

Introduced by Senator WrightFebruary 14, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

SB 296, as introduced, Wright. Criminal street gangs: injunction: petition for exemption.

Existing law provides for injunctive relief from the unlawful activities of criminal street gangs, the duration of which is within the court's discretion. Existing law provides for injunctive relief from a person who engages in harassment, as specified, of a duration of not more than 3 years, and provides that, at any time within the 3 months before the expiration of the injunction prohibiting harassment, the plaintiff may apply for a renewal of that injunction by filing a new petition.

This bill would provide that, in addition to any other administrative or judicial remedies, in an action relating to an injunction pursuant to the provisions above, an individual may file with the court a petition on a form developed by the Judicial Council to exempt him or her from the injunction or portions of the injunction. The bill would require the petitioner to certify, under penalty of perjury, that he or she meets specified conditions. By expanding the scope of the crime of perjury, the bill would impose a state-mandated local program. The bill would allow the court to hold an evidentiary hearing and receive any relevant evidence in order to rule on any petition filed pursuant to these provisions. The bill would provide that its provisions pertaining to the petition process become operative on July 1, 2012. The bill would express legislative findings, declarations, and intent regarding the enactment of the above provisions.

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. The Legislature finds and declares the following:
- 2 (a) Under federal law applicable to the California gang database
- 3 (28 C.F.R. 23.20(h)), there is a five-year limit on the retention of
- 4 names in the system.
- 5 (b) Under state law relating to the registration of gang offenders
- 6 (subd. (c), Sec. 186.32, Pen. C.), there is a five-year limit on the
- 7 application of registration requirements to gang offenders.
- 8 (c) Existing law does not provide a time limit on the duration
- 9 of gang injunctions as applied to an individual.
- 10 (d) Members of the public subject to gang injunctions are
- 11 typically low-income persons who cannot afford attorneys.
- 12 (e) It is the intent of the Legislature to provide an inexpensive
- 13 means for members of the public to have affordable access to the
- 14 court to contest and to be removed from some or all of the
- 15 provisions of a gang injunction.
- 16 SEC. 2. Section 186.22a of the Penal Code, as amended by
- 17 Section 50 of Chapter 178 of the Statutes of 2010, is amended to
- 18 read:
- 19 186.22a. (a) Every building or place used by members of a
- 20 criminal street gang for the purpose of the commission of the
- 21 offenses listed in subdivision (e) of Section 186.22 or any offense
- 22 involving dangerous or deadly weapons, burglary, or rape, and
- 23 every building or place wherein or upon which that criminal
- 24 conduct by gang members takes place, is a nuisance which shall
- 25 be enjoined, abated, and prevented, and for which damages may
- 26 be recovered, whether it is a public or private nuisance.
- 27 (b) Any action for injunction or abatement filed pursuant to
- 28 subdivision (a), including an action filed by the Attorney General,
- 29 shall proceed according to the provisions of Article 3 (commencing

1 with Section 11570) of Chapter 10 of Division 10 of the Health
2 and Safety Code, except that all of the following shall apply:

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

6 (2) No order of eviction or closure may be entered.

7 (3) All injunctions issued shall be limited to those necessary to
8 protect the health and safety of the residents or the public or those
9 necessary to prevent further criminal activity.

10 (4) Suit may not be filed until 30-day notice of the unlawful use
11 or criminal conduct has been provided to the owner by mail, return
12 receipt requested, postage prepaid, to the last known address.

13 (5) (A) *In addition to any other applicable administrative or*
14 *judicial remedies, in any action relating to an individual subject*
15 *to an injunction issued pursuant to subdivision (a), the individual*
16 *may petition the court to exempt him or her from all or any part*
17 *of an injunction order.*

18 (B) *The petition shall specify whether the individual is*
19 *requesting to be exempt from the entire injunction order or any*
20 *part of that order. The individual shall in the petition certify, under*
21 *penalty of perjury, all of the following:*

22 (i) *The individual has not violated any provisions of an*
23 *injunction issued pursuant to subdivision (a) of which he or she*
24 *had notice.*

25 (ii) *The individual is not a member of the criminal street gang*
26 *that is subject to the injunction.*

27 (iii) *The individual is not a member of any other criminal street*
28 *gang, as defined in subdivision (f) of Section 186.22.*

29 (iv) *The individual does not have any criminal charges pending*
30 *against him or her.*

31 (v) *The individual has not been arrested in any jurisdiction*
32 *within three years prior to making the petition of which this*
33 *certification is a part.*

34 (vi) *The individual has not obtained any gang-related tattoos*
35 *within three years prior to making the petition of which this*
36 *certification is a part.*

37 (vii) *The individual has not, within three years prior to making*
38 *the petition of which this certification is a part, knowingly been*
39 *documented by any law enforcement agency to have been in the*
40 *company or association of any other gang member that the*

1 *individual knows to be covered by the injunction, other than an*
2 *immediate family member.*

3 *(viii) The individual is not acting, and agrees that he or she will*
4 *not act, to promote or assist any activities prohibited by the*
5 *injunction.*

6 *(C) The court may hold an evidentiary hearing in order to rule*
7 *on any petition filed pursuant to subparagraph (A). The court may,*
8 *in its discretion, receive any evidence relevant to whether the*
9 *petition should be granted or denied.*

10 *(D) At the time notice of an injunction filed pursuant to*
11 *subdivision (a) is served on any person, the petition form developed*
12 *by the Judicial Council for use by an individual seeking to be*
13 *exempt from all or part of an injunction shall be attached to the*
14 *documents that are served.*

15 *(6) Any prosecuting agency filing any action for injunction*
16 *pursuant to subdivision (a) shall, at the time of filing the action*
17 *with the court, provide a copy of the filing to the local public*
18 *defender's office.*

19 *(c) Whenever an injunction is issued pursuant to subdivision*
20 *(a), or Section 3479 of the Civil Code, to abate gang activity*
21 *constituting a nuisance, the Attorney General or any district*
22 *attorney or any prosecuting city attorney may maintain an action*
23 *for money damages on behalf of the community or neighborhood*
24 *injured by that nuisance. Any money damages awarded shall be*
25 *paid by or collected from assets of the criminal street gang or its*
26 *members. Only members of the criminal street gang who created,*
27 *maintained, or contributed to the creation or maintenance of the*
28 *nuisance shall be personally liable for the payment of the damages*
29 *awarded. In a civil action for damages brought pursuant to this*
30 *subdivision, the Attorney General, district attorney, or city attorney*
31 *may use, but is not limited to the use of, the testimony of experts*
32 *to establish damages suffered by the community or neighborhood*
33 *injured by the nuisance. The damages recovered pursuant to this*
34 *subdivision shall be deposited into a separate segregated fund for*
35 *payment to the governing body of the city or county in whose*
36 *political subdivision the community or neighborhood is located,*
37 *and that governing body shall use those assets solely for the benefit*
38 *of the community or neighborhood that has been injured by the*
39 *nuisance.*

1 (d) No nonprofit or charitable organization which is conducting
2 its affairs with ordinary care or skill, and no governmental entity,
3 shall be abated pursuant to subdivisions (a) and (b).

4 (e) Nothing in this chapter shall preclude any aggrieved person
5 from seeking any other remedy provided by law.

6 (f) (1) Any firearm, ammunition which may be used with the
7 firearm, or any deadly or dangerous weapon which is owned or
8 possessed by a member of a criminal street gang for the purpose
9 of the commission of any of the offenses listed in subdivision (e)
10 of Section 186.22, or the commission of any burglary or rape, may
11 be confiscated by any law enforcement agency or peace officer.

12 (2) In those cases where a law enforcement agency believes that
13 the return of the firearm, ammunition, or deadly weapon
14 confiscated pursuant to this subdivision, is or will be used in
15 criminal street gang activity or that the return of the item would
16 be likely to result in endangering the safety of others, the law
17 enforcement agency shall initiate a petition in the superior court
18 to determine if the item confiscated should be returned or declared
19 a nuisance.

20 (3) No firearm, ammunition, or deadly weapon shall be sold or
21 destroyed unless reasonable notice is given to its lawful owner if
22 his or her identity and address can be reasonably ascertained. The
23 law enforcement agency shall inform the lawful owner, at that
24 person's last known address by registered mail, that he or she has
25 30 days from the date of receipt of the notice to respond to the
26 court clerk to confirm his or her desire for a hearing and that the
27 failure to respond shall result in a default order forfeiting the
28 confiscated firearm, ammunition, or deadly weapon as a nuisance.

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

34 (5) At the hearing, the burden of proof is upon the law
35 enforcement agency or peace officer to show by a preponderance
36 of the evidence that the seized item is or will be used in criminal
37 street gang activity or that return of the item would be likely to
38 result in endangering the safety of others. All returns of firearms
39 shall be subject to Chapter 2 (commencing with Section 33850)
40 of Division 11 of Title 4 of Part 6.

1 (6) If the person does not request a hearing within 30 days of
2 the notice or the lawful owner cannot be ascertained, the law
3 enforcement agency may file a petition that the confiscated firearm,
4 ammunition, or deadly weapon be declared a nuisance. If the items
5 are declared to be a nuisance, the law enforcement agency shall
6 dispose of the items as provided in Sections 18000 and 18005.

7 SEC. 3. The Judicial Council shall develop a petition form, by
8 July 1, 2012, that meets the requirements of paragraph (5) of
9 subdivision (b) of Section 186.22a for use by an individual seeking
10 to be exempt from all or a part of an injunction, as specified in
11 subparagraph (A) of paragraph (5) of subdivision (b) of Section
12 186.22a.

13 SEC. 4. The amendments made to Section 186.22a of the Penal
14 Code, as contained in Section 2 of this act, shall become operative
15 on July 1, 2012.

16 SEC. 5. No reimbursement is required by this act pursuant to
17 Section 6 of Article XIII B of the California Constitution because
18 the only costs that may be incurred by a local agency or school
19 district will be incurred because this act creates a new crime or
20 infraction, eliminates a crime or infraction, or changes the penalty
21 for a crime or infraction, within the meaning of Section 17556 of
22 the Government Code, or changes the definition of a crime within
23 the meaning of Section 6 of Article XIII B of the California
24 Constitution.