

AMENDED IN ASSEMBLY JUNE 25, 1997

AMENDED IN SENATE MAY 13, 1997

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
(Coauthor: Senator Schiff)
(Coauthor: Assembly Member Hertzberg)

February 27, 1997

An act to amend 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.

(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.

This bill would become operative only if AB 856 is enacted and becomes effective on or before January 1, 1998.

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



1 person who has been the victim of a crime or who is
2 witness to a crime from doing any of the following is guilty
3 of a public offense and shall be punished by imprisonment
4 in a county jail for not more than one year or in the state
5 prison:

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

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

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

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

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

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

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

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

36 (d) Every person attempting the commission of any
37 act described in subdivisions (a), (b), and (c) is guilty of
38 the offense attempted without regard to success or failure
39 of the attempt. The fact that no person was injured



1 physically, or in fact intimidated, shall be no defense
2 against any prosecution under this section.

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

6 (f) The use of force during the commission of any
7 offense described in subdivision (c) shall be considered
8 a circumstance in aggravation of the crime in imposing a
9 term of imprisonment under subdivision (b) of Section
10 1170.

11 SEC. 2. Section 186.22 of the Penal Code is amended
12 to read:

13 186.22. (a) Any person who actively participates in
14 any criminal street gang with knowledge that its
15 members engage in or have engaged in a pattern of
16 criminal gang activity, and who willfully promotes,
17 furthers, or assists in any felonious criminal conduct by
18 members of that gang, shall be punished by
19 imprisonment in a county jail for a period not to exceed
20 one year, or by imprisonment in the state prison for 16
21 months, or two or three years.

22 (b) (1) Except as provided in paragraph (4), any
23 person who is convicted of a felony committed for the
24 benefit of, at the direction of, or in association with any
25 criminal street gang, with the specific intent to promote,
26 further, or assist in any criminal conduct by gang
27 members, shall, upon conviction of that felony, in
28 addition and consecutive to the punishment prescribed
29 for the felony or attempted felony of which he or she has
30 been convicted, be punished by an additional term of one,
31 two, or three years at the court's discretion.

32 (2) If the underlying felony described in paragraph
33 (1) is committed on the grounds of, or within 1,000 feet
34 of, a public or private elementary, vocational, junior high,
35 or high school, during hours in which the facility is open
36 for classes or school-related programs or when minors are
37 using the facility, the additional term shall be two, three,
38 or four years, at the court's discretion.

39 (3) The court shall order the imposition of the middle
40 term of the sentence enhancement, unless there are



1 circumstances in aggravation or mitigation. The court
2 shall state the reasons for its choice of sentence
3 enhancements on the record at the time of the
4 sentencing.

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

9 (5) Any person convicted under this section, who is
10 also convicted of a felony violation of Section 136.1, which
11 violation is accompanied by a credible threat of violence
12 or death made to the victim or witness to a violent felony,
13 as defined in subdivision (c) of Section 667.5, shall
14 receive, in addition to the penalties provided in
15 paragraph (1) or (2) of this subdivision, an additional
16 consecutive penalty of five years imprisonment. The
17 penalty under this paragraph shall only be imposed if the
18 credible threat of violence or death was made to prevent
19 or dissuade the witness or victim from attending or giving
20 testimony at any trial for a violent felony, as defined in
21 subdivision (c) of Section 667.5. For purposes of this
22 paragraph, the following terms have the following
23 meanings:

24 (A) “Credible threat” means a threat made with the
25 intent and apparent ability to carry out the threat so as to
26 cause the target of the threat to reasonably fear for his or
27 her safety or the safety of a third person.

28 (B) “Threat of violence” means a threat to commit a
29 violent felony, as defined in subdivision (c) of Section
30 667.5.

31 (c) If the court grants probation or suspends the
32 execution of sentence imposed upon the defendant for a
33 violation of subdivision (a), or in cases involving a true
34 finding of the enhancement enumerated in subdivision
35 (b), the court shall require that the defendant serve a
36 minimum of 180 days in a county jail as a condition
37 thereof.

38 (d) Notwithstanding any other law, the court may
39 strike the additional punishment for the enhancements
40 provided in this section or refuse to impose the minimum



1 jail sentence for misdemeanors in an unusual case where
2 the interests of justice would best be served, if the court
3 specifies on the record and enters into the minutes the
4 circumstances indicating that the interests of justice
5 would best be served by that disposition.

6 (e) As used in this chapter, “pattern of criminal gang
7 activity” means the commission of, attempted
8 commission of, or solicitation of, sustained juvenile
9 petition for, or conviction of two or more of the following
10 offenses, provided at least one of these offenses occurred
11 after the effective date of this chapter and the last of those
12 offenses occurred within three years after a prior offense,
13 and the offenses were committed on separate occasions,
14 or by two or more persons:

15 (1) Assault with a deadly weapon or by means of force
16 likely to produce great bodily injury, as defined in Section
17 245.

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

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

23 (4) The sale, possession for sale, transportation,
24 manufacture, offer for sale, or offer to manufacture
25 controlled substances as defined in Sections 11054, 11055,
26 11056, 11057, and 11058 of the Health and Safety Code.

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

29 (6) Discharging or permitting the discharge of a
30 firearm from a motor vehicle, as defined in subdivisions
31 (a) and (b) of Section 12034.

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

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

36 (9) Grand theft, as defined in Section 487, when the
37 value of the money, labor, or real or personal property
38 taken exceeds ten thousand dollars (\$10,000).

39 (10) Grand theft of any vehicle, trailer, or vessel, as
40 described in Section 487h.



- 1 (11) Burglary, as defined in Section 459.
- 2 (12) Rape, as defined in Section 261.
- 3 (13) Looting, as defined in Section 463.
- 4 (14) Moneylaundering, as defined in Section 186.10.
- 5 (15) Kidnapping, as defined in Section 207.
- 6 (16) Mayhem, as defined in Section 203.
- 7 (17) Aggravated mayhem, as defined in Section 205.
- 8 (18) Torture, as defined in Section 206.
- 9 (19) Felony extortion, as defined in Sections 518 and
- 10 520.
- 11 (20) Felony vandalism, as defined in paragraph (1) of
- 12 subdivision (b) of Section 594.
- 13 (21) Carjacking, as defined in Section 215.
- 14 (22) The sale, delivery, or transfer of a firearm, as
- 15 defined in Section 12072.
- 16 (23) Possession of a pistol, revolver, or other firearm
- 17 capable of being concealed upon the person in violation
- 18 of paragraph (1) of subdivision (a) of Section 12101.
- 19 (f) As used in this chapter, “criminal street gang”
- 20 means any ongoing organization, association, or group of
- 21 three or more persons, whether formal or informal,
- 22 having as one of its primary activities the commission of
- 23 one or more of the criminal acts enumerated in
- 24 paragraphs (1) to (23), inclusive, of subdivision (e),
- 25 having a common name or common identifying sign or
- 26 symbol, and whose members individually or collectively
- 27 engage in or have engaged in a pattern of criminal gang
- 28 activity.
- 29 ~~SEC. 2.~~
- 30 *SEC. 3.* No reimbursement is required by this act
- 31 pursuant to Section 6 of Article XIII B of the California
- 32 Constitution because the only costs that may be incurred
- 33 by a local agency or school district will be incurred
- 34 because this act creates a new crime or infraction,
- 35 eliminates a crime or infraction, or changes the penalty
- 36 for a crime or infraction, within the meaning of Section
- 37 17556 of the Government Code, or changes the definition
- 38 of a crime within the meaning of Section 6 of Article
- 39 XIII B of the California Constitution.



1 Notwithstanding Section 17580 of the Government
2 Code, unless otherwise specified, the provisions of this act
3 shall become operative on the same date that the act
4 takes effect pursuant to the California Constitution.

5 ~~SEC. 3.~~

6 *SEC. 4.* This act shall become operative only if
7 Assembly Bill 856 of the 1997–98 Regular Session is
8 enacted and becomes effective on or before January 1,
9 1998.

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