

AMENDED IN SENATE MAY 5, 2009
AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 282

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 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 that injunction by filing a new petition.

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~~. *It would further provide* that at any time within 3 months before the expiration of ~~the injunction~~ *one of these injunctions or an injunction that enjoins street gang activity as a nuisance, as specified*, the Attorney General or any district attorney or prosecuting city attorney may apply for a renewal of the injunction by filing a certification that a court has determined that an individual subject to the injunction has violated the injunction or ~~committed a new crime~~ *has been convicted of a new felony or misdemeanor*. This bill would authorize the court, after a noticed hearing, to issue an order for an extension of the injunction against that individual for an additional 5

years. 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 database
4 (28 C.F.R. 23.20(h)), there is a five-year limit on the retention of
5 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 law
14 involving gangs.

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

16 186.22a. (a) Every building or place used by members of a
17 criminal street gang for the purpose of the commission of the
18 offenses listed in subdivision (e) of Section 186.22 or any offense
19 involving dangerous or deadly weapons, burglary, or rape, and
20 every building or place wherein or upon which that criminal
21 conduct by gang members takes place, is a nuisance which shall
22 be enjoined, abated, and prevented, and for which damages may
23 be recovered, whether it is a public or private nuisance.

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

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

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

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

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

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

10 (B) At any time within three months before the expiration of
11 an injunction issued pursuant to this section, *or Section 3479 or*
12 *3480 of the Civil Code enjoining criminal street gang activity as*
13 *a nuisance*, against an individual, the Attorney General or any
14 district attorney or prosecuting city attorney may apply for a
15 renewal of the injunction by filing a certification that a court has
16 determined that an individual subject to injunction under this
17 section has violated that injunction or ~~committed a new crime~~ *has*
18 *been convicted of a new felony or misdemeanor*. The court, after
19 a noticed hearing, may issue an order for an extension of the
20 injunction against that individual for an additional five years.

21 (c) Whenever an injunction is issued pursuant to subdivision
22 (a), or Section 3479 of the Civil Code, to abate gang activity
23 constituting a nuisance, the Attorney General or any district
24 attorney or any prosecuting city attorney may maintain an action
25 for monetary damages on behalf of the community or neighborhood
26 injured by that nuisance. Any monetary damages awarded shall
27 be paid by or collected from assets of the criminal street gang or
28 its members. Only members of the criminal street gang who
29 created, maintained, or contributed to the creation or maintenance
30 of the nuisance shall be personally liable for the payment of the
31 damages awarded. In a civil action for damages brought pursuant
32 to this subdivision, the Attorney General, district attorney, or city
33 attorney may use, but is not limited to the use of, the testimony of
34 experts to establish damages suffered by the community or
35 neighborhood injured by the nuisance. The damages recovered
36 pursuant to this subdivision shall be deposited into a separate
37 segregated fund for payment to the governing body of the city or
38 county in whose political subdivision the community or
39 neighborhood is located, and that governing body shall use those

1 assets solely for the benefit of the community or neighborhood
2 that has been injured by the nuisance.

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

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

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

14 (2) In those cases where a law enforcement agency believes that
15 the return of the firearm, ammunition, or deadly weapon
16 confiscated pursuant to this subdivision, is or will be used in
17 criminal street gang activity or that the return of the item would
18 be likely to result in endangering the safety of others, the law
19 enforcement agency shall initiate a petition in the superior court
20 to determine if the item confiscated should be returned or declared
21 a nuisance.

22 (3) No firearm, ammunition, or deadly weapon shall be sold or
23 destroyed unless reasonable notice is given to its lawful owner if
24 his or her identity and address can be reasonably ascertained. The
25 law enforcement agency shall inform the lawful owner, at that
26 person's last known address by registered mail, that he or she has
27 30 days from the date of receipt of the notice to respond to the
28 court clerk to confirm his or her desire for a hearing and that the
29 failure to respond shall result in a default order forfeiting the
30 confiscated firearm, ammunition, or deadly weapon as a nuisance.

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

36 (5) At the hearing, the burden of proof is upon the law
37 enforcement agency or peace officer to show by a preponderance
38 of the evidence that the seized item is or will be used in criminal
39 street gang activity or that return of the item would be likely to

1 result in endangering the safety of others. All returns of firearms
2 shall be subject to Section 12021.3.

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

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