

AMENDED IN SENATE MAY 28, 2013

AMENDED IN SENATE MAY 8, 2013

SENATE BILL

No. 473

Introduced by Senator Block
(Coauthor: Senator Anderson)
(Coauthor: Assembly Member Chávez)

February 21, 2013

An act to amend Section 186.22 ~~of, and to add Section 266m to, of~~ the Penal Code, relating to human trafficking.

LEGISLATIVE COUNSEL'S DIGEST

SB 473, as amended, Block. Human trafficking.

Existing law, as amended by Proposition 21, as approved by the voters at the March 7, 2000, statewide primary election, provides that any person who actively participates in any criminal street gang with knowledge that its members 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, shall be punished, as specified. Existing law defines "a pattern of criminal gang activity" as the commission of, attempted commission of, conspiracy to commit, or solicitation of, sustained juvenile petition for, or conviction of, 2 or more listed offenses. Proposition 21 may be amended by a statute passed by a $\frac{2}{3}$ vote of the membership of each house of the Legislature.

This bill would add pimping, pandering, and human trafficking as offenses that may be used to establish a pattern of criminal gang activity. Because this bill would amend Proposition 21, ~~it therefore~~ *the bill* requires a $\frac{2}{3}$ vote.

~~Existing law provides various penalties for human trafficking and sex trafficking offenses.~~

~~This bill would require that any person convicted of a human trafficking offense or a specified sex trafficking offense where any part of the violation takes place upon the grounds of, or within 1,000 feet of, a public or private elementary school, vocational, junior high, or high school during the hours that the school is open for classes or school-related programs, or at any time when minors are using the facility, receive, in addition to any other penalty imposed, punishment of 3 years in state prison.~~

Because this bill would change the definition of a crime and require a higher level of service from local prosecutors in pleading and proving the enhancement, it would impose a state-mandated local program.

The bill would also correct cross-references and make conforming changes.

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: $\frac{2}{3}$. 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 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 members engage in
6 or have engaged in a pattern of criminal gang activity, and who
7 willfully promotes, furthers, or assists in any felonious criminal
8 conduct by members of that gang, shall be punished by
9 imprisonment in a county jail for a period not to exceed one year,
10 or by imprisonment in the state prison for 16 months, or two or
11 three years.

12 (b) (1) Except as provided in paragraphs (4) and (5), any person
13 who is convicted of a felony committed for the benefit of, at the
14 direction of, or in association with any criminal street gang, with
15 the specific intent to promote, further, or assist in any criminal

1 conduct by gang members, shall, upon conviction of that felony,
2 in addition and consecutive to the punishment prescribed for the
3 felony or attempted felony of which he or she has been convicted,
4 be punished as follows:

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

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

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

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

21 (3) The court shall order the imposition of the middle term of
22 the sentence enhancement, unless there are circumstances in
23 aggravation or mitigation. The court shall state the reasons for its
24 choice of sentencing enhancements on the record at the time of
25 the sentencing.

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

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

39 (B) Imprisonment in the state prison for 15 years, if the felony
40 is a home invasion robbery, in violation of subparagraph (A) of

1 paragraph (1) of subdivision (a) of Section 213; carjacking, as
2 defined in Section 215; a felony violation of Section 246; or a
3 violation of Section 12022.55.

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

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

11 (c) If the court grants probation or suspends the execution of
12 sentence imposed upon the defendant for a violation of subdivision
13 (a), or in cases involving a true finding of the enhancement
14 enumerated in subdivision (b), the court shall require that the
15 defendant serve a minimum of 180 days in a county jail as a
16 condition thereof.

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

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

- 1 (1) Assault with a deadly weapon or by means of force likely
2 to produce great bodily injury, as defined in Section 245.
- 3 (2) Robbery, as defined in Chapter 4 (commencing with Section
4 211) of Title 8.
- 5 (3) Unlawful homicide or manslaughter, as defined in Chapter
6 1 (commencing with Section 187) of Title 8.
- 7 (4) The sale, possession for sale, transportation, manufacture,
8 offer for sale, or offer to manufacture controlled substances as
9 defined in Sections 11054, 11055, 11056, 11057, and 11058 of
10 the Health and Safety Code.
- 11 (5) Shooting at an inhabited dwelling or occupied motor vehicle,
12 as defined in Section 246.
- 13 (6) Discharging or permitting the discharge of a firearm from
14 a motor vehicle, as defined in subdivisions (a) and (b) of Section
15 26100.
- 16 (7) Arson, as defined in Chapter 1 (commencing with Section
17 450) of Title 13.
- 18 (8) The intimidation of witnesses and victims, as defined in
19 Section 136.1.
- 20 (9) Grand theft, as defined in subdivision (a) or (c) of Section
21 487.
- 22 (10) Grand theft of any firearm, vehicle, trailer, or vessel.
- 23 (11) Burglary, as defined in Section 459.
- 24 (12) Rape, as defined in Section 261.
- 25 (13) Looting, as defined in Section 463.
- 26 (14) Money laundering, as defined in Section 186.10.
- 27 (15) Kidnapping, as defined in Section 207.
- 28 (16) Mayhem, as defined in Section 203.
- 29 (17) Aggravated mayhem, as defined in Section 205.
- 30 (18) Torture, as defined in Section 206.
- 31 (19) Felony extortion, as defined in Sections 518 and 520.
- 32 (20) Felony vandalism, as defined in paragraph (1) of
33 subdivision (b) of Section 594.
- 34 (21) Carjacking, as defined in Section 215.
- 35 (22) The sale, delivery, or transfer of a firearm, as defined in
36 Article 1 (commencing with Section 27500) of Chapter 4 of
37 Division 6 of Title 4 of Part 6.
- 38 (23) Possession of a pistol, revolver, or other firearm capable
39 of being concealed upon the person in violation of Section 29610.

- 1 (24) Threats to commit crimes resulting in death or great bodily
2 injury, as defined in Section 422.
- 3 (25) Theft and unlawful taking or driving of a vehicle, as defined
4 in Section 10851 of the Vehicle Code.
- 5 (26) Felony theft of an access card or account information, as
6 defined in Section 484e.
- 7 (27) Counterfeiting, designing, using, or attempting to use an
8 access card, as defined in Section 484f.
- 9 (28) Felony fraudulent use of an access card or account
10 information, as defined in Section 484g.
- 11 (29) Unlawful use of personal identifying information to obtain
12 credit, goods, services, or medical information, as defined in
13 Section 530.5.
- 14 (30) Wrongfully obtaining Department of Motor Vehicles
15 documentation, as defined in Section 529.7.
- 16 (31) Prohibited possession of a firearm in violation of Chapter
17 2 (commencing with Section 29800) of Division 9 of Title 4 of
18 Part 6.
- 19 (32) Carrying a concealed firearm in violation of Section 25400.
- 20 (33) Carrying a loaded firearm in violation of Section 25850.
- 21 (34) Pimping in violation of Section 266h.
- 22 (35) Pandering in violation of Section 266i.
- 23 (36) Human trafficking in violation of Section 236.1.
- 24 (f) As used in this chapter, “criminal street gang” means any
25 ongoing organization, association, or group of three or more
26 persons, whether formal or informal, having as one of its primary
27 activities the commission of one or more of the criminal acts
28 enumerated in paragraphs (1) to (25), inclusive, or (31) to (36),
29 inclusive, of subdivision (e), having a common name or common
30 identifying sign or symbol, and whose members individually or
31 collectively engage in or have engaged in a pattern of criminal
32 gang activity.
- 33 (g) Notwithstanding any other law, the court may strike the
34 additional punishment for the enhancements provided in this
35 section or refuse to impose the minimum jail sentence for
36 misdemeanors in an unusual case where the interests of justice
37 would best be served, if the court specifies on the record and enters
38 into the minutes the circumstances indicating that the interests of
39 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 (36), 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, 2014.

24 ~~SEC. 2. Section 266m is added to the Penal Code, to read:~~

25 ~~266m. (a) Any person who is convicted of a felony violation~~
 26 ~~of Section 236.1, 266, 266a, 266b, 266c, 266d, 266e, 266f, 266g,~~
 27 ~~266h, 266i, or 266j, where any part of the violation takes place on~~
 28 ~~the grounds of, or within 1,000 feet of, a public or private~~
 29 ~~elementary, vocational, junior high, or high school, during the~~
 30 ~~hours in which the facility is open for classes or school-related~~
 31 ~~programs or when minors are using the facility, shall receive, in~~
 32 ~~addition to any other penalty imposed, punishment of three years~~
 33 ~~in state prison.~~

34 ~~(b) A violation of this section does not require physical presence~~
 35 ~~on school grounds or within 1,000 feet of school grounds.~~

36 ~~SEC. 3.~~

37 *SEC. 2.* No reimbursement is required by this act pursuant to
 38 Section 6 of Article XIII B of the California Constitution because
 39 the only costs that may be incurred by a local agency or school
 40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section 17556 of
3 the Government Code, or changes the definition of a crime within
4 the meaning of Section 6 of Article XIII B of the California
5 Constitution.

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