

AMENDED IN ASSEMBLY JUNE 24, 2009

AMENDED IN SENATE MAY 5, 2009

AMENDED IN SENATE APRIL 13, 2009

**SENATE BILL**

**No. 282**

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**Introduced by Senator Wright**

February 24, 2009

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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: petition to terminate.~~

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. It would further provide that at any time within 3 months before the expiration of 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 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

*This bill would provide that, in addition to any other administrative or judicial remedies, in an action relating to an injunction issued against an individual who is a criminal street gang member, the individual may file a specified petition with the court to terminate the criminal street gang injunction against the individual. The bill would require the petition to be filed under penalty of perjury and to certify that the individual has not violated the injunction or been convicted of committing a new felony or misdemeanor and that not less than 5 years have elapsed between the application of the injunction to the individual and the filing of the petition for termination. By expanding the scope of the crime of perjury, the bill would impose a state-mandated local program. The bill would require the court to grant the petition under specified circumstances. The bill would require the Judicial Council, by September 1, 2010, to develop, approve, and adopt forms and notices relating to the petition for termination of a criminal street gang injunction against an individual, as specified. The bill would express legislative findings, declarations, and intent regarding the enactment of its provisions.*

*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: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

*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.

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

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

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

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

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

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

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

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

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

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

34 ~~(B) At any time within three months before the expiration of  
35 an injunction issued pursuant to this section, or Section 3479 or  
36 3480 of the Civil Code enjoining criminal street gang activity as  
37 a nuisance, against an individual, the Attorney General or any  
38 district attorney or prosecuting city attorney may apply for a  
39 renewal of the injunction by filing a certification that a court has  
40 determined that an individual subject to injunction under this~~

1 ~~section has violated that injunction or has been convicted of a new~~  
2 ~~felony or misdemeanor. The court, after a noticed hearing, may~~  
3 ~~issue an order for an extension of the injunction against that~~  
4 ~~individual for an additional five years.~~

5 (5) (A) *In addition to any other applicable administrative or*  
6 *judicial remedies, in any action relating to an individual subject*  
7 *to an injunction issued pursuant to this section or issued pursuant*  
8 *to Section 3479 or 3480 of the Civil Code enjoining criminal street*  
9 *gang activity as a nuisance, the individual may petition the court*  
10 *to terminate the gang injunction against the individual pursuant*  
11 *to these provisions.*

12 (B) *The defendant shall file the original petition to terminate*  
13 *an injunction with the court that issued the injunction and shall*  
14 *serve a copy of the petition on the agency that prosecuted the case.*

15 (C) *The individual shall in the petition certify, under penalty of*  
16 *perjury, the following:*

17 (i) *The individual has not violated the subject injunction.*

18 (ii) *The individual has not been convicted of committing a new*  
19 *felony or misdemeanor.*

20 (iii) *Not less than five years have elapsed between the*  
21 *application of the injunction to the individual and the filing of this*  
22 *petition.*

23 (D) *If any of the information required in subparagraph (C) is*  
24 *missing from the petition, or if proof of service on the prosecuting*  
25 *agency is not provided, the court shall return the petition to the*  
26 *individual and advise him or her that the matter cannot be*  
27 *considered without the missing information.*

28 (E) *A reply to the petition, if any, shall be filed with the court*  
29 *within 60 days of the date on which the prosecuting agency is*  
30 *served with the motion, unless a continuance is granted for good*  
31 *cause.*

32 (F) *If the court finds by a preponderance of the evidence that*  
33 *the statements in the petition are true, or if no reply to the petition*  
34 *is filed, the court shall grant the petition to terminate the injunction*  
35 *as regards the individual.*

36 (c) *Whenever an injunction is issued pursuant to subdivision*  
37 *(a), or Section 3479 of the Civil Code, to abate gang activity*  
38 *constituting a nuisance, the Attorney General or any district*  
39 *attorney or any prosecuting city attorney may maintain an action*  
40 *for monetary damages on behalf of the community or neighborhood*

1 injured by that nuisance. Any monetary damages awarded shall  
2 be paid by or collected from assets of the criminal street gang or  
3 its members. Only members of the criminal street gang who  
4 created, maintained, or contributed to the creation or maintenance  
5 of the nuisance shall be personally liable for the payment of the  
6 damages awarded. In a civil action for damages brought pursuant  
7 to this subdivision, the Attorney General, district attorney, or city  
8 attorney may use, but is not limited to the use of, the testimony of  
9 experts to establish damages suffered by the community or  
10 neighborhood injured by the nuisance. The damages recovered  
11 pursuant to this subdivision shall be deposited into a separate  
12 segregated fund for payment to the governing body of the city or  
13 county in whose political subdivision the community or  
14 neighborhood is located, and that governing body shall use those  
15 assets solely for the benefit of the community or neighborhood  
16 that has been injured by the nuisance.

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

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

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

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

36 (3) No firearm, ammunition, or deadly weapon shall be sold or  
37 destroyed unless reasonable notice is given to its lawful owner if  
38 his or her identity and address can be reasonably ascertained. The  
39 law enforcement agency shall inform the lawful owner, at that  
40 person's last known address by registered mail, that he or she has

1 30 days from the date of receipt of the notice to respond to the  
2 court clerk to confirm his or her desire for a hearing and that the  
3 failure to respond shall result in a default order forfeiting the  
4 confiscated firearm, ammunition, or deadly weapon as a nuisance.

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

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

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

22 *SEC. 3. The Judicial Council shall, by September 1, 2010, do*  
23 *both of the following:*

24 *(a) Develop, approve, and adopt a petition form that meets the*  
25 *requirements of paragraph (5) of subdivision (b) of Section 186.22a*  
26 *of the Penal Code. The form of the petition shall be as simple as*  
27 *possible, requiring only that the petitioner fill out his or her name,*  
28 *check any applicable box or boxes, and provide a signature, under*  
29 *penalty of perjury. The petition shall contain a notice that if an*  
30 *individual cannot afford the petition filing fee, the individual may*  
31 *file for a waiver of the fee under Section 68632 of the Government*  
32 *Code.*

33 *(b) Ensure that an injunction issued against an individual*  
34 *pursuant to Section 186.22a of the Penal Code or issued pursuant*  
35 *to Section 3479 or 3480 of the Civil Code enjoining criminal street*  
36 *gang activity as a nuisance shall prominently display a notice, in*  
37 *bold 20-point type, that states that the individual may, after five*  
38 *years, petition the court to terminate the injunction by use of the*  
39 *form described in subdivision (a).*

1     *SEC. 4. No reimbursement is required by this act pursuant to*  
2     *Section 6 of Article XIII B of the California Constitution because*  
3     *the only costs that may be incurred by a local agency or school*  
4     *district will be incurred because this act creates a new crime or*  
5     *infraction, eliminates a crime or infraction, or changes the penalty*  
6     *for a crime or infraction, within the meaning of Section 17556 of*  
7     *the Government Code, or changes the definition of a crime within*  
8     *the meaning of Section 6 of Article XIII B of the California*  
9     *Constitution.*

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