

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1123

Introduced by Assembly Members Patterson and Nestande

February 22, 2013

An act to amend Section 186.22 of the Penal Code, relating to street gangs.

LEGISLATIVE COUNSEL'S DIGEST

AB 1123, as amended, Patterson. Street gangs.

Existing law ~~makes~~ *provides that* any person who actively participates in any criminal street gang with knowledge that the members of the gang engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, *is guilty of a crime* punishable by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or 2 or 3 years.

This bill would ~~make technical, nonsubstantive changes to that provision~~ *revise and expand the scope of the provision described above to apply to a person who actively participates in a criminal street gang with knowledge that the gang's members or active participants engage in or have engaged in a pattern of criminal gang activity, and who (1) commits, alone or in concert, a felony that is one of the gang's primary activities, as described, (2) aids or abets any felony committed by a member of, or active participant in, that gang, or (3) willfully promotes, furthers, or assists in any felonious criminal conduct by a member of, or an active participant in, that gang. By revising and expanding the scope of a 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: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

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

1 SECTION 1. Section 186.22 of the Penal Code, as amended
2 by Section 2 of Chapter 361 of the Statutes of 2011, is amended
3 to read:

4 186.22. (a) Any person who actively participates in ~~any a~~
5 criminal street gang with knowledge that ~~the its~~ members ~~of the~~
6 ~~gang or active participants~~ engage in or have engaged in a pattern
7 of criminal gang activity, and who (1) commits, alone or in concert,
8 a felony that is one of the gang's primary activities and is set forth
9 in subdivision (e), (2) aids or abets any felony committed by a
10 member of, or an active participant in, that gang, or (3) willfully
11 promotes, furthers, or assists in any felonious criminal conduct by
12 ~~members~~ a member of, or an active participant in, that gang, shall
13 be punished by imprisonment in a county jail for a period not to
14 exceed one year, or by imprisonment in the state prison for 16
15 months, or two or three years.

16 (b) (1) Except as provided in paragraphs (4) and (5), any person
17 who is convicted of a felony committed for the benefit of, at the
18 direction of, or in association with any criminal street gang, with
19 the specific intent to promote, further, or assist in any criminal
20 conduct by gang members, shall, upon conviction of that felony,
21 in addition and consecutive to the punishment prescribed for the
22 felony or attempted felony of which he or she has been convicted,
23 be punished as follows:

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

27 (B) If the felony is a serious felony, as defined in subdivision
28 (c) of Section 1192.7, the person shall be punished by an additional
29 term of five years.

1 (C) If the felony is a violent felony, as defined in subdivision
2 (c) of Section 667.5, the person shall be punished by an additional
3 term of 10 years.

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

11 (3) The court shall order the imposition of the middle term of
12 the sentence enhancement, unless there are circumstances in
13 aggravation or mitigation. The court shall state the reasons for its
14 choice of sentencing enhancements on the record at the time of
15 the sentencing.

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

23 (A) The term determined by the court pursuant to Section 1170
24 for the underlying conviction, including any enhancement
25 applicable under Chapter 4.5 (commencing with Section 1170) of
26 Title 7 of Part 2, or any period prescribed by Section 3046, if the
27 felony is any of the offenses enumerated in subparagraph (B) or
28 (C) of this paragraph.

29 (B) Imprisonment in the state prison for 15 years, if the felony
30 is a home invasion robbery, in violation of subparagraph (A) of
31 paragraph (1) of subdivision (a) of Section 213; carjacking, as
32 defined in Section 215; a felony violation of Section 246; or a
33 violation of Section 12022.55.

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

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

1 (c) If the court grants probation or suspends the execution of
2 sentence imposed upon the defendant for a violation of subdivision
3 (a), or in cases involving a true finding of the enhancement
4 enumerated in subdivision (b), the court shall require that the
5 defendant serve a minimum of 180 days in a county jail as a
6 condition thereof.

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

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

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

32 (2) Robbery, as defined in Chapter 4 (commencing with Section
33 211) of Title 8 of Part 1.

34 (3) Unlawful homicide or manslaughter, as defined in Chapter
35 1 (commencing with Section 187) of Title 8 of Part 1.

36 (4) The sale, possession for sale, transportation, manufacture,
37 offer for sale, or offer to manufacture controlled substances as
38 defined in Sections 11054, 11055, 11056, 11057, and 11058 of
39 the Health and Safety Code.

1 (5) Shooting at an inhabited dwelling or occupied motor vehicle,
2 as defined in Section 246.

3 (6) Discharging or permitting the discharge of a firearm from
4 a motor vehicle, as defined in subdivisions (a) and (b) of Section
5 12034 until January 1, 2012, and, on or after that date, subdivisions
6 (a) and (b) of Section 26100.

7 (7) Arson, as defined in Chapter 1 (commencing with Section
8 450) of Title 13.

9 (8) The intimidation of witnesses and victims, as defined in
10 Section 136.1.

11 (9) Grand theft, as defined in subdivision (a) or (c) of Section
12 487.

13 (10) Grand theft of any firearm, vehicle, trailer, or vessel.

14 (11) Burglary, as defined in Section 459.

15 (12) Rape, as defined in Section 261.

16 (13) Looting, as defined in Section 463.

17 (14) Money laundering, as defined in Section 186.10.

18 (15) Kidnapping, as defined in Section 207.

19 (16) Mayhem, as defined in Section 203.

20 (17) Aggravated mayhem, as defined in Section 205.

21 (18) Torture, as defined in Section 206.

22 (19) Felony extortion, as defined in Sections 518 and 520.

23 (20) Felony vandalism, as defined in paragraph (1) of
24 subdivision (b) of Section 594.

25 (21) Carjacking, as defined in Section 215.

26 (22) The sale, delivery, or transfer of a firearm, as defined in
27 Section 12072 until January 1, 2012, and, on or after that date,
28 Article 1 (commencing with Section 27500) of Chapter 4 of
29 Division 6 of Title 4 of Part 6.

30 (23) Possession of a pistol, revolver, or other firearm capable
31 of being concealed upon the person in violation of paragraph (1)
32 of subdivision (a) of Section 12101 until January 1, 2012, and, on
33 or after that date, Section 29610.

34 (24) Threats to commit crimes resulting in death or great bodily
35 injury, as defined in Section 422.

36 (25) Theft and unlawful taking or driving of a vehicle, as defined
37 in Section 10851 of the Vehicle Code.

38 (26) Felony theft of an access card or account information, as
39 defined in Section 484e.

1 (27) Counterfeiting, designing, using, or attempting to use an
2 access card, as defined in Section 484f.

3 (28) Felony fraudulent use of an access card or account
4 information, as defined in Section 484g.

5 (29) Unlawful use of personal identifying information to obtain
6 credit, goods, services, or medical information, as defined in
7 Section 530.5.

8 (30) Wrongfully obtaining Department of Motor Vehicles
9 documentation, as defined in Section 529.7.

10 (31) Prohibited possession of a firearm in violation of Section
11 12021 until January 1, 2012, and, on or after that date, Chapter 2
12 (commencing with Section 29800) of Division 9 of Title 4 of Part
13 6.

14 (32) Carrying a concealed firearm in violation of Section 12025
15 until January 1, 2012, and, on or after that date, Section 25400.

16 (33) Carrying a loaded firearm in violation of Section 12031
17 until January 1, 2012, and, on or after that date, Section 25850.

18 (f) As used in this chapter, “criminal street gang” means any
19 ongoing organization, association, or group of three or more
20 persons, whether formal or informal, having as one of its primary
21 activities the commission of one or more of the criminal acts
22 enumerated in paragraphs (1) to (25), inclusive, or (31) to (33),
23 inclusive, of subdivision (e), having a common name or common
24 identifying sign or symbol, and whose members individually or
25 collectively engage in or have engaged in a pattern of criminal
26 gang activity.

27 (g) Notwithstanding any other law, the court may strike the
28 additional punishment for the enhancements provided in this
29 section or refuse to impose the minimum jail sentence for
30 misdemeanors in an unusual case where the interests of justice
31 would best be served, if the court specifies on the record and enters
32 into the minutes the circumstances indicating that the interests of
33 justice would best be served by that disposition.

34 (h) Notwithstanding any other provision of law, for each person
35 committed to the Division of Juvenile Facilities for a conviction
36 pursuant to subdivision (a) or (b) of this section, the offense shall
37 be deemed one for which the state shall pay the rate of 100 percent
38 of the per capita institutional cost of the Division of Juvenile
39 Facilities, pursuant to Section 912.5 of the Welfare and Institutions
40 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) This section shall become operative on January 1, 2014.

17 *SEC. 2. It is the intent of the Legislature in enacting this act*
18 *to address the California Supreme Court's decision in People v.*
19 *Rodriguez (2012) S187680 and to ensure that a person who actively*
20 *participates in a criminal street gang with knowledge that its*
21 *members or active participants engage in or have engaged in a*
22 *pattern of criminal gang activity, and who (1) commits, alone or*
23 *in concert, a felony that is one of the gang's primary activities, as*
24 *described in the amendments made by this act, (2) aids or abets*
25 *any felony committed by a member of, or an active participant in,*
26 *that gang, or (3) willfully promotes, furthers, or assists in any*
27 *felonious criminal conduct by a member of, or an active participant*
28 *in, that gang, may be prosecuted pursuant to subdivision (a) of*
29 *Section 186.22 of the Penal Code.*

30 *SEC. 3. No reimbursement is required by this act pursuant to*
31 *Section 6 of Article XIII B of the California Constitution because*
32 *the only costs that may be incurred by a local agency or school*
33 *district will be incurred because this act creates a new crime or*
34 *infraction, eliminates a crime or infraction, or changes the penalty*
35 *for a crime or infraction, within the meaning of Section 17556 of*
36 *the Government Code, or changes the definition of a crime within*
37 *the meaning of Section 6 of Article XIII B of the California*
38 *Constitution.*