

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 introduced, Patterson. Street gangs.

Existing law makes 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, 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.

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 361 of the Statutes of 2011, is amended
3 to read:
4 186.22. (a) Any person who actively participates in any
5 criminal street gang with knowledge that ~~its~~ *the* members of *the*
6 *gang* engage in or have engaged in a pattern of criminal gang

1 activity, and who willfully promotes, furthers, or assists in any
2 felonious criminal conduct by members of that gang, shall be
3 punished by imprisonment in a county jail for a period not to
4 exceed one year, or by imprisonment in the state prison for 16
5 months, or two or three years.

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

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

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

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

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

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

35 (4) Any person who is convicted of a felony enumerated in this
36 paragraph committed for the benefit of, at the direction of, or in
37 association with any criminal street gang, with the specific intent
38 to promote, further, or assist in any criminal conduct by gang
39 members, shall, upon conviction of that felony, be sentenced to

1 an indeterminate term of life imprisonment with a minimum term
2 of the indeterminate sentence calculated as the greater of:

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

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

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

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

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

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

1 as a condition thereof that the defendant serve 180 days in a county
2 jail.

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

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

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

15 (3) Unlawful homicide or manslaughter, as defined in Chapter
16 1 (commencing with Section 187) of Title 8 of Part 1.

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

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

23 (6) Discharging or permitting the discharge of a firearm from
24 a motor vehicle, as defined in subdivisions (a) and (b) of Section
25 12034 until January 1, 2012, and, on or after that date, subdivisions
26 (a) and (b) of Section 26100.

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

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

31 (9) Grand theft, as defined in subdivision (a) or (c) of Section
32 487.

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

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

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

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

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

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

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

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

- 1 (18) Torture, as defined in Section 206.
- 2 (19) Felony extortion, as defined in Sections 518 and 520.
- 3 (20) Felony vandalism, as defined in paragraph (1) of
- 4 subdivision (b) of Section 594.
- 5 (21) Carjacking, as defined in Section 215.
- 6 (22) The sale, delivery, or transfer of a firearm, as defined in
- 7 Section 12072 until January 1, 2012, and, on or after that date,
- 8 Article 1 (commencing with Section 27500) of Chapter 4 of
- 9 Division 6 of Title 4 of Part 6.
- 10 (23) Possession of a pistol, revolver, or other firearm capable
- 11 of being concealed upon the person in violation of paragraph (1)
- 12 of subdivision (a) of Section 12101 until January 1, 2012, and, on
- 13 or after that date, Section 29610.
- 14 (24) Threats to commit crimes resulting in death or great bodily
- 15 injury, as defined in Section 422.
- 16 (25) Theft and unlawful taking or driving of a vehicle, as defined
- 17 in Section 10851 of the Vehicle Code.
- 18 (26) Felony theft of an access card or account information, as
- 19 defined in Section 484e.
- 20 (27) Counterfeiting, designing, using, or attempting to use an
- 21 access card, as defined in Section 484f.
- 22 (28) Felony fraudulent use of an access card or account
- 23 information, as defined in Section 484g.
- 24 (29) Unlawful use of personal identifying information to obtain
- 25 credit, goods, services, or medical information, as defined in
- 26 Section 530.5.
- 27 (30) Wrongfully obtaining Department of Motor Vehicles
- 28 documentation, as defined in Section 529.7.
- 29 (31) Prohibited possession of a firearm in violation of Section
- 30 12021 until January 1, 2012, and, on or after that date, Chapter 2
- 31 (commencing with Section 29800) of Division 9 of Title 4 of Part
- 32 6.
- 33 (32) Carrying a concealed firearm in violation of Section 12025
- 34 until January 1, 2012, and, on or after that date, Section 25400.
- 35 (33) Carrying a loaded firearm in violation of Section 12031
- 36 until January 1, 2012, and, on or after that date, Section 25850.
- 37 (f) As used in this chapter, “criminal street gang” means any
- 38 ongoing organization, association, or group of three or more
- 39 persons, whether formal or informal, having as one of its primary
- 40 activities the commission of one or more of the criminal acts

1 enumerated in paragraphs (1) to (25), inclusive, or (31) to (33),
2 inclusive, of subdivision (e), having a common name or common
3 identifying sign or symbol, and whose members individually or
4 collectively engage in or have engaged in a pattern of criminal
5 gang activity.

6 (g) Notwithstanding any other law, the court may strike the
7 additional punishment for the enhancements provided in this
8 section or refuse to impose the minimum jail sentence for
9 misdemeanors in an unusual case where the interests of justice
10 would best be served, if the court specifies on the record and enters
11 into the minutes the circumstances indicating that the interests of
12 justice would best be served by that disposition.

13 (h) Notwithstanding any other provision of law, for each person
14 committed to the Division of Juvenile Facilities for a conviction
15 pursuant to subdivision (a) or (b) of this section, the offense shall
16 be deemed one for which the state shall pay the rate of 100 percent
17 of the per capita institutional cost of the Division of Juvenile
18 Facilities, pursuant to Section 912.5 of the Welfare and Institutions
19 Code.

20 (i) In order to secure a conviction or sustain a juvenile petition,
21 pursuant to subdivision (a) it is not necessary for the prosecution
22 to prove that the person devotes all, or a substantial part, of his or
23 her time or efforts to the criminal street gang, nor is it necessary
24 to prove that the person is a member of the criminal street gang.
25 Active participation in the criminal street gang is all that is
26 required.

27 (j) A pattern of gang activity may be shown by the commission
28 of one or more of the offenses enumerated in paragraphs (26) to
29 (30), inclusive, of subdivision (e), and the commission of one or
30 more of the offenses enumerated in paragraphs (1) to (25),
31 inclusive, or (31) to (33), inclusive, of subdivision (e). A pattern
32 of gang activity cannot be established solely by proof of
33 commission of offenses enumerated in paragraphs (26) to (30),
34 inclusive, of subdivision (e), alone.

35 (k) This section shall become operative on January 1, 2014.