

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,  
Plaintiff and Respondent,

v.

JOE RODRIGUEZ, JR.,  
Defendant and Appellant.

) Supreme Court No.  
) S187680  
)  
) Court of Appeal No.  
) C060227  
)  
) Superior Court No.  
) CRF07288  
)  
)

SUPREME COURT  
FILED

MAY 24 2011

Frederick K. Ehrlich Cle

Deputy

Court of Appeal, Third Appellate District  
Yuba County Superior Court, Honorable James L. Curry, Judge

APPELLANT'S MOTION FOR JUDICIAL NOTICE

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And Appellant  
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By appointment of the  
Supreme Court  
under the Central  
California Appellate  
Program independent  
case system

**IN THE SUPREME COURT OF THE STATE OF CALIFORNIA**

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**APPELLANT’S MOTION FOR JUDICIAL NOTICE**

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**TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF CALIFORNIA:**

Pursuant to Evidence Code sections 452 and 459 and Rule 8.252(a), California Rules of Court,<sup>1</sup> appellant Joe Rodriguez, Jr. hereby moves this Court to take judicial notice of the documents listed below.

Exhibits “A” through “D” are true and correct copies of the documents obtained by counsel for appellant from Legislative Intent Service of Woodland, California, which pertain to Penal Code section 186.22 as enacted by Senate Bill No. 1555 (1987-1988 Regular Session)

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<sup>1</sup>All further rule references are to the California Rules of Court.

Statutes 1988, Chapter 1256 and Assembly Bill No. 2013 (1987-1988 Regular Session) Statutes 1988, Chapter 1242.

Appellant requests this Court take judicial notice of the following documents:

1. Exhibit "A" -- Author's Letter to Chairman of Senate Committee on Appropriations, August 18, 1988, Assembly Bill (1987-1988 Regular Session) Statutes 1988, Chapter 1242 [cited in Appellant's Answer Brief on the Merits ("ABOM") p. 43];

2. Exhibit "B" -- Author's Statement to Senate Third Reading, August 31, 1988, Assembly Bill No. 2013 (1987-1988 Regular Session) Statutes 1988, Chapter 1242 [ABOM p. 43];

3. Exhibit "C" -- Author's Statement to Senate Judiciary Committee dated May 10, 1988, Assembly Bill No. 2013 (1987-1988 Regular Session) Statutes 1988, Chapter 1242 [ABOM p. 43];

4. Exhibit "D" -- Legislative Counsel's Digest, Assembly Bill No. 2013 (1987-1988 Regular Session) Statutes 1988, Chapter 1242 [ABOM p. 39];

5. Exhibit "E" -- Legislative Counsel's Digest, Senate Bill No. 1555 (1987-1988 Regular Session) Statutes 1988, Chapter 1256 [ABOM p. 40];

6. Exhibit "F" -- Legislative Counsel's Report to Governor on Enrolled Bill, dated September 28, 1988 [sic], Senate Bill No. 1555 (1987-

1988 Regular Session) Statutes 1988, Chapter 1256 [ABOM p. 14, fn. 6];  
and

7. Exhibit "G" -- Penal Code section 186.22, subdivision (a),  
Assembly Bill No. 2013 (1987-1988 Regular Session) Statutes 1988,  
Chapter 1242, as enacted [ABOM p. 29].

This motion is based upon the above, Evidence Code sections 452  
and 459, rule 8.252(a), and the attached memorandum of points and  
authorities.

Dated: May 20, 2011

A handwritten signature in cursive script that reads "Diane Nichols". The signature is written in black ink and is positioned above a horizontal line.

Diane Nichols

## MEMORANDUM OF POINTS AND AUTHORITIES

Pursuant to Evidence Code sections 452 and 459 and rule 8.252(a), appellant moves this Court to take judicial notice of the documents contained in Exhibits “A” through “G” to this motion.

Under Evidence Code section 459, appellate courts have the same right and power to take judicial notice as do the trial courts. Construction of a statute is a question of law, and a reviewing court is not bound by evidence presented on that question below. (*California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, 698-699.) A reviewing court under Evidence Code section 459, subdivision (a) may take notice of any matter in Evidence Code section 452. Evidence Code section 452, subdivision (c) provides that official acts of the legislative, executive, and judicial departments of any state may be judicially noticed. Under that provision, this Court has previously taken judicial notice of legislative history materials. (*People v. Ledesma* (1997) 16 Cal.4th 90, 98, fn. 4; *Mangini v. R.J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1064.)

Only relevant material may be judicially noticed. (*Mangini v. R.J. Reynolds Tobacco Co., supra*, 7 Cal.4th at p. 1063.) This court has granted judicial notice of documents bearing on the legislative history of a statute. (*Smith v Rae-Venter Law Group* (2002) 29 Cal.4th 345, 359, fn. 7; *Pearl v. Workers’ Comp. Appeals Bd.* (2001) 26 Cal.4th 189, 198, fn. 4.) Here, the issue on review is whether an active participant in a criminal street gang

who acts alone as the direct perpetrator of felonious criminal conduct can be found guilty of violating Penal Code section 186.22, subdivision (a). The answer turns on the construction of Penal Code section 186.22, subdivision (a). The documents of which judicial notice is sought are portions of the legislative history of the two bills which enacted Penal Code section 186.22, Senate Bill No. 1555 (1987-1988 Regular Session) Statutes 1988, Chapter 1256 and Assembly Bill No. 2103 (1987-1988 Regular Session) Statutes 1988, Chapter 1242. The documents are cited in Appellant's Answer Brief on the Merits. Therefore, the documents are relevant to determination of the issue on appeal and to appellant's construction of Penal Code section 186.22, subdivision (a) as set forth in his Answer Brief on the Merits.

Furthermore, judicial notice of materials relating to both Assembly Bill No. 2013 and Senate Bill No. 1555 are appropriate. The two almost identical bills resulted in the enactment of Penal Code section 186.22 and related provisions (the Street Terrorism Enforcement and Prevention Act of 1988 ("STEP Act"); §§ 186.20-186.33), with the major difference between the two bills being Senate Bill No. 1555's inclusion of civil forfeiture proceedings. (Leg. Counsel's Rep. to Governor on Enrolled Bill, dated September 28, 1988 [sic], Sen. Bill No. 1555 (1987-1988 Reg. Sess.) Stats. 1988, ch. 1256.) When two statutes dealing with the same subject conflict, the most recently enacted one expresses the Legislature's will and governs

any conflicts between the two. (*In re Thierry S.* (1977) 19 Cal.3d 727, 744; Gov. Code, § 9605.) Both bills were signed by the governor on September 23, 1988, and the provisions of Senate Bill No. 1555, the later chaptered bill, controls where conflicts exist. Consequently, both Assembly Bill No. 2013 and Senate Bill No. 1555 and legislative materials regarding both bills are relevant to the enactment of Penal Code section 186.22. In construing Penal Code section 186.22, subdivision (a) in other cases, this Court has taken judicial notice of the relevant legislative history of both Assembly Bill No. 2013 (*People v. Castenada* (2000) 23 Cal.4th 743, 749-750) and Senate Bill No. 1555 (*People v. Albillar* (2010) 51 Cal.4th 47, 56).

Appellant is requesting this Court to take judicial notice of specific documents found in the legislative histories of the two bills. Appellant is aware that some courts prefer an entire legislative history (*People v. Valenzuela* (2001) 92 Cal.App.4th 768, 776, fns. 3, 4) while others prefer only the relied-upon documents with authority as to why each constitutes cognizable legislative history (*Kaufman & Broad Communities, Inc.* (2005) 133 Cal.App.4th 26, 29 [disapproving submission of “telephone book”-sized legislative history with no justification for individual documents]). Appellant is not trying to persuade this court “to rely on isolated fragments of the Act’s legislative history” (*Drouet v. Superior Court (Broustis)* (2003) 31 Cal.4th 583, 598) but is trying to act economically. Respondent in its Opening Brief on the Merits has cited to only one document from the

legislative history of Assembly Bill No. 2013 and appellant in his Answer Brief on the Merits relies only upon the documents cited herein. Although appellant has examined the complete legislative histories of the two bills, which total 1,181 pages, appellant has not submitted a motion for judicial notice of all the materials contained therein for reasons of judicial economy. Such a motion would have required over 20,000 photocopies in order for this court to consider only a handful of documents contained therein. However, appellant has the two legislative histories and can provide them in full at this Court's request.

In the past, this Court has taken judicial notice of the specific types of documents of which appellant seeks this Court to take judicial notice, as set forth below:

**A. Statements of Author**

This Court has taken judicial notice of an author's statements as indicative of legislative intent when the statements "appear to be part of the debate on the legislation and were communicated to other legislators." (*Carter v. California Dept. of Veterans Affairs* (2006) 38 Cal.4th 914, 928-929.) As set forth before, Assembly Bill No. 2013 and Senate Bill No. 1555 both became law, but the most recently enacted one expresses the Legislature's will and governs if there are any conflicts between the two. (*In re Thierry S., supra*, 19 Cal.3d at p. 744; Gov. Code, § 9605.) In construing Penal Code section 186.22, subdivision (a), this Court has taken



judicial notice of the legislative history of both Assembly Bill No. 2013 (*People v. Castenada, supra*, 23 Cal.4th at pp. 749-750) and Senate Bill No. 1555 (*People v. Albillar, supra*, 51 Cal.4th at p. 56).

Further, this court has taken judicial notice of an author's floor statements (*Catholic Charities of Sacramento, Inc. v. Superior Court (Dept. of Managed Health Care)* (2004) 32 Cal.4th 527, 579; see also *In re Marriage of Siller* (1986) 187 Cal.App.3d 36, 46, fn. 6), as requested for Exhibit "B" here. Judicial notice has also been taken of an author's committee statement (*Lewis v. County of Sacramento* (2001) 93 Cal.App.4th 107, 121, fn. 4), as requested in Exhibit "C" and similar to the document in Exhibit "A."

This court should take judicial notice of:

1. Exhibit "A" -- Author's Letter to Chairman of Senate Committee on Appropriations, August 18, 1988, Assembly Bill (1987-1988 Regular Session) Statutes 1988, Chapter 1242;
2. Exhibit "B" -- Author's Statement to Senate Third Reading, August 31, 1988, Assembly Bill No. 2013 (1987-1988 Regular Session) Statutes 1988, Chapter 1242; and
3. Exhibit "C" -- Author's Statement to Senate Judiciary Committee dated May 10, 1988, Assembly Bill No. 2013 (1987-1988 Regular Session) Statutes 1988, Chapter 1242.

## **B. Legislative Counsel's Digests**

Judicial notice of Legislative Counsel's Digests is appropriate as it is reasonable to assume the Legislature acted with the intent and meaning expressed in the Legislative Counsel's Digest, although the Digest is not binding or even persuasive if contravened by the plain language of the statute or other indicia of statutory intent. (*Jones v. Lodge at Torrey Pines Partnership* (2008) 42 Cal.4th 1158, 1169; *Harris v. Price Waterhouse Coopers, LLP* (2006) 39 Cal.4th 1220, 1233, fn. 9; *People v. Cruz* (1996) 13 Cal.4th 764, 780.)

As set forth before, both Senate Bill No. 1555 and Assembly Bill No. 2013 became law, but the most recently enacted one expresses the Legislature's will and governs if there are any conflicts between the two. (*In re Thierry S., supra*, 19 Cal.3d at p. 744; Gov. Code, § 9605.) In construing Penal Code section 186.22, subdivision (a), this Court has taken judicial notice of the legislative history of both Assembly Bill No. 2013 (*People v. Castenada, supra*, 23 Cal.4th at pp. 749-750) and Senate Bill No. 1555 (*People v. Albillar, supra*, 51 Cal.4th at p. 56).

This Court should take judicial notice of:

4. Exhibit "D" -- Legislative Counsel's Digest, Assembly Bill No. 2013 (1987-1988 Regular Session) Statutes 1988, Chapter 1242
5. Exhibit "E" -- Legislative Counsel's Digest, Senate Bill No. 1555 (1987-1988 Regular Session) Statutes 1988, Chapter 1256.

### **C. Enrolled Bill Reports**

This Court has “routinely found enrolled bill reports, prepared by a responsible agency contemporaneous with passage and before signing, instructive on matters of legislative intent.” (*Eisner v. Uveges* (2004) 34 Cal.4th 915, 934, fn. 19; see also *Parnell v. Adventist Health System/West* (2005) 35 Cal.4th 595, 604-605.)

This court should take judicial notice of:

6. Exhibit “F” -- Legislative Counsel’s Report to Governor on Enrolled Bill, dated September 28, 1988 [sic], Senate Bill No. 1555 (1987-1988 Regular Session) Statutes 1988, Chapter 1256.

### **D. Version of Statute in Contemporaneously Enacted Statute**

As set forth earlier, Senate Bill No. 1555 and Assembly Bill No. 2013 were both enacted and signed by the governor on the same day, with Senate Bill No. 1555 being signed into law last. Although both bills became law, the most recently enacted one expresses the Legislature’s will and governs if there are any conflicts between the two. (*In re Thierry S.*, *supra*, 19 Cal.3d at p. 744; Gov. Code, § 9605.) The language of Penal Code section 186.22, subdivision (a) differs slightly between the two enacted versions. Therefore, Assembly Bill No. 2013 is relevant to show different versions of the final statute. This Court has taken judicial notice of different versions of a bill. (*Murphy v. Kenneth Cole Productions* (2007) 40 Cal.4th 1094, 1107; *Wells v. Onezone Learning Foundation* (2006) 39

Cal.4th 1164, 1191-1192.) Further, in *People v. Castenada, supra*, 23 Cal.4th at pp. 749-750, this Court took judicial notice of portions of the legislative history of Assembly Bill No. 2013 when it construed Penal Code section 186.22, subdivision (a).

This court should take judicial notice of:

7. Exhibit "G" -- Penal Code section 186.22, subdivision (a), Assembly Bill No. 2013 (1987-1988 Regular Session) Statutes 1988, Chapter 1242, as enacted.

## CONCLUSION

Appellant respectfully asks this Court to take judicial notice of Exhibits "A" through "G" to this motion pursuant to Evidence Code section 459.

Dated: May 20, 2011

Respectfully submitted,

A handwritten signature in cursive script that reads "Diane Nichols".

Diane Nichols  
Attorney for Defendant and Appellant  
Joe Rodriguez, Jr.

**EXHIBIT "A"**

Author's Letter to Chairman of Senate Committee on Appropriations,  
August 18, 1988, Assembly Bill (1987-1988 Regular Session) Statutes  
1988, Chapter 1242

Sacramento Address  
State Capitol  
P.O. Box 942849  
Sacramento, CA 94249-0001  
Telephone: (916) 445-8800

District Office Address  
3731 Stocker Street, Suite 106  
Los Angeles, CA 90008  
(213) 292-0605



# Assembly California Legislature

COMMITTEES:  
Finance and Insurance  
Health  
Public Employees, Retirement,  
and Social Security  
Utilities and Commerce,  
Chairwoman

GWEN MOORE

ASSEMBLYWOMAN, FORTY-NINTH DISTRICT

August 18, 1988

Senator Robert Presley  
Chairman, Senate Committee on  
Appropriations  
State Capitol, Room 2206  
Sacramento, California 95814

Dear Senator Presley:

Thank you for your letter inviting comments regarding priorities for legislation on the Committee's suspense file. I have six measures on the Committee's suspense file, and all are important, both to me personally and to Californians.

Several of the measures have minimal cost implications and it is unclear to me why they were referred to the suspense file. One of the bills, Assembly Bill 2013, which makes it a separate crime to for a person who knows about a gang's pattern of criminal activity to actively participate in the gang and assist in commission of any felony -- and increases penalties for any crime committed in association with a gang -- was apparently referred to the suspense file pending assurances from local government that no reimbursement will be requested for the report required by the bill. This past week, the City of Los Angeles adopted a resolution stating that no reimbursement would be requested and that the report would be prepared utilizing existing resources. The County is expected to adopt a similar resolution at its meeting this coming Tuesday. Although neither resolution is in hand at this time, I am enclosing letters from the City attorney and the District Attorney to the Commission on State Mandates. In consideration of these assurances, I urge the Committee to release AB 2013 to the Floor. I note also that the Committee has already approved a bill which is virtually identical.

Assembly Bill 3491, of special significance to members of the minority community, also has minimal cost implications. This

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LEGISLATIVE INTENT SERVICE



August 18, 1988

Page 2

bill would replace permissive regulations with statutory priorities and time-frames for placement of children for adoption and foster care with relatives or persons of the same background. I believe that the cost should be at the lower end of the \$14,000 to \$83,000 estimated range since records should already be and in many cases are maintained and periodically reviewed to assure that diligent efforts are being made to place children in families best suited to their needs.

Another measure I expect to have an actual cost less than that which has been estimated is Assembly Bill 2738. This measure establishes the right of mothers and fathers to take up to four months' leave to care for a child without fear of job loss. I have worked for over five years on this proposal and have addressed all the legitimate concerns regarding the bill which is similar to legislation the Committee approved last year. Since then the Department of Finance has significantly revised its cost estimate, in recognition that since state employees are already entitled to up to a year's leave in connection with parenting, there should be no additional state costs for training and replacement of employees. The cost estimate for this bill, the number one priority of women's organizations in California, is now less than \$150,000. However, the estimated cost for the Fair Employment and Housing Commission to respond to complaints regarding parental leave will probably not be fully incurred in 1989-90 due to time required for development and adoption of implementing regulations.

Assembly Bill 457 will result in zero cost to the General Fund and is of significance for Californians throughout the state, particularly for those in metropolitan areas. This bill appropriates \$5 million from the petroleum violation escrow account for a Smart Corridor Telecommunications Demonstration Project aimed at reducing the traffic congestion, fuel use, and air pollution that costs the state's residents millions of dollars a year, wastes their time, and adversely affects their health. This project would extend use of technology which expedited traffic during the 1984 Olympic Games to a segment of the Santa Monica Freeway and connecting surface streets. It also calls for a study of the feasibility of extending Smart Corridor technologies to other metropolitan areas. It is supported by the Deukmejian Administration and by a host of local government and other entities, including the South Coast Air Quality Management District, the Los Angeles County Transportation Commission, the Los Angeles Chamber of Commerce and the City and County of Los Angeles. The appropriation from the petroleum violation escrow account is consistent with the limitation on use of these funds for conservation purposes, and I believe it will be worth many times its face value to Californians.

A88-19

1988 AUG 18 10 47 AM STATE ARCHIVE



August 18, 1988  
Page 3

Another proposal, Assembly Bill 199, seeks to bring equity to surviving spouses of members of the Public Employees' Retirement System. Currently, only spouses acquired before a member's retirement are eligible for the employer-paid survivor's continuance. This bill would extend the benefit enjoyed by persons who marry before retirement to those who marry afterwards. With the author's amendments worked out this week, the cost of the bill has been reduced from close to a million and a half to \$280,000. This was accomplished by excluding active members and school employees and their survivors from the benefits of the bill.

A final measure, Assembly Bill 385, allows a 25% tax credit (in lieu of a charitable deduction) for donations of computers, software, and related services to libraries. Estimates on the potential revenue loss to the state range from \$250,000 to \$1 million a year until the measure sunsets in 1990, depending on the effectiveness of the state's 730 libraries in obtaining donations. This measure will provide libraries, which are very hard-pressed for funding, and their patrons throughout the state access to information in computer libraries. I believe and hope you would agree that access to information is a vital ingredient of our democratic form of government. For this reason, I encourage the Committee to approve AB 385.

I am certainly sympathetic with difficulties the Committee faces in allocating limited resources among meritorious measures. I hope that my comments are helpful in establishing your priorities. If I can be of any further assistance, please contact me.

Sincerely yours,

GWEN MOORE  
49th Assembly District

GM:ach

cc: Members, Senate Appropriations Committee

LEGISLATIVE INTENT SERVICE (800) 666-1017



**EXHIBIT "B"**

Author's Statement to Senate Third Reading, August 31, 1988, Assembly

Bill No. 2013 (1987-1988 Regular Session) Statutes 1988, Chapter 1242

Robbins, August 31

AB 2013, SENATE THIRD READING

Item # 221

MR. PRESIDENT, MEMBERS, THIS BILL, AN URGENCY MEASURE, WILL PUT MEMBERS OF CRIMINAL GANGS ON NOTICE THEY THEY WILL NOT BE IMMUNE FROM PUNISHMENT. IT WILL DO SO BY MAKING IT A SEPARATE OFFENSE FOR A PERSON TO ACTIVELY PARTICIPATE IN A CRIMINAL STREET GANG AND ASSIST IN ANY FELONIOUS CRIMINAL CONDUCT BY THE GANG WITH KNOWLEDGE THAT IT HAS ENGAGED IN A PATTERN OF CRIMINAL ACTIVITY. THIS WILL ENDURE THAT PERSONS WHO HAND THE WEAPONS TO OTHER GANG MEMBERS OR WHO DRIVE THE VEHICLE FOR A SHOOTING WILL BE PUNISHED FOR WHAT THEY CAN NOT HELP BUT KNOW WILL BE INVOLVEMENT IN SERIOUS CRIMINAL ACTIVITY.

THE BILL ALSO PROVIDES FOR ENHANCEMENT OF PENALTIES WHEN A PERSON IS CONVICTED OF EITHER A MISDEMEANOR OR A FELONY COMMITTED IN ASSOCIATION WITH A GANG.

FINALLY, THE BILL, WHICH SUNSETS JANUARY 1, 1992, REQUIRES THE DISTRICT ATTORNEY OF LOS ANGELES COUNTY AND THE CITY ATTORNEY OF LOS ANGELES TO REPORT TO THE LEGISLATURE BY JANUARY 1, 1991, ON THE EFFECTS OF THIS BILL ON THE ARREST AND PUNISHMENT OF CRIMINALS UNDER THIS STATUTE. BOTH THE ATTORNEY AND THE D.A. HAVE AGREED TO MAKE THE REPORT WITHIN EXISTING RESOURCES AND WILL MAKE NO CLAIM FOR REIMBURSEMENT FROM THE STATE.

THIS IS A GOOD BILL, ONE WHICH IS VERY SIMILAR TO LEGISLATION ALREADY APPROVED BY THIS HOUSE, AND I ASK FOR YOUR "AYE" VOTE.

LEGISLATIVE INTENT SERVICE

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AB 2013

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AB 2013, THIRD READING AMENDMENTS

MR. PRESIDENT, MEMBERS, I HAVE AMENDMENTS AT THE DESK WHICH REMOVE UNNECESSARY LANGUAGE RELATING TO PROSECUTION OF CRIMES BY CITY ATTORNEYS OR PROSECUTORS FROM THIS LEGISLATION RELATING TO PENALTIES FOR GANG-RELATED CRIME.

I ASK FOR YOUR "AYE" VOTE.

LEGISLATIVE INTENT SERVICE / 800 688 4017

**EXHIBIT "C"**

Author's Statement to Senate Judiciary Committee dated May 10, 1988,

Assembly Bill No. 2013 (1987-1988 Regular Session) Statutes 1988,

Chapter 1242

AB 2013 SENATE JUDICIARY, 5-10-88

MR. CHAIRMAN, MEMBERS, THIS BILL STRIKES AT THE SERIOUS AND GROWING PROBLEM OF GANG-RELATED VIOLENCE IN OUR COMMUNITIES. IN LOS ANGELES ALONE, LAW ENFORCEMENT HAS LINKED MEMBERS OF CRIMINAL GANGS TO 328 KILLINGS IN 1986 AND TO 387 KILLINGS IN 1987, AN 18% INCREASE. GANGS WERE ALSO LINKED TO 5,000 OTHER VIOLENT CRIMES IN LOS ANGELES COUNTY IN 1986. IN 1987, JUST IN THE SHERIFF'S AREA OF RESPONSIBILITY ALONE, THERE WAS A 35% INCREASE IN THESE CRIMES IN 1987 OVER 1986.

THE 600 STREET GANGS IN LOS ANGELES AND THEIR ESTIMATED 75,000 MEMBERS ARE NOT SIMPLY YOUNG CHILDREN UNDER THE WRONG INFLUENCES, THEY ARE MADE UP INCREASINGLY OF PERSONS BEYOND THEIR TEENS. THEY ARE WELL EQUIPPED WITH MILITARY TYPE WEAPONS, THEY ARE IMPLICATED IN NARCOTICS TRAFFICKING, AND THEY DISREGARD THE LIVES OF THOSE WHO GET IN THEIR WAY.

AB 2013, AN URGENCY MEASURE, WILL PUT MEMBERS OF CRIMINAL GANGS ON NOTICE THAT THEY WILL NOT BE IMMUNE FROM PUNISHMENT. IT WILL DO SO BY MAKING IT A SEPARATE OFFENSE FOR A PERSON TO ACTIVELY PARTICIPATE IN A CRIMINAL STREET GANG AND ASSIST IN ANY FELONIOUS CRIMINAL CONDUCT BY THE GANG WITH KNOWLEDGE THAT IT HAS ENGAGED IN A PATTERN OF CRIMINAL ACTIVITY. THIS WILL ENSURE THAT PERSONS WHO HAND THE WEAPONS TO OTHER GANG MEMBERS OR WHO DRIVE THE VEHICLE FOR A SHOOTING WILL BE PUNISHED FOR WHAT THEY CAN NOT HELP BUT KNOW WILL BE INVOLVEMENT IN SERIOUS CRIMINAL ACTIVITY.

THE BILL ALSO PROVIDES FOR ENHANCEMENT OF PENALTIES WHEN A PERSON IS CONVICTED OF EITHER A MISDEMEANOR OR A FELONY COMMITTED IN ASSOCIATION WITH A GANG. FINALLY, THE BILL, WHICH SUNSETS JANUARY 1, 1992, REQUIRES THE DISTRICT ATTORNEY OF LOS ANGELES COUNTY AND THE CITY ATTORNEY OF LOS ANGELES TO REPORT TO THE

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LEGISLATIVE PRINTING SERVICE

LEGISLATURE BY JANUARY 1, 1991, ON THE EFFECTS OF THIS BILL ON  
THE ARREST AND PUNISHMENT OF CRIMINALS UNDER THIS STATUTE.

WITNESSES:

CLIFF KLEIN, SPECIAL ASSISTANT TO THE L.A. DISTRICT ATTORNEY

~~CHERYL WARD SMITH~~, LOS ANGELES CITY ATTORNEY'S OFFICE

~~BRUCE COBLEN~~, LOS ANGELES CITY ATTORNEY'S OFFICE

LEGISLATIVE INTENT SERVICE / 800 666 4047

**EXHIBIT "D"**

Legislative Counsel's Digest, Assembly Bill No. 2013 (1987-1988 Regular  
Session) Statutes 1988, Chapter 1242



Assembly Bill No. 2013

CHAPTER 1242

An act to add and repeal Chapter 11 (commencing with Section 18620) to Title 7 of Part 1 of the Penal Code, relating to crimes, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1988. Filed with Secretary of State September 26, 1988.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2013, 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 for 1, 2, or 3 years.

This bill would also prescribe the punishment applicable to any person who is convicted of a felony or 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, including the minimum term of imprisonment in the county jail and the state prison for these offenses and 1-, 2-, or 3-year sentence enhancement of the underlying felony. The bill would require the court to order the middle term of the sentence enhancement, unless there are circumstances in aggravation or mitigation, and would additionally require the court to state the reasons for its choice of sentence enhancement on the record at the time of sentencing.

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 District Attorney of the County of Los Angeles and the City Attorney of the City of Los Angeles to submit a report to the Legislature on or before January 1, 1991, on the impact this bill has had on the control of criminal street gang activity in Los Angeles County, thereby imposing a state-mandated local program.

This bill would repeal these provisions on January 1, 1992.

(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 specified reasons.

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

*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 1985, 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 for one, two, or three years.

(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 of a misdemeanor, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison for one, two, or three years, 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 of a felony shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony of which he or she has been convicted, be punished by an additional term of one, two, or three years at the court's discretion. The court shall order the imposition of the middle term of the sentence enhancement, unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentence enhancements on the record at the time of sentencing.

(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 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 individually or collectively engage in or have engaged in a pattern of criminal gang activity.

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, 1991, the District Attorney of Los Angeles County and the City Attorney of the City of Los Angeles shall submit a report to the Legislature on the impact of this chapter on the control of criminal street gang activity in 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, 1992, and as of that date is repealed, unless a later enacted statute, which is chaptered on or before January 1, 1992, 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: (1) 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; and (2) 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. 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.

**EXHIBIT “E”**

Legislative Counsel’s Digest, Senate Bill No. 1555 (1987-1988 Regular  
Session) Statutes 1988, Chapter 1256

## CHAPTER 1256

(Senate Bill No. 1555)

An act to amend Section 272 of, to add and repeal Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1 of, to add Title 11.5 (commencing with Section 422) to Part 1 of, and to add Chapter 2.9B (commencing with Section 1001.70) to Title 6 of Part 2 of, the Penal Code, relating to crime, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1988.]

## LEGISLATIVE COUNSEL'S DIGEST

SB 1555, Robbins, Crimes.

(1) Under existing law, there are no special provisions for the punishment of crimes committed by members of street gangs.

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 for 1, 2, or 3 years.

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 1, 2, or 3 years for these offenses and a 1-, 2-, or 3-year sentence enhancement applicable to the commission or attempted commission of a felony in furtherance of these objectives. This bill would thus impose a state-mandated local program by creating new crimes.

This bill would provide that every building or place, other than buildings in gang for the purpose of committing specified offenses, and every building or place, other than buildings in which there are 3 or fewer dwelling units, where that criminal gang conduct takes place, is a nuisance. The bill would provide that the district attorney in any county, in the name of the people, and the city attorney of any incorporated city, may, and any citizen of the state residing in the county where the building, place, or residence is located, in his or her own name, may, bring an action to abate as a nuisance any building, place, or residence used for that purpose or enjoin the person so conducting the activity or maintaining the building in accordance with the proceedings governing the abatement of nuisances and injunction of persons involved in unlawful controlled substances offenses, except as specified.

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, 1992.

(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 state that for purposes of the above provision, a parent or legal guardian of any person under the age of 18 years shall have the duty to exercise reasonable care, supervision, protection, and control over their minor child.

(3) Existing law authorizes the diversion, instead of criminal prosecution, of a person accused of specified offenses, or cases involving certain defendants. The diversion is for the purposes of education, treatment, and rehabilitation.

This bill would, in a jurisdiction where the local prosecution has approved, permit the diversion for education, treatment, or rehabilitation of a defendant accused of an offense set forth under (2) above.

This bill would, in such a jurisdiction, require the probation department to conduct a specified investigation, thereby increasing the duties imposed upon county probation officers, thus constituting a state-mandated local program. It would also require the court to hold a hearing to determine whether the defendant would be benefited by diversion.

This bill would also provide for the resumption of criminal proceedings against the defendant for specified reasons.

(4) Existing law prescribes the penalties for criminal assault.

This bill would 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.

(5) This bill would require the District Attorney of Los Angeles County and the City Attorney of the City of Los Angeles to submit a report to the Legislature on or before January 1, 1991, on the effect of the bill on the control of criminal street gang activity in Los Angeles County.

(6) 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 for certain costs, no reimbursement is required by this act for specified reasons.

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

*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, 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 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. 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 for one, two, or three years.

(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 of a misdemeanor, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison for one, two, or three years, 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 of a felony shall, upon conviction of that 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 one, two, or three years at the court's discretion. The court shall order the imposition of the middle term of the sentence enhancement, unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentence enhancements on the record at the time of the sentencing.

(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 individually or collectively engage in or have engaged in a pattern of criminal gang activity.

§ 186.22a. (a) Every building or place, other than residential buildings in which there are three or fewer dwelling units, used by members of a criminal street gang for the purpose of the commission of the offenses listed in subdivision (c) of Section 186.22 or any offense involving dangerous or deadly weapons, burglary, or rape, and every building or place, other than residential buildings in which there are three or fewer dwelling units, wherein or upon which that 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.

(b) Any action for injunction or abatement filed pursuant to this section shall proceed according to the provisions of Article 3 (commencing with Section 11570) of Chapter 10 of Division 10 of the Health and Safety Code, except that all of the following shall apply:

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

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

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

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

(c) No nonprofit or charitable organization which is conducting its affairs with ordinary care or skill, and no governmental entity, shall be abated pursuant to this chapter.

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

§ 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 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.

§ 186.25. 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 local laws duplicate or supplement this chapter, this chapter shall be construed as providing alternative remedies and not as preempting the field.

§ 186.27. This chapter shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1992, deletes or extends that date.

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

§ 272. 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 Section 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 Section 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. For purposes of this section, a parent or legal guardian to any person under the age of 18 years shall have the duty to exercise reasonable care, supervision, protection, and control over their minor child.

SEC. 3. Chapter 2.9B (commencing with Section 1001.70) is added to Title 6 of Part 2 of the Penal Code, to read:

#### Chapter 2.9B. Parental Diversion

§ 1001.70. (a) Every local prosecutor with jurisdiction to prosecute violations of Section 272 shall review annually any diversion program established pursuant to this chapter, and no program shall commence or continue without the approval of the local prosecutor. No person shall be diverted under a program unless it has been approved by the local prosecutor. Nothing in this subdivision shall authorize the prosecutor to determine whether a particular defendant shall be diverted.

(b) As used in this chapter, "pretrial diversion" means the procedure of postponing prosecution either temporarily or permanently at any point in the judicial process from the point at which the accused is charged until adjudication.

§ 1001.71. This chapter shall apply whenever a case is before any court upon an accusatory pleading alleging a parent or legal guardian to have violated

subdivision (a) or (b) of Section 272 with respect to his or her minor child, and all of the following apply to the defendant.

(a) The defendant's record does not indicate that probation or parole has ever been revoked without thereafter being completed.

(b) The defendant's record does not indicate that he or she has previously been diverted pursuant to this chapter.

§ 1001.72. (a) If the defendant consents and waives his or her right to a speedy trial, the case shall be referred to the probation department. The probation department shall conduct an investigation as is necessary to determine whether the defendant qualifies for diversion under this chapter, and whether he or she is a person who would be benefited by education, treatment, or rehabilitation. The probation department shall also determine which education, treatment, or rehabilitative plan would benefit the defendant. The probation department shall report its findings and recommendations to the court. If the recommendation includes referral to a community program, the report shall contain a statement regarding the program's willingness to accept the defendant and the manner in which the services they offer can assist the defendant in completing the diversion program successfully.

(b) No statement, or any information procured therefrom, made by the defendant to any probation officer, which is made during the course of any investigation conducted by the probation department pursuant to subdivision (a), and prior to the reporting of the probation department's findings and recommendations to the court, shall be admissible in any action or proceeding brought subsequent to the investigation.

No statement, or any information procured therefrom, with respect to the specific offense with which the defendant is charged which is made to any probation officer subsequent to the granting of diversion, shall be admissible in any action or proceeding.

In the event that diversion is either denied or is subsequently revoked once it has been granted, neither the probation investigation nor statements or information divulged during that investigation shall be used in any pretrial sentencing procedures.

§ 1001.73. The court shall hold a hearing and, after consideration of the probation department's report, and any other relevant information, shall determine if the defendant consents to further proceedings under this chapter and waives his or her right to a speedy trial. If the court orders a defendant to be diverted, the court may make inquiry into the financial condition of the defendant, and upon a finding that the defendant is able, in whole or in part, to pay the reasonable cost of diversion, the court may order him or her to pay all or part of the expense. The reasonable cost of diversion shall not exceed the amount determined to be the actual average cost of diversion services.

If the court does not deem the defendant to be a person who would be benefited by diversion or if the defendant does not consent to participate, the proceedings shall continue as in any other case.

At the time that a defendant's case is diverted, any bail bond or undertaking, or deposit in lieu thereof, on file by or on behalf of the defendant shall be exonerated, and the court shall enter an order so directing.

The period during which the further criminal proceedings against the defendant may be diverted shall be for the length of time required to complete and verify the diversion program but in no case shall it exceed two years.

§ 1001.74. If it appears to the probation department that the diveree is performing unsatisfactorily in the assigned program, or that the diveree is not benefiting from education, treatment, or rehabilitation, or that the diveree is convicted of a misdemeanor in which force or violence was used, or if the diveree

is convicted of a felony, after notice to the divertee, the court shall hold a hearing to determine whether the criminal proceedings should be reinstated. If the court finds that the divertee is not performing satisfactorily in the assigned program, or that the divertee has been convicted of a crime as indicated above, the criminal case shall be referred back to the court for resumption of the criminal proceedings. If the divertee has performed satisfactorily during the period of diversion, the criminal charges shall be dismissed.

§ 1001.75. Any record filed with the Department of Justice shall indicate the disposition in those cases diverted pursuant to this chapter. Upon successful completion of a diversion program, the arrest upon which the diversion was based shall be deemed to have never occurred. The divertee may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or diverted for that offense. A record pertaining to an arrest resulting in successful completion of a diversion program shall not, without the divertee's consent, be used in any way which would result in the denial of any employment, benefit, license, or certificate.

SEC. 4. Title 11.5 (commencing with Section 422) is added to Part 1 of the Penal Code, to read:

#### TITLE 11.5. TERRORIST THREATS

§ 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, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison if he or she causes another person reasonably to be in sustained fear for his or her or their immediate family's safety. For the purposes of this section, the term "immediate family" means any spouse, whether by marriage or not, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household.

SEC. 5. On or before January 1, 1991, the District Attorney of Los Angeles County and the City Attorney of the City of Los Angeles shall submit a report to the Legislature on the effect of this act on the control of criminal street gang activity in the County of Los Angeles. 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.
- (f) The number of nuisance abatement actions under this act.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because: (1) 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; and (2)

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. 7. 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.



**EXHIBIT "F"**

Legislative Counsel's Report to Governor on Enrolled Bill, dated  
September 28, 1988 [sic], Senate Bill No. 1555 (1987-1988 Regular  
Session) Statutes 1988, Chapter 1256

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Honorable George Deukmejian  
Governor of California  
Sacramento, CA

## REPORT ON ENROLLED BILL

S.B. 1555

ROBBINS. Crimes.

To take effect immediately, urgency statute.

SUMMARY:

See Legislative Counsel's Digest on the attached copy of the bill as adopted.

FORM:

Approved.

CONSTITUTIONALITY: Approved.

TITLE: Approved.

CONFLICTS:

This bill, which is an urgency measure, and Assembly Bill No. 2013, which is also before the Governor and which is also an urgency measure, would both add a Chapter 11 (commencing with Section 186.20) to Title 7 of Part 1 of the Penal Code entitled the "Street Terrorism Enforcement and Prevention Act." Although the two bills are substantially similar, there are provisions in this bill which are different from those in A.B. 2013.

In particular, this bill would add a Section 186.22a to the Penal Code to provide that every building or place, other than buildings in which there are three or fewer dwelling units, used by members of a criminal street gang for the purpose of committing certain criminal offenses, and every building or place, other than buildings in which there are three or fewer dwelling units, where that criminal activity takes place, is a nuisance. This bill would authorize the district attorney or city attorney to bring an action to abate that nuisance or obtain an injunction against persons involved in that criminal activity, as specified. A.B. 2013 does not include comparable provisions. There are also minor differences with respect to legislative findings (Sec. 186.21, Gov. C., as proposed by both bills) and the report to be made to the Legislature (A.B. 2013 does not contain a provision comparable to subdivision (f) of Sec. 3 of this bill).

When two statutes deal with the same subject matter are in irreconcilable conflict, the most recently enacted expresses the will of the Legislature and to the extent of the conflict impliedly repeals the earlier enactment (In re Thierry S., 19 Cal. 3d 727, 744). However, the two chapters being added by this bill and A.B. 2013 are not in irreconcilable conflict, thus both can be given effect; and, to the extent of any conflict between them, the provision added by the bill last chaptered will prevail (Sec. 9605, Gov. C.).

Bion M. Gregory  
Legislative Counsel

  
By  
Henry J. Contreras  
Deputy Legislative Counsel

HJC:nes

Two copies to Honorable Alan Robbins  
and Honorable Gwen Moore,  
pursuant to Joint Rule 34.

**EXHIBIT "G"**

Penal Code section 186.22, subdivision (a), as enacted by Assembly Bill

No. 2013 (1987-1988 Regular Session) Statutes 1988, Chapter 1242.

Assembly Bill No. 2013

CHAPTER 1242

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.

[Approved by Governor September 23, 1988. Filed with Secretary of State September 26, 1988.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2013, 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 for 1, 2, or 3 years.

This bill would also prescribe the punishment applicable to any person who is convicted of a felony or 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, including the minimum term of imprisonment in the county jail and the state prison for these offenses and 1-, 2-, or 3-year sentence enhancement of the underlying felony. The bill would require the court to order the middle term of the sentence enhancement, unless there are circumstances in aggravation or mitigation, and would additionally require the court to state the reasons for its choice of sentence enhancement on the record at the time of sentencing.

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 District Attorney of the County of Los Angeles and the City Attorney of the City of Los Angeles to submit a report to the Legislature on or before January 1, 1991, on the impact this bill has had on the control of criminal street gang activity in Los Angeles County, thereby imposing a state-mandated local program.

This bill would repeal these provisions on January 1, 1992.

(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 specified reasons.

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

*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 1985, 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 for one, two, or three years.

(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 of a misdemeanor, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison for one, two, or three years, 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 of a felony shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony of which he or she has been convicted, be punished by an additional term of one, two, or three years at the court's discretion. The court shall order the imposition of the middle term of the sentence enhancement, unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentence enhancements on the record at the time of sentencing.

(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 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 individually or collectively engage in or have engaged in a pattern of criminal gang activity.

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, 1991, the District Attorney of Los Angeles County and the City Attorney of the City of Los Angeles shall submit a report to the Legislature on the impact of this chapter on the control of criminal street gang activity in 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, 1992, and as of that date is repealed, unless a later enacted statute, which is chaptered on or before January 1, 1992, 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: (1) 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; and (2) 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. 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.

## DECLARATION OF SERVICE

PEOPLE OF  
THE STATE OF CALIFORNIA  
v. **JOE RODRIGUEZ, JR.**

SUPREME COURT NO. **S187680**  
COURT OF APPEAL NO. **C060227**

The undersigned declares: I am an attorney duly licensed to practice in the State of California and am not a party to the subject cause. My business address is P.O. Box 2194, Grass Valley, California 95945-2194. I served the attached **APPELLANT'S MOTION FOR JUDICIAL NOTICE** by placing a true and correct copy thereof in a separate envelope for each addressee named hereafter, addressed as follows:

Court of Appeal  
Third Appellate District  
621 Capitol Mall, 10th Floor  
Sacramento CA 95814-4719

Office of the Attorney General  
1300 I Street  
P.O. Box 944255  
Sacramento CA 94244

Yuba County Superior Court  
FOR DELIVERY TO:  
Hon. James L. Curry  
215 Fifth Street, Suite 200  
Marysville CA 95901

Central California Appellate Program  
2407 J Street, Suite 301  
Sacramento CA 95816-4736

Joe Rodriguez, Jr.  
P-70505  
P.O. Box 5248  
Corcoran CA 93212

Each envelope was then sealed and with the postage thereon fully prepaid deposited in the United States mail by me at Nevada City, California on May 23, 2011.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Nevada City, California on May 23, 2011.



Diane Nichols