivision (b) for any single offense.~~

28 **Comment.** Section 368 is amended as part of a nonsubstantive reorganization of sentence
29 enhancements for crimes that cause an injury. Former paragraphs (2) and (3) of subdivision (b)
30 are continued without substantive change in Section 17465(a) & (b).

31 The second sentence of subdivision (j) is redundant and has been deleted. See Section 17400
32 (“When two or more enhancements may be imposed for the infliction of great bodily injury in the
33 commission of a single offense, only the greatest of those enhancements shall be imposed for that
34 offense.”). This is a nonsubstantive change.

35 ☞ **Staff Note.** The second sentence in subdivision (j) appears to be redundant with respect to the
36 general rule provided in proposed Section 17400 and has been deleted. The Commission would
37 like to receive input on whether this change would have any substantive effect.

38 **Penal Code § 451.1 (amended). Arson**

39 SEC. _____. Section 451.1 of the Penal Code is amended to read:

40 451.1. (a) Notwithstanding any other law, any person who is convicted of a
41 felony violation of Section 451 shall be punished by a three-, four-, or five-year
42 enhancement if one or more of the following circumstances is found to be true:

1 (1) (a) The defendant has been previously convicted of a felony violation of
2 Section 451 or 452.

3 (2) ~~A firefighter, peace officer, or other emergency personnel suffered great~~
4 ~~bodily injury as a result of the offense. The additional term provided by this~~
5 ~~subdivision shall be imposed whenever applicable, including any instance in~~
6 ~~which there is a violation of subdivision (a) of Section 451.~~

7 (3) ~~The defendant proximately caused great bodily injury to more than one~~
8 ~~victim in any single violation of Section 451. The additional term provided by this~~
9 ~~subdivision shall be imposed whenever applicable, including any instance in~~
10 ~~which there is a violation of subdivision (a) of Section 451.~~

11 (4) (b) The defendant proximately caused multiple structures to burn in any
12 single violation of Section 451.

13 (5) (c) The defendant committed arson as described in subdivision (a), (b), or (c)
14 of Section 451 and the arson was caused by use of a device designed to accelerate
15 the fire or delay ignition.

16 (b) ~~The additional term specified in subdivision (a) shall not be imposed unless~~
17 ~~the existence of any fact required under this section shall be alleged in the~~
18 ~~accusatory pleading and either admitted by the defendant in open court or found to~~
19 ~~be true by the trier of fact.~~

20 **Comment.** Section 451.1 is amended as part of a nonsubstantive reorganization of sentence
21 enhancements for crimes that cause an injury. Former subdivision (a)(2)-(3) is continued without
22 substantive change in Penal Code Section 17520.

23 Subdivision (b) is deleted as redundant. See Section 1170.1(e) (“All enhancements shall be
24 alleged in the accusatory pleading and either admitted by the defendant in open court or found to
25 be true by the trier of fact.”). This is a nonsubstantive change.

26 ☞ **Staff Note.** Subdivision (b) appears to be redundant with respect to the general rule provided
27 in Section 1170.1(e) and has been deleted. The Commission would like to receive input on
28 whether this change would have any substantive effect.

29 **Penal Code § 452.1 (amended). Aggravated arson**

30 SEC. ____ . Section 452.1 of the Penal Code is amended to read:

31 452.1. (a) Notwithstanding any other law, any person who is convicted of a
32 felony violation of Section 452 shall be punished by a one-, two-, or three-year
33 enhancement for each of the following circumstances that is found to be true:

34 (1) (a) The defendant has been previously convicted of a felony violation of
35 Section 451 or 452.

36 (2) ~~A firefighter, peace officer, or other emergency personnel suffered great~~
37 ~~bodily injury as a result of the offense. The additional term provided by this~~
38 ~~subdivision shall be imposed whenever applicable, including any instance in~~
39 ~~which there is a violation of subdivision (a) of Section 452.~~

40 (3) ~~The defendant proximately caused great bodily injury to more than one~~
41 ~~victim in any single violation of Section 452. The additional term provided by this~~
42 ~~subdivision shall be imposed whenever applicable, including any instance in~~
43 ~~which there is a violation of subdivision (a) of Section 452.~~

1 (4) (b) The defendant proximately caused multiple structures to burn in any
2 single violation of Section 452.

3 ~~(b) The additional term specified in subdivision (a) of Section 452.1 shall not be~~
4 ~~imposed unless the existence of any fact required under this section shall be~~
5 ~~alleged in the accusatory pleading and either admitted by the defendant in open~~
6 ~~court or found to be true by the trier of fact.~~

7 **Comment.** Section 452.1 is amended as part of a nonsubstantive reorganization of sentence
8 enhancements for crimes that cause an injury. Former subdivision (a)(2)-(3) is continued without
9 substantive change in Penal Code Section 17525.

10 Subdivision (b) is deleted as redundant. See Section 1170.1(e) (“All enhancements shall be
11 alleged in the accusatory pleading and either admitted by the defendant in open court or found to
12 be true by the trier of fact.”). This is a nonsubstantive change.

13 ☞ **Staff Note.** Subdivision (b) appears to be redundant with respect to the general rule provided
14 in Section 1170.1(e) and has been deleted. The Commission would like to receive input on
15 whether this change would have any substantive effect.

16 **Penal Code § 550 (amended). False or fraudulent claims or statements**

17 SEC. ____ . Section 550 of the Penal Code is amended to read:

18 550. (a) It is unlawful to do any of the following, or to aid, abet, solicit, or
19 conspire with any person to do any of the following:

20 (1) Knowingly present or cause to be presented any false or fraudulent claim for
21 the payment of a loss or injury, including payment of a loss or injury under a
22 contract of insurance.

23 (2) Knowingly present multiple claims for the same loss or injury, including
24 presentation of multiple claims to more than one insurer, with an intent to defraud.

25 (3) Knowingly cause or participate in a vehicular collision, or any other
26 vehicular accident, for the purpose of presenting any false or fraudulent claim.

27 (4) Knowingly present a false or fraudulent claim for the payments of a loss for
28 theft, destruction, damage, or conversion of a motor vehicle, a motor vehicle part,
29 or contents of a motor vehicle.

30 (5) Knowingly prepare, make, or subscribe any writing, with the intent to present
31 or use it, or to allow it to be presented, in support of any false or fraudulent claim.

32 (6) Knowingly make or cause to be made any false or fraudulent claim for
33 payment of a health care benefit.

34 (7) Knowingly submit a claim for a health care benefit that was not used by, or
35 on behalf of, the claimant.

36 (8) Knowingly present multiple claims for payment of the same health care
37 benefit with an intent to defraud.

38 (9) Knowingly present for payment any undercharges for health care benefits on
39 behalf of a specific claimant unless any known overcharges for health care benefits
40 for that claimant are presented for reconciliation at that same time.

41 (10) For purposes of paragraphs (6) to (9), inclusive, a claim or a claim for
42 payment of a health care benefit also means a claim or claim for payment

1 submitted by or on the behalf of a provider of any workers' compensation health
2 benefits under the Labor Code.

3 (b) It is unlawful to do, or to knowingly assist or conspire with any person to do,
4 any of the following:

5 (1) Present or cause to be presented any written or oral statement as part of, or in
6 support of or opposition to, a claim for payment or other benefit pursuant to an
7 insurance policy, knowing that the statement contains any false or misleading
8 information concerning any material fact.

9 (2) Prepare or make any written or oral statement that is intended to be presented
10 to any insurer or any insurance claimant in connection with, or in support of or
11 opposition to, any claim or payment or other benefit pursuant to an insurance
12 policy, knowing that the statement contains any false or misleading information
13 concerning any material fact.

14 (3) Conceal, or knowingly fail to disclose the occurrence of, an event that affects
15 any person's initial or continued right or entitlement to any insurance benefit or
16 payment, or the amount of any benefit or payment to which the person is entitled.

17 (4) Prepare or make any written or oral statement, intended to be presented to
18 any insurer or producer for the purpose of obtaining a motor vehicle insurance
19 policy, that the person to be the insured resides or is domiciled in this state when,
20 in fact, that person resides or is domiciled in a state other than this state.

21 (c)(1) Every person who violates paragraph (1), (2), (3), (4), or (5) of
22 subdivision (a) is guilty of a felony punishable by imprisonment in the state prison
23 for two, three, or five years, and by a fine not exceeding fifty thousand dollars
24 (\$50,000), unless the value of the fraud exceeds fifty thousand dollars (\$50,000),
25 in which event the fine may not exceed double of the value of the fraud.

26 (2) Every person who violates paragraph (6), (7), (8), or (9) of subdivision (a) is
27 guilty of a public offense.

28 (A) Where the claim or amount at issue exceeds four hundred dollars (\$400), the
29 offense is punishable by imprisonment in the state prison for two, three, or five
30 years, or by a fine not exceeding fifty thousand dollars (\$50,000), or by both that
31 imprisonment and fine, unless the value of the fraud exceeds fifty thousand dollars
32 (\$50,000), in which event the fine may not exceed double the value of the fraud, or
33 by imprisonment in a county jail not to exceed one year, by a fine of not more than
34 one thousand dollars (\$1,000), or by both that imprisonment and fine.

35 (B) Where the claim or amount at issue is four hundred dollars (\$400) or less,
36 the offense is punishable by imprisonment in a county jail not to exceed six
37 months, or by a fine of not more than one thousand dollars (\$1,000), or by both
38 that imprisonment and fine, unless the aggregate amount of the claims or amount
39 at issue exceeds four hundred dollars (\$400) in any 12-consecutive-month period,
40 in which case the claims or amounts may be charged as in subparagraph (A).

41 (3) Every person who violates paragraph (1), (2), (3), or (4) of subdivision (b)
42 shall be punished by imprisonment in the state prison for two, three, or five years,
43 or by a fine not exceeding fifty thousand dollars (\$50,000), unless the value of the

1 fraud exceeds fifty thousand dollars (\$50,000), in which event the fine may not
2 exceed double the value of the fraud, or by both that imprisonment and fine ; or by
3 imprisonment in a county jail not to exceed one year, or by a fine of not more than
4 one thousand dollars (\$1,000), or by both that imprisonment and fine.

5 (d) Notwithstanding any other provision of law, probation shall not be granted
6 to, nor shall the execution or imposition of a sentence be suspended for, any adult
7 person convicted of felony violations of this section who previously has been
8 convicted of felony violations of this section or Section 548, or of Section 1871.4
9 of the Insurance Code, or former Section 556 of the Insurance Code, or former
10 Section 1871.1 of the Insurance Code as an adult under charges separately brought
11 and tried two or more times. The existence of any fact that would make a person
12 ineligible for probation under this subdivision shall be alleged in the information
13 or indictment, and either admitted by the defendant in an open court, or found to
14 be true by the jury trying the issue of guilt or by the court where guilt is
15 established by plea of guilty or nolo contendere or by trial by the court sitting
16 without a jury.

17 Except when the existence of the fact was not admitted or found to be true or the
18 court finds that a prior felony conviction was invalid, the court shall not strike or
19 dismiss any prior felony convictions alleged in the information or indictment.

20 This subdivision does not prohibit the adjournment of criminal proceedings
21 pursuant to Division 3 (commencing with Section 3000) or Division 6
22 (commencing with Section 6000) of the Welfare and Institutions Code.

23 (e) Except as otherwise provided in subdivision (f), any person who violates
24 subdivision (a) or (b) and who has a prior felony conviction of an offense set forth
25 in either subdivision (a) or (b), in Section 548, in Section 1871.4 of the Insurance
26 Code, in former Section 556 of the Insurance Code, or in former Section 1871.1 of
27 the Insurance Code shall receive a two-year enhancement for each prior felony
28 conviction in addition to the sentence provided in subdivision (c). The existence of
29 any fact that would subject a person to a penalty enhancement shall be alleged in
30 the information or indictment and either admitted by the defendant in open court,
31 or found to be true by the jury trying the issue of guilt or by the court where guilt
32 is established by plea of guilty or nolo contendere or by trial by the court sitting
33 without a jury. Any person who violates this section shall be subject to appropriate
34 orders of restitution pursuant to Section 13967 of the Government Code.

35 (f) Any person who violates paragraph (3) of subdivision (a) and who has two
36 prior felony convictions for a violation of paragraph (3) of subdivision (a) shall
37 receive a five-year enhancement in addition to the sentence provided in
38 subdivision (c). ~~The existence of any fact that would subject a person to a penalty~~
39 ~~enhancement shall be alleged in the information or indictment and either admitted~~
40 ~~by the defendant in open court, or found to be true by the jury trying the issue of~~
41 ~~guilt or by the court where guilt is established by plea of guilty or nolo contendere~~
42 ~~or by trial by the court sitting without a jury.~~

1 (g) ~~Except as otherwise provided in Section 12022.7, any person who violates~~
2 ~~paragraph (3) of subdivision (a) shall receive a two-year enhancement for each~~
3 ~~person other than an accomplice who suffers serious bodily injury resulting from~~
4 ~~the vehicular collision or accident in a violation of paragraph (3) of subdivision~~
5 ~~(a).~~

6 (h) This section shall not be construed to preclude the applicability of any other
7 provision of criminal law or equitable remedy that applies or may apply to any act
8 committed or alleged to have been committed by a person.

9 **Comment.** Section 550 is amended as part of a nonsubstantive reorganization of sentence
10 enhancements for crimes that cause an injury. Former subdivision (g) is continued without
11 substantive change in Penal Code Section 17550(a). The substance of former subdivision (h)
12 (renumbered as subdivision (g) in this section) is continued in Penal Code Section 17550(b).

13 The second sentence of subdivision (f) is deleted as redundant. See Section 1170.1(e) (“All
14 enhancements shall be alleged in the accusatory pleading and either admitted by the defendant in
15 open court or found to be true by the trier of fact.”). The introductory clause of subdivision (g) is
16 redundant and is not continued. See Section 17400 (“When two or more enhancements may be
17 imposed for the infliction of great bodily injury in the commission of a single offense, only the
18 greatest of those enhancements shall be imposed for that offense.”). These are nonsubstantive
19 changes.

20 ☞ **Staff Note.** The second sentence of subdivision (f) appears to be redundant with respect to the
21 general rule provided in Section 1170.1(e) and has been deleted. The introductory clauses of
22 subdivisions (a)(1), (a)(2), (c) and (d) appear to be redundant in light of the general rule provided
23 in proposed Section 17400 and have been deleted. The Commission would like to receive input
24 on whether these changes would have any substantive effect.

25 **Penal Code § 593a (amended). Tree spiking**

26 SEC. _____. Section 593a of the Penal Code is amended to read:

27 593a. (a) Every person who maliciously drives or places, in any tree, saw-log,
28 shingle-bolt, or other wood, any iron, steel, ceramic, or other substance sufficiently
29 hard to injure saws, knowing that the tree is intended to be harvested or that the
30 saw-log, shingle-bolt, or other wood is intended to be manufactured into any kind
31 of lumber or other wood product, is guilty of a felony.

32 ~~(b) Any person who violates subdivision (a) and causes bodily injury to another~~
33 ~~person other than an accomplice shall, in addition and consecutive to the~~
34 ~~punishment prescribed for that felony, be punished by an additional prison term of~~
35 ~~three years.~~

36 **Comment.** Section 593a is amended as part of a nonsubstantive reorganization of sentence
37 enhancements for crimes that cause an injury. Former subdivision (b) is continued without
38 substantive change in Penal Code Section 17530. The designation of the first paragraph as
39 subdivision (a) is deleted.

40 **Penal Code § 600 (amended). Harm to or interference with horses or dogs used by peace** 41 **officers**

42 SEC. _____. Section 600 of the Penal Code is amended to read:

43 600. (a) Any person who willfully and maliciously and with no legal justification
44 strikes, beats, kicks, cuts, stabs, shoots with a firearm, administers any poison or

1 other harmful or stupefying substance to, or throws, hurls, or projects at, or places
2 any rock, object, or other substance which is used in such a manner as to be
3 capable of producing injury and likely to produce injury, on or in the path of, any
4 horse being used by, or any dog under the supervision of, any peace officer in the
5 discharge or attempted discharge of his or her duties, is guilty of a public offense.
6 If the injury inflicted is a serious injury, as defined in subdivision (c), the person
7 shall be punished by imprisonment in the state prison for 16 months, two or three
8 years, or in a county jail for not exceeding one year, or by a fine not exceeding two
9 thousand dollars (\$2,000), or by both a fine and imprisonment. If the injury
10 inflicted is not a serious injury, the person shall be punished by imprisonment in
11 the county jail for not exceeding one year, or by a fine not exceeding one thousand
12 dollars (\$1,000), or by both a fine and imprisonment.

13 (b) Any person who willfully and maliciously and with no legal justification
14 interferes with or obstructs any horse or dog being used by any peace officer in the
15 discharge or attempted discharge of his or her duties by frightening, teasing,
16 agitating, harassing, or hindering the horse or dog shall be punished by
17 imprisonment in a county jail for not exceeding one year, or by a fine not
18 exceeding one thousand dollars (\$1,000), or by both a fine and imprisonment.

19 (c) ~~Any person who, in violation of this section, and with intent to inflict such~~
20 ~~injury or death, personally causes the death, destruction, or serious physical injury~~
21 ~~including bone fracture, loss or impairment of function of any bodily member,~~
22 ~~wounds requiring extensive suturing, or serious crippling, of any horse or dog,~~
23 ~~shall, upon conviction of a felony under this section, in addition and consecutive to~~
24 ~~the punishment prescribed for the felony, be punished by an additional term of~~
25 ~~imprisonment in the state prison for one year.~~

26 (d) ~~Any person who, in violation of this section, and with the intent to inflict~~
27 ~~such injury, personally causes great bodily injury, as defined in Section 12022.7,~~
28 ~~to any person not an accomplice, shall, upon conviction of a felony under this~~
29 ~~section, in addition and consecutive to the punishment prescribed for the felony, be~~
30 ~~punished by an additional term of imprisonment in the state prison for two years~~
31 ~~unless the conduct described in this subdivision is an element of any other offense~~
32 ~~of which the person is convicted or receives an enhancement under Section~~
33 ~~12002.7.~~

34 (e) In any case in which a defendant is convicted of a violation of this section,
35 the defendant shall be ordered to make restitution to the agency owning the animal
36 and employing the peace officer for any veterinary bills, replacement costs of the
37 animal if it is disabled or killed, and the salary of the peace officer for the period
38 of time his or her services are lost to the agency.

39 **Comment.** Section 600 is amended as part of a nonsubstantive reorganization of sentence
40 enhancements for crimes that cause an injury. Former subdivisions (c) and (d) are continued
41 without substantive change in Penal Code Section 17555.

42 The final clause in subdivision (d), “or receives an enhancement under Section 12002.7” is
43 redundant and is not continued. See Section 17400 (“When two or more enhancements may be
44 imposed for the infliction of great bodily injury in the commission of a single offense, only the

1 greatest of those enhancements shall be imposed for that offense.”). This is a nonsubstantive
2 change. Note that the reference in the deleted clause to Section 12002.7 was erroneous. The
3 clause should have referred to Section 12022.7.

4 ☞ **Staff Note.** The final clause of subdivision (d) appears to be redundant in light of the general
5 rule provided in proposed Section 17400. and has been deleted. The Commission would like to
6 receive input on whether deletion of this clause would have any substantive effect.

7 **Penal Code § 1170.1 (amended). Consecutive and aggregate terms**

8 SEC. ____ . Section 1170.1 of the Penal Code is amended to read:

9 1170.1 (a) Except as provided in subdivisions (b) and (c), and subject to Section
10 654, when any person is convicted of two or more felonies, whether in the same
11 proceeding or court or in different proceedings or courts, and whether by judgment
12 rendered by the same or by a different court, and a consecutive term of
13 imprisonment is imposed under Sections 669 and 1170, the aggregate term of
14 imprisonment for all these convictions shall be the sum of the principal term, the
15 subordinate term, and any additional term imposed for applicable enhancements
16 for prior convictions, prior prison terms, and Section 12022.1. The principal term
17 shall consist of the greatest term of imprisonment imposed by the court for any of
18 the crimes, including any term imposed for applicable specific enhancements. The
19 subordinate term for each consecutive offense which is not a “violent felony,” as
20 defined in subdivision (c) of Section 667.5, shall consist of one-third of the middle
21 term of imprisonment prescribed for each other felony conviction for an offense
22 that is not a violent felony for which a consecutive term of imprisonment is
23 imposed, and shall exclude any specific enhancements. The subordinate term for
24 each consecutive offense which is a “violent felony,” as defined in any paragraph
25 of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of
26 imprisonment prescribed for each other felony conviction for an offense that is a
27 violent felony for which a consecutive term of imprisonment is imposed, and shall
28 include one-third of the term imposed for any specific enhancements applicable to
29 those subordinate offenses.

30 (b) When a consecutive term of imprisonment is imposed under Sections 669
31 and 1170 for two or more convictions for kidnapping, as defined in Section 207,
32 involving separate victims, the aggregate term shall be calculated as provided in
33 subdivision (a), except that the subordinate term for each subordinate kidnapping
34 conviction shall consist of the full middle term for each kidnapping conviction for
35 which a consecutive term of imprisonment is imposed and shall include the full
36 term imposed for specific enhancements applicable to those subordinate offenses.

37 (c) In the case of any person convicted of one or more felonies committed while
38 the person is confined in a state prison or is subject to reimprisonment for escape
39 from custody and the law either requires the terms to be served consecutively or
40 the court imposes consecutive terms, the term of imprisonment for all the
41 convictions that the person is required to serve consecutively shall commence
42 from the time the person would otherwise have been released from prison. If the
43 new offenses are consecutive with each other, the principal and subordinate terms

1 shall be calculated as provided in subdivision (a). This subdivision shall be
2 applicable in cases of convictions of more than one offense in different
3 proceedings, and convictions of more than one offense in the same or different
4 proceedings.

5 (d) When the court imposes a prison sentence for a felony pursuant to Section
6 1170, the court shall also impose the additional terms provided for any applicable
7 enhancements. The court shall also impose any other additional term that the court
8 determines in its discretion or as required by law shall run consecutive to the term
9 imposed under Section 1170. In considering the imposition of the additional term,
10 the court shall apply the sentencing rules of the Judicial Council.

11 (e) All enhancements shall be alleged in the accusatory pleading and either
12 admitted by the defendant in open court or found to be true by the trier of fact.

13 ~~(f) When two or more enhancements may be imposed for being armed with or~~
14 ~~using a dangerous or deadly weapon or a firearm in the commission of a single~~
15 ~~offense, only the greatest of those enhancements shall be imposed for that offense.~~
16 ~~This subdivision shall not limit the imposition of any other enhancements~~
17 ~~applicable to that offense, including an enhancement for the infliction of great~~
18 ~~bodily injury.~~

19 ~~(g) When two or more enhancements may be imposed for the infliction of great~~
20 ~~bodily injury in the commission of a single offense, only the greatest of those~~
21 ~~enhancements shall be imposed for that offense. This subdivision shall not limit~~
22 ~~the imposition of any other enhancements applicable to that offense, including an~~
23 ~~enhancement for being armed with or using a dangerous or deadly weapon or a~~
24 ~~firearm.~~

25 (h) For any violation of paragraph (2), (3), or (6) of subdivision (a) of Section
26 261, paragraph (1) or (4) of subdivision (a) of Section 262, Section 264.1,
27 subdivision (b) of Section 288, subdivision (a) of Section 289, or sodomy or oral
28 copulation by force, violence, duress, menace, or fear of immediate and unlawful
29 bodily injury on the victim or another person as provided in Section 286 or 288a,
30 the number of enhancements that may be imposed shall not be limited, regardless
31 of whether the enhancements are pursuant to this section, Section 667.6, or some
32 other section of law. Each of the enhancements shall be a full and separately
33 served enhancement and shall not be merged with any term or with any other
34 enhancement.

35 **Comment.** Section 1170.1 is amended as part of a nonsubstantive reorganization of sentence
36 enhancements for crimes that cause an injury or involve a weapon. Former subdivisions (f) and
37 (g) are continued without substantive change in Penal Code Sections 17100 and 17400
38 respectively.

39 **Penal Code § 12021.5 (repealed). Street gang crimes**

40 SEC. _____. Section 12021.5 of the Penal Code is repealed.

41 ~~12021.5. (a) Every person who carries a loaded or unloaded firearm on his or her~~
42 ~~person, or in a vehicle, during the commission or attempted commission of any~~

1 ~~street gang crimes described in subdivision (a) or (b) of Section 186.22, shall,~~
2 ~~upon conviction of the felony or attempted felony, be punished by an additional~~
3 ~~term of imprisonment in the state prison for one, two, or three years in the court's~~
4 ~~discretion. The court shall impose the middle term unless there are circumstances~~
5 ~~in aggravation or mitigation. The court shall state the reasons for its enhancement~~
6 ~~choice on the record at the time of sentence.~~

7 ~~(b) Every person who carries a loaded or unloaded firearm together with a~~
8 ~~detachable shotgun magazine, a detachable pistol magazine, a detachable~~
9 ~~magazine, or a belt feeding device on his or her person, or in a vehicle, during the~~
10 ~~commission or attempted commission of any street gang crimes described in~~
11 ~~subdivision (a) or (b) of Section 186.22, shall, upon conviction of the felony or~~
12 ~~attempted felony, be punished by an additional term of imprisonment in the state~~
13 ~~prison for two, three, or four years in the court's discretion. The court shall impose~~
14 ~~the middle term unless there are circumstances in aggravation or mitigation. The~~
15 ~~court shall state the reasons for its enhancement choice on the record at the time of~~
16 ~~sentence.~~

17 ~~(c) As used in this section, the following definitions shall apply:~~

18 ~~(1) "Detachable magazine" means a device that is designed or redesigned to do~~
19 ~~all of the following:~~

20 ~~(A) To be attached to a rifle that is designed or redesigned to fire ammunition.~~

21 ~~(B) To be attached to, and detached from, a rifle that is designed or redesigned to~~
22 ~~fire ammunition.~~

23 ~~(C) To feed ammunition continuously and directly into the loading mechanism~~
24 ~~of a rifle that is designed or redesigned to fire ammunition.~~

25 ~~(2) "Detachable pistol magazine" means a device that is designed or redesigned~~
26 ~~to do all of the following:~~

27 ~~(A) To be attached to a semiautomatic firearm that is not a rifle or shotgun that is~~
28 ~~designed or redesigned to fire ammunition.~~

29 ~~(B) To be attached to, and detached from, a firearm that is not a rifle or shotgun~~
30 ~~that is designed or redesigned to fire ammunition.~~

31 ~~(C) To feed ammunition continuously and directly into the loading mechanism~~
32 ~~of a firearm that is not a rifle or a shotgun that is designed or redesigned to fire~~
33 ~~ammunition.~~

34 ~~(3) "Detachable shotgun magazine" means a device that is designed or~~
35 ~~redesigned to do all of the following:~~

36 ~~(A) To be attached to a firearm that is designed or redesigned to fire a fixed~~
37 ~~shotgun shell through a smooth or rifled bore.~~

38 ~~(B) To be attached to, and detached from, a firearm that is designed or~~
39 ~~redesigned to fire a fixed shotgun shell through a smooth bore.~~

40 ~~(C) To feed fixed shotgun shells continuously and directly into the loading~~
41 ~~mechanism of a firearm that is designed or redesigned to fire a fixed shotgun shell.~~

1 (4) “Belt-feeding device” means a device that is designed or redesigned to
2 continuously feed ammunition into the loading mechanism of a machinegun or a
3 semiautomatic firearm.

4 (5) “Rifle” shall have the same meaning as specified in paragraph (20) of
5 subdivision (c) of Section 12020.

6 (6) “Shotgun” shall have the same meaning as specified in paragraph (21) of
7 subdivision (c) of Section 12020.

8 **Comment.** Section 12021.5 is repealed as part of a nonsubstantive reorganization of sentence
9 enhancements for crimes that involve a weapon. The section is continued without substantive
10 change in Penal Code Section 17180.

11 **Penal Code § 12022 (repealed). Armed with firearm in commission of felony**

12 SEC. ____ . Section 12022 of the Penal Code is repealed.

13 ~~12022. (a)(1) Except as provided in subdivisions (c) and (d), any person who is~~
14 ~~armed with a firearm in the commission or attempted commission of a felony~~
15 ~~shall, upon conviction of that felony or attempted felony, in addition and~~
16 ~~consecutive to the punishment prescribed for the felony or attempted felony of~~
17 ~~which he or she has been convicted, be punished by an additional term of one year,~~
18 ~~unless the arming is an element of the offense of which he or she was convicted.~~
19 ~~This additional term shall apply to any person who is a principal in the~~
20 ~~commission or attempted commission of a felony if one or more of the principals~~
21 ~~is armed with a firearm, whether or not the person is personally armed with a~~
22 ~~firearm.~~

23 ~~(2) Except as provided in subdivision (c), and notwithstanding subdivision (d), if~~
24 ~~the firearm is an assault weapon, as defined in Section 12276 or Section 12276.1,~~
25 ~~or a machinegun, as defined in Section 12200, the additional term described in this~~
26 ~~subdivision shall be three years whether or not the arming is an element of the~~
27 ~~offense of which he or she was convicted. The additional term provided in this~~
28 ~~paragraph shall apply to any person who is a principal in the commission or~~
29 ~~attempted commission of a felony if one or more of the principals is armed with an~~
30 ~~assault weapon or machinegun whether or not the person is personally armed with~~
31 ~~an assault weapon or machinegun.~~

32 ~~(b)(1) Any person who personally uses a deadly or dangerous weapon in the~~
33 ~~commission or attempted commission of a felony shall, upon conviction of that~~
34 ~~felony or attempted felony, in addition and consecutive to the punishment~~
35 ~~prescribed for the felony or attempted felony of which he or she has been~~
36 ~~convicted, be punished by an additional term of one year, unless use of a deadly or~~
37 ~~dangerous weapon is an element of the offense of which he or she was convicted.~~

38 ~~(2) If the person described in paragraph (1) has been convicted of carjacking or~~
39 ~~attempted carjacking, the additional term shall be one, two, or three years.~~

40 ~~(3) When a person is found to have personally used a deadly or dangerous~~
41 ~~weapon in the commission or attempted commission of a felony as provided in this~~
42 ~~subdivision and the weapon is owned by that person, the court shall order that the~~

1 weapon be deemed a nuisance and disposed of in the manner provided in Section
2 12028.

3 ~~(c) Notwithstanding the enhancement set forth in subdivision (a), any person~~
4 ~~who is personally armed with a firearm in the commission or attempted~~
5 ~~commission of a violation of Section 11351, 11351.5, 11352, 11366.5, 11366.6,~~
6 ~~11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code, shall,~~
7 ~~upon conviction of that offense and in addition and consecutive to the punishment~~
8 ~~prescribed for that offense of which he or she has been convicted, be punished by~~
9 ~~an additional term of imprisonment in the state prison for three, four, or five years~~
10 ~~in the court's discretion. The court shall order the middle term unless there are~~
11 ~~circumstances in aggravation or mitigation. The court shall state the reasons for its~~
12 ~~enhancement choice on the record at the time of the sentence.~~

13 ~~(d) Notwithstanding the enhancement set forth in subdivision (a), any person~~
14 ~~who is not personally armed with a firearm who, knowing that another principal is~~
15 ~~personally armed with a firearm, is a principal in the commission or attempted~~
16 ~~commission of an offense specified in subdivision (c), shall, upon conviction of~~
17 ~~that offense, be punished by an additional term of one, two, or three years in the~~
18 ~~court's discretion. The court shall order the middle term unless there are~~
19 ~~circumstances in aggravation or mitigation. The court shall state the reasons for its~~
20 ~~enhancement choice on the record at the time of the sentence.~~

21 ~~(e) For purposes of imposing an enhancement under Section 1170.1, the~~
22 ~~enhancements under this section shall count as one, single enhancement.~~

23 ~~(f) Notwithstanding any other provision of law, the court may strike the~~
24 ~~additional punishment for the enhancements provided in subdivision (c) or (d) in~~
25 ~~an unusual case where the interests of justice would best be served, if the court~~
26 ~~specifies on the record and enters into the minutes the circumstances indicating~~
27 ~~that the interests of justice would best be served by that disposition.~~

28 **Comment.** Section 12022 is repealed as part of a nonsubstantive reorganization of sentence
29 enhancements for crimes that involve a weapon. Subdivision (a)(1) is continued without
30 substantive change in Penal Code Section 17150. Subdivision (a)(2) is continued without
31 substantive change in Penal Code Section 17155. Subdivision (b)(1)-(2) is continued without
32 substantive change in Penal Code Section 17300. Subdivision (b)(3) is generalized in Section
33 17010. Subdivisions (c)-(d), (f) are continued without substantive change in Penal Code Section
34 17185.

35 The introductory clauses of subdivisions (a)(1), (a)(2), (c) and (d) are redundant and are not
36 continued. Subdivision (e) is redundant and is not continued. See *People v. Jones*, 82 Cal. App.
37 4th 485, 98 Cal. Rptr 2d 329 (2000) (identical provision in Section 12022.5(f) “mirrors” general
38 rule limiting application of weapons enhancement); Section 17100 (“When two or more
39 enhancements may be imposed for being armed with or using a dangerous or deadly weapon or a
40 firearm in the commission of a single offense, only the greatest of those enhancements shall be
41 imposed for that offense.”). These are nonsubstantive changes.

42 ☞ **Staff Note.** The introductory clauses of subdivisions (a)(1), (a)(2), (c) and (d) appear to be
43 redundant in light of the general rule provided in proposed Section 17100 and have been deleted.
44 The Commission would like to receive input on whether deletion of these clauses would have any
45 substantive effect.

1 Subdivision (e) appears to be redundant with respect to the general rule provided in proposed
2 Section 17100 and has been deleted. See *People v. Jones* 82 Cal. App. 4th 485 (2000) (identical
3 provision in Section 12022.5(f) “mirrors” general rule limiting application of weapons
4 enhancement). See also *People v. King*, 5 Cal. 4th 59 (1993) (meaning of Section 12022.5(f) “not
5 readily apparent”). The Commission would like to receive input on whether this change would
6 have any substantive effect.

7 **Penal Code § 12022.2 (repealed). Possession of armor-piercing ammunition or body vest**

8 SEC. _____. Section 12022.2 of the Penal Code is repealed.

9 ~~12022.2. (a) Any person who, while armed with a firearm in the commission or~~
10 ~~attempted commission of any felony, has in his or her immediate possession~~
11 ~~ammunition for the firearm designed primarily to penetrate metal or armor, shall~~
12 ~~upon conviction of that felony or attempted felony, in addition and consecutive to~~
13 ~~the punishment prescribed for the felony or attempted felony, be punished by an~~
14 ~~additional term of 3, 4, or 10 years. The court shall order the middle term unless~~
15 ~~there are circumstances in aggravation or mitigation. The court shall state the~~
16 ~~reasons for its enhancement choice on the record at the time of the sentence.~~

17 ~~(b) Any person who wears a body vest in the commission or attempted~~
18 ~~commission of a violent offense, as defined in subdivision (b) of Section 12021.1,~~
19 ~~shall, upon conviction of that felony or attempted felony, in addition and~~
20 ~~consecutive to the punishment prescribed for the felony or attempted felony of~~
21 ~~which he or she has been convicted, be punished by an additional term of one, two,~~
22 ~~or five years. The court shall order the middle term unless there are circumstances~~
23 ~~in aggravation or mitigation. The court shall state the reasons for its enhancement~~
24 ~~choice on the record at the time of the sentence.~~

25 ~~(c) As used in this section, “body vest” means any bullet-resistant material~~
26 ~~intended to provide ballistic and trauma protection for the wearer.~~

27 **Comment.** Section 12022.2 is repealed as part of a nonsubstantive reorganization of sentence
28 enhancements for crimes that involve a weapon. Subdivision (a) is continued without substantive
29 change in Penal Code Section 17160. Subdivisions (b)-(c) are continued without substantive
30 change in Penal Code Section 17165.

31 **Penal Code § 12022.3 (repealed). Use or possession of weapons in commission of certain sex**
32 **offenses**

33 SEC. _____. Section 12022.3 of the Penal Code is repealed.

34 ~~12022.3. For each violation or attempted violation of Section 261, 262, 264.1,~~
35 ~~286, 288, 288a, or 289, and in addition to the sentence provided, any person shall~~
36 ~~receive the following:~~

37 ~~(a) A 3-, 4-, or 10-year enhancement if the person uses a firearm or a deadly~~
38 ~~weapon in the commission of the violation.~~

39 ~~(b) A one-, two-, or five-year enhancement if the person is armed with a firearm~~
40 ~~or a deadly weapon. The court shall order the middle term unless there are~~
41 ~~circumstances in aggravation or mitigation. The court shall state the reasons for its~~
42 ~~enhancement choice on the record at the time of the sentence.~~

1 **Comment.** Section 12022.3 is repealed as part of a nonsubstantive reorganization of sentence
2 enhancements for crimes that involve a weapon. Subdivision (a) is continued without substantive
3 change in Penal Code Section 17325. Subdivision (b) is continued without substantive change in
4 Penal Code Section 17190.

5 **Penal Code § 12022.4 (repealed). Furnishing firearm in furtherance of felony**

6 SEC. _____. Section 12022.4 of the Penal Code is repealed.

7 ~~12022.4. Any person who, during the commission or attempted commission of a
8 felony, furnishes or offers to furnish a firearm to another for the purpose of aiding,
9 abetting, or enabling that person or any other person to commit a felony shall, in
10 addition and consecutive to the punishment prescribed by the felony or attempted
11 felony of which the person has been convicted, be punished by an additional term
12 of one, two, or three years in the state prison. The court shall order the middle term
13 unless there are circumstances in aggravation or mitigation. The court shall state
14 the reasons for its enhancement choice on the record at the time of the sentence.
15 The additional term provided in this section shall not be imposed unless the fact of
16 the furnishing is charged in the accusatory pleading and admitted or found to be
17 true by the trier of fact.~~

18 **Comment.** Section 12022.4 is repealed as part of a nonsubstantive reorganization of sentence
19 enhancements for crimes that involve a weapon. The former section is continued without
20 substantive change in Penal Code Section 17170.

21 The final sentence of the section is redundant and is not continued. See Section 1170.1(e) (“All
22 enhancements shall be alleged in the accusatory pleading and either admitted by the defendant in
23 open court or found to be true by the trier of fact.”). This is a nonsubstantive change.

24 ☞ **Staff Note.** The final sentence is redundant with respect to the general rule provided in
25 Section 1170.1(e) and has not been continued. The Commission would like to receive input on
26 whether this change would have any substantive effect.

27 **Penal Code § 12022.5 (repealed). Use of firearms in commission of felony**

28 SEC. _____. Section 12022.5 of the Penal Code is repealed.

29 ~~12022.5. (a)(1) Except as provided in subdivisions (b) and (c), any person who
30 personally uses a firearm in the commission or attempted commission of a felony
31 shall, upon conviction of that felony or attempted felony, in addition and
32 consecutive to the punishment prescribed for the felony or attempted felony of
33 which he or she has been convicted, be punished by an additional term of
34 imprisonment in the state prison for 3, 4, or 10 years, unless use of a firearm is an
35 element of the offense of which he or she was convicted.~~

36 ~~(2) If the person described in paragraph (1) has been convicted of carjacking or
37 attempted carjacking, the additional term shall be 4, 5, or 10 years. The court shall
38 order imposition of the middle term unless there are circumstances in aggravation
39 or mitigation. The court shall state its reasons for its enhancement choice on the
40 record at the time of sentencing.~~

41 ~~(b)(1) Notwithstanding subdivision (a), any person who is convicted of a felony
42 or an attempt to commit a felony, including murder or attempted murder, in which
43 that person discharged a firearm at an occupied motor vehicle which caused great~~

1 ~~bodily injury or death to the person of another, shall, upon conviction of that~~
2 ~~felony or attempted felony, in addition and consecutive to the sentence prescribed~~
3 ~~for the felony or attempted felony, be punished by an additional term of~~
4 ~~imprisonment in the state prison for 5, 6, or 10 years.~~

5 ~~(2) Notwithstanding subdivision (a), any person who personally uses an assault~~
6 ~~weapon, as specified in Section 12276 or Section 12276.1, or a machinegun, as~~
7 ~~defined in Section 12200, in the commission or attempted commission of a felony,~~
8 ~~shall, upon conviction of that felony or attempted felony, in addition and~~
9 ~~consecutive to the sentence prescribed for the felony or attempted felony, be~~
10 ~~punished by an additional term of imprisonment in the state prison for 5, 6, or 10~~
11 ~~years.~~

12 ~~(c) Notwithstanding the enhancement set forth in subdivision (a), any person~~
13 ~~who personally uses a firearm in the commission or attempted commission of a~~
14 ~~violation of Section 11351, 11351.5, 11352, 11366.5, 11366.6, 11378, 11378.5,~~
15 ~~11379, 11379.5, or 11379.6 of the Health and Safety Code, shall, upon conviction~~
16 ~~of that offense and in addition and consecutive to the punishment prescribed for~~
17 ~~the offense of which he or she has been convicted, be punished by an additional~~
18 ~~term of imprisonment in the state prison for 3, 4, or 10 years in the court's~~
19 ~~discretion. The court shall order the imposition of the middle term unless there are~~
20 ~~circumstances in aggravation or mitigation. The court shall state the reasons for its~~
21 ~~enhancement choice on the record.~~

22 ~~(d) The additional term provided by this section may be imposed in cases of~~
23 ~~assault with a firearm under paragraph (2) of subdivision (a) of Section 245, or~~
24 ~~assault with a deadly weapon which is a firearm under Section 245, or murder if~~
25 ~~the killing was perpetrated by means of shooting a firearm from a motor vehicle,~~
26 ~~intentionally at another person outside of the vehicle with the intent to inflict great~~
27 ~~bodily injury or death.~~

28 ~~(e) When a person is found to have personally used a firearm, an assault weapon,~~
29 ~~or a machinegun in the commission or attempted commission of a felony as~~
30 ~~provided in this section and the firearm, assault weapon, or machinegun is owned~~
31 ~~by that person, the court shall order that the firearm be deemed a nuisance and~~
32 ~~disposed of in the manner provided in Section 12028.~~

33 ~~(f) For purposes of imposing an enhancement under Section 1170.1, the~~
34 ~~enhancements under this section shall count as one, single enhancement.~~

35 **Comment.** Section 12022.5 is repealed as part of a nonsubstantive reorganization of sentence
36 enhancements for crimes that involve a weapon. Subdivision (a) is continued without substantive
37 change in Penal Code Section 17305. Subdivision (b)(1) is continued without substantive change
38 in Penal Code Section 17330. Subdivision (b)(2) is continued without substantive change in Penal
39 Code Section 17310. Subdivision (c) is continued without substantive change in Penal Code
40 Section 17315. Subdivision (d) is continued without substantive change in Sections 17305(c),
41 17330(b), 17310(b), 17315(b). Subdivision (e) is generalized in Section 17010.

42 The introductory clauses of subdivisions (a)(1), (b)(1)-(2), and (c) are redundant and are not
43 continued. Subdivision (f) is redundant and is not continued. See *People v. Jones*, 82 Cal. App.
44 4th 485, 98 Cal. Rptr 2d 329 (2000) (Section 12022.5(f) “mirrors” general rule limiting
45 application of weapons enhancement); Section 17100 (“When two or more enhancements may be

1 imposed for being armed with or using a dangerous or deadly weapon or a firearm in the
2 commission of a single offense, only the greatest of those enhancements shall be imposed for that
3 offense.”). This is a nonsubstantive change.

4 ☞ **Staff Note.** The introductory clauses of subdivisions (a)(1), (b)(1)-(2), and (c) appear to be
5 redundant in light of the general rule provided in proposed Section 17100 and have been deleted.
6 The Commission would like to receive input on whether deletion of these clauses would have any
7 substantive effect.

8 Subdivision (f) appears to be redundant with respect to the general rule provided in proposed
9 Section 17100 and has been deleted. See *People v. Jones* 82 Cal. App. 4th 485 (2000) (Section
10 12022.5(f) “mirrors” general rule limiting application of weapons enhancement). See also *People*
11 *v. King*, 5 Cal. 4th 59 (1993) (meaning of Section 12022.5(f) “not readily apparent”). The
12 Commission would like to receive input on whether this change would have any substantive
13 effect.

14 **Penal Code § 12022.53 (repealed). Use of weapon in commission of specified violent offenses**

15 SEC. _____. Section 12022.53 of the Penal Code is repealed
16 ~~12022.53. (a) This section applies to the following felonies:~~

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

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

43 ~~(c) Notwithstanding any other provision of law, any person who is convicted of a~~
44 ~~felony specified in subdivision (a), and who in the commission of that felony~~

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

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

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

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

21 (f) Only one additional term of imprisonment under this section shall be imposed
22 per person for each crime. If more than one enhancement per person is found true
23 under this section, the court shall impose upon that person the enhancement that
24 provides the longest term of imprisonment. An enhancement involving a firearm
25 specified in Section 12021.5, 12022, 12022.3, 12022.4, 12022.5, or 12022.55 shall
26 not be imposed on a person in addition to an enhancement imposed pursuant to
27 this section. An enhancement for great bodily injury as defined in Section 12022.7,
28 12022.8, or 12022.9 shall not be imposed on a person in addition to an
29 enhancement imposed pursuant to subdivision (d).

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

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

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

41 (j) For the penalties in this section to apply, the existence of any fact required
42 under subdivision (b), (c), or (d) shall be alleged in the information or indictment
43 and either admitted by the defendant in open court or found to be true by the trier

1 of fact. When an enhancement specified in this section has been admitted or found
2 to be true, the court shall impose punishment pursuant to this section rather than
3 imposing punishment authorized under any other provision of law, unless another
4 provision of law provides for a greater penalty or a longer term of imprisonment.

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

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

14 **Comment.** Section 12022.53 is repealed as part of a nonsubstantive reorganization of sentence
15 enhancements for crimes that involve a weapon. The former section is continued without
16 substantive change in Penal Code Section 17320, except that subdivision (k) is generalized in
17 Section 17010.

18 Subdivision (f) and the second sentence of subdivision (j) are redundant and are not continued.
19 See Section 17100 (“When two or more enhancements may be imposed for being armed with or
20 using a dangerous or deadly weapon or a firearm in the commission of a single offense, only the
21 greatest of those enhancements shall be imposed for that offense.”), 17400 (“When two or more
22 enhancements may be imposed for the infliction of great bodily injury in the commission of a
23 single offense, only the greatest of those enhancements shall be imposed for that offense.”). This
24 is a nonsubstantive change. The first sentence of subdivision (j) is redundant and is not continued.
25 See Section 1170.1(e) (“All enhancements shall be alleged in the accusatory pleading and either
26 admitted by the defendant in open court or found to be true by the trier of fact.”). This is a
27 nonsubstantive change.

28 ☞ **Staff Note.** Subdivision (f) and the second sentence of subdivision (j) appear to be redundant
29 with respect to the general rules provided in proposed Sections 17100 and 17400 and have been
30 deleted. The Commission would like to receive input on whether this change would have any
31 substantive effect.

32 The second sentence of subdivision (j) appears to be redundant with respect to the general rule
33 provided in Section 1170.1(e) and has been deleted. The Commission would like to receive input
34 on whether this change would have any substantive effect.

35 **Penal Code § 12022.55 (repealed). Discharge of firearm from motor vehicle**

36 SEC. ____ . Section 12022.55 of the Penal Code is repealed.

37 ~~12022.55. Notwithstanding Section 12022.5, any person who, with the intent to~~
38 ~~inflict great bodily injury or death, inflicts great bodily injury, as defined in~~
39 ~~Section 12022.7, or causes the death of a person, other than an occupant of a motor~~
40 ~~vehicle, as a result of discharging a firearm from a motor vehicle in the~~
41 ~~commission of a felony or attempted felony, shall, upon conviction of the felony~~
42 ~~or attempted felony, in addition and consecutive to the punishment prescribed for~~
43 ~~the felony or attempted felony of which he or she has been convicted, be punished~~
44 ~~by an additional term of imprisonment in the state prison for 5, 6, or 10 years.~~

1 **Comment.** Section 12022.55 is repealed as part of a nonsubstantive reorganization of sentence
2 enhancements for crimes that involve a weapon. The former section is continued without
3 substantive change in Penal Code Section 17335.

4 The introductory clause of the first sentence is redundant and is not continued. This is a
5 nonsubstantive change. See Section 17100 (“When two or more enhancements may be imposed
6 for being armed with or using a dangerous or deadly weapon or a firearm in the commission of a
7 single offense, only the greatest of those enhancements shall be imposed for that offense.”).

8 ☞ **Staff Note.** The introductory clauses of the first sentence appears to be redundant in light of
9 the general rule provided in proposed Section 17400 and has been deleted. The Commission
10 would like to receive input on whether deletion of this clause would have any substantive effect.

11 **Penal Code § 12022.7 (repealed). Infliction of great bodily injury**

12 SEC. ____ . Section 12022.7 of the Penal Code is repealed.

13 ~~12022.7. (a) Any person who personally inflicts great bodily injury on any~~
14 ~~person other than an accomplice in the commission or attempted commission of a~~
15 ~~felony shall, in addition and consecutive to the punishment prescribed for the~~
16 ~~felony or attempted felony of which he or she has been convicted, be punished by~~
17 ~~an additional term of three years, unless infliction of great bodily injury is an~~
18 ~~element of the offense of which he or she is convicted.~~

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

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

29 ~~(d) Any person who personally inflicts great bodily injury under circumstances~~
30 ~~involving domestic violence in the commission or attempted commission of a~~
31 ~~felony shall, in addition and consecutive to the punishment prescribed for the~~
32 ~~felony or attempted felony of which he or she has been convicted, be punished by~~
33 ~~an additional term of three, four, or five years. The court shall order imposition of~~
34 ~~the middle term unless there are circumstances in aggravation or mitigation. The~~
35 ~~court shall state its reasons for its enhancement choice on the record at the time of~~
36 ~~sentencing. As used in this section, “domestic violence” has the meaning provided~~
37 ~~in subdivision (b) of Section 13700.~~

38 ~~(e) As used in this section, “great bodily injury” means a significant or~~
39 ~~substantial physical injury.~~

40 ~~(f) This section shall not apply to murder or manslaughter or a violation of~~
41 ~~Section 451 or 452. The additional term provided in this section shall not be~~
42 ~~imposed unless the fact of great bodily injury is charged in the accusatory pleading~~
43 ~~and admitted or found to be true by the trier of fact.~~

1 ~~(g) The court shall impose the additional terms of imprisonment under either~~
2 ~~subdivision (a), (b), or (c), but may not impose more than one of those terms for~~
3 ~~the same offense.~~

4 **Comment.** Section 12022.7 is repealed as part of a nonsubstantive reorganization of sentence
5 enhancements for crimes that cause an injury. Subdivision (a) is continued without substantive
6 change in Section 17450(a). Subdivision (b) is continued without substantive change in Section
7 17455(a). Subdivision (c) is continued without substantive change in Section 17460(a).
8 Subdivision (d) is continued without substantive change in Section 17475(a). Subdivision (e) is
9 continued without substantive change in Section 17050. The first sentence of subdivision (f) is
10 continued without substantive change in Sections 17450(b), 17455(b), 17460(b), and 17475(b).

11 The second sentence of subdivision (f) is redundant and is not continued. See Section 1170.1(e)
12 (“All enhancements shall be alleged in the accusatory pleading and either admitted by the
13 defendant in open court or found to be true by the trier of fact.”). This is a nonsubstantive change.
14 Subdivision (g) is redundant and is not continued. See Section 17400 (“When two or more
15 enhancements may be imposed for the infliction of great bodily injury in the commission of a
16 single offense, only the greatest of those enhancements shall be imposed for that offense.”). This
17 is a nonsubstantive change.

18 ☞ **Staff Note.** Subdivision (b) appears to be redundant with respect to the general rule provided
19 in Section 1170.1(e) and has been deleted. The Commission would like to receive input on
20 whether this change would have any substantive effect.

21 Subdivision (g) appears to be redundant with respect to the general rule provided in proposed
22 Section 17400 and has been deleted. The Commission would like to receive input on whether this
23 change would have any substantive effect.

24 **Penal Code § 12022.75 (repealed). Administering controlled substance against victim’s will**

25 SEC. _____. Section 12022.75 of the Penal Code is repealed.

26 ~~12022.75. Any person who, for the purpose of committing a felony, administers~~
27 ~~by injection, inhalation, ingestion, or any other means, any controlled substance~~
28 ~~listed in Section 11054, 11055, 11056, 11057, or 11058 of the Health and Safety~~
29 ~~Code, against the victim’s will by means of force, violence, or fear of immediate~~
30 ~~and unlawful bodily injury to the victim or another person, shall, in addition and~~
31 ~~consecutive to the penalty provided for the felony or attempted felony of which he~~
32 ~~or she has been convicted, be punished by an additional term of three years.~~

33 **Comment.** Section 12022.75 is repealed as part of a nonsubstantive reorganization of sentence
34 enhancements for crimes that cause an injury. The section is continued without change in Penal
35 Code Section 17505.

36 **Penal Code § 12022.8 (repealed). Infliction of great bodily injury in commission of certain**
37 **sex offenses**

38 SEC. _____. Section 12022.8 of the Penal Code is repealed.

39 ~~12022.8. Any person who inflicts great bodily injury, as defined in Section~~
40 ~~12022.7, on any victim in a violation or attempted violation of paragraph (2), (3),~~
41 ~~or (6) of subdivision (a) of Section 261, paragraph (1) or (4) of subdivision (a) of~~
42 ~~Section 262, Section 264.1, subdivision (b) of Section 288, subdivision (a) of~~
43 ~~Section 289, or sodomy or oral copulation by force, violence, duress, menace, or~~
44 ~~fear of immediate and unlawful bodily injury on the victim or another person as~~

1 provided in Section 286 or 288a shall receive a five-year enhancement for each
2 such violation in addition to the sentence provided for the felony conviction.

3 **Comment.** Section 12022.8 is repealed as part of a nonsubstantive reorganization of sentence
4 enhancements for crimes that cause an injury. The section is continued without substantive
5 change in Section 17510.

6 **Penal Code § 12022.85 (repealed). Sexual offense with knowledge of AIDS or HIV infection**

7 SEC. _____. Section 12022.85 of the Penal Code is repealed.

8 ~~12022.85. (a) Any person who violates one or more of the offenses listed in~~
9 ~~subdivision (b) with knowledge that he or she has acquired immune deficiency~~
10 ~~syndrome (AIDS) or with the knowledge that he or she carries antibodies of the~~
11 ~~human immunodeficiency virus at the time of the commission of those offenses,~~
12 ~~shall receive a three-year enhancement for each violation in addition to the~~
13 ~~sentence provided under those sections.~~

14 ~~(b) Subdivision (a) applies to the following crimes:~~

15 ~~(1) Rape in violation of Section 261.~~

16 ~~(2) Unlawful intercourse with a person under 18 years of age in violation of~~
17 ~~Section 261.5.~~

18 ~~(3) Rape of a spouse in violation of Section 262.~~

19 ~~(4) Sodomy in violation of Section 286.~~

20 ~~(5) Oral copulation in violation of Section 288a.~~

21 ~~(c) For purposes of proving the knowledge requirement of this section, the~~
22 ~~prosecuting attorney may use test results received under subdivision (c) of Section~~
23 ~~1202.1 or subdivision (g) of Section 1202.6.~~

24 **Comment.** Section 12022.85 is repealed as part of a nonsubstantive reorganization of sentence
25 enhancements for crimes that cause an injury. The section is continued without change in Section
26 17515.

27 **Penal Code § 12022.9 (repealed). Intentional infliction of injury upon pregnant woman**
28 **causing termination of pregnancy or discharge of firearms from motor vehicle causing**
29 **paralysis**

30 SEC. _____. Section 12022.9 of the Penal Code is repealed.

31 ~~12022.9. (a) Any person who, during the commission or attempted commission~~
32 ~~of a felony, knows or reasonably should know that the victim is pregnant, and~~
33 ~~who, with intent to inflict injury, and without the consent of the woman,~~
34 ~~personally inflicts injury upon a pregnant woman that results in the termination of~~
35 ~~the pregnancy shall, in addition and consecutive to the punishment prescribed by~~
36 ~~the felony or attempted felony of which the person has been convicted, be~~
37 ~~punished by an additional term of five years in the state prison. The additional~~
38 ~~term provided in this subdivision shall not be imposed unless the fact of that injury~~
39 ~~is charged in the accusatory pleading and admitted or found to be true by the trier~~
40 ~~of fact.~~

41 ~~Nothing in this subdivision shall be construed as affecting the applicability of~~
42 ~~subdivision (a) of Section 187 of the Penal Code.~~

1 ~~(b) (1) Any person convicted of a violation of subdivision (c) of Section 12034~~
2 ~~shall, in addition and consecutive to the punishment for that violation, be punished~~
3 ~~by an additional term of four years, if as a result of the defendant personally and~~
4 ~~willfully and maliciously discharging the firearm, the victim suffers paralysis or~~
5 ~~paraparesis of a major body part, including, but not limited to, the entire hand or~~
6 ~~foot.~~

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

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

14 ~~(A) “Paralysis” means a major or complete loss of motor function resulting from~~
15 ~~injury to the nervous system or to a muscular mechanism.~~

16 ~~(B) “Paraparesis” means a significant weakness of a major body part, including,~~
17 ~~but not limited to, the entire hand or foot, causing the extremity to be functionally~~
18 ~~impaired and rendered useless to assist with one of the basic skills in life such as~~
19 ~~eating or walking.~~

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

23 **Comment.** Section 12022.9 is repealed as part of a nonsubstantive reorganization of sentence
24 enhancements for crimes that cause an injury. Subdivision (a) is continued without substantive
25 change in Section 17470. Subdivision (b) is continued without substantive change in Section
26 17340.

27 The second sentence of subdivision (a) and subdivision (b)(3)(C) are redundant and are not
28 continued. See Section 1170.1(e) (“All enhancements shall be alleged in the accusatory pleading
29 and either admitted by the defendant in open court or found to be true by the trier of fact.”). This
30 is a nonsubstantive change.

31  **Staff Note.** The final sentence of subdivision (a) and subdivision (b)(3)(C) appear to be
32 redundant with respect to the general rule provided in Section 1170.1(e) and have been deleted.
33 The Commission would like to receive input on whether this change would have any substantive
34 effect.

35 **Penal Code § 12022.95 (repealed). Willful harm or injury resulting in death of child**

36 SEC. ____ . Section 12022.95 of the Penal Code is repealed.

37 ~~12022.95. Any person convicted of a violation of Section 273a, who under~~
38 ~~circumstances or conditions likely to produce great bodily harm or death, willfully~~
39 ~~causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain~~
40 ~~or injury that results in death, or having the care or custody of any child, under~~
41 ~~circumstances likely to produce great bodily harm or death, willfully causes or~~
42 ~~permits that child to be injured or harmed, and that injury or harm results in death,~~
43 ~~shall receive a four-year enhancement for each violation, in addition to the~~
44 ~~sentence provided for that conviction. Nothing in this paragraph shall be construed~~

1 as affecting the applicability of subdivision (a) of Section 187 or Section 192. This
2 section shall not apply unless the allegation is included within an accusatory
3 pleading and admitted by the defendant or found to be true by the trier of fact.

4 **Comment.** Section 12022.95 is repealed as part of a nonsubstantive reorganization of sentence
5 enhancements for crimes that cause an injury. The section is continued without substantive
6 change in Section 17480.

7 The final sentence of the section is redundant and is not continued. See Section 1170.1(e) (“All
8 enhancements shall be alleged in the accusatory pleading and either admitted by the defendant in
9 open court or found to be true by the trier of fact.”). This is a nonsubstantive change.

10 ☞ **Staff Note.** The final sentence appears to be redundant with respect to the general rule
11 provided in Section 1170.1(e) and has been deleted. The Commission would like to receive input
12 on whether this change would have any substantive effect.

13 **Penal Code § 12072 (amended). Prohibited transfers, deliveries or sales of firearms**

14 SEC. ____ . Section 12072 of the Penal Code is amended to read:

15 12072. (a)(1) No person, corporation, or firm shall knowingly supply, deliver,
16 sell, or give possession or control of a firearm to any person within any of the
17 classes prohibited by Section 12021 or 12021.1.

18 (2) No person, corporation, or dealer shall sell, supply, deliver, or give
19 possession or control of a firearm to any person whom he or she has cause to
20 believe to be within any of the classes prohibited by Section 12021 or 12021.1 of
21 this code or Section 8100 or 8103 of the Welfare and Institutions Code.

22 (3)(A) No person, corporation, or firm shall sell, loan, or transfer a firearm to a
23 minor.

24 (B) Subparagraph (A) shall not apply to or affect those circumstances set forth in
25 subdivision (p) of Section 12078.

26 (4) No person, corporation, or dealer shall sell, loan, or transfer a firearm to any
27 person whom he or she knows or has cause to believe is not the actual purchaser or
28 transferee of the firearm, or to any person who is not the person actually being
29 loaned the firearm, if the person, corporation, or dealer has either of the following:

30 (A) Knowledge that the firearm is to be subsequently loaned, sold, or transferred
31 to avoid the provisions of subdivision (c) or (d).

32 (B) Knowledge that the firearm is to be subsequently loaned, sold, or transferred
33 to avoid the requirements of any exemption to the provisions of subdivision (c) or
34 (d).

35 (5) No person, corporation, or dealer shall acquire a firearm for the purpose of
36 selling, transferring, or loaning the firearm, if the person, corporation, or dealer
37 has either of the following:

38 (A) In the case of a dealer, intent to violate subdivision (b) or (c).

39 (B) In any other case, intent to avoid either of the following:

40 (i) The provisions of subdivision (d).

41 (ii) The requirements of any exemption to the provisions of subdivision (d).

42 (6) The dealer shall comply with the provisions of paragraph (18) of subdivision
43 (b) of Section 12071.

1 (7) The dealer shall comply with the provisions of paragraph (19) of subdivision
2 (b) of Section 12071.

3 (8) No person shall sell or otherwise transfer his or her ownership in a pistol,
4 revolver, or other firearm capable of being concealed upon the person unless the
5 firearm bears either:

6 (A) The name of the manufacturer, the manufacturer's make or model, and a
7 manufacturer's serial number assigned to that firearm.

8 (B) The identification number or mark assigned to the firearm by the Department
9 of Justice pursuant to Section 12092.

10 (9)(A) No person shall make an application to purchase more than one pistol,
11 revolver, or other firearm capable of being concealed upon the person within any
12 30-day period.

13 (B) Subparagraph (A) shall not apply to any of the following:

14 (i) Any law enforcement agency.

15 (ii) Any agency duly authorized to perform law enforcement duties.

16 (iii) Any state or local correctional facility.

17 (iv) Any private security company licensed to do business in California.

18 (v) Any person who is properly identified as a full-time paid peace officer, as
19 defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, and
20 who is authorized to, and does carry a firearm during the course and scope of his
21 or her employment as a peace officer.

22 (vi) Any motion picture, television, or video production company or
23 entertainment or theatrical company whose production by its nature involves the
24 use of a firearm.

25 (vii) Any person who may, pursuant to Section 12078, claim an exemption from
26 the waiting period set forth in subdivision (c) of this section.

27 (viii) Any transaction conducted through a licensed dealer pursuant to Section
28 12082.

29 (ix) Any transaction conducted through a law enforcement agency pursuant to
30 Section 12084.

31 (x) Any person who is licensed as a collector pursuant to Chapter 44
32 (commencing with Section 921) of Title 18 of the United States Code and the
33 regulations issued pursuant thereto and who has a current certificate of eligibility
34 issued to him or her by the Department of Justice pursuant to Section 12071.

35 (xi) The exchange of a pistol, revolver, or other firearm capable of being
36 concealed upon the person where the dealer purchased that firearm from the
37 person seeking the exchange within the 30-day period immediately preceding the
38 date of exchange or replacement.

39 (xii) The replacement of a pistol, revolver, or other firearm capable of being
40 concealed upon the person when the person's pistol, revolver, or other firearm
41 capable of being concealed upon the person was lost or stolen, and the person
42 reported that firearm lost or stolen prior to the completion of the application to

1 purchase to any local law enforcement agency of the city, county, or city and
2 county in which he or she resides.

3 (xiii) The return of any pistol, revolver, or other firearm capable of being
4 concealed upon the person to its owner.

5 (b) No person licensed under Section 12071 shall supply, sell, deliver, or give
6 possession or control of a pistol, revolver, or firearm capable of being concealed
7 upon the person to any person under the age of 21 years or any other firearm to a
8 person under the age of 18 years.

9 (c) No dealer, whether or not acting pursuant to Section 12082, shall deliver a
10 firearm to a person, as follows:

11 (1) Within 10 days of the application to purchase, or, after notice by the
12 department pursuant to subdivision (d) of Section 12076, within 10 days of the
13 submission to the department of any correction to the application, or within 10
14 days of the submission to the department of any fee required pursuant to
15 subdivision (e) of Section 12076, whichever is later.

16 (2) Unless unloaded and securely wrapped or unloaded and in a locked
17 container.

18 (3) Unless the purchaser, transferee, or person being loaned the firearm presents
19 clear evidence of his or her identity and age, as defined in Section 12071, to the
20 dealer.

21 (4) Whenever the dealer is notified by the Department of Justice that the person
22 is in a prohibited class described in Section 12021 or 12021.1 of this code or
23 Section 8100 or 8103 of the Welfare and Institutions Code.

24 (5) Commencing April 1, 1994, no pistol, revolver, or other firearm capable of
25 being concealed upon the person shall be delivered unless the purchaser,
26 transferee, or person being loaned the firearm presents to the dealer a basic
27 firearms safety certificate.

28 (6) No pistol, revolver, or other firearm capable of being concealed upon the
29 person shall be delivered whenever the dealer is notified by the Department of
30 Justice that within the preceding 30-day period the purchaser has made another
31 application to purchase a pistol, revolver, or other firearm capable of being
32 concealed upon the person and that the previous application to purchase involved
33 none of the entities specified in subparagraph (B) of paragraph (9) of subdivision
34 (a).

35 (d) Where neither party to the transaction holds a dealer's license issued
36 pursuant to Section 12071, the parties to the transaction shall complete the sale,
37 loan, or transfer of that firearm through either of the following:

38 (1) A licensed dealer pursuant to Section 12082.

39 (2) A law enforcement agency pursuant to Section 12084.

40 (e) No person may commit an act of collusion relating to Article 8 (commencing
41 with Section 12800) of Chapter 6. For purposes of this section and Section 12071,
42 collusion may be proven by any one of the following factors:

1 (1) Answering a test applicant's questions during an objective test relating to
2 basic firearms safety.

3 (2) Knowingly grading the examination falsely.

4 (3) Providing an advance copy of the test to an applicant.

5 (4) Taking or allowing another person to take the basic firearms safety course for
6 one who is the applicant for the basic firearms safety certificate.

7 (5) Allowing another to take the objective test for the applicant, purchaser, or
8 transferee.

9 (6) Allowing others to give unauthorized assistance during the examination.

10 (7) Reference to materials during the examination and cheating by the applicant.

11 (8) Providing originals or photocopies of the objective test, or any version
12 thereof, to any person other than as specified in subdivision (f) of Section 12805.

13 (f)(1) No person who is licensed pursuant to Chapter 44 (commencing with
14 Section 921) of Title 18 of the United States Code shall deliver, sell, or transfer a
15 firearm to a person who is licensed pursuant to Chapter 44 (commencing with
16 Section 921) of Title 18 of the United States Code and whose licensed premises
17 are located in this state unless one of the following conditions is met:

18 (A) The person presents proof of licensure pursuant to Section 12071 to that
19 person.

20 (B) The person presents proof that he or she is exempt from licensure under
21 Section 12071 to that person, in which case the person also shall present proof that
22 the transaction is also exempt from the provisions of subdivision (d).

23 (2)(A) On or after January 1, 1998, within 60 days of bringing a pistol, revolver,
24 or other firearm capable of being concealed upon the person into this state, a
25 personal handgun importer shall do one of the following:

26 (i) Forward by prepaid mail or deliver in person to the Department of Justice, a
27 report prescribed by the department including information concerning that
28 individual and a description of the firearm in question.

29 (ii) Sell or transfer the firearm in accordance with the provisions of subdivision
30 (d) or in accordance with the provisions of an exemption from subdivision (d).

31 (iii) Sell or transfer the firearm to a dealer licensed pursuant to Section 12071.

32 (iv) Sell or transfer the firearm to a sheriff or police department.

33 (B) If the personal handgun importer sells or transfers the pistol, revolver, or
34 other firearm capable of being concealed upon the person pursuant to subdivision
35 (d) of Section 12072 and the sale or transfer cannot be completed by the dealer to
36 the purchaser or transferee, and the firearm can be returned to the personal
37 handgun importer, the personal handgun importer shall have complied with the
38 provisions of this paragraph.

39 (C) The provisions of this paragraph are cumulative and shall not be construed
40 as restricting the application of any other law. However, an act or omission
41 punishable in different ways by this section and different provisions of the Penal
42 Code shall not be punished under more than one provision.

1 (D)(i) On and after January 1, 1998, the department shall conduct a public
2 education and notification program regarding this paragraph to ensure a high
3 degree of publicity of the provisions of this paragraph.

4 (ii) As part of the public education and notification program described in this
5 subparagraph, the department shall do all of the following:

6 (I) Work in conjunction with the Department of Motor Vehicles to ensure that
7 any person who is subject to this paragraph is advised of the provisions of this
8 paragraph, and provided with blank copies of the report described in clause (i) of
9 subparagraph (A) at the time that person applies for a California driver's license or
10 registers his or her motor vehicle in accordance with the Vehicle Code.

11 (II) Make the reports referred to in clause (i) of subparagraph (A) available to
12 dealers licensed pursuant to Section 12071.

13 (III) Make the reports referred to in clause (i) of subparagraph (A) available to
14 law enforcement agencies.

15 (IV) Make persons subject to the provisions of this paragraph aware of the fact
16 that reports referred to in clause (i) of subparagraph (A) may be completed at
17 either the licensed premises of dealers licensed pursuant to Section 12071 or at law
18 enforcement agencies, that it is advisable to do so for the sake of accuracy and
19 completeness of the reports, that prior to transporting a pistol, revolver, or other
20 firearm capable of being concealed upon the person to a law enforcement agency
21 in order to comply with subparagraph (A), the person should give prior notice to
22 the law enforcement agency that he or she is doing so, and that in any event, the
23 pistol, revolver, or other firearm capable of being concealed upon the person
24 should be transported unloaded and in a locked container.

25 (iii) Any costs incurred by the department to implement this paragraph shall be
26 absorbed by the department within its existing budget and the fees in the Dealers'
27 Record of Sale Special Account allocated for implementation of this subparagraph
28 pursuant to Section 12076.

29 (3) Where a person who is licensed as a collector pursuant to Chapter 44
30 (commencing with Section 921) of Title 18 of the United States Code and the
31 regulations issued pursuant thereto, whose licensed premises are within this state,
32 acquires a pistol, revolver, or other firearm capable of being concealed upon the
33 person that is a curio or relic, as defined in Section 178.11 of Title 27 of the Code
34 of Federal Regulations, outside of this state, takes actual possession of that firearm
35 outside of this state pursuant to the provisions of subsection (j) of Section 923 of
36 Title 18 of the United States Code, as amended by Public Law 104-208, and
37 transports that firearm into this state, within five days of that licensed collector
38 transporting that firearm into this state, he or she shall report to the department in a
39 format prescribed by the department his or her acquisition of that firearm.

40 (4)(A) It is the intent of the Legislature that a violation of paragraph (2) or (3)
41 shall not constitute a "continuing offense" and the statute of limitations for
42 commencing a prosecution for a violation of paragraph (2) or (3) commences on
43 the date that the applicable grace period specified in paragraph (2) or (3) expires.

1 (B) Paragraphs (2) and (3) shall not apply to a person who reports his or her
2 ownership of a pistol, revolver, or other firearm capable of being concealed upon
3 the person after the applicable grace period specified in paragraph (2) or (3)
4 expires if evidence of that violation arises only as the result of the person
5 submitting the report described in paragraph (2) or (3).

6 (g)(1) Except as provided in paragraph (2), (3), or ~~(5)~~ (4), a violation of this
7 section is a misdemeanor.

8 (2) If any of the following circumstances apply, a violation of this section is
9 punishable by imprisonment in the state prison for two, three, or four years.

10 (A) If the violation is of paragraph (1) of subdivision (a).

11 (B) If the defendant has a prior conviction of violating the provisions, other than
12 paragraph (9) of subdivision (a), of this section or former Section 12100 of this
13 code or Section 8101 of the Welfare and Institutions Code.

14 (C) If the defendant has a prior conviction of violating any offense specified in
15 subdivision (b) of Section 12021.1 or of a violation of Section 12020, 12220, or
16 12520, or of former Section 12560.

17 (D) If the defendant is in a prohibited class described in Section 12021 or
18 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

19 (E) A violation of this section by a person who actively participates in a
20 “criminal street gang” as defined in Section 186.22.

21 (F) A violation of subdivision (b) involving the delivery of any firearm to a
22 person who the dealer knows, or should know, is a minor.

23 (3) If any of the following circumstances apply, a violation of this section shall
24 be punished by imprisonment in a county jail not exceeding one year or in the state
25 prison, or by a fine not to exceed one thousand dollars (\$1,000), or by both the fine
26 and imprisonment.

27 (A) A violation of paragraph (2), (4), or (5), of subdivision (a).

28 (B) A violation of paragraph (3) of subdivision (a) involving the sale, loan, or
29 transfer of a pistol, revolver, or other firearm capable of being concealed upon the
30 person to a minor.

31 (C) A violation of subdivision (b) involving the delivery of a pistol, revolver, or
32 other firearm capable of being concealed upon the person.

33 (D) A violation of paragraph (1), (3), (4), (5), or (6) of subdivision (c) involving
34 a pistol, revolver, or other firearm capable of being concealed upon the person.

35 (E) A violation of subdivision (d) involving a pistol, revolver, or other firearm
36 capable of being concealed upon the person.

37 (F) A violation of subdivision (e).

38 ~~(4) If both of the following circumstances apply, an additional term of~~
39 ~~imprisonment in the state prison for one, two, or three years shall be imposed in~~
40 ~~addition and consecutive to the sentence prescribed.~~

41 ~~(A) A violation of paragraph (2) of subdivision (a) or subdivision (b).~~

1 ~~(B) The firearm transferred in violation of paragraph (2) of subdivision (a) or~~
2 ~~subdivision (b) is used in the subsequent commission of a felony for which a~~
3 ~~conviction is obtained and the prescribed sentence is imposed.~~

4 ~~(5)(A) A first violation of paragraph (9) of subdivision (a) is an infraction~~
5 ~~punishable by a fine of fifty dollars (\$50).~~

6 (B) A second violation of paragraph (9) of subdivision (a) is an infraction
7 punishable by a fine of one hundred dollars (\$100).

8 (C) A third or subsequent violation of paragraph (9) of subdivision (a) is a
9 misdemeanor.

10 (D) For purposes of this paragraph each application to purchase a pistol,
11 revolver, or other firearm capable of being concealed upon the person in violation
12 of paragraph (9) of subdivision (a) shall be deemed a separate offense.

13 **Comment.** Section 12072 is amended as part of a nonsubstantive reorganization of sentence
14 enhancements for crimes that cause an injury. Subdivision (g)(4) is continued without substantive
15 change in Section 17175. Subdivision (g)(5) is renumbered as (g)(4) and a reference to (g)(5) is
16 corrected in subdivision (g)(1).

17 **Penal Code § 12280 (amended). Assault weapons**

18 SEC. ____ . Section 12280 of the Penal Code is amended to read:

19 12280. (a)(1) Any person who, within this state, manufactures or causes to be
20 manufactured, distributes, transports, or imports into the state, keeps for sale, or
21 offers or exposes for sale, or who gives or lends any assault weapon, except as
22 provided by this chapter, is guilty of a felony, and upon conviction shall be
23 punished by imprisonment in the state prison for four, six, or eight years.

24 ~~(2) In addition and consecutive to the punishment imposed under paragraph (1),~~
25 ~~any person who transfers, lends, sells, or gives any assault weapon to a minor in~~
26 ~~violation of paragraph (1) shall receive an enhancement of one year.~~

27 (b) Except as provided in Section 12288, and in subdivisions (c) and (d), any
28 person who, within this state, possesses any assault weapon, except as provided in
29 this chapter, is guilty of a public offense and upon conviction shall be punished by
30 imprisonment in the state prison, or in a county jail, not exceeding one year.
31 However, if the person presents proof that he or she lawfully possessed the assault
32 weapon prior to June 1, 1989, or prior to the date it was specified as an assault
33 weapon, and has since either registered the firearm and any other lawfully
34 obtained firearm specified by Section 12276 or 12276.5 pursuant to Section 12285
35 or relinquished them pursuant to Section 12288, a first-time violation of this
36 subdivision shall be an infraction punishable by a fine of up to five hundred
37 dollars (\$500), but not less than three hundred fifty dollars (\$350), if the person
38 has otherwise possessed the firearm in compliance with subdivision (c) of Section
39 12285. In these cases, the firearm shall be returned unless the court finds in the
40 interest of public safety, after notice and hearing, that the assault weapon should
41 be destroyed pursuant to Section 12028.

1 (c) A first-time violation of subdivision (b) shall be an infraction punishable by a
2 fine of up to five hundred dollars (\$500), if the person was found in possession of
3 no more than two firearms in compliance with subdivision (c) of Section 12285
4 and the person meets all of the following conditions:

5 (1) The person proves that he or she lawfully possessed the assault weapon prior
6 to the date it was defined as an assault weapon pursuant to Section 12276.1.

7 (2) The person is not found in possession of a firearm specified as an assault
8 weapon pursuant to Section 12276 or Section 12276.5.

9 (3) The person has not previously been convicted of violating this section.

10 (4) The person was found to be in possession of the assault weapons within one
11 year following the end of the one-year registration period established pursuant to
12 subdivision (a) of Section 12285.

13 (5) The person has since registered the firearms and any other lawfully obtained
14 firearms defined by Section 12276.1, pursuant to Section 12285, except as
15 provided for by this section, or relinquished them pursuant to Section 12288.

16 (d) Firearms seized pursuant to subdivision (c) shall be returned unless the court
17 finds in the interest of public safety, after notice and hearing, that the assault
18 weapon should be destroyed pursuant to Section 12028.

19 (e) Notwithstanding Section 654 or any other provision of law, any person who
20 commits another crime while violating this section may receive an additional,
21 consecutive punishment of one year for violating this section in addition and
22 consecutive to the punishment, including enhancements, which is prescribed for
23 the other crime.

24 (f) Subdivisions (a) and (b) shall not apply to the sale to, purchase by, or
25 possession of assault weapons by the Department of Justice, police departments,
26 sheriffs' offices, marshals' offices, the Youth and Adult Corrections Agency, the
27 Department of the California Highway Patrol, district attorneys' offices,
28 Department of Fish and Game, Department of Parks and Recreation, or the
29 military or naval forces of this state or of the United States for use in the discharge
30 of their official duties.

31 (g) Subdivision (b) shall not prohibit the possession or use of assault weapons by
32 sworn peace officer members of those agencies specified in subdivision (f) for law
33 enforcement purposes, whether on or off duty.

34 (h) Subdivisions (a) and (b) shall not prohibit the sale or transfer of assault
35 weapons by an entity specified in subdivision (f) to a person, upon retirement, who
36 retired as a sworn officer from that entity.

37 (i) Subdivision (b) shall not apply to the possession of an assault weapon by a
38 retired peace officer who received that assault weapon pursuant to subdivision (h).

39 (j) Subdivision (b) shall not apply to the possession of an assault weapon, as
40 defined in Section 12276, by any person during the 1990 calendar year, during the
41 90-day period immediately after the date it was specified as an assault weapon
42 pursuant to Section 12276.5, or during the one-year period after the date it was

1 defined as an assault weapon pursuant to Section 12276.1, if all of the following
2 are applicable:

3 (1) The person is eligible under this chapter to register the particular assault
4 weapon.

5 (2) The person lawfully possessed the particular assault weapon described in
6 paragraph (1) prior to June 1, 1989, if the weapon is specified as an assault
7 weapon pursuant to Section 12276, or prior to the date it was specified as an
8 assault weapon pursuant to Section 12276.5, or prior to the date it was defined as
9 an assault weapon pursuant to Section 12276.1.

10 (3) The person is otherwise in compliance with this chapter.

11 (k) Subdivisions (a) and (b) shall not apply to the manufacture by persons who
12 are issued permits pursuant to Section 12287 of assault weapons for sale to the
13 following:

14 (1) Exempt entities listed in subdivision (f).

15 (2) Entities and persons who have been issued permits pursuant to Section
16 12286.

17 (3) Entities outside the state who have, in effect, a federal firearms dealer's
18 license solely for the purpose of distribution to an entity listed in paragraphs (4) to
19 (6), inclusive.

20 (4) Federal military and law enforcement agencies.

21 (5) Law enforcement and military agencies of other states.

22 (6) Foreign governments and agencies approved by the United States State
23 Department.

24 (l) Subdivision (a) shall not apply to a person who is the executor or
25 administrator of an estate that includes an assault weapon registered under Section
26 12285 or that was possessed pursuant to subdivision (g) or (i) which is disposed of
27 as authorized by the probate court, if the disposition is otherwise permitted by this
28 chapter.

29 (m) Subdivision (b) shall not apply to a person who is the executor or
30 administrator of an estate that includes an assault weapon registered under Section
31 12285 or that was possessed pursuant to subdivision (g) or (i), if the assault
32 weapon is possessed at a place set forth in paragraph (1) of subdivision (c) of
33 Section 12285 or as authorized by the probate court.

34 (n) Subdivision (a) shall not apply to:

35 (1) A person who lawfully possesses and has registered an assault weapon
36 pursuant to this chapter who lends that assault weapon to another if all the
37 following apply:

38 (A) The person to whom the assault weapon is lent is 18 years of age or over and
39 is not in a class of persons prohibited from possessing firearms by virtue of
40 Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and
41 Institutions Code.

42 (B) The person to whom the assault weapon is lent remains in the presence of
43 the registered possessor of the assault weapon.

1 (C) The assault weapon is possessed at any of the following locations:

2 (i) While on a target range that holds a regulatory or business license for the
3 purpose of practicing shooting at that target range.

4 (ii) While on the premises of a target range of a public or private club or
5 organization organized for the purpose of practicing shooting at targets.

6 (iii) While attending any exhibition, display, or educational project that is about
7 firearms and that is sponsored by, conducted under the auspices of, or approved by
8 a law enforcement agency or a nationally or state recognized entity that fosters
9 proficiency in, or promotes education about, firearms.

10 (2) The return of an assault weapon to the registered possessor which is lent by
11 the same pursuant to paragraph (1).

12 (o) Subdivision (b) shall not apply to the possession of an assault weapon by a
13 person to whom an assault weapon is lent pursuant to subdivision (n).

14 (p) Subdivisions (a) and (b) shall not apply to the possession and importation of
15 an assault weapon into this state by a nonresident if all of the following conditions
16 are met:

17 (1) The person is attending or going directly to or coming directly from an
18 organized competitive match or league competition that involves the use of an
19 assault weapon.

20 (2) The competition or match is conducted on the premises of one of the
21 following:

22 (i) A target range that holds a regulatory or business license for the purpose of
23 practicing shooting at that target range.

24 (ii) A target range of a public or private club or organization that is organized for
25 the purpose of practicing shooting at targets.

26 (3) The match or competition is sponsored by, conducted under the auspices of,
27 or approved by, a law enforcement agency or a nationally or state recognized
28 entity that fosters proficiency in, or promotes education about, firearms.

29 (4) The assault weapon is transported in accordance with Section 12026.1 or
30 12026.2.

31 (5) The person is 18 years of age or over and is not in a class of persons
32 prohibited from possessing firearms by virtue of Section 12021 or 12021.1 of this
33 code or Section 8100 or 8103 of the Welfare and Institutions Code.

34 (q) Subdivision (b) shall not apply to any of the following persons:

35 (1) A person acting in accordance with Section 12286.

36 (2) A person who has a permit to possess an assault weapon issued pursuant to
37 Section 12286 when he or she is acting in accordance with Section 12285 or
38 12286.

39 (r) Subdivisions (a) and (b) shall not apply to any of the following persons:

40 (1) A person acting in accordance with Section 12285.

41 (2) A person acting in accordance with Section 12286 or 12290.

42 (s) Subdivision (b) shall not apply to the registered owner of an assault weapon
43 possessing that firearm in accordance with subdivision (c) of Section 12285.

1 (t) Subdivision (a) shall not apply to the importation into this state of an assault
2 weapon by the registered owner of that assault weapon, if it is in accordance with
3 the provisions of subdivision (c) of Section 12285.

4 (u) As used in this chapter, the date a firearm is an assault weapon is the earliest
5 of the following:

6 (1) The effective date of an amendment to Section 12276 that adds the
7 designation of the specified firearm.

8 (2) The effective date of the list promulgated pursuant to Section 12276.5 that
9 adds or changes the designation of the specified firearm.

10 (3) The operative date of Section 12276.1, as specified in subdivision (b) of that
11 section.

12 **Comment.** Section 12280 is amended as part of a nonsubstantive reorganization of sentence
13 enhancements for crimes that cause an injury. Former subdivision (a)(2) is continued without
14 substantive change in Section 17195.

15 **Veh. Code § 23558 (repealed). Causing bodily injury or death to more than one victim while**
16 **driving in violation of specified sections**

17 SEC. _____. Section 23558 of the Vehicle Code is repealed.

18 ~~23558. Any person who proximately causes bodily injury or death to more than~~
19 ~~one victim in any one instance of driving in violation of Section 23153 of this code~~
20 ~~or in violation of Section 191.5 of, or paragraph (3) of subdivision (c) of Section~~
21 ~~192 of, the Penal Code, shall, upon a felony conviction, and notwithstanding~~
22 ~~subdivision (g) of Section 1170.1 of the Penal Code, receive an enhancement of~~
23 ~~one year in the state prison for each additional injured victim. The enhanced~~
24 ~~sentence provided for in this section shall not be imposed unless the fact of the~~
25 ~~bodily injury to each additional victim is charged in the accusatory pleading and~~
26 ~~admitted or found to be true by the trier of fact. The maximum number of one year~~
27 ~~enhancements which may be imposed pursuant to this section is three.~~

28 ~~Notwithstanding any other provision of law, the court may strike the~~
29 ~~enhancements provided in this section if it determines that there are circumstances~~
30 ~~in mitigation of the additional punishment and states on the record its reasons for~~
31 ~~striking the additional punishment.~~

32 **Comment.** Section 23558 is repealed as part of a nonsubstantive reorganization of sentence
33 enhancements for crimes that cause an injury. The section is continued without substantive
34 change in Penal Code Section 17545.

35

DISPOSITION OF EXISTING LAW

Note. This table shows the disposition of provisions in the Health and Safety Code, Penal Code, and the Vehicle Code that would be repealed or deleted in connection with reorganization of sentence enhancements relating to weapons and injuries. For further detail, see the Comment to the appropriate section in the proposed legislation.

HEALTH AND SAFETY CODE

<i>Health & Safety Code</i>	<i>Env't Code</i>	<i>Health & Safety Code</i>	<i>Env't Code</i>
11379.7(b)	17490	25189.5(e).....	17535
11739.7(d)	omitted	25189.7(c).....	17540
11379.9.....	17495		

PENAL CODE

<i>Penal Code</i>	<i>Env't Code</i>	<i>Penal Code</i>	<i>Env't Code</i>
273.4.....	17485	12022.5(c).....	17315(a)
347(a) 2d para.....	17500	12022.5(d).....	17305(c), 17330(b), 17310(b), 17315(b)
368(b)(2)-(3).....	17465(a)-(b)	12022.5(e).....	17105
368(j) 2d sent.....	omitted	12022.5(f).....	omitted
451.1(a)(2)-(3).....	17520	12022.53(a)-(e), (g)-(i), (k)-(l).....	17320
451.1(b)	omitted	10222.53(f) & (j)	omitted
452.1(a)(2)-(3).....	17525	12022.53(k).....	17105
452.1(b)	omitted	12022.55	17335
550(f) 2d sent.	omitted	12022.7(a).....	17450(a)
550(g)-(h)	17550	12022.7(b).....	17455(a)
593a(b).....	17530	12022.7(c).....	17460(a)
600(c)-(d).....	17555	12022.7(d).....	17475(a)
1170.1(f).....	17100	12022.7(e).....	17050
1170.1(g)	17400	12022.7(f) 1st sent.	17450(b), 17455(b), 17460(b), 17475(b)
12021.5.....	17180	12022.7(f) 2d sent.....	omitted
12022(a)(1).....	17150	12022.7(g).....	omitted
12022(a)(2).....	17155	12022.75	17505
12022(b)(1)-(2).....	17300	12022.8	17510
12022(b)(3).....	17105	12022.85	17515
12022(c), (d) & (f).....	17185	12022.9(a) 1st & 3d sent.....	17470
12022(e).....	omitted	12022.9(a) 2d sent.....	omitted
12022.2(a)	17160	12022.9(b)(1)-(3)(B).....	17340
12022.2(b)-(c)	17165	12022.9(b)(3)(C).....	omitted
12022.3(a)	17325	12022.95 1st & 2d sent.	17480
12022.3(b)	17190	12022.95 3d sent.....	omitted
12022.4 1st-3d sent.....	17170	12072(g)(4).....	17175
12022.4 4th sent.	omitted	12280(a)(2)	17195
12022.5(a)	17305(a)-(b)		
12022.5(b)(1).....	17330(a)		
12022.5(b)(2).....	17310(a)		

VEHICLE CODE

<i>Veh. Code</i>	<i>Env't Code</i>	<i>Veh. Code</i>	<i>Env't Code</i>
23558	17545		