

AMENDED IN SENATE MARCH 7, 2006

SENATE BILL

No. 1222

Introduced by Senator Ackerman

(Coauthors: Senators Ashburn, Battin, Cox, Dutton, and Margett)

(Coauthors: Assembly Members Benoit, Bogh, Cogdill, DeVore, Garcia, Haynes, Shirley Horton, Huff, Karnette, Maze, McCarthy, Mountjoy, Plescia, Spitzer, and Wyland)

February 1, 2006

An act to amend Section 186.22 of the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

SB 1222, as amended, Ackerman. Crime: criminal gangs.

Existing law, as amended by initiative, provides that any person who participates in any criminal street gang with knowledge that its members engage in a pattern of criminal gang activity and who promotes felonious criminal conduct shall be punished, as specified. Existing law defines a pattern of criminal gang activity as the commission, attempt to commit, conspiracy to commit, solicitation for, or conviction of 2 or more listed offenses, as specified. Existing law authorizes the Legislature to amend these provisions with a 2/3 vote of each house.

This bill would add various crimes relating to prohibited possession of a firearm, carrying a concealed firearm, and carrying a loaded firearm, to those offenses which if committed by members of the criminal street gang establish a pattern of criminal gang activity for purposes of these provisions, ~~however, such a pattern would not be established by commission of one or more of these offenses alone, in addition, an offense already listed in existing law would also have to have been committed~~ *as specified*.

Because this bill would change the definition of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. Section 186.22 of the Penal Code is amended to
2 read:

3 186.22. (a) Any person who actively participates in any
4 criminal street gang with knowledge that its members engage in
5 or have engaged in a pattern of criminal gang activity, and who
6 willfully promotes, furthers, or assists in any felonious criminal
7 conduct by members of that gang, shall be punished by
8 imprisonment in a county jail for a period not to exceed one year,
9 or by imprisonment in the state prison for 16 months, or two or
10 three years.

11 (b) (1) Except as provided in paragraphs (4) and (5), any
12 person who is convicted of a felony committed for the benefit of,
13 at the direction of, or in association with any criminal street gang,
14 with the specific intent to promote, further, or assist in any
15 criminal conduct by gang members, shall, upon conviction of that
16 felony, in addition and consecutive to the punishment prescribed
17 for the felony or attempted felony of which he or she has been
18 convicted, be punished as follows:

19 (A) Except as provided in subparagraphs (B) and (C), the
20 person shall be punished by an additional term of two, three, or
21 four years at the court’s discretion.

22 (B) If the felony is a serious felony, as defined in subdivision
23 (c) of Section 1192.7, the person shall be punished by an
24 additional term of five years.

25 (C) If the felony is a violent felony, as defined in subdivision
26 (c) of Section 667.5, the person shall be punished by an
27 additional term of 10 years.

1 (2) If the underlying felony described in paragraph (1) is
2 committed on the grounds of, or within 1,000 feet of, a public or
3 private elementary, vocational, junior high, or high school,
4 during hours in which the facility is open for classes or
5 school-related programs or when minors are using the facility
6 that fact shall be a circumstance in aggravation of the crime in
7 imposing a term under paragraph (1).

8 (3) The court shall order the imposition of the middle term of
9 the sentence enhancement, unless there are circumstances in
10 aggravation or mitigation. The court shall state the reasons for its
11 choice of sentencing enhancements on the record at the time of
12 the sentencing.

13 (4) Any person who is convicted of a felony enumerated in
14 this paragraph committed for the benefit of, at the direction of, or
15 in association with any criminal street gang, with the specific
16 intent to promote, further, or assist in any criminal conduct by
17 gang members, shall, upon conviction of that felony, be
18 sentenced to an indeterminate term of life imprisonment with a
19 minimum term of the indeterminate sentence calculated as the
20 greater of:

21 (A) The term determined by the court pursuant to Section
22 1170 for the underlying conviction, including any enhancement
23 applicable under Chapter 4.5 (commencing with Section 1170) of
24 Title 7 of Part 2, or any period prescribed by Section 3046, if the
25 felony is any of the offenses enumerated in subparagraph (B) or
26 (C) of this paragraph.

27 (B) Imprisonment in the state prison for 15 years, if the felony
28 is a home invasion robbery, in violation of subparagraph (A) of
29 paragraph (1) of subdivision (a) of Section 213; carjacking, as
30 defined in Section 215; a felony violation of Section 246; or a
31 violation of Section 12022.55.

32 (C) Imprisonment in the state prison for seven years, if the
33 felony is extortion, as defined in Section 519; or threats to
34 victims and witnesses, as defined in Section 136.1.

35 (5) Except as provided in paragraph (4), any person who
36 violates this subdivision in the commission of a felony
37 punishable by imprisonment in the state prison for life, shall not
38 be paroled until a minimum of 15 calendar years have been
39 served.

1 (c) If the court grants probation or suspends the execution of
2 sentence imposed upon the defendant for a violation of
3 subdivision (a), or in cases involving a true finding of the
4 enhancement enumerated in subdivision (b), the court shall
5 require that the defendant serve a minimum of 180 days in a
6 county jail as a condition thereof.

7 (d) Any person who is convicted of a public offense
8 punishable as a felony or a misdemeanor, which is committed for
9 the benefit of, at the direction of or in association with, any
10 criminal street gang with the specific intent to promote, further,
11 or assist in any criminal conduct by gang members, shall be
12 punished by imprisonment in the county jail not to exceed one
13 year, or by imprisonment in the state prison for one, two, or three
14 years, provided that any person sentenced to imprisonment in the
15 county jail shall be imprisoned for a period not to exceed one
16 year, but not less than 180 days, and shall not be eligible for
17 release upon completion of sentence, parole, or any other basis,
18 until he or she has served 180 days. If the court grants probation
19 or suspends the execution of sentence imposed upon the
20 defendant, it shall require as a condition thereof that the
21 defendant serve 180 days in a county jail.

22 (e) As used in this chapter, “pattern of criminal gang activity”
23 means the commission of, attempted commission of, conspiracy
24 to commit, or solicitation of, sustained juvenile petition for, or
25 conviction of two or more of the following offenses, provided at
26 least one of these offenses occurred after the effective date of this
27 chapter and the last of those offenses occurred within three years
28 after a prior offense, and the offenses were committed on
29 separate occasions, or by two or more persons:

30 (1) Assault with a deadly weapon or by means of force likely
31 to produce great bodily injury, as defined in Section 245.

32 (2) Robbery, as defined in Chapter 4 (commencing with
33 Section 211) of Title 8 of Part 1.

34 (3) Unlawful homicide or manslaughter, as defined in Chapter
35 1 (commencing with Section 187) of Title 8 of Part 1.

36 (4) The sale, possession for sale, transportation, manufacture,
37 offer for sale, or offer to manufacture controlled substances as
38 defined in Sections 11054, 11055, 11056, 11057, and 11058 of
39 the Health and Safety Code.

- 1 (5) Shooting at an inhabited dwelling or occupied motor
2 vehicle, as defined in Section 246.
- 3 (6) Discharging or permitting the discharge of a firearm from
4 a motor vehicle, as defined in subdivisions (a) and (b) of Section
5 12034.
- 6 (7) Arson, as defined in Chapter 1 (commencing with Section
7 450) of Title 13.
- 8 (8) The intimidation of witnesses and victims, as defined in
9 Section 136.1.
- 10 (9) Grand theft, as defined in subdivision (a) or (c) of Section
11 487.
- 12 (10) Grand theft of any firearm, vehicle, trailer, or vessel.
- 13 (11) Burglary, as defined in Section 459.
- 14 (12) Rape, as defined in Section 261.
- 15 (13) Looting, as defined in Section 463.
- 16 (14) Money laundering, as defined in Section 186.10.
- 17 (15) Kidnapping, as defined in Section 207.
- 18 (16) Mayhem, as defined in Section 203.
- 19 (17) Aggravated mayhem, as defined in Section 205.
- 20 (18) Torture, as defined in Section 206.
- 21 (19) Felony extortion, as defined in Sections 518 and 520.
- 22 (20) Felony vandalism, as defined in paragraph (1) of
23 subdivision (b) of Section 594.
- 24 (21) Carjacking, as defined in Section 215.
- 25 (22) The sale, delivery, or transfer of a firearm, as defined in
26 Section 12072.
- 27 (23) Possession of a pistol, revolver, or other firearm capable
28 of being concealed upon the person in violation of paragraph (1)
29 of subdivision (a) of Section 12101.
- 30 (24) Threats to commit crimes resulting in death or great
31 bodily injury, as defined in Section 422.
- 32 (25) Theft and unlawful taking or driving of a vehicle, as
33 defined in Section 10851 of the Vehicle Code.
- 34 (26) Felony theft of an access card or account information, as
35 defined in Section 484e.
- 36 (27) Counterfeiting, designing, using, attempting to use an
37 access card, as defined in Section 484f.
- 38 (28) Felony fraudulent use of an access card or account
39 information, as defined in Section 484g.

1 (29) Unlawful use of personal identifying information to
2 obtain credit, goods, services, or medical information, as defined
3 in Section 530.5.

4 (30) Wrongfully obtaining Department of Motor Vehicles
5 documentation, as defined in Section 529.7.

6 (31) Prohibited possession of a firearm in violation of Section
7 12021.

8 (32) Carrying a concealed firearm in violation of Section
9 12025.

10 (33) ~~Carry~~ *Carrying* a loaded firearm in violation of Section
11 12031.

12 (f) As used in this chapter, “criminal street gang” means any
13 ongoing organization, association, or group of three or more
14 persons, whether formal or informal, having as one of its primary
15 activities the commission of one or more of the criminal acts
16 enumerated in paragraphs (1) to (25), inclusive, *or* (30) to (33),
17 *inclusive*, of subdivision (e), having a common name or common
18 identifying sign or symbol, and whose members individually or
19 collectively engage in or have engaged in a pattern of criminal
20 gang activity.

21 (g) Notwithstanding any other law, the court may strike the
22 additional punishment for the enhancements provided in this
23 section or refuse to impose the minimum jail sentence for
24 misdemeanors in an unusual case where the interests of justice
25 would best be served, if the court specifies on the record and
26 enters into the minutes the circumstances indicating that the
27 interests of justice would best be served by that disposition.

28 (h) Notwithstanding any other provision of law, for each
29 person committed to the Division of Juvenile Facilities for a
30 conviction pursuant to subdivision (a) or (b) of this section, the
31 offense shall be deemed one for which the state shall pay the rate
32 of 100 percent of the per capita institutional cost of the Division
33 of Juvenile Facilities, pursuant to Section 912.5 of the Welfare
34 and Institutions Code.

35 (i) In order to secure a conviction, or sustain a juvenile
36 petition, pursuant to subdivision (a), it is not necessary for the
37 prosecution to prove that the person devotes all, or a substantial
38 part of his or her time or efforts to the criminal street gang, nor is
39 it necessary to prove that the person is a member of the criminal

1 street gang. Active participation in the criminal street gang is all
2 that is required.

3 (j) A pattern of gang activity may be shown by the
4 commission of one or more of the offenses enumerated in
5 paragraphs (26) to (30), inclusive, of subdivision (e), and the
6 commission of one or more of the offenses enumerated in
7 paragraphs (1) to (25), inclusive of subdivision (e). A pattern of
8 gang activity cannot be established solely by proof of
9 commission of offenses enumerated in paragraphs (26) to (30),
10 inclusive, of subdivision (e), alone.

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