

AMENDED IN SENATE APRIL 1, 2009

SENATE BILL

No. 492

Introduced by Senator Maldonado
(Coauthors: Senators Ashburn, Cox, and Runner)

February 26, 2009

An act to amend Section 653b of the Penal Code, relating to loitering.

LEGISLATIVE COUNSEL'S DIGEST

SB 492, as amended, Maldonado. Loitering: ~~registered~~ *criminal* street gangs.

Under existing law, it is a misdemeanor for any person to loiter after being asked to leave, as specified, about any school or public place at or near which children attend or normally congregate. Existing law establishes enhanced misdemeanor penalties for this crime if the person is required to register as a sex offender.

~~This bill would also apply these enhanced penalties for that crime if the person has ever been required to register for criminal street gang activity. The bill would specify that the minimum penalties in these enhanced penalties shall not be applied if they would prevent an offender from attending school if that offender is enrolled in school and is subject to these enhanced penalties only because he or she has been required to register for criminal street gang activity, as specified. Because the bill would increase the penalties of an existing crime, the bill would impose a state-mandated local program.~~

This bill would provide enhanced penalties for this crime if the person has been previously convicted of, or had a petition sustained in juvenile court for, any of specified criminal street gang offenses. The bill would require the court to impose upon these defendants a condition prohibiting the defendant from entering the grounds of a school without

the express permission of the chief administrative officer of the school. The bill would allow the court to excuse a defendant from this condition under certain circumstances. Because the bill would increase the penalties for an existing crime, the bill would impose a state-mandated local program.

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: yes.
 State-mandated local program: yes.

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

1 SECTION 1. Section 653b of the Penal Code is amended to
 2 read:
 3 653b. (a) Except as provided in subdivision (b) *or (c)*, every
 4 person who loiters about any school or public place at or near
 5 which children attend or normally congregate and who remains at
 6 any school or public place at or near which children attend or
 7 normally congregate, or who reenters or comes upon a school or
 8 place within 72 hours, after being asked to leave by the chief
 9 administrative official of that school or, in the absence of the chief
 10 administrative official, the person acting as the chief administrative
 11 official, or by a member of the security patrol of the school district
 12 who has been given authorization, in writing, by the chief
 13 administrative official of that school to act as his or her agent in
 14 performing this duty, or a city police officer, or sheriff or deputy
 15 sheriff, or Department of the California Highway Patrol peace
 16 officer is a vagrant, and is punishable by a fine of not exceeding
 17 one thousand dollars (\$1,000) or by imprisonment in the county
 18 jail for not exceeding six months, or by both the fine and the
 19 imprisonment.
 20 (b) Every person required to register as a sex offender ~~or who~~
 21 ~~has ever been required to register for criminal street gang activity~~
 22 ~~pursuant to Section 186.30 of the Penal Code~~ who violates
 23 subdivision (a) shall be punished as follows:

1 (1) Upon a first conviction, by a fine not exceeding two thousand
2 dollars (\$2,000), by imprisonment in a county jail for a period of
3 not more than six months, or by both that fine and imprisonment.

4 (2) If the defendant has been previously convicted once of a
5 violation of this section or former Section 653g, by imprisonment
6 in a county jail for a period of not less than 10 days or more than
7 six months, or by both imprisonment and a fine of not exceeding
8 two thousand dollars (\$2,000), and shall not be released on
9 probation, parole, or any other basis until he or she has served at
10 least 10 days.

11 (3) If the defendant has been previously convicted two or more
12 times of a violation of this section or former Section 653g, by
13 imprisonment in a county jail for a period of not less than 90 days
14 or more than six months, or by both imprisonment and a fine of
15 not exceeding two thousand dollars (\$2,000), and shall not be
16 released on probation, parole, or any other basis until he or she
17 has served at least 90 days.

18 ~~(4) Notwithstanding any other provision in this subdivision, the~~
19 ~~minimum penalties in this subdivision shall not be applied if they~~
20 ~~would prevent any person who has been required to register for~~
21 ~~criminal street gang activity and who is enrolled in school from~~
22 ~~attending school if this subdivision only applies to that person~~
23 ~~because that person has been required to register for criminal street~~
24 ~~gang activity.~~

25 *(c) (1) Any person described in subdivision (b) of Section 186.30*
26 *who violates subdivision (a) shall be punished as follows:*

27 *(A) Upon first conviction, by a fine not exceeding one thousand*
28 *dollars (\$1,000), by imprisonment in a county jail for a period of*
29 *not more than one year, or by both that fine and imprisonment.*

30 *(B) Upon a second conviction, by a fine not exceeding two*
31 *thousand dollars (\$2,000), by imprisonment in a county jail for a*
32 *period of not more than one year, or by both that fine and*
33 *imprisonment. The court shall consider a period of imprisonment*
34 *of at least 10 days.*

35 *(C) If the defendant has been previously convicted two or more*
36 *times, by a fine not exceeding two thousand dollars (\$2,000), by*
37 *imprisonment in a county jail for a period of not more than one*
38 *year, or by both that fine and imprisonment. The court shall*
39 *consider a period of imprisonment of at least 90 days.*

1 (2) *If the court grants probation to a defendant who was*
 2 *convicted of, or for whom a petition was sustained for, a violation*
 3 *of subdivision (a) and the defendant is a person described in*
 4 *subdivision (b) of Section 186.30, the court shall impose a*
 5 *condition prohibiting the defendant from entering the grounds of*
 6 *a school without the express permission of the chief administrative*
 7 *officer of the school. The court may excuse a defendant from this*
 8 *condition in the unusual case in which the interests of justice*
 9 *warrant this excuse. The court shall state the reasons on the record*
 10 *for excusing a defendant from this condition.*

11 ~~(e)~~

12 (d) As used in this section, “loiter” means to delay, to linger,
 13 or to idle about a school or public place without lawful business
 14 for being present.

15 ~~(e)~~

16 (e) Nothing in this section shall preclude or prohibit prosecution
 17 under any other provision of law.

18 SEC. 2. No reimbursement is required by this act pursuant to
 19 Section 6 of Article XIII B of the California Constitution because
 20 the only costs that may be incurred by a local agency or school
 21 district will be incurred because this act creates a new crime or
 22 infraction, eliminates a crime or infraction, or changes the penalty
 23 for a crime or infraction, within the meaning of Section 17556 of
 24 the Government Code, or changes the definition of a crime within
 25 the meaning of Section 6 of Article XIII B of the California
 26 Constitution.