

Introduced by Senator Wright

February 24, 2009

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

LEGISLATIVE COUNSEL'S DIGEST

SB 282, as introduced, Wright. Criminal street gangs: injunction: duration.

Existing law provides for injunctive relief from the unlawful activities of criminal street gangs. Existing law provides that an injunction issued against a person prohibiting harassment, as specified, shall have a duration of not more than 3 years, and that at any time within the 3 months before the expiration of the injunction, the plaintiff may apply for a renewal of the injunction by filing a new petition for an injunction for harassment.

This bill would provide that an injunction issued against an individual who is a criminal street gang member shall have a duration of not more than 5 years, and that at any time within 3 months before the expiration of the injunction, the plaintiff may apply for a renewal of the injunction by filing a new petition for an injunction against the criminal street gang member. The bill would further provide that if an individual subject to an injunction violates that injunction, an ex parte application may be made for, and the court, after a noticed hearing, may issue, an order for an extension of the injunction for an additional 5 years, if the court determines that that action would be in the interest of justice and equity, as specified.

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

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

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

3 186.22a. (a) Every building or place used by members of a
4 criminal street gang for the purpose of the commission of the
5 offenses listed in subdivision (e) of Section 186.22 or any offense
6 involving dangerous or deadly weapons, burglary, or rape, and
7 every building or place wherein or upon which that criminal
8 conduct by gang members takes place, is a nuisance which shall
9 be enjoined, abated, and prevented, and for which damages may
10 be recovered, whether it is a public or private nuisance.

11 (b) Any action for injunction or abatement filed pursuant to
12 subdivision (a), including an action filed by the Attorney General,
13 shall proceed according to the provisions of Article 3 (commencing
14 with Section 11570) of Chapter 10 of Division 10 of the Health
15 and Safety Code, except that all of the following shall apply:

16 (1) The court shall not assess a civil penalty against any person
17 unless that person knew or should have known of the unlawful
18 acts.

19 (2) No order of eviction or closure may be entered.

20 (3) All injunctions issued shall be limited to those necessary to
21 protect the health and safety of the residents or the public or those
22 necessary to prevent further criminal activity.

23 (4) Suit may not be filed until 30-day notice of the unlawful use
24 or criminal conduct has been provided to the owner by mail, return
25 receipt requested, postage prepaid, to the last known address.

26 (5) *An injunction issued pursuant to this section against an*
27 *individual who is a criminal street gang member shall have a*
28 *duration of not more than five years.*

29 (6) *At any time within three months before the expiration of the*
30 *injunction, the Attorney General or any district attorney or any*
31 *prosecuting city attorney may apply for a renewal of the injunction*
32 *by filing a new petition for an injunction under this section.*

33 (7) *If an individual subject to an injunction under this section*
34 *violates that injunction, the Attorney General or any district*
35 *attorney or any prosecuting city attorney, may make an ex parte*
36 *application for, and the court, after a noticed hearing, may issue*
37 *an order for, an extension of the injunction for an additional five*
38 *years, if the court determines that that action would be in the*

1 *interest of justice and equity for all parties, taking into account*
2 *the effect on the parties of extending of the original injunction,*
3 *and any other pertinent factor.*

4 (c) Whenever an injunction is issued pursuant to subdivision
5 (a), or Section 3479 of the Civil Code, to abate gang activity
6 constituting a nuisance, the Attorney General or any district
7 attorney or any prosecuting city attorney may maintain an action
8 for ~~money~~ *monetary* damages on behalf of the community or
9 neighborhood injured by that nuisance. Any ~~money~~ *monetary*
10 damages awarded shall be paid by or collected from assets of the
11 criminal street gang or its members. Only members of the criminal
12 street gang who created, maintained, or contributed to the creation
13 or maintenance of the nuisance shall be personally liable for the
14 payment of the damages awarded. In a civil action for damages
15 brought pursuant to this subdivision, the Attorney General, district
16 attorney, or city attorney may use, but is not limited to the use of,
17 the testimony of experts to establish damages suffered by the
18 community or neighborhood injured by the nuisance. The damages
19 recovered pursuant to this subdivision shall be deposited into a
20 separate segregated fund for payment to the governing body of the
21 city or county in whose political subdivision the community or
22 neighborhood is located, and that governing body shall use those
23 assets solely for the benefit of the community or neighborhood
24 that has been injured by the nuisance.

25 (d) No nonprofit or charitable organization which is conducting
26 its affairs with ordinary care or skill, and no governmental entity,
27 shall be abated pursuant to subdivisions (a) and (b).

28 (e) Nothing in this chapter shall preclude any aggrieved person
29 from seeking any other remedy provided by law.

30 (f) (1) Any firearm, ammunition which may be used with the
31 firearm, or any deadly or dangerous weapon which is owned or
32 possessed by a member of a criminal street gang for the purpose
33 of the commission of any of the offenses listed in subdivision (e)
34 of Section 186.22, or the commission of any burglary or rape, may
35 be confiscated by any law enforcement agency or peace officer.

36 (2) In those cases where a law enforcement agency believes that
37 the return of the firearm, ammunition, or deadly weapon
38 confiscated pursuant to this subdivision, is or will be used in
39 criminal street gang activity or that the return of the item would
40 be likely to result in endangering the safety of others, the law

1 enforcement agency shall initiate a petition in the superior court
2 to determine if the item confiscated should be returned or declared
3 a nuisance.

4 (3) No firearm, ammunition, or deadly weapon shall be sold or
5 destroyed unless reasonable notice is given to its lawful owner if
6 his or her identity and address can be reasonably ascertained. The
7 law enforcement agency shall inform the lawful owner, at that
8 person's last known address by registered mail, that he or she has
9 30 days from the date of receipt of the notice to respond to the
10 court clerk to confirm his or her desire for a hearing and that the
11 failure to respond shall result in a default order forfeiting the
12 confiscated firearm, ammunition, or deadly weapon as a nuisance.

13 (4) If the person requests a hearing, the court clerk shall set a
14 hearing no later than 30 days from receipt of that request. The
15 court clerk shall notify the person, the law enforcement agency
16 involved, and the district attorney of the date, time, and place of
17 the hearing.

18 (5) At the hearing, the burden of proof is upon the law
19 enforcement agency or peace officer to show by a preponderance
20 of the evidence that the seized item is or will be used in criminal
21 street gang activity or that return of the item would be likely to
22 result in endangering the safety of others. All returns of firearms
23 shall be subject to Section 12021.3.

24 (6) If the person does not request a hearing within 30 days of
25 the notice or the lawful owner cannot be ascertained, the law
26 enforcement agency may file a petition that the confiscated firearm,
27 ammunition, or deadly weapon be declared a nuisance. If the items
28 are declared to be a nuisance, the law enforcement agency shall
29 dispose of the items as provided in Section 12028.