

ASSEMBLY BILL

No. 894

Introduced by Assembly Member Nakanishi

February 22, 2007

An act to amend Section 186.22 of the Penal Code, relating to criminal street gangs.

LEGISLATIVE COUNSEL'S DIGEST

AB 894, as introduced, Nakanishi. Criminal street gangs.

Existing law, as amended by Proposition 21 of the March 7, 2000, statewide general election, prohibits a person convicted of committing a felony punishable in the state prison for life at the direction or for the benefit of a criminal street gang from being paroled before serving a minimum of 15 years in prison, but does not impose an additional term of imprisonment.

This bill would impose an additional 10-year term of imprisonment as well as prohibit parole until a minimum of 15 years has been served for a person convicted of committing a felony punishable in the state prison for life.

Proposition 21 requires a statute amending the provisions of the act to be passed in each house by rollcall vote entered in the journal, $\frac{2}{3}$ of the membership of each house concurring.

This bill, which would amend a provision of the act, would therefore require a $\frac{2}{3}$ vote of each house.

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

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

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

19 (A) Except as provided in subparagraphs (B) and (C), the person
20 shall be punished by an additional term of two, three, or four years
21 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 additional
24 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 additional
27 term of 10 years.

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

35 (3) The court shall order the imposition of the middle term of
36 the sentence enhancement, unless there are circumstances in
37 aggravation or mitigation. The court shall state the reasons for its

1 choice of sentencing enhancements on the record at the time of
2 the sentencing.

3 (4) Any person who is convicted of a felony enumerated in this
4 paragraph committed for the benefit of, at the direction of, or in
5 association with any criminal street gang, with the specific intent
6 to promote, further, or assist in any criminal conduct by gang
7 members, shall, upon conviction of that felony, be sentenced to
8 an indeterminate term of life imprisonment with a minimum term
9 of the indeterminate sentence calculated as the greater of:

10 (A) The term determined by the court pursuant to Section 1170
11 for the underlying conviction, including any enhancement
12 applicable under Chapter 4.5 (commencing with Section 1170) of
13 Title 7 of Part 2, or any period prescribed by Section 3046, if the
14 felony is any of the offenses enumerated in subparagraph (B) or
15 (C) of this paragraph.

16 (B) Imprisonment in the state prison for 15 years, if the felony
17 is a home invasion robbery, in violation of subparagraph (A) of
18 paragraph (1) of subdivision (a) of Section 213; carjacking, as
19 defined in Section 215; a felony violation of Section 246; or a
20 violation of Section 12022.55.

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

24 (5) Except as provided in paragraph (4), any person who violates
25 this subdivision in the commission of a felony punishable by
26 imprisonment in the state prison for life shall *be punished by an*
27 *additional term of 10 years and shall* not be paroled until a
28 minimum of 15 calendar years have been served.

29 (c) If the court grants probation or suspends the execution of
30 sentence imposed upon the defendant for a violation of subdivision
31 (a), or in cases involving a true finding of the enhancement
32 enumerated in subdivision (b), the court shall require that the
33 defendant serve a minimum of 180 days in a county jail as a
34 condition thereof.

35 (d) Any person who is convicted of a public offense punishable
36 as a felony or a misdemeanor, which is committed for the benefit
37 of, at the direction of or in association with, any criminal street
38 gang with the specific intent to promote, further, or assist in any
39 criminal conduct by gang members, shall be punished by
40 imprisonment in the county jail not to exceed one year, or by

1 imprisonment in the state prison for one, two, or three years,
2 provided that any person sentenced to imprisonment in the county
3 jail shall be imprisoned for a period not to exceed one year, but
4 not less than 180 days, and shall not be eligible for release upon
5 completion of sentence, parole, or any other basis, until he or she
6 has served 180 days. If the court grants probation or suspends the
7 execution of sentence imposed upon the defendant, it shall require
8 as a condition thereof that the defendant serve 180 days in a county
9 jail.

10 (e) As used in this chapter, “pattern of criminal gang activity”
11 means the commission of, attempted commission of, conspiracy
12 to commit, or solicitation of, sustained juvenile petition for, or
13 conviction of two or more of the following offenses, provided at
14 least one of these offenses occurred after the effective date of this
15 chapter and the last of those offenses occurred within three years
16 after a prior offense, and the offenses were committed on separate
17 occasions, or by two or more persons:

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

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

22 (3) Unlawful homicide or manslaughter, as defined in Chapter
23 1 (commencing with Section 187) of Title 8 of Part 1.

24 (4) The sale, possession for sale, transportation, manufacture,
25 offer for sale, or offer to manufacture controlled substances as
26 defined in Sections 11054, 11055, 11056, 11057, and 11058 of
27 the Health and Safety Code.

28 (5) Shooting at an inhabited dwelling or occupied motor vehicle,
29 as defined in Section 246.

30 (6) Discharging or permitting the discharge of a firearm from
31 a motor vehicle, as defined in subdivisions (a) and (b) of Section
32 12034.

33 (7) Arson, as defined in Chapter 1 (commencing with Section
34 450) of Title 13.

35 (8) The intimidation of witnesses and victims, as defined in
36 Section 136.1.

37 (9) Grand theft, as defined in subdivision (a) or (c) of Section
38 487.

39 (10) Grand theft of any firearm, vehicle, trailer, or vessel.

40 (11) Burglary, as defined in Section 459.

- 1 (12) Rape, as defined in Section 261.
- 2 (13) Looting, as defined in Section 463.
- 3 (14) Money laundering, as defined in Section 186.10.
- 4 (15) Kidnapping, as defined in Section 207.
- 5 (16) Mayhem, as defined in Section 203.
- 6 (17) Aggravated mayhem, as defined in Section 205.
- 7 (18) Torture, as defined in Section 206.
- 8 (19) Felony extortion, as defined in Sections 518 and 520.
- 9 (20) Felony vandalism, as defined in paragraph (1) of
- 10 subdivision (b) of Section 594.
- 11 (21) Carjacking, as defined in Section 215.
- 12 (22) The sale, delivery, or transfer of a firearm, as defined in
- 13 Section 12072.
- 14 (23) Possession of a pistol, revolver, or other firearm capable
- 15 of being concealed upon the person in violation of paragraph (1)
- 16 of subdivision (a) of Section 12101.
- 17 (24) Threats to commit crimes resulting in death or great bodily
- 18 injury, as defined in Section 422.
- 19 (25) Theft and unlawful taking or driving of a vehicle, as defined
- 20 in Section 10851 of the Vehicle Code.
- 21 (26) Felony theft of an access card or account information, as
- 22 defined in Section 484e.
- 23 (27) Counterfeiting, designing, using, attempting to use an
- 24 access card, as defined in Section 484f.
- 25 (28) Felony fraudulent use of an access card or account
- 26 information, as defined in Section 484g.
- 27 (29) Unlawful use of personal identifying information to obtain
- 28 credit, goods, services, or medical information, as defined in
- 29 Section 530.5.
- 30 (30) Wrongfully obtaining Department of Motor Vehicles
- 31 documentation, as defined in Section 529.7.
- 32 (31) Prohibited possession of a firearm in violation of Section
- 33 12021.
- 34 (32) Carrying a concealed firearm in violation of Section 12025.
- 35 (33) Carrying a loaded firearm in violation of Section 12031.
- 36 (f) As used in this chapter, “criminal street gang” means any
- 37 ongoing organization, association, or group of three or more
- 38 persons, whether formal or informal, having as one of its primary
- 39 activities the commission of one or more of the criminal acts
- 40 enumerated in paragraphs (1) to (25), inclusive, or (31) to (33),

1 inclusive, of subdivision (e), having a common name or common
2 identifying sign or symbol, and whose members individually or
3 collectively engage in or have engaged in a pattern of criminal
4 gang activity.

5 (g) Notwithstanding any other law, the court may strike the
6 additional punishment for the enhancements provided in this
7 section or refuse to impose the minimum jail sentence for
8 misdemeanors in an unusual case where the interests of justice
9 would best be served, if the court specifies on the record and enters
10 into the minutes the circumstances indicating that the interests of
11 justice would best be served by that disposition.

12 (h) Notwithstanding any other provision of law, for each person
13 committed to the Division of Juvenile Facilities for a conviction
14 pursuant to subdivision (a) or (b) of this section, the offense shall
15 be deemed one for which the state shall pay the rate of 100 percent
16 of the per capita institutional cost of the Division of Juvenile
17 Facilities, pursuant to Section 912.5 of the Welfare and Institutions
18 Code.

19 (i) In order to secure a conviction or sustain a juvenile petition,
20 pursuant to subdivision (a) it is not necessary for the prosecution
21 to prove that the person devotes all, or a substantial part, of his or
22 her time or efforts to the criminal street gang, nor is it necessary
23 to prove that the person is a member of the criminal street gang.
24 Active participation in the criminal street gang is all that is
25 required.

26 (j) A pattern of gang activity may be shown by the commission
27 of one or more of the offenses enumerated in paragraphs (26) to
28 (30), inclusive, of subdivision (e), and the commission of one or
29 more of the offenses enumerated in paragraphs (1) to (25),
30 inclusive, or (31) to (33), inclusive of subdivision (e). A pattern
31 of gang activity cannot be established solely by proof of
32 commission of offenses enumerated in paragraphs (26) to (30),
33 inclusive, of subdivision (e), alone.