

Introduced by Senator Calderon

February 23, 1996

An act to amend Sections 186.22, 186.22a, 186.26, and 186.28 of, to add Sections 186.22b, 186.22c, 186.22d, 186.22e, 186.22f, 186.22g, and 186.22h to, and to repeal Section 186.27 of, the Penal Code, relating to crime, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1992, as introduced, Calderon. Street terrorism: forfeiture.

(1) Existing law, known as the Street Terrorism Enforcement and Prevention Act, provides that any person who actively participates in any criminal street gang with knowledge that its members 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, shall be punished 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 repeal the above provision.

(2) Existing law provides that (a) any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of

one, 2, or 3 years at the court's discretion, and (b) if the underlying felony is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school-related programs or when minors are using the facility, the additional term shall be 2, 3, or 4 years, at the court's discretion.

This bill would increase the term of imprisonment for the offense specified in (a) above from one, 2, or 3 years to 4, 5, or 6 years, and would increase the term of imprisonment for the offense specified in (b) above from 2, 3, or 4 years to 5, 6, or 7 years. The bill would make conforming changes.

(3) Existing law provides that every building or place wherein or upon which specified criminal conduct by gang members takes place is a nuisance which shall be enjoined, abated, and prevented, and for which damages may be recovered, whether it is a public or private nuisance. Existing law also provides that no order of eviction of a tenant or closure of a building may be entered under this nuisance provision.

This bill would provide that for the building or place to be considered a nuisance the criminal conduct by gang members must be on an ongoing basis. The bill would also provide that any activity by members of a criminal street gang that risks injury to the public's health or safety or obstructs the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance that shall be enjoined, abated, and prevented. This bill would further provide for an order of eviction of a tenant or the closure of a building if the tenant or the owner of the building is convicted of a specified offense.

(4) Existing law provides that any adult who utilizes physical violence to coerce, induce, or solicit another person who is under 18 years of age to actively participate in any criminal street gang shall be punished by imprisonment in the state prison for one, 2, or 3 years. Existing law further provides that any adult who threatens a minor with physical violence on 2 or more separate occasions within any 30-day period with the intent to coerce, induce, or solicit the minor to actively participate in a criminal street gang shall be punished by



imprisonment in the state prison for one, 2, or 3 years or in a county jail for up to one year.

This bill would revise these provisions to delete the element of “active” participation in any criminal street gang and would increase the term of imprisonment in state prison for these offenses from one, 2, or 3 years to 2, 3, or 4 years.

(5) Existing law provides that any person who shall knowingly supply, sell, or give possession or control of any firearm to another shall be punished by imprisonment in the state prison for 16 months, or 2 or 3 years, or in a county jail for a term not exceeding one year, if the person has actual knowledge that the other person will use the firearm to commit a specified felony, the firearm is used to commit the felony, and a conviction for the felony violation has first been obtained of the person to whom the firearm was supplied, sold, or given possession or control.

This bill would increase the punishment for this offense by eliminating imprisonment in a county jail as a possible sentence.

(6) The bill would also set forth a procedure for the seizure and forfeiture of assets used in, or derived from, the criminal activity prohibited under the Street Terrorism Enforcement and Prevention Act. The bill would provide for the distribution of any money forfeited, or the proceeds of the sale of any assets forfeited, to specified persons and state and local entities for specified reimbursement purposes, including the satisfaction of orders of restitution outstanding against the defendant. By providing for this distribution, this bill would make an appropriation.

(7) The Street Terrorism Enforcement and Prevention Act is scheduled to be repealed on January 1, 1997. The act contains specified crimes which prohibit specified acts by criminal street gangs as described in part above.

This bill would delete that scheduled repealer. By extending the duration of the various crimes contained in the act, the bill would impose a state-mandated local program.

(8) 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: ²/₃. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. Section 186.22 of the Penal Code is
2 amended to read:

3 ~~186.22. (a) Any person who actively participates in~~
4 ~~any criminal street gang with knowledge that its~~
5 ~~members engage in or have engaged in a pattern of~~
6 ~~criminal gang activity, and who willfully promotes,~~
7 ~~further, or assists in any felonious criminal conduct by~~
8 ~~members of that gang, shall be punished by~~
9 ~~imprisonment in a county jail for a period not to exceed~~
10 ~~one year, or by imprisonment in the state prison for 16~~
11 ~~months, or 2 or 3 years.~~

12 ~~(b) (1) Except as provided in paragraph (4), any~~
13 ~~(1) Any person who is convicted of a felony committed~~
14 ~~for the benefit of, at the direction of, or in association with~~
15 ~~any criminal street gang, or committed with the specific~~
16 ~~intent to promote, further, or assist in any criminal~~
17 ~~conduct by gang members, shall, upon conviction of that~~
18 ~~felony, in addition and consecutive to the punishment~~
19 ~~prescribed for the felony or attempted felony of which he~~
20 ~~or she has been convicted, be punished by an additional~~
21 ~~term of one, two, or three four, five, or six years at the~~
22 ~~court's discretion.~~

23 (2) If the underlying felony described in paragraph
24 (1) is committed on the grounds of, or within 1,000 feet
25 of, a public or private elementary, vocational, junior high,
26 or high school, during hours in which the facility is open
27 for classes or school related programs or when minors are
28 using the facility, the additional term shall be ~~two, three,~~
29 ~~or four~~ five, six, or seven years, at the court's discretion.

30 (3) The court shall order the imposition of the middle
31 term of the sentence enhancement, unless there are
32 circumstances in aggravation or mitigation. The court
33 shall state the reasons for its choice of sentence



1 enhancements on the record at the time of the
2 sentencing.

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

7 ~~(e)~~

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

15 ~~(d)~~

16 (c) Notwithstanding any other law, the court may
17 strike *or reduce* the additional punishment for the
18 enhancements provided in this section ~~or refuse to~~
19 ~~impose the minimum jail sentence for misdemeanors~~ in
20 an unusual case where the interests of justice would best
21 be served, if the court specifies on the record and enters
22 into the minutes the circumstances indicating that the
23 interests of justice would best be served by that
24 disposition.

25 ~~(e) As used in this chapter, "pattern of criminal gang~~
26 ~~activity" means the commission, attempted commission,~~
27 ~~or solicitation of two or more of the following offenses;~~
28 ~~provided at least one of those offenses occurred after the~~
29 ~~effective date of this chapter and the last of those offenses~~
30 ~~occurred within three years after a prior offense, and the~~
31 ~~offenses are committed on separate occasions, or by two~~
32 ~~or more persons:~~

33 (d) *As used in this chapter, "criminal street gang"*
34 *means any ongoing organization, association, or group of*
35 *three or more persons, whether formal or informal,*
36 *having a common name or common identifying sign or*
37 *symbol, and having as one of its primary activities the*
38 *commission of one or more of the following criminal acts:*



- 1 (1) Assault with a deadly weapon or by means of force
2 likely to produce great bodily injury, as defined in Section
3 245.
- 4 (2) Robbery, as defined in Chapter 4 (commencing
5 with Section 211) of Title 8 of Part 1.
- 6 (3) Unlawful homicide or manslaughter, as defined in
7 Chapter 1 (commencing with Section 187) of Title 8 of
8 Part 1.
- 9 (4) The sale, possession for sale, transportation,
10 manufacture, offer for sale, or offer to manufacture
11 controlled substances as defined in Sections 11054, 11055,
12 11056, 11057, and 11058 of the Health and Safety Code.
- 13 (5) Shooting at an inhabited dwelling or occupied
14 motor vehicle, as defined in Section 246.
- 15 (6) Discharging or permitting the discharge of a
16 firearm from a motor vehicle, as defined in subdivisions
17 (a) and (b) of Section 12034.
- 18 (7) Arson, as defined in Chapter 1 (commencing with
19 Section 450) of Title 13.
- 20 (8) The intimidation of witnesses and victims, as
21 defined in Section 136.1.
- 22 (9) Grand theft, as defined in Section 487, when the
23 value of the money, labor, or real or personal property
24 taken exceeds ten thousand dollars (\$10,000).
- 25 (10) Grand theft of any vehicle, trailer, or vessel, as
26 described in Section 487h.
- 27 (11) Burglary, as defined in Section 459.
- 28 (12) Rape, as defined in Section 261.
- 29 (13) Looting, as defined in Section 463.
- 30 (14) Moneylaundering, as defined in Section 186.10.
- 31 (15) Kidnapping, as defined in Section 207.
- 32 (16) Mayhem, as defined in Section 203.
- 33 (17) Aggravated mayhem, as defined in Section 205.
- 34 (18) Torture, as defined in Section 206.
- 35 (19) Felony extortion, as defined in Sections 518 and
36 520.
- 37 (20) Felony vandalism, as defined in paragraph (1) of
38 subdivision (b) of Section 594.
- 39 (21) Carjacking, as defined in Section 215.



1 (22) The sale, delivery, or transfer of a firearm as
2 described in Section 12072.

3 (23) Possession of a pistol, revolver, or other firearm
4 capable of being concealed upon the person in violation
5 of paragraph (1) of subdivision (a) of Section 12101.

6 ~~(f) As used in this chapter, "criminal street gang"~~
7 ~~means any ongoing organization, association, or group of~~
8 ~~three or more persons, whether formal or informal,~~
9 ~~having as one of its primary activities the commission of~~
10 ~~one or more of the criminal acts enumerated in~~
11 ~~paragraphs (1) to (23), inclusive, of subdivision (e),~~
12 ~~having a common name or common identifying sign or~~
13 ~~symbol, and whose members individually or collectively~~
14 ~~engage in or have engaged in a pattern of criminal gang~~
15 ~~activity.~~

16 ~~(g) This section shall remain in effect only until~~
17 ~~January 1, 1997, and on that date is repealed.~~

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

20 186.22a. (a) Every building or place used by
21 members of a criminal street gang for the purpose of the
22 commission of the offenses listed in subdivision ~~(e)~~ (d) of
23 Section 186.22 or any offense involving dangerous or
24 deadly weapons, burglary, or rape, and every building or
25 place wherein or upon which that criminal conduct by
26 gang members takes place *on an ongoing basis*, is a
27 nuisance which shall be enjoined, abated, and prevented,
28 and for which damages may be recovered, whether it is
29 a public or private nuisance.

30 (b) *Any activity by members of a criminal street gang*
31 *that risks injury to the public's health or safety or*
32 *obstructs the free use of property, so as to interfere with*
33 *the comfortable enjoyment of life or property, is a*
34 *nuisance that shall be enjoined, abated, and prevented.*

35 (c) Any action for injunction or abatement filed
36 pursuant to subdivision (a) *or (b)* shall proceed
37 according to the provisions of Article 3 (commencing
38 with Section 11570) of Chapter 10 of Division 10 of the
39 Health and Safety Code, except that all of the following
40 shall apply:



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

4 (2) No order of eviction or closure may be entered,
5 *except that eviction may be ordered of any tenant who is*
6 *convicted of an offense under Section 186.22, and closure*
7 *may be ordered where the owner of the building at the*
8 *time of the offense is convicted of an offense under*
9 *Section 186.22.*

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

14 (4) ~~Suit~~ *Where an injunction is sought under*
15 *subdivision (a), suit may not be filed until 30-day notice*
16 *of the unlawful use or criminal conduct has been*
17 *provided to the owner of the building or place by mail,*
18 *return receipt requested, postage prepaid, to the last*
19 *known address.*

20 ~~(e)~~

21 (d) No nonprofit or charitable organization which is
22 conducting its affairs with ordinary care or skill, and no
23 governmental entity, shall be abated pursuant to
24 ~~subdivisions subdivision (a) and or (b).~~

25 ~~(d)~~

26 (e) Nothing in this chapter shall preclude any
27 aggrieved person from seeking any other remedy
28 provided by law, *nor is anything in this chapter intended*
29 *to preempt the use of any other abatement procedures*
30 *provided by law.*

31 ~~(e)~~

32 (f) (1) Any firearm, ammunition which may be used
33 with the firearm, or any deadly or dangerous weapon
34 which is owned or possessed by a member of a criminal
35 street gang for the purpose of the commission of any of
36 the offenses listed in subdivision ~~(e)~~ (d) of Section 186.22,
37 or the commission of any burglary or rape, may be
38 confiscated by any law enforcement agency or peace
39 officer.



1 (2) In those cases where a law enforcement agency
2 believes that the return of the firearm, ammunition, or
3 deadly weapon confiscated pursuant to this subdivision,
4 is or will be used in criminal street gang activity or that
5 the return of the item would be likely to result in
6 endangering the safety of others, the law enforcement
7 agency shall initiate a petition in the superior court to
8 determine if the item confiscated should be returned or
9 declared a nuisance.

10 (3) No firearm, ammunition, or deadly weapon shall
11 be sold or destroyed unless reasonable notice is given to
12 its lawful owner if his or her identity and address can be
13 reasonably ascertained. The law enforcement agency
14 shall inform the lawful owner, at that person's last known
15 address by registered mail, that he or she has 30 days from
16 the date of receipt of the notice to respond to the court
17 clerk to confirm his or her desire for a hearing and that
18 the failure to respond shall result in a default order
19 forfeiting the confiscated firearm, ammunition, or deadly
20 weapon as a nuisance.

21 (4) If the person requests a hearing, the court clerk
22 shall set a hearing no later than 30 days from receipt of
23 that request. The court clerk shall notify the person, the
24 law enforcement agency involved, and the district
25 attorney of the date, time, and place of the hearing.

26 (5) At the hearing, the burden of proof is upon the law
27 enforcement agency or peace officer to show by a
28 preponderance of the evidence that the seized item is or
29 will be used in criminal street gang activity or that return
30 of the item would be likely to result in endangering the
31 safety of others. All returns of firearms shall be subject to
32 subdivision (d) of Section 12072.

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



1 SEC. 3. Section 186.22b is added to the Penal Code, to
2 read:

3 186.22b. (a) In any case in which a person is
4 convicted of an offense described in subdivision (a) of
5 Section 186.22, upon conviction the person shall, upon
6 proof required by subdivision (d) of Section 186.22d,
7 forfeit the assets described below in subdivisions (b) and
8 (c).

9 (b) Any property interest, whether tangible or
10 intangible, acquired, directly or indirectly, as a result of
11 the criminal activity giving rise to the conviction, and the
12 instrumentalities used in the commission of that criminal
13 activity.

14 (c) All proceeds of any property interest, whether
15 tangible or intangible, acquired, directly or indirectly, as
16 a result of the criminal activity giving rise to the
17 conviction, which proceeds shall include all things of
18 value that may have been received in exchange for that
19 property interest.

20 (d) Notwithstanding any other provision of this
21 section, forfeited property falling under Section 1407 shall
22 be disposed of according to that section.

23 SEC. 4. Section 186.22c is added to the Penal Code, to
24 read:

25 186.22c. (a) The prosecuting agency may, in
26 conjunction with the criminal proceeding, file a petition
27 of forfeiture with the superior court of the county in
28 which the defendant has been charged with the
29 underlying criminal offense, which shall allege that the
30 defendant has engaged in an offense described in
31 subdivision (a) of Section 186.22. The petition shall
32 describe the criminal activity giving rise to the forfeiture
33 and the property forfeitable pursuant to Section 186.22b.
34 The prosecuting agency shall make service of process of
35 a notice regarding that petition upon every individual
36 who may have a property interest in the allegedly
37 forfeitable property. The notice shall state that any
38 interested party must file a verified claim with the
39 superior court stating the nature and amount of his or her
40 claimed interest and an affirmation or denial of the



1 allegations contained within the petition. If the notices
2 cannot be delivered by registered mail or personal
3 delivery, the notices shall be published daily for at least
4 three successive weeks in a newspaper of general
5 circulation in the county where the property is located.
6 If the property alleged to be subject to forfeiture is real
7 property, the prosecuting agency shall, at the time of
8 filing the petition of forfeiture, record a lis pendens in
9 each county in which the real property is situated which
10 specifically identifies the real property alleged to be
11 subject to forfeiture. The judgment of forfeiture shall not
12 affect the interest in real property of any third party
13 which was acquired prior to the recording of the lis
14 pendens.

15 (b) All notices shall set forth the time within which a
16 claim of interest in the property seized is required to be
17 filed pursuant to Section 186.22d.

18 SEC. 5. Section 186.22d is added to the Penal Code, to
19 read:

20 186.22d. (a) Any person claiming an interest in the
21 property or proceeds shall be required, at any time within
22 30 days from the date of the first publication of the notice
23 of the seizure, or within 30 days after the receipt of actual
24 notice, to file with the superior court of the county in
25 which the action is pending a verified claim stating the
26 nature and amount of his or her interest in the property
27 or proceeds. A verified copy of the claim shall be served
28 by the claimant on the Attorney General or district
29 attorney, as appropriate, within 10 days of filing the claim
30 with the court.

31 (b) (1) Anyone other than the defendant who fails to
32 make a claim by the end of the time set forth in
33 subdivision (a), shall be deemed to have defaulted in
34 connection with his or her interest, and the property shall
35 be subject to forfeiture upon proof of subdivision (d).

36 (2) The court, upon motion, may strike a claim of
37 interest that is not verified, fails to state the nature and
38 amount of the claimant's interest, or fails to respond
39 specifically to the petition. The court shall, where the



1 interests of justice so require, give the party an
2 opportunity to amend the claim.

3 (3) The defendant may admit or deny that the
4 property is subject to forfeiture pursuant to this chapter.
5 If the defendant fails to admit or deny or to file a claim of
6 interest in the property or proceeds, the court shall enter
7 a response of denial on behalf of the defendant.

8 (c) (1) The forfeiture proceeding shall be set for
9 hearing in the superior court in which the underlying
10 criminal offense shall be tried.

11 (2) If the defendant is found guilty of the underlying
12 offense, the issue of forfeiture shall be promptly tried
13 before the same jury, or if there is no jury, before the same
14 judge, unless waived by the consent of all parties.

15 (d) At the forfeiture hearing, the prosecuting agency
16 shall have the burden of establishing beyond a reasonable
17 doubt that the property alleged in the petition comes
18 within subdivision (b) or (c) of Section 186.22b.

19 SEC. 6. Section 186.22e is added to the Penal Code, to
20 read:

21 186.22e. (a) Concurrent with, or subsequent to, the
22 filing of the petition, the prosecuting agency may move
23 the superior court for the following pendente lite orders
24 to preserve the status quo of the property alleged in the
25 petition of forfeiture:

26 (1) An injunction to restrain all interested parties and
27 enjoin them from transferring, encumbering,
28 hypothecating, or otherwise disposing of that property.

29 (2) Appointment of a receiver to take possession of,
30 care for, manage, and operate the assets and properties
31 so that property may be maintained and preserved.

32 (b) No preliminary injunction may be granted or
33 receiver appointed without notice to the interested
34 parties and a hearing to determine that the order is
35 necessary to preserve the property, pending the outcome
36 of the criminal proceedings, and that there is probable
37 cause to believe that the property alleged in the forfeiture
38 proceedings is forfeitable under Section 186.22b.
39 However, a temporary restraining order may issue



1 pending that hearing pursuant to Section 527 of the Code
2 of Civil Procedure.

3 (c) The court in granting these motions may order a
4 surety bond or undertaking to preserve the property
5 interests of the interested parties.

6 (d) The court shall, in making its orders, seek to
7 protect the interests of third parties not involved in the
8 activities giving rise to the forfeiture.

9 SEC. 7. Section 186.22f is added to the Penal Code, to
10 read:

11 186.22f. (a) If the trier of fact at the forfeiture
12 hearing finds that the alleged property or proceeds is
13 forfeitable pursuant to Section 186.22b, the court shall
14 declare that property or proceeds forfeited to the state or
15 local governmental entity, subject to distribution as
16 provided in Section 186.22g. Provided that the owner has
17 timely claimed his or her interest under Section 186.22d,
18 no property shall be subject to forfeiture if it is solely
19 owned by a bona fide purchaser for value who had no
20 notice of the property's criminal connection.

21 (b) If the trier of fact at the forfeiture hearing finds
22 that the alleged property is forfeitable pursuant to
23 Section 186.22b but does not find that a person holding a
24 valid lien, mortgage, security interest, or interest under
25 a conditional sales contract acquired that interest with
26 actual knowledge that the property was acquired or used
27 by the defendant in connection with criminal activity,
28 and the amount due to that person is less than or equal to
29 the appraised value of the property, that person may pay
30 to the state or the local governmental entity which
31 initiated the forfeiture proceeding, the amount of the
32 registered owner's equity, which shall be deemed to be
33 the difference between the appraised value and the
34 amount of the lien, mortgage, security interest, or interest
35 under a conditional sales contract. Upon that payment,
36 the state or local governmental entity shall relinquish all
37 claims to the property. If the holder of the interest elects
38 not to make that payment to the state or local
39 governmental entity, the property shall be deemed
40 forfeited to the state or local governmental entity and the



1 ownership certificate shall be forwarded. The appraised
2 value shall be determined as of the date judgment is
3 entered either by agreement between the legal owner
4 and the governmental entity involved, or if they cannot
5 agree, then by a court-appointed appraiser for the county
6 in which the action is brought. A person holding a valid
7 lien, mortgage, security interest, or interest under a
8 conditional sales contract shall be paid the appraised
9 value of his or her interest.

10 (c) If the amount due to a person holding a valid lien,
11 mortgage, security interest, or interest under a
12 conditional sales contract is less than the value of the
13 property and the person elects not to make payment to
14 the governmental entity, the property shall be sold at
15 public auction by the Department of General Services or
16 by the local governmental entity which shall provide
17 notice of that sale by one publication in a newspaper
18 published and circulated in the city, community, or
19 locality where the sale is to take place.

20 (d) Notwithstanding subdivision (c), a county may
21 dispose of any real property forfeited to the county may
22 under this chapter pursuant to Section 25538.5 of the
23 Government Code.

24 SEC. 8. Section 186.22g is added to the Penal Code, to
25 read:

26 186.22g. Notwithstanding that no response claim has
27 been filed pursuant to Section 186.22d, in all cases where
28 property is forfeited pursuant to this chapter and, where
29 necessary, sold by the Department of General Services or
30 local governmental entity, the money forfeited or the
31 proceeds of sale shall be distributed by the state or local
32 governmental entity as follows:

33 (a) To the bona fide or innocent purchaser,
34 conditional sales vendor, or holder of valid lien, mortgage,
35 or security interest, if any, up to the amount of his or her
36 interest in the property or proceeds, when the court
37 declaring the forfeiture orders a distribution to that
38 person. The court shall endeavor to discover all
39 lienholders and protect their interests and may, in its
40 discretion, order the proceeds placed in escrow for up to



1 60 days to ensure that all valid claims are received and
2 processed. At the conclusion of the escrow, all funds shall
3 be distributed according to this section.

4 (b) To the Department of General Services or local
5 governmental entity for all expenditures made or
6 incurred by it in connection with the sale of the property,
7 including expenditures for any necessary repairs, storage,
8 or transportation of any property seized under this
9 chapter.

10 (c) To satisfy orders of restitution outstanding against
11 the defendant. Where the value of forfeited property is
12 insufficient to satisfy all orders, the property shall be used
13 first to satisfy, pro rata, orders of restitution issued in
14 connection with any conviction underlying the forfeiture
15 order, and the remainder shall be used to satisfy any other
16 orders of restitution, with priority being given to those
17 most recently ordered.

18 (d) To the General Fund of the state or local entity,
19 whichever prosecutes.

20 SEC. 9. Section 186.22h is added to the Penal Code, to
21 read:

22 186.22h. (a) Property, except real property, subject
23 to forfeiture under Section 186.22b, may be seized by any
24 peace officer upon process issued by any court having
25 jurisdiction over the property. Seizure of the property
26 without process may be made if either of the following
27 situations exist:

28 (1) The property subject to seizure has been the
29 subject of a prior judgment in favor of the state in a
30 criminal injunction based on this chapter or a forfeiture
31 proceeding.

32 (2) The seizure is incident to a lawful arrest,
33 attempted arrest, or search under a search warrant, and
34 there is probable cause to believe that the property is
35 subject to forfeiture under Section 186.22b.

36 (b) A peace officer seizing property pursuant to this
37 section shall notify the Franchise Tax Board of a seizure
38 where there is reasonable cause to believe that the value
39 of the seized property exceeds five thousand dollars
40 (\$5,000).



1 (c) Receipts for property seized pursuant to this
2 section shall be delivered to any person out of whose
3 possession the property was seized, in accordance with
4 Section 1412. In the event that property seized was not
5 seized out of anyone's possession, receipt for the property
6 shall be delivered to the individual in possession of the
7 premises at which the property was seized. Where an
8 automobile is seized, the registered owner shall be
9 notified promptly by mail.

10 (d) In the event that seized property is not found to be
11 forfeitable, the property shall be returned to its owner, or
12 to the person out of whose possession it was seized, or
13 where it was not seized out of anyone's possession, to the
14 premises from which it was seized.

15 (e) The court before whom the forfeiture issues shall
16 be tried may, in its discretion, and upon the request of the
17 purported owner of the property other than the
18 defendant, expedite the return of property seized
19 pursuant to this section by determining, in advance of the
20 criminal trial, that the defendant has no ownership
21 interest in the property seized, and that the property was
22 not used in connection with the alleged criminal activity.

23 SEC. 10. Section 186.26 of the Penal Code is amended
24 to read:

25 186.26. (a) Any ~~adult~~ *person* who utilizes physical
26 violence to coerce, induce, or solicit another person who
27 is under 18 years of age to ~~actively~~ participate in any
28 criminal street gang, as defined in subdivision ~~(f)~~ *(d)* of
29 Section 186.22, ~~the members of which engage in a pattern~~
30 ~~of criminal gang activity, as defined in subdivision (e) of~~
31 ~~Section 186.22~~, shall be punished by imprisonment in the
32 state prison for ~~one, two, or three~~ *two, three, or four* years.

33 (b) Any ~~adult~~ *person* who threatens a minor with
34 physical violence on two or more separate occasions
35 within any ~~30-day~~ *60-day* period with the intent to coerce,
36 induce, or solicit the minor to ~~actively~~ participate in a
37 criminal street gang, as defined in subdivision ~~(f)~~ *(d)* of
38 Section 186.22, ~~the members of which engage in a pattern~~
39 ~~of criminal gang activity, as defined in subdivision (e) of~~
40 ~~Section 186.22~~, shall be punished by imprisonment in the



1 state prison for ~~one, two, or three~~ two, three, or four years
2 or in a county jail for up to one year.

3 (c) ~~A minor~~ Notwithstanding subdivisions (a) and (b),
4 any person who is less than 16 years of age ~~or older~~ who
5 commits an offense described in subdivision (a) or (b) is
6 guilty of a misdemeanor.

7 (d) Nothing in this section shall be construed to limit
8 prosecution under any other provision of the law.

9 (e) No person shall be convicted of violating this
10 section based upon speech alone, except upon a showing
11 that the speech itself threatened violence against a
12 specific person, that the defendant had the apparent
13 ability to carry out the threat, and that physical harm was
14 imminently likely to occur.

15 SEC. 11. Section 186.27 of the Penal Code is repealed.

16 ~~186.27. This chapter shall remain in effect only until~~
17 ~~January 1, 1997, and as of that date is repealed, unless a~~
18 ~~later enacted statute, which is chaptered before January~~
19 ~~1, 1997, deletes or extends that date.~~

20 SEC. 12. Section 186.28 of the Penal Code is amended
21 to read:

22 186.28. (a) Any person, corporation, or firm who shall
23 knowingly supply, sell, or give possession or control of any
24 firearm to another shall be punished by imprisonment in
25 the state prison, ~~or in a county jail for a term not~~
26 ~~exceeding one year,~~ or by a fine not exceeding one
27 thousand dollars (\$1,000), or by both that fine and
28 imprisonment if all of the following apply:

29 (1) The person, corporation, or firm has actual
30 knowledge that the person will use the firearm to commit
31 a felony described in subdivision (e) (d) of Section 186.22;
32 ~~while actively participating in any criminal street gang,~~
33 ~~as defined in subdivision (f) of Section 186.22, the~~
34 ~~members of which engage in a pattern of criminal~~
35 ~~activity, as defined in subdivision (e) of Section 186.22.~~

36 (2) The firearm is used to commit the felony.

37 (3) ~~A conviction for the felony violation under~~
38 ~~subdivision (e) of Section 186.22 has first been obtained~~
39 ~~of the~~ The person to whom the firearm was supplied, sold,



1 or given possession or control pursuant to this section *has*
2 *been convicted of the felony.*

3 (b) This section shall only be applicable where the
4 person is not convicted as a principal to the felony offense
5 committed by the person to whom the firearm was
6 supplied, sold, or given possession or control pursuant to
7 this section.

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

18 Notwithstanding Section 17580 of the Government
19 Code, unless otherwise specified, the provisions of this act
20 shall become operative on the same date that the act
21 takes effect pursuant to the California Constitution.

