

**LOS ANGELES CITY ATTORNEY
GANG DIVISION**



**PUBLICLY ACCESSIBLE INFORMATION
REGARDING GANG PROSECUTION,
GANG INJUNCTIONS AND
GANG INJUNCTION REMOVAL PETITION**

WWW.LACITY.ORG/ATTY



LOS ANGELES CITY ATTORNEY'S OFFICE

GANG DIVISION

WEBSITE TABLE OF CONTENTS

- Anti-Gang Action Plan
- Community Law Enforcement and Recovery (CLEAR) Program
- Gang Injunction Facts
 - English
 - Spanish
- Gang Injunction Guidelines
- Gang Injunctions
- Gang Injunctions How And Why They Work
 - English
 - Spanish
- Los Angeles County Grand Jury Report on Civil Gang Injunctions
- Petition For Removal From Gang Injunction
 - English Petition
 - Spanish Petition
- Removal Petition Information
- Taking Out Urban and Headquarters (TOUGH) Program



LOS ANGELES CITY ATTORNEY'S OFFICE

GANG DIVISION

WEBSITE TABLE OF CONTENTS

- Anti-Gang Action Plan
- Community Law Enforcement and Recovery (CLEAR) Program
- Gang Injunction Facts
 - English
 - Spanish
- Gang Injunction Guidelines
- Gang Injunctions
- Gang Injunctions How And Why They Work
 - English
 - Spanish
- Los Angeles County Grand Jury Report on Civil Gang Injunctions
- Petition For Removal From Gang Injunction
 - English Petition
 - Spanish Petition
- Removal Petition Information
- Taking Out Urban and Headquarters (TOUGH) Program

OFFICE OF THE
LOS ANGELES CITY ATTORNEY
ROCKY DELGADILLO

The Los Angeles City Attorney's Anti-Gang Plan

A Guide to Reducing Gang Activity in the City of Los Angeles

"By being smarter and tougher, and working together, we can - and will - reduce gang violence and restore hope to our communities." L.A. City Attorney Rocky Delgadillo

Presented at the California District Attorneys Association (CDAA)
Winter Conference

Shell Beach, CA

Wednesday, January 24, 2007



A Message from the Los Angeles City Attorney

Dear Colleagues:

As Los Angeles City Attorney, I have made eradicating the criminal street gangs who terrorize our neighborhoods one of my top priorities.

For me, keeping the residents of Los Angeles safe and secure is job No. 1, and people cannot possibly feel safe and secure living in the midst of gang violence. As a former Deputy Mayor for Economic Development, and now as City Attorney, I have learned that the economic revitalization so critical to Los Angeles' success simply cannot occur in communities plagued by such violence.

Over the past five years, through the effective use of a comprehensive approach – with innovative programs and initiatives designed to prevent, interdict, and suppress gang activity – and in concert with our partners in law enforcement, we've been able to reduce both the number of gang members, and incidents of gang violence.

Los Angeles Police Department data show that, from 2001 to 2005, gang membership in the City plummeted 33%, and gang violence actually dropped 3.3%.

Unfortunately, new data indicate that 2006 saw a spike in gang-related crime – 14% citywide, 3% in Central Los Angeles, 23% in South Los Angeles, and 42% in the San Fernando Valley.

Statistics aside, it is clear that gangs remain Los Angeles' most significant crime problem. Thus we must immediately act to address this situation.

While my office has been a leader in the fight against L.A. gangs, I recognize that the City Attorney is only one agent in this fight. Thus, this plan is designed to serve as part of a working partnership with Mayor Villaraigosa and Police Chief William J. Bratton, as well as my fellow law enforcement professionals throughout the region and state. Together, we *can* eradicate the gangs who terrorize our neighborhoods. And together, we *will*.

This anti-gang plan is designed to serve as a resource for those seeking to craft a citywide approach to reducing gang activity. It combines information about proven existing programs with dozens of new programs and proposals that will serve to aid the City of Los Angeles in its broader effort to stem the tide – and stop the violence. It is also my hope that the aforementioned proposals will lead to a greater dialogue about how we can do things differently, and work collaboratively to effectively address this problem.

Thank you for reviewing this guide and I look forward to engaging in a broader dialogue with you and all law enforcement professionals throughout the region and State as to how best to end the scourge of gang violence.

Sincerely,

Rocky Delgadillo

A Collaborative Anti-Gang Effort – The Key to Success

I have long believed that the only way to fix our gang problem is to use a collaborative, proactive approach. A scattershot, reactive approach to gang reduction does not - and will not - work.

I've worked to build partnerships with law enforcement agencies, and community and private organizations, and have implemented both prevention and suppression programs designed to significantly reduce the number of gang members in Los Angeles and the violence they inflict on our communities.

What follows is my plan to strengthen the City of Los Angeles' anti-gang efforts.

A Three-Pronged Strategy to Attack Gang Problems in Los Angeles

In light of the recent spike in gang violence across Los Angeles, my office has formulated a three-prong anti-gang strategy that will guide our efforts to significantly reduce, and ultimately eradicate, gang activity in the city.

The Three Components Are:

Prevention

Prevent at-risk youth from joining criminal street gangs and encourage and provide the means for young members to safely leave gang life.

Suppression

Suppress and disrupt criminal gang activity and protect the local community through gang injunctions, nuisance abatement actions, unlawful business practice actions, aggressive prosecutions of gang members and their accomplices, as well as protect residents from violence and intimidation, keep school environments, recreational areas, and the Internet safe from gangs, and halt community deterioration due to the defacing and destruction of property, quality of life crimes, and loss of businesses.

Eradication

Eradicate the link between criminal street gangs and proceeds from the drug trade and other illegal activities, such as identity theft and human trafficking, and shut down the sources that feed the growth of gangs.



PREVENTION

Any comprehensive anti-gang action plan must contain a prevention component. In our attempts to get smarter in how we fight gangs, my gang prosecutors and I continue to find that targeting at-risk youth with programs designed to keep them safe, in school, and away from gang recruiters is critical to our success in reducing both the number of gang members, and incidents of gang violence.

Children and youth who live in violent or abusive homes and who are regularly truant are more likely to enter a life of crime, and more likely to join a gang. *Any gang prosecutor you talk to will tell you they've never met a gang member who wasn't a truant first.*

Thus it is incumbent upon law enforcement professionals and elected officials to stop passing the buck, and make sure our kids are safe at home, safe at school, and in the neighborhood.

The key components of prevention are:

- **Ensuring the Safety of the Environment in and Surrounding Schools**
- **Providing Safe Passage To and From School**
- **Anti-Truancy Programs and Prosecutions**
- **Targeting Adults Who Encourage or Facilitate Gang Membership for Minors**
- **Violence-Free Homes**



Safe Schools:

School Safety Prosecutors

Last year, in response to concerns raised at a series of public hearings hosted by my office and attended by educators, law enforcement, community leaders, parents, and students, I created the School Safety Prosecutor Program. The program, an adjunct to our successful Neighborhood Prosecutor Program, is focused on eradicating crime in areas immediately surrounding our schools. School Safety Prosecutors will provide a single point of contact for residents, businesses and other city agencies to work with in combating crime in areas surrounding schools. Support for the program has been provided by the Los Angeles City Council.

As part of an increased effort to prevent our at-risk youth from joining criminal street gangs, my school safety prosecutors will work in partnership with the neighborhoods and law enforcement professionals within their respective jurisdictions to keep local kids in school and out of gangs, to develop targeted strategies to keep local gangs from trying to recruit kids from local schools, and to facilitate critical information sharing between law enforcement and school officials so problems are not allowed to develop into crises.

As part of a comprehensive response to a recent surge in gang violence across the City, I intend to work with the City Council and the Mayor in the coming weeks to explore significantly expanding this innovative, community-based program. **(New Program)**



L.A. SAVES

L.A. SAVES is an inter-agency partnership brought together by my office to protect our children from violent offenders who are wanted by the courts and live near schools – and who are often gang members. The law enforcement agencies participating in L.A. SAVES identify felons on probation or parole in the areas around a target school, focusing on those convicted of violent crimes and/or firearms and sex offenses. A computer search then determines if any of them are wanted by the court. Once a target area is identified, a strategy for arresting these wanted felons is implemented.

Our partners in L.A. SAVES include the Los Angeles County Probation Department, the juvenile and adult parole divisions of the State Department of Corrections and Rehabilitation, the Los Angeles Police Department, Los Angeles School Police, the Department of Children and Family Services, and other law enforcement agencies.

Results have been significant. In 2006, L.A. SAVES:

- Removed 41 wanted criminals from the neighborhoods surrounding 14 high schools.
- Saved 40 children who were living in hazardous conditions.
- Recovered a variety of illegal weapons and narcotics.



The L.A. SAVES program has played a key role in law enforcement efforts to keep convicted felons, many of whom are gang members, away from our kids and their schools. **(Existing Program)**



Kid Watch

In this safe passage program, dedicated volunteers throughout Los Angeles are helping to protect our kids as they travel to and from school. This year, 52 public elementary schools and more than 430 volunteers participated in Kid Watch L.A. The program recently expanded to include training for parents on such topics as child abuse prevention, nutrition, and job training. Kid Watch volunteers work to ensure that kids who are on their way to and from school are not harassed or harmed by gang members. The program is also a part of our larger effort to inhibit gangs' ability to recruit new members. **(Existing Program)**

School Uniform Mandate

Too many kids in Los Angeles are being injured or killed because of the clothes they wear, whether or not they are in a gang. We've got to do everything within our power to protect our kids at school, and in transit to school. An LAUSD district-wide K-12 school uniform mandate would serve to reduce incidents of gang violence in and around our schools by eliminating any conflict stemming from students wearing gang attire.

Because gang attire is constantly evolving, mere dress appearance codes will not do. And since kids are at risk of joining, or being harmed by, gangs in all grades, K-12, we must mandate that every child in every grade in Los Angeles be required to wear a school uniform. The district would also likely need to create a scholarship mechanism to assist families who can't afford to pay for uniforms on their own. After requiring uniforms, the Long Beach Unified School District reduced incidences of crime in schools by 36%, fights by 51%, and weapons by 50%. At Salida Middle School in Stanislaus County, the incidence of students sent to the principal's office for bad behavior dropped by 30% following implementation of a uniform mandate, and the decline continued in subsequent years despite a population increase. Schools automatically become safer because with every student in uniform, gang members, recruiters, and other strangers stand out.

I expect there will be some hand-wringing from some quarters about the mandate impinging upon students' freedoms. But in my judgment, the right to be safe from the scourge of gang violence represents a far more consequential liberty than the right to wear different types of clothing as a form of self-expression.

(New Proposal)



School Campus Stay Away Orders

My office requests that the courts include “Stay Away from School Grounds Provisions” where appropriate in civil gang injunctions. These stay away provisions make it harder for gang members to get onto school campuses, and make it easier for law enforcement to remove them from the area. **(Existing Program)**



Gang Sentencing and Injunction Enhancements Legislation



In an effort to protect our kids and our schools from gang violence, I am sponsoring legislation that seeks to:

Establish sentencing enhancements for gang activities, gang injunction violations, hate crimes, child abuse and drug crimes committed in our Safe School Zones. The Safe School Zones program, launched in June 2005, designates school, bus stops, and the areas within 1,000 feet of schools as violence free zones.

(New Proposal)

Keeping our Kids in Class...and Out of Trouble:

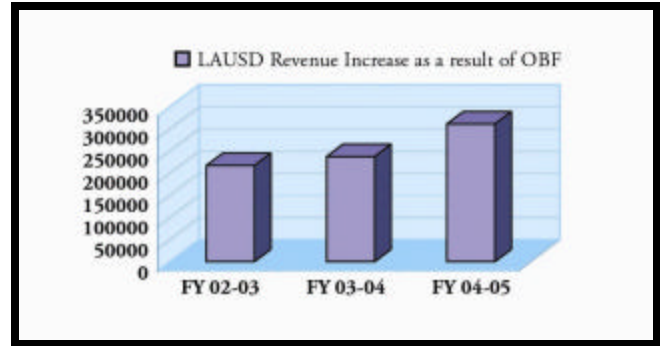
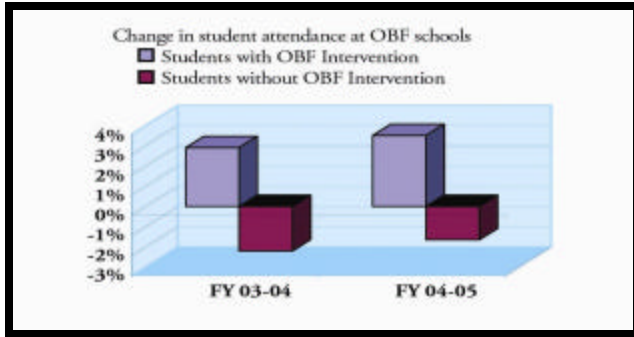
Anti-Truancy Program

One of the most powerful predictors of juvenile delinquent behavior and future gang membership is chronic absenteeism from school. My Operation Bright Future anti-truancy program (OBF) has been successfully combating the influence of gangs on our vulnerable youth since 2002. OBF's strategy is to educate parents about the importance of their children's education and the legal consequences if their children are truant.

Today, Operation Bright Future operates in 30 Los Angeles public middle schools, and has served more than 20,000 families of chronically truant students. Of those students, only 13 have required the filing of criminal charges. After the initial intervention by my office, approximately 90% of the identified chronically truant students are not referred by LAUSD for further intervention.

Overall, Operation Bright Future's chronically truant students have increased their attendance rates by over 5% per year on average following OBF intervention. This is particularly impressive since students in the same schools who are not identified as truant have consistently experienced on average a decrease in their attendance rate as the school year progresses.

In the first four years, Operation Bright Future added more than \$1,000,000 in additional apportionment dollars to the LAUSD budget. In April 2005, 71% of the eighth grade students at South Los Angeles' Adams Middle School who were in the OBF program as sixth graders (because they were chronically truant) graduated with good attendance and passing grades. **(Existing Program)**



I look forward to partnering with Admiral Brewer, the Los Angeles Unified School District, and City Hall to expand this proven anti-truancy program to every 5TH, 6TH, 7TH, and 8th grader in Los Angeles. The cost of this expansion would be partially offset by the revenue generated for the district, which receives state funding based in-part upon the number of students in attendance. I will also be more vigorous in the prosecution of parents in extreme cases of parental irresponsibility. We must send a strong message to parents that, by law, they are ultimately responsible for ensuring that their kids attend school. **(New Proposal)**

The Truth about Truancy, Gangs and Crime:

A young person is three times more likely to join a gang when he or she has low school attachment, low academic achievement or learning disabilities. 44% of juvenile crime takes place during school hours. In some areas of Los Angeles, over 25% of the crimes that occur during school hours are committed by juveniles.

Additionally, truancy has an enormous fiscal impact on our school system and takes millions of dollars in funding away from our public school system due to unexcused absences.

Stopping a Bullet with a Job...Giving our Kids a “First Chance”:

First Chance

My office and Jewish Vocational Services have this year teamed up to give at-risk youth a “first chance” by initiating a program to provide them with educational opportunities, job skills training, mentoring and assisting with placement in career-track employment.

“Eight minutes after one [injunction] was filed here on the Eastside, I had kids in my office saying ‘Get me a job.’ An injunction creates a kind of vigilant heat that moves kids toward the light.”

- Father Greg Boyle,
Director of Homeboy Industries,
an at-risk youth job training center in L.A.

The program is open to young adults who are at risk of entering the criminal justice system or have entered the system for non-violent misdemeanor offenses. **(New Program)**

Resolving Conflicts...Without Resorting to Violence:

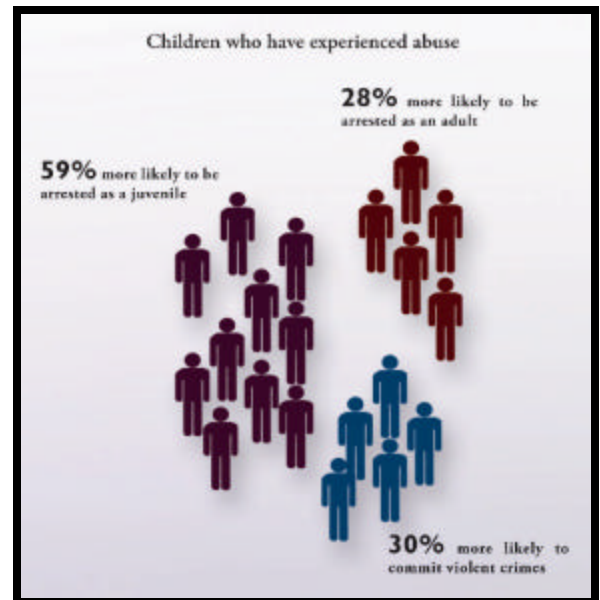
The Dispute Resolution Program

My office utilizes the DRP to resolve problems before they grow into crises, defuse racial tensions, and open up lines of communication between the various factions in dispute. **(Existing Program)**

Safe Homes:

Child abuse and neglect often leave our children with long-term emotional, psychological, and physical damage. Children who experience abuse and neglect are 59% more likely to be arrested as a juvenile, 28% more likely to be arrested as an adult, and 30% more likely to commit violent crimes (Source: U.S. Department of Justice).

Eliminating violence in the home is a critical component of any comprehensive effort to reduce and eventually eliminate gang violence. Happy, healthy kids from happy, healthy homes are not the grist for gang recruitment.



Programs and initiatives designed to ensure safe homes for our kids include:

No Secrets – This program provides parents and teachers with information on how to identify signs of sexual abuse. **(Existing Program)**

Project PARENT– Project PARENT is a child abuse prevention curriculum used by Early Education Centers and Head Start. **(Existing Program)**

A Stand-Alone Family Violence Unit – My first-in-the-nation City Attorney’s Office Family Violence Unit is exploring connections between violence in the home and future gang membership and gang violence. **(Existing Program)**

Cracking Down on Adults Who Cause or Encourage Gang Membership – In an effort to protect our kids from those who would encourage, compel, or coerce kids into gangs, I am sponsoring legislation that seeks to amend Penal Code section 272(a) [Contributing to Delinquency of a Minor] to include causing, tending to cause, or encouraging a minor to become a member of a criminal street gang. **(New Proposal)**

Gang Related Domestic Violence Prosecutions – As City Attorney, one of my top priorities has been putting an end to domestic violence. As part of my effort to expand my office’s anti-gang measures, I have tasked my deputies with prioritizing all gang-related domestic violence cases and to utilize all the prosecutorial tools – from batterers’ treatment programs to the imposition of additional criminal penalties – because violence in the street often begins with violence in the home. **(New Proposal)**

SUPPRESSION

Gangs are constantly evolving, becoming more violent, and engaging in racially-motivated crimes. So we must evolve with them.

Eradicating gangs means being tougher and smarter, and working together as a team.

Since 2001, I have implemented a number of successful gang suppression measures. Over the past five years, we've seen a 33% reduction in the number of gang members in Los Angeles and a 3.3% overall reduction in gang-related crime. Crime data for 2006 show a spike in gang-related crime and we must be prepared to be tougher and smarter in crafting an effective gang suppression response to this challenge.

My office's gang suppression tools include:

Gang Injunctions

Over the past five years, my gang prosecutors have worked tirelessly to roll out twenty-five new gang injunctions against the city's most violent gangs. Gang injunctions may restrict members of targeted gangs from loitering in public with other members, harassing residents and intimidating witnesses, possessing or using weapons, alcohol or illegal narcotics, disobeying gang-imposed curfews, and trespassing. These injunctions give communities a much needed break from the constant street presence of gangs. **(Existing Program)**

Our experience in Los Angeles has taught us that gangs hate injunctions. They hate them because they work.

Currently in Los Angeles, there are 33 gang injunctions against 49 gangs. These injunctions have played a critical role in dramatically reducing the number of self-identified L.A. gang members over the past five years.

49 Gangs Currently Under Injunction:

18th Street	Eastside Wilmas	Orphans
18th Street Pico Union	East Lake	Pacoima Project Boys
18th Street South West	Grape Street Crips	Playboys
38th Street	Harbor City Boys	Rockwood Street Locos
42nd Street Crips	Harbor City Crips	Rollin' 60's
43 rd Street Crips	Harpys	School Yard Crips
48 th Street Crips	Highland Park	Trouble
Avenues	Hoovers	Varrio Vista Rifa
Big Hazard	Hollywood 18th Street	Venice 13
Black P Stones	KAM (Krazy Ass Mexicans)	Venice Shoreline Crips
Blythe Street	Krazy Riders	VNE
Bounty Hunters	Krazy Town	Wanderers
Canoga Park Alabama	La Raza Loca	Westside Wilmas
Clover	Langdon Street	White Fence
Culver City Boys	Lincoln Heights	Wilshire 18th Street
Dogtown	Mara Salvatrucha (MS)	Witmer Street Locos
Geer Street Crips		



While gang injunctions have proven highly effective in suppressing criminal gang activity, last year's marked increase in L.A. gang-related crimes affords us the opportunity to explore ways we can be tougher and smarter with our injunctions, both with regard to the terms of injunctions we seek and how we enforce them.

Tougher/ Smarter Gang Injunction Enforcement:

Sentencing Enhancement

In an effort to enhance our enforcement of gang injunctions in the midst of a new spike in gang violence, I am directing my gang prosecutors to ask the court for a mandatory minimum 180-day sentence for gang injunction violations whenever legally permissible. **(New Proposal)**

Stay Away Orders

My office will begin seeking from the court stay away orders to keep gang members who do not normally reside in an area but are engaged in illegal activity in that area away from it, unless they can demonstrate a legitimate purpose for being there. **(New Proposal)**

Search and Seizure Conditions

In the effort to be more proactive in preventing gang crime, we will secure search and seizure probation conditions in all gang cases to give our local law enforcement professionals the tools they need to more effectively apprehend gang members who are stashing guns, drugs, or drug paraphernalia.

(New Proposal)



Innovative Probationary Conditions

I have directed my deputies to work with our partners in law enforcement to develop new and innovative probationary conditions for gang members, such as requiring them to enroll in substance abuse or intervention programs. **(New Proposal)**



The 100% Project

Working in partnership with Los Angeles County Sheriff Lee Baca, my office will ensure that gang members incarcerated for gang injunction violations will be exempted from any early release program and will be required to serve 100% of their sentence. In the coming weeks, the Sheriff and I will announce the details of this new collaborative effort to keep convicted gang members behind bars and away from the communities they are terrorizing. **(New Proposal)**

Cracking Down On Gang Members Who Commit Hate Crimes

Racially motivated crime tears at the fabric of our society. As a result, my office is proposing new legislation that would add hate crimes to the "Dirty 30" list of crimes contributing to a pattern of criminal gang activity in the Street Terrorism and Enforcement Protection Act. **(New Proposal)**

The CLEAR Program

The Community Law Enforcement and Recovery program (CLEAR) was established to facilitate the recovery of gang-infested communities through an infusion of coordinated resources into targeted areas of high gang crime. The program brings together several city, county, and state law enforcement agencies to get the job done. Agencies partnering with my office in this program include the Mayor's office, the District Attorney, the Los Angeles Police Department, the County Sheriff's Department, the County Probation Department, and the California State Department of Corrections and Rehabilitation.

(Existing Program)

We are currently working with the Los Angeles Police Department in determining potential new CLEAR sites.

Safer City Initiatives

Our Safer City Initiative is a multi-agency, multi-pronged strategy to control crime and improve the quality of life in high crime and blighted areas. These initiatives, launched in targeted areas throughout the City, have proven invaluable tools in our effort to remove from our neighborhoods the enablers of gang crime. My office has worked in partnership with other law enforcement agencies, community members, local businesses, and city departments to craft solutions to fix community problems at the local level. Safer Cities Initiatives have been launched in Baldwin Village, North Hills, the Hollywood & Highland area, MacArthur Park, and on Downtown's Skid Row. **(Existing Program)**

Neighborhood Prosecutor Program

My office's Neighborhood Prosecutor Program is designed to improve community safety and quality of life by putting prosecutors in the community to work with other law enforcement professionals and the local community to identify and eliminate the causes of crime and blight.

Now in its fifth year, the Neighborhood Prosecutor Program continues to fight the most corrosive crimes for communities including drug sales, prostitution, illegal dumping, graffiti, nuisance properties and street racing. Today, Neighborhood Prosecutors are stationed in 19 police divisions across the city, bringing them into the heart of the communities that need them most. Each Los Angeles neighborhood has its own rhythm, its own sources of pride and its own concerns. Neighborhood Prosecutors understand this and work hard within each neighborhood to confront and solve that community's unique challenges.

(Existing Program)

In the wake of 2006's spike in gang-related crime, I have directed my Neighborhood Prosecutors to redouble their efforts to work with the community and the LAPD to fight the gangs that plague the neighborhoods they are working to protect and improve. I will also work with the City Council to significantly expand this proven program to place a neighborhood gang prosecutor in each police division in the city as part of our effort to counter the gang violence plaguing L.A. residents. **(New Proposal)**

Taking the "Hazard" out of "Big Hazard"

An atmosphere of fear and social disorder has plagued the Ramona Gardens Housing Project, notorious for being one of Los Angeles' most dangerous destinations and claimed by the Big Hazard gang as its base of operation. Our Gang Unit and Neighborhood Prosecutors, in collaboration with the Los Angeles Police Department, formed an inter-agency task force to take back Ramona Gardens and to expel the Big Hazard gang from the neighborhood.

Within one year, our efforts resulted in dramatic improvements including:

- More LAPD officers policing the community
- The Big Hazard gang under gang injunction
- Implementation of school-based safety programs, at the local elementary school
- Community-based safety fairs, clean-ups and neighborhood watches were introduced
- Improvement in city services, such as street lighting maintenance

Today:

- Misdemeanor crimes continue to be aggressively prosecuted
- Abatements and evictions continue to be initiated
- Community members are reporting crime and cooperating with law enforcement
- Graffiti is being painted out
- The influence of the Big Hazard gang in the development is diminishing



Nuisance Property Abatement Actions

Opportunistic gang members often hide out in vacant buildings and use them to perpetrate crimes. Vacant nuisance properties also contribute directly to urban blight by operating as make-shift dumping grounds for unwanted furniture and refuse. Through the City Attorney's Citywide Nuisance Abatement Program (CNAP), abandoned structures and nuisance properties plaguing neighborhoods are being eliminated. Gang members also blight buildings by using them as places to sell and store drugs. CNAP files nuisance abatement actions mandating the removal of drug-dealing occupants and the implementation of improvements preventing the buildings from becoming centers of illegal activity. **(Existing Program)**

Number of Nuisance Properties Eliminated Each Year:

2001-2002: 703 nuisance properties
2002-2003: 656 nuisance properties
2003-2004: 972 nuisance properties
2004-2005: 775 nuisance properties
2005-2006: 607 nuisance properties

Total Nuisance Properties Eliminated: 3,713



Valley Anti-Gang Working Group – In response to the spike in gang crime in the San Fernando Valley, I have restructured my office's Valley operations to add anti-gang resources and work to forge new law enforcement/community partnerships in that part of the city. **(New Program)**

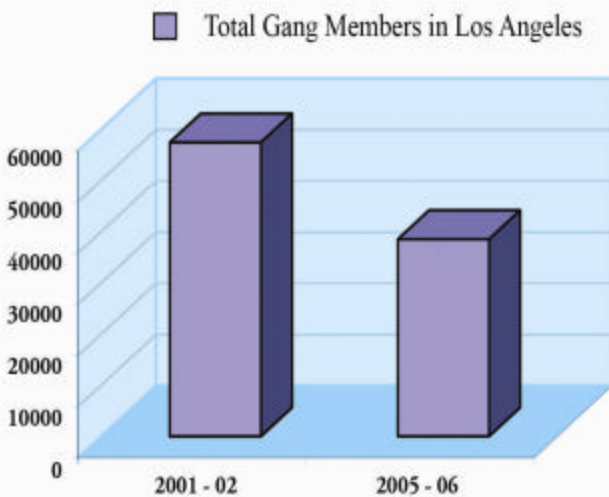
New Interdiction Actions – Effectively reducing gang activity in the City of Los Angeles requires interdiction, as well as prevention and suppression. "Interdiction" can be used to describe efforts to halt the spread of criminal street gangs into communities that have not previously had an entrenched gang problem.

While we must do everything in our power to eradicate gang violence in our hardest-hit communities, we must also act to prevent this violence from spreading to communities that have up until now been relatively free from gang violence.

Containing the spread of gangs:

Gang Injunctions as Tools for a New Kind of Interdiction

– Traditionally, civil gang injunctions have been used by me and other prosecutors throughout the country to fight gangs indigenous to a particular geographic area. After conferring with my team of gang prosecutors and representatives of the Los Angeles Police Department, I commenced an effort to develop a new kind of stay-away gang injunction that would apply to gangs not indigenous to the injunction area. This would serve to allow us to meet the challenge of gangs who move into and out of the area, and engage in various nuisance activities including peddling drugs and inflicting acts of violence on local residents, before escaping to their homes in other neighborhoods. **(New Proposal)**



ERADICATION

In order to eradicate criminal street gangs, we must cut off their access to proceeds from the drug trade and other illegal activities, such as identity theft and human trafficking. We must also eliminate both their tools of violence, and bases of operation.

Taking Away a Gang's Tools of Violence

Seizing Gang Assets

In our effort to eradicate gangs, we must be willing to take extreme measures, including the seizure of gang assets. I will seek new legislation to allow myself and certain other prosecutors to bring damage suits against and seize assets from gang members. More specifically, I will be asking the California Legislature to amend Penal Code section 186.22a(c) (STEP Act) to authorize District Attorneys and City Attorneys of cities over 750,000 to bring damage suits against enjoined gangs. With this amendment, my prosecutors will be able to seize gangs' illegally obtained assets. **(New Proposal)**



New Weapon Law

One highly-effective way to crush criminal street gangs is to do a better job of cracking down on gang members in possession of illegal weapons. We know where the illegal guns are coming from, but under current law we can't stop them. Therefore, I propose that we amend federal law to remove federal barriers to the enactment of state and local legislation that would allow us to effectively track, and prosecute the illegal use, transfer, and sale of weapons. **(New Proposal)**

Identify Theft Unit

My gang prosecutors are seeing gangs increasingly engage in identity theft. As part of my overall effort to crack down on L.A.'s criminal street gangs, I have directed my Identity Theft Unit to prioritize its gang-related ID theft activities. **(Existing Program)**

I will sponsor new legislation to allow us to crack down on false documents. By eliminating the ability of gang members to loiter for the purpose of selling, giving away or distributing false documents, we will give law enforcement another tool with which to eradicate the false documents business thereby reducing the criminal activity these documents facilitate. **(New Proposal)**

Taking Away Bases of Operation:

Project T.O.U.G.H.

Project T.O.U.G.H. or “Taking Out Urban Gang Headquarters” is a new initiative of my office’s Citywide Nuisance Abatement Program (CNAP) that is focused on abating or shutting down chronic gang locations/hangouts/headquarters throughout the City of Los Angeles.

In response to the recent surge in gang-related crime, I hope to expand this project and work in partnership with the Los Angeles Police Department to both develop a list of the ten worst gang hangouts in the City, and then shut them down as soon as possible.

(New Proposal)



Project V.A.C.A.T.E.

This program uses local law to allow the City to notify property owners if occupants of their buildings engage in violent crime, illegal drug or gang activity, and to require owners to evict such occupants. Under state law (H&S 11571.1) the City Attorney can itself bring eviction actions against drug dealers.

(Existing Program)

We can further stem violence in our communities by also requiring the eviction of tenants who illegally use or possess dangerous weapons and I intend to work with the City Council to expand this program by adding such a provision to the ordinance.

As part of my crackdown on illegal weapons possession among criminal street gangs, I am proposing that we amend H&S 11571.1 to add illegal use and possession of weapons as a basis for eviction by the City Attorney. **(New Proposal)**

WHERE DO WE GO FROM HERE?

The lack of jobs, opportunity, and hope, combined with the broad availability of narcotics and weapons, has created a seemingly intractable situation. The proposals outlined in this anti-gang plan are a first step toward the complete eradication of criminal gang activity in Los Angeles.

As civil rights attorney Connie Rice makes clear in her recent report to the Los Angeles City Council's Ad Hoc Committee on Gangs, we can no longer avoid discussions about the root causes of gang membership. Subjects like the foster care system, public housing, illegal immigration, fair wages, and prison reform all tie into the growth of gangs in America. We must have a conversation about these issues and we must not wait.

As elected officials, we must never lose sight of the fact that we are charged with improving quality of life for everyone, no matter the color of their skin, where they come from, where they live, or how much money they have.

Los Angeles will never meet its full potential so long as entire communities are living in fear, with little hope of a better future. Working together, we can - and will - reduce gang violence and restore hope to our communities.

For More Information

Office of Los Angeles City Attorney Rocky Delgadillo
800 City Hall East
200 North Main Street
Los Angeles, CA 90012
(213) 978-8100
<http://www.lacity.org/atty/>

Criminal and Special Litigation Branch

Jeffrey Isaacs
Chief
(213) 978-7948
jeffrey.isaacs@lacity.org

Bruce Riordan
Coordinator of Anti-Gang Programs and Operations
(213) 978-8049
bruce.riordan@lacity.org

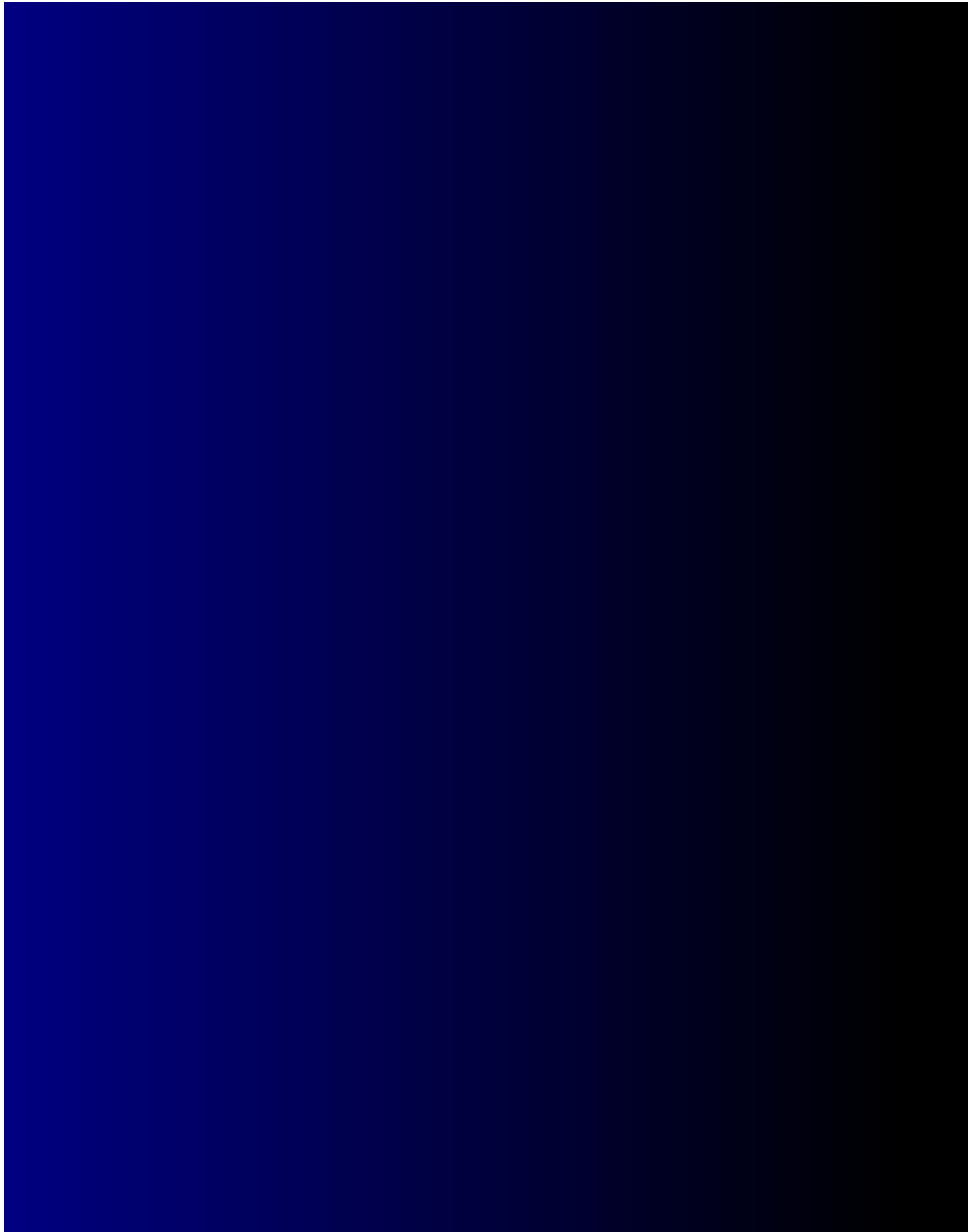
Earl Thomas
Deputy Chief, Citywide Gang Operations
(213) 978-7940
earl.thomas@lacity.org

Mary Clare Molidor
Deputy Chief, Safe Neighborhoods Division
(310) 575-8552
mc.molidor@lacity.org

Marty Vranicar
Supervising Attorney, Gang Prosecution and Prevention Section
(213) 978-4099
marty.vranicar@lacity.org

Communications Office

Nick Velasquez
Director of Communications
(213) 978-8377
nick.velasquez@lacity.org





- Home
- About the Office of the City Attorney
- Meet Rocky
- News and Events
- Community Resources
- Fighting Gangs and Gang Violence
- Safeguarding Our Children and Schools
- Securing Our Neighborhoods
- Protecting Our Environment
- Advocating for Taxpayers, Seniors and Animals
- RFPs and RFQs
- Contact Us >

THE COMMUNITY LAW ENFORCEMENT AND RECOVERY (CLEAR) PROGRAM

The CLEAR Mission

The mission of Los Angeles City/County Community Law Enforcement and Recovery (CLEAR) program is to facilitate the recovery of gang-infested communities. This is accomplished by an infusion of coordinated resources into targeted areas of high gang crime in order to decrease gang violence and promote community recovery. This mission is accomplished through an effective collaboration among several city, county and state criminal justice agencies, and through partnerships between CLEAR's core collaborative and agencies, programs and individuals in the targeted communities.

CLEAR's Core Team Members

- [Los Angeles Mayor's Office](#)
- [Los Angeles County District Attorney](#)
- [Los Angeles Police Department](#)
- [Los Angeles County Sheriff's Department](#)
- [Los Angeles County Probation Department](#)
- [Los Angeles City Attorney](#)
- [California Department of Corrections Parole](#)

CLEAR Program Organization

CLEAR's policy, management, operations and community engagement functions are distributed among several organizational components.

- CLEAR was founded at the highest levels of local government and, on occasion, convenes a summit of the leaders of its constituent agencies: the Mayor of Los Angeles, LAPD Chief of Police, LA County Sheriff, LA City Attorney, and heads of the County District Attorney and County Probation offices, who work together on strategies against gang violence.



The Community Law Enforcement and Recovery (CLEAR) Program

*What is the CLEAR model of anti-gang programming?
What makes CLEAR unique, and uniquely successful?*

The CLEAR Mission

The mission of Los Angeles City/County Community Law Enforcement and Recovery (CLEAR) program is to facilitate the recovery of gang-infested communities. This is accomplished by an infusion of coordinated resources into targeted areas of high gang crime in order to decrease gang violence and promote community recovery. This mission is accomplished through an effective collaboration among several city, county and state criminal justice agencies, and through partnerships between CLEAR's core collaborative and agencies, programs and individuals in the targeted communities.



CLEAR's Core Team Members

- Los Angeles Mayor's Office
- Los Angeles County District Attorney
- Los Angeles Police Department
- Los Angeles County Sheriff's Department
- Los Angeles County Probation Department
- Los Angeles City Attorney
- California Department of Corrections Parole

CLEAR Program Organization

CLEAR's policy, management, operations and community engagement functions are distributed among several organizational components.

- CLEAR was founded at the highest levels of local government and, on occasion, convenes a summit of the leaders of its constituent agencies: the Mayor of Los Angeles, LAPD Chief of Police, LA County Sheriff, LA City Attorney, and heads of the County District Attorney and County Probation offices, who work together on strategies against gang violence.
- Program-level policy, management and oversight are provided by the CLEAR Executive Committee, which represents each core agency. The Executive Committee meets monthly and has an administrative staff. The District Attorney member of the Committee serves as CLEAR program Coordinator.
- At each CLEAR site, local management, operations and community engagement are handled by an Operations Team, which also works closely with a Community Impact Team (CIT) composed of CLEAR personnel and community stakeholders. Each Operations Team also engages other law enforcement agencies and community programs to make CLEAR a truly comprehensive anti-gang initiative.

CLEAR Results

Compared with similar high gang crime areas where CLEAR has not been operating, CLEAR's primary target areas have experienced 22% less gang crime during the last 3 years than occurred before the CLEAR program was there.

Please address any questions to Detective Jorge L. Martinez, CLEAR Administrative Director at (213) 847-1698.





Important Facts to Know About Gang Injunctions

The following are some important facts about gang injunctions:

- As of September 2008, in the City of Los Angeles there are 37 injunctions covering 57 gangs. This means that less than 15% of the City's estimated 400 gangs are currently subject to injunctions.
- A gang injunction is a civil court order that prohibits a gang and its members from conducting certain specified activities within a defined geographic area known as a "safety zone."
- Members of a gang under an injunction may be subject to prosecution if they are aware of and on notice of the injunction. Personal service of the court-ordered injunction and related paperwork are the most common form of notice.
- The civil court order declares the gang a public nuisance and prohibits certain activities.
- Common restrictions and prohibitions of the court ordered injunction include:
 - Do not associate with other gang members.
 - Do not use gang hand signs and/or wear gang colors and attire.
 - Do not use, possess, sell or transport drugs.
 - Do not drink or possess alcohol.
 - Do not own, use or possess any dangerous or deadly weapons.
 - Do not commit graffiti/vandalism and/or possess graffiti/vandalism tools.
 - Do not intimidate, threaten or harass people.
- Many of the activities prohibited in the injunction are in and of themselves violations of the law.
- Violating the terms of the injunction, also known as contempt of court, is a criminal misdemeanor punishable by up to 6 months in jail and/or a \$1,000 fine.
- Criminal prosecutors must prove the contempt of court charge beyond a reasonable doubt to a judge and jury.

For more information regarding gang injunctions, including the removal process and public safety outcomes, please visit the Los Angeles City Attorney's website at www.lacity.org/atty/.



Datos Importantes Relacionados Con Las Restricciones Legales Contra Pandillas

Los siguientes son datos importantes relacionados con las restricciones legales contra pandillas:

- Hasta el mes de Septiembre de 2008, en la Ciudad de Los Angeles había 37 Restricciones Legales contra Pandillas, abarcando 57 pandillas. Esto significa que menos de un 15% de las 400 pandillas estimadas son sujetas a restricciones legales.
- Una Restricción Legal contra Pandillas es una orden civil por parte de la corte que prohíbe a una pandilla y a sus integrantes en realizar ciertas actividades dentro de un área geográfica conocida como “Zona Segura”.
- Los miembros de una Pandilla bajo restricción legal pueden ser procesados penalmente si tienen conocimiento y son avisados de la restricción. Las formas más comunes en las que estos son avisados de la restricción, son servicio de entrega de documento en persona, así como los trámites por escrito.
- La orden civil de la corte declara que una pandilla es molestia pública, y le prohíbe ciertas actividades.
- Las restricciones y prohibiciones comunes dentro de la restricción legal incluyen:
 - No asociarse con otros pandilleros.
 - No hacer con las manos gestos relacionados con pandillas, ni llevar puesta ropa con colores pandilleriles.
 - No usar, poseer, vender o transportar drogas.
 - No vender ni poseer alcohol.
 - No poseer ni usar armas peligrosas o mortales.
 - No cometer actos de vandalismo/grafitos, ni poseer herramientas de grafitos-vandalismo.
 - No intimidar, amenazar o acosar a personas.
- Muchas de las actividades prohibidas en la restricción son en si mismas violaciones a la ley.
- La violación de los términos de la restricción, también conocida en inglés como *contempt of court*, en una ofensa criminal menor, castigada con hasta 6 meses en la cárcel y/o una multa de \$1,000.
- Los fiscales del área criminal deberán probar el cargo de *contempt of court*, sin que haya duda razonable, ante un juez y jurado.

Para mayor información relacionada con las restricciones legales, incluyendo el proceso de remoción y resultados relacionados con la seguridad pública, por favor vaya a la pagina Web de la Procuraduría de la Ciudad de Los Angeles, www.lacity.org/atty/.

**LOS ANGELES
CITY ATTORNEY'S OFFICE
CRIMINAL AND SPECIAL LITIGATION BRANCH**

GANG INJUNCTION GUIDELINES

**ROCKARD J. DELGADILLO
CITY ATTORNEY
CITY OF LOS ANGELES**



JEFFREY B. ISAACS
Chief, Criminal and
Special Litigation Branch

BRUCE RIORDAN
Director of Anti-Gang
Programs and Operations

MARTY VRANICAR
Supervising Attorney,
Gang Prosecution and
Prevention Section

April 2007

ADVISEMENTS

THE FOLLOWING GUIDELINES REPRESENT THE INTERNAL POLICY OF THE LOS ANGELES CITY ATTORNEY'S OFFICE AND APPLY SOLELY AND EXCLUSIVELY TO ATTORNEYS IN THE CRIMINAL AND SPECIAL LITIGATION BRANCH OF THE LOS ANGELES CITY ATTORNEY'S OFFICE.

THESE GUIDELINES DO NOT HAVE THE FORCE AND EFFECT OF LAW, ARE NOT INTENDED TO CREATE JUDICIALLY ENFORCEABLE STANDARDS, AND MAY NOT BE RELIED UPON BY ENJOINED GANG MEMBERS, DEFENDANTS, SUSPECTS OR OTHER PARTIES AS CREATING ANY RIGHTS, CLAIMS, OR DEFENSES.

TABLE OF CONTENTS

	PAGE
A. DEFINITIONS AND PURPOSE	1
A.1: Definitions	1
A.2: Purpose	1
B. OBTAINING THE GANG INJUNCTION	2
B.1: Basic Requirements	2
B.2: Identifiable Criminal Street Gang	3
B.3: Pattern of Nuisance Activity	3
B.4: Safety Zone	3
B.5: Burden of Proof	3
B.6: Likely to Abate the Nuisance Activity	4
B.7: Decision to Seek a Gang Injunction	5
B.8: Coordination With the Local Branch and Safe Neighborhoods Division	5
C. PROVISIONS OF THE GANG INJUNCTION AND NOTICE TO THE GANG	5
C.1: Narrowly Tailored	5
C.2: Inclusion of Standard Provisions	5
C.3: Inclusion of Special Provisions	6
C.4: Notice to the Gang	7
D. SERVICE OF SUSPECTED GANG MEMBERS FOR ENFORCEMENT PURPOSES	7
D.1: Coordination With LAPD	7
D.2: Personal Service Required	8

TABLE OF CONTENTS (Continued)

	PAGE
D.3: Proof Beyond a Reasonable Doubt Required	8
D.4: Prior Approval of Gang Deputy Required	8
D.5: Exigent Circumstances and Excusable Neglect	8
D.6: Continuous Monitoring	8
D.7: Service of Non-Gang Members Generally Not Permitted	9
E. PROSECUTION FOR GANG INJUNCTION VIOLATION	9
E.1: Prosecution for Contempt	9
E.2: Subpoena of LAPD Officers	9
E.3: Filing of the Gang Enhancement Allegation	9
F. SENTENCING OF GANG MEMBERS	10
F.1: Sentencing Goals	10
F.2: Baseline Sentence	11
F.3: Deriving the Proposed Sentence	11
F.4: Striking of the Gang Enhancement Allegation	12
F.5: Court's Refusal to Impose the Gang Enhancement	13
F.6: Standard Conditions of Probation	13
F.7: Special Conditions of Probation	13
F.8: Victim Restitution	14
F.9: Gang Member Registration	14
F.10: Referral to Federal Immigration Authorities	15
G. REMOVAL FROM GANG INJUNCTION GENERALLY	15
G.1: Enforcement List	15

TABLE OF CONTENTS (Continued)

	PAGE
G.2: Removal from Enforcement List Generally	15
G.3: Person Served No Longer Subject to Enforcement	15
G.4: Removal Without Prejudice	15
G.5: Seeking Judicial Declaration Not Precluded	16
G.6: Confidentiality of Removal Processes	16
G.7: Participation of Other City Agencies	16
H. REMOVAL FROM THE ENFORCEMENT LIST AT THE DIRECTION OF THE REVIEWING AUTHORITY	16
H.1: Submission of Petition For Removal	16
H.2: Time Limit for Submission	16
H.3: Contents of Petition	16
H.4: Noncompliance With Petition Requirements	17
H.5: Recommendation of Gang Deputy and LAPD Gang Expert	18
H.6: Consideration By the Reviewing Authority	18
H.7: Decision of the Reviewing Authority	18
H.8: Communication of Decision	18
I. REMOVAL FROM THE ENFORCEMENT LIST AS A RESULT OF PERIODIC REVIEW	19
I.1: Periodic Review	19
I.2: Purpose of Periodic Review	19
I.3: Standard for Removal	19
I.4: Rebuttal Presumption	19

TABLE OF CONTENTS (Continued)

	PAGE
I.5: Determination Regarding Removal	19
J. BINDING POLICY, DEVIATION THEREFROM	20
J.1: Binding Policy	20
J.2: Effective Date	20
J.3: Retention of Authority and Discretion	20

APPENDIX “A”: STANDARD GANG INJUNCTION PROVISIONS

APPENDIX “B”: COMMENTARY

A.

DEFINITIONS AND PURPOSE

A.1: Definitions

As used in these Guidelines:

- a) **Criminal Branch** refers to the Criminal and Special Litigation Branch of the Los Angeles City Attorney's Office.
- b) **Gang Deputy** refers to a Deputy City Attorney within the Gang Prosecution and Prevention Section as well as any Deputy City Attorney prosecuting a case in which the defendant is a suspected gang member accused of violating a Gang Injunction.
- c) **Gang Injunction** or **Injunction** refers to a court order, in the form of a preliminary or permanent injunction, issued against an identifiable criminal street gang as an unincorporated association or organization, the provisions of which seek to abate the gang's nuisance activity in a delineated geographic area known as the "Safety Zone."
- d) **Gang Supervisor** refers to the Supervisor, an Assistant Supervisor or a Deputy In Charge of the Gang Prosecution and Prevention Section. It also may include the Director of Anti-Gang Programs and Operations and the Chief of the Criminal Branch when a Gang Supervisor is unavailable, or when the required recommendation, decision, approval or action so merits.
- e) **LAPD** refers to the Los Angeles Police Department.
- f) **Reviewing Authority** refers to the City Attorney and, by designation, the Deputy Chief, Citywide Branch Operations Division; the Deputy Chief, Safe Neighborhoods Division; the Deputy Chief, Special Operations Division, or a senior supervisor within one of these divisions, when determining, in accordance with the review processes established by these Guidelines, whether a person who has been served with a Gang Injunction should no longer be subject to enforcement of the Injunction.

A.2: Purpose

Gang Injunctions have proven to be one of the most effective legal tools available to law enforcement in suppressing and disrupting the criminal and often violent activities of Los Angeles street gangs and protecting the communities and neighborhoods they terrorize. Because of their success, in both the courts and the communities, there are currently more than 30 permanent Gang Injunctions

in place in the City of Los Angeles enjoining the activities of 50 criminal street gangs.

The principal purpose of these Guidelines is to ensure consistency and fairness in obtaining Gang Injunctions, fashioning their terms, identifying suspected gang members to be served, enforcing Gang Injunctions through contempt prosecutions, and sentencing gang members convicted of violating Gang Injunctions.

The Guidelines also create a new non-judicial process by which an individual who has been served with a Gang Injunction can seek to be removed from the Injunction based on reliable information that he or she is no longer (or never was) a gang member or acting to promote, further, or assist the gang's criminal and/or nuisance activity. In addition, the Guidelines create a new review process to periodically determine whether any gang members served with a Gang Injunction should be removed from the Injunction because of changed circumstances.

It should be noted that in many instances the Guidelines impose, as a matter of policy, standards more stringent than those under existing law. In no instance do the Guidelines seek to relax protections established by existing law or by the prior practices and policies of this Office for obtaining and enforcing Gang Injunctions.

Many of the Guidelines formalize in writing existing policies and practices. Others, however, create new standards and procedures or require supervisory level review or approval where no such review or approval was required before. Therefore, Gang Deputies must carefully review and become thoroughly familiar with these Guidelines.

B.

OBTAINING THE GANG INJUNCTION

B.1: Basic Requirements

As a matter of Criminal Branch policy, a Gang Injunction will be sought only when:

- a) There is clear and convincing evidence that (i) an identifiable criminal street gang (ii) is engaged in nuisance activity (iii) within a defined geographic area (the proposed "Safety Zone"); *and*
- b) The nuisance activity includes acts or threats of violence, drug dealing, the possession of illegal weapons or illegal possession of weapons, destruction or defacement of property, harassment of community members, or witness intimidation or retaliation; *and*

- c) There is substantial reason to conclude that the Gang Injunction is likely to succeed to a significant degree in abating the nuisance activity.

B.2: Identifiable Criminal Street Gang

For purposes of these Guidelines, an “identifiable criminal street gang” is: (a) an ongoing organization, association or group of three or more persons, whether formal or informal, (b) with a common name or identifying sign or symbol, (c) which has as one of its primary activities one or more of the offenses referenced in Penal Code section 186.22, subdivision (f), and/or nuisance activity as defined in Civil Code sections 3479 and 3480, and (d) whose members individually or collectively engage in a pattern of criminal gang activity or in nuisance activity.

B.3: Pattern of Nuisance Activity

For purposes of these Guidelines, a “pattern of nuisance activity” consists of anything which affects at the same time an entire community or neighborhood or any considerable number of persons, *and* is:

- a) Injurious to health, including, but not limited to, the illegal sale of controlled substances, so as to interfere with the comfortable enjoyment of life or property; *or*
- b) Indecent or offensive to the senses, so as to interfere with the comfortable enjoyment of life or property; *or*
- c) An obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property; *or*
- d) Unlawfully obstructing the free passage or use, in the customary manner, of any public park, square, street or highway; *or*
- e) A nuisance *per se*.

B.4: Safety Zone

The proposed Safety Zone shall be no larger than deemed necessary to abate the targeted gang’s nuisance activity.

B.5: Burden of Proof

The burden of proof for obtaining a Gang Injunction is clear and convincing evidence.

B.6: Likely to Abate the Nuisance Activity

In determining whether the proposed Gang Injunction is likely to succeed to a significant degree in abating the targeted gang's nuisance activity, all relevant factors, including (but not necessarily limited to) the following, should be considered and weighed.

Factors supporting the likely success of the proposed Gang Injunction in abating the nuisance activity of the targeted gang:

- a) The targeted gang is territorial or an identifiable and distinct territorial clique of a transitory, opportunistic or criminal syndicate gang;
- b) LAPD can readily identify suspected gang members;
- c) The targeted gang's nuisance activities are confined geographically by surrounding territorial gangs or significant natural or man-made barriers;
- d) There is substantial community support for a Gang Injunction;
- e) The proposed Safety Zone is contained within or immediately adjacent to a Safer City Initiative area, CLEAR site or other special multi-agency project;
- f) The proposed Gang Injunction is to be part of a broader plan for economic revitalization of a blighted area undertaken with law enforcement agencies, governmental entities and/or private partners;
and/or
- g) LAPD and the City Attorney's Office have sufficient available resources to enforce the proposed Gang Injunction.

Factors indicating that another strategy may be more effective in abating the nuisance activity of the targeted gang:

- a) The targeted gang operates as a criminal syndicate and its criminal conduct is diffused across a sizeable geographic area;
- b) The targeted gang's nuisance activity is generally limited to one or two buildings such that a nuisance abatement action against those properties may be sufficient to abate the targeted gang's nuisance activity;
- c) It is likely to prove unusually difficult to identify and/or personally serve a sufficient number of suspected gang members for a court to find that the targeted gang as an entity has been given adequate notice of the Gang Injunction;

- d) There are too few documented incidents of recent nuisance activity attributable to the targeted gang within the proposed Safety Zone to establish a continuing course of conduct or threat of a continuing course of conduct;
- e) There is a substantial risk that the gang will be able to establish turf-based nuisance activity in another community; *and/or*
- f) LAPD and the City Attorney's Office do not have sufficient available resources to adequately enforce the proposed Gang Injunction.

B.7: Decision to Seek a Gang Injunction

A request for a Gang Injunction shall be analyzed in the first instance by the Gang Deputy and a Gang Supervisor, in consultation with the designated LAPD gang expert(s). If they concur that the requirements of Guideline B.1 are met, the request and their recommendation shall be forwarded to the Director of Anti-Gang Programs and Operations, the Chief of the Criminal Branch and the City Attorney for prompt action thereon. The decision whether to proceed with the request rests with the City Attorney, who may delegate such decision-making at any time and in any case to the Chief of the Criminal Branch.

B.8: Coordination With the Local Branch and Safe Neighborhoods Division

Absent exigent circumstances, the Gang Deputy and Gang Supervisor should timely consult with the supervisor of the local Branch Office and attorneys in the Safe Neighborhoods Division to determine whether there are additional legal actions or other measures that could be taken within or around the proposed Safety Zone to abate the targeted gang's nuisance activity and/or improve the safety and quality of life of the members of the affected community.

C.

**PROVISIONS OF THE
GANG INJUNCTION AND NOTICE TO THE GANG**

C.1: Narrowly Tailored

Each provision included in the proposed Gang Injunction should be narrowly tailored to abate a particular category of nuisance activity or a precursor to such nuisance activity.

C.2: Inclusion of Standard Provisions

To the extent available evidence justifies inclusion of any of the following provisions, the initial application to the court for a Gang Injunction shall include

the provision in the language set forth in Appendix A, unless a deviation is authorized by a Gang Supervisor:

- a) *Do Not Associate*
- b) *No Intimidation*
- c) *No Firearms, Imitation Firearms, or Dangerous Weapons*
- d) *Stay Away From Drugs*
- e) *Stay Away From Alcohol*
- f) *No Trespassing*
- g) *Obey Curfew*
- h) *No Graffiti or Graffiti Tools*
- i) *No Forcible Recruiting*
- j) *No Preventing a Member From Leaving the Gang*
- k) *Obey All Laws.*

C.3: Inclusion of Special Provisions

Inclusion of a new or otherwise non-standard provision in the Gang Injunction must be approved by a Gang Supervisor.

Such special provisions could include, but are not necessarily limited to:

- a) *Stay Away From School Grounds*
- b) *Stay Away From Designated Locations*
- c) *No Extortion Including Collection of "Rents" or "Taxes"*
- d) *No Acting as Lookout*
- e) *No Fighting*
- f) *Stay Away From Rival Gang's Territory* (where the Gang Injunction operates against two or more gangs)
- g) *No Contact With Minors Going to and From School*
- h) *No Use of Gang Gestures in Public*

- i) *No Wearing of Gang Clothing in Public*
- j) *No Interference With a Person's Exercise of Civil Rights Based Upon Race, Ethnicity, Nationality, or Sexual Orientation*
- k) *No Contact with Specified Individuals* (especially persons in jail or prison or on probation or parole)
- l) *Obey Specified Laws.*

The Gang Deputy and Gang Supervisor should carefully research and analyze the applicable law to ensure the legality (and in particular the constitutionality) of the provision. To avoid repetition of effort, for each such approved provision the Gang Deputy shall distribute a memorandum to all attorneys within the Gang Prosecution and Prevention Section, the Director of Anti-Gang Programs and Operations and the Chief of the Criminal Branch that includes the language of the provision, a brief explanation of its intended purpose, and any research and/or analysis concerning its legality.

C.4: Notice to the Gang

The lawsuit requesting issuance of the Gang Injunction is filed against the gang as an unincorporated association or organization and not against individual gang members. However, to provide notice to the gang of the pendency of the lawsuit, one or more designated gang members must be served with the summons, complaint, order to show cause and supporting documentation. To ensure that the court has a sufficient basis for finding that the gang as an entity received adequate notice of the lawsuit, the Gang Deputy should plan and make arrangements for the initial service of process on an adequate number of suspected gang members.

For purposes of this initial service of process, the Gang Deputy should select only suspected gang members with respect to whom there is substantial, admissible and credible evidence that they are, in fact, gang members.

D.

**SERVICE OF SUSPECTED
GANG MEMBERS FOR ENFORCEMENT PURPOSES**

D.1: Coordination With LAPD

Upon issuance of the Gang Injunction, the Gang Deputy should: (a) provide appropriate training to the LAPD gang detail and any other officers who will be responsible for service and/or enforcement of the Gang Injunction; and (b) assist LAPD in creating an Injunction Enforcement Manual and keeping the Manual current.

D.2: Personal Service Required

A suspected gang member will not be subject to enforcement of the Gang Injunction unless he or she has been personally served with the Injunction. To implement this requirement, each application for Gang Injunction filed after the effective date of these Guidelines shall request that the court include the following language in the Gang Injunction:

No [NAME OF DEFENDANT GANG] member shall be prosecuted for violating any provision of this Order unless he or she has previously been personally served with a copy of this Order.

D.3: Proof Beyond a Reasonable Doubt Required

A suspected gang member may be served with the Gang Injunction if, at the time of service, there is documented evidence establishing beyond a reasonable doubt that: (a) the suspected gang member is, in fact, a gang member; *and* (b) his or her participation in the enjoined gang during the past five (5) years has been more than nominal, passive, inactive, or purely technical.

D.4: Prior Approval of Gang Deputy Required

Before LAPD may serve a suspected gang member with a Gang Injunction, it must receive approval from the Gang Deputy responsible for enforcement of the Injunction (or a Gang Supervisor if the Gang Deputy is unavailable). To obtain such approval, LAPD must submit a request to the Gang Deputy, who shall determine whether the requirements of Guideline D.3 have been satisfied.

D.5: Exigent Circumstances and Excusable Neglect

If, because of exigent circumstances or excusable neglect, LAPD serves a suspected gang member with the Gang Injunction without first receiving the approval required by Guideline D.4, LAPD shall submit the request for approval to the Gang Deputy as soon as reasonably possible with an explanation of why prior approval was not obtained. The Gang Deputy, in consultation with a Gang Supervisor, may approve of the service retroactively if they determine that the requirements of Guideline D.3 have been satisfied, and that LAPD was, under the totality of the circumstances, acting reasonably. If the Gang Deputy and Gang Supervisor refuse to approve of the service, the person served shall not be subject to enforcement of the Gang Injunction.

D.6: Continuous Monitoring

The Gang Deputy responsible for enforcement of the Gang Injunction shall carefully monitor the ongoing process of serving suspected gang members with the Gang Injunction to ensure compliance with Guidelines D.1, D.2, D.3 and D.4.

Should the Gang Deputy conclude that those Guidelines are not being followed in material respects, he or she shall promptly notify a Gang Supervisor.

D.7: Service of Non-Gang Members Generally Not Permitted

Pending the adoption of specific guidelines regarding the service of non-gang members, individuals who are not gang members, and who may only be associated or affiliated with the gang, shall not be served with a Gang Injunction without the prior approval of the Director of Anti-Gang Programs and Operations, the Chief of the Criminal Branch, or the City Attorney.

E.

PROSECUTION FOR GANG INJUNCTION VIOLATION

E.1: Prosecution for Contempt

A person arrested for violating a Gang Injunction shall be prosecuted for contempt only if there is sufficient documented evidence to establish beyond a reasonable doubt that:

- a) The person was a member of the enjoined gang, and therefore subject to the Gang Injunction, at the time of the alleged violation; *and*
- b) The person violated one or more provisions of the Gang Injunction within the Safety Zone; *and*
- c) The person had notice of the Gang Injunction at the time of the violation, having been personally served with a copy of the Gang Injunction prior to committing the violation.

E.2: Subpoena of LAPD Officers

Absent exigent circumstances, no more than twelve (12) LAPD officers shall be subpoenaed to appear at trial without the prior approval of a Gang Supervisor.

E.3: Filing of the Gang Enhancement Allegation

The misdemeanor gang enhancement allegation (“gang enhancement allegation”) of Penal Code section 186.22, subdivision (d), shall only be filed when:

- a) There is proof beyond a reasonable doubt that:
 - i) The Gang Injunction violation was committed for the benefit of, at the direction of, or in association with the enjoined gang; *and*

- ii) The defendant acted with the specific intent to promote, further, or assist in any criminal conduct by gang members; *and*
- b) One or more of the following circumstances applies:
 - i) The defendant was convicted of a Gang Injunction violation, crime of violence, or felony offense within five years of the Gang Injunction violation forming the basis of the current prosecution; *or*
 - ii) The defendant was on probation or parole for another offense (felony or misdemeanor) at the time of the Gang Injunction violation; *or*
 - iii) The Gang Injunction violation involved acts or threats of violence, drug dealing, the possession of illegal weapons or the illegal possession of weapons, harassment of community members, or witness intimidation or retaliation; *or*
 - iv) There is substantial reason to conclude that the Gang Injunction violation was motivated, in whole or in part, by racial animus; *or*
 - v) The defendant's violation of the Gang Injunction occurred within 1,000 feet of a school, park, or other public recreational area; *or*
 - vi) A Gang Supervisor approves of the filing.

The gang enhancement allegation shall not be filed solely to gain leverage in plea negotiations.

F.

SENTENCING OF GANG MEMBERS

F.1: Sentencing Goals

In negotiating a possible pre-trial disposition in a case in which the defendant is charged with violating a Gang Injunction, or in recommending to the court the sentence the defendant in such a case should receive following conviction at trial, the Gang Deputy shall seek a sentence that is consistent with traditional notions of specific and general deterrence, retribution, rehabilitation and restraint, but also that promotes the goals of obtaining the defendant's compliance with the Gang Injunction and abating the nuisance activity in which the gang has been found to be engaged.

F.2: Baseline Sentence

For purposes of these Guidelines, the Baseline Sentence in a case in which the defendant is charged with violating a Gang Injunction is 60 days in county jail.

F.3: Deriving the Proposed Sentence

In deriving a proposed sentence to offer the defendant as part of a pre-trial disposition, or to recommend to the court following conviction at trial, the Gang Deputy shall begin with the Baseline Sentence of 60 days in jail, and then apply appropriate mitigating and aggravating factors, including (but not necessarily limited to) the following, to derive the final proposed sentence.

Mitigating Factors:

- a) The defendant accepted responsibility at an early stage of the proceedings;
- b) The defendant's criminal history does not include any convictions for prior Gang Injunction violations, crimes of violence, or felony offenses;
- c) The defendant is gainfully employed;
- d) The defendant professes a desire to renounce the gang lifestyle and there is reasonable cause to believe that he or she is sincere;
- e) The defendant graduated from high school or received a GED;
- f) The defendant is under 21 years of age;
- g) The defendant recognizes that he or she has a substance abuse problem and is willing to enroll in a program to help overcome that problem;
- h) The defendant's violation of the Gang Injunction resulted in the destruction of property, but the defendant is willing to repair, restore, or replace the property or make restitution to the property owner; *and*
- i) The defendant is willing to agree to a combination of probationary conditions that, in the Gang Deputy's judgment, will achieve the sentencing goals of Guideline F.1, given the available evidence of the defendant's character, reputation, history, personal traits, family and community support, and capacity and commitment to abide by the terms of the Gang Injunction.

Aggravating Factors:

- a) The defendant was previously convicted of violating the

Gang Injunction, a crime of violence, or a felony offense;

- b) The defendant was on probation or parole for another offense (felony or misdemeanor) at the time of the Gang Injunction violation;
- c) The defendant's violation of the Gang Injunction involved acts or threats of violence, drug dealing, the possession of illegal weapons, or the illegal possession of weapons, harassment of community members, or witness intimidation or retaliation;
- d) The defendant holds a leadership position in the gang;
- e) There is substantial reason to conclude that the defendant derives all or some of his or her income from criminal activity (because, for example, the defendant has no visible lawful sources of income or any such sources of income cannot account for the defendant's lifestyle);
- f) There is substantial reason to conclude that the Gang Injunction violation was motivated, in whole or in part, by racial animus;
- g) The defendant is 21 years of age or older;
- h) There is substantial reason to conclude that the defendant has a substance abuse problem, but the defendant refuses to seek help to overcome that problem;
- i) There is substantial reason to conclude that the defendant is or has been involved in the recruitment of new gang members; *and*
- j) The gang of which the defendant is a member has a documented history of extreme or racially motivated violence.

F.4: Striking of the Gang Enhancement Allegation

In any case in which the gang enhancement allegation has been filed, the Gang Deputy shall not agree to strike the allegation as part of a pretrial disposition unless:

- a) The Gang Deputy, upon subsequent review of the case file, is firmly convinced that:
 - i) The allegation should not have been filed because the requirements of Guideline E.3 do not exist; *or*
 - ii) Application of the factors listed in Guideline F.3 would result in a proposed sentence of well below the mandatory minimum of 180 days; *and*

- b) A Gang Supervisor approves the striking of the allegation.

F.5: Court’s Refusal to Impose the Gang Enhancement

In any case in which the jury finds the gang enhancement allegation to be true, but the court refuses, pursuant to Penal Code section 186.22, subdivision (g), to impose the mandatory minimum misdemeanor sentence, the Gang Deputy shall promptly report the court’s refusal and its stated reasons therefor to a Gang Supervisor and the Director of Anti-Gang Programs and Operations.

F.6: Standard Conditions of Probation

Unless otherwise approved by a Gang Supervisor, in any case in which the defendant is convicted of violating a Gang Injunction and the court indicates its intention to impose a sentence of probation, the Gang Deputy shall request as conditions of probation the court-approved “warrantless search and seizure condition” and the “gang condition.”

F.7: Special Conditions of Probation

In any case in which the defendant is convicted of violating a Gang Injunction and the court indicates its intention to impose a sentence of probation, the Gang Deputy should request any special conditions of probation that the Gang Deputy believes are reasonably related to abating the nuisance activity in which the gang has been found to be engaged and/or that are reasonably related to preventing the defendant’s future criminality.

Such special conditions may include, but are not necessarily limited to:

- a) Stay away from specified persons or groups of persons;
- b) Stay away from specified locations or areas;
- c) Expansion of one or more provisions of the Gang Injunction;
- d) Enroll in an approved substance abuse program;
- e) Do not use or possess alcohol and/or controlled substances;
- f) Repair or restore damaged property;
- g) Community service;
- h) GPS or other court-approved electronic monitoring;
- i) Attend parenting classes as specified;
- j) Enroll in an approved anger management or race relations program;

- k) Participate in psychological counseling as required;
- l) Do not use, own, or possess dangerous weapons;
- m) Do not use or threaten to use force or violence against any person;
- n) Enroll in an available gang intervention program;
- o) Report to the court periodically;
- p) Report to a probation officer periodically or as directed by the probation officer;
- q) Report to a court-approved case manager or mentor;
- r) Do not use specified computer hardware or software or access the Internet;
- s) Enroll or stay in school, maintain a certain minimum grade point average, or enroll in or continue to attend an approved job training program; *or*
- t) Use best efforts to obtain and/or retain lawful employment.

F.8: Victim Restitution

In any case in which the defendant is convicted of violating a Gang Injunction, and the violation involved the destruction or defacement of property or caused some other economic loss to the victim, the Gang Deputy shall request that the court order the defendant to make full restitution to the victim in accordance with Penal Code section 1202.4, subdivision (f), unless:

- a) In the Gang Deputy's judgment, there is a compelling and extraordinary reason for the court not to order full restitution; *and*
- b) A Gang Supervisor approves.

F.9: Gang Member Registration

In any case in which the defendant is convicted of violating a Gang Injunction, the Gang Deputy shall, unless otherwise approved by a Gang Supervisor, request that the court find that the defendant was convicted of a "gang related" crime, and, if the court so finds, ensure that the court advises the defendant of his or her duty to register with LAPD in accordance with the requirements of Penal Code section 186.30.

F.10: Referral to Federal Immigration Authorities

Upon conviction of a defendant for violating a Gang Injunction, the Gang Deputy shall forward the defendant's name and other requested identifying information to designated federal authorities to enable those authorities to determine whether the defendant is in the country illegally, and, if so, whether to prosecute the defendant federally and/or seek his or her deportation.

G.

REMOVAL FROM GANG INJUNCTION GENERALLY

G.1: Enforcement List

The Gang Deputy responsible for enforcement of the Gang Injunction, together with the designated LAPD gang expert, shall be responsible for creating, maintaining and updating a list of the persons who have been served with the Gang Injunction and remain subject to its enforcement (the "Enforcement List" or "List").

G.2: Removal From Enforcement List Generally

A person on the Enforcement List may be removed from the List by either of the following two non-judicial processes:

- a) At the direction of the Reviewing Authority pursuant to the procedures specified in Guidelines H.1 through H.8 below; *or*
- b) As a result of a Periodic Review conducted pursuant to the procedures specified in Guidelines I.1 through I.5 below.

G.3: Person Served No Longer Subject to Enforcement

A person served with a Gang Injunction, but who is subsequently removed from the Enforcement List pursuant to the procedures referenced above, shall no longer be subject to enforcement of the Gang Injunction.

Such removal represents an exercise of prosecutorial discretion, and does not constitute an admission, factual finding, or legal determination by the City Attorney's Office or LAPD that the person is not a gang member for any other purpose.

G.4: Removal Without Prejudice

Removal of a gang member from the Enforcement List is *without prejudice*. A gang member removed from the Enforcement List may be restored to the List by again serving him or her with the Gang Injunction, either personally or by mail, should evidence come to light that he or she remained a member of the gang;

rejoined the gang; or is acting, directly or indirectly, to promote, further, or assist the gang's criminal or nuisance activity.

G.5: Seeking Judicial Declaration Not Precluded

Nothing in these Guidelines precludes a person who has been served with a Gang Injunction from seeking a judicial declaration that he or she is not subject to enforcement of the Injunction.

G.6: Confidentiality of Removal Processes

To protect persons seeking to leave an enjoined gang, records relating to proceedings by which persons are removed from the Enforcement List shall be maintained as confidential to the extent permitted by law.

G.7: Participation of Other City Agencies

The Criminal Branch shall continue to work with the Community Development Department and all other appropriate City agencies to develop procedures and means by which such agencies can assist the Criminal Branch in determining whether a person served with a Gang Injunction should be removed from the Enforcement List.

H.

**REMOVAL FROM THE ENFORCEMENT LIST
AT THE DIRECTION OF THE REVIEWING AUTHORITY**

H.1: Submission of Petition For Removal

A person served with a Gang Injunction may seek to be removed from the Enforcement List by submitting to the Reviewing Authority (through the Gang Prosecution and Prevention Section or LAPD) a written petition requesting removal from the Enforcement List (the "Petition").

H.2: Time Limit For Submission

To be considered, a Petition must be received by the City Attorney's Office or LAPD within 90 days of the Petitioner being personally served with the Gang Injunction, unless good cause is demonstrated, which could include the prior unavailability of this procedure to the Petitioner or recent completion of an educational, job training, or gang intervention program.

H.3: Contents of Petition

The Petition may, though need not be, submitted on a form to be developed and made available by the Criminal Branch and LAPD. The Petition should contain the following information:

- a) The Petitioner's full name;
- b) The Petitioner's date of birth;
- c) The Petitioner's social security account number, or, if the petitioner has none, a copy of a valid and acceptable photo identification, such as a driver's license or school issued identification card;
- d) The Petitioner's home address and telephone number;
- e) The name, address and telephone number of the Petitioner's place of employment;
- f) Any aliases or monikers the Petitioner uses or has used in the past;
- g) A signed verification by the Petitioner that he or she:
 - i) No longer is (or never was) a member of the gang named in the Gang Injunction; *and*
 - ii) No longer is (or never was) a member of any other criminal street gang; *and*
 - iii) No longer is (or never was) acting, directly or indirectly, to promote, further, or assist any such gang's criminal or nuisance activity;
- h) If the Petitioner claims to have previously been, but no longer is, a gang member, a statement explaining when, why and under what circumstances he or she ceased being a gang member;
- i) A statement describing any facts supporting Petitioner's claim that he or she no longer is (or never was) a gang member;
- j) A list of witnesses, including current contact information, who could support Petitioner's claim that he or she no longer is (or never was) a gang member; and
- k) Any witness testimonials, letters from third parties, or other documentation or evidence supporting Petitioner's claim that he or she no longer is (or never was) a gang member.

H.4: Noncompliance With Petition Requirements

The failure of a Petition to comply fully with the requirements of Guideline H.3 shall not, standing alone, be reason enough for refusing to review or act upon the Petition; *provided, however*, that a Petition shall not be considered if the

Petitioner has: (a) failed to provide sufficient identifying information; or (b) failed to sign a verification regarding his or her status as a gang member.

Any other deficiencies in the Petition may be considered as a factor in determining whether the Petitioner qualifies to be removed from the Enforcement List.

H.5: Recommendation of Gang Deputy and LAPD Gang Expert

The Gang Deputy responsible for enforcement of the Gang Injunction, in consultation with the designated LAPD gang expert, shall promptly review the Petition and make a recommendation in writing to the Reviewing Authority. The Gang Deputy shall forward the Petition, the recommendation, and a copy of any evidence or other relevant and reliable information to the Reviewing Authority.

H.6: Consideration By the Reviewing Authority

The Reviewing Authority shall promptly review the Petition and all available evidence and other relevant and reliable information. Additionally, the Reviewing Authority may, in his or her discretion, hear informally, in person, telephonically, or in writing, from the designated LAPD gang expert, the Petitioner, or any other person believed to possess relevant information.

H.7: Decision of the Reviewing Authority

The Reviewing Authority shall direct that the Petitioner be removed from the Enforcement List if the Reviewing Authority is firmly convinced that the Petitioner:

- a) No longer is (or never was) a member of the enjoined gang; *and*
- b) No longer is (or never was) acting, directly or indirectly, to promote, further, or assist the gang's criminal and/or nuisance activity; *and*
- c) No longer is (or never was) a substantial threat to act, directly or indirectly, to promote, further, or assist the gang's criminal and/or nuisance activity.

H.8: Communication of Decision

The Reviewing Authority shall communicate his or her decision regarding the Petition to the Gang Deputy responsible for enforcement of the Gang Injunction and the designated LAPD gang expert. If the Reviewing Authority grants the Petition, the Gang Deputy and LAPD gang expert shall ensure that the Petitioner is promptly removed from the Enforcement List.

I.

REMOVAL FROM THE ENFORCEMENT LIST AS A RESULT OF PERIODIC REVIEW

I.1: Periodic Review

For each Gang Injunction issued after the effective date of these Guidelines: Three years from the anniversary date that the Gang Injunction issued, or as soon thereafter as reasonably possible, and every three years thereafter, the Gang Deputy responsible for enforcement of the Gang Injunction, together with the designated LAPD gang expert, shall review all available relevant and reliable information concerning gang membership and affiliation for each person subject to enforcement of the Gang Injunction (“Periodic Review”).

I.2: Purpose of Periodic Review

The purpose of the Periodic Review shall be to determine whether any person should be removed from the Enforcement List due to changed circumstances.

I.3: Standard for Removal

A person shall be removed from the Enforcement List if the Gang Deputy and designated LAPD gang expert reasonably conclude, based upon all available relevant and reliable information, that the person is: (a) no longer a member of the enjoined gang; *and* (b) no longer acting, directly or indirectly, to promote, further, or assist the gang’s criminal or nuisance activity.

I.4: Rebuttal Presumption

For purposes of Guideline I.3, there shall be a rebuttal presumption that a person on the Enforcement List qualifies for removal from the List if, during the three years preceding the Periodic Review: (a) the person was not at any time in custody or on parole, probation, or a similar form of supervised release; *and* (b) the person had not been convicted of, charged with, or arrested for a crime of violence, a felony offense, or a violation of a Gang Injunction.

I.5: Determination Regarding Removal

Should, as a result of the Periodic Review, the Gang Deputy and designated LAPD gang expert reasonably conclude that a gang member should be removed from the Enforcement List, the Gang Deputy shall forward their recommendation and the reasons therefor to a Gang Supervisor, who shall review the recommendation and available evidence and information to determine whether the recommendation is reasonable in light of such evidence and information. The Gang Supervisor’s determination may be reviewed by the City Attorney or his or her designee.

J.

BINDING POLICY, DEVIATION THEREFROM

J.1: Binding Policy

These Guidelines represent the official policy of the Criminal Branch and shall be followed and applied in good faith by all members of the Criminal Branch.

J.2: Effective Date

The effective date of these Guidelines shall be April 30, 2007.

J.3: Retention of Authority and Discretion

The City Attorney retains the authority and discretion to deviate from these Guidelines in any case in which justice and fairness so require, which authority and discretion the City Attorney may delegate at any time or in any case to the Chief of the Criminal Branch and/or the Director of Anti-Gang Programs and Operations.

APPENDIX “A”

STANDARD GANG INJUNCTION PROVISIONS

Defendant [Gang], all members of Defendant, and all persons acting under, in concert with, for the benefit of, at the direction of, or in association with Defendant, are enjoined and restrained from engaging in or performing, directly or indirectly, any of the following activities in the Safety Zone:

Do Not Associate: Driving, standing, sitting, walking, gathering or appearing, anywhere in public view or anyplace accessible to the public, with any known member of [Gang], but not including: (1) when all individuals are inside a school attending class or on school business, and (2) when all individuals are inside a church; provided however that this prohibition against associating shall apply to all claims of travel to or from any of those locations;

No Intimidation: Confronting, intimidating, annoying, harassing, threatening, challenging, provoking, assaulting or battering any person known to be a witness to any activity of [Gang], known to be a victim of any activity of [Gang], or known to be a person who has complained about any activity of [Gang];

No Firearms, Imitation Firearms, or Dangerous Weapons: Anywhere in public view or anyplace accessible to the public, (1) possessing any firearm, imitation firearm, ammunition, or dangerous weapon as defined in Penal Code section 12020, (2) knowingly remaining in the presence of anyone who is in possession of such firearm, imitation firearm, ammunition or dangerous weapon, or (3) knowingly remaining in the presence of such firearm, imitation firearm, ammunition or dangerous weapon. For purposes of this provision, an imitation firearm means a replica of a firearm that is so substantially similar in physical properties to an existing firearm as to lead a reasonable person to conclude that the replica is a firearm;

Stay Away From Drugs: Without a prescription, (1) selling, possessing, or using any controlled substance or related paraphernalia, including rolling papers and pipes used for illegal drug use, (2) knowingly remaining in the presence of anyone selling, possessing, or using any controlled substance or such related paraphernalia, or (3) knowingly remaining in the presence of any controlled substance or such related paraphernalia;

Stay Away From Alcohol: Anywhere in public view or any place accessible to the public, except on properly licensed premises, (1) possessing an open container of an alcoholic beverage, (2) knowingly remaining in the presence of anyone possessing an open container of an alcoholic beverage, or (3) knowingly remaining in the presence of an open container of an alcoholic beverage;

No Trespassing: Being present on or in any property not open to the general public, except (1) with the prior written consent of the owner, owner’s agent, or the person in lawful possession of the property, or (2) in the presence of and with the voluntary consent of the owner, owner’s agent, or the person in lawful possession of the property;

Obey Curfew: Being outside between the hours of 10:00 p.m. on any day and 5:00 a.m. of the following day, unless (1) going to or from a legitimate meeting or entertainment activity, (2) actively engaged in some business, trade, profession or occupation that requires such presence, or (3) involved in a legitimate emergency situation that requires immediate attention;

No Graffiti or Graffiti Tools: Damaging, defacing, or marking any public property or private property of another, or possessing any spray paint container or felt tip marker;

No Forcible Recruiting: Making any threats, or doing anything threatening, including striking or battering a person, destroying or damaging personal property, or disturbing the peace, to cause or encourage a person to join [Gang];

No Preventing a Member From Leaving the Gang: Making any threats, or doing anything threatening, including striking or battering a person, destroying or damaging personal property, or disturbing the peace, (1) to prevent a person from leaving [Gang], or (2) because a person is known to have left [Gang];

Obey All Laws: Failing to obey all laws that (1) prohibit violence and threatened violence, including murder, rape, robbery by force or fear, assault and battery, (2) prohibit interference with the property rights of others including trespass, theft, driving or taking a vehicle without the owner's consent, and vandalism, or (3) prohibit the commission of acts which create a nuisance including the illegal sale of controlled substances and blocking the sidewalk or street;

APPENDIX “B”

COMMENTARY

ADVISEMENTS

These Guidelines do not have the force and effect of law. As the Ninth Circuit Court of Appeals observed with respect to the U.S. Department of Justice’s internal guidelines (known as the U.S. Attorney’s Manual): “[T]hese guidelines . . . do not have the force of law. A court is not required to enforce an agency regulation unless compliance with the regulation is mandated by the Constitution or federal law. [Citation.] As this court held in *United States v. Welch*, 572 F.2d 1359, 1360 (9th Cir.), *cert. denied*, 439 U.S. 842 (1978), the court ‘will not interfere with the Attorney General’s prosecutorial discretion unless it is abused to such an extent as to be arbitrary and capricious and violative of due process,’ and unless ‘a breach of the Attorney General’s in-house rules rises to this level,’ this court has no authority to enforce them. . . .” (*United States v. Wilson* (9th Cir. 1980) 614 F.2d 1224, 1227-1228; *see also United States v. Rockwell International Corp.* (9th Cir. 1991) 924 F.2d 928, 939 [Reinhardt, J. concurring] [Where DOJ internal guidelines “expressly state that they ‘do not establish any rights for corporations being reviewed under [them]’ . . . Rockwell’s claim that it had a right to have the Department of Justice comply with the guidelines is meritless.”].)

B.

OBTAINING THE GANG INJUNCTION

B.1 Basic Requirements

This Guideline outlines the basic requirements that must be met before the Criminal Branch will apply to the court for a gang injunction. The first subsection reflects the legal requirements for obtaining a gang injunction; the other two subsections add requirements as a matter of Criminal Branch policy.

Subsection (a) summarizes the legal requirements for obtaining a Gang Injunction. (*See generally People ex rel. Gallo v. Acuna*, (1997) 14 Cal.4th 1090, *cert. denied*, 521 U.S. 1121 (1997) (“*Acuna*”); *In re Englebrecht* (1998) 67 Cal.App.4th 486 (“*Englebrecht I*”); *People v. Englebrecht* (2001) 88 Cal.App.4th 1236 (“*Englebrecht II*”); *see also* Commentary to Guidelines B.2, B.3 and B.4.)

Subsection (b) is intended to ensure that the targeted gang’s nuisance activity includes acts sufficiently serious to warrant the commitment of the substantial resources necessary to obtain a gang injunction. It is not necessary that the gang’s nuisance activity consists entirely of such acts; it is enough that it “includes” one or more of the enumerated categories of conduct.

Obtaining and enforcing compliance with a Gang Injunction represents a considerable long-term commitment of resources by the City Attorney's Office and LAPD. Subsection (c) is intended to ensure that before such a commitment is made the likely success of the gang injunction in abating the targeted gang's criminal and nuisance activities is thoroughly evaluated based upon available information about the gang, its activities, and the area in which the proposed gang injunction will operate.

B.2 Identifiable Criminal Street Gang

This definition of "identifiable criminal street gang" is based upon the definition of "criminal street gang" found in the California Street Terrorism Enforcement and Prevention Act, more commonly known as the "STEP Act." The definition is modified as suggested by the Court of Appeal in *Englebrecht II, supra*, 88 Cal.App.4th at p. 1258, for gang injunction cases.

The STEP Act's Definition of "Criminal Street Gang"

Penal Code section 186.22, subdivision (f) defines "criminal street gang" for purposes of the STEP Act as follows:

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 (25), inclusive, or (31) to (33), inclusive of subdivision (e), having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

As stated by the Court of Appeal in *In re Nathaniel C.* (1991) 228 Cal.App.3d 990 ("*Nathaniel C.*"): "[C]riminal street gang' is the linchpin for the [STEP Act's] provisions. The phrase is defined specifically, and its application requires proof of multiple elements. A criminal street gang is defined as '[1] any ongoing organization, association, or group of three or more persons, whether formal or informal, [2] having as one of its primary activities the commission of one or more [enumerated offenses], [3] which has a common name or common identifying sign or symbol, [4] whose members individually or collectively engage or have engaged in a pattern of criminal gang activity.'" (*Id.* at p. 1000 [italics omitted].)

"Ongoing Organization, Association or Group of Three or More Persons"

"There was sufficient evidence that the [gang] met the first criterion of being an 'ongoing organization, association or group of three or more persons, whether formal or informal'" where "[t]here was testimony that the gang had a membership roll written on a wall," and "[t]he evidence also showed that the members, friends, and supporters of the

[gang] were capable of concerted actions such as the attempted retaliation against [a rival gang].” (*Nathaniel C.*, *supra*, 228 Cal.App.3d at p. 1001.)

“*Common Name or Common
Identifying Sign or Symbol*”

“The association of multiple names with a gang satisfies the statute’s requirement [that the gang have ‘a common name’] so long as at least one name is common to the gang’s members.” (*Nathaniel C.*, *supra*, 228 Cal.App.3d at p. 1001.)

Graffiti, hand signs, tattoos, clothing and colors can provide evidence of the “common identifying sign or symbol” requirement. (*See Nathaniel C.*, *supra*, 228 Cal.App.3d at p. 1001 [“[T]he gang practices expert testified there was graffiti which signified the gang, though no particular color or clothing was associated with gang membership. As anyone familiar with the modern urban environment is aware, graffiti function as symbols as well as a visual blight. . . .”]; *People v. Gamez* (1991) 235 Cal.App.3d 957, 977, fn. 7 [“Southside had a name and identified itself in a common manner on graffiti; it had its own hand signs”], *disapproved on other grounds by People v. Gardeley* (1996) 14 Cal.4th 605, 624, fn. 10 (“*Gardeley*”).)

“*One of Its Primary Activities*”

“The phrase ‘primary activities,’ as used in the gang statute, implies that the commission of one or more of the statutorily enumerated crimes is one of the group’s ‘chief’ or ‘principal’ occupations. [Citation.] That definition would necessarily exclude the occasional commission of those crimes by the group’s members. . . .” (*People v. Sengpadychith* (2001) 26 Cal.4th 316, 323 (“*Sengpadychith*”).) “[E]vidence sufficient to show only *one* offense,” therefore, “is not enough.” (*In re Jorge G.* (2004) 117 Cal.App.4th 931, 945 (“*Jorge G.*”) [italics in original].)

“Sufficient proof of the gang’s primary activities might consist of evidence that the group’s members *consistently and repeatedly* have committed criminal activity listed in the gang statute. Also sufficient might be expert testimony[.]” (*Sengpadychith*, *supra*, 26 Cal.4th at p. 324 [italics in original]; *see also Gardeley*, *supra*, 14 Cal.4th at p. 620 [Gang expert testimony provided substantial evidence that “the primary activity of the Family Crip gang was the sale of narcotics, but that the gang also engaged in witness intimidation,” where the gang expert’s opinion was based upon “conversations with the defendants and with other Family Crip members, his personal investigations of hundreds of crimes committed by gang members, as well as information from his colleagues and various law enforcement agencies.”]; *Jorge G.*, *supra*, 117 Cal.App.4th at p. 945 “[A] gang’s primary activities may be shown through expert testimony[.]”.)

“Evidence of past or present conduct by gang members involving the commission of one or more of the statutorily enumerated crimes are relevant in determining the group’s primary activities.” (*Sengpadychith*, *supra*, 26 Cal.4th at p. 323; *see also People v. Galvan* (1998) 68 Cal.App.4th 1135, 1140 [“[E]ither prior conduct or acts committed at the time of the charged offenses can be used to establish the ‘primary activities’ element of the gang[.]”].)

“[A]ctual convictions or proof beyond a reasonable doubt for these past activities [is] unnecessary. It [is] sufficient instead to provide credible testimony that the gang is known for committing one or more of the offenses listed.” (*In re Elodio O.* (1997) 56 Cal.App.4th 1175, 1181, *disapproved on other grounds by Sengpadychith, supra*, 26 Cal.4th at pp. 322-323.)

“Pattern of Criminal Gang Activity”

The term “pattern of criminal gang activity” is defined by Penal Code section 186.22, subdivision (e) as:

. . . [T]he commission of, attempted commission of, conspiracy to commit, or solicitation of, sustained juvenile petition for, or conviction of two or more of the following offenses, provided at least one of those offenses occurred after the effective date of this chapter [September 23, 1988] and the last of those offenses occurred within three years of the prior offense, and the offenses were committed on separate occasions, or by two or more persons.

Subdivision (e) then lists 33 offenses, commonly referred to as “predicate offenses,” proof of two or more of which can form the basis of the “pattern of criminal gang activity.” (*See People v. Zermeno* (1999) 21 Cal.4th 927, 930 (“*Zermeno*”) [“A gang engages in a ‘pattern of criminal gang activity’ when its members participate in ‘two or more’ statutorily enumerated criminal offenses (the so-called ‘predicate offenses’) that are committed within a certain time frame and ‘on separate occasions or by two or more persons.’ [Citation.]”]); *People v. Olguin* (1994) 31 Cal.App.4th 1355, 1383, fn. 13 (“*Olguin*”) [“While the [STEP Act] does not use the word ‘predicate’ it has become the accepted usage for reference to the statutorily required offenses.”].)

Offenses (1) through (25) include crimes of violence ranging from assault with a deadly weapon, to rape, to manslaughter and homicide. They also include robbery; witness intimidation; the use, sale and transfer of firearms; the manufacture and distribution of controlled substances; burglary, arson and felony vandalism; vehicle theft and carjacking; and grand theft, felony extortion and money laundering. Offenses (31) through (33) include illegal possession of a firearm, carrying a concealed firearm and carrying a loaded firearm.

Offenses (26) through (30) involve identity theft and credit card fraud. Subdivision (j) of section 186.22 places some limitations on the pairing of offenses (26) through (30) with the other enumerated offenses to establish the requisite pattern, instructing that:

A pattern of gang activity may be shown by the commission of one or more of the offenses enumerated in paragraphs (26) to (30), inclusive, of subdivision (e), and the commission of one or more of the offenses enumerated in paragraphs (1) to (25), inclusive, or (31) to (33), inclusive of subdivision (e). A pattern of gang activity cannot be established solely by proof of commission of

offenses enumerated in paragraphs (26) to (33), inclusive, of subdivision (e), alone.

“To establish the predicate offenses that comprise the requisite ‘pattern of criminal gang activity,’ the STEP Act does not require a conviction thereof.” (*Zermeno, supra*, 21 Cal.4th at p. 932, fn. 2.)

The charged offense may be considered as one of the predicate offenses in establishing the requisite pattern of criminal gang activity. (*See Gardeley, supra*, 14 Cal.4th p. 625; *Olguin, supra*, 31 Cal.App.4th at p. 1383; *In re Jose T.* (1991) 230 Cal.App.3d 1455, 1463; *In re Lincoln J.* (1990) 223 Cal.App.3d 322, 328.)

The STEP Act does not require that the pattern amount to or pose “a threat of continued criminal activity” because it does not incorporate the judicial gloss associated with the federal racketeering law’s “pattern” requirement. (*See Olguin, supra*, 31 Cal.App.4th at pp. 1385-1386.) Nor does it require that each predicate offense be “gang related” or committed “for the benefit of, at the direction of, or in association with the gang.” (*Gardeley, supra*, 14 Cal.4th at p. 610 [“We disagree that the predicate offenses must be ‘gang related.’”] and at p. 621 [“Nothing in this statutory language [of Penal Code section 186.22(e)] suggests an intent by the Legislature to require ‘two or more’ predicate offenses to have been committed ‘for the benefit of, at the direction of, or in association with’ the gang, as defendants contend.”].)

The Plurality Requirement

In *Nathaniel C.*, the Court of Appeal clarified that Section 186.22(e) “does not require that each predicate offense be committed by two or more persons. To constitute a ‘pattern’ the statute requires only the offenses be ‘committed on separate occasions *or* by two or more persons’ [Citation.] The use of the disjunctive in defining ‘pattern of criminal gang activity’ means a pattern can be established by two or more incidents, each with a single perpetrator, or by a single incident with multiple participants committing one or more of the specified offenses. . . .” (228 Cal.App.3d at p. 1003 [italics in original, bold added].)

The California Supreme Court has held that the pattern requirement may be satisfied by proof of the defendant’s commission of one of the enumerated offenses, and evidence of another gang member’s earlier commission of an enumerated offense. (*See Zermeno, supra*, 21 Cal.4th at p. 931 [pattern element established “by proof of the defendant’s commission of (1) the charged offense of aggravated assault (one of the statutorily enumerated offenses), and (2) an earlier incident in which a fellow gang member had shot at an occupied dwelling (also an enumerated offense)”] [discussing *Gardeley, supra*, 14 Cal.4th at p. 610].)

The Supreme Court also has held that the pattern requirement may be satisfied by proof that two gang members committed simultaneous offenses involving the same victim, as long as each gang member committed a separately chargeable offense. (*See Zermeno, supra*, 21 Cal.4th at p. 931 [pattern element established “by evidence of (1) the charged crime of assault with a deadly weapon, and (2) a separate assault with a deadly

weapon on the same victim committed contemporaneously with the charged offense by the defendant's fellow gang member"] [discussing *People v. Loeun* (1997) 17 Cal.4th 1, 10 ("*Loeun*")].)

The Supreme Court has further held, however, that the requisite plurality of predicate offenses is not established when a gang member commits a predicate offense and another gang member only aids and abets him in the commission of that offense. In such circumstances, only one offense has been committed. (See *Zermeno, supra*, 21 Cal.4th at p. 932 ["[W]e conclude that when defendant hit Garcia with the beer bottle and [defendant's fellow gang member] prevented Garcia's friends from coming to his aid, this was just one offense. Accordingly, this conduct did not satisfy the statutory requirement of 'two or more' predicate offenses to establish the 'pattern of criminal gang activity' under the STEP Act."].) In *Zermeno*, the Court distinguished its holding in *Loeun*, explaining that the defendant in that case "committed an assault with a deadly weapon (a baseball bat) contemporaneously with a fellow gang member's separate assault with a deadly weapon (a tire iron) on the same victim. We concluded in *Loeun* that these actions met the statutory requirement of 'two or more offenses' necessary to establish a 'pattern of criminal gang activity' [because they] involved two separate assaults by two different assailants, each one subject to criminal liability as a direct perpetrator, not merely as an aider and abettor." (*Id.* at pp. 932-933.)

The Primary Activities and Pattern Requirements in Gang Injunction Cases

In *Engelbrecht II*, the Court of Appeal suggested the following modification to Penal Code section 186.22(f)'s definition of "criminal street gang" in cases in which the People are seeking an injunction to abate a gang's nuisance activity: "For purposes of a gang abatement injunction, the above definition [of Penal Code section 186.22(f)] would seem adequate with the modification the group have as one of its primary activities not the commission of the enumerated crimes, but rather the commission of acts constituting the public nuisance. And whose members individually or collectively engage in not necessarily a pattern of criminal activity, but rather a pattern of activity amounting to the public nuisance." (88 Cal.App.4th at p. 1258.)

Statutory Exclusion

The STEP Act expressly excludes from its definition of "criminal street gang" any "employees engaged in concerted activities for their mutual aid and protection, or the activities of labor organizations or their members or agents." (Penal Code § 186.23.)

Constitutionality

The California Supreme Court upheld the statutory definition of "criminal street gang" against a vagueness challenge in *People v. Gardeley, supra*, 14 Cal.4th at p. 623 ["These detailed requirements of the STEP Act [definition of 'criminal street gang'] are sufficiently explicit to inform those who are subject to it what constitutes a criminal street gang for purposes of the act. . . . In contrast, the New Jersey statute [at issue in *Lanzetta v. New Jersey* (1939) 306 U.S. 451, 453] defined a gang merely by the phrase 'consisting

of two or more persons,’ a term so vague that persons of ordinary intelligence would necessarily have to guess at its meaning and application, because the statute brought within its range any noncriminal association or group.”].)

B.3 Pattern of Nuisance Activity

“The use of civil injunctions to abate gang-related problems is a relatively new law enforcement approach that relies on the centuries-old public nuisance law.” (*Englebrecht I, supra*, 67 Cal.App.4th at p. 492.)

Relevant Statutory Provisions

This Guideline is based on the definition of public nuisance found in Civil Code sections 3479 and 3480. Those sections provide as follows:

Section 3479 – Nuisance defined. Anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance.

Section 3480 – Public nuisance. A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

(*See also* Penal Code §§ 370 & 371; *Acuna, supra*, 14 Cal.4th at p. 1104 [“Section 370 of the Penal Code mirrors these civil provisions”]; *People ex rel. Busch v. Project Room Theater* (1976) 17 Cal.3d 42, 49 [noting “the substantial identity of definitions appearing in Penal Code sections 370 and 371, and Civil Code sections 3479 and 3480”].)

Civil Code section 3491 provides: “The remedies against a public nuisance are [¶] 1. Indictment or information; [¶] 2. A civil action; or [¶] 3. Abatement.” (*See also Englebrecht I, supra*, 67 Cal.App.4th at p. 492.)

Code of Civil Procedure section 731 authorizes city attorneys to bring nuisance actions in the name of the People. It provides in relevant part that “[a] civil action may be brought in the name of the people of the State of California to abate a public nuisance, as the same is defined in section thirty-four hundred and eighty of the Civil Code, . . . by the city attorney of any town or city in which such nuisance exists” (*See also Englebrecht I, supra*, 67 Cal.App.4th at p. 492.)

Underlying Theory

The theory behind the public nuisance doctrine was explained by the California Supreme Court in its watershed opinion in *Acuna*: “Unlike the private nuisance – tied to and designed to vindicate individual ownership interests in *land* – the ‘common’ or *public* nuisance emerged from distinctly different historical origins. The public nuisance doctrine is aimed at the protection and redress of *community* interests and, at least in theory, embodies a kind of collective ideal of civil life which the courts have vindicated by equitable remedies since the beginning of the 16th century.” (14 Cal.4th at p. 1103 [italics in original].)

Elements

In *People ex rel. Busch v. Projection Room Theater, supra*, 17 Cal.3d 42, the California Supreme Court, in discussing Penal Code sections 370 and 371, stated the elements of a public nuisance as “[1] anything which alternatively is injurious to health or is indecent, or offensive to the senses; [2] the results of the act must interfere with the comfortable enjoyment of life or property; and [3] those affected by the [proscribed] act may be an entire neighborhood or a considerable number of persons, . . . [although] the extent of the annoyance or damage on the affected individuals may be unequal.” (*Id.* at p. 49. [bracketed numbers added].)

“[M]ere apprehension of injury from a dangerous condition may constitute a nuisance where it interferes with the comfortable enjoyment of property. . . .” (*McIvor v. Mercer-Fraser Co.* (1946) 76 Cal.App.2d 247, 254.)

Conduct Need Not Be Criminal

To be enjoined as a public nuisance, the acts complained of need not be criminal: “Acts or conduct which qualify as public nuisances are enjoined as civil wrongs *or* prosecutable as criminal misdemeanors, a characteristic that derives not from their status as independent crimes, but from their inherent tendency to injure or interfere with a community’s exercise and enjoyment of rights common to the public. It is precisely this recognition of – and willingness to vindicate – the value of community and the collective interests it furthers, rather than to punish criminal acts, that lies at the heart of the public nuisance as an equitable doctrine. . . .” (*Acuna, supra*, 14 Cal.4th at pp. 1108-1109 [italics in original]; *see also Englebrecht I, supra*, 67 Cal.App.4th at p. 492 [“Either criminal or noncriminal conduct may be abated. . . .”]; *Acuna, supra*, 14 Cal.4th at p. 1139, fn. 8 [Mosk, J. dissenting] [“That both criminal and noncriminal conduct can be enjoined as a public nuisance is clear under our statutory and case law.”]; *cf.* Civil Code § 3369 [“Neither specific nor preventive relief can be granted . . . to enforce a penal law, except in a case of nuisance or as otherwise provided by law.”].)

Conduct Must Be Reasonably Within the Statutory Definition

Because “the ultimate legal authority to declare a given act or condition a public nuisance rests with the Legislature[,] the courts lack the power to extend the definition of

the wrong or to grant equitable relief against conduct not reasonably within the ambit of the statutory definition of a public nuisance.” (*Acuna, supra*, 14 Cal.4th at p. 1107.) As the *Acuna* court elaborated, “[t]his lawmaking supremacy serves as a brake on any tendency in the courts to enjoin conduct and punish it with the contempt power under a standardless notion of what constitutes a ‘public nuisance.’” (*Ibid.*)

Acuna holds that typical turf-based gang activity will “reasonably fall within the statutory definition of a public nuisance.” (14 Cal.4th at p. 1120.) As stated in that case:

. . . Gang members not only routinely obstruct Rocksprings residents’ use of their own property by such activities as dealing drugs from apartment houses, lawns, carports, and even residents’ automobiles – but habitually obstruct the “free passage or use, in the customary manner,” of the public streets of Rocksprings. It is likewise clear from this record that the conduct of gang members qualifies as “indecent or offensive to the senses” of reasonable area residents: The hooligan-like atmosphere that prevails night and day in Rocksprings – the drinking, consumption of illegal drugs, loud talk, loud music, vulgarity, profanity, brutality, fist-fights and gunfire – easily meet the statutory standard. Nor is it difficult to see how threats of violence to individual residents and families in Rocksprings, murder, attempted murder, drive-by shootings, assault and battery, vandalism, arson and associated crimes, obstruct the free use of property and interference with the enjoyment of life of an entire community.

(*Ibid.*)

*Interference Must Be Both
Substantial and Unreasonable*

“[N]ot every interference with collective social interests constitutes a public nuisance. To qualify, and thus be enjoined, the interference must be both *substantial* and *unreasonable*.” (*Acuna, supra*, 14 Cal.4th at p. 1105 [italics in original]; *see also Englebrecht I, supra*, 67 Cal.App.4th at p. 492 [“A nuisance must be substantial and unreasonable to qualify as a public nuisance and be enjoined.”].)

“Substantial” is defined as “significant harm” that is “definitely offensive, seriously annoying or intolerable.” (*Acuna, supra*, 14 Cal.4th at p. 1105.) It is measured objectively: “If normal persons in that locality would not be substantially annoyed or disturbed by the situation, then the invasion is not a significant one.” (*Ibid.*)

“Unreasonableness” is determined by “comparing the social utility of an activity against the gravity of the harm it inflicts” (*Ibid.*) It too is judged objectively: “[W]hether reasonable persons generally, looking at the whole situation impartially and objectively, would consider it unreasonable.” (*Ibid.* [quoting *San Diego Gas & Electric Co. v. Superior Court* (1996) 13 Cal.4th 893, 938] [internal quotation marks omitted].)

Nuisance Per Se

California law recognizes that “the legislature has the power to declare certain uses of property a nuisance and such use thereupon becomes a nuisance *per se*.” (*McClatchy v. Laguna Lands Ltd.* (1917) 32 Cal.App. 718, 725 [citation and internal quotation marks omitted].) “Nuisances *per se* are so regarded because no proof is required, beyond the actual fact of their existence, to establish the nuisance. No ill effects need be proved.” (*Ibid.*)

Section 11.00, subdivision (l) of the Los Angeles Municipal Code (“LAMC”) provides, in relevant part, that, “[i]n addition to any other remedy or penalty provided by this Code, any violation of any provision of this Code is declared to be a public nuisance and may be abated by the City or by the City Attorney on behalf of the people of the State of California as a nuisance by means of a restraining order, injunction or any other judgment in law or equity issued by a court of competent jurisdiction.”

Some of the municipal ordinances that gangs typically violate include LAMC 41.03 [lookout for illegal acts]; 41.14 [injury to public property]; 41.18, subdivision (a) [obstruction of public sidewalk or street]; 41.19 [obstruction of entrance to place of public assemblage]; 41.24 [trespass on private property]; 41.27 [public consumption of alcohol]; 41.33 [interference with tenant’s peaceful enjoyment of premises]; 41.47.2 [urinating or defecating in public]; 41.57 [loud and raucous noise]; 45.03 [curfew restrictions for minors]; 45.04 [juvenile loitering during school hours]; 49.84 and 49.85 [liability for acts of graffiti]; and 63.44 [regulations affecting park and recreation areas].

B.4 Safety Zone

This Guideline formalizes in writing existing Criminal Branch practice and policy. It is based upon the legal principle that “[a]n injunction may not burden the constitutional right of association more than is necessary to serve the significant governmental issue at stake.” (*Englebrecht II, supra*, 88 Cal.App.4th at p. 1262; *see also Madsen v. Women’s Health Center, Inc.* (1994) 512 U.S. 753, 765 (“*Madsen*”) [An injunction must “burden no more speech than necessary to serve a significant government interest.”]; *Acuna, supra*, 14 Cal.4th at p. 1115 [To be “constitutionally sustainable,” an injunction must meet “the requirement that the superior court’s decree burden no more of defendants’ speech than necessary to serve the significant governmental interest at stake.”].)

In *Englebrecht I*, the Court of Appeal stated as follows in upholding a Safety Zone (referred to as a “Target Area”) “considerably larger than the Target Area in *Acuna*”:

. . . [R]elative size is not determinative. What matters is whether the Target Area in this case burdened ‘no more speech than necessary to serve a significant government interest.’ [Citation.] The Target Area encompasses ‘Eastside’ – the turf of the Posole gang and the area that the gang has made a public nuisance. Despite its larger size, the Target Area is well defined by distinct boundaries – highways and major streets. The

injunction specifically and narrowly describes the Target Area within legal requirements. There has been no showing that the target area is larger than it need be to abate the public nuisance. . . .

(67 Cal.App.4th at p. 495.)

B.5 Burden of Proof

A gang injunction is the product of a civil lawsuit brought by the City Attorney in the name of the People. In most civil actions, the plaintiff's burden of proof is by a preponderance of the evidence. (*See* Evid. Code § 115 [“Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.”].) In *Englebrecht II*, however, the Court of Appeal raised the People's burden in gang injunction cases to clear and convincing evidence, reasoning as follows:

We do not suggest, nor do we believe it necessary to find, before requiring proof by clear and convincing evidence, that the interests involved in the enjoined activities rise to the level of physical liberty or parental or First Amendment rights. The interests involve more than a mere dispute over property or money. The need for a standard of proof allowing a greater confidence in the decision reached arises not because the personal activities enjoined are sublime or grand but rather because they are commonplace, and ordinary. While it may be lawful to restrict such activity, it is also extraordinary. The government, in any guise, should not undertake such restrictions without good reason and without firmly establishing the facts making such restrictions necessary.

(88 Cal.App.4th at p. 1256.)

B.6 Likely to Abate the Nuisance Activity

The decision to commit the significant resources involved in obtaining and enforcing a gang injunction should be made only after a careful analysis of whether a gang injunction is the most effective and efficient means for combating the criminal conduct, nuisance activities and unwanted presence of a criminal street gang in a particular area. This Guideline lists some of the factors that experience has taught can be indicative of the likely success of a gang injunction in achieving its purpose. The list is not intended to be exclusive; any and all other relevant factors should be considered and weighed as part of this analysis.

B.7: Decision to Seek a Gang Injunction

Because obtaining and enforcing a new gang injunction may require the dedication of significant Criminal Branch resources for an extended period of time – which may, as a consequence, impact immediate and/or long-term Criminal Branch priorities – it is appropriate that the final decision whether to seek the gang injunction (assuming the requirements of Guideline B.1 are met) be made by the City Attorney, or, by delegation, the Chief of the Criminal Branch.

B.8: Coordination With Local Branch and Safe Neighborhoods Division

Experience has taught that gang injunctions are most effective when they are part of a collaborative effort and comprehensive strategy that employs other legal tools available to prosecutors within the Criminal Branch, including property abatement actions; forced evictions of tenants engaged in drug dealing or other illegal activity; graffiti abatement, prevention and clean-up projects; property manager training; and quality of life prosecutions.

At the same time, however, it is of paramount importance that all information that may reveal plans to seek a gang injunction be maintained as confidential pending filing of the application for gang injunction. Attorneys in the Criminal Branch with whom such information is shared, therefore, must act with the utmost diligence to protect and preserve the confidentiality of such information.

C.

PROVISIONS OF THE GANG INJUNCTION AND NOTICE TO THE GANG

C.1: Narrowly Tailored

This Guideline reflects the legal principle that injunctive relief “ought never to go beyond the necessities of the case.” (*Anderson v. Souza* (1952) 38 Cal.2d 825, 840-841; *see also Madsen, supra*, 512 U.S. at p. 765 [As a “general rule, . . . injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.”]; *People v. Mason* (1981) 124 Cal.App.3d 348, 354 [Injunctive relief may not extend “further than is absolutely necessary to protect the lawful rights of the parties seeking an injunction”; thus, it is “important for the trial court to limit the scope of the injunction, taking only those measures which would afford the People the relief to which they are entitled.”].)

C.2: Inclusion of Standard Provisions

The use of standardized language in the application to a court for a gang injunction is beneficial for at least two reasons. First, experience confirms that these particular provisions are effective in abating the type of nuisance activity that allows gangs to terrorize and control neighborhoods. Second, the courts that regularly adjudicate applications for gang injunctions are familiar with the standardized language of most, if not all, of these provisions.

While this Guideline requires Gang Supervisor approval to deviate from the standard language in an application for a gang injunction, it is recognized that the court, in the course of a hearing, may indicate that it wants the language of a particular provision modified, and that the Gang Deputy may not have the opportunity to contact a Gang Supervisor for guidance. In such circumstances, the Gang Deputy must, and is

authorized to, use his or her best judgment in determining whether to agree or object to the proposed change.

The “Do Not Associate” Provision

The legality of these standard provisions should be beyond serious debate. The most controversial provision has been the “Do Not Associate” provision; however, its constitutionality is now well established, having been upheld against a variety of constitutional challenges by the Supreme Court in *Acuna* and the Court of Appeal in *Englebrecht I* and *II*.

In *Acuna*, enjoined gang members challenged the “Do Not Associate” provision of a preliminary injunction on freedom of association, overbreadth and vagueness grounds. The Supreme Court rejected each of these challenges.

In rejecting the First Amendment challenge, the *Acuna* court noted that “the United States Supreme Court has made it clear that, although the Constitution recognizes and shields from government intrusion a *limited* right of association, it does not recognize ‘a generalized right of “social association.”’” (14 Cal.4th at p. 1110 [italics in original] [quoting *Dallas v. Stanglin* (1989) 490 U.S. 19, 25].) Moreover, while the *Acuna* court recognized that “[t]he high court has identified two kinds of association entitled to First Amendment protection – those with an ‘intrinsic’ or ‘intimate’ value, and those that are ‘instrumental’ to forms of religious and political expression and activity” (*ibid*), it held that “the street gang’s conduct in Rocksprings at issue in this case fails to qualify as either of the two protected forms of association.” (*Id.* at p. 1111.) The *Acuna* court concluded that: (1) “in its activities within the four-block area of Rocksprings, the gang is not an association of individuals formed *for the purpose* of engaging in protected speech or religious activities” (*ibid.* [quoting *Board of Directors of Rotary International v. Rotary Club* (1987) 481 U.S. 537, 544] [italics added in *Acuna*]); and (2) “[w]e do not, in short, believe that the activities of the gang and its members in Rocksprings at issue here are either ‘private’ or ‘intimate’ as constitutionally defined. . . .” (*Id.* at p. 1112.)

In rejecting the overbreadth challenge, the *Acuna* court observed that “the trial court’s interlocutory decree here does not embody broad and abstract commands of a statute. Instead, it is the product of a concrete judicial proceeding prompted by particular events . . . that led to a specific request by the City for preventive relief.” (*Id.* at p. 1114.) The court continued: “Manifestly, the paradigm for an overbreadth challenge is not present in *this* case. Here, there is no possibility that the concerns motivating the high court in its classic overbreadth opinions – the ‘chilling effect’ of abstract, broadly framed statutes on the conduct of those not before the court [citation] – could place at risk *any* protected conduct other than that of defendants themselves. . . . There is accordingly no basis, legal or factual, for the professed concern that protected speech or communicative conduct by anyone *other* than defendants might be endangered by the terms of the trial court’s injunction.” (*Ibid.* [italics in original].)

Finally, in rejecting the vagueness challenge, the *Acuna* court held that as long as the prosecution was required to “establish a defendant’s *own knowledge* of his associate’s gang membership to meet its burden of proving conduct in violation of the injunction”

(*id.* at p. 1117 [italics in original]), “the text of [the ‘Do Not Associate’ provision] passes scrutiny under the vagueness doctrine.” (*Id.* at p. 1118.)

Additionally, the *Acuna* court concluded that the “Do Not Associate” provision “compl[ie]d with the constitutional standard announced by the Supreme Court in *Madsen*” (*id.* at p. 1120) – that it “burden no more speech than necessary to serve a significant government interest.” (*Madsen, supra*, 512 U.S. at p. 765.) The court explained: “The provision’s ban on all forms of association – ‘standing, sitting, walking, driving, gathering or appearing anywhere in public view’ – does not violate the *Madsen* standard merely because of its breadth. The provision seeks to ensure that, within the circumscribed area of Rocksprings, gang members have no opportunity to combine. [¶] It is the threat of *collective* conduct by gang members loitering in a specific and narrowly described neighborhood that the provision is sensibly intended to forestall. . . .” (14 Cal.4th at p. 1121 [italics in original].)

In *Englebrecht II*, the Court of Appeal rejected the contention that “that portion of the injunction forbidding gang members from being seen together in public in the target area is more burdensome than necessary since it unnecessarily infringes on protected family relationships.” (88 Cal.App.4th at pp. 1261-1262.) It explained:

Collective activity by gang members is at the core of the nuisance the injunction justifiably attempts to abate. While it may be that many gang members are also related by family, and while the injunction’s associational restrictions may affect, in the target area, contact between those family members, those facts are not determinative. The injunction places no restrictions on contact between any individuals outside the target area. In the target area the injunction merely requires gang members not to associate in public. While the injunction may place some burden on family contact in the target area, it by no means has, in our view, a fundamental impact on general family association.

(*Id.* at p. 1263; *see also Englebrecht I, supra*, 67 Cal.App.4 at p. 496 [“Engelbrecht misreads the injunction. It does not enjoin him from being in the Target Area; he is free to visit his grandmother and other relatives who reside there. What the injunction prohibits is his association with other Posole gang members within the Target Area. . . .”].)

The *Englebrecht II* court thus concluded that “the injunction as issued has a limited impact on familial relationships,” and “any liberalization of the injunction to try to allow greater familial contact in the target area would limit the effectiveness of the injunction.” (88 Cal.App.4th at p. 1263; *see also Englebrecht I, supra*, 67 Cal.App.4th at p. 496 [“T]he fact that some Posole gang members live or have relatives who live in the Target Area does not transform their gang activities into ‘intimate’ or ‘intrinsic’ associational activities. The gang activities remain nonintimate activities. The familial nexus of some Posole gang members to the Target Area does not bestow constitutional protection on associational gang activity, which is often criminal or terrorizing or both.”].)

The Other Standard Provisions

The remaining standard provisions are derived from or analogous to state criminal statutes and/or Los Angeles City ordinances:

No Intimidation: Penal Code sections 136.1 [intimidation of witnesses and victims], 186.26 [soliciting or recruiting for gangs], and 422 [criminal threats].

No Firearms, Imitation Firearms or Dangerous Weapons: Penal Code sections 12020 [possession of certain dangerous weapons], 12025 [carrying concealed weapon], 12028, subdivision (a) [firearms and other weapons as nuisance], and 12031 [carrying loaded weapon].

Stay Away From Drugs: Penal Code sections 647 [disorderly conduct] and 653f, subdivision (d) [solicitation of drug sales]; Health and Safety Code sections 11054-11058 [controlled substances defined], 11530 [loitering in a public place], and 11532 [loitering for drug-related purpose].

Stay Away From Alcohol: LAMC section 41.27 [public consumption of alcohol].

No Trespassing: Penal Code sections 602 [trespass] and 647 [disorderly conduct]; LAMC section 41.24 [trespass on private property].

Obey Curfew: LAMC sections 45.03 [curfew restrictions for minors], 45.04 [juvenile loitering during school hours], and 63.44 [presence in park after hours].

No Graffiti or Graffiti Tools: Penal Code sections 594 [vandalism], 594.2 [possession of graffiti tools], and 640.6 [graffiti prohibited]; LAMC sections 49.84 and 49.85 [liability for acts of graffiti].

No Forcible Recruiting: Penal Code section 186.26 [soliciting or recruiting for gangs].

No Preventing a Member From Leaving the Gang: Penal Code sections 186.26 [soliciting or recruiting for gangs] and 422 [criminal threats].

C.3: Inclusion of Special Provisions

Gang Deputies are encouraged to propose new injunctive provisions that they believe may be more effective at abating particular categories of nuisance activity than the standard provisions, or that they believe are needed to abate a category of nuisance activity not adequately addressed by the standard provisions. Before proposing such a provision, the Gang Deputy should attempt to find an analogous prohibition created by statute or ordinance.

The Gang Deputy also should analyze the proposed provision to ensure that it is not vulnerable to constitutional challenge on the grounds that it is vague, overbroad,

violates equal protection, or impermissibly interferes with the exercise of a fundamental right. (*See generally* Penal Code § 186.21 [“The Legislature . . . 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. . . .”]; *Acuna, supra*, 14 Cal.4th at p. 1112 [“Freedom of association, in the sense protected by the First Amendment, ‘does not extend to joining with others for the purpose of depriving third parties of their lawful rights.’”][quoting *Madsen, supra*, 512 U.S. at p. 776]; *People v. Lopez* (1998) 66 Cal.App.4th 615, 632 [“Activities of an association which deprive third parties of their lawful rights fall outside the constitutional pale. The commission of crimes is the most apparent manifestation of such unprotected conduct. The performance of acts that constitute a civil nuisance is another.”]; *Englebrecht I, supra*, 67 Cal.4th at pp. 496-499 [Concluding that a provision enjoining the possession and use of pagers or beepers in the Target Area was unconstitutionally overbroad because “constitutionally protected communications are swept within its ambit”; “[s]uch an all-encompassing ban on pagers and beepers poses a greater burden on the defendants’ right to free speech than is necessary to serve the district attorney’s legitimate interest in curtailing illegal gang activity and abating the public nuisance in the Target Area”; “there was no attempt made below to create a nexus between the use of pagers and beepers and the public nuisance, which the preliminary injunction is intended to abate”; and “[t]here was no attempt to narrow the provision so that it enjoins the use of these devices to abet criminal activities – e.g., to facilitate drug sales or to assist fellow gang members to elude the police – the type of conduct that has contributed to the public nuisance.”].)

C.4: Notice to the Gang

Generally

This Guideline is based upon well established legal principles that the criminal street gang itself can be named as the defendant in a gang injunction; that effective service on the gang can be accomplished through service on an adequate number of designated gang members; and that gang members receiving notice of the injunction are bound by its terms, even if not individually named in the injunction or as parties in the action that led to its issuance.

Suing the Gang as an Unincorporated Association

A criminal street gang may be sued as an “unincorporated association.” Code of Civil Procedure section 369.5, subdivision (a) provides that an “unincorporated association, whether organized for profit or not, may sue and be sued in the name it has assumed or by which it is known.” (*See Barr v. United Methodist Church* (1979) 90 Cal.App.3d 259, 265 (“*Barr*”) [“The trend of case law has been the rejection of legal niceties to assure full recognition of the unincorporated association as a separate legal entity.”].)

Criminal street gangs easily satisfy the definition of an unincorporated association: “The criteria applied to determine whether an entity is an unincorporated association are no more complicated than (1) a group whose members share a common purpose, and (2) who function under a common name under circumstances where fairness requires the group be recognized as a legal entity. Fairness includes those situations where persons dealing with the association contend their legal rights have been violated. [Citation.] Formalities of quasi-corporate organization are not required.” (*Barr, supra*, 90 Cal.App.3d at pp. 266-267.)

Serving the Gang as an Unincorporated Association

Code of Civil Procedure section 416.40 governs service of an unincorporated association. Section 416.40, subdivision (c) provides: “A summons may be served on an unincorporated association . . . by delivering a copy of the summons and of complaint . . . [¶] When authorized by Section 18220 of the Corporations Code, as provided by that section.” (C.C.P. § 416.40(c).)

Corporations Code section 18220 provides for service of an unincorporated association in some circumstances “by delivery of a copy of the process to one or more of the association’s members designated in the order and by mailing a copy of the process to the association at its last known address.” It provides in full as follows:

If designation of an agent for the purpose of service of process has not been made as provided in Section 18200, or if the agent designated cannot with reasonable diligence be found at the address specified in the index referred to in Section 18205 for delivery by hand of the process, and it is shown by affidavit to the satisfaction of a court or judge that process against an unincorporated association cannot be served with reasonable diligence upon the designated agent by hand or the unincorporated association in the manner provided for in *Section 415.10* [by personal delivery] or *415.30 of the Code of Civil Procedure* [by first-class mail and return of written acknowledgement of receipt] or subdivision (a) of *Section 415.20 of the Code of Civil Procedure* [by leaving copy at office and thereafter mailing copy by first-class mail], ***the court or judge may make an order that service be made upon the unincorporated association by delivery of a copy of the process to one or more of the association’s members designated in the order and by mailing a copy of the process to the association at its last known address. Service in this manner constitutes personal service upon the unincorporated association.*** [Emphasis added.]

Because criminal street gangs generally do not have fixed addresses for service of process, courts can, and do, excuse compliance with the “mailing a copy of the process to the association at its last known address” requirement, and allow service on the gang by serving one or more “designated” members. (*See Gible v. Car-Lene Research, Inc.* (1998) 67 Cal.App.4th 295, 313 [“It is well settled that strict compliance with statutes governing service of process is not required. Rather, in deciding whether service was valid, the statutory provisions regarding service of process should be liberally construed to effectuate service and uphold the jurisdiction of the court if actual notice has been received by the defendant. [Citations.] Thus, substantial compliance is sufficient.”].)

*A Gang Injunction Binds All Members of the
Enjoined Class Who Receive Notice of It*

It is a well settled principle of California law that an injunction may enjoin an identified class of persons, and, moreover, upon receiving notice of the injunction, a member of the class is subject to the injunction, even though he or she was not a named party in the civil action that led to the injunction, did not receive notice of that action, and did not have an opportunity to contest issuance of the injunction.

The classic statement of this principle appears in the oft-cited case of *Berger v. Superior Court* (1917) 175 Cal. 719 (“*Berger*”), in which the California Supreme Court declared:

. . . [I]t has been a common practice to make the injunction run also to classes of persons through whom the enjoined party may act, such as agents, servants, employees, aiders, abettors, etc. though not parties to the action, and this practice has always been upheld by the courts, and any of such parties violating its terms with notice thereof are held guilty of contempt for disobedience of the judgment. But the whole effect of this is simply to make the injunction effectual against *all* through whom the *enjoined party* may act, and to prevent the prohibited action by persons acting in concert with or in support of the claim of the *enjoined party*, who are in fact *his* aiders and abettors. As we have said, this practice is thoroughly settled and approved by the courts

(*Id.* at p. 721 [italics in original. ; accord *People ex rel. Gwinn v. Kothari* (2000) 83 Cal.App. 4th 759, 766.]

No Due Process Violation

In *Ross v. Superior Court* (1977) 19 Cal.3d 899, the defendants, elected members of the Plumas County Board of Supervisors, contended that “the judgment of contempt is invalid because they were not bound by the injunctive order which the trial court found they had willfully disobeyed.” (*Id.* at p. 905.) Asserting that “neither Plumas County nor they, as individuals, were named defendants in the [action in which the injunction was sought and issued], and that they received no notice and were afforded no opportunity to defend that action,” defendants complained that they had been “denied due process by being held in contempt for violating the injunctive order issued in that case.” (*Ibid.*)

In unequivocally rejecting defendants’ due process claim, the Supreme Court stated:

The United States Supreme Court faced and explicitly rejected an almost identical due process contention over three-quarters of a century ago in *In re Lennon* (1897) 166 U.S. 548 In *Lennon*, an employee of a railroad company who had been found in contempt for violating the terms of an injunction issued against his employer, maintained that the contempt injunction was invalid in that he had not personally been a party to the action in which the injunction had been issued. The Supreme Court responded: “The facts that [the employee] was

not a party to such suit, nor served with process of subpoena, nor had notice of the application made by the complainant for the mandatory injunction, nor was served by the officers of the court with such injunction are immaterial, so long as it was made to appear that he had notice of the issuing of an injunction by the court. To render [an employee] amenable to an injunction it is neither necessary that he should have been party to the suit in which in the injunction was issued, nor to have been actually served with a copy of it, so long as he appears to have actual notice. [Citations.]” (166 U.S. at p. 554.)

(*Id.* at pp. 905-906.)

Application to Gang Injunction Cases

In *Acuna*, the action that led to issuance of the gang injunction named as defendants the gang as well as 38 individual members. In addressing the issue of who may be bound by the injunction, the Supreme Court observed that “the City *could* have named the gangs themselves as defendants and proceeded against them.” (14 Cal.4th at p. 1125 [italics in original].) Citing *Berger, In re Lennon* and Federal Rule of Civil Procedure 65, subdivision (d), the *Acuna* court explained:

We see nothing in this case – where instead of naming the gang organizations themselves as parties, the City named as individual defendants all 38 gang members it was able to identify – that removes it from the usual rule applied in *Berger v. Superior Court, supra*, 175 Cal. 719, and many other cases. The City’s evidence in support of preliminary equitable relief demonstrated that it was the gang itself, acting through its membership, that was responsible for creating and maintaining the public nuisance in Rocksprings. Because the City *could* have named the gangs themselves as defendants and proceeded against them, its decision to name individual gang members instead does not take the case out of the familiar rule that both the organization and the members through which it acts are subject to injunctive relief.

(*Ibid.* [italics in original].)

Neither Specific Intent to Further an Unlawful Goal Nor Individualized Proof of Criminal Nuisance Activity are Required

In *Acuna*, the Supreme Court flatly rejected the defendants’ contention that “they may not be bound by the injunction except on proof that each possessed ‘a specific intent to further an unlawful aim embraced by [the gang].’” (14 Cal.4th at pp. 1122-1123 [quoting *NAACP v. Claiborne Hardware Co.* (1982) 458 U.S. 886, 925] [bracketed language in original].) The court found that for purposes of issuing the preliminary injunction, “it is enough to observe that there was sufficient evidence before the superior court to support the conclusions that the gang and its members present in Rocksprings were responsible for the public nuisance, that each of the individual defendants either admitted gang membership or was identified as a gang member, and that each was observed by police officials in the Rocksprings neighborhood.” (*Id.* at p. 1125.)

The *Acuna* court also held that “individualized proof” of gang members committing acts contributing to the alleged public nuisance “is not a condition to the entry of preliminary relief based on a showing that it is the gang, acting through its individual members, that is responsible for the conditions prevailing in Rocksprings.” (*Ibid.* [“Although all but three of the eleven defendants who chose to contest entry of the preliminary injunction . . . were shown to have committed acts, primarily drug related, comprising specific elements of the public nuisance, such individualized proof is not a condition to the entry of preliminary relief based on a showing that it is the gang, acting through its individual members, that is responsible for the conditions prevailing in Rocksprings.”]; *see also Englebrecht II, supra*, 88 Cal.App.4th at p. 1261 [“It does not appear . . . *Acuna* requires for a sufficient demonstration of membership any showing the individual had engaged in nuisance activities.”].)

D.

SERVICE OF SUSPECTED GANG MEMBERS FOR ENFORCMENT PURPOSES

D.2: Personal Service Required

This Guideline formalizes in writing longstanding Criminal Branch policy.

D.3: Proof Beyond a Reasonable Doubt Required

Subsection (a) of this Guideline is intended to limit service of the Gang Injunction to gang members only. (*See* Guideline D.4.)

Subsection (b) is derived from language in *Englebrecht II*, addressing whether the defendant was an “active gang member” subject to the gang injunction in that case. (88 Cal.App.4th at pp. 1257-1261.) The court in that case settled on the following two-part test for determining whether a person is an “active gang member” – the first part being based upon the STEP Act’s definition of “criminal street gang” (Penal Code § 186.22, subd. (f)), and the second part coming from language in *People v. Green* (1991) 227 Cal.App.3d 692, 700, and *People v. Castenada* (2000) 23 Cal. 4th 743, 747, 752, defining “active participation” as used in Penal Code section 186.22, subdivision (a):

We conclude for the purposes of a gang injunction an active gang member is a person who participates in or acts in concert with an ongoing organization, association or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of acts constituting the enjoined public nuisance, having a common name or common identifying sign or symbol and whose members individually or collectively engage in the acts constituting the enjoined public nuisance. ***The participation or acting in concert must be more than nominal, passive, inactive or purely technical.***

(*Englebrecht II, supra*, 88 Cal.App.4th at p. 1261 [emphasis added].)

The five (5) year period was added to ensure that evidence of gang membership was not so stale as to lack reliability.

Subsection (b) reflects a Criminal Branch policy judgment and not a legal requirement. (*See In re Ramon T.* (1997) 57 Cal.App.4th 201, 207 [“We decline to read a requirement into subdivision (b) of section 186.22 that violation of that act requires either ‘active’ or ‘current active’ participation in a gang.”].)

D.4: Prior Approval of Gang Deputy Required

This Guideline creates a new procedural safeguard as a matter of Criminal Branch policy. No such procedure is legally required.

In determining whether the available evidence is sufficient to prove gang membership beyond a reasonable doubt, the Gang Deputy should consider the totality of the circumstances. Though not necessarily dispositive, evidence of the existence of two or more of the following criteria represents strong proof of gang membership:

- 1) The individual admitted to being a gang member in a non-custodial situation;
- 2) The individual was identified as a gang member by a reliable informant or source (such as a registered gang member);
- 3) The individual was identified as a gang member by an untested informant or source with corroboration;
- 4) The individual was witnessed wearing distinctive gang attire;
- 5) The individual was seen displaying gang hand signs or symbols;
- 6) The individual has gang tattoos;
- 7) The individual frequents gang hangouts;
- 8) The individual openly associates with documented gang members; or,
- 9) The individual has been arrested, alone or with known gang members, for a crime usually indicative of gang activity.

The presence of an individual in the CAL GANGS database is not determinative of gang membership for purposes of these Guidelines. The Gang Deputy should exercise independent and informed judgment based on all available evidence and the totality of the circumstances.

D.5: Exigent Circumstances and Excusable Neglect

This Guideline recognizes the reality that interacting with gang members can be dangerous police work, and that LAPD officers in the field, when presented with an unexpected opportunity to serve a suspected gang member, may not be able to stop and contact the Gang Deputy for approval. The Guideline is intended to provide LAPD with flexibility in such situations, while implementing safeguards to ensure that the proof beyond a reasonable doubt standard is satisfied in each case in which a suspected gang member is served with the Gang Injunction.

D.7: Service on Nonmembers Generally Not Permitted

Gang injunctions typically enjoin the gang itself, “all members of [the gang],” and “all persons acting under, in concert with, for the benefit of, at the direction of, or in association with [the gang].”

This final category would include associates and affiliates of the gang. It also could include property and business owners and managers who, with notice of the injunction, willfully aid and abet the gang’s criminal or nuisance activities in violation of the injunction.

The law is clear that an individual who is not directly bound by a court order may nevertheless be prosecuted for violating it, if he or she, having notice of the order, violates it in concert with a person who is directly bound by the order. In the words of the Court of Appeal, “a nonparty to an injunction is subject to the contempt power of the court when, with knowledge of the injunction, the nonparty violates its terms *with or for* those who are restrained.” (*People v. Conrad* (1997) 55 Cal.App.4th 896, 903 (“*Conrad*”) [italics in original]; *see also Berger, supra*, 175 Cal. at p. 721 [“[P]ersons not parties to the action may be bound by an injunction if they have knowledge of it, provided they are servants or agents of the defendants or act in collusion or combination with them. . . .”] [citation and internal quotation marks omitted]; *In re Berry* (1968) 68 Cal.2d 137, 155-156 (“*Berry*”) [“We recognize that the direction of injunctive orders to persons ‘in active concert or participation with’ specifically named parties defendant is approved by long-standing custom and practice, and we agree that an ascertainable class of persons is described by such language.”]; Fed. R. Civ. P. 65, subd. (d) [An injunction is “binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.”].)

On the other hand, it is not enough that the nonparty commits acts prohibited by the order, even though those acts were done with the same purpose as the restrained party, if both parties are acting independently: “[I]n addition to knowledge of the injunction, some actual relationship with an enjoined party is required to bring a nonparty within the injunction’s scope. An enjoined party . . . has to be demonstrably implicated in the nonparty’s activity. Mere ‘mutuality of purpose’ is not enough.” (*Conrad, supra*, 55 Cal.App.4th at p. 903; *see also Berger, supra*, 175 Cal. at p. 721 [“[I]t is generally held that a theory of disobedience of the injunction cannot be predicated on the act of a person not in any way included in its terms or acting in concert with the enjoined party

and in support of his claims. . . .”]; *People v. Saffell* (1946) 74 Cal.App.2d Supp. 967, 979 [“[O]ne not included in the terms of a restraining order or injunction, who does not act in concert with any of the parties enjoined or in support of their claims, but is moved by some independent purpose of his own, cannot be held in contempt of court because he does some act forbidden to those who are bound by the restraining order or injunction.”].)

The Criminal Branch believes that the expanded use of gang injunctions to enjoin non-gang members, including associates, affiliates, wannabes, or others acting in concert with the gang or its members, requires further consideration; thus, a Guideline governing service of gang injunctions on persons who are not believed to be gang members is not proposed at this time.

Nevertheless, there may be situations presenting sufficient reasons for enjoining the conduct of a non-gang member by serving him or her with the gang injunction. This Guideline makes allowance for such situations by permitting service on the nonmember with the approval of the Director of Antigang Programs and Operations, the Chief of the Criminal Branch or the City Attorney.

E.

PROSECUTION FOR GANG INJUNCTION VIOLATION

E.1: Prosecution for Contempt

Penal Code Section 166(a)(4)

Violations of a gang injunction are prosecuted as contempt pursuant to Penal Code section 166, subdivision (a)(4), which provides that “every person guilty of any contempt of court, of any of the following kinds, is guilty of a misdemeanor: [¶] (4) Willful disobedience of the terms as written of any process or court order . . . lawfully issued by any court” The punishment for a violation of Section 166(a)(4) is not more than six months in county jail, a fine of not more than \$1,000, or both. (Penal Code § 19.)

Elements

The elements of a violation of Section 166(a)(4) are: (1) a court issued a written order; (2) the defendant knew about the order and its contents; (3) the defendant had the ability to follow the order; and (4) the defendant willfully violated the order. (*See* CALCRIM 2700; *see also* 2 Witkin & Epstein, *California Criminal Law* (3d ed. 2000) Crimes Against Governmental Authority, § 30 at pp. 1119-1122.)

Notice of the Gang Injunction

Proof that the defendant was served with the order will suffice to establish that he or she had notice of it. (*See People v. Poe* (1965) 236 Cal.App.2d Supp. 928, 939 [“[S]uch knowledge as a defendant must be shown to possess, in order to be found guilty

of *willful violation* of a court order, may be shown by evidence that he was personally served with the order and that he knew that fact. . . . [¶] We have been unable to find any requirement in the law of contempt, whether arising in criminal court or in the civil court, that a party to the action who is duly served with a preliminary order must be shown independently to have, subjectively, some additional information before being held to answer for disobedience. Cases which do search for such additional information have the premise that no personal service occurred.”] [italics in original]; *see also In re Felthoven* (1946) 75 Cal.App.2d 465, 468 [“In order to punish for constructive contempt of court, it must appear that the order upon which the contempt proceeding is based has been served on the accused, or that he was present when the order was made, or that he had knowledge of it.”]; *People v. Hadley* (1924) 66 Cal.App. 370, 379 [“In order that one may be punished for contempt because of the violation of an order of court, it is essential that such person either have actual notice of the making of the order or that personal service of the order be had upon him prior to the time he is charged with its violation.”].)

Challenging the Validity of the Underlying Order

California does not adhere to the collateral bar rule, which holds that the asserted invalidity of a court order may not be raised as a defense in a contempt prosecution for violating that order. (*See People v. Gonzalez* (1996) 12 Cal.4th 804, 818 (“*Gonzalez*”) [“Some other jurisdictions require persons affected by injunctive orders to challenge the injunctive order directly, and in the meantime, to obey the order. Disobedience of the order is punished as contempt whether the order is valid or not. This is known as the ‘collateral bar’ rule. California law is otherwise. . . .”].)

“The rule is well settled in California that a void order cannot be the basis for a valid contempt judgment.” (*Gonzalez, supra*, 12 Cal.4th at p. 817; *see also Berry, supra*, 68 Cal.2d at p. 147 [“In this state it is clearly the law that the violation of an order in excess of the jurisdiction of the issuing court cannot produce a valid judgment of contempt.”].) As explained in *Gonzalez*: “Section 166 has defined misdemeanor contempt as involving only the violation of ‘lawfully issued’ orders ever since the statute was first enacted in 1872. Further, out of a concern to protect the constitutional rights of those affected by invalid injunctive orders on pain of punishment for contempt, this court has firmly established that a person subject to a court’s injunction may elect whether to challenge the constitutional validity of the injunction when it is issued, or to reserve that claim until a violation of the injunction is charged as a contempt of court. That is ***the defendant in a contempt proceeding in this state may challenge the validity of an injunction, the violation of which is the basis for the contempt prosecution, even if no such claim was made when the injunction issued.*** [Citations.]” (12 Cal.4th at p. 818 [emphasis added].)

Thus, in California, “a person affected by an injunctive order has available to him two alternative methods by which he may challenge the validity of such order on the ground that it was issued without or in excess of jurisdiction.” (*Berry, supra*, 68 Cal.2d at p. 148; *see also Gonzalez, supra*, 12 Cal.4th at p. 818.) *First*: “He may consider it a more prudent course to comply with the order while seeking a judicial declaration as to its jurisdictional validity.” (*Berry, supra*, 68 Cal.2d at p. 148.) *Second*: “[H]e may conclude that the exigencies of the situation or the magnitude of the rights involved

render immediate action worth the cost of peril.” (*Id.* at p. 149.) In that case, “such a person, under California law, may disobey the order and raise his jurisdictional contentions when he is sought to be punished for such disobedience. If he has correctly assessed his legal position, and it is therefore finally determined that the order was issued without or in excess of jurisdiction, his violation of such void order constitutes no punishable wrong. [Citations.] If, however, the final determination is otherwise he may be punished.” (*Ibid.*)

The court in *Berry* made clear, furthermore, that when it spoke of an order issued without or in excess of jurisdiction, “the ‘jurisdiction’ in question extends beyond mere subject matter or personal jurisdiction,” and includes “any acts which exceed the defined power of a court in any instance, whether that power be defined by constitutional provision, express statutory declaration, or rules developed by the courts and followed under the doctrine of *stare decisis*. . . .” (68 Cal.2d at p. 147 [citation and internal quotation marks omitted]; *see also Gonzalez, supra*, 12 Cal.4th at p. 123.)

E.2: Subpoena of LAPD Officers

This Guideline seeks to control the considerable costs associated with LAPD overtime by limiting to twelve (12) the number of LAPD officers a Gang Deputy can subpoena to testify at a trial involving a gang injunction violation, unless a Gang Supervisor approves otherwise or exigent circumstances exist.

To prove a contempt charge based upon a gang injunction violation, the prosecutor will ordinarily require testimony from the officers who personally served the defendant, the arresting officers who witnessed the violation, officers who can provide evidence of the defendant’s gang membership, and one or more gang experts. A recently completed review of Criminal Branch practice indicates that rarely should the number of LAPD officers needed to testify at the trial of a gang injunction violation case exceed twelve, even when potential officer unavailability due to vacation or scheduling conflicts is taken into account.

At the same time, the Guideline recognizes that there will undoubtedly be cases requiring the Gang Deputy to subpoena more than twelve officers for trial. In such cases, the Guideline does not prohibit the service of additional subpoenas; it simply requires that the Gang Deputy first consult with and obtain the approval of a Gang Supervisor before issuing the additional subpoenas.

The Guideline additionally contemplates that there may be circumstances in which the Gang Deputy needs to exceed the twelve subpoena limit but does not have time or is unable to reach a Gang Supervisor. In such a case, the Guideline authorizes the Gang Deputy to do what is necessary to ensure that the officers’ whose testimony is required are present or available to testify.

E.3: Filing of the Gang Enhancement Allegation

Penal Code section 186.22(d)

Penal Code section 186.22, subdivision (d) provides for, in certain gang-related misdemeanor prosecutions, a maximum one-year sentence with a mandatory minimum sentence of 180 days in county jail. It states in relevant part that:

Any person who is convicted of a public offense punishable as . . . 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 by imprisonment in the county jail not to exceed one year, . . . provided that any person sentenced to imprisonment in the county jail 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 execution of sentence imposed upon the defendant, it shall require as a condition thereof that the defendant serve 180-days in a county jail.*** [Emphasis added.]

*“Committed For the Benefit Of, at the Direction Of or
In Association With, Any Criminal Street Gang”*

The first prong of Section 186.22(d) “requires that the crime be committed (1) for the benefit of, (2) at the direction of, *or* (3) in association with a gang.” (*People v. Morales* (2003) 112 Cal.App.4th 1176, 1198 (“*Morales*”) [italics in original, additional italics omitted].)

Although “it is conceivable that several gang members could commit a crime together, yet be on a frolic and detour unrelated to the gang,” generally, “the jury could reasonably infer the requisite association from the very fact defendant committed the charged crimes in association with fellow gang members.” (*Morales, supra*, 112 Cal.App.4th at p. 1198.)

Testimony by a gang expert may provide substantial evidence that the offense was committed for the benefit of the gang. (*See Olguin, supra*, 31 Cal.App.4th at p. 1384 [Gang expert testimony that Southside Gang benefited from one of its members being recruited by another gang to participate in the shootings of members of a third gang, “because it ‘promoted the respect of the Southside Gang,’” supported jury’s finding that gang enhancement applied: “It is difficult to imagine a clearer need for expert explication than that presented by a subculture in which this type of mindless retaliation promoted ‘respect.’ But [the gang expert] explained that ‘respect’ is often synonymous with fear among gangs, and his expertise enabled him to recognize the benefit Southside would realize from the fact another gang called upon one of its members when it needed serious muscle.”].)

“Committed . . . With the Specific Intent to Promote

Further or Assist in Any Criminal Conduct By Gang Members”

“As to the second prong of the enhancement, all that is required is a specific intent ‘to promote, further, or assist in any criminal conduct by gang members.’ (§ 186.22, subd. (b)(1).) Commission of a crime in concert with known gang members is substantial evidence which supports the inference that the defendant acted with the specific intent to promote, further or assist gang members in the commission of the crime.” (*People v. Villalobos* (2006) 145 Cal.App.4th 310, 322 [citing *Morales, supra*, 112 Cal.App.4th at p. 1198].)

Notably, “specific intent to *benefit* the gang is not required. What is required is the ‘specific intent to promote, further or assist in any criminal conduct by gang members. . . .’” (*Morales, supra*, 112 Cal.App.4th at p. 1198 [italics in original] and pp. 1198-1199 “[D]efendant’s intentional acts, when combined with his knowledge that those acts would assist crimes by fellow gang members, afforded sufficient evidence of the requisite specific intent.”].)

Additional Requirements as a Matter of Criminal Branch Policy

Subsections (a)(i) and (a)(ii) of this Guideline state the legal requirements for the enhancement to apply. The requirement of subsection (b) was added as a matter of Criminal Branch policy, to ensure that the gang enhancement allegation is applied consistently and only in the most serious of gang injunction violation cases.

F.

SENTENCING OF GANG MEMBERS

- F.1: Sentencing Goals**
- F.2: Baseline Sentence**
- F.3: Deriving the Proposed Sentence**

These Guidelines are intended to provide internal guidance to Gang Deputies in the sentencing of gang members convicted of gang injunction violations. They reflect the policy judgments of the Criminal Branch— their goal being to achieve fairness and consistency in the sentencing of such defendants.

Guidelines F.2 and F.3 establish a sentencing regime applicable to cases in which the defendant is convicted of violating a gang injunction. They are intended to grant Gang Deputies broad discretion in fashioning individualized sentencing proposals that achieve the goals identified in Guideline F.1, while at the same time channeling the exercise of that discretion.

F.5: Court’s Refusal to Impose the Gang Enhancement

Penal Code section 186.22, subdivision (g) allows the court to refuse to impose the 180-day mandatory minimum sentence. It states in relevant part: “Notwithstanding

any other law, the court may . . . refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would be best served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would be best served by that disposition.”

This Guideline requires the Gang Deputy to report all such refusals to a Gang Supervisor and the Director of Anti-Gang Programs and Operations.

F.6: Standard Conditions of Probation

F.7: Special Conditions of Probation

Probation Generally

California law contains a patchwork of provisions governing the imposition of probation. (See 3 Witkin & Epstein, *California Criminal Law* (3d ed. 2000) Punishment, § 502 at p. 684 (“Witkin: Punishment”) [“This conditional release of the convicted defendant is the subject of a series of complicated and frequently amended statutes. . . .”].)

“Probation is not a matter of right but an act of grace and clemency.” (*People v. Cortez* (1962) 199 Cal.App.2d 839, 843.) “The purpose of probation is rehabilitation.” (*People v. Hacker* (1993) 13 Cal.App.4th 1049, 1058.) “The sentencing court has broad discretion to determine whether an eligible defendant is suitable for probation and what conditions should be imposed.” (*People v. Welch* (1993) 5 Cal.4th 228, 233 (“*Welch*”); see also Witkin: Punishment, *supra*, § 532 at p. 718.)

Penal Code section 1202.7 declares that “the primary considerations in the granting of probation” are “[t]he safety of the public, which shall be a primary goal through the enforcement of court-ordered conditions of probation; the nature of the offense; the interests of justice, including punishment, reintegration of the offender into the community, and the enforcement of conditions of probation; the loss to the victim; and the needs of the defendant. . . .”

As stated by the California Supreme Court in reversing a trial court’s grant of probation: “The paramount concern in sentencing must be the protection of society. The interests of the defendant are of legitimate but secondary concern. Granting a convicted criminal the qualified liberty of probation subjects society to the risk that it will continue to be victimized during the period when he would otherwise be confined. In determining whether to grant probation the judge must therefore satisfy himself that the risks inherent in that disposition are outweighed by the potential benefits. We are mindful that society, as well as defendant, would benefit if he were rehabilitated through psychiatric treatment while on probation. But, on this record, the chances are slight. . . .” (*People v. Warner* (1978) 20 Cal.3d 678, 689.)

“Probation” and “Conditional Sentence” Defined

Penal Code section 1203, subdivision (a) defines “probation” and “conditional sentence” as follows:

As used in this code “probation” means the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer. As used in this code, “conditional sentence” means the suspension of the imposition or execution of a sentence and the order of revocable release in the community subject to conditions established by the court without the supervision of a probation officer. It is the intent of the Legislature that both conditional sentence and probation are authorized whenever probation is authorized in any code as a sentencing option for infractions or misdemeanors.

Procedure in Misdemeanor Cases

Penal Code section 1203, subdivision (d) outlines the procedure for imposing probation in misdemeanor cases:

If a person is convicted of a misdemeanor, the court may either refer the matter to the probation officer for an investigation and a report or summarily pronounce a conditional sentence. . . . If the case is not referred to the probation officer, in sentencing the person, the court may consider any information concerning the person that could have been included in a probation report. The court shall inform the person of the information to be considered and permit him or her to answer or controvert the information. For this purpose, upon the request of the person, the court shall grant a continuance before the judgment is pronounced.

As Witkin explains: “Generally, in both infraction and misdemeanor cases, the court may either refer the matter to the probation officer for an investigation and a report or summarily pronounce a conditional sentence. . . . [¶] When the court has requested a probation report under P.C. 1203.10 or C.C.P. 131.3, no judgment can be pronounced unless the report has been made available to the court, the prosecuting attorney, and the defendant or his or her attorney. (P.C. 1203d and C.C.P. 131.5.)” (Witkin: Punishment, *supra*, § 530 at pp. 716-717.)

Penal Code section 1203b authorizes the court to impose probation without referring the matter to a probation officer for a report and without ordering probation officer supervision: “All Courts shall have power to suspend the imposition or execution of a sentence and grant a conditional sentence in misdemeanor and infraction cases without referring such cases to the probation officer. Unless otherwise ordered by the court, persons granted a conditional sentence in the community shall report only to the court and the probation officer shall not be responsible in any way for supervising or accounting for such persons.”

According to Witkin, “[t]hese statutory provisions establish two alternative kinds of supervision: by the court, or, if ordered by the court, by the probation officer. If the judge does not order supervision by the probation officer, the judge must nevertheless undertake the performance of two of the functions of that officer: (a) furnishing the probation papers that inform the defendant of his or her rights . . . , and (b) requiring the

defendant to report, in order that his or her conduct may be supervised.” (Witkin: Punishment, *supra*, § 531 at pp. 717-718.)

Defendant’s Right to Refuse Probation

“It is settled that a criminal defendant has the right to refuse probation and undergo a sentence.” (*People v. Brown* (2001) 96 Cal.App.4th Supp. 1, 42; *see also* *People v. Balestra* (1999) 76 Cal.App.4th 57, 69; *People v. Beal* (1997) 60 Cal.App.4th 84, 86-87; Witkin: Punishment, *supra*, § 544 at pp. 729-730.)

Maximum Term

Penal Code section 1203a affixes the maximum term of probation in misdemeanor cases:

. . . Any such court [in a misdemeanor case] shall have power to suspend the imposing or the execution of the sentence, and to make and enforce the terms of probation for a period not to exceed three years; provided, that when the maximum sentence provided by law exceeds three years imprisonment, the period during which sentence may be suspended and terms of probation enforced may be for a longer period than three years, but in such instance, not to exceed the maximum time for which sentence of imprisonment might be pronounced.

“Because a misdemeanor sentence cannot be over 1 year . . . , the [more than 3 years] proviso can only apply to consecutive sentences, which may aggregate more than 1 year. . . .” (Witkin: Punishment, *supra*, § 543 at p. 728.)

Suspending Imposition or Execution of Sentence

Penal Code section 1203.1, subdivision (a) authorizes the court to suspend imposition or execution of sentence:

The court, or judge thereof, in the order granting probation, may suspend the imposing or the execution of sentence and may direct that the suspension may continue for a period of time not exceeding the maximum possible term of the sentence, except as hereinafter set forth, and upon those terms and conditions as it shall determine. The court, or judge thereof, in the order granting probation and as a condition therefore, may imprison the defendant in county jail for a period not exceeding the maximum time fixed by law in the case.

In speaking of this provision, Witkin has observed: “The meager statutory language does not adequately describe the distinct procedures that have developed in granting probation. The only express statement is in P.C. section 1203(a) The decisions interpreting this statement have established the rule that a *suspension of sentence*, in whole or in part, is the equivalent of probation.” (Witkin: Punishment, *supra*, § 538 at p. 724 [italics added].)

When the court suspends imposition of sentence, “the judge suspends imposing the sentence, by refraining from any pronouncement of judgment. Without the pronouncement and entry of judgment, the judge cannot commit the defendant to the prison authorities, and the effect is necessarily the equivalent of probation granted. The defendant is within the jurisdiction of the court, subject to the supervision of the probation officer and the conditions of probation imposed by the court.” (*Id.*, § 539 at p. 725.)

When the court suspends execution of sentence, “the judge first pronounces judgment of guilt and imposes sentence of imprisonment, then suspends execution of the sentence or some part of it, i.e., refrains from commitment of the defendant to the prison authorities, and places him or her on probation.” (*Id.*, § 540 at pp. 725-726.)

The gang enhancement provision, Penal Code section 186.22(d), expressly states that in cases in which the enhancement is found to apply, “[i]f the court grants probation or suspends execution of sentence imposed upon the defendant, it shall require as a condition thereof that the defendant serve 180-days in a county jail.”

Specific Statutorily Authorized Conditions of Probation

Penal Code section 1203.1, subdivision (a) lists a number of specific conditions of probation the court is authorized to impose. It provides that “[t]he following shall apply to this subdivision,” and then states:

- (1) The court may fine the defendant in a sum not to exceed the maximum Fine provided by law in the case.
- (2) The court may, in connection with granting probation, impose either imprisonment in a county jail or a fine, both, or neither.
- (3) The court shall provide for restitution in proper cases. The restitution order shall be fully enforceable as a civil judgment forthwith and in accordance with Section 1202.4 of the Penal Code.
- (4) The court may require bonds for the faithful observance and performance of any or all of the conditions of performance.

Penal Code section 1203.1, subdivision (c) authorizes the court to require the probationer to perform “public work” in lieu of jail. It provides in relevant part that “in counties or cities and counties where road camps, farms or other public work is available the court may place the probationer in the road camp, farm, or other public work instead of in jail. . . .”

Penal Code section 1203.1, subdivision (d) authorizes the court, “in all cases of probation,” to “require as a condition of probation that the probationer go to work and earn money for the support of his or her dependents or to pay any fine imposed or reparation condition, to keep an account of his or her earnings, to report them to the probation officer and apply those earnings as directed by the court.”

Penal Code section 1203.1, subdivision (g) authorizes the court, subject to certain limitations, to require “any defendant who has been convicted of a nonviolent or nonserious offense and ordered to participate in community service as a condition of probation . . . to engage in the removal of graffiti in performance of the community service. . . .”

“*Other Reasonable Conditions*”

Penal Code section 1203.1, subdivision (j) authorizes the court to impose “other reasonable conditions” of probation. (*See Welch, supra*, 5 Cal.4th at p. 233 [“Some probation conditions – particularly those involving confinement in county jail or payment of restitution and other fines and costs – are statutorily mandated or recommended in certain cases. . . . Most conditions, however, stem from the sentencing court’s general authority to impose any ‘reasonable’ condition that ‘it may determine’ is ‘fitting and proper to the end justice may be done’ (§ 1203.1.)”].) Subsection (j) provides in relevant part that:

The court may impose and require any or all of the above-mentioned terms of imprisonment, fine, and conditions, and ***other reasonable conditions***, as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the probationer. . . .

(Penal Code § 1203.1, subd.(j) [emphasis added].)

“The law on the validity of probation conditions [imposed pursuant to Section 1203.1(j)] is settled.” (*People v. Berry* (2006) 146 Cal.App.4th 20, 26.) As stated by the Supreme Court more than 30 years ago: “A condition of probation will not be held invalid unless it ‘(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality’ [Citation.] Conversely, a condition of probation which requires or forbids conduct which is not itself criminal ***is valid if that conduct is reasonably related to the crime of which the defendant was convicted or to future criminality.***” (*People v. Lent* (1975) 15 Cal.3d 481, 486 [emphasis added]; *see also People v. Carbajal* (1995) 10 Cal.4th 1114, 1121; *Welch, supra*, 5 Cal.4th at pp. 233-234; *People v. Berry, supra*, 146 Cal.App.4th at p. 26.)

The trial court has “broad discretion” in fixing terms of probation pursuant to Section 1203.1(j). (*See People v. Lent, supra*, 15 Cal.3d at p. 486 [“The Legislature has placed in trial judges a broad discretion in the sentencing process, including the determination as to whether probation is appropriate and, if so, the conditions thereof.”].) “As with any exercise of discretion, the sentencing court violates this standard when its determination is arbitrary and capricious or exceeds the bounds of reason, all of the circumstances being considered.” (*Welch, supra*, 5 Cal.4th at p. 234 [citation and internal quotation marks omitted].)

The Warrantless Search and Seizure Condition

The court-approved “warrantless search and seizure” condition reads: “**Submit your person and property to search and seizure** at any time of the day or night by any peace officer, with or without a warrant, probable cause, or reasonable suspicion.” (Superior Court, County of Los Angeles: Misdemeanor Sentencing Memorandum – General Misdemeanors, CRIM 086 (Rev. 09/01/05) [bold in original].)

The constitutionality of this condition should now be beyond serious debate in light of the United States Supreme Court’s 2006 decision in *Samson v. California* (2006) 126 S.Ct. 2193 (“*Samson*”). In that case, the Court held that a suspicionless search of a parolee on the street, conducted under the authority of Penal Code section 3067, subdivision (a), did not violate the United States Constitution. (See *Samson, supra*, 126 S.Ct. at p. 2202 [“[W]e conclude that the Fourth Amendment does not prohibit a police officer from conducting a suspicionless search of a parolee.”].) Section 3067(a) reads very similarly to the court-approved probation condition quoted above. It requires that every prisoner eligible for parole “shall agree in writing to be subject to search or seizure by a parole officer or other peace officer at any time of the day or night, with or without cause.” (Penal Code § 3067, subd. (a).)

Samson’s holding was recently extended by the Ninth Circuit Court of Appeals to a search of a parolee’s residence conducted pursuant to Section 3067(a). In *United States v. Lopez* (9th Cir. 2007) 474 F.3d 1205 (“*Lopez*”), the court held that although “*Samson* involved a suspicionless search of a parolee’s person, not of a parolee’s residence[,] . . . we conclude that this is not a significant difference in light of the Supreme Court’s rationale.” (*Id.* at p. 1213.) The court explained:

. . . The California parole-search statute at issue in *Samson* also governed *Lopez*’s conditions of parole. *Lopez* signed a Notice and Conditions of Parole form that gave *Lopez* notice that his person, his property, and his residence were subject to a warrantless, suspicionless search at any time. The Supreme Court founded its holding in *Samson* on the conclusion that under a parole-search statute, such as California’s, parolee’s do “not have an expectation of privacy that society would recognize as legitimate.” [126 S.Ct.] at 2199. If under the California parole-search statute, a parolee has no expectation of privacy in his person, we reason that a parolee has no legitimate expectation of privacy in his residence either, at least when the parolee is present. Any other rule would diminish the protection to society given by the search condition of parole, permitting search at any time

(*Ibid.*)

Although *Samson* and *Lopez* concerned a parole condition, their holdings should apply with equal force to similarly worded probation conditions. As the *Lopez* court observed, the Ninth Circuit has “consistently recognized that there is no constitutional difference between probation and parole.” (*Id.* at p. 1214 [quoting *Motley v. Parks* (9th Cir. 2005) 432 F.3d 1072, 1083, fn. 9 (en banc)] [internal quotation marks omitted]; *cf.*

In re Stevens (2004) 119 Cal.App.4th 1228, 1233 [“The criteria for assessing the constitutionality of conditions of probation also applies to conditions of parole.”.]

Parenthetically, it should be noted that “[u]nder California precedent . . . an officer would not act reasonably in conducting a suspicionless search absent knowledge that the person stopped for the search is a parolee.” (*Samson, supra*, 126 S.Ct. at p. 2202 [citing *People v. Sanders* (2003) 31 Cal.4th 318, 331-332].) Similarly, the Ninth Circuit has held, en banc, that “before conducting a warrantless search pursuant to a parolee’s parole condition, law enforcement officers must have probable cause to believe that the parolee is a resident of the house to be searched.” (*Motley v. Parks, supra*, 432 F.3d at p. 1080.) In addition, as the Supreme Court noted in *Samson*, “[t]he concern that California’s suspicionless search system gives officers unbridled discretion to conduct searches . . . is belied by California’s prohibition on ‘arbitrary, capricious or harassing’ searches.” (*Samson, supra*, 126 S.Ct. at p. 2202 [quoting *People v. Reyes* (1998) 19 Cal.4th 743, 752, 753-754 and citing *People v. Bravo* (1987) 43 Cal.3d 600, 610].)

The warrantless search and seizure probation condition is reasonably related to deterring future criminality by convicted gang members; indeed, it is essential to this objective. Therefore, in all gang injunction violation cases in which probation is to be imposed, Guideline F.6 requires that the Gang Deputy advocate for imposition of this condition, unless a Gang Supervisor approves otherwise.

The “Gang Condition”

The court-approved “gang condition” provides: **“Do not associate with any persons known by you to be criminal street gang members, affiliates, or associates, and stay away from all places where you know such persons congregate, except in an authorized anti-gang program. Obey any gang injunction that applies to you.”** (Superior Court of California, County of Los Angeles: Misdemeanor Sentencing Memorandum – General Misdemeanors, CRIM 086 (Rev. 9/01/05) [bold in original].)

Recently, the Ninth Circuit Court of Appeals upheld imposition of a similar condition of supervised release (which replaced parole in the federal system), concluding that the condition was “reasonably related to [the defendant’s] rehabilitation and to protection of the public.” (*United States v. Ross* (2007) U.S.App.LEXIS 2777, *8.) The condition in that case recited that: “You shall not associate with known neo-Nazi/white supremacist members, known neo-Nazi/white supremacist affiliates, or any other organization that advocates engaging in criminal activity or overthrowing the United States government. In addition, you shall not possess neo-Nazi/white supremacist paraphernalia.” (*Id.* at p.*3.)

Citing cases in which it had upheld restrictions on possessing computer equipment and accessing the Internet, contacting children and possessing sexually stimulating materials, membership and participation in a motorcycle club, and association with Irish organizations, the Ninth Circuit noted that it has “frequently permitted restrictions on supervised release that infringe on fundamental rights, including First Amendment rights.” (*Id.* at p.*5.) Regarding the case before it, the court stated:

Special conditions “may seek to prevent reversion into a former crime inducing lifestyle by barring contact with old haunts and associates, even though the activities may be legal.” [Citations.] Restricting [the defendant] from associating with known neo-Nazi/white supremacist members or affiliates is just such a condition. It advances the purposes of supervised release like the condition prohibiting a defendant convicted of exporting firearms to the United Kingdom from associating with the Irish Republican movement . . . , and prohibiting a defendant convicted of being a felon in possession of a firearm from being involved in any motorcycle club activities. . . .

(*Id.* a p.*6.)

Imposition of the gang condition is reasonably related both to the crime of which the defendant was convicted (violating the gang injunction) as well as his or her potential future criminality. Accordingly, in all gang injunction violation cases in which probation is to be imposed, Guideline F.6 requires that the Gang Deputy advocate for imposition of this condition, unless a Gang Supervisor approves otherwise.

Probation Violation

Penal Code section 1203.1, subdivision (j) provides that, “should the probationer violate any of the terms or conditions imposed by the court in the matter, it shall have authority to modify and change any and all the terms and conditions and to reimprison the probationer in the county jail with the limitations of the penalty of the public offense involved[.]”

F.8: Victim Restitution

This Guideline requires the Gang Deputy to advocate for restitution in any gang injunction violation case in which there is a measurable economic loss to an identifiable victim, unless there truly are compelling and extraordinary reasons for not doing so and a Gang Supervisor agrees. A victim’s fear of retaliation if the defendant is ordered to make restitution may, depending upon the basis and severity of that fear, constitute a compelling and extraordinary reason for not demanding restitution on behalf of the victim.

Constitutional Mandate

Article I, section 28, subdivision (b) of the California Constitution, which was added by voter initiative in 1982, provides in relevant part that “all persons who suffer losses as a result of criminal activity shall have the right to restitution,” and that “[r]estitution shall be ordered from the convicted persons *in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss*, unless compelling and extraordinary reasons exist to the contrary.” [Emphasis added.]

Implementing Statutory Provisions

Penal Code section 1202.4 implements this constitutional mandate. It provides in relevant part that:

(a)(1) It is the intent of the Legislature that a victim of crime who incurs any economic loss as a result of the commission of a crime shall receive restitution directly from any defendant convicted of that crime.

* * *

(f) . . . [I]n every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court ***shall require that the defendant make restitution to the victim or victims*** in an amount established by court order, based upon the amount of loss claimed by the victim or victims or any other showing to the court. If the amount of loss cannot be ascertained at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court. The court ***shall order full restitution*** unless it finds compelling and extraordinary reasons for not doing so, and states them on the record.

(Penal Code § 1202.4 [emphasis added].)

Inability to Pay Not Relevant

Penal Code section 1202.4, subdivision (g) provides that: "A defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution order, nor shall inability to pay be a consideration in determining the amount of restitution."

Amount

Penal Code section 1202.4, subdivision (f)(3) provides, among other things, that "the restitution order . . . shall be of a dollar amount that is sufficient to fully reimburse the victim or victims for every determined economic loss incurred as a result of the defendant's criminal conduct, including, but not limited to, all of the following," and then lists a number of categories of potential economic loss, including the following:

- (A) Full or partial payment for the value of stolen or damaged property. The value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is possible.
- (B) Medical expenses.
- (C) Mental health counseling expenses.
- (D) Wages or profits lost due to injury incurred by the victim
- (E) Wages or profits lost by the victims . . . due to time spent as a

witness or in assisting the police or prosecution. . . .

(Penal Code § 1202.4, subd. (f)(3)(A)-(E).)

Restitution as a Condition of Probation

Penal Code section 1202.4, subdivision (m) provides that: “In every case in which the defendant is granted probation, the court shall make the payment of restitution fines and orders imposed pursuant to this section a condition of probation. Any portion of a restitution order that remains unsatisfied after a defendant is no longer on probation shall continue to be enforceable by a victim pursuant to Section 1214 until the obligation is satisfied.”

Community Service In Lieu of Restitution

Penal Code section 1202.4, subdivision (n) provides that: “If the court finds and states on the record compelling and extraordinary reasons why a . . . full restitution order should not be required, the court shall order, as a condition of probation, that the defendant perform specified community service, unless it finds and states on the record compelling and extraordinary reasons not to require community service in addition to the finding that restitution should not be required. Upon revocation of probation, the court shall impose restitution pursuant to this section.”

F.9: Gang Member Registration

The Registration Requirement

Penal Code sections 186.30, 186.31, 186.32 and 186.33 were added as an amendment to the STEP Act by the voters’ passage of Proposition 21 in the March 2000 election. (*See Jorge G., supra*, 117 Cal.App.4th at p. 938; *People v. Bailey* (2002) 101 Cal.App.4th 238, 241-242 (“*Bailey*”).)

These provisions establish a system of registration for persons convicted of gang-related crimes akin to that for those convicted of sex offenses (*see* Penal Code § 290), certain narcotics-related crimes (*see* Health & Safety Code § 11590), and arson (*see* Penal Code § 457.1). Like these other statutes, the gang registration law is “concerned with assisting law enforcement to prevent and detect repeat crimes of kinds deemed highly susceptible to recidivism.” (*In re Alva* (2004) 33 Cal.4th 254, 265, fn. 5 (“*Alva*”); *see also People v. Adams* (1990) 224 Cal.App.3d 705, 710 [“Registration requirements generally are based on the assumption that persons convicted of certain offenses are more likely to repeat the crimes and that law enforcement’s ability to prevent certain crimes and its ability to apprehend certain types of criminals will be improved if these repeat offenders’ whereabouts are known.”]; *Bailey, supra*, 101 Cal.App.4th at p. 245 [“[T]he underlying purpose of the [gang] registration provision is to enhance law enforcement officers’ ability to prevent gang-related crime by keeping informed of the location of known gang associates.”]; *Jorge G., supra*, 117 Cal.App.4th at p. 943 [“The voters’ purpose in enacting the registration provisions of Proposition 21 was similar to the

Legislature’s purpose in enacting sex-offender registration requirements to facilitate surveillance of offenders by law enforcement.”.])

Penal Code section 186.30 requires, in relevant part, that “any person convicted in a criminal court . . . in this state of . . . [a]ny crime that the court finds is gang related at the time of sentencing or disposition” must “register with the chief of police of the city in which he or she resides. . . .” (Penal Code § 186.30, subd. (a) & (b)(3).) Section 186.30 further provides that the person must register “within 10 days of release from custody or within 10 days of his or her arrival in any city, county, or city and county to reside there, whichever occurs first.” (Penal Code § 186.30, subd. (a).)

“Gang Related” Crime

The term “gang” as appears in the phrase “gang related” has been interpreted as being synonymous with “criminal street gang” as defined in Penal Code section 186.22(f). (*See People v. Martinez* (2004) 116 Cal.App.4th 753, 761, fn. 6 (“*Martinez*”) [We think that the term ‘gang’ in section 186.30 is synonymous with the term ‘criminal street gang’ as defined in section 186.22, subdivision (f).”]; *Jorge G., supra*, 117 Cal.App.4th at p. 940 [“[W]e do not believe the voters intended to make a distinction between the two expressions [‘gang’ and ‘criminal street gang’]. We instead conclude the terms are used interchangeably and that the voters intended ‘gang related’ to mean ‘related to a criminal street gang.’ . . . ¶] As a result, we adopt the definition of ‘criminal street gang’ set forth in section 186.22, subdivisions (e) and (f), as a limiting construction of the word ‘gang’ in section 186.30, subdivision (b)(3).”].)

In *Jorge G.*, the Court of Appeal held that “[g]ang-related crimes within the meaning of section 186.30, subdivision (b)(3), surely include, but are not limited to, all crimes committed for the benefit of, at the direction of, or in association with a criminal street gang.” (117 Cal.App.4th at p. 941.) In reaching this conclusion, the court noted that “[i]t is evident that in enacting Proposition 21, the voters intended to address broadly the problem of crimes related to criminal street gangs,” and observed that the word “related” was appropriately chosen “to achieve [this] broad purpose” because it “can encompass a wide variety of relationships.” (*Ibid; see also Martinez, supra*, 116 Cal.App.4th at pp. 761- 762 [“[A] crime is ‘gang related’ in this context when it was committed, in the words of subdivision (b)(1) of section 186.22, for the benefit of, at the direction of, or in association with a street gang.”] [citations and internal quotation marks omitted].)

Under this standard, “the crime itself must have some connection with the activities of a [criminal street] gang.” (*Martinez, supra*, 116 Cal.App.4th at p. 961.) “Thus, a crime committed by a defendant in association with other gang members or demonstrated to promote gang objectives may be gang related.” (*Id.* at p. 762.)

However, while “a defendant’s history of participation in gang activities or criminal offenses may prove that a crime not otherwise or intrinsically gang related nevertheless falls within the meaning of section 186.30” (*ibid.*), “a crime may not be found gang related within the meaning of section 186.30 based *solely* upon the

defendant’s criminal history and gang affiliations.” (*Id.* at p. 761 [first italics in original, second italics added].)

The Court of Appeal in *Jorge G.* held that “the fact that the subject crime was gang related need be proved only by a preponderance of the evidence.” (*Jorge G., supra*, 117 Cal.App.4th at p. 944.) The court reached this conclusion based upon its “decision that registration pursuant to section 186.30 is not punishment for purposes of due process under *Apprendi* [*v. New Jersey* (2000) 530 U.S. 466, 490].” (*Ibid.*; *cf. Alva, supra*, 33 Cal.4th at p. 262 [“[W]e conclude that California’s law requiring the mere *registration* of convicted sex offenders is not a punitive measure subject to either state or federal proscriptions against punishment that is ‘cruel’ and/or ‘unusual’.”] [italics in original].)

As virtually all prosecutions of gang members for violating a gang injunction will involve a “gang related” crime, this Guideline requires the Gang Deputy to request in all such cases that the court find that the defendant committed a gang-related crime, so as to trigger the registration requirement of Penal Code sections 186.30. If for some reason the Gang Deputy believes that this provision is inapplicable in a particular case, the Guideline allows the Gang Deputy to adopt that position where a Gang Supervisor agrees.

The Advisement Requirement

Penal Code section 186.31 provides that: “At the time of sentencing in adult court . . . the court shall inform any person subject to Section 186.30 of his or her duty to register pursuant to that section. This advisement shall be noted in the minute order. The court clerk shall send a copy of the minute order to the law enforcement agency with jurisdiction for the last known address of the person subject to registration under Section 186.30. The parole officer or probation officer assigned to that person shall verify that he or she has complied with the registration requirements of Section 186.30.”

The Registration Process

Penal Code section 186.32 requires the registrant to appear at the law enforcement agency, submit fingerprints and a current photograph, and provide a written and signed statement that furnishes information required by the law enforcement agency. (Penal Code § 186.32(a)(2)(A), (C) & (D).) It also requires the registrant to advise the law enforcement agency, in writing, of his or her new address within ten days of changing addresses. (Penal Code § 186.32(b).)

A registrant does not have a right to the assistance *or presence* of counsel during the registration process. (*See People v. Sanchez* (2003) 105 Cal.App.4th 1240, 1245–1246 [“[T]he trial court did not err in refusing to require the law enforcement agency to permit defendant’s attorney to assist him during the registration process” for the reasons that: (1) “the Sixth Amendment right to counsel does not attach when a person attempts to register pursuant to section 186.32 because it is not contemplated that the registrant will be the subject of criminal proceedings at the time”; and (2) “[a]ny hazard of incrimination is speculative and insufficient to implicate defendant’s right to remain silent and the related right to have counsel present.”].)

Unlike sex offender registration, which is lifetime in duration, gang registration “shall terminate five years after the last imposition of a registration requirement pursuant to Section 186.30.” (Penal Code § 186.32(c).)

Subdivision (d) of Section 186.32 provides that: “The statements, photography and fingerprints required under this section shall not be open to inspection by any person other than a regularly employed peace or other law enforcement officer.”

The “Any Information” Requirement

Penal Code section 186.32 requires the registrant to provide “[a] written statement, signed by the [registrant], giving *any information* that may be required by the law enforcement agency . . .” (Penal Code § 186.32, subd. (a)(2)(C) [emphasis added]; *see also Sanchez, supra*, 105 Cal.App.4th at p. 1243 [“[T]he written statement required by section 186.32 was intended to improve law enforcement’s ability to prevent gang-related crimes by keeping the agency informed of the registrants’ whereabouts.”].)

To preserve the constitutionality of this requirement, the Courts of Appeal have given it a limiting construction, “to mean that the registrant may be required to provide information enabling law enforcement to identify and locate the registrant.” (*Jorge G., supra*, 117 Cal.App.4th at pp. 947–953 [As so construed, the “any information” requirement was not impermissibly vague, did not violate the rights of self-incrimination, free speech or privacy, was not an unconstitutional delegation of legislative authority, and did not amount to cruel or unusual punishment.])

In *Bailey*, the Court of Appeal held that “section 186.32, subdivision (a)(2)(C) . . . may reasonably be construed to require descriptive or identifying information that aids law enforcement in monitoring the whereabouts of gang members and thus preventing gang-related violent crimes. So viewed, section 186.32 is not unconstitutionally vague.” (101 Cal.App.4th at p. 245.) The court further held that, “[f]or the same reasons,” the provision did not “abridge free speech and freedom of association,” did not “compel answers to unlimited questions from law enforcement officers,” was not “impermissibly overbroad,” and, because, “[i]nasmuch as we have determined the questioning is limited to descriptive information about the registrant, it does not implicate the Fifth or Sixth Amendment.” (*Id.* at pp. 245-246.)

Similarly, in *Sanchez*, the Court of Appeal “construed the requirement that the registrant give ‘any information’ . . . to mean that the registrant must provide information from which the law enforcement agency could locate him or her,” including such information as “the person’s full name, any aliases or gang monikers or change of name, the person’s date of birth, residence address, description and license plate number of any vehicle the person owns or drives, and any information regarding the persons’ employment or school.” (105 Cal.App.4th at pp. 1243-1244.)

Additionally, the *Sanchez* court specifically upheld against constitutional challenge “the trial court’s order requiring defendant to disclose his ‘alias and/or monikers’ . . .” (*Id.* at p. 1245.) The court reasoned that: “Just as routine booking

information concerning a person's identity and address is not incriminatory, neither is the limited disclosure contemplated by the modified registration requirement in this case. In requiring defendant to list his or her 'alias and/or monikers' the order merely requires revelation of all names by which he is known to others, including but not limited to those names by which he is known among gang members. Requiring the defendant to disclose all his aliases, including his gang names, is consistent with the purpose of the registration requirement, i.e., minimizing the 'significant threat' to public safety and health posed by criminal street gangs." (*Ibid.*)

At the same time, however, the *Sanchez* court held that the "portion of the trial court's order requiring defendant to identify 'areas frequented' is impermissibly vague and must be stricken." (*Id.* at p. 1244.) It concluded that "[t]he trial court's order fails to accord defendant due process in that 'areas frequented' has no fixed meaning such that defendant can know what information he is expected to disclose and places excessive discretion in law enforcement for its interpretation." (*Ibid.*)

Likewise, in *Jorge G.*, the court rebuffed the People's attempt to "have us interpret the statute to allow police to demand from registrants the identities and whereabouts of other members of their gangs" because "criminalizing a refusal to name and help locate one's gang associate would violate the constitutional protection against self-incrimination." (117 Cal.App.4th at p. 949.) The court explained, "to require disclosure of the identities of other gang members with whom the registrant associates would obviously help in proving that the registrant is a knowing participant in the gang." (*Id.* at p. 950.)

Failure to Register

Penal Code section 186.33, subdivision (a) makes it a misdemeanor to knowingly fail to register. It provides: "Any person required to register pursuant to Section 186.30 who knowingly violates any of its provisions is guilty of a misdemeanor."

F.10: Referral to Federal Immigration Authorities

Undocumented immigrants now comprise a significant percentage of the membership of criminal street gangs, and often times are the most violent members of such gangs. Deportation of gang members who are in the country illegally has proven to be an effective means for disrupting and suppressing gang activity.

This Guideline establishes a new protocol for ensuring that gang members who enter this county illegally, *and* are thereafter convicted of violating a gang injunction, are brought to the attention of the appropriate federal authorities, who can prosecute them for violating federal laws and/or seek their deportation.

This Guideline does not affect LAPD Special Order No. 40. It applies only to Gang Deputies and not to LAPD officers. Therefore, it will not discourage victims and witnesses from cooperating with LAPD, one of the principal purposes underlying Special Order No. 40.

Furthermore, this Guideline only comes into play after the defendant has been duly convicted of contempt for violating a gang injunction. As a consequence, no question will remain concerning the defendant's status as a gang member at the time of the referral: he or she either will have admitted to being a member as part of a plea bargain, or will have been shown to be one beyond a reasonable doubt at trial.

In addition, identifying information is provided to federal authorities for *all* defendants convicted of violating gang injunctions, not just those who may be suspected of being in the country illegally. Thus, the Gang Deputy will not have to exercise judgment or discretion in determining whether to refer a defendant to federal authorities as being in the country illegally.

G.

Removal From Gang Injunction Generally

A person served with a gang injunction as a suspected gang member, but who maintains that he or she no longer is (or never was) a gang member, may seek a judicial declaration to that effect. If the court grants the requested relief, the person will not be subject to enforcement of the injunction. (*See Berry, supra*, 68 Cal.2d at p. 148.)

To address concerns that such a formal judicial procedure is too cumbersome a means for seeking removal from a gang injunction, and would require the assistance of counsel, the Guidelines create a new non-judicial process for obtaining such relief. The process is easily initiated with the submission of an informal petition to the City Attorney's Office. The petition is reviewed by a senior supervising attorney in the Criminal Branch who is outside of the gang injunction enforcement area. Furthermore, the process is designed to be simple, so that a person seeking removal from a gang injunction can obtain a determination without having to retain counsel.

The Guidelines also create a new periodic review process. Every three years, the Gang Deputy responsible for enforcement of the gang injunction and the assigned LAPD gang expert will review the available information as to each gang member who has been served, and determine whether there are changed circumstances, such that the gang member should no longer be subject to enforcement of the injunction.

Because of concerns that gangs may attempt to retaliate against members seeking to extricate themselves from the organization, records relating to removal proceedings should be maintained as confidential to the extent permitted by law. (*See* Government Code § 6254, subd. (f) [records of investigations conducted by, and records of intelligence information and security procedures of, state or local police agencies, investigatory or security files compiled by state and local police agencies, and any investigatory or security files compiled by any other state or local agency for law enforcement purposes are exempt from disclosure under California Public Records Act ("CPRA")]; *see also* Government Code § 6254, subd. (k) & Evidence Code § 1040.)

H.

REMOVAL FROM THE ENFORCEMENT LIST AT THE DIRECTION OF THE REVIEWING AUTHORITY

These Guidelines are intended to create a relatively simple, informal and expeditious, yet still highly reliable, process by which a person served with a gang injunction can seek a determination that he or she no longer is (or never was) a gang member, and therefore should not be subject to enforcement of the injunction.

In determining whether to remove a person from a gang injunction, the “Reviewing Authority,” unlike a court, is not limited to consideration of “evidence” in its traditional form, such as affidavits, declarations and testimony under oath. Instead, he or she may look to any “relevant and reliable information,” which may include letters, emails, verbal reports, field interviews or other information provided by family members, community leaders, employers, teachers, ministers, landlords, former gang members, intervention specialists, probation officers and knowledgeable law enforcement personnel.

Removal of a person from a gang injunction at the direction of the Reviewing Authority represents an exercise of prosecutorial discretion. It is not an admission, factual finding, or legal determination by the City Attorney’s Office or LAPD cognizable in a court of law.

I.

REMOVAL FROM THE ENFORCEMENT LIST AS A RESULT OF PERIODIC REVIEW

These Guidelines create a new process by which the available information of gang membership is reviewed every three years to determine whether changed circumstances warrant removing a person or persons from the gang injunction. Such changed circumstances may include, but are not necessarily limited to, the absence of formal contact with the criminal justice system or law enforcement for a period of three years, unless the contact involves only a minor offense.

While removal from a gang injunction at the direction of the Reviewing Authority requires the submission of a petition, and the determination is limited to the person submitting the petition, the periodic review process occurs automatically every three years, and will encompass every gang member subject to enforcement of the injunction at the time of the review.

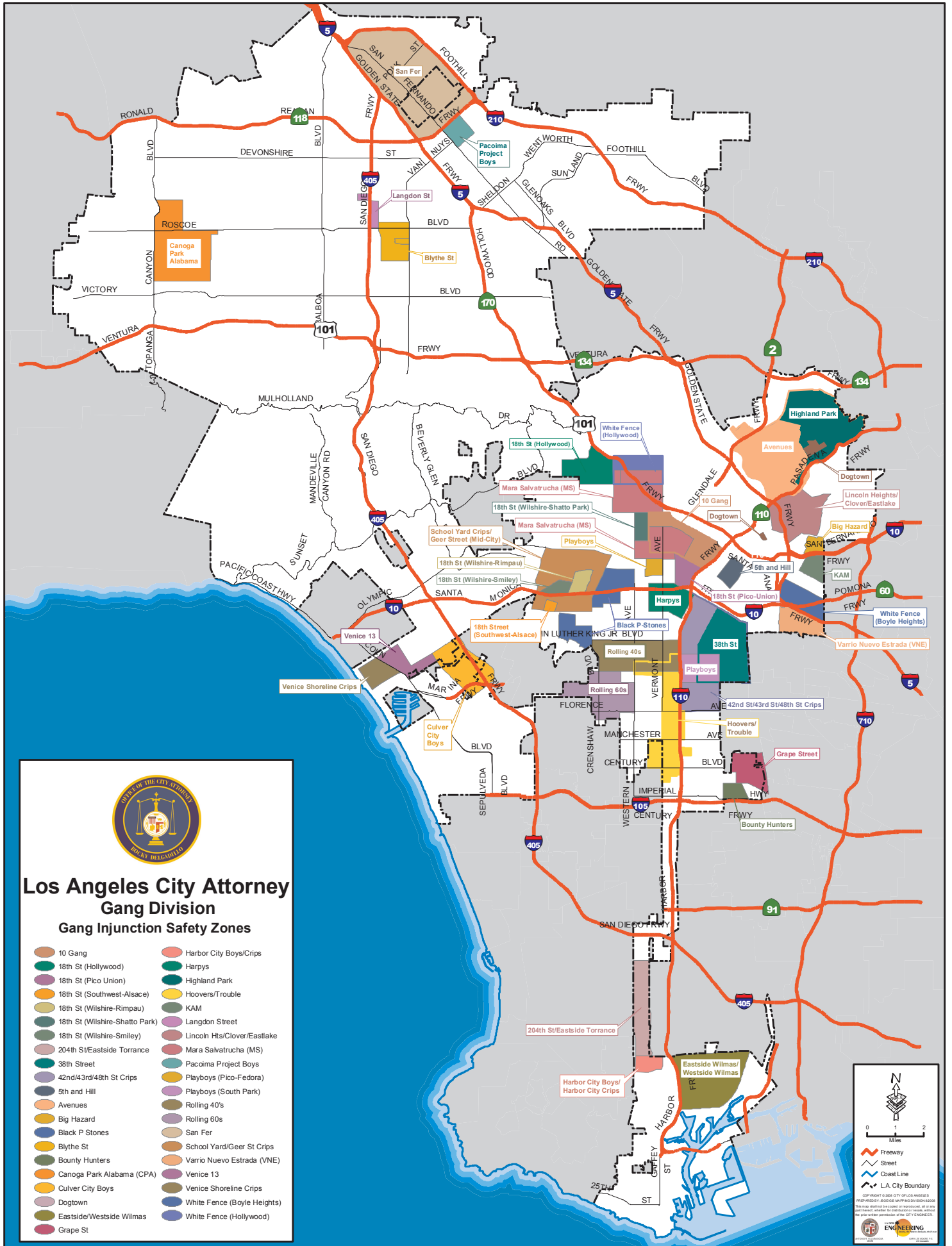
Like the Reviewing Authority, the Gang Deputy, LAPD gang expert and Gang Supervisor conducting the periodic review are not limited to consideration of “evidence” in its traditional form; rather, they are to consider “all available relevant and reliable information” bearing on each gang member’s status.

As with removal at the direction of the Reviewing Authority, removal as a result of a Periodic Review represents an exercise of prosecutorial discretion, and not an admission, factual finding, or legal determination by the City Attorney's Office or LAPD cognizable in a court of law.



Los Angeles City Attorney Gang Division Gang Injunction Safety Zones

- | | |
|--------------------------------|-----------------------------|
| 10 Gang | Harbor City Boys/Crips |
| 18th St (Hollywood) | Harpys |
| 18th St (Pico Union) | Highland Park |
| 18th St (Southwest-Alsace) | Hoovers/Trouble |
| 18th St (Wishfire-Rimpau) | KAM |
| 18th St (Wishfire-Shatto Park) | Langdon Street |
| 18th St (Wishfire-Smiley) | Lincoln Hts/Clover/Eastlake |
| 204th St/Eastside Torrance | Mara Salvatrucha (MS) |
| 38th Street | Pacoima Project Boys |
| 42nd/43rd/48th St Crips | Playboys (Pico-Fedora) |
| 5th and Hill | Playboys (South Park) |
| Avenues | Rolling 40's |
| Big Hazard | Rolling 60's |
| Black P Stones | San Fer |
| Blythe St | School Yard/Geer St Crips |
| Bounty Hunters | Varrío Nuevo Estrada (VNE) |
| Canoga Park Alabama (CPA) | Venice 13 |
| Culver City Boys | Venice Shoreline Crips |
| Dogtown | White Fence (Boyle Heights) |
| Eastside/Westside Wilmas | White Fence (Hollywood) |
| Grape St | |



0 1 2
Miles

Freeway
Street
Coast Line
L.A. City Boundary

ENGINEERING

OFFICE OF THE
LOS ANGELES CITY ATTORNEY
ROCKY DELGADILLO

THE CITY ATTORNEY'S REPORT

GANG INJUNCTIONS:
HOW AND WHY THEY WORK

April 2007

JEFFREY B. ISAACS
Chief, Criminal and
Special Litigation Branch

BRUCE RIORDAN
Director of Anti-Gang
Programs and Operations

MARTY VRANICAR
Supervising Attorney,
Gang Prosecution and
Prevention Section

MAX SHINER
Deputy in Charge,
Valley Anti-Gang Operations



TABLE OF CONTENTS

	Page
FOREWORD	1
GANG INJUNCTIONS – AN INTRODUCTION	2
THE FUNDAMENTALS OF INJUNCTIONS	3
WHY GANG INJUNCTIONS ARE NECESSARY	4
GANG INJUNCTIONS ARE EFFECTIVE	5
ACTIVITIES PROHIBITED BY GANG INJUNCTIONS	6
THE KEY TO MAKING GANG INJUNCTIONS WORK	7
HOW A GANG INJUNCTION IS OBTAINED	9
Evaluation Phase	9
Evidence-Gathering and Preparation Phase.....	10
Litigation Phase.....	10
ENFORCEMENT OF GANG INJUNCTIONS	13
WHO MAY BE PROSECUTED FOR VIOLATING A GANG INJUNCTION?	14
Evidence of Gang Membership	14
Service of the Gang Injunction	15
CONCLUSION.....	17
END NOTES	18

FOREWORD

We do not have merely a gang problem in this country; we have a gang crisis. The U.S. Department of Justice (“US-DOJ”) estimates that there are approximately 731,000 gang members nationwide while another recent US-DOJ study shows that there are only 708,000 state and local police officers. Indeed, experience informs us that this critical gap may be widening rather than shrinking. Clearly, government needs to use all of its available resources to confront this crisis now.

One significant resource available to prosecutors and law enforcement is the gang injunction. Gang injunctions allow us to be tougher, but also smarter, in fighting criminal street gangs. At this late date, there is no longer any doubt about it: gang injunctions effectively reduce gang-related crime and prevent gangs from controlling and terrorizing communities. Los Angeles Police Department (“LAPD”) statistics show that gang-related crime has declined by 13% since 2001. In the designated “Safety Zones” in which the gang injunctions operate, serious crime has been reduced by as much as 53%.

Anecdotal evidence and testimony from local communities confirm that “quality of life” crimes (such as graffiti writing or tagging, drinking or using narcotics in public, and disturbing the peace) decrease when a gang injunction is in place. Most importantly, gang injunctions provide much needed relief to the community from the constant street presence of the gang and allow outreach, intervention and prevention programs and workers the opportunity to work in safety to further decrease criminal gang activity and membership.

“Seldom do outcomes of public initiatives produce results of this clarity.”

- Los Angeles County
Civil Grand Jury Report
on Gang Injunctions



I am proud to say that, as of the date of this report, my prosecutors, working with the dedicated men and women of the LAPD, have obtained 33 permanent injunctions against a total of 50 gangs in Los Angeles. Based on the documented success of civil gang injunctions, which has also been independently verified by the Los Angeles County Civil Grand Jury, my office stands firmly with the LAPD in our commitment to obtain gang injunctions as needed and vigilantly enforce them as an effective means to break the grip criminal street gangs have on too many of our communities.

ROCKY DELGADILLO
City Attorney
City of Los Angeles

GANG INJUNCTIONS – AN INTRODUCTION

Although gangs have existed in the City of Los Angeles for decades -- and have subjected the residents of the City to abuse, intimidation, physical harm, destruction of property, loss of life, and other forms of victimization for all of that time -- it was only relatively recently that those in government responsible for ensuring the safety of communities have recognized that gangs as organizations, including their members, could be held responsible through the civil courts for their harmful actions.

“Gang injunctions” are a product of a simple but previously overlooked idea: that a gang can be sued in civil court just like any other entity. The power of gang injunctions is that these civil lawsuits can result in court orders which prohibit members of the gang from engaging in activities that have been shown to contribute to the harm gangs cause, such as associating with other gang members in public, trespassing on private property, and marking their territory with graffiti. These injunctions are somewhat unique in that they are one of the few preventative law tools available to law enforcement the activities of the members of a gang can be restricted in an effort to *prevent* them from engaging in criminal activities. As the California Supreme Court observed in upholding the constitutionality of gang injunctions:

“Often the public interest in tranquility, security, and protection is invoked only to be blithely dismissed, subordinated to the paramount right of the individual. In this case, however, the true nature of the trade-off becomes painfully obvious Liberty unrestrained is an invitation to anarchy. Freedom and responsibility are joined at the hip.”¹

Gang injunctions restrain the actions of a group of people. That group is the members of the criminal street gang who have been shown to have persistently engaged in a pattern of criminal and nuisance activities. When a gang has engaged in so many crimes and has, through its everyday activities, infringed on the rights of other members of the community to the comfortable enjoyment of life and property, it is not only legal for a court to enjoin the actions of that gang, but it is appropriate and just. Although gang members remain free to be gang members, if they choose to continue on such a course they bear the responsibility of abiding by the injunction. In the words of one court, injunctions “may work to deprive the enjoined parties of rights others enjoy precisely because the enjoined parties have abused those rights in the past.”²

Gang injunctions would not be possible if gangs could not be sued in civil court just like any other entity. When individuals join together to form an organization or association, that group is responsible for the consequences of its activities. Like a business or club or any other group, a criminal street gang is an organization, and its members cannot, as a group or individually on behalf of the group, violate the law without consequence. This common-sense principle lies at the heart of gang injunctions: the rules of conduct that apply to all organizations apply to *gangs and gang members*.



THE FUNDAMENTALS OF INJUNCTIONS

An injunction is a court order requiring the people subject to it to either do or not do certain things. This concept is one of the fundamental powers of the judiciary. Judges, if they are to have any authority, must be able to make people follow their court orders, and the injunction is a part of that necessary power.

Courts do not have unlimited power to issue injunctions. For example, they may not issue orders that are unconstitutional. Also, they must be specific in the orders that they issue: the people bound by the order must be identified either individually or as an identifiable group, and the “certain things” that are mandated or prohibited by the order must be defined. In short, the injunction must address the specific problem the court is attempting to remedy.³

Violations of gang injunctions are shown by proving that the defendant is a member of the enjoined gang.

However, because a judge issuing an injunction is seeking to remedy a specific problem caused by particular people or groups, the judge can prohibit those people from doing things that the legislature could not make illegal by passing a law. This is true because injunctions are remedies imposed by the judge for specific violations (or threatened violations) of the law.⁴

By way of example: The legislature could not make a law prohibiting abortion protestors from congregating near abortion clinics to hold their protests because of First Amendment considerations. A court can, however, order specific protest organizations from doing so at specific clinics, if the evidence presented to the judge showed that this order was necessary to stop the groups from continuing to interfere with the rights of others. In fact, this is precisely what the United States Supreme Court did in the case of *Madsen v. Women’s Health Center, Inc.*⁵ in which it upheld such an injunction.



Thus, injunctions differ from statutes and ordinances in that they are much narrower as to whom and what they apply. There is a well-known saying that “ignorance of the law is not a defense.” This is true of statutes, which everybody must obey. (This is why visitors to states where it is illegal to make a right turn against a red light still get tickets even though they didn’t know the rule.) In contrast, in order to be bound by an injunction, a person must be “on notice” of the injunction and its terms. Because it is a special order that applies only to certain people or groups of people, those people must have been either notified of the injunction, or otherwise have knowledge of the injunction and its requirements, before they can be found to have violated it.⁶

Furthermore, because an injunction only applies to a narrow class of people, proving a violation of an injunction requires proof that the injunction applies to the person charged with violating it. In the case of gang injunctions, establishing a violation requires proof that the defendant was a member of the enjoined gang at the time of the violation.⁷

WHY GANG INJUNCTIONS ARE NECESSARY

A gang injunction provides a legal tool for law enforcement to deal with the unique problems posed by territorial or turf-based criminal street gangs. Criminal street gangs share one common trait they lay claim to turf. The gangs take over neighborhoods, marking their territory with graffiti, telling everyone that the neighborhood belongs to them, threatening outsiders who dare encroach on the turf, and, most importantly, threatening and intimidating the law-abiding residents of the area with their presence.

Unlike run-of-the-mill criminals, criminal street gangs publicize their criminal activities. A turf-based gang thrives when it has made its presence known to everyone in the neighborhood. When a gang has fostered a reputation for violence and a willingness to retaliate against those who challenge it, that gang is able to frighten residents of the community into hiding when they become aware of the gang's criminal activities. Witnesses become unwilling to take the risk of reporting the gang's crimes, out of fear of being targeted as a "snitch" or "rat." Through sheer intimidation, gangs are able to subvert the constitutional protections of the legal system, such as the right to confront witnesses, and undermine the criminal justice system.

This is why gang crimes frequently remain unsolved, even though most gang-related crime occurs out in the open and not behind closed doors. The pervasive fear that the gangs create in their neighborhoods results in the common complaint from officers and detectives investigating gang murders: "Everyone knows who did it, but there are no witnesses."



A gang's strength is in its numbers. Gang injunctions cut at the heart of that strength.

Gang injunctions seek to level that playing field and restore balance to the communities. When gang members gather together, they promote their gang's activities, they encourage each other to commit crimes on behalf of the gang, they become targets for rival gang members, and they serve as a constant reminder to the community that the gang is out there ready to strike. The more members a gang has and the more visible it is, the stronger the gang becomes, and the more fear it is able to instill in the community. For this reason, there is no legitimately innocent membership in a criminal street gang -- each gang member contributes to the gang's "presence," its ability to harass, intimidate and commit crimes in its territory.

When a gang injunction is issued, all members of the gang are subject to the injunction. Any individual gang member who is notified of the injunction is from then on subject to the restrictions of the injunction, which aim to keep gang members from behaving in ways that publicize the gang, perpetuate the gang's reputation, or increase the gang's grip on a neighborhood. Therefore, the injunction will only be effective in achieving these aims if all of the gang's members are bound by the restrictions of the injunction.

GANG INJUNCTIONS ARE EFFECTIVE

Gang injunctions are an important resource because they work. They have been shown to undermine a gang's ability to commit crime, to intimidate others, and to diminish the quality of life for residents of a community.

“Vigorous Law Enforcement provides an excuse for some members to get out of the gang.”

- Los Angeles County
Civil Grand Jury Report
On Gang Injunctions.

LAPD statistics support the effectiveness of injunctions, showing a typical decrease in major gang-related crime after the implementation of a gang injunction. Anecdotal evidence also supports the notion that residents in areas plagued by gangs feel safer after the implementation of a gang injunction.

Independent analysis also supports the crime-fighting effectiveness of gang injunctions. The Los Angeles County Civil Grand Jury of 2003-2004, an independent body of citizens, conducted a study of gang injunctions and concluded that gang injunctions result in a significant reduction in both serious and total crimes, while not causing a significant displacement of crime to adjacent neighborhoods.⁸ Indeed, the Grand Jury found that civil gang injunctions play an important role in the intervention, the prevention *and* the suppression of gang activities. Academic studies by experts in the field similarly have found that gang injunctions have positive effects.⁹

In fact, gang injunctions are typically welcomed by the community and feedback from residents has been overwhelmingly positive. Although media accounts of gang injunctions tend to focus on controversy or conflict, when residents of the gang-plagued area are interviewed, the reactions are favorable. In one article, a resident was quoted as saying, “From one to 10, I give them [the injunctions] a 10.”¹⁰ The Los Angeles County Grand Jury came to a similar conclusion, finding that when gang injunctions are in place, “residents are relieved from particular actions by gangs,” and also “gain a greater sense of control [of their neighborhoods.]”¹¹

Gang members themselves often acknowledge the effectiveness of gang injunctions in reducing the harm caused by gangs. One gang member at a hearing on a preliminary injunction, when asked what provisions he objected to, stated, “I don't object to none of them. I think that's going to be better for the community.”¹² Other gang members know how effective injunctions are and for that reason openly express animosity towards and fear of the civil injunction process.

In addition to reducing crime and increasing safety, gang injunctions also make gang intervention efforts more effective, as they create an incentive for at-risk youth to avoid or get out of the gang lifestyle. Father Greg Boyle, who runs a leading gang intervention agency, explained the effect of gang injunctions in this way: “Eight minutes after one was filed here on the Eastside, I had kids in my office saying, ‘Get me a job.’ At its best, an injunction creates a kind of vigilant heat that moves kids toward the light.”¹³



ACTIVITIES PROHIBITED BY GANG INJUNCTIONS

The typical gang injunction applies only within a narrowly-defined area called a Safety Zone, and prohibits the gang and its members from engaging in certain activities that are a nuisance to the community or have been proven to be precursors to the gang's criminal and nuisance behavior. These prohibitions typically include the following:

- Associating with other known gang members in public;
- Confronting, intimidating, annoying, harassing, threatening, challenging, provoking, assaulting or battering any person known to be a victim of or witness to gang activity;
- Possessing or knowingly remaining in the presence of anyone who is in possession of any gun, ammunition, or weapon in any public place;
- Possessing or knowingly remaining in the presence of anyone who is in possession of any controlled substance or drug paraphernalia;
- Being present on any private property without the written consent of the owner;
- Defacing any public or private property or possessing graffiti tools; and
- Violating a court-defined curfew, subject to exceptions.

Each one of these restrictions seeks to change the behavior of the gang's members in ways that reduce their ability to engage in or encourage others to engage in criminal and nuisance activities, to intimidate neighborhood residents, to maintain a public reputation for lawlessness, to recruit others into the gang, and to keep a grip on the areas the gang claims as its turf.



THE KEY TO MAKING GANG INJUNCTIONS WORK

The notion that a gang can be the subject of a lawsuit just like any other organization is what enables a gang injunction case to be brought. But what makes the injunction work is the legal principle that an injunction against an organization extends to all of the members of the enjoined organization. This principle recognizes that gangs, like other groups, act through their members.

A criminal street gang may have many members who are not yet known to the police. Most gangs also are constantly recruiting new members. Some members may attempt to leave the gang. As a result, a gang's membership is constantly in flux, even though the gang's criminal activities may continue indefinitely. In Los Angeles, it is common for gangs to be decades old and multi-generational, such that fathers and grandfathers of new gang members were themselves members of the gang. But the gangs continue to commit crimes regardless of who its members are at any given time. It is therefore the gang itself that is properly the subject of the injunction.

An injunction against a gang only works if it extends to all of the members of the gang.

Because this is true, an injunction will be effective only if it extends to all of the members of the gang. Bringing a lawsuit for an injunction against a gang is a task that requires a tremendous amount of effort and investigation by police and prosecutors. If a separate lawsuit had to be filed against every member of the gang, the result would be hundreds of lawsuits. Moreover, every time someone joined the gang, be it today or a year from now, a new lawsuit would have to be brought against the new gang member. This would result in never-ending litigation and a multitude of lawsuits to keep the injunction in place

against the ever changing membership of the gang, even if there was no dispute about whether the gang should be enjoined. It also would lead to more questions: If someone is found by the court to be a gang member but later leaves the gang, would he or she have to go back to court to be dismissed from the injunction? If someone is found not to be a gang member, but later commits a gang-related crime clearly showing he is and always was a gang member, could he be added? What about those who leave the gang but then return, or are just claiming to have left the gang?

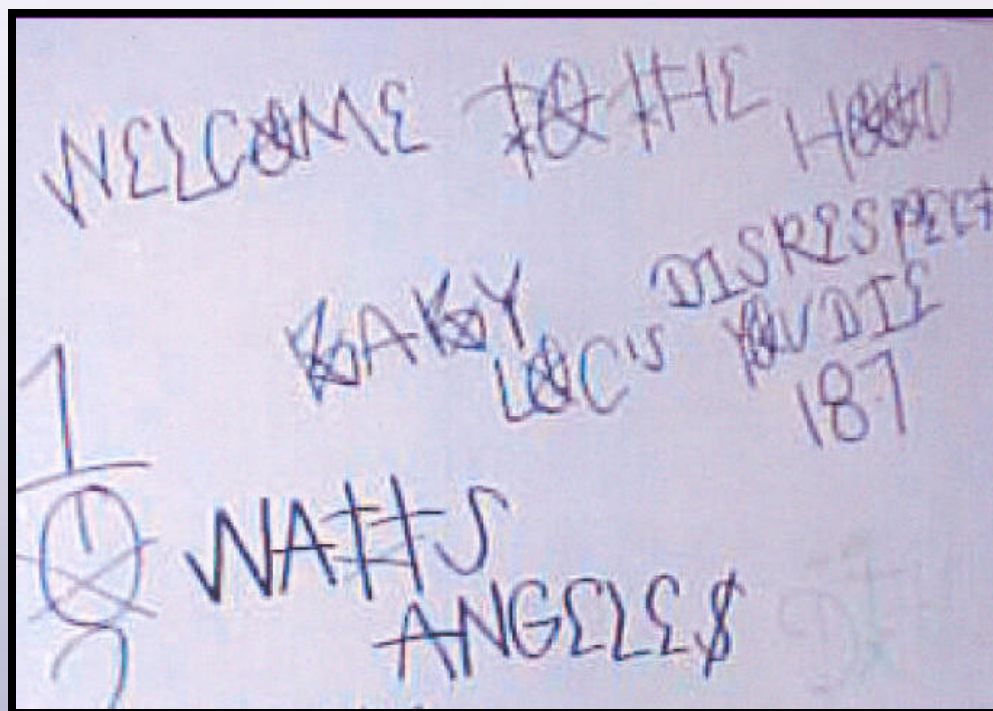
For these reasons, the law has never required this unworkable approach. California law provides that an injunction against an entity, such as a business, a labor union, a protest group, a criminal street gang, or any other association or group, properly extends to unnamed nonparty "members" of the enjoined entity, as well as certain other classes of unnamed persons, because an enjoined group can act only through its members or through the actions of others.¹⁴



In fact, the California Supreme Court specifically approved of this principle as applied to gang injunctions in the leading case of *People ex rel. Gallo v. Acuna*:

[The gang injunction] entered by the superior court is indistinguishable from time-honored equitable practice applicable to labor unions, abortion protesters or other identifiable groups. Because such groups can act only through the medium of their membership, “. . . it has been a common practice to make the injunction run also to classes of persons through whom the enjoined person may act, such as agents, servants, employees, aiders [and] abettors.”¹⁵

This rule of law is especially applicable in the case of a gang. Gangs terrorize and intimidate neighborhoods by gathering in groups, flaunting their gang tattoos and signs, tagging their gang symbols, and brandishing their gang name as a means to strike fear into their victims during the commission of their crimes. This fear allows a gang to commit its crimes unchecked. After committing their crimes, gangs invoke their gang name as a shield behind which to hide and avoid accountability for their actions. If a gang member believes that a victim or witness has reported a crime, the gang retaliates or threatens retaliation against the person in the name of the gang. The gang's victims are made to understand that the retaliation can come from anyone in the gang. It is because gangs rely on their gang name and their numbers for their strength that it is necessary and just that they be treated as an enjoined entity under the law.



Gangs use threats and other fear tactics like graffiti to terrorize and intimidate.

HOW A GANG INJUNCTION IS OBTAINED

To obtain a gang injunction, the City Attorney must prove to the court that the gang's activities constitute a public nuisance. A public nuisance is defined as anything which is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood.¹⁶ The public nuisance doctrine essentially recognizes that an individual's or entity's actions can be restricted when they interfere with the rights of others.¹⁷

Criminal street gangs easily meet the definition of public nuisance because their primary activities are criminal, such as property crimes, crimes of violence, and narcotics sales, all of which are always a nuisance under the law because they are so harmful to the community.¹⁸ In addition, street gangs engage in other activities, such as intimidating neighborhood residents, which, although not normally thought of as a crime, substantially interferes with the comfortable enjoyment of life or property of residents who live in the area claimed by the gang. All of the gang's activities that have been proven to create a public nuisance may be restrained.¹⁹

The fact that the gang is a public nuisance must be proven to the court by clear and convincing evidence, a standard of proof greater than that ordinarily required in civil cases. This standard is required by the California Court of Appeal's decision in *People v. Englebrecht*,²⁰ and is met by submitting to the court substantial proof of the crimes and nuisance activities in which the gang's members have engaged. In fact, in a typical gang injunction case, hundreds of pages of legal documentation evidencing the gang's activities are offered in support of the application for the injunction.

In all gang injunction cases brought by the Los Angeles City Attorney, the gang itself is sued as the defendant. As discussed, if the court enters an injunction against the defendant gang, the injunction will bind all of the gang's members.

Evaluation Phase

Before an attempt is made to obtain a gang injunction, the targeted gang is stringently evaluated to determine whether it fits the legal definition of a criminal street gang,²¹ whether the conduct of its members amounts to a public nuisance, whether sufficient documentation of these facts is likely to exist, and whether the gang and its activities are of the kind that are likely to be abated by the issuance of an injunction. This evaluation includes determining how long the gang has operated in the area and whether it is primarily turf-based or transitory. To be effective, this analysis must be the product of a partnership between prosecutor and investigator. In essence, because there are many potential target gangs in the City of Los Angeles, a cost-benefit analysis of the project must be performed before it is begun.



Evidence-Gathering and Preparation Phase

The process of obtaining a gang injunction begins with a period of preparation in which evidence of the gang's criminal and nuisance activities and documentation on the gang's members is gathered and analyzed. This phase of the process is lengthy because targeted gangs typically have a long history of criminal activity, and there is normally a tremendous volume of documentation that must be gathered and reviewed. This process produces the evidence that is submitted to the court in support of the claim that the gang is a public nuisance. This evidence, which must be in a form admissible in court, includes affidavits testifying to the gang's activities, photographs, and documentary evidence of criminal convictions of the gang's members. This documentation must prove that the conduct is attributable to the gang.



In addition to evidence of a pattern of criminal and nuisance conduct, the documentation must identify several of the gang's current members so that the court may order that they be designated to receive service of process on behalf of the gang.

Litigation Phase

Once the gang's activities are sufficiently documented to prove their criminal and nuisance activities, the case may be brought to court. As in any civil case, the summons, complaint, and all other documents filed with the court must be served on the defendant. Because a gang has no fixed address where these can be sent, nor does it have a formal official like a president who can accept service on behalf of the gang, the City Attorney requests the court to allow all of these court papers to be served on the gang by serving individual members of the gang. This is the only possible way to assure that members of the gang are on notice of the lawsuit against the gang.

As part of this process, letters are given to gang members advising them that a gang injunction will soon be filed against their gang, and that the City Attorney will request at a hearing that this service procedure be approved. The City Attorney then submits documentation to the court for each of the persons to be served on behalf of the gang establishing their gang membership and allowing the court to be certain that each person is, in fact, a member of the gang, and can accept service on behalf of the gang. It is not until this hearing, of which gang members are notified, that the court makes the decision to allow the gang to be notified by service on its members.

The issue of whether the court will issue a preliminary injunction against the gang is reserved for another hearing, which occurs only after the service of all the court documents on the court-approved designated gang members has been accomplished.

This procedure has been shown to give adequate and effective notice to the targeted gang. Members of the gang frequently show up to the hearings, including the first hearing of which the gang is notified by letter. In one case, members of the targeted gang chartered a bus to provide transportation to the courthouse for all of the members who wished to oppose the issuance of the preliminary injunction. These individuals filled all the available courtroom seats, demonstrating that the gang was clearly aware of the gang injunction proceedings.

In fact, word of the injunction typically travels fast throughout gangs when members are given notice of a possible injunction. Publicity surrounding injunctions, including not just word-of-mouth but television and other media coverage of the application for injunction, puts the gang on notice.

Proof that the gang is on notice is often evidenced by gang graffiti denouncing the injunction, which crops up after the gang members are notified of the injunction proceedings. Police interviews with gang members and their families reveal that news of an injunction spreads throughout the gang and the whole neighborhood. Indeed, before a hearing on one gang injunction, the father of several of the gang's members told police officers that everyone knew about the injunction.



After members of the KAM gang were served with injunction paperwork, but before the hearing on the injunction, KAM gang graffiti began to appear challenging the injunction and its "Safety Zone."



Members of the Avenues gang reacted quickly to news that the City was seeking an injunction against them, responding with graffiti reading, "F*** YOUR INJUNCTION." In January 2007, members of the 204th Street Gang in the Harbor-Gateway area of Los Angeles used similar graffiti to send the same message to law enforcement.

At the hearing on the preliminary injunction, the court hears from the parties and decides if the evidence is sufficient to issue an injunction. All members of the gang who choose to appear have an opportunity to be heard at this hearing. Opposition to these injunctions also has come from attorneys representing gang members. The litigation then proceeds much like other civil litigation, except that the standard of proof for gang injunctions is higher.



The day after members of the Schoolyard Crips were notified of the City's injunction effort, word had obviously spread through the gang, as graffiti reading "INJUNCTION KILLA" was tagged in the Safety Zone, along with the claim of authorship, "LEFTY DID IT."



ENFORCEMENT OF GANG INJUNCTIONS

When a member of an enjoined gang violates a gang injunction, that gang member can be prosecuted for contempt of court, which is a misdemeanor.²² In a contempt prosecution, the defendant has all of the rights due any criminal defendant, including the presumption of innocence, the right to an attorney, the right to a jury trial, the right to call witnesses on his or her behalf, and the right to confront and cross-examine witnesses against him or her and to see the prosecution's evidence. In addition, under California law, the defendant can contest the validity of the underlying injunction in the criminal court in which the prosecution is pending.²³

To prove that a gang member violated the injunction, the prosecutor must be able to prove all of the following three elements ***beyond a reasonable doubt***:

- 1) That the defendant had notice of the injunction, which is done by proving that he had been personally served a copy of the court order;
- 2) That the defendant was a gang member at the time of the violation, and was, therefore, subject to the injunction; and
- 3) That the defendant did some act that violated the injunction within the defined "Safety Zone."²⁴

If the defendant was charged, for example, with violating an injunction by associating with another gang member in public within the Safety Zone, the prosecution would have to convince a jury beyond a reasonable doubt that the defendant was a gang member at the time of the violation; that he or she had been previously served with the injunction; that he or she was in fact associating within the Safety Zone with another person who was a gang member; and that he or she *knew* the other person was a gang member.²⁵

WHO MAY BE PROSECUTED FOR VIOLATING A GANG INJUNCTION?

As noted above, a gang injunction binds the entire gang including all of the gang's members. All of the injunctions currently in effect in the City of Los Angeles started with a lawsuit that named the gang as a defendant.²⁶ The resulting injunctions thus bind the gangs themselves, as well as all of the gang's members.

It is a person's membership in the gang that places him or her in the category of persons to whom the injunction applies. Whether the individual was a party to the proceedings in which the injunction was sought is not relevant; what is relevant is the issue of the defendant's gang membership. (A discussion of this well-established legal rule is contained in "The Key to Making Gang Injunctions Work" above.)

Arrest and prosecution depends on hard evidence of the defendant's gang membership, which must be presented to the jury.

prosecution depend on hard evidence of the defendant's gang membership -- evidence that must be admissible at trial and sufficient to convince the jury, beyond a reasonable doubt, that the individual was a gang member at the time of the violation.

Determining who is and is not a member of the gang is therefore essential to the success of a gang injunction. This determination involves a process of intelligence gathering, which is the task of specially-trained police officers assigned to gang enforcement, commonly referred to as "gang experts." These officers have, as part of their duties, the job of determining who are the gang members in a particular area, which they do by spending much of their time gathering intelligence by talking to and studying gang members in the area.

It is only because these officers are frequently successful in gathering evidence of an individual's gang membership that arrests and prosecutions are able to occur. Such evidence might include gang-related activities and crimes in which the defendant has taken part, the defendant's gang-related tattoos, or the defendant's own admissions of gang membership. All of this evidence may be challenged, impeached, and contradicted by defense counsel (to which the defendant is entitled, regardless of ability to pay) in all criminal contempt prosecutions based on a violation of a gang injunction.

A WORD ABOUT "DOE" DEFENDANTS

California law permits designating unknown defendants by a fictitious name in order to allow defendants who might be discovered in the future to be added to the lawsuit (Code of Civil Procedure section 474.) Under this procedure, lawyers practicing in California routinely allege, in addition to the named defendant(s), a certain number of defendants who are usually designated as "Does." "Doe" defendants represent a legal shortcut for additional parties to be made defendants after a lawsuit is filed, if such a need arises. Although these "Does" appear on the face of the complaints for gang injunctions, they are not the procedure used to "add" defendants to make them subject to a gang injunction, as all members of the gang are subject to the injunction once it is issued.

When the court issues a judgment granting an injunction, the "Doe" defendants are routinely dismissed, and all future prosecutions of gang members for violating the gang injunction proceed by proving in each case that the defendant is a gang member.

In addition, gang prosecutions almost always require the prosecutor to call a gang expert as a witness because gangs and gang membership are matters typically beyond the common experience of jurors, who may know little about how to interpret the evidence to determine whether the defendant is a gang member. The gang expert is typically a law enforcement officer specially-assigned to gang enforcement, who has developed expertise on the gang as a part of his or her duties. Civilian experts are not used because few people other than gang members and their close associates have the necessary contact with and knowledge of the gang's members and local residents who might possess this knowledge would be endangered by testifying. A gang expert must satisfy the trial judge that his or her knowledge, skill, experience, training, and/or education is sufficient to qualify the witness as an expert.²⁸ Only those officers who have enough knowledge and experience with the gang to qualify in court as experts are called for this purpose. The defense is also entitled to call a gang expert as one of their witnesses, at the court's expense.

Service of the Gang Injunction

Even members of the gang subject to the injunction are not subject to prosecution for violating it unless they are personally on notice of the injunction. Gang members are notified by personal service of the injunction, which is usually done by a police officer handing the injunction to the individual being served.²⁹


When a gang member is formally charged with violating the injunction, the prosecution then presents evidence that the defendant was served with the injunction, to demonstrate that the defendant was notified of the injunction and its provisions.

Only police officers specially assigned to gang enforcement, who have training on serving gang injunctions and determining an individual's gang membership, are currently authorized to serve gang injunctions.

BEING "CATEGORIZED" AS A GANG MEMBER DOES NOT CAUSE A PERSON TO BE BOUND BY AN INJUNCTION

For investigatory purposes, the LAPD, like many police agencies, maintains records of gang members who are contacted by its officers. The Department also abides by criteria approved by the California Department of Justice (CAL-DOJ) for classifying an individual as a gang member. The determination of whether an individual may be served with a gang injunction, or arrested or prosecuted for violating a gang injunction, is separate from the question of whether the individual has, however, ever been documented as a gang member. *Prosecution for violating a gang injunction requires proof beyond a reasonable doubt that the defendant was a gang member at the time of the alleged injunction violation.*

Furthermore, the mere fact that an individual associates with a gang member or members does not suffice to prove that the individual is a gang member who is subject to a gang injunction. Such association does not even suffice under either CAL-DOJ or LAPD criteria for documenting someone as a gang member. Individuals who have been documented as associating with a known gang member are considered "gang affiliated," and may not be identified as a gang member in departmental records based on this alone. When the documentation does not exist to prove the individual's gang membership, such persons may not be served with an injunction.



Properly understood, service of an injunction on an individual does not render that person bound by the injunction. If a person is a gang member, he or she is bound by the gang injunction by virtue of his or her current *membership* in the enjoined gang, in accordance with long-standing and settled legal rules. Service is used to show that the bound individual had notice of the injunction and its provisions.

These principles represent the most compelling and powerful limitation on the use of gang injunctions: whether an individual must abide by the injunction depends wholly upon whether that individual is, in fact, a gang member. The fact that the alleged violator was a gang member on the date of the violation must be proven, beyond a reasonable doubt, in each case in which a violation is alleged. If a gang member is able to successfully break from the gang and no longer acts on behalf of the gang, he or she is not bound by the injunction. This is why “getting off” of the injunction means first leaving the gang. The ultimate decision to become free of an injunction’s restrictions remains with the individual, who may do so by leaving his or her gang and ceasing to act on behalf of the gang, or by moving outside of the “Safety Zone.”

The determination of whether an individual is bound by the terms of the gang injunction is not up to either the police or prosecutors, nor does being “categorized” as a gang member trigger the injunction’s restrictions. In each and every criminal case based upon an injunction violation, the determination of gang membership must be made in court and must be based on competent evidence of gang membership at the time of the violation, which requires the evidence of gang membership to be recent and compelling. The role of the police investigators is to gather admissible evidence of gang membership; the role of the prosecutor is to present competent evidence in court. Indeed, current gang members often make unsubstantiated claims that they are no longer affiliated with the gang in an attempt to defeat a meritorious prosecution. Such claims, however, do not change the prosecutor’s burden to establish gang membership in every injunction violation case.

CONCLUSION

Gang injunctions are effective legal tools that enable communities to take back their streets and public places from the gangs and gang members that terrorize them. When employed as part of a comprehensive strategy, gang injunctions contribute to the stabilization of communities and reduce urban blight and gang-related crimes. Where a gang injunction is used as part of a strategy that includes the efforts and expertise of other governmental agencies and community organizations, the positive effect on the overall well-being of a neighborhood can be dramatic.

In the final analysis, the Los Angeles City Attorney's use and enforcement of gang injunctions is entirely consistent with due process of law, follows well-established legal precedent, protects the neighborhoods of Los Angeles, and safeguards the civil liberties of all of the city's residents.



END NOTES

- ¹ *People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1102, *cert. denied*, 521 U.S. 1121 (“Acuna”).
- ² *People v. Conrad* (1997) 55 Cal.App.4th 896, 902 (“Conrad”).
- ³ See *Acuna, supra*, 14 Cal.4th at pp. 1113-1115; see also *Madsen v. Women’s Health Center, Inc.* (1994) 512 U.S. 753, 765; *Anderson v. Souza* (1953) 38 Cal.2d 825, 840-841.
- ⁴ See *Acuna, supra*, 14 Cal.4th at p. 1114.
- ⁵ (1994) 512 U.S. 753.
- ⁶ *People v. Poe* (1965) 236 Cal.App.2d Supp. 928, 939-940 (“Poe”); see also *In re Felthoven* (1946) 75 Cal.App.2d 465, 468; *People v. Hadley* (1924) 66 Cal.App. 370, 379; *People v. Saffell* (1946) 74 Cal.App.2d Supp. 967, 979 (“Saffell”).
- ⁷ See *Berger v. Superior Court* (1917) 175 Cal.719, 721 (“Berger”); *Saffell, supra*, 74 Cal.App.2d Supp. at p. 979.
- ⁸ See Report at: http://grandjury.co.la.ca.us/gjury03-04/LACGJFR_03-04.pdf.
- ⁹ See, e.g., C. Maxson, K. Hennigan and D. Sloane, “‘It’s Getting Crazy Out There’: Can a Civil Gang Injunction Change a Community?” (August 2005) *Criminology and Public Policy*, Vol. 4, No. 3; J. Grogger, “The Effects of the Civil Gang Injunctions on Reported Violent Crime: Evidence from Los Angeles County” (April 2002) *Journal of Law and Economics*, Vol. 45.
- ¹⁰ “Politics in the Street: The Debate That Matters on Gang Injunctions,” J. Trevino, *LA Weekly*, May 23, 2001.
- ¹¹ See Report at: http://grandjury.co.la.ca.us/gjury03-04/LACGJFR_03-04.pdf
- ¹² Statement made at hearing in *People v. 38th Street Gang*, Case No. BC319166.
- ¹³ “Flying the Flag,” C. Fremon, *LA Weekly*, July 17, 2003.
- ¹⁴ See *People v. Lennon* (1897) 166 U.S. 548, 554; *Berger, supra*, 175 Cal. at p. 721; *Saffell, supra* 74 Cal.App.2d Supp. at p. 978; see also *Ross v. Superior Court* (1977) 19 Cal.3d 899, 905-906; *Greenly v. Cooper* (1978) 77 Cal.App.3d 382, 395.
- ¹⁵ 14 Cal.4th at p. 1124 [quoting *Berger, supra*, 175 Cal. at p. 721].

END NOTES

- ¹⁶ See Civil Code sections 3479 and 3480; see also Penal Code sections 370 and 371.
- ¹⁷ See *Acuna, supra*, 14 Cal.4th at pp. 1108-1109; see also *People v. Englebrecht* (1998) 67 Cal.App.4th 486, 492 (“*Englebrecht I*”).
- ¹⁸ See *Acuna, supra*, 14 Cal.4th at pp. 1108-1109.
- ¹⁹ See *Acuna, supra*, 14 Cal.4th at pp. 1108-1109.
- ²⁰ (2001) 88 Cal.App.4th 1236, 1256 (“*Englebrecht II*”).
- ²¹ See Penal Code Section 186.22, subdivision (f) [STEP Act definition of “criminal street gang.”].
- ²² See Penal Code section 166, subdivision (a)(4) [criminal contempt].
- ²³ See *People v. Gonzalez* (1996) 12 Cal.4th 804, 818-819; *In re Berry* (1968) 68 Cal.2d 137, 147-148.
- ²⁴ Penal Code section 166 subdivision (a)(4); CALCRIM 2700; see also *Saffell, supra*, 74 Cal.App.2d Supp. at p. 979; *Poe, supra*, 236 Cal.App.2d Supp. at pp. 939-940.
- ²⁵ *Acuna, supra* 14 Cal.4th at p. 1117-1118.
- ²⁶ Some past gang injunction actions named individual gang members as defendants in addition to the gang itself. For the reasons explained herein, this practice is no longer followed by the City Attorney.
- ²⁷ Injunctions bind those persons through whom the enjoined entity may act. Gangs act almost entirely through their members. For a non-gang member to be bound by the injunction, it must be shown that the person was acting “with or for” the gang while doing the act which would violate the injunction, such as when a “gang wannabe” spray-paints the gang’s graffiti. (See *Conrad, supra*, 55 Cal.App.4th at p. 903; see also *Berger, supra*, 175 Cal. at p. 721; *Berry, supra*, 68 Cal.2d at pp. 155-156.)
- ²⁸ See Evidence Code section 720.
- ²⁹ *Poe, supra*, 236 Cal.App.2d Supp. at p. 939.

For More Information



Office of Los Angeles City Attorney Rocky Delgadillo
800 City Hall East
200 North Main Street
Los Angeles, CA 90012
(213) 978-8100
<http://www.lacity.org/atty/>

Criminal and Special Litigation Branch

Jeffrey B. Isaacs
Chief
(213) 978-7948
jeffrey.isaacs@lacity.org

Bruce Riordan
Coordinator of Anti-Gang Programs and Operations
(213) 978-8049
bruce.riordan@lacity.org

Marty Vranicar
Supervising Attorney, Gang Prosecution and Prevention Section
(213) 978-4099
marty.vranicar@lacity.org

Max Shiner
Deputy in Charge,
Valley Anti-Gang Operations
(213) 978-8100
max.shiner@lacity.org

**OFICINAS DEL
PROCURADOR DE LA CIUDAD
DE LOS ÁNGELES
ROCKY DELGADILLO**

INFORME DEL PROCURADOR DE LA CIUDAD

**MANDATOS JUDICIALES ANTIPANDILLAS:
CÓMO Y POR QUÉ FUNCIONAN**

Abril de 2007

JEFFREY B. ISAACS
Jefe, Sección de Litigio Criminal
y Especial

BRUCE RIORDAN
Director de Programas y
Operaciones Antipandillas

MARTY VRANICAR
Procurador Supervisor,
Sección de Prevención y
Enjuiciamiento de Pandillas

MAX SHINER
Delegado a Cargo,
Operaciones Antipandillas del Valle

OFICINAS DEL PROCURADOR DE LA CIUDAD

ROCKY DELGADILLO

ÍNDICE

	Página
PREFACIO	1
MANDATOS JUDICIALES ANTIPANDILLAS – INTRODUCCIÓN	2
FUNDAMENTOS DE LOS MANDATOS JUDICIALES.....	3
POR QUÉ SON NECESARIOS LOS MANDATOS JUDICIALES.....	4
LOS MANDATOS JUDICIALES ANTIPANDILLAS SON EFECTIVOS.....	5
ACTIVIDADES PROHIBIDAS POR LOS MANDATOS JUDICIALES ANTIPANDILLAS.....	6
LA CLAVE PARA QUE LOS MANDATOS JUDICIALES ANTIPANDILLAS DEN RESULTADOS.....	7
CÓMO SE OBTIENE UN MANDATO JUDICIAL ANTIPANDILLAS.....	9
Fase de evaluación	9
Fase de recopilación de pruebas y preparación.....	10
Fase de Litigio.....	10
APLICACIÓN DE LOS MANDATOS JUDICIALES ANTIPANDILLAS.....	13
¿QUIÉN PUEDE SER PROCESADO POR CONTRAVENIR UN MANDATO JUDICIAL ANTIPANDILLAS?	14
Evidencia de afiliación pandilleril	14
Notificación del mandato judicial antipandillas.....	15
CONCLUSIÓN	17
NOTAS FINALES.....	18

PREFACIO

No tenemos sencillamente un problema de pandillas en este país; tenemos una crisis pandilleril. El Departamento de Justicia de los EE.UU. ("US-DOJ") calcula que hay aproximadamente 731,000 integrantes de pandillas a nivel nacional, mientras que otro estudio reciente del US-DOJ demuestra que se cuenta solamente con 708,000 oficiales de policía estatales y locales. De hecho, la experiencia indica que esta crítica brecha podría estar ensanchándose en lugar de decrecer. Claramente, el gobierno necesita usar todos los recursos disponibles para hacer frente a esta crisis inmediatamente.

Un recurso significativo con el que cuentan los fiscales y las agencias policiales es el mandato judicial antipandillas. Los mandatos judiciales antipandillas nos permiten ser más estrictos, pero también más inteligentes, al combatir las pandillas delincuentes callejeras. A estas alturas, ya no queda la menor duda: los mandatos judiciales antipandillas efectivamente reducen el crimen relacionado con pandillas e impiden que las pandillas controlen y aterricen a las comunidades. Estadísticas del Departamento de Policía de Los Ángeles ("LAPD") demuestran que la delincuencia pandilleril ha declinado en un 13% desde 2001. En las áreas designadas como "Zonas de Seguridad", en las que operan los mandatos judiciales antipandillas, los delitos graves han disminuido hasta en un 53%.

La evidencia anecdótica y el testimonio de las comunidades locales confirman que los delitos contra la "calidad de vida" (tales como la pintar graffiti o "tagging", beber o usar narcóticos en público, y la alteración del orden público) disminuyen cuando hay un mandato judicial antipandillas en vigor. Lo más importante es que los mandatos judiciales antipandillas ofrecen un muy necesario alivio a la comunidad de la constante presencia de la pandilla en la calle, y permite que los programas de contacto comunitario, intervención y prevención, y los trabajadores de los mismos, laboren con seguridad para disminuir aún más las actividades de las pandillas delincuentes y la afiliación en las mismas.

"Muy pocas veces los logros de las iniciativas públicas producen resultados tan claros como éstos".

- Informe del Gran Jurado Civil del Condado de Los Ángeles County Civil sobre los mandatos judiciales antipandillas

[Fotografía]

Es un orgullo para mí decir que, a la fecha de este informe, mis fiscales, trabajando conjuntamente con los dedicados hombres y mujeres del LAPD, han obtenido 33 mandatos judiciales permanentes contra un total de 50 pandillas en Los Ángeles. Con base en el éxito documentado de los mandatos judiciales civiles antipandillas, que también ha sido verificado independientemente por el Gran Jurado Civil del Condado de Los Ángeles, mi oficina respalda firmemente al LAPD con un compromiso de obtener mandatos judiciales antipandillas según sea necesario y hacerlos cumplir diligentemente como un medio efectivo de debilitar el control que mantienen las pandillas callejeras criminales sobre demasiadas de nuestras comunidades.

ROCKY DELGADILLO
Procurador De La Ciudad
Ciudad de Los Ángeles

MANDATOS JUDICIALES ANTIPANDILLAS – INTRODUCCIÓN

Aunque las pandillas han existido en la ciudad de Los Ángeles por décadas – y han sometido a los residentes de la ciudad a abuso, intimidación, lesiones físicas, destrucción de propiedad, pérdida de vidas, y otras formas de persecución a lo largo de todo ese lapso – sólo en tiempos relativamente recientes aquéllos en el gobierno responsables de garantizar la seguridad de las comunidades han reconocido que era posible hacer responsables a las pandillas como organizaciones, incluyendo a sus miembros, de los actos perjudiciales de las mismas a través de los tribunales civiles.

Los "mandatos judiciales antipandillas" son producto de una idea sencilla aunque previamente ignorada: que es posible demandar a una pandilla en un tribunal civil igual que a cualquier otra entidad. El poder de los mandatos judiciales antipandillas reside en que estas demandas civiles pueden resultar en órdenes judiciales que les prohíben a los miembros de la pandilla tomar parte en actividades que se haya demostrado que contribuyen al daño que causan las pandillas, como asociarse con otros miembros de pandillas en público, entrar ilegalmente en propiedad privada, y marcar su territorio con graffiti. Estos mandatos judiciales son hasta cierto punto singulares en el sentido de que son una de las pocas herramientas legales de prevención disponibles a las agencias policiales: es posible limitar las actividades de los miembros de la pandilla con el fin de evitar que tomen parte en actividades delictivas. Como observó el Tribunal Supremo de California al defender la constitucionalidad de los mandatos judiciales antipandillas:

"Con frecuencia se invoca el interés público en la tranquilidad, seguridad y protección sólo para que sea fácilmente descartado, subordinado al derecho superior del individuo. En este caso, sin embargo, la verdadera naturaleza de la disyuntiva se hace evidente. La libertad sin restricciones es una invitación a la anarquía. La libertad y la responsabilidad van de la mano".¹

Los mandatos judiciales antipandillas limitan las acciones de un grupo de personas. Ese grupo consta de los integrantes de la pandilla callejera delincuente, los cuales se ha comprobado que participan persistentemente en un patrón de actividades delictivas y perjudiciales.

Cuando una pandilla ha tomado parte en tantos delitos y, a través de sus actividades cotidianas, ha infringido el derecho de otros miembros de la comunidad a gozar libremente de la vida y la propiedad, no sólo es legal que un tribunal prohíba las acciones de dicha pandilla, sino que es apropiado y justo. Aunque los pandilleros continúan siendo libres de ser pandilleros, si deciden continuar dicha trayectoria, tienen la responsabilidad de someterse al mandato judicial. En las palabras de un tribunal, los mandatos judiciales "pueden tratar de privar a las partes sujetas a la prohibición de los derechos de los que gozan los demás precisamente porque las partes bajo la prohibición han abusado de dichos derechos en el pasado".¹¹

Los mandatos judiciales antipandillas no serían posibles si las pandillas no pudiesen ser demandadas en un tribunal civil de igual manera que cualquier otra entidad. Cuando un grupo de individuos se une para formar una organización o asociación, tal grupo es responsable de las consecuencias de sus actividades. Al igual que una empresa o club o cualquier otro grupo, una pandilla criminal callejera es una organización, y sus integrantes no pueden, como grupo o de manera individual en favor del grupo, contravenir la ley sin consecuencias. Este principio de sentido común es el meollo de los mandatos judiciales antipandillas: las normas de conducta aplicables a todas las organizaciones se aplican también a las pandillas y a los integrantes de pandillas.

[Fotografía]

FUNDAMENTOS DE LOS MANDATOS JUDICIALES

Un mandato judicial es una orden de un tribunal que exige que las personas sujetas a ella hagan o dejen de hacer ciertas cosas. Este concepto es uno de los poderes fundamentales de la magistratura. Los jueces, si han de ejercer alguna autoridad, deben tener la capacidad de hacer que las personas se adhieran a sus órdenes judiciales, y el mandato judicial es parte de esta facultad necesaria.

Los tribunales no tienen poder ilimitado para emitir mandatos judiciales. Por ejemplo, no pueden emitir órdenes que sean inconstitucionales. Además, tienen que ser específicos en las órdenes que promulguen: las personas sujetas a la orden deben ser identificadas, o bien individualmente, o como un grupo identificable, y las "ciertas cosas" requeridas o prohibidas por la orden deben estar definidas. En definitiva, el mandato judicial debe abordar el problema específico que el tribunal intenta remediar.ⁱⁱⁱ

Se demuestran las violaciones a los mandatos judiciales antipandillas probando que el acusado es miembro de la pandilla sujeta a la prohibición.

Sin embargo, debido a que un juez que emite un mandato judicial está procurando remediar un problema específico causado por personas o grupos en particular, el juez puede prohibirles a dichas personas hacer cosas que la legislatura no podría hacer ilegales por medio de aprobar una ley. Esto es el caso debido a que los mandatos judiciales son remedios impuestos por el juez por contravenciones específicas (o amenazas de contravenciones) de la ley.^{iv}

Por ejemplo: La legislatura no podría aprobar una ley que prohibiese que las personas que protestan contra el aborto se congreguen cerca de clínicas de aborto para realizar sus protestas, debido a consideraciones relacionadas con la Primera Enmienda a la Constitución. Sin embargo, un tribunal puede prohibir que organizaciones de protesta específicas lo hagan en clínicas específicas, si la evidencia presentada ante el juez demostrara que esta orden es necesaria para hacer que dichos grupos no continúen interfiriendo con los derechos de otros. De hecho, esto es precisamente lo que el Tribunal Supremo de los Estados Unidos hizo en el caso de *Madsen v. Women's Health Center, Inc.*^v cuando dicho tribunal sostuvo tal mandato judicial.

[Fotografía]

Por lo tanto, los mandatos judiciales difieren de los estatutos y las ordenanzas en que el enfoque de aquéllos es mucho más restringido en cuanto a quién se aplican y qué es lo que aplican. Hay un aforismo bien conocido que reza "la ignorancia de la ley no es una defensa". Esto es cierto de los estatutos, los cuales todo el mundo tiene que obedecer. (Por eso a los visitantes a estados donde es ilegal dar vuelta a la izquierda con el semáforo en rojo aún se les imponen multas aunque no hayan sabido la regla). En contraste, para estar sujeta a un mandato judicial, una persona tiene que haber sido notificada previamente del mandato judicial y de los términos del mismo. Porque es una orden especial que se aplica solamente a ciertas personas o grupos de personas, es necesario que a dichas personas se les haya notificado del mandato judicial o que de otro modo tengan conocimiento del mandato judicial y sus requisitos, antes de poder ser halladas culpables de quebrantarlo.^{vi}

Además, como que un mandato judicial sólo se aplica a una clase limitada de personas, para probar una violación de un mandato judicial se requieren pruebas de que el mandato judicial se aplica a la persona acusada de contravenerlo. En el caso de los mandatos judiciales antipandillas, para establecer la existencia de una violación se requieren pruebas de que el acusado era miembro de la pandilla sujeta a prohibiciones en el momento en que ocurrió la infracción.^{vii}

POR QUÉ SON NECESARIOS LOS MANDATOS JUDICIALES ANTIPANDILLAS

Un mandato judicial antipandillas les ofrece una herramienta legal a las agencias policiales con la cual hacer frente a los singulares problemas presentados por las pandillas callejeras criminales de naturaleza territorial. Las pandillas callejeras criminales tienen una característica en común: reclaman territorio. Las pandillas se apoderan de los vecindarios, marcando su territorio con graffiti, diciéndole a todo el mundo que el barrio les pertenece, amenazando a aquéllos de fuera que se atreven a invadir su territorio, y, lo más importante, amenazando e intimidando con su presencia a los residentes del área respetuosos de la ley.

A diferencia de los delincuentes comunes, las pandillas callejeras criminales divulgan sus actividades delictivas. Una pandilla territorial prospera cuando ha hecho patente su presencia ante todo el mundo en el barrio. Cuando una pandilla ha cultivado una reputación de violencia y la disposición a tomar represalias contra quienes la desafían, esa pandilla puede atemorizar a los residentes de la comunidad hasta el punto de que se escondan al darse cuenta de las actividades criminales de la pandilla. Los testigos no están dispuestos a arriesgarse y denunciar los delitos de la pandilla por temor a convertirse en blanco de represalias como "delatores" o "ratas". Por medio de pura intimidación,

las pandillas pueden subvertir las protecciones constitucionales del sistema legal, como el derecho a confrontar a testigos, y socavar el sistema de justicia penal.

Es por esto que los delitos de pandillas frecuentemente quedan sin solución, aunque la mayor parte de los crímenes pandilleriles ocurren en público y no a puertas cerradas. El temor insidioso que las pandillas crean en sus vecindarios resulta en la queja frecuente de oficiales de policía y detectives que investigan los asesinatos pandilleriles: "Todo el mundo sabe quién lo hizo, pero no hay testigos".

Los mandatos judiciales antipandillas procuran cambiar esa dinámica y restaurar el equilibrio en las comunidades. Cuando los integrantes de pandillas se congregan, fomentan las actividades de la pandilla, se alientan unos a otros a cometer crímenes en favor de la

[Fotografía]

La fuerza de una pandilla reside en el número de sus integrantes. Los mandatos judiciales antipandillas atacan al corazón de esa fuerza.

pandilla, se convierten en blancos para los miembros de las pandillas rivales, y sirven como un recordatorio constante a la comunidad de que la pandilla está ahí, lista para atacar. Mientras mayor sea el número de integrantes con los que cuenta y más visible sea la pandilla, más fuerte se vuelve, y más temor puede infundir a la comunidad. Por esta razón, no hay afiliación legítimamente inocente en una pandilla criminal callejera – cada integrante contribuye a la "presencia" de la pandilla, a la capacidad de la misma para acosar, intimidar y cometer crímenes en su territorio.

Cuando se emite un mandato judicial antipandillas, todos los miembros de la pandilla quedan sujetos al mandato judicial. Todo pandillero individual que sea notificado del mandato judicial está a partir de ese momento sujeto a las restricciones del mandato judicial, cuya finalidad es evitar que los integrantes de la pandilla se conduzcan en formas que le hagan publicidad a la pandilla, que perpetúen la reputación de la pandilla, o que aumenten el dominio de la pandilla sobre el vecindario. Por lo tanto, el mandato judicial solamente será efectivo para lograr estos fines si todos los integrantes de la pandilla están sujetos a las restricciones del mandato judicial.

LOS MANDATOS JUDICIALES ANTIPANDILLAS SON EFECTIVOS

Los mandatos judiciales antipandillas constituyen un recurso importante porque dan resultados. Se ha demostrado que erosionan la capacidad de una pandilla para cometer crímenes, intimidar a otros y reducir la calidad de vida de los residentes de una comunidad.

"Una vigorosa vigilancia del cumplimiento de la ley les ofrece una excusa a algunos pandilleros para dejar la pandilla".

- Informe del Gran Jurado Civil del Condado de Los Ángeles County Civil sobre los mandatos judiciales antipandillas

Las estadísticas del Departamento de Policía de Los Ángeles (LAPD) corroboran la eficacia de los mandatos judiciales, registrando una típica disminución en los delitos importantes relacionados con pandillas después de la implementación de un mandato judicial. La evidencia anecdótica también respalda la idea de que los residentes en áreas infestadas de pandillas se sienten más seguros después del emplazamiento de un mandato judicial.

Un análisis independiente también confirma la eficacia de los mandatos judiciales antipandillas en la lucha contra la delincuencia. El Gran Jurado Civil del Condado de Los Ángeles de 2003-2004, un cuerpo independiente compuesto de ciudadanos, realizó un estudio de los mandatos judiciales antipandillas y concluyó que éstos resultan en una reducción significativa tanto en los delitos graves como en el total de delitos, mientras que no causa un desplazamiento significativo de la delincuencia hacia vecindarios adyacentes.^{viii} En efecto, el Gran Jurado concluyó que los mandatos judiciales civiles en contra de las pandillas juegan un papel importante en la intervención, la prevención y la supresión de las actividades pandilleriles. Estudios académicos realizados por expertos en este campo han concluido, de manera similar, que los mandatos judiciales antipandillas tienen efectos positivos.^{ix}

De hecho, los mandatos judiciales antipandillas son típicamente bien recibidos por la comunidad, y la reacción de los residentes ha sido abrumadoramente positiva. Aunque los informes de los medios de difusión acerca de los mandatos judiciales antipandillas tienden a enfocarse sobre la controversia o el conflicto, cuando se entrevista a los residentes del área infestada de pandillas, las reacciones son favorables. En un artículo, se citó a un residente que dijo, "Del uno al 10, les doy [a los mandatos judiciales] un 10".^x El Gran Jurado del Condado de Los Ángeles arribó a una conclusión similar, y determinó que cuando se han puesto en vigor mandatos judiciales, "los residentes experimentan un alivio de acciones particulares de las pandillas", y también "logran un mayor sentido de control [sobre sus vecindarios)".^{xi}

Los mismos pandilleros con frecuencia reconocen la eficacia de los mandatos judiciales en reducir el daño causado por las pandillas. Un miembro de pandilla presente en una audiencia sobre un mandato judicial provisorio, al preguntársele contra cuáles estipulaciones objetaba, declaró, "No tengo objeción contra ninguna de ellas. Creo que va a ser mejor para la comunidad".^{xii}

Otros pandilleros saben lo eficaces que son los mandatos judiciales, y por ese motivo expresan abiertamente animosidad y temor ante el proceso del mandato judicial civil.

Además de reducir la delincuencia e incrementar la seguridad, los mandatos judiciales también hacen los esfuerzos de intervención antipandilleril más efectivos, ya que crean un incentivo para que los jóvenes con alto riesgo eviten unirse a, o abandonen el estilo de vida pandilleril. El Padre Greg Boyle, quien opera una prominente agencia de intervención antipandillas, explicó el efecto de los mandatos judiciales de este modo: "Ocho minutos después de que se asentó uno aquí en el área del Este, ya tenía muchachos en mi oficina diciendo 'Consígame un trabajo'. Idealmente, un mandato judicial genera cierto tipo de presión vigilante que impulsa a los chicos hacia la luz".^{xiii}

[Fotografía]

ACTIVIDADES PROHIBIDAS POR LOS MANDATOS JUDICIALES ANTIPANDILLAS

El típico mandato judicial antipandillas se aplica solamente dentro de un área específicamente definida conocida como Zona de Seguridad, y les prohíbe a los pandilleros tomar parte en ciertas actividades perjudiciales para la comunidad o que han demostrado ser precursoras de la conducta delictiva y perjudicial de la pandilla. Estas prohibiciones típicamente incluyen las siguientes actividades:

- Asociarse en público con otros pandilleros conocidos;
- Confrontar, intimidar, molestar, acosar, amenazar, desafiar, provocar, agredir o lesionar a cualquier persona que se sepa que ha sido víctima o testigo de actividades pandilleriles;
- Estar en posesión, o a sabiendas permanecer en la presencia de cualquier persona que esté en posesión de una pistola, municiones o armas en cualquier lugar público;
- Estar en posesión, o a sabiendas permanecer en la presencia de cualquier persona que esté en posesión de una sustancia controlada o de parafernalia relacionada con las drogas;
- Estar presente en cualquier propiedad privada sin la autorización por escrito del propietario de la misma;
- Mutilar cualquier propiedad pública o privada o poseer instrumentos asociados con el graffiti; y
- Quebrantar un toque de queda impuesto por el tribunal, sujeto a excepciones.

Cada una de estas restricciones tiene como finalidad alterar la conducta de los integrantes de la pandilla en formas que reduzcan la capacidad de aquéllos para participar, o animar a otros a que participen, en actividades delictivas y perjudiciales, intimidar a los residentes del vecindario, mantener una reputación pública de criminalidad, reclutar a otros para que se unan a la pandilla, y mantener control sobre las áreas que la pandilla reclama como su territorio.



[Fotografía]

LA CLAVE PARA QUE LOS MANDATOS JUDICIALES ANTIPANDILLAS DEN RESULTADOS

La idea de que una pandilla puede estar sujeta a una demanda judicial como cualquier otra organización es lo que permite que se pueda entablar un caso de mandato judicial antipandillas. Pero lo que hace que el mandato judicial funcione es el principio legal de que un mandato judicial contra una organización se extiende a todos los miembros de la organización sujeta a prohibiciones. Este principio reconoce que las pandillas, al igual que otros grupos, actúan por medio de sus integrantes.

Una pandilla criminal callejera puede tener muchos miembros que aún nos son conocidos por la policía. La mayoría de las pandillas también están constantemente reclutando a nuevos miembros. Algunos integrantes podrían intentar abandonar la pandilla. Como resultado, el complemento de afiliados de una pandilla está en flujo constante, aunque las actividades delictivas de la misma pueden continuar indefinidamente. En Los Ángeles, es común encontrar pandillas multi-generacionales y con décadas de existencia, de manera que los padres y los abuelos de los nuevos miembros eran también integrantes de la pandilla. Pero las pandillas continúan cometiendo crímenes sin importar quiénes sean sus integrantes en cualquier momento dado. Por lo tanto, la pandilla en sí es el objeto del mandato judicial.

Un mandato judicial contra una pandilla sólo funciona si es extensivo a todos los miembros de la pandilla.

Siendo este el caso, un mandato judicial será efectivo sólo si se extiende a todos los integrantes de la pandilla. Presentar una demanda judicial para lograr un mandato judicial contra una pandilla es una tarea que requiere un enorme esfuerzo y una gran cantidad de investigación por parte de la policía y los fiscales. Si hubiera que presentar una demanda judicial por separado contra cada miembro de la pandilla, el resultado sería cientos de demandas. Además, cada vez que alguien se uniera a la pandilla, ya sea hoy o dentro de un año, habría que entablar una nueva demanda contra el nuevo integrante de la pandilla. Esto resultaría en litigios interminables y en una multitud de demandas para mantener el mandato judicial vigente contra el

siempre variable número de miembros de la pandilla, aún si no existiese controversia alguna sobre si la pandilla debería estar sujeta a prohibiciones. Esto también conduciría a preguntas adicionales: Si un tribunal decide que una persona pertenece a una pandilla, pero más tarde abandona dicha pandilla, ¿tendría esta persona que volver ante el tribunal para ser eximida del mandato judicial? Si se concluye que alguien no es miembro de una pandilla, pero más tarde comete un delito relacionado con la pandilla, demostrando claramente que es y siempre fue un integrante de la misma, ¿podría agregarse esta persona al mandato judicial? ¿Qué tal aquéllos que dejan la pandilla pero luego regresan, o que sólo dicen que han dejado a la pandilla?

Por estos motivos, la ley nunca ha exigido este enfoque imposible de implementar. Las leyes de California estipulan que un mandato judicial contra una entidad, tal como un negocio, un sindicato laboral, un grupo de protesta, una pandilla criminal callejera, o cualquier otra asociación o grupo, propiamente se extiende a "miembros" no nombrados que no forman parte oficial de la entidad bajo la prohibición, así como a ciertas otras clases de personas no nombradas, porque un grupo bajo prohibición puede actuar solamente a través de sus miembros o a través de las acciones de otros.^{xiv}

[Fotografía]

De hecho, el Tribunal Supremo de California específicamente aprobó este principio según se aplica a los mandatos judiciales antipandillas en el destacado caso de *People ex rel. Gallo v. Acuña*:

[El mandato judicial antipandillas] registrado por el tribunal superior es indistinguible de la práctica equitativa y respetada a través del tiempo que se aplica a sindicatos laborales, protestadores contra el aborto u otros grupos identificables. Debido a que dichos grupos pueden actuar solamente a través del medio de su afiliación, ". . . ha sido una práctica común hacer que el mandato judicial se extienda también a clases de personas por medio de las cuales la persona bajo la prohibición pueda actuar, tales como agentes, sirvientes, empleados y cómplices".^{xv}

Este precepto de ley es especialmente aplicable en el caso de una pandilla. Las pandillas aterrizan e intimidan a los vecindarios congregándose en grupos, ostentando sus tatuajes y señales de pandilla, marcando sus símbolos pandilleriles y haciendo alarde del nombre de la pandilla con el fin de atemorizar a sus víctimas durante la comisión de sus delitos. Este temor le permite a la pandilla cometer sus crímenes sin obstáculos. Después de cometer los delitos, las pandillas invocan su nombre pandilleril como un escudo detrás del cual se ocultan y eluden la responsabilidad por sus acciones. Si un pandillero cree que una víctima o un testigo ha denunciado el delito, la pandilla toma represalias o amenaza venganza contra la persona en nombre de la pandilla. Se les hace entender a las víctimas de la pandilla que las represalias podrían venir de cualquier integrante de la pandilla. Es precisamente porque el poder de las pandillas depende del nombre de la pandilla y del número de sus integrantes que se hace necesario y justo que se les trate como una entidad sujeta a prohibiciones bajo la ley.

[Fotografía]

Las pandillas usan amenazas y otras tácticas aterrizantes como el graffiti para aterrizan e intimidar.

CÓMO SE OBTIENE UN MANDATO JUDICIAL ANTIPANDILLAS

Para obtener un mandato judicial antipandillas, el Procurador De La Ciudad debe probar ante el tribunal que las actividades de la pandilla constituyen un perjuicio público. Se define como perjuicio público cualquier cosa que sea perjudicial para la salud, o que sea indecente u ofensiva a los sentidos, o una obstrucción al libre uso de la propiedad de manera que interfiera con el disfrute tranquilo de la vida o la propiedad por parte de toda una comunidad o vecindario.^{xvi} La doctrina del perjuicio público esencialmente reconoce que se pueden restringir las acciones de un individuo o una entidad cuando interfieren con los derechos de los demás.^{xvii}

Las pandillas criminales callejeras fácilmente satisfacen la definición de perjuicio público debido a que sus actividades primarias son delictivas, tales como delitos contra la propiedad, crímenes de violencia y venta de narcóticos, todas las cuales siempre constituyen un perjuicio público bajo la ley porque son perjudiciales para la comunidad.^{xviii} Además, las pandillas criminales callejeras toman parte en otras actividades, tales como intimidar a los residentes del vecindario, lo cual, aunque normalmente no se considera un crimen, interfiere considerablemente con el disfrute tranquilo de la vida o la propiedad de los residentes que viven en el área que la pandilla reclama como propia. Todas las actividades de la pandilla que hayan demostrado ser un perjuicio público pueden ser restringidas.^{xix}

El hecho de que la pandilla sea un perjuicio público debe demostrarse ante el tribunal por medio de pruebas claras y convincentes, una norma probatoria mayor que la que generalmente se requiere en casos civiles. El fallo del Tribunal de Apelaciones de California en el caso de *People v. Englebrecht*^{xx} exige esta norma probatoria, la cual se satisface presentando ante el tribunal pruebas sustanciales de los crímenes y las actividades perjudiciales en las que los integrantes de la pandilla han participado. De hecho, en un caso típico de mandato judicial antipandillas, se suministran cientos de páginas de documentación legal con evidencia de las actividades de la pandilla en respaldo de la solicitud de mandato judicial.

En todos los casos de mandato judicial antipandillas entablados por el Procurador De La Ciudad de Los Ángeles, se demanda a la pandilla misma como acusada. Como se ha indicado, si el tribunal emite un mandato judicial contra la pandilla acusada, el mandato judicial será vinculante para todos los integrantes de la pandilla.

Fase de evaluación

Antes de intentar obtener un mandato judicial antipandillas, la pandilla en cuestión se evalúa rigurosamente para determinar si se ajusta a la definición legal de una pandilla criminal callejera,^{xxi} si la conducta de sus miembros constituye un perjuicio público, si es probable que exista suficiente documentación de estos hechos, y si la pandilla y sus actividades son del tipo que probablemente se reduzcan como resultado de la emisión de un mandato judicial. Esta evaluación incluye determinar por cuánto tiempo la pandilla ha operado en el área y si es principalmente territorial o transitoria. Para ser efectivo, este análisis



[Fotografía]

debe ser producto de la colaboración entre el fiscal y el investigador. Esencialmente, debido a que existen muchas pandillas potencialmente objeto de este proceso en la Ciudad de Los Ángeles, es imperativo hacer un análisis costo-beneficio del proyecto antes de dar comienzo al mismo.

Fase de obtención de pruebas y preparación

El proceso de obtener un mandato judicial antipandillas comienza con un período de preparación durante el cual se recopilan y analizan las pruebas de las actividades criminales y perjudiciales y la documentación sobre los integrantes de la pandilla. Esta fase del proceso es extensa, porque las pandillas típicamente tienen un largo historial de actividad delictiva, y normalmente existe un enorme volumen de documentación que hay que recopilar y revisar. Este proceso produce la evidencia que se presenta ante el tribunal en respaldo de la alegación de que la pandilla constituye un perjuicio público. Esta evidencia, que debe estar en un formato admisible en el tribunal, incluye declaraciones juradas en testimonio de las actividades de la pandilla, fotografías, y evidencia documental de condenas criminales de los miembros de la pandilla. Esta documentación debe probar que la conducta es atribuible a la pandilla.

[Fotografía]

Además de suministrar pruebas de un patrón de conducta delictiva y perjudicial, la documentación deberá identificar a varios de los integrantes actuales de la pandilla de manera que el tribunal pueda ordenar que éstos sean designados para recibir notificación oficial de la acción judicial en representación de la pandilla.

Fase de litigio

Una vez que las actividades de la pandilla han sido suficientemente documentadas para probar sus actividades delictivas y perjudiciales, se podrá entablar el caso ante el tribunal. Como en cualquier caso civil, el acusado deberá recibir notificación de la citatoria, la demanda, y todos los demás documentos asentados ante el tribunal. Debido a que una pandilla no tiene un domicilio fijo adonde se puedan mandar estos documentos, ni cuenta con un oficial formal como un presidente que pueda aceptar la notificación a nombre de la pandilla, el Procurador De La Ciudad solicita que el tribunal permita que todos estos documentos se les entreguen a la pandilla por medio de notificación de proceso a miembros individuales de la pandilla. Éste es el único medio posible de garantizar que los integrantes de la pandilla estén notificados de la demanda contra la pandilla.

Como parte de este proceso, se les entregan cartas a los pandilleros notificándoles de que en breve se asentará un mandato judicial contra su pandilla, y que el Procurador De La Ciudad solicitará en una audiencia que se apruebe este procedimiento de notificación. El Procurador De La Ciudad entonces presenta al tribunal, para cada una de las personas a quien se notificará en nombre de la pandilla, documentación que establezca su afiliación en la pandilla y que permita que el tribunal sepa con certeza que cada persona es, en realidad, miembro de la pandilla, y que puede aceptar la notificación en nombre de la pandilla. No es sino hasta el momento de esta audiencia, de la cual se notifica a los integrantes de la pandilla, que el tribunal toma la decisión de permitir que a la pandilla se le avise por medio de notificación a sus integrantes.

La cuestión de si el tribunal emitirá un mandato judicial provisorio contra la pandilla se reserva para otra audiencia, que tiene lugar sólo después de que se ha efectuado la notificación de todos los documentos del tribunal a los integrantes de la pandilla designados, con la autorización del tribunal.

Se ha demostrado que este procedimiento le proporciona notificación adecuada y efectiva a la pandilla en cuestión. Los miembros de la pandilla a menudo asisten a las audiencias, incluyendo la primera audiencia de la cual a la pandilla se le ha notificado por carta. En un caso, los miembros de la pandilla en cuestión alquilaron un autobús para ofrecerles transporte al tribunal a todos los integrantes que desearan oponerse a la emisión del mandato judicial provisorio. Estos individuos llenaron todos los asientos disponibles en la sala del tribunal, demostrando que la pandilla estaba claramente consciente de las actuaciones del mandato judicial antipandillas.

De hecho, típicamente las pandillas conocen la noticia del mandato judicial rápidamente cuando se hace notificación a sus miembros de un posible mandato judicial. La publicidad que rodea a los mandatos judiciales, incluyendo no sólo la publicidad verbal, sino también la cobertura de la solicitud de una orden judicial por televisión y otros medios de comunicación, pone en alerta a la pandilla.

Como evidencia de que la pandilla está al tanto de la notificación, con frecuencia aparece graffiti pandilleril expresando oposición el mandato judicial después de que los pandilleros han sido notificados de las actuaciones del mandato judicial. Entrevistas policiales con pandilleros y sus familias revelan que la noticia de una orden judicial se riega entre la pandilla y por todo el vecindario. En efecto, antes de una audiencia para un mandato judicial antipandillas, el padre de varios de los integrantes de la pandilla les dijo a los oficiales que todo el mundo sabía del mandato judicial.

[Fotografía]

Después de que integrantes de la pandilla KAM fueron notificados con documentos del mandato judicial, pero antes de la audiencia sobre dicho mandato judicial, comenzó a aparecer graffiti en contra del mandato judicial y de su "Zona de Seguridad".

[Fotografía]

Los integrantes de la pandilla Avenues reaccionaron rápidamente a la noticia de que la Ciudad procuraba obtener un mandato judicial contra ellos, y respondieron con graffiti que rezaba, "F*** YOUR INJUNCTION" ("Ch*** a su mandato judicial"). En enero de 2007, miembros de la pandilla de 204th Street en el área Harbor-Gateway de Los Ángeles usaron graffiti similar para enviar el mismo mensaje a las autoridades policiales.

Durante la audiencia sobre el mandato judicial provisorio, el tribunal escucha testimonio de las partes y decide si la evidencia es suficiente para emitir un mandato judicial. Todos los miembros de la pandilla que deciden comparecer tienen la oportunidad de ser oídos durante esta audiencia. La oposición a estos mandatos judiciales también ha provenido de los abogados que representan a los pandilleros. El litigio entonces procede de manera similar a cualquier otro litigio civil, con la excepción de que la norma probatoria para los mandatos judiciales antipandillas es más rigurosa.

[Fotografía]

Un día después de que los miembros de la pandilla Schoolyard Crips recibieron notificación de los esfuerzos de la Ciudad para obtener un mandato judicial, la noticia obviamente había corrido por toda la pandilla, como se aprecia en el graffiti que dice "MUERTE AL MANDATO JUDICIAL " escrito en la Zona de Seguridad, con la atribución de responsabilidad, "LEFTY LO HIZO".

[Fotografía]

APLICACIÓN DE LOS MANDATOS JUDICIALES ANTIPANDILLAS

Cuando un miembro de una pandilla sujeta a prohibiciones comete una violación de un mandato judicial antipandillas, ese integrante de la pandilla puede ser procesado por desacato, lo cual es un delito menor.^{xxii} En un proceso por desacato, el acusado tiene todos los derechos que posee cualquier acusado criminal, incluyendo la presunción de inocencia, el derecho a un abogado, el derecho a un juicio con jurado, el derecho de citar testigos en su favor, y el derecho de confrontar y contrainterrogar a los testigos en su contra y de ver la evidencia de la fiscalía. Además, bajo las leyes de California, el acusado puede impugnar la validez del mandato judicial subyacente en el tribunal penal donde está pendiente el proceso.^{xxiii}

Para probar que un integrante de pandilla quebrantó un mandato judicial, el fiscal deberá probar todos y cada uno de los tres elementos siguientes **fuera de duda razonable**:

Que el acusado había recibido notificación del mandato judicial, lo cual se logra probando que al acusado se le había notificado personalmente con una copia de la orden judicial;

Que el acusado era pandillero en el momento en que ocurrió la violación, y que estaba, por lo tanto, sujeto al mandato judicial; y

Que el acusado cometió algún acto que constituyó una violación del mandato judicial dentro de la "Zona de Seguridad" definida.^{xxiv}

Si al acusado se le acusó, por ejemplo, de contravenir un mandato judicial asociándose en público con otro pandillero dentro de la Zona de Seguridad, la fiscalía tendría que convencer a un jurado fuera de duda razonable de que el acusado era pandillero en el momento en que ocurrió la violación; que se le había notificado previamente del mandato judicial; que de hecho se estaba asociando dentro de la Zona de Seguridad con otra persona que era integrante de la pandilla, y que sabía que la otra persona era integrante de la pandilla.^{xxv}

¿QUIÉN PUEDE SER PROCESADO POR CONTRAVENIR UN MANDATO JUDICIAL ANTIPANDILLAS?

Como se indica anteriormente, un mandato judicial antipandillas es vinculante para la totalidad de la pandilla incluyendo a todos los integrantes de la pandilla. Todos los mandatos judiciales actualmente en vigencia en la Ciudad de Los Ángeles se iniciaron con una demanda que nombraba a la pandilla como acusado.^{xxvi} De este modo, los mandatos judiciales resultantes obligan a las pandillas en sí, así como a todos los integrantes de la pandilla.

Es la afiliación del individuo en la pandilla la que lo coloca en la categoría de personas a quienes se aplica el mandato judicial. Si el individuo fue o no parte en los procedimientos en los cuales se procuró el mandato judicial no es relevante; lo que sí es relevante es la cuestión de la afiliación del acusado a la pandilla. (La anterior sección "La clave para que los mandatos judiciales antipandillas den resultados" contiene una discusión de este precepto legal sólidamente establecido).

El arresto y el enjuiciamiento dependen de pruebas fehacientes de la afiliación del acusado a la pandilla, que deben presentarse ante el jurado.

Evidencia de afiliación en una pandilla

Para enjuiciar a una persona por violar un mandato judicial, es necesario probar, *fuera de duda razonable*, que el individuo era integrante de la pandilla al momento en que ocurrió la violación.^{xxvii} Por lo tanto, el arresto y el

enjuiciamiento dependen de que haya pruebas incontrovertibles de la afiliación del acusado a la pandilla – pruebas que deben ser admisibles en un juicio y suficientes para persuadir al jurado, fueran de duda razonable, de que el individuo era pandillero al momento en que ocurrió la violación.

Por lo tanto, determinar quién es y quién no es miembro de una pandilla es esencial para el éxito de un mandato judicial antipandillas. Esta determinación involucra un proceso de recopilación de inteligencia, que es la función de oficiales de la policía especialmente capacitados y asignados a la vigilancia y el control de las pandillas, comúnmente conocidos como "peritos en pandillas". Estos oficiales tienen, como parte de sus deberes, la función de determinar quiénes son los integrantes de la pandilla en un área en particular, lo cual conlleva pasar gran parte de su tiempo recopilando inteligencia por medio de hablar con, y estudiar, a los pandilleros en el área.

Es sólo debido a que estos oficiales con frecuencia tienen éxito en obtener evidencia de la afiliación pandilleril de un individuo, que es posible realizar arrestos y enjuiciamientos. Dicha evidencia podría incluir actividades y delitos relacionados con pandillas en los cuales el acusado haya tomado parte, los tatuajes de pandilla del acusado, o las admisiones propias del acusado en cuanto a su afiliación en la pandilla. El abogado defensor (al cual el acusado tiene derecho, sin importar su capacidad para pagar) podrá objetar, impugnar y contradecir toda esta evidencia en todos los procesos penales por desacato basados en una violación de un mandato judicial antipandillas.

SOBRE LOS ACUSADOS NO IDENTIFICADOS

Las leyes de California permiten designar a acusados desconocidos por un nombre ficticio de manera que sea posible agregar acusados que se pudieran descubrir en una fecha futura a la demanda (Código de Procedimiento Civil sección 474). Bajo este procedimiento, los abogados que practican en California de manera sistemática incluyen, en adición al (a los) acusado(s) nombrados, a cierto número de acusados que se designan usualmente como "Desconocidos". Los acusados "Desconocidos" representan un atajo legal para que se pueda nombrar a partes adicionales como acusados después de que se ha asentado una demanda, si fuese necesario. Aunque estos "Desconocidos" aparecen en la portada de las solicitudes de mandatos judiciales antipandillas, éste no es el procedimiento que se usa para "añadir" acusados para que estén sujetos a un mandato judicial antipandillas, ya que todos los integrantes de la pandilla están sujetos al mandato judicial una vez que éste es emitido.

Cuando un tribunal emite un fallo otorgando un mandato judicial, los acusados "Desconocidos" son eximidos de manera sistemática, y todos los enjuiciamientos futuros de pandilleros por violación del mandato judicial antipandillas proceden por medio de probar en cada caso que el acusado es un pandillero.

Además, los procesamientos de pandillas casi siempre requieren que el fiscal llame a un perito en pandillas como testigo, ya que las pandillas y la afiliación en las mismas son cuestiones típicamente ajenas a la experiencia de los jurados; éstos probablemente sepan muy poco sobre cómo interpretar la evidencia para determinar si el acusado es pandillero. El perito en pandillas típicamente es un oficial de policía especialmente asignado a la vigilancia y el control de las pandillas, y que ha adquirido competencia en materias relacionadas con la pandilla como parte de sus responsabilidades. No se usan expertos civiles porque pocas personas aparte de los pandilleros y sus asociados cercanos tienen el contacto necesario con, y el conocimiento de, los miembros de la pandilla; y los residentes locales que pudiesen tener este conocimiento estarían en peligro si testificaran. Un perito en pandillas debe persuadir al juez a su plena satisfacción de que el conocimiento, la habilidad, la experiencia, la capacitación y/o la educación de dicho perito son suficientes para habilitar al testigo como experto.^{xxviii} Sólo se cita a aquellos oficiales que poseen suficiente conocimiento y experiencia con la pandilla que los habilite ante el tribunal como expertos con este fin. La defensa también tiene derecho a citar a un experto en pandillas como uno de sus testigos, a costa del tribunal.

Notificación del mandato judicial antipandillas

Aún los miembros de la pandilla obligada bajo el mandato judicial no están sujetos a enjuiciamiento por violar dicho mandato a menos que hayan recibido notificación personal del mandato judicial. A los integrantes de pandillas se les notifica por medio de entrega personal del mandato judicial; esto generalmente lo hace un oficial de policía entregándole el mandato judicial al individuo a quien se notifica.^{xxix}

Cuando a un se le acusa pandillero formalmente de violar el mandato judicial, la fiscalía presenta las pruebas de que el acusado fue notificado del mandato judicial, para demostrar que el acusado recibió notificación del mandato judicial y de las estipulaciones del mismo.

Sólo oficiales de policía especialmente asignados a la vigilancia y el control de las pandillas que hayan recibido adiestramiento en hacer notificación de mandatos judiciales antipandillas y en determinar la afiliación de un individuo en una pandilla, están actualmente autorizados para hacer notificación de mandatos judiciales antipandillas.

SER "CATEGORIZADA" COMO INTEGRANTE DE PANDILLA NO HACE QUE UNA PERSONA ESTÉ SUJETA A UN MANDATO JUDICIAL

Con fines de investigación, y al igual que muchas otras agencias policiales, la LAPD mantiene registros de pandilleros con los que sus oficiales tienen contacto. El Departamento también se rige por los criterios aprobados por el Departamento de Justicia de California (CAL-DOJ) para clasificar a un individuo como pandillero. La determinación de si un individuo puede recibir notificación de un mandato judicial antipandillas, o si puede ser arrestado o enjuiciado por quebrantar un mandato judicial antipandillas, es aparte de la cuestión de si alguna vez se ha documentado que el individuo es pandillero. *El enjuiciamiento por violar un mandato judicial antipandillas requiere que se demuestre fuera de duda razonable que el acusado era pandillero en el momento en que ocurrió la supuesta infracción del mandato judicial.*

Además, el solo hecho de que un individuo se asocie con un pandillero o pandilleros no es suficiente para probar que el individuo es un pandillero sujeto a un mandato judicial antipandillas. Tal asociación no es siquiera suficiente bajo los criterios de CAL-DOJ o de la LAPD para documentar a alguien como pandillero. Las personas que se ha documentado que se asocian con un pandillero conocido se consideran "afiliadas con pandillas", y no podrán ser identificadas como pandilleros en los registros del departamento con base en este hecho solamente. Cuando no existe documentación para probar la afiliación del individuo en la pandilla, a dicha personas no se le podrá dar notificación formal de un mandato judicial.

Propiamente entendida, la notificación a un individuo de un mandato judicial no hace que esa persona esté sujeta al mandato judicial. Si una persona es integrante de pandilla, está sujeta al mandato judicial antipandillas en virtud de su afiliación actual en la pandilla objeto de prohibiciones, de conformidad con regulaciones establecidas por largo tiempo. La notificación se usa para demostrar que el individuo sujeto al mandato recibió aviso del mandato judicial y de sus estipulaciones.

Estos principios representan la limitación más persuasiva y enérgica sobre el uso de los mandatos judiciales antipandillas: el que un individuo esté obligado a obedecer el mandato judicial depende completamente de si dicho individuo es, de hecho, un miembro de pandilla. El hecho de que el supuesto infractor era pandillero en la fecha en que ocurrió la contravención debe probarse fuera de duda razonable, en cada caso en el que se aduzca una violación. Si un miembro de pandilla logra separarse exitosamente de la pandilla y ya no actúa en beneficio de la pandilla, ese miembro ya no está obligado bajo el mandato judicial. Por este motivo "excluirse" del mandato judicial significa abandonar la pandilla primero. La decisión definitiva de liberarse de las restricciones de un mandato judicial está en manos del individuo, quien puede hacerlo abandonando a la pandilla y dejando de actuar en nombre de la pandilla, o mudándose fuera de la "Zona de Seguridad".

La determinación de si un individuo está sujeto a los términos de un mandato judicial antipandillas no depende de la policía ni de los fiscales, ni estar "categorizado" como integrante de pandilla acciona las restricciones del mandato judicial. En cada caso penal basado en una contravención de un mandato judicial, la determinación de afiliación a una pandilla debe realizarse en el tribunal y basarse en evidencia competente de afiliación en una pandilla al momento en que ocurrió la violación, lo cual exige que la evidencia de afiliación en la pandilla sea reciente y persuasiva. El papel de los investigadores policiales es reunir evidencia admisible de afiliación en la pandilla; el papel del fiscal es presentar evidencia competente ante el tribunal. De hecho, los integrantes actuales de pandillas a menudo hacen declaraciones infundadas de que ya no están afiliados con la pandilla en un intento de eludir un enjuiciamiento justificado. Tales afirmaciones, sin embargo, no alteran la responsabilidad del fiscal de establecer la afiliación pandilleril en cada de violación de un mandato judicial.

CONCLUSIÓN

Los mandatos judiciales antipandillas son herramientas legales efectivas que les permiten a las comunidades recuperar sus calles y sitios públicos de las pandillas y los pandilleros que las aterrorizan. Cuando se usan como parte de una estrategia global, los mandatos judiciales antipandillas contribuyen a la estabilización de las comunidades y a reducir la destrucción urbana y los delitos relacionados con pandillas. Donde se usa un mandato judicial antipandillas como parte de una estrategia que incluye los esfuerzos y la pericia de otras agencias gubernamentales y organizaciones comunitarias, el efecto positivo sobre el bienestar general de un vecindario puede ser dramático.

En última instancia, el uso y la vigilancia del cumplimiento de los mandatos judiciales antipandillas por parte del Procurador De La Ciudad es completamente consistente con el proceso legal, se adhiere a precedentes legales bien establecidos, protege a los vecindarios de Los Ángeles, y protege las libertades civiles de todos los residentes de la ciudad.



[Fotografía]

Notas finales

- ⁱ People ex rel. Gallo v. Acuña (1997) 14 Cal.4th 1090, 1102, cert. denegada, 521 U.S. 1121 ("Acuña").
- ⁱⁱ People v. Conrad (1997) 55 Cal.App.4th 896, 902 ("Conrad").
- ⁱⁱⁱ Ver Acuña, supra, 14 Cal.4th at pp. 1113-1115; ver también Madsen v. Women's Health Center, Inc. (1994) 512 U.S. 753, 765; Anderson v. Souza (1953) 38 Cal.2d 825, 840-841.
- ^{iv} Ver Acuña, supra, 14 Cal.4th at p. 1114.
- ^v (1994) 512 U.S. 753.
- ^{vi} People v. Poe (1965) 236 Cal.App.2d Supp.928, 939-940 ("Poe"); ver también In re Felthoven (1946) 75 Cal.App.2d 465, 468; People v. Hadley (1924) 66 Cal.App. 370, 379; People v. Saffell (1946) 74 Cal.App.2d Supp. 967, 979 ("Saffell").
- ^{vii} Ver Berger v. Superior Court (1917) 175 Cal.719, 721 ("Berger"); Saffell, supra, 74 Cal.App.2d Supp. at p. 979.
- ^{viii} Ver informe en: http://grandjury.co.la.ca.us/gjury03-04/LACGJFR_03-04.pdf
- ^{ix} Ver, e.g., C. Maxson, K. Hennigan y D. Sloane, "It's Getting Crazy Out There: Can a Civil Gang Injunction Change a Community?" (August 2005) Criminology and Public Policy, Vol. 4, No. 3; J. Grogger, "The Effects of the Civil Gang Injunction on Reported Violent Crime: Evidence from Los Angeles County" (April 2002) Journal of Law and Economics, Vol. 45.
- ^x "Politics in the Street: The Debate That Matters on Gang Injunction," J. Trevino, LA Weekly, May 23, 2001.
- ^{xi} Ver informe en: http://grandjury.co.la.ca.us/gjury03-04/LACGJFR_03-04.pdf
- ^{xii} Declaración hecha en una audiencia en People v. 38th Street Gang, Case No. BC319166.
- ^{xiii} "Flying the Flag," C. Fremon, LA Weekly, July 17, 2003.
- ^{xiv} Ver People v. Lennon (1897) 166 U.S. 548, 554; Berger, supra, 175 Cal. at p. 721; Saffell, supra 74 Cal.App.2d Supp. at p. 978; ver también Ross v. Superior Court (1977) 19 Cal.3d 899, 905-906; Greenly v. Cooper (1978) 77 Cal.App.3d 382, 395.
- ^{xv} 14 Ca.4th at p. 1124 [citando a Berger, supra, 175 Cal. at p. 721].
- ^{xvi} Ver Código Civil, secciones 3479 y 3480; ver también Código Penal secciones 370 y 371.
- ^{xvii} Ver Acuña, supra, 14 Cal4th en las pp. 1108-1109; ver también People v. Englebrecht (1998) 67 Cal.App.4th 486, 492 ("Englebrecht I").
- ^{xviii} Ver Acuña, supra, 14 Cal4th en las pp. 1108-1109.
- ^{xix} Ver Acuña, supra, 14 Cal4th en las pp. 1108-1109.
- ^{xx} (2001) 88 Cal.App.4th 1236, 1256 ("Englebrecht II").

^{xxi} Ver Código Penal sección 186.22, subdivisión (f) [STEP Act definición de "pandilla criminal callejera "].

^{xxii} Ver Código Penal sección 166, subdivisión (a)(4) [desacato criminal].

^{xxiii} Ver *People v. González* (1996) 12 Cal.4th 804, 818-819; *In re Berry* (1968) 68 Cal.2d 137, 147-148.

^{xxiv} Código Penal sección 166, subdivisión (a)(4); CALCRIM 2700; ver también *Saffell*, supra, 74 Cal.App.2d Supp. en la p. 979; *Poe*, supra, 236 Cal.App.2d Supp. en las pp. 939-940.

^{xxv} *Acuña*, supra 14 Cal.4th en la p. 1117-1118.

^{xxvi} Algunos procesos de mandatos judiciales antipandillas en el pasado nombraban a integrantes individuales de la pandilla como acusados además de nombrar a la pandilla en sí. Por las razones explicadas aquí, el Procurador De La Ciudad ya no continúa esta práctica.

^{xxvii} Los mandatos judiciales vinculan a aquellas personas a través de las cuales la entidad sujeta a prohibiciones puede actuar. Las pandillas actúan casi totalmente a través de sus integrantes. Para que un individuo no miembro de la pandilla esté obligado bajo el mandato judicial, es necesario demostrar que dicho individuo estaba actuando "con o por" la pandilla al realizar la acción que constituiría una infracción del mandato judicial, como cuando alguien que desea ser pandillero pinta el graffiti de la pandilla. (Ver *Conrad*, supra, 55 Cal.App.4th en la p. 903; ver también *Berger*, supra, 175 Cal. en la p. 721; *Berry*, supra, 68 Cal.2d en las pp. 155-156).

^{xxviii} Ver Código de Evidencia sección 720.

^{xxix} *Poe*, supra, 236 Cal.App.2d Supp. en la p. 939.

Para más información

OFICINAS DEL PROCURADOR DE LA CIUDAD

ROCKY DELGADILLO

Oficinas del Procurador De La Ciudad de Los Ángeles Rocky Delgadillo
800 City Hall East
200 North Main Street
Los Angeles, CA 90012
(213) 978-8100
<http://www.lacity.org/atty/>

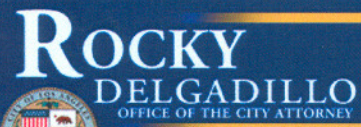
Sección de Litigio Criminal y Especial

Jeffrey B. Isaacs
Jefe
(213) 978-7948
jeffrey.isaacs@lacity.org

Bruce Riordan
Coordinador de Programas y Operaciones Antipandillas
(213) 978-8049
bruce.riordan@lacity.org

Marty Vranicar
Procurador Supervisor, Sección de Prevención y Enjuiciamiento de Pandillas
(213) 978-4099
marty.vranicar@lacity.org

Max Shiner
Delegado a Cargo, Operaciones Antipandillas del Valle
(213) 978-8100
max.shiner@lacity.org



ESPAÑOL || SITE MAP

Search

- Home
- About the Office of the City Attorney
- Meet Rocky
- News and Events
- Community Resources
- Fighting Gangs and Gang Violence**
- Safeguarding Our Children and Schools
- Securing Our Neighborhoods
- Protecting Our Environment
- Advocating for Taxpayers, Seniors and Animals
- RFPs and RFQs
- Contact Us >

LOS ANGELES COUNTY GRAND JURY REPORT ON CIVIL GANG INJUNCTIONS

Independent analysis supports the crime-fighting effectiveness of gang injunctions. The Los Angeles County Civil Grand Jury of 2003-2004, an independent body of citizens, conducted a study of gang injunctions and concluded that gang injunctions result in a significant reduction in both serious and total crimes, while not causing a significant displacement of crime to adjacent neighborhoods. Indeed, the Grand Jury found that civil gang injunctions play an important role in the intervention, the prevention and the suppression of gang activities.

[Click here](#) to see the Management Audit of the Civil Gang Injunctions (CGIs) contained on pages 168- 389 of the full report.

LOS ANGELES CITY ATTORNEY'S OFFICE

PETITION FOR REMOVAL FROM GANG INJUNCTION

This form is for use by persons living in the City of Los Angeles who have been served with a Gang Injunction and who want the opportunity to demonstrate that they should not be restrained by the Gang Injunction because they no longer are, or they never were, a gang member. **A Spanish language version of this form is also available.**

ELIGIBILITY:

The Los Angeles City Attorney's Office has put in place a review process for those persons living in the City of Los Angeles who believe they were wrongly served with a Gang Injunction because they were not then and are not now a gang member, or who were properly served but have since ended their association with the gang.

The review process is intended to be informal and does not require the filing of any papers with a court or any appearances before a judge. It does, however, require that you either submit a completed version of this form to the City Attorney's Office or otherwise provide us with the information requested by this form.

A Gang Injunction will be enforced against you only if you have been personally served with it. To be eligible for removal from the Gang Injunction if you have been personally served, you must provide sufficient information for the City Attorney's Office to positively confirm that:

- 1) You no longer are, or you never were, a member of the gang named in the Gang Injunction; **and**
- 2) You are not now acting, and you will not in the future act, to promote, further, or assist any of the activities prohibited by the Gang Injunction on behalf of the gang named in the Gang Injunction; **and**
- 3) You are not a member of any other criminal street gang.

THE REVIEW PROCESS:

The review process is conducted by a senior attorney within the City Attorney's Office who is not involved in the enforcement of gang injunctions. The attorney will review all of the information in your Petition, as well as any other available and reliable information concerning your past and present membership in or

involvement with criminal street gangs. The attorney may contact you for additional information and may contact other people you know who may have information relevant to the review process. You will be advised of the decision to remove or not to remove you from the Gang Injunction at your home address, or, if you prefer for safety or convenience reasons, at another address. If your Petition is denied (and you are not removed from the Gang Injunction at this time), you may submit a new Petition when you have significant new information to report supporting your claim that you no longer are (or you never were) a gang member.

CONFIDENTIALITY:

The City Attorney's Office will keep the information you provide in this form confidential to the maximum extent permitted by law.

The City Attorney's Office will not use the information provided in this form to prove any fact essential to proving any criminal charge the City Attorney's Office may bring against you in the future. (However, such information may still be used to cross-examine you should you testify at a trial in a case brought by the City Attorney's Office and should your testimony be inconsistent with the factual information provided in this form.)

REPRESENTATION BY COUNSEL:

Are you currently represented by an attorney (which includes a Public Defender) in any legal proceeding involving the Gang Injunction, including (but not limited to) a proceeding in which you are accused of violating the Gang Injunction:
__ Yes __ No

Because of ethical rules applicable to all attorneys, if you answered yes, your Petition cannot be considered unless **your attorney** completes and signs Addendum No. 1 at the end of this Petition.

HOW TO SUBMIT YOUR PETITION:

Once you have filled out this form, please make a copy of it for your records and submit the original **BY MAIL ONLY** to:

Los Angeles City Attorney's Office
Crime Prevention and Youth Protection Division
Attn: Gang Injunction Review Process
800 City Hall East
200 N. Main Street
Los Angeles, California 90012

INFORMATION IN SUPPORT OF YOUR PETITION:

EDUCATION:

Please provide the following information regarding any schools you have attended, including elementary, middle, and high school, a trade school, or college. Please start with your most recent school and work your way backward in time.

1. _____
Name of School

Location

_____ Completed/Graduated: ___ Yes ___ No

Time Period Attended

2. _____
Name of School

Location

_____ Completed/Graduated: ___ Yes ___ No

Time Period Attended

3. _____
Name of School

Location

_____ Completed/Graduated: ___ Yes ___ No

Time Period Attended

4. _____
Name of School

Location

_____ Completed/Graduated: ___ Yes ___ No

Time Period Attended

PEOPLE WHO CAN SUPPORT YOUR PETITION:

Please provide the following contact information for any people who know you and can confirm that you no longer are, or you never were, a member of a criminal street gang. Such people can include: family members; neighbors; teachers, principals and school staff; coaches and former teammates; current and past employers; community leaders and organizers; priests, ministers, reverends and other religious counselors; social and gang intervention workers; and probation, parole and police officers.

1. _____
Name

Address

Email Address (_____) _____
Phone Number

Your Relation to This Person

2. _____
Name

Address

Email Address (_____) _____
Phone Number

Your Relation to This Person

3. _____
Name

Address

Email Address (_____) _____
Phone Number

Your Relation to This Person

4. _____
Name

Address

Email Address (_____) _____
Phone Number

Your Relation to This Person

5. _____
Name

Address

Email Address (_____) _____
Phone Number

Your Relation to This Person

CONFIRMATION:

By signing below, you will be confirming the accuracy of the following statements:

- 1) I no longer am, or I never was, a member of the gang named in the Gang Injunction.
- 2) I am not now acting, and I will not act in the future, to promote, further, or assist any of the activities prohibited by the Gang Injunction on behalf of the gang named in the Gang Injunction.
- 3) I am not a member of any other criminal street gang.
- 4) All of the information provided in or with this form is, to the best of my knowledge, true and correct.

Signature

Date

ADDENDUM NO. 1

To Be Completed Only if You Are Currently Represented by an Attorney in a Legal Proceeding Involving the Gang Injunction

[To Be Completed and Signed by Your Attorney]

Name of Attorney: _____

California Bar Number: _____

Name and Address of Law Office/Employer:

Name of Law Office/Employer

Address of Law Office/Employer

(_____) _____
Phone Number Email Address

Name of Client: _____

Description of legal proceeding in which you represent client [including case name and number]:

Please indicate below whether you:

- 1) Read the foregoing Petition form and reviewed it with your client:
__ Yes __ No
- 2) Approved of your client submitting a completed Petition to the City Attorney's Office for consideration: __ Yes __ No
- 3) Authorize the Attorney assigned to review your client's Petition to contact your client directly, and to confirm information or obtain additional information from your client outside of your presence for purposes of evaluating your client's Petition: __ Yes __ No

Signature

Date

PROCURADURIA DE JUSTICIA DE LOS ANGELES

PETICION PARA SER REMOVIDO DE RESTRICCION LEGAL CONTRA PANDILLAS

Esta forma podrá ser usada por personas que residen en la Ciudad de Los Angeles que hayan sido notificadas por escrito con una Restricción Legal Anti Pandillas y que quieran tener la oportunidad de demostrar que ya no deben ser limitadas por la Restricción Legal, debido a que ya no son, o nunca fueron integrantes de pandillas.

ELIGIBILIDAD:

La Procuraduría de Justicia de la Ciudad de Los Angeles ha puesto en efecto un proceso de revisión para las personas que, en la Ciudad de Los Angeles, crean que han sido erróneamente notificadas/sujetas por escrito con una restricción legal. El proceso de revisión tiene la intención de ser informal y no requiere que se levante ningún tipo de expediente en la corte y que se comparezca ante ningún juez. Sin embargo, si requiere que usted llene por escrito esta forma y la entregue a la Procuraduría de la Ciudad, y provea la información requerida.

Una restricción legal le afecta a usted únicamente después de haber sido notificado por escrito. Si usted lo ha sido, entonces deberá dar suficiente información a la Procuraduría de Justicia de la Ciudad, para confirmar que:

- 1) Usted ya no es, o nunca fue, miembro(a) de la pandilla nombrada en la restricción legal; **Y**
- 2) Usted ya no es, o nunca fue, un miembro(a) de ninguna otra pandilla callejera; **Y**
- 3) Usted ya no esta, o estuvo nunca, actuando para promover, impulsar o asistir las actividades de ninguna pandilla callejera, ya sea en forma directa o indirecta.
- 4)

EL PROCESO DE REVISION:

El proceso de revisión es conducido por un abogado *senior* de la Procuraduría de la Ciudad que no está involucrado en la aplicación de las Restricciones Legales. El abogado va a revisar toda la información en su petición, así como cualquier otra información disponible y confiable relacionada con su participación actual o pasada en pandillas callejeras. El abogado, o un miembro de su equipo

lo podrían contactar para que usted de información adicional y podrían contactar a otras personas que lo conozcan que pudieran tener información relevante para el proceso de revisión. Usted será notificado(a) en su domicilio de la decisión de sacarlo o no de la Restricción, o en caso de que usted lo prefiera por motivos de seguridad , en otro domicilio. Si su petición es negada (Y usted no es sacado(a) de la Restricción Legal esta vez), usted podrá presentar otra nueva Petición cuando tenga nueva información a reportar que sea significativa, que apoye su aseveración de no ser (o no haber sido nunca) un pandillero.

CONFIDENCIALIDAD:

La Procuraduría de Justicia de la Ciudad guardará la información que usted provea en (y con) esta forma, en forma confidencial al grado máximo permitido por la ley.

La Procuraduría de Justicia de la Ciudad no usará la información que usted proveyó en (y con) esta forma como una admisión de hecho en ningún caso criminal que la Procuraduría de Justicia de la Ciudad pueda presentar en su contra en el futuro.

COMO PRESENTAR SU PETICION:

Una vez que haya llenado esta forma, por favor haga una copia de la misma para mantener en su archivo personal; entregue el original **POR CORREO UNICAMENTE** a:

Los Angeles City Attorney's Office
Crime Prevention and Youth Protection Division
Attn: Gang Injunction Review Process
800 City Hall East,
200 North Main Street
Los Angeles, California 90012

INFORMACION PARA IDENTIFICACION:

Nombre Completo:

Apellidos Number

Cualquier Otro Nombre(s) que usted use o haya usado (Incluyendo alias o Apodos)

Fecha de Nacimiento: ____/____/____
Día Mes Año

Numero de Seguro Social: _____

[Si usted no tiene un número de seguro social, por favor incluya una copia de identificación con fotografía, tal y como una licencia de manejo o su credencial de estudiante.]

LA RESTRICCIÓN LEGAL:

El nombre de la pandilla(s) aparece en la restricción legal:

Fecha (o fecha aproximada) en la que le entregaron los papeles notificándole:

____ / ____ / ____

Día Mes Año

INFORMACION PARA CONTACTARLO:

Su domicilio:

Calle

Apto./No. de Unidad.

Ciudad

Código Postal

Otras direcciones (Si tiene) en las que usted puede ser contactado:

Calle

Apto./No. de Unidad.

Ciudad

Código

Teléfono de su casa: () _____ Celular: () _____

REPRESENTACION LEGAL:

¿Está usted actualmente representado por un abogado en relación a la restricción legal u otro tipo de asunto legal?: Si No

Si usted respondió si, por favor provea la siguiente información:

Nombre del Abogado

Domicilio

() _____

Numero de Teléfono

Descripción del Asunto Legal

INFORMACION EN APOYO A SU PETICION:

EDUCACION:

Por favor provea la siguiente información relacionada con las escuelas en las que usted ha estado enrolado, incluyendo primaria (Elementary), secundaria (Middle School) y preparatoria (High School)

1. _____
Nombre de la Escuela

Ubicación

_____ Completado/Graduado: __ Si __ No
Periodo de tiempo

2. _____
Nombre de la Escuela

Ubicación

_____ Completado/Graduado: __ Si __ No
Periodo de Tiempo

3. _____
Nombre de la Escuela

Ubicación

_____ Completado/Graduado: __ Si __ No
Periodo de Tiempo

4. _____
Nombre de la Escuela

Ubicación

_____ Completado/Graduado: __ Si __ No
Periodo de Tiempo

CONFIRMACION:

Al firmar abajo, usted esta confirmando la validez de las siguientes declaraciones:

- 1) Yo ya no soy, o no fui nunca, miembro de la pandilla nombrada en la restricción legal.
- 2) Yo ya no soy, o no fui nunca, miembro de ninguna pandilla criminal.
- 3) Yo ya no participo, o nunca he participado, directa o indirectamente, en la promoción, impulso, o asistencia de actividades ilegales de ninguna pandilla criminal.
- 4) Toda la información dada en o con esta forma es, hasta donde yo se, verdadera y correcta.

Firma

Fecha



Gang Injunction Removal Petition Information

Thank you for your interest in the Gang Injunction Removal Petition process. Petitioning for removal from enforcement of an injunction represents a significant step towards creating a healthier, safer, and more productive future. Please be advised that regardless of the outcome of the Petition, you, like all other persons, remain subject to and must abide by all federal, state and local laws.

The Removal Process itself promotes:

- A symbolic step toward leaving the gang life and creating a better life for you and your family.
- An investment of time to gather background information and positive character references that has many benefits for future school or job applications seeking the same information. This is known as creating a “positive paper trail.”
- An opportunity to learn about and utilize the various programs and services available throughout the City of Los Angeles.

If your petition is granted, the benefits include:

- The LAPD and City Attorney will no longer enforce the gang injunction against you.
- Public association, adult curfew, and “stay away” orders are among some of the injunction prohibitions that will no longer be enforced against you.
- Freedom from injunction enforcement and the *opportunity* to build a more productive life for yourself and your family.

The City Attorney’s Office accepts applications of any length and format. During the review process, the City Attorney will contact personal references, seek input from law enforcement, and conduct a face to face interview. The applicant’s motivation for removal and authenticity of the petition documents rank high in determining whether the City Attorney’s Office approves the request. We seek individuals who demonstrate a strong desire to further their goals and make a fresh start.

In addition to the benefits outlined above, the City of Los Angeles, and those agencies whom the City partners with, offers many resources to assist you throughout the application process and beyond. These resources include: job training, development, and placement; housing assistance; tattoo removal; educational support; recreational services; and other beneficial individual and family services.

For more information regarding the Removal Petition Process, please contact:

The Office of the City Attorney at (213) 978-7192 or visit our website at www.lacity.org/atty/.

For more information regarding support services, please contact:

The Mayor’s Office of Gang Reduction and Youth Development at (213) 473-7798 or visit their website at www.mayor.lacity.org/index.htm.



Restricciones Legales Contra Pandillas

Información Sobre Petición Para Ser Removido

Gracias por su interés en el proceso para ser removido de una restricción legal. El pedir ser removido de una restricción legal representa un paso significativo para la creación de un futuro más sano, seguro y productivo. Por favor tome en cuenta que, independientemente del resultado de la petición, usted, como cualquier otra persona, permanece sujeto, y debe cumplir con todas las leyes federales, estatales y locales.

El Proceso de Remoción Promueve:

- Un paso simbólico dejando la vida de las pandillas, y creando una vida mejor para usted y su familia.
- Una inversión de tiempo, para recopilar información de antecedentes e información positiva, que le ayude en futuras solicitudes escolares o de trabajo.
- Una oportunidad para aprender sobre cómo utilizar los varios programas y servicios disponibles alrededor de la Ciudad de Los Angeles.

Si su petición es aprobada, los beneficios incluyen:

- El Departamento de Policía y la Procuraduría de la Ciudad ya no podrán aplicar la restricción en su contra.
- La asociación en público, toque de queda para adultos y las ordenes de alejamiento de la zona, ya no le serían impuestas a usted.
- La libertad respecto al tener que cumplir con la restricción, y la OPORTUNIDAD de una vida más productiva para usted y su familia.

La Procuraduría de la Ciudad acepta solicitudes de cualquier tamaño y formato. Durante el proceso de revisión, la procuraduría va a contactar las personas que usted puso como referencias personales, escuchará el punto de vista de los agentes del orden público involucrados en su caso, y lo llamará a una entrevista en persona. Las motivaciones del solicitante para ser removido de la restricción y la autenticidad de los documentos de la petición, tendrán mucho que ver, respecto a la aprobación o negación de la solicitud por parte de la procuraduría.

Además de los beneficios mencionados arriba, la ciudad de Los Angeles, así como todas las agencias con las que esta colabora, ofrece varios recursos, incluyendo, entrenamiento de trabajo, desarrollo y colocación profesional; asistencia en vivienda, remoción de tatuajes, apoyo educacional, servicios recreacionales y otros beneficios a nivel individual y familiar.

Para mayor información relacionada con el Proceso para Ser Removido, por favor contacte:
Procuraduría de la Ciudad, al 213-978-7192 o en la página Web www.lacity.org/atty/.

Para mayor información en relación a los servicios de apoyo:
Oficina del Alcalde *Gang Reduction and Youth Development*, al (213) 473-7798 o su página Web www.mayor.lacity.org/index.htm.