



2

DEPARTMENT OF
POLICE

CITY OF SACRAMENTO
CALIFORNIA

February 24, 1988

HALL OF JUSTICE
813 SIXTH STREET
SACRAMENTO, CA
95814-2495

916-449-5121

Law and Legislation Committee
Council Chambers

JOHN P. KEARNS
CHIEF OF POLICE

Honorable Members in Session:

SUBJECT: SB 1555 and AB 2013 - CRIMINAL STREET GANGS

SUMMARY

There are presently two very significant pieces of legislation making way in the State Senate and Assembly respectfully. The legislation will be instrumental in controlling street gangs that have proliferated in California and most recently have been active in the City of Sacramento.

BACKGROUND

Gang violence within the City of Sacramento first rose to prominence in 1982 with the murder of a transient by admitted gang members in a brutal "thrill killing". Since then, the gang violence problem has risen to count 39 gang related homicides and more than 1,130 felony assaults, many involving the use of firearms. The gang structure permeates virtually every neighborhood within this City with a major recruiting effort at many of this City's junior and senior high schools.

AB 2013, as amended, Moore. Crimes.

(1) Under existing law, there are no provisions which specifically make the commission of criminal offenses by individuals who are members of street gangs a separate and distinctly punished offense, or which provide for the forfeiture of the proceeds of gang-related activity.

This bill would provide that any person who actively participates in any criminal street gang, as defined, with knowledge that its members engage in or who have engaged in a pattern of criminal gang activity, as defined, and who willfully furthers, or assists in, any felonious criminal conduct by gang members, shall be punished by imprisonment in the county jail for a period not to exceed one year, or imprisonment in the state prison.

This bill would also prescribe the punishment applicable to any person who is convicted of a felony or misdemeanor which is committed or attempted to be 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, including the minimum term of imprisonment in the County Jail and the state prison for these offenses and a 2-year sentence enhancement of the underlying felony punishable by a maximum term of 3 years, or a 3-year sentence enhancement if the underlying felony is punishable by a maximum term exceeding 3 years would be applicable to the commission or attempted commission of a felony in the furtherance of these objectives.

SB 1555, as amended, Robbins. Crimes.

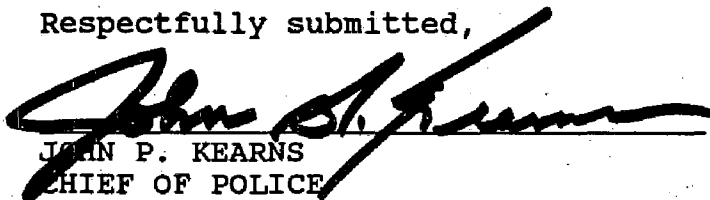
(1) Under existing law, there are no provisions which specifically make the commission of criminal offenses by individuals who are members of street gangs a separate and distinctly punished offense, or which provide for the forfeiture of the proceeds of gang-related activity. This bill would provide 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 furthers, or assists in, any criminal conduct by members of that gang, shall be punished by imprisonment in the county jail for a period not to exceed one year, or by imprisonment in the state prison.

This bill would also prescribe the punishment applicable to any person who is convicted of a felony or misdemeanor which is committed or attempted to be 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 including the minimum term of imprisonment in the county jail and the state prison for these offenses and a two - or three - year sentence enhancement applicable to the commission or attempted commission of a felony in furtherance of these objectives.

RECOMMENDATION

The Council contact our local elected representatives and urge they support both AB 2013 and SB 1555.

Respectfully submitted,


JOHN P. KEARNS
CHIEF OF POLICE

JPK:lf

Ref: 2-64

A S S E M B L Y B I L L 2 0 1 3

AMENDED IN ASSEMBLY SEPTEMBER 1, 1987
 AMENDED IN ASSEMBLY AUGUST 18, 1987
 AMENDED IN ASSEMBLY JULY 9, 1987
 AMENDED IN ASSEMBLY JUNE 25, 1987
 AMENDED IN ASSEMBLY JUNE 9, 1987
 AMENDED IN ASSEMBLY JUNE 3, 1987
 AMENDED IN ASSEMBLY MAY 26, 1987
 AMENDED IN ASSEMBLY APRIL 23, 1987

Introduced by Assembly Member Moore

March 6, 1987

An act to add and repeal Chapter 11 (commencing with Section 186.20) to Title 7 of Part 1 of, the Penal Code, relating to crimes, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2013, as amended, Moore. Crimes.

(1) Under existing law, there are no provisions which specifically make the commission of criminal offenses by individuals who are members of street gangs a separate and distinctly punished offense, or which provide for the forfeiture of the proceeds of gang-related activity.

This bill would provide that any person who actively participates in any criminal street gang, as defined, with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, as defined, and who willfully furthers, or assists in, any felonious criminal conduct by gang members, shall be punished by imprisonment in the county jail for a period not to exceed one year, or imprisonment in the state prison.

This bill would also prescribe the punishment applicable to any person who is convicted of a felony or misdemeanor which is committed or attempted to be 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, including the minimum term of imprisonment in the county jail and the state prison for these offenses and a 2-year sentence enhancement of the underlying felony punishable by a maximum term of 3 years, or a 3-year sentence enhancement if the underlying felony is punishable by a maximum term exceeding 3 years would be applicable to the commission or attempted commission of a felony in furtherance of

these objectives.

This bill would impose a state-mandated local program by creating new crimes.

This bill would provide that these provisions do not apply to employees engaged in concerted activities for their mutual aid and protection, or the activities of labor organizations or their members or agents.

This bill would require the <Attorney General> [DISTRICT] [ATTORNEY OF THE COUNTY OF LOS ANGELES] to submit a report to the Legislature on or before January 1, 1990, on the impact this bill has had on the control of criminal street gang activity in <the> state> [LOS ANGELES COUNTY, THEREBY IMPOSING A STATE-MANDATED] [LOCAL PROGRAM].

This bill would repeal these provisions on January 1, 1991.

(2) 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> [REASONS].

(3) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

SECTION 1. Chapter 11 (commencing with Section 186.20) is added to Title 7 of Part 1 of the Penal Code, to read:

Chapter 11. Street Terrorism Enforcement
and Prevention Act

186.20. This chapter shall be known and may be cited as the "California Street Terrorism Enforcement and Prevention Act."

186.21. The Legislature hereby finds and declares that it is the right of every person regardless of race, color, creed, religion, national origin, sex, age, sexual orientation, or handicap to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals. It is not the intent of the Legislature in enacting this chapter to interfere with the exercise of rights protected by the United States Constitution or by the California Constitution. The Legislature recognizes the constitutional right of every citizen to harbor and express beliefs on any lawful subject whatsoever, to lawfully associate with others who share similar beliefs, to petition lawfully constituted authority for a redress of perceived grievances, or to participate in the electoral process.

The Legislature, however, further finds that the State of California is in a state of crisis which has been caused by violent street gangs whose members threaten, terrorize, and commit a multitude of crimes against the peaceful citizens of their neighborhoods. These activities, both individually and

collectively, present a clear and present danger to public order and safety and are not constitutionally protected. It is the intent of the Legislature in enacting this chapter to seek the eradication of criminal activity by street gangs by focusing upon patterns of criminal gang-related activity and upon the organized nature of street gangs, which together are the chief source of terror created by street gangs. The Legislature further finds that there are nearly 600 criminal street gangs operating in California, and that the number of gang-related murders is increasing. The Legislature also finds that in Los Angeles County alone there were 328 gang-related murders in 1986, and that gang homicides in 1987 have increased 80 percent over 1986.

186.22. (a) 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 gang members, shall be punished by imprisonment in the county jail for a period not to exceed one year, or by imprisonment in the state prison.

(b) Any person who is convicted of a felony or a misdemeanor which is 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 be punished in the following manner:

(1) Any person who violates this subdivision in the commission or attempted commission of a misdemeanor, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison, provided that any person sentenced to imprisonment in the county jail pursuant to subdivision (b) of Section 17, shall be imprisoned for a period not to exceed one year, but not less than 180 days, and shall not be eligible for release upon completion of sentence, parole, or any other basis, until he or she has served 180 days. If the court grants probation or suspends the execution of sentence imposed upon the defendant, it shall require as a condition thereof that the defendant serve 180 days in county jail.

(2) Except as provided in paragraph (3), any person who violates this subdivision in the commission or attempted commission of a felony shall, upon conviction of that felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of two years if the underlying felony is punishable by a maximum term of three years, or by an additional term of three years if the underlying felony is punishable by a maximum term exceeding three years.

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

(4) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in this section in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(c) As used in this chapter, "pattern of criminal gang

activity" means the commission, attempted commission, or solicitation of two or more of the following offenses, provided at least one of those 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 are 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) Arson, as defined in Section 451.

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

(d) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informall, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (7), inclusive, of subdivision (c), which has a common name or common identifying sign or symbol, whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(e) As used in this chapter, "prosecutor" means any agency or attorney authorized to prosecute criminal offenses pursuant to state law, including a city attorney or city prosecutor if so authorized.

186.23. This chapter does not apply to employees engaged in concerted activities for their mutual aid and protection, or the activities of labor organizations or their members or agents.

186.24. If any part or provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter, including the application of such part or provisions to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this chapter are severable.

186.25. Nothing in this chapter shall prevent a local governing body from adopting and enforcing laws consistent with this chapter relating to gangs and gang violence. Where those local laws duplicate or supplement the provisions of this chapter, this chapter shall be construed as providing alternative remedies and not as preempting the field.

186.26. On or before January 1, 1990, the <Attorney General>

[DISTRICT ATTORNEY OF LOS ANGELES COUNTY] shall submit a report to the Legislature on the impact of this chapter on the control of criminal street gang activity in <the state.> [LOS ANGELES COUNTY.] The report shall include, but need not be limited to, all of the following:

(a) The number of arrests made under this chapter.

(b) The number of prosecutions under this chapter.

(c) The number of trials which have resulted from prosecutions under this chapter and the number of pleas which have resulted.

(d) The number of convictions under this chapter.

(e) The number and type of sentence enhancements which have been sought under this chapter, and the number and kind of sentence enhancements which have been ordered by the courts.

186.27. This chapter shall remain in effect only until January 1, 1991, and as of that date is repealed, unless a later enacted statute, which is chaptered on or before January 1, 1991, deletes or extends that date.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

[SEC. 3. NO REIMBURSEMENT IS REQUIRED BY THIS ACT PURSUANT] [TO SECTION 6 OF ARTICLE XIII B OF THE CALIFORNIA CONSTITUTION] [BECAUSE THIS ACT IS IN ACCORDANCE WITH THE REQUEST OF A LOCAL] [AGENCY OR SCHOOL DISTRICT WHICH DESIRED LEGISLATIVE AUTHORITY] [TO CARRY OUT THE PROGRAM SPECIFIED IN THIS ACT.]

<SEC. 3.>

[SEC. 4.] This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide the tools necessary for law enforcement to stem the tide of illegal gang warfare without infringing upon the constitutional rights of any individual, at the earliest possible time, it is necessary that this act take effect immediately.

LEGEND: <Deleted text> [NEW TEXT]

END OF BILL TEXT
END OF BILL TEXT

SENATE BILL 1555

AMENDED IN ASSEMBLY AUGUST 20, 1987

AMENDED IN SENATE JUNE 23, 1987

AMENDED IN SENATE JUNE 4, 1987

AMENDED IN SENATE MAY 22, 1987

Introduced by Senator Robbins

(Coauthors: Senators Torres and Watson)

March 6, 1987

An act to amend Sections 272 and 422 of, and to add [AND REPEAL] Chapter 11 (commencing with Section 186.20) <to> [OF] Title 7 of Part 1 of, the Penal Code, relating to crime, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1555, as amended, Robbins. Crimes.

(1) Under existing law, there are no provisions which specifically make the commission of criminal offenses by individuals who are members of street gangs a separate and distinctly punished offense, or which provide for the forfeiture of the proceeds of gang-related activity. This bill would provide 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 furthers, or assists in, any criminal conduct by members of that gang, shall be punished by imprisonment in the county jail for a period not to exceed one year, or by imprisonment in the state prison.

This bill would also prescribe the punishment applicable to any person who is convicted of a felony or misdemeanor which is committed or attempted to be 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, including the minimum term of imprisonment in the county jail and the state prison for these offenses and a [2- OR] 3-year sentence enhancement applicable to the commission or attempted commission of a felony in furtherance of these objectives.

This bill would impose a state-mandated local program by creating new crimes. This bill would provide that every building or place used for the purpose of promoting, furthering, or

assisting in criminal conduct by members of a criminal street gang, and every building or place where [CRIMINAL] gang <criminal> conduct takes place, is a nuisance. The bill would provide that the prosecutor in any county, in the name of the people, shall, and any citizen of the state residing in the county where the building or place is located, in his or her own name, may, bring an action to abate as a nuisance any building or place used for that purpose. This bill would authorize the Attorney General to intervene in, or act as amicus curiae in any private civil action maintained under this bill.

This bill would provide that a criminal street gang is an "unincorporated association" within the meaning of designated provisions of current law relating to the capacity to sue or be sued, the service of process, and the imposition of a judgement against it or its members.

This bill would establish a procedure for the forfeiture of any property interest, whether tangible or intangible, or real or personal property, including money, which are the proceeds of, or which are derived from, any crime committed for the benefit of, at the direction of, or in association with, any criminal street gang, as specified.

This bill would establish the Gang Violence Prevention and Education Revolving Fund to be administered by the Office of Criminal Justice Planning. This bill would require any penalties or forfeitures recovered for the state pursuant to this bill to be deposited in the fund. This bill would provide continuous appropriation of funds to the Gang Violence Prevention and Education Revolving Fund, thereby constituting an appropriation.

[THIS BILL WOULD PROVIDE THAT THESE PROVISIONS ARE NOT] [APPLICABLE TO EMPLOYEES ENGAGED IN CONCERTED ACTIVITIES FOR] [THEIR MUTUAL AID AND PROTECTION, OR TO LABOR ORGANIZATION] [ACTIVITIES OR THE ACTIVITIES OF THEIR MEMBERS OR AGENTS.]

[THIS BILL WOULD REPEAL THESE PROVISIONS ON JANUARY 1, 1991.]

(2) Existing law provides that every person who commits any act or omits the performance of a duty which causes or tends to cause or encourage a minor to engage in specified prohibited conduct, is guilty of a misdemeanor.

This bill would provide that every parent or guardian of a minor who violates these provisions of current law and who, as a result of that violation, knowingly receives any proceeds derived directly or indirectly from a pattern of criminal gang activity, as defined, is guilty of an offense punishable by imprisonment in the county jail for a period not to exceed one year, or by imprisonment in the state prison. This bill would impose a state-mandated local program by creating a new crime.

(3) Existing law provides that it is a felony for any person to willfully threaten to commit a crime which will result in death or great bodily injury to another person, with intent to terrorize another or with reckless disregard of the risk of terrorizing another, as prescribed.

This bill would recast these provisions to prohibit any person from willfully threatening to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement is to be taken as a threat, even if there is no intent to actually carry it out, which, on its face and under the circumstances in which it is made is so unequivocal, unconditional, immediate, and specific as to convey

to the person threatened a gravity of purpose and an immediate prospect of execution. This bill would make this offense either a misdemeanor or a felony punishable either by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison, thereby imposing a state-mandated local program.

(4) [THIS BILL WOULD REQUIRE THE ATTORNEY GENERAL TO SUBMIT] [A REPORT TO THE LEGISLATURE ON OR BEFORE JANUARY 1, 1990, ON] [THE EFFECT OF THE BILL ON THE CONTROL OF CRIMINAL STREET GANG] [ACTIVITY.]

[(5)] 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.

<(5)>

[(6)] The bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

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

SECTION 1. Chapter 11 (commencing with Section 186.20) is added to Title 7 of Part 1 of the Penal Code, to read:

Chapter 11. Street Terrorism Enforcement and Prevention Act

186.20. This chapter shall be known and may be cited as the "California Street Terrorism Enforcement and Prevention Act."

186.21. The Legislature hereby finds and declares that it is the right of every person, regardless of race, color, creed, religion, national origin, sex, age, sexual orientation, or handicap, to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals. It is not the intent of this chapter to interfere with the exercise of the constitutionally protected rights of freedom of expression and association. The Legislature hereby recognizes the constitutional right of every citizen to harbor and express beliefs on any lawful subject whatsoever <and> [,] to lawfully associate with others who share similar beliefs [, TO] [PETITION LAWFULLY CONSTITUTED AUTHORITY FOR A REDRESS OF] [PERCEIVED GRIEVANCES, AND TO PARTICIPATE IN THE ELECTORAL] [PROCESS].

The Legislature, however, further finds that the State of California is in a state of crisis which has been caused by violent street gangs whose members threaten, terrorize, and commit a multitude of crimes against the peaceful citizens of their neighborhoods. These activities, both individually and collectively, present a clear and present danger to public order and safety and are not constitutionally protected. [THE] [LEGISLATURE FINDS THAT THERE ARE NEARLY 600 CRIMINAL STREETS] [GANGS OPERATING IN CALIFORNIA, AND THAT THE NUMBER OF GANG-]

[RELATED MURDERS IS INCREASING. THE LEGISLATURE ALSO FINDS THAT] [IN LOS ANGELES COUNTY ALONE THERE WERE 328 GANG-RELATED MURDERS] [IN 1986, AND THAT GANG HOMICIDES IN 1987 HAVE INCREASED 80] [PERCENT OVER 1986.] It is the intent of the Legislature in enacting this chapter to seek the eradication of criminal activity by street gangs by focusing upon patterns of criminal gang activity and upon the organized nature of street gangs, which together, are the chief source of terror created by street gangs. The Legislature further finds that an effective means of punishing and deterring the criminal activities of street gangs is through forfeiture of the profits, proceeds, and instrumentalities acquired, accumulated, or used by street gangs.

186.22. (a) 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 by imprisonment in the county jail for a period not to exceed one year, or by imprisonment in the state prison.

(b) Any person who is convicted of a felony or a misdemeanor which is 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 be punished in the following manner:

(1) Any person who violates this subdivision in the commission or attempted commission of a misdemeanor, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison, provided that any person sentenced to imprisonment in the county jail pursuant to subdivision (b) of Section 17, shall be imprisoned for a period not to exceed one year, but not less than 180 days, and shall not be eligible for release upon completion of sentence, parole, or any other basis, until he or she has served 180 days. If the court grants probation or suspends the execution of sentence imposed upon the defendant, it shall require as a condition thereof that the defendant serve 180 days in the county jail.

(2) Except as provided in paragraph (3), any person who violates this subdivision in the commission or attempted commission of a felony shall, upon conviction of that felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of <three> <years> [TWO YEARS IF THE UNDERLYING FELONY IS PUNISHABLE BY A] [MAXIMUM TERM OF THREE YEARS, OR BY AN ADDITIONAL TERM OF THREE] [YEARS IF THE UNDERLYING FELONY IS PUNISHABLE BY A MAXIMUM TERM] [EXCEEDING THREE YEARS].

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

(4) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in this section in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(c) As used in this chapter, "pattern of criminal gang

activity" means the commission, attempted commission, or solicitation of two or more of the following offenses, provided at least one of those 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 ARE] [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) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

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

(d) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its [PRIMARY] activities the commission of [ONE OR MORE OF THE] criminal acts [ENUMERATED IN PARAGRAPHS (1) TO (7), INCLUSIVE,] [OF SUBDIVISION (C)], which has a common name or common identifying sign or symbol, whose members <or participants> individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(e) As used in this chapter, "prosecutor" means any agency or attorney authorized to prosecute criminal offenses pursuant to state law, including a city attorney or city prosecutor, if so authorized.

<186.25.>

[186.23.] (a) A criminal street gang, as defined in this chapter, is an unincorporated association within the meaning of subdivision (a) of Section 388 of the Code of Civil Procedure and subdivision (a) of Section 24000 of the Corporations Code. Service of process upon a criminal street gang as an unincorporated association shall be made by delivery of a copy of the process to any three or more members <or participants> of the gang whose character, as determined by the court, is such that it could reasonably be expected that he or she would give notice to other members, together with publication pursuant to Section 6061.3 of the Government Code.

(b) For purposes of any violation of this chapter, every building or place used for the purpose of promoting, furthering, or assisting in any criminal conduct by members of a criminal street gang, and every building or place wherein or upon which criminal conduct by gang members takes place, is a nuisance which shall be enjoined, abated, and prevented, and for which damages may be recovered, whether it is a public or private nuisance. Whenever there is reason to believe that a nuisance is kept, maintained, or exists, in any county, the prosecutor, in the name of the people of the State of California, shall, or any citizen

of the state residing in the county, in his or her own name, may, maintain an action to abate and prevent the nuisance and perpetually enjoin the person conducting or maintaining it, and the owner, lessee, or agent of the building or place, in or upon which the nuisance exists, from directly or indirectly maintaining or permitting the nuisance and to seek redress for damages as provided in this chapter. Whenever there is reason to believe that property is subject to forfeiture as provided herein, the prosecutor may, in the name of the people of the State of California, maintain a civil action to seek the forfeiture thereof.

(c) Any person who is found to be in violation of Section 186.22 shall be liable for damages, punitive damages, pursuant to Section 32294 of the Civil Code, reasonable attorney's fees, and any of the costs to the victim of any crime committed by him or her, or by any other member <or participant> of that person's criminal street gang, with the specific intent to promote, further, or assist in any of its criminal conduct by members of the criminal street gang. Any criminal street gang, as defined in Section 186.22, shall be liable for damages, punitive damages pursuant to Section 3294 of the Civil Code, reasonable attorney's fees, and costs to the victim of any crime committed by any member of the criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by any member <or participant> of the criminal street gang.

(d) The Attorney General shall be given notice of, and may intervene in, or act as amicus curiae in, any private civil action commenced pursuant to this chapter. The Attorney General shall notify all prosecutors specified in subdivision (g) of Section 186.22, who have jurisdiction over the location of any included cause of action who may then, with the consent of the Attorney General, intervene in, or act as amicus curiae in, that action.

(e) A criminal street gang or any person who is found to be liable for damages pursuant to this chapter shall also be liable to the State of California for a civil penalty of twice the proved damages, reasonable attorney's fees, and costs. These damages may be collected only upon full satisfaction of any judgment entered in favor of a victim pursuant to subdivision (c). Any moneys collected shall be deposited in the fund created pursuant to Section <186.27> [186.25].

(f) If the existence of the nuisance is shown in the action to the satisfaction of the court or judge, either by verified complaint or affidavit, the court or judge shall allow a temporary writ of injunction to abate and prevent the continuance or reoccurrence of the nuisance.

(g) Notwithstanding any law to the contrary, the initiation of civil proceedings pursuant to this chapter shall commence within three years after the actual discovery of the violation.

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

<186.26.>

[186.24.] (a) Any property interest, whether tangible or intangible, real or personal, including money, used in the course of, intended for use in the course of, derived from, realized through, or which is proceeds of, or received in exchange for the proceeds of, any crime committed for the benefit of, at the

direction of, or in association with, any criminal street gang, or is used or intended to be used to facilitate, any violation of this chapter, or which affords a source of influence over any criminal street gang, shall be subject to civil forfeiture pursuant to this section. Subject to Section 1538.5 and compliance with the hearing requirements of subdivisions (c) to (j), inclusive, and subject to the protections for bona fide purchasers for value under subdivision (h) any such property interest shall vest in the state or local governmental entity, upon commission of the act giving rise to forfeiture. Any property interest that is subsequently transferred to any other person may be the subject of a special judgment of forfeiture, and shall thereafter be ordered forfeited to the state or local governmental entity, unless the transferee is a bona fide purchaser for value pursuant to subdivision (h).

(b) Any property, except real property, which is subject to forfeiture pursuant to this section may be seized upon a warrant issued by a court of competent jurisdiction, upon application of the prosecutor supported by an affidavit, demonstrating probable cause to believe the property should be forfeited pursuant to this section. Seizure without a warrant may occur if incident to a lawful arrest or search, or if exigent circumstances exist, indicating that flight or destruction are imminent, or in any other manner consistent with the protections of the Constitutions of the United States and the State of California. Receipts for property seized pursuant to this section shall be delivered to any person out of whose possession that property was seized, in accordance with Section 1412. In the event property seized was not seized out of anyone's possession, a receipt for the property shall be delivered to the individual in possession of the premises at which the property was seized. Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the prosecutor, subject only to the orders and decrees of the court or official having jurisdiction thereof.

(c) The prosecutor may, in conjunction with any civil or criminal proceeding filed pursuant to this chapter, or separately, file a civil petition of forfeiture in rem with any court of competent jurisdiction. If a complaint, indictment, or information has been filed, the same prosecutorial agency shall file the civil petition of forfeiture. The prosecutor shall make or cause to be made service of process of a notice regarding that petition upon every individual designated in a receipt issued for the property seized or who may have a property interest in the alleged proceeds, which notice shall state that any interested party may file a verified claim with the court stating the amount of their claimed interest and an affirmation or denial of the prosecutor's allegation. If the notices cannot be given by registered mail or personal delivery, the notices shall be published for at least three successive weeks in a newspaper of general circulation in the county where the property is located. If the property alleged to be subject to forfeiture is real property, the prosecutor shall, at the time of filing the petition of forfeiture, record a lis pendens in each county in which the real property is situated which specifically identifies the real property alleged to be subject to forfeiture. The judgment of forfeiture shall not affect the interest in real

property of any third party which was acquired prior to the recording of the lis pendens.

All notices shall set forth the time within which a claim of interest in the property seized is required to be filed pursuant to subdivision (d).

(d) Any person claiming an interest in the property or proceeds may, within 10 days after actual receipt of service of process, or within 30 days from the date of the first publication of the notice of seizure if personal service of process has not been made, file with the court of the county in which the action is pending a verified claim stating his or her interest in the property or proceeds. A verified copy of the claim shall be given by the claimant to the prosecutor.

If, at the end of that period an interested person has not filed a claim, the court, upon motion, shall declare that the person has defaulted upon his or her alleged interest, and it shall be subject to forfeiture.

(e) If filed in conjunction with a criminal case, the forfeiture proceeding shall be set for hearing in the same court in which the criminal offense will be tried. The issue of forfeiture shall be promptly tried after the conclusion of the criminal trial, before either the same jury or judge.

(f) At all forfeiture proceedings, the prosecutor shall have the burden of demonstrating, by a preponderance of the evidence, that the property is subject to forfeiture pursuant to subdivision (a). In the alternative, if the prosecutor establishes, by a preponderance of the evidence, that the property was acquired by the claimant during a period when the claimant was a member of a criminal street gang, and that there was no likely source for such property other than as proceeds of, or received in exchange for proceeds of, any crime committed for the benefit of, at the direction of, or in association with, any criminal street gang, there shall be a rebuttable presumption that the property is subject to forfeiture. In that event, the claimant shall have the burden of demonstrating, by a preponderance of the evidence, that the property is not subject to forfeiture.

Notwithstanding any law to the contrary, at the forfeiture proceeding, all relevant evidence, including hearsay evidence, shall be admissible, unless exclusion is required pursuant to the United States Constitution or the California Constitution.

(g) Concurrent with, or subsequent to, the filing of the petition, the prosecutor may move the court for the following pendente lite orders to preserve the status quo of the property alleged in the petition of forfeiture:

(1) An injunction to restrain all interested parties and enjoin them from transferring, encumbering, hypothecating, or otherwise disposing of that property.

(2) Appointment of a receiver to take possession of, care for, manage, and operate the assets and properties so that such property may be maintained and preserved.

No preliminary injunction may be granted or receiver appointed without notice to the interested parties and a hearing to determine that an order is necessary to preserve the property, pending the outcome of the forfeiture proceedings, and that there is probable cause to believe that the property alleged in the forfeiture proceedings is subject to forfeiture pursuant to

subdivision (a). However, a temporary restraining order may issue pending that hearing pursuant to Section 527 of the Code of Civil Procedure.

The court in granting these motions may order a surety bond or undertaking to preserve the property interests of the interested parties.

(h) If the trier of fact at the forfeiture hearing finds that the alleged property or proceeds is forfeitable pursuant to subdivision (a), the court shall declare the property or proceeds forfeited to the state or local governmental entity, subject to distribution as provided in subdivision (k). No property solely owned by a bona fide purchaser for value, who can demonstrate having done all that could reasonably be expected to prevent the property from being used as proscribed herein, shall be subject to forfeiture.

(i) If the trier of fact at the forfeiture hearing finds that the alleged property is forfeitable pursuant to subdivision (a), but does not find that a person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract, acquired that interest with actual knowledge that the property was to be used for a purpose for which forfeiture is permitted, and the amount due to that person is less than the appraised value of the property, that person may pay to the state or local governmental entity, the amount of the registered owner's equity, which shall be deemed to be the difference between the appraised value and the amount of the lien, mortgage, security interest, or interest under a conditional sales contract. Upon that payment, the state or local governmental entity shall relinquish all claims to the property. If the holder of the interest elects not to make that payment to the state or local governmental entity, the property shall be deemed forfeited to the state or local governmental entity and the ownership certificate shall be forwarded. The appraised value shall be determined as of the date judgment is entered either by agreement between the legal owner and the prosecutor, or if they cannot agree, then by a court-appointed appraiser. A person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract shall be paid the appraised value of his or her interest.

If the amount due to a person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract is less than the value of the property and the person elects not to make payment to the state or local governmental entity, the property shall be sold at public auction by the Department of General Services or local governmental entity which shall provide notice of that sale by one publication in a newspaper of general circulation in the city, community, or locality where the sale is to take place.

(j) If the trier of fact at the forfeiture hearing does not find that the alleged property is forfeitable pursuant to subdivision (a), it shall order the return of the property upon satisfactory proof of ownership. If satisfactory proof of ownership is not provided, the property shall be disposed of according to the procedures set out in paragraphs (1), (2), and (3) of subdivision (b) of Section 1417.5.

(k) Notwithstanding the fact that no response or claim has been filed pursuant to subdivision (d), in all cases where

property is forfeited pursuant to this section and, where necessary, sold by the Department of General Services or local governmental entity, the property forfeited or the proceeds of sale shall be distributed by the state or local governmental entity according to the following priorities:

(1) To the bona fide or innocent purchaser, conditional sales vendor, or holder of a valid lien, mortgage, or security interest, if any up to the amount of his or her interest in the property or proceeds, when the court declaring the forfeiture orders a distribution to that person. The court shall endeavor to discover all such lienholders and protect their interests and may, at its discretion, order the proceeds placed in escrow for up to an additional 60 days to ensure that all valid claims are received and processed.

(2) As directed by the prosecutor, to the Department of General Services or local governmental entity for all expenditures made or incurred by it in connection with the sale of the property, including expenditures for any necessary repairs, storage, or transportation of any property seized pursuant to this section.

(3) As directed by the prosecutor, to any nonprosecutorial law enforcement agency which participated directly in any of the acts which led to the seizure or forfeiture of the property so as to equitably reflect the investigating and processing costs of that agency.

(4) To the prosecutor for the reimbursement of all expenditures made in connection with the forfeiture proceedings, including, but not limited to, personnel costs, expenditures for witness fees, reporter's fees, transcripts, printing, traveling, undertakings, and investigation.

(5) The balance to the fund created pursuant to Section <186.27> [186.25].

(L) The claim of the state or local governmental entity pursuant to this chapter shall have priority over a claim to the seized property made by the Franchise Tax Board in a notice to withhold issued under Section 18817 or 26132 of the Revenue and Taxation Code.

<186.27.>

[186.25.] (a) There is hereby established in the State Treasury a Gang Violence Prevention and Education Revolving Fund to be administered by the Office of Criminal Justice Planning under the conditions and purposes of Chapter 3.5 (commencing with Section 13826) of Title 6 of Part 4. In the event that chapter is repealed [OR BECOMES INOPERATIVE], or the Office of Criminal Justice Planning is terminated or abolished <or becomes> <inoperative>, this fund shall be administered by the Attorney General according to such rules and regulations as he or she shall promulgate. All funds disbursed from the fund shall only be used for prevention and education activities. Any city, county, or city and county, or any department or office thereof, in addition to any nonprofit operation or corporation, whether or not established solely for these purposes, and community-based organizations, as defined in Section 13826.6, shall be eligible to apply for funding. Funds disbursed from this fund may be used by a grantee to implement any one or more of the activities listed in subdivision (a) or (b) of Section <11386.6> [13826.6], or Section 13826.65. The Office of Criminal Justice Planning

shall make a good faith attempt to award grants to programs serving counties in approximately the same dollar proportion per county as the dollar proportion of the receipts of the fund from each county.

(b) Notwithstanding any other provision of law, including Section 13340 of the Government Code, the moneys in the fund are hereby continuously appropriated to the Office of Criminal Justice Planning, or to the Attorney General as provided in subdivision (a), without regard to fiscal years, for the purposes of the section.

(c) On or before the 15th day of January, April, July, and October of each fiscal year, the Office of Criminal Justice Planning, or the Attorney General, shall cause to be filed with the Governor, with copies to the Department of General Services, an assistant director of the Department of Finance, the President pro Tempore of the Senate, and the Speaker of the Assembly, a full and complete public accounting of the receipts and disbursements from the fund in the previous calendar quarter.

<186.28.>

[186.26.] (a) Any prosecutor for the county in which property is subject to seizure pursuant to subdivision (a) of Section <186.26> [186.24] may, pursuant to this section, order forfeiture of personal property not exceeding twenty-five thousand dollars (\$25,000) in value. The prosecutor shall provide notice of proceeding under this section pursuant to the procedures in subdivision (c) of Section <186.26> [186.24] including all of the following:

- (1) A description of the property.
- (2) The appraised value of the property.
- (3) The date and place of seizure.
- (4) The violation of law alleged with respect to forfeiture of the property.
- (5) The instructions for filing of a claim pursuant to subdivision (d) of Section <186.26> [186.24] and time limits for filing a claim.

(b) The prosecutor shall provide the seizing agency with a written decision on each claim within 30 days of the claim, unless the circumstances require additional time. If no claims are timely filed, the prosecutor shall prepare a written declaration of forfeiture of the subject property to the state or local governmental entity and dispose of the property in accordance with subdivision (k) of Section <186.26> [186.24]. A written declaration of forfeiture signed by the prosecutor pursuant to this section shall be deemed to provide good and sufficient title to the forfeited property.

If a claim is timely filed, the prosecutor shall file a petition of forfeiture within 30 days of the receipt of the claim. The petition of forfeiture shall then proceed pursuant to other provisions of Section <186.26> [186.24].

<186.29.>

[186.27.] A civil action brought by the prosecutor pursuant to this chapter, and a civil petition of forfeiture which is not filed in conjunction with a criminal case, shall have precedence over all other actions, except criminal proceedings, election contests, and hearings on injunctions.

[186.28. THIS CHAPTER DOES NOT APPLY TO EMPLOYEES ENGAGED IN] [CONCERTED ACTIVITIES FOR THEIR MUTUAL AID AND PROTECTION, OR]

[THE ACTIVITIES OF LABOR ORGANIZATIONS OR THEIR MEMBERS OR]
[AGENTS.]

<186.30.>

[186.29.] If any part or provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter, including the application of that part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this chapter are severable.

<186.31.>

[186.30.] Nothing in this chapter shall prevent a local governing body from adopting and enforcing laws consistent with this chapter relating to gangs and gang violence. Where local laws duplicate or supplement this chapter, this chapter shall be construed as providing alternative remedies and not as preempting the field.

[186.31. THIS CHAPTER SHALL REMAIN IN EFFECT ONLY UNTIL]
[JANUARY 1, 1991, AND AS OF THAT DATE IS REPEALED, UNLESS A]
[LATER ENACTED STATUTE, WHICH IS CHAPTERED BEFORE JANUARY 1,]
[1991, DELETES OR EXTENDS THAT DATE.]

SEC. 2. Section 272 of the Penal Code is amended to read:

272. (a) Every person who commits any act or omits the performance of any duty, which act or omission causes or tends to cause or encourage any person under the age of 18 years to come within the provisions of Sections 300, 601, or 602 of the Welfare and Institutions Code or which act or omission contributes thereto, or any person who, by any act or omission, or by threats, commands, or persuasion, induces or endeavors to induce any person under the age of 18 years or any ward or dependent child of the juvenile court to fail or refuse to conform to a lawful order of the juvenile court, or to do or to perform any act or to follow any course of conduct or to so live as would cause or manifestly tend to cause any such person to become or to remain a person within the provisions of Sections 300, 601, or 602 of the Welfare and Institutions Code, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding two thousand five hundred dollars (\$2,500), or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment in a county jail, or may be released on probation for a period not exceeding five years. The district attorney shall prosecute all violations charged under this section.

(b) Every parent or legal guardian of any person under the age of 18 years who violates this section and who, as a result of that violation, knowingly receives any proceeds derived directly or indirectly from a pattern of criminal gang activity, as defined in subdivision (e) of Section 186.22, is guilty of an offense punishable by imprisonment in the county jail for a period not to exceed one year, or by imprisonment in the state prison.

SEC. 3. Section 422 of the Penal Code is amended to read:

422. Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances

in which it is made is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened a gravity of purpose and an immediate prospect of execution, and who thereby either:

- (a) Causes another person reasonably to be in sustained fear for his or her or their immediate family's safety;
 - (b) Causes the evacuation of a building, place of assembly, or facility used in public transportation;
 - (c) Interferes with essential public services; or
 - (d) Otherwise causes serious disruption of public activities,
- shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison.

[SEC. 4. ON OR BEFORE JANUARY 1, 1990, THE ATTORNEY GENERAL] [SHALL SUBMIT A REPORT TO THE LEGISLATURE ON THE EFFECT OF THIS] [ACT ON THE CONTROL OF CRIMINAL STREET GANG ACTIVITY IN THE] [STATE. THE REPORT SHALL INCLUDE, BUT NEED NOT BE LIMITED TO,] [ALL OF THE FOLLOWING:]

- [(A) THE NUMBER OF ARRESTS UNDER THIS ACT.]
- [(B) THE NUMBER OF PROSECUTIONS UNDER THIS ACT.]
- [(C) THE NUMBER OF TRIALS WHICH HAVE RESULTED FROM] [PROSECUTIONS UNDER THIS ACT, AND THE NUMBER OF PLEAS WHICH] [RESULTED.]
- [(D) THE NUMBER OF CONVICTIONS UNDER THIS ACT.]
- [(E) THE NUMBER AND TYPE OF SENTENCE ENHANCEMENTS WHICH HAVE] [BEEN SOUGHT UNDER THIS ACT, AND THE NUMBER AND KIND WHICH HAVE] [BEEN ORDERED BY THE COURTS.]

<SEC. 4.>

[SEC. 5.] No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

<SEC. 5.>

[SEC. 6.] This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide the tools necessary for law enforcement to stem the tide of illegal gang warfare without infringing upon the constitutional rights of any individual, at the earliest possible time, it is necessary that this act take effect immediately.

LEGEND: <Deleted text> [NEW TEXT]

END OF REQUESTED TEXT.