

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 amended, Wright. Criminal street gangs: injunction: duration.

Existing law provides for injunctive relief from the unlawful activities of criminal street gangs, *the duration of which is within the court's discretion*. Existing law provides ~~that an injunction issued against a person prohibiting harassment, as specified, shall have for injunctive relief from a person who engages in harassment, as specified, of a~~ duration of not more than 3 years, and *provides* that, at any time within the 3 months before the expiration of the injunction *prohibiting harassment*, the plaintiff may apply for a renewal of ~~the that~~ 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~~ *Attorney General or any district attorney or prosecuting city attorney* 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 certification that if a court has determined that an individual subject to an the injunction violates that has violated the injunction, an ex parte application may be made for, and the or committed a new crime. This bill would authorize the court, after a noticed hearing, may to issue; an order for an extension~~.

of the injunction ~~against that individual~~ for an additional 5 years, ~~if the court determines that that action would be in the interest of justice and equity, as specified.~~ The bill would express legislative findings, declarations, and intent regarding the enactment of its provisions.

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. (a) The Legislature finds and declares the
2 following:

3 (1) Under federal law applicable to the California gang
4 database (28 C.F.R. 23.20 (h)), there is a five-year limit on the
5 retention of names in the system.

6 (2) Under state law relating to the registration of gang offenders
7 (subd. (c), Sec. 186.32, Pen. C.), there is a five-year limit on the
8 application of registration requirements on gang offenders.

9 (3) Existing law does not provide a time limit on the duration
10 of gang injunctions as applied to an individual.

11 (b) It is the intent of the Legislature in enacting this bill to
12 provide a time limit on the duration of gang injunctions as applied
13 to an individual that is consistent with related state and federal
14 law involving gangs.

15 ~~SECTION 1.~~

16 SEC. 2. Section 186.22a of the Penal Code is amended to read:

17 186.22a. (a) Every building or place used by members of a
18 criminal street gang for the purpose of the commission of the
19 offenses listed in subdivision (e) of Section 186.22 or any offense
20 involving dangerous or deadly weapons, burglary, or rape, and
21 every building or place wherein or upon which that criminal
22 conduct by gang members takes place, is a nuisance which shall
23 be enjoined, abated, and prevented, and for which damages may
24 be recovered, whether it is a public or private nuisance.

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

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

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

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

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

11 (5) (A) An injunction issued pursuant to this section against an
12 individual who is a criminal street gang member shall have a
13 duration of not more than five years.

14 ~~(6)~~

15 ~~(B) At any time within three months before the expiration of~~
16 ~~the injunction an injunction issued pursuant to this section against~~
17 ~~an individual, the Attorney General or any district attorney or any~~
18 ~~prosecuting city attorney may apply for a renewal of the injunction~~
19 ~~by filing a new petition for an injunction under this section.~~

20 ~~(7) If an individual subject to an injunction under this section~~
21 ~~violates that injunction, the Attorney General or any district~~
22 ~~attorney or any prosecuting city attorney, may make an ex parte~~
23 ~~application for, and the by filing a certification that a court has~~
24 ~~determined that an individual subject to injunction under this~~
25 ~~section has violated that injunction or committed a new crime. The~~
26 ~~court, after a noticed hearing, may issue an order for, an extension~~
27 ~~of the injunction against that individual for an additional five~~
28 ~~years, if the court determines that that action would be in the~~
29 ~~interest of justice and equity for all parties, taking into account the~~
30 ~~effect on the parties of extending of the original injunction, and~~
31 ~~any other pertinent factor. years.~~

32 (c) Whenever an injunction is issued pursuant to subdivision
33 (a), or Section 3479 of the Civil Code, to abate gang activity
34 constituting a nuisance, the Attorney General or any district
35 attorney or any prosecuting city attorney may maintain an action
36 for monetary damages on behalf of the community or neighborhood
37 injured by that nuisance. Any monetary damages awarded shall
38 be paid by or collected from assets of the criminal street gang or
39 its members. Only members of the criminal street gang who
40 created, maintained, or contributed to the creation or maintenance

1 of the nuisance shall be personally liable for the payment of the
2 damages awarded. In a civil action for damages brought pursuant
3 to this subdivision, the Attorney General, district attorney, or city
4 attorney may use, but is not limited to the use of, the testimony of
5 experts to establish damages suffered by the community or
6 neighborhood injured by the nuisance. The damages recovered
7 pursuant to this subdivision shall be deposited into a separate
8 segregated fund for payment to the governing body of the city or
9 county in whose political subdivision the community or
10 neighborhood is located, and that governing body shall use those
11 assets solely for the benefit of the community or neighborhood
12 that has been injured by the nuisance.

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

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

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

24 (2) In those cases where a law enforcement agency believes that
25 the return of the firearm, ammunition, or deadly weapon
26 confiscated pursuant to this subdivision, is or will be used in
27 criminal street gang activity or that the return of the item would
28 be likely to result in endangering the safety of others, the law
29 enforcement agency shall initiate a petition in the superior court
30 to determine if the item confiscated should be returned or declared
31 a nuisance.

32 (3) No firearm, ammunition, or deadly weapon shall be sold or
33 destroyed unless reasonable notice is given to its lawful owner if
34 his or her identity and address can be reasonably ascertained. The
35 law enforcement agency shall inform the lawful owner, at that
36 person's last known address by registered mail, that he or she has
37 30 days from the date of receipt of the notice to respond to the
38 court clerk to confirm his or her desire for a hearing and that the
39 failure to respond shall result in a default order forfeiting the
40 confiscated firearm, ammunition, or deadly weapon as a nuisance.

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

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

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