

AMENDED IN SENATE MAY 29, 1996

SENATE BILL

No. 1701

Introduced by Senator Hurtt

(Coauthors: Senators Costa, Haynes, Kopp, Leslie, and Rogers)

(Coauthors: Assembly Members Ackerman, Baldwin, Battin, Baugh, Boland, Bordonaro, Bowler, Conroy, Granlund, Harvey, House, Hawkins, Hoge, Margett, Morrissey, Morrow, Pringle, Rainey, Richter, and Rogan)

February 21, 1996

An act to amend Sections 186.22 and 186.27 of the Penal Code, relating to gangs.

LEGISLATIVE COUNSEL'S DIGEST

SB 1701, as amended, Hurtt. Criminal street gangs.

Existing law, the Street Terrorism Enforcement and Prevention Act, which is operative until January 1, 1997, provides, among other things, that any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, be punished by an additional consecutive term of 1, 2, or 3 years at the court's discretion. However, if the underlying felony is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, as specified, the additional term shall be 2, 3, or 4 years, at the court's discretion.

This bill would ~~eliminate the court's discretion for purposes of~~ *make a clarifying change to* these provisions. The bill also would extend the operation of the Street Terrorism Enforcement and Prevention Act until January 1, 1998. *This bill would impose a state-mandated local program by extending the operation of provisions that establish crimes.*

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: ~~no~~ yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 186.22 of the Penal Code is
2 amended to read:

3 186.22. (a) Any person who actively participates in
4 any criminal street gang with knowledge that its
5 members engage in or have engaged in a pattern of
6 criminal gang activity, and who willfully promotes,
7 furthers, or assists in any felonious criminal conduct by
8 members of that gang, shall be punished by
9 imprisonment in a county jail for a period not to exceed
10 one year, or by imprisonment in the state prison for 16
11 months, or 2 or 3 years.

12 (b) (1) Except as provided in paragraph (4), any
13 person who is convicted of a felony committed for the
14 benefit of, at the direction of, or in association with any
15 criminal street gang, with the specific intent to promote,
16 further, or assist in any criminal conduct by gang
17 members, shall, upon conviction of that felony, in
18 addition and consecutive to the punishment prescribed
19 for the felony or attempted felony of which he or she has
20 been convicted, be punished by an additional term of one,
21 two, or three years.

22 (2) If the underlying felony described in paragraph
23 (1) is committed on the grounds of, or within 1,000 feet



1 of, a public or private elementary, vocational, junior high,
2 or high school, during hours in which the facility is open
3 for classes or school related programs or when minors are
4 using the facility, the additional term shall be two, three,
5 or four years.

6 (3) The court shall order the imposition of the middle
7 term of the sentence enhancement, unless there are
8 circumstances in aggravation or mitigation. The court
9 shall state the reasons for its choice of sentence
10 enhancements on the record at the time of the
11 sentencing.

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

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

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

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



- 1 (1) Assault with a deadly weapon or by means of force
2 likely to produce great bodily injury, as defined in Section
3 245.
- 4 (2) Robbery, as defined in Chapter 4 (commencing
5 with Section 211) of Title 8 of Part 1.
- 6 (3) Unlawful homicide or manslaughter, as defined in
7 Chapter 1 (commencing with Section 187) of Title 8 of
8 Part 1.
- 9 (4) The sale, possession for sale, transportation,
10 manufacture, offer for sale, or offer to manufacture
11 controlled substances as defined in Sections 11054, 11055,
12 11056, 11057, and 11058 of the Health and Safety Code.
- 13 (5) Shooting at an inhabited dwelling or occupied
14 motor vehicle, as defined in Section 246.
- 15 (6) Discharging or permitting the discharge of a
16 firearm from a motor vehicle, as defined in subdivisions
17 (a) and (b) of Section 12034.
- 18 (7) Arson, as defined in Chapter 1 (commencing with
19 Section 450) of Title 13.
- 20 (8) The intimidation of witnesses and victims, as
21 defined in Section 136.1.
- 22 (9) Grand theft, as defined in Section 487, when the
23 value of the money, labor, or real or personal property
24 taken exceeds ten thousand dollars (\$10,000).
- 25 (10) Grand theft of any vehicle, trailer, or vessel, as
26 described in Section 487h.
- 27 (11) Burglary, as defined in Section 459.
- 28 (12) Rape, as defined in Section 261.
- 29 (13) Looting, as defined in Section 463.
- 30 (14) Moneylaundering, as defined in Section 186.10.
- 31 (15) Kidnapping, as defined in Section 207.
- 32 (16) Mayhem, as defined in Section 203.
- 33 (17) Aggravated mayhem, as defined in Section 205.
- 34 (18) Torture, as defined in Section 206.
- 35 (19) Felony extortion, as defined in Sections 518 and
36 520.
- 37 (20) Felony vandalism, as defined in paragraph (1) of
38 subdivision (b) of Section 594.
- 39 (21) Carjacking, as defined in Section 215.



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

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

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

16 (g) This section shall remain in effect only until
17 January 1, 1998, and on that date is repealed.

18 SEC. 2. Section 186.27 of the Penal Code is amended
19 to read:

20 186.27. This chapter shall remain in effect only until
21 January 1, 1998, and as of that date is repealed, unless a
22 later enacted statute, which is chaptered before January
23 1, 1998, deletes or extends that date.

24 *SEC. 3. No reimbursement is required by this act*
25 *pursuant to Section 6 of Article XIII B of the California*
26 *Constitution because the only costs that may be incurred*
27 *by a local agency or school district will be incurred*
28 *because this act creates a new crime or infraction,*
29 *eliminates a crime or infraction, or changes the penalty*
30 *for a crime or infraction, within the meaning of Section*
31 *17556 of the Government Code, or changes the definition*
32 *of a crime within the meaning of Section 6 of Article*
33 *XIII B of the California Constitution.*

34 *Notwithstanding Section 17580 of the Government*
35 *Code, unless otherwise specified, the provisions of this act*
36 *shall become operative on the same date that the act*
37 *takes effect pursuant to the California Constitution.*

