

AMENDED IN SENATE MAY 1, 1997
AMENDED IN SENATE APRIL 16, 1997
AMENDED IN SENATE APRIL 7, 1997

SENATE BILL

No. 940

Introduced by Senator Leslie

February 27, 1997

An act to amend ~~Section 136.1 of, and to add Section 186.29 to, Sections 136.1 and 186.22 of the Penal Code, relating to crimes.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 940, as amended, Leslie. Crimes: intimidation of witnesses and victims.

(1) Existing law makes it a misdemeanor for any person to knowingly and maliciously prevent or dissuade or knowingly and maliciously attempt to prevent or dissuade any witness or victim from attending or giving testimony at any trial, proceeding, or inquiry authorized by law.

This bill instead would make these offenses punishable as either a misdemeanor or a felony. ~~The bill also would impose an additional 5-year sentence enhancement for a felony conviction for any of these offenses if the offense is committed by a member of a criminal street gang who made a credible threat of violence or death during the commission of the offense. By~~

(2) Existing law imposes an enhanced penalty for the commission of a felony by a member of a criminal street gang,

if the felony is committed with intent to promote, further, or assist in any criminal conduct by gang members.

This bill would impose an additional and consecutive penalty of 5 years imprisonment if a credible threat of violence or death were made by a criminal street gang member to prevent or dissuade a witness or victim of a violent felony from attending or testifying at the trial of the violent felony.

By increasing the penalties for an existing crime and establishing a new sentence enhancement, 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: 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 136.1 of the Penal Code is
2 amended to read:

3 136.1. (a) Except as provided in subdivision (c), any
4 person who does any of the following is guilty of a public
5 offense and shall be punished by imprisonment in a
6 county jail for not more than one year or in the state
7 prison:

8 (1) Knowingly and maliciously prevents or dissuades
9 any witness or victim from attending or giving testimony
10 at any trial, proceeding, or inquiry authorized by law.

11 (2) Knowingly and maliciously attempts to prevent or
12 dissuade any witness or victim from attending or giving
13 testimony at any trial, proceeding, or inquiry authorized
14 by law.

15 (b) Except as provided in subdivision (c), every
16 person who attempts to prevent or dissuade another
17 person who has been the victim of a crime or who is
18 witness to a crime from doing any of the following is guilty



1 of a public offense and shall be punished by imprisonment
2 in a county jail for not more than one year or in the state
3 prison:

4 (1) Making any report of that victimization to any
5 peace officer or state or local law enforcement officer or
6 probation or parole or correctional officer or prosecuting
7 agency or to any judge.

8 (2) Causing a complaint, indictment, information,
9 probation or parole violation to be sought and prosecuted,
10 and assisting in the prosecution thereof.

11 (3) Arresting or causing or seeking the arrest of any
12 person in connection with that victimization.

13 (c) Every person doing any of the acts described in
14 subdivision (a) or (b) knowingly and maliciously under
15 any one or more of the following circumstances, is guilty
16 of a felony punishable by imprisonment in the state prison
17 for two, three, or four years under any of the following
18 circumstances:

19 (1) Where the act is accompanied by force or by an
20 express or implied threat of force or violence, upon a
21 witness or victim or any third person or the property of
22 any victim, witness, or any third person.

23 (2) Where the act is in furtherance of a conspiracy.

24 (3) Where the act is committed by any person who has
25 been convicted of any violation of this section, any
26 predecessor law hereto or any federal statute or statute
27 of any other state which, if the act prosecuted was
28 committed in this state, would be a violation of this
29 section.

30 (4) Where the act is committed by any person for
31 pecuniary gain or for any other consideration acting upon
32 the request of any other person. All parties to such a
33 transaction are guilty of a felony.

34 (d) Every person attempting the commission of any
35 act described in subdivisions (a), (b), and (c) is guilty of
36 the offense attempted without regard to success or failure
37 of the attempt. The fact that no person was injured
38 physically, or in fact intimidated, shall be no defense
39 against any prosecution under this section.



1 (e) Nothing in this section precludes the imposition of
2 an enhancement for great bodily injury where the injury
3 inflicted is significant or substantial.

4 (f) The use of force during the commission of any
5 offense described in subdivision (c) shall be considered
6 a circumstance in aggravation of the crime in imposing a
7 term of imprisonment under subdivision (b) of Section
8 1170.

9 ~~(g) Any person, who is a member of a criminal street
10 gang, who is convicted of a felony violation of this section,
11 who makes a credible threat of violence or death during
12 the commission of the felony, shall, upon conviction of
13 that felony, in addition to and consecutive to any other
14 punishment provided by law, be punished by an
15 additional term of five years.~~

16 ~~(h) For purposes of this section, the following terms
17 have the following meanings:~~

18 ~~(1) "Credible threat" means a threat made with the
19 intent and apparent ability to carry out the threat so as to
20 cause the target of the threat to reasonably fear for his or
21 her safety or the safety of a third person.~~

22 ~~(2) "Criminal street gang" has the same meaning
23 defined in subdivision (f) of Section 186.22.~~

24 ~~(3) "Member of a criminal street gang" means a
25 person who commits, or has committed, a felony,
26 including any of the offenses enumerated in subdivision
27 (b) of Section 186.22, for the benefit of, at the direction
28 of, or in association with, any criminal street gang, with
29 the specific intent to promote, further, or assist in any
30 criminal street gang.~~

31 ~~(4) "Threat of violence" means a threat to commit a
32 violent felony, as defined in subdivision (c) of Section
33 667.5.~~

34 *SEC. 2. Section 186.22 of the Penal Code is amended*
35 *to read:*

36 186.22. (a) Any person who actively participates in
37 any criminal street gang with knowledge that its
38 members engage in or have engaged in a pattern of
39 criminal gang activity, and who willfully promotes,
40 furthers, or assists in any felonious criminal conduct by



1 members of that gang, shall be punished by
2 imprisonment in a county jail for a period not to exceed
3 one year, or by imprisonment in the state prison for 16
4 months, or two or three years.

5 (b) (1) Except as provided in paragraph (4), any
6 person who is convicted of a felony committed for the
7 benefit of, at the direction of, or in association with any
8 criminal street gang, with the specific intent to promote,
9 further, or assist in any criminal conduct by gang
10 members, shall, upon conviction of that felony, in
11 addition and consecutive to the punishment prescribed
12 for the felony or attempted felony of which he or she has
13 been convicted, be punished by an additional term of one,
14 two, or three years at the court's discretion.

15 (2) If the underlying felony described in paragraph
16 (1) is committed on the grounds of, or within 1,000 feet
17 of, a public or private elementary, vocational, junior high,
18 or high school, during hours in which the facility is open
19 for classes or school related programs or when minors are
20 using the facility, the additional term shall be two, three,
21 or four years, at the court's discretion.

22 (3) The court shall order the imposition of the middle
23 term of the sentence enhancement, unless there are
24 circumstances in aggravation or mitigation. The court
25 shall state the reasons for its choice of sentence
26 enhancements on the record at the time of the
27 sentencing.

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

32 (5) *Any person convicted under this section, who is*
33 *also convicted of a felony violation of Section 136.1, which*
34 *violation is accompanied by a credible threat of violence*
35 *or death made to the victim or witness to a violent felony,*
36 *as defined in subdivision (c) of Section 667.5, shall*
37 *receive, in addition to the penalties provided in*
38 *paragraph (1) or (2) of this subdivision, an additional*
39 *consecutive penalty of five years imprisonment. The*
40 *penalty under this paragraph shall only be imposed if the*



1 *credible threat of violence or death was made to prevent*
2 *or dissuade the witness or victim from attending or giving*
3 *testimony at any trial for a violent felony, as defined in*
4 *subdivision (c) of Section 667.5. For purposes of this*
5 *paragraph, the following terms have the following*
6 *meanings:*

7 (A) *“Credible threat” means a threat made with the*
8 *intent and apparent ability to carry out the threat so as to*
9 *cause the target of the threat to reasonably fear for his or*
10 *her safety or the safety of a third person.*

11 (B) *“Threat of Violence” means a threat to commit a*
12 *violent felony, as defined in subdivision (c) of Section*
13 *667.5.*

14 (c) If the court grants probation or suspends the
15 execution of sentence imposed upon the defendant for a
16 violation of subdivision (a), or in cases involving a true
17 finding of the enhancement enumerated in subdivision
18 (b), the court shall require that the defendant serve a
19 minimum of 180 days in a county jail as a condition
20 thereof.

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

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

38 (1) Assault with a deadly weapon or by means of force
39 likely to produce great bodily injury, as defined in Section
40 245.



- 1 (2) Robbery, as defined in Chapter 4 (commencing
2 with Section 211) of Title 8 of Part 1.
- 3 (3) Unlawful homicide or manslaughter, as defined in
4 Chapter 1 (commencing with Section 187) of Title 8 of
5 Part 1.
- 6 (4) The sale, possession for sale, transportation,
7 manufacture, offer for sale, or offer to manufacture
8 controlled substances as defined in Sections 11054, 11055,
9 11056, 11057, and 11058 of the Health and Safety Code.
- 10 (5) Shooting at an inhabited dwelling or occupied
11 motor vehicle, as defined in Section 246.
- 12 (6) Discharging or permitting the discharge of a
13 firearm from a motor vehicle, as defined in subdivisions
14 (a) and (b) of Section 12034.
- 15 (7) Arson, as defined in Chapter 1 (commencing with
16 Section 450) of Title 13.
- 17 (8) The intimidation of witnesses and victims, as
18 defined in Section 136.1.
- 19 (9) Grand theft, as defined in Section 487, when the
20 value of the money, labor, or real or personal property
21 taken exceeds ten thousand dollars (\$10,000).
- 22 (10) Grand theft of any vehicle, trailer, or vessel, as
23 described in Section 487h.
- 24 (11) Burglary, as defined in Section 459.
- 25 (12) Rape, as defined in Section 261.
- 26 (13) Looting, as defined in Section 463.
- 27 (14) Moneylaundering, as defined in Section 186.10.
- 28 (15) Kidnapping, as defined in Section 207.
- 29 (16) Mayhem, as defined in Section 203.
- 30 (17) Aggravated mayhem, as defined in Section 205.
- 31 (18) Torture, as defined in Section 206.
- 32 (19) Felony extortion, as defined in Sections 518 and
33 520.
- 34 (20) Felony vandalism, as defined in paragraph (1) of
35 subdivision (b) of Section 594.
- 36 (21) Carjacking, as defined in Section 215.
- 37 (22) The sale, delivery, or transfer of a firearm, as
38 defined in Section 12072.



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

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

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

24 Notwithstanding Section 17580 of the Government
25 Code, unless otherwise specified, the provisions of this act
26 shall become operative on the same date that the act
27 takes effect pursuant to the California Constitution.

