

Introduced by Senator CannellaFebruary 15, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

SB 338, as introduced, Cannella. Criminal street gangs

Existing law, as amended by initiative, provides that any person who participates in any criminal street gang with knowledge that its members engage in a pattern of criminal gang activity and who promotes felonious criminal conduct 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 make a technical, nonsubstantive change to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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 256 of the Statutes of 2010, is amended
- 3 to read:
- 4 186.22. (a) Any person who actively participates in any
- 5 criminal street gang with knowledge that its members engage in
- 6 or have engaged in a pattern of criminal gang activity, and who
- 7 willfully ~~promotes, furthers,~~ *furtheres, promotes,* or assists in any
- 8 felonious criminal conduct by members of that gang, shall be
- 9 punished by imprisonment in a county jail for a period not to

1 exceed one year, or by imprisonment in the state prison for 16
2 months, or two or three years.

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

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

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

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

20 (2) If the underlying felony described in paragraph (1) is
21 committed on the grounds of, or within 1,000 feet of, a public or
22 private elementary, vocational, junior high, or high school, during
23 hours in which the facility is open for classes or school-related
24 programs or when minors are using the facility, that fact shall be
25 a circumstance in aggravation of the crime in imposing a term
26 under paragraph (1).

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

32 (4) Any person who is convicted of a felony enumerated in this
33 paragraph committed for the benefit of, at the direction of, or in
34 association with any criminal street gang, with the specific intent
35 to promote, further, or assist in any criminal conduct by gang
36 members, shall, upon conviction of that felony, be sentenced to
37 an indeterminate term of life imprisonment with a minimum term
38 of the indeterminate sentence calculated as the greater of:

39 (A) The term determined by the court pursuant to Section 1170
40 for the underlying conviction, including any enhancement

1 applicable under Chapter 4.5 (commencing with Section 1170) of
2 Title 7 of Part 2, or any period prescribed by Section 3046, if the
3 felony is any of the offenses enumerated in subparagraph (B) or
4 (C) of this paragraph.

5 (B) Imprisonment in the state prison for 15 years, if the felony
6 is a home invasion robbery, in violation of subparagraph (A) of
7 paragraph (1) of subdivision (a) of Section 213; carjacking, as
8 defined in Section 215; a felony violation of Section 246; or a
9 violation of Section 12022.55.

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

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

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

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

38 (e) As used in this chapter, “pattern of criminal gang activity”
39 means the commission of, attempted commission of, conspiracy
40 to commit, or solicitation of, sustained juvenile petition for, or

conviction of two or more of the following offenses, provided at least one of these offenses occurred after the effective date of this chapter and the last of those offenses occurred within three years after a prior offense, and the offenses were committed on separate occasions, or by two or more persons:

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

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

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

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

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

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

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

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

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

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

(11) Burglary, as defined in Section 459.

(12) Rape, as defined in Section 261.

(13) Looting, as defined in Section 463.

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

(15) Kidnapping, as defined in Section 207.

(16) Mayhem, as defined in Section 203.

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

(18) Torture, as defined in Section 206.

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

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

(21) Carjacking, as defined in Section 215.

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

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

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

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

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

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

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

16 (29) Unlawful use of personal identifying information to obtain
17 credit, goods, services, or medical information, as defined in
18 Section 530.5.

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

21 (31) Prohibited possession of a firearm in violation of Section
22 12021.

23 (32) Carrying a concealed firearm in violation of Section 12025.

24 (33) Carrying a loaded firearm in violation of Section 12031.

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

34 (g) Notwithstanding any other law, the court may strike the
35 additional punishment for the enhancements provided in this
36 section or refuse to impose the minimum jail sentence for
37 misdemeanors in an unusual case where the interests of justice
38 would best be served, if the court specifies on the record and enters
39 into the minutes the circumstances indicating that the interests of
40 justice would best be served by that disposition.

1 (h) Notwithstanding any other provision of law, for each person
2 committed to the Division of Juvenile Facilities for a conviction
3 pursuant to subdivision (a) or (b) of this section, the offense shall
4 be deemed one for which the state shall pay the rate of 100 percent
5 of the per capita institutional cost of the Division of Juvenile
6 Facilities, pursuant to Section 912.5 of the Welfare and Institutions
7 Code.

8 (i) In order to secure a conviction or sustain a juvenile petition,
9 pursuant to subdivision (a) it is not necessary for the prosecution
10 to prove that the person devotes all, or a substantial part, of his or
11 her time or efforts to the criminal street gang, nor is it necessary
12 to prove that the person is a member of the criminal street gang.
13 Active participation in the criminal street gang is all that is
14 required.

15 (j) A pattern of gang activity may be shown by the commission
16 of one or more of the offenses enumerated in paragraphs (26) to
17 (30), inclusive, of subdivision (e), and the commission of one or
18 more of the offenses enumerated in paragraphs (1) to (25),
19 inclusive, or (31) to (33), inclusive, of subdivision (e). A pattern
20 of gang activity cannot be established solely by proof of
21 commission of offenses enumerated in paragraphs (26) to (30),
22 inclusive, of subdivision (e), alone.

23 (k) This section shall become operative on January 1, 2012.