

AMENDED IN ASSEMBLY APRIL 26, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 996**

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**Introduced by Assembly Member Donnelly**

February 18, 2011

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~~An act to amend Section 186.22 of the Penal Code, relating to crime.~~  
*An act to amend Section 290 of the Penal Code, relating to sex offenders.*

LEGISLATIVE COUNSEL'S DIGEST

AB 996, as amended, Donnelly. ~~Criminal gangs and drug cartels.~~  
*Sex offenders: human trafficking.*

*Existing law, the Sex Offender Registration Act, requires persons convicted of specified sex offenses to register with local authorities for life while residing, located, attending school, or working in California. Willful failure to register, as required, is a misdemeanor, or a felony, depending on the underlying offense.*

*Existing law makes it a felony, generally known as human trafficking, to deprive or violate the personal liberty of another with the intent to effect or maintain a felony violation of, among other crimes, pimping, pandering, and abducting a minor for the purpose of prostitution.*

*This bill would add human trafficking for the purposes of sexual slavery to the list of offenses requiring registration as a sex offender under the Sex Offender Registration Act. Because this bill would create a new crime, and because additional persons have to be registered as sex offenders by local officials, it 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.*

*With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.*

~~Existing law, as amended by Proposition 21 of the March 7, 2000, primary election, the Gang Violence and Juvenile Crime Prevention Act of 1998, provides that any person who participates in any criminal street gang with knowledge that its members engage in a pattern of criminal street gang activity and who promotes felonious criminal conduct shall be punished, as specified. Existing law defines a pattern of criminal gang activity as the commission of, attempted commission of, conspiracy to commit, or solicitation of, sustained juvenile petition for, or conviction of 2 or more listed offenses, as specified. Existing law places specified enhancements on persons convicted of a felony committed in association with any criminal street gang, as specified. The act authorizes the Legislature to amend these provisions with a  $\frac{2}{3}$  vote of each house concurring.~~

~~This bill would provide that if the finder of fact makes a finding that the defendant was, at the time the defendant committed a crime, a member of, affiliated with, or associated with a criminal street gang or a drug cartel, as defined, the court shall, after making a determination of the punishment that would otherwise be imposed, automatically double all fines, restitutions, and terms of imprisonment otherwise applicable to the defendant. Because this bill would change the punishment for conviction of a crime in association with a criminal street gang, it would amend Proposition 21 and therefore require a  $\frac{2}{3}$  vote of the membership of each house.~~

~~Because this bill would change the punishment for a crime, this 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:  $\frac{2}{3}$ -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 290 of the Penal Code is amended to*  
2 *read:*

3     290. (a) Sections 290 to 290.023, inclusive, shall be known  
4 and may be cited as the Sex Offender Registration Act. All  
5 references to “the Act” in those sections are to the Sex Offender  
6 Registration Act.

7     (b) Every person described in subdivision (c), for the rest of his  
8 or her life while residing in California, or while attending school  
9 or working in California, as described in Sections 290.002 and  
10 290.01, shall be required to register with the chief of police of the  
11 city in which he or she is residing, or the sheriff of the county if  
12 he or she is residing in an unincorporated area or city that has no  
13 police department, and, additionally, with the chief of police of a  
14 campus of the University of California, the California State  
15 University, or community college if he or she is residing upon the  
16 campus or in any of its facilities, within five working days of  
17 coming into, or changing his or her residence within, any city,  
18 county, or city and county, or campus in which he or she  
19 temporarily resides, and shall be required to register thereafter in  
20 accordance with the Act.

21     (c) The following persons shall be required to register:

22     Any person who, since July 1, 1944, has been or is hereafter  
23 convicted in any court in this state or in any federal or military  
24 court of a violation of Section 187 committed in the perpetration,  
25 or an attempt to perpetrate, rape or any act punishable under  
26 Section 286, 288, 288a, or 289, Section 207 or 209 committed  
27 with intent to violate Section 261, 286, 288, 288a, or 289, Section  
28 220, except assault to commit mayhem, *Section 236.1 where the*  
29 *trier of fact has made a finding that the victim was used for*  
30 *purposes of sexual slavery*, Section 243.4, paragraph (1), (2), (3),  
31 (4), or (6) of subdivision (a) of Section 261, paragraph (1) of  
32 subdivision (a) of Section 262 involving the use of force or  
33 violence for which the person is sentenced to the state prison,  
34 Section 264.1, 266, or 266c, subdivision (b) of Section 266h,  
35 subdivision (b) of Section 266i, Section 266j, 267, 269, 285, 286,  
36 288, 288a, 288.3, 288.4, 288.5, 288.7, 289, or 311.1, subdivision  
37 (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10,  
38 311.11, or 647.6, former Section 647a, subdivision (c) of Section

1 653f, subdivision 1 or 2 of Section 314, any offense involving  
2 lewd or lascivious conduct under Section 272, or any felony  
3 violation of Section 288.2; any statutory predecessor that includes  
4 all elements of one of the above-mentioned offenses; or any person  
5 who since that date has been or is hereafter convicted of the attempt  
6 or conspiracy to commit any of the above-mentioned offenses.

7 *SEC. 2. No reimbursement is required by this act pursuant to*  
8 *Section 6 of Article XIII B of the California Constitution for certain*  
9 *costs that may be incurred by a local agency or school district*  
10 *because, in that regard, this act creates a new crime or infraction,*  
11 *eliminates a crime or infraction, or changes the penalty for a crime*  
12 *or infraction, within the meaning of Section 17556 of the*  
13 *Government Code, or changes the definition of a crime within the*  
14 *meaning of Section 6 of Article XIII B of the California*  
15 *Constitution.*

16 *However, if the Commission on State Mandates determines that*  
17 *this act contains other costs mandated by the state, reimbursement*  
18 *to local agencies and school districts for those costs shall be made*  
19 *pursuant to Part 7 (commencing with Section 17500) of Division*  
20 *4 of Title 2 of the Government Code.*

21 ~~SECTION 1. Section 186.22 of the Penal Code, as amended~~  
22 ~~by Section 2 of Chapter 256 of the Statutes of 2010, is amended~~  
23 ~~to read:~~

24 ~~186.22. (a) Any person who actively participates in any~~  
25 ~~criminal street gang with knowledge that its members engage in~~  
26 ~~or have engaged in a pattern of criminal gang activity, and who~~  
27 ~~willfully promotes, furthers, or assists in any felonious criminal~~  
28 ~~conduct by members of that gang, shall be punished by~~  
29 ~~imprisonment in a county jail for a period not to exceed one year,~~  
30 ~~or by imprisonment in the state prison for 16 months, or two or~~  
31 ~~three years.~~

32 ~~(b) (1) Except as provided in paragraphs (4) and (5), any person~~  
33 ~~who is convicted of a felony committed for the benefit of, at the~~  
34 ~~direction of, or in association with any criminal street gang, with~~  
35 ~~the specific intent to promote, further, or assist in any criminal~~  
36 ~~conduct by gang members, shall, upon conviction of that felony,~~  
37 ~~in addition and consecutive to the punishment prescribed for the~~  
38 ~~felony or attempted felony of which he or she has been convicted,~~  
39 ~~be punished as follows:~~

1 (A) Except as provided in subparagraphs (B) and (C), the person  
2 shall be punished by an additional term of two, three, or four years  
3 at the court's discretion.

4 (B) If the felony is a serious felony, as defined in subdivision  
5 (e) of Section 1192.7, the person shall be punished by an additional  
6 term of five years.

7 (C) If the felony is a violent felony, as defined in subdivision  
8 (e) of Section 667.5, the person shall be punished by an additional  
9 term of 10 years.

10 (2) If the underlying felony described in paragraph (1) is  
11 committed on the grounds of, or within 1,000 feet of, a public or  
12 private elementary, vocational, junior high, or high school, during  
13 hours in which the facility is open for classes or school-related  
14 programs or when minors are using the facility, that fact shall be  
15 a circumstance in aggravation of the crime in imposing a term  
16 under paragraph (1).

17 (3) The court shall order the imposition of the middle term of  
18 the sentence enhancement, unless there are circumstances in  
19 aggravation or mitigation. The court shall state the reasons for its  
20 choice of sentencing enhancements on the record at the time of  
21 the sentencing.

22 (4) Any person who is convicted of a felony enumerated in this  
23 paragraph committed for the benefit of, at the direction of, or in  
24 association with any criminal street gang, with the specific intent  
25 to promote, further, or assist in any criminal conduct by gang  
26 members, shall, upon conviction of that felony, be sentenced to  
27 an indeterminate term of life imprisonment with a minimum term  
28 of the indeterminate sentence calculated as the greater of:

29 (A) The term determined by the court pursuant to Section 1170  
30 for the underlying conviction, including any enhancement  
31 applicable under Chapter 4.5 (commencing with Section 1170) of  
32 Title 7 of Part 2, or any period prescribed by Section 3046, if the  
33 felony is any of the offenses enumerated in subparagraph (B) or  
34 (C) of this paragraph.

35 (B) Imprisonment in the state prison for 15 years, if the felony  
36 is a home invasion robbery, in violation of subparagraph (A) of  
37 paragraph (1) of subdivision (a) of Section 213; carjacking, as  
38 defined in Section 215; a felony violation of Section 246; or a  
39 violation of Section 12022.55.

1 ~~(C) Imprisonment in the state prison for seven years, if the~~  
2 ~~felony is extortion, as defined in Section 519; or threats to victims~~  
3 ~~and witnesses, as defined in Section 136.1.~~

4 ~~(5) Except as provided in paragraph (4), any person who violates~~  
5 ~~this subdivision in the commission of a felony punishable by~~  
6 ~~imprisonment in the state prison for life shall not be paroled until~~  
7 ~~a minimum of 15 calendar years have been served.~~

8 ~~(e) If the court grants probation or suspends the execution of~~  
9 ~~sentence imposed upon the defendant for a violation of subdivision~~  
10 ~~(a), or in cases involving a true finding of the enhancement~~  
11 ~~enumerated in subdivision (b), the court shall require that the~~  
12 ~~defendant serve a minimum of 180 days in a county jail as a~~  
13 ~~condition thereof.~~

14 ~~(d) Any person who is convicted of a public offense punishable~~  
15 ~~as a felony or a misdemeanor, which is committed for the benefit~~  
16 ~~of, at the direction of, or in association with any criminal street~~  
17 ~~gang, with the specific intent to promote, further, or assist in any~~  
18 ~~criminal conduct by gang members, shall be punished by~~  
19 ~~imprisonment in the county jail not to exceed one year, or by~~  
20 ~~imprisonment in the state prison for one, two, or three years,~~  
21 ~~provided that any person sentenced to imprisonment in the county~~  
22 ~~jail shall be imprisoned for a period not to exceed one year, but~~  
23 ~~not less than 180 days, and shall not be eligible for release upon~~  
24 ~~completion of sentence, parole, or any other basis, until he or she~~  
25 ~~has served 180 days. If the court grants probation or suspends the~~  
26 ~~execution of sentence imposed upon the defendant, it shall require~~  
27 ~~as a condition thereof that the defendant serve 180 days in a county~~  
28 ~~jail.~~

29 ~~(e) As used in this chapter, “pattern of criminal gang activity”~~  
30 ~~means the commission of, attempted commission of, conspiracy~~  
31 ~~to commit, or solicitation of, sustained juvenile petition for, or~~  
32 ~~conviction of two or more of the following offenses, provided at~~  
33 ~~least one of these offenses occurred after the effective date of this~~  
34 ~~chapter and the last of those offenses occurred within three years~~  
35 ~~after a prior offense, and the offenses were committed on separate~~  
36 ~~occasions, or by two or more persons:~~

37 ~~(1) Assault with a deadly weapon or by means of force likely~~  
38 ~~to produce great bodily injury, as defined in Section 245.~~

39 ~~(2) Robbery, as defined in Chapter 4 (commencing with Section~~  
40 ~~211) of Title 8.~~

- 1     ~~(3) Unlawful homicide or manslaughter, as defined in Chapter~~
- 2 ~~1 (commencing with Section 187) of Title 8.~~
- 3     ~~(4) The sale, possession for sale, transportation, manufacture,~~
- 4 ~~offer for sale, or offer to manufacture controlled substances as~~
- 5 ~~defined in Sections 11054, 11055, 11056, 11057, and 11058 of~~
- 6 ~~the Health and Safety Code.~~
- 7     ~~(5) Shooting at an inhabited dwelling or occupied motor vehicle,~~
- 8 ~~as defined in Section 246.~~
- 9     ~~(6) Discharging or permitting the discharge of a firearm from~~
- 10 ~~a motor vehicle, as defined in subdivisions (a) and (b) of Section~~
- 11 ~~26100.~~
- 12     ~~(7) Arson, as defined in Chapter 1 (commencing with Section~~
- 13 ~~450) of Title 13.~~
- 14     ~~(8) The intimidation of witnesses and victims, as defined in~~
- 15 ~~Section 136.1.~~
- 16     ~~(9) Grand theft, as defined in subdivision (a) or (c) of Section~~
- 17 ~~487.~~
- 18     ~~(10) Grand theft of any firearm, vehicle, trailer, or vessel.~~
- 19     ~~(11) Burglary, as defined in Section 459.~~
- 20     ~~(12) Rape, as defined in Section 261.~~
- 21     ~~(13) Looting, as defined in Section 463.~~
- 22     ~~(14) Money laundering, as defined in Section 186.10.~~
- 23     ~~(15) Kidnapping, as defined in Section 207.~~
- 24     ~~(16) Mayhem, as defined in Section 203.~~
- 25     ~~(17) Aggravated mayhem, as defined in Section 205.~~
- 26     ~~(18) Torture, as defined in Section 206.~~
- 27     ~~(19) Felony extortion, as defined in Sections 518 and 520.~~
- 28     ~~(20) Felony vandalism, as defined in paragraph (1) of~~
- 29 ~~subdivision (b) of Section 594.~~
- 30     ~~(21) Carjacking, as defined in Section 215.~~
- 31     ~~(22) The sale, delivery, or transfer of a firearm, in violation of~~
- 32 ~~Article 1 (commencing with Section 27500) of Chapter 4 of~~
- 33 ~~Division 6 of Title 4 of Part 6.~~
- 34     ~~(23) Possession of a pistol, revolver, or other firearm capable~~
- 35 ~~of being concealed upon the person in violation of Section 29610.~~
- 36     ~~(24) Threats to commit crimes resulting in death or great bodily~~
- 37 ~~injury, as defined in Section 422.~~
- 38     ~~(25) Theft and unlawful taking or driving of a vehicle, as defined~~
- 39 ~~in Section 10851 of the Vehicle Code.~~

- 1     ~~(26) Felony theft of an access card or account information, as~~
- 2     ~~defined in Section 484e.~~
- 3     ~~(27) Counterfeiting, designing, using, or attempting to use an~~
- 4     ~~access card, as defined in Section 484f.~~
- 5     ~~(28) Felony fraudulent use of an access card or account~~
- 6     ~~information, as defined in Section 484g.~~
- 7     ~~(29) Unlawful use of personal identifying information to obtain~~
- 8     ~~credit, goods, services, or medical information, as defined in~~
- 9     ~~Section 530.5.~~
- 10    ~~(30) Wrongfully obtaining Department of Motor Vehicles~~
- 11    ~~documentation, as defined in Section 529.7.~~
- 12    ~~(31) Prohibited possession of a firearm in violation of Chapter~~
- 13    ~~2 (commencing with Section 29800) of Division 9 of Title 4 of~~
- 14    ~~Part 6.~~
- 15    ~~(32) Carrying a concealed firearm in violation of Section 25400.~~
- 16    ~~(33) Carrying a loaded firearm in violation of Section 25850.~~
- 17    ~~(f) As used in this chapter, “criminal street gang” means any~~
- 18    ~~ongoing organization, association, or group of three or more~~
- 19    ~~persons, whether formal or informal, having as one of its primary~~
- 20    ~~activities the commission of one or more of the criminal acts~~
- 21    ~~enumerated in paragraphs (1) to (25), inclusive, or (31) to (33),~~
- 22    ~~inclusive, of subdivision (e), having a common name or common~~
- 23    ~~identifying sign or symbol, and whose members individually or~~
- 24    ~~collectively engage in or have engaged in a pattern of criminal~~
- 25    ~~gang activity.~~
- 26    ~~(g) Notwithstanding any other law, the court may strike the~~
- 27    ~~additional punishment for the enhancements provided in this~~
- 28    ~~section or refuse to impose the minimum jail sentence for~~
- 29    ~~misdemeanors in an unusual case where the interests of justice~~
- 30    ~~would best be served, if the court specifies on the record and enters~~
- 31    ~~into the minutes the circumstances indicating that the interests of~~
- 32    ~~justice would best be served by that disposition.~~
- 33    ~~(h) Notwithstanding any other provision of law, for each person~~
- 34    ~~committed to the Division of Juvenile Facilities for a conviction~~
- 35    ~~pursuant to subdivision (a) or (b) of this section, the offense shall~~
- 36    ~~be deemed one for which the state shall pay the rate of 100 percent~~
- 37    ~~of the per capita institutional cost of the Division of Juvenile~~
- 38    ~~Facilities, pursuant to Section 912.5 of the Welfare and Institutions~~
- 39    ~~Code.~~

1 (i) In order to secure a conviction or sustain a juvenile petition,  
2 pursuant to subdivision (a) it is not necessary for the prosecution  
3 to prove that the person devotes all, or a substantial part, of his or  
4 her time or efforts to the criminal street gang, nor is it necessary  
5 to prove that the person is a member of the criminal street gang.  
6 ~~Active participation in the criminal street gang is all that is~~  
7 ~~required.~~

8 (j) ~~A pattern of gang activity may be shown by the commission~~  
9 ~~of one or more of the offenses enumerated in paragraphs (26) to~~  
10 ~~(30), inclusive, of subdivision (e), and the commission of one or~~  
11 ~~more of the offenses enumerated in paragraphs (1) to (25),~~  
12 ~~inclusive, or (31) to (33), inclusive, of subdivision (e). A pattern~~  
13 ~~of gang activity cannot be established solely by proof of~~  
14 ~~commission of offenses enumerated in paragraphs (26) to (30),~~  
15 ~~inclusive, of subdivision (e), alone.~~

16 (k) ~~For purposes of this section, “drug cartel” means any~~  
17 ~~criminal organization developed with the primary purpose of~~  
18 ~~promoting and controlling drug trafficking operations and shall~~  
19 ~~include, but not be limited to, all of the following:~~

- 20 (1) ~~The Medellin Cartel.~~
- 21 (2) ~~The Cali Cartel.~~
- 22 (3) ~~The Norte del Valle Cartel.~~
- 23 (4) ~~The North Coast Cartel.~~
- 24 (5) ~~The Beltran-Leyva Cartel.~~
- 25 (6) ~~The La Familia Cartel.~~
- 26 (7) ~~The Gulf Cartel.~~
- 27 (8) ~~The Juarez Cartel.~~
- 28 (9) ~~The Sinaloa Cartel.~~
- 29 (10) ~~The Tijuana Cartel.~~
- 30 (11) ~~The Los Zetas Cartel.~~

31 (l) ~~Notwithstanding any other law, if the finder of fact makes a~~  
32 ~~finding that the defendant was, at the time the defendant committed~~  
33 ~~a crime, a member of, affiliated with, or associated with a criminal~~  
34 ~~street gang or a drug cartel, as defined in subdivision (k), the court~~  
35 ~~shall, after making a determination of the punishment that would~~  
36 ~~otherwise be imposed, automatically double all fines and terms of~~  
37 ~~imprisonment otherwise applicable to the defendant and all~~  
38 ~~penalties imposed pursuant to Section 1202.4.~~

39 ~~SEC. 2. No reimbursement is required by this act pursuant to~~  
40 ~~Section 6 of Article XIII B of the California Constitution because~~

1 ~~the only costs that may be incurred by a local agency or school~~  
2 ~~district will be incurred because this act creates a new crime or~~  
3 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
4 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
5 ~~the Government Code, or changes the definition of a crime within~~  
6 ~~the meaning of Section 6 of Article XIII B of the California~~  
7 ~~Constitution.~~

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