

**COPY**

KAMALA D. HARRIS  
Attorney General of California  
DANE R. GILLETTE  
Chief Assistant Attorney General  
GARY W. SCHONS  
Senior Assistant Attorney General  
STEVE T. OETTING  
Supervising Deputy Attorney General  
MEREDITH A. STRONG  
Deputy Attorney General  
State Bar No. 255840  
110 West A Street, Suite 1100  
San Diego, CA 92101  
P.O. Box 85266  
San Diego, CA 92186-5266  
Telephone: (619) 645-2297  
Fax: (619) 645-2271  
Email: Meredith.Strong@doj.ca.gov  
*Attorneys for Plaintiff and Respondent*

SUPREME COURT  
**FILED**

APR 18 2011

Frederick K. Ohlrich Clerk  

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Deputy

**In the Supreme Court of the State of California**

**THE PEOPLE OF THE STATE OF CALIFORNIA,**  
  
Plaintiff and Respondent,  
  
v.  
  
**TOMMY ANGEL MESA,**  
  
Defendant and Appellant.

Case No. S185688

Appellate District  
Division One, Case  
No. RIF137046

Riverside County  
Superior Court, Case  
No. D056280

**RESPONDENT'S MOTION FOR JUDICIAL NOTICE**

TO THE HONORABLE CHIEF JUSTICE RONALD GEORGE  
AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF  
CALIFORNIA:

Respondent respectfully moves this Court, pursuant to Evidence Code sections 452 and 459 and California Rules of Court, rules 22 and 29.1(g), to take judicial notice of the relevant legislative history of Assembly Bill 2013 of the 1987-1988 Regular Session (also known as “The STEP Act”).

These relevant documents, which are appended to this motion, include the following:

- A. Legislative Counsel’s Digest, Assembly Bill 2013 (1987-1988 Reg. Sess.) from March 6, 1987 (Exhibit A)
- B. Assembly Committee on Public Safety, Report on Assembly Bill 2013 (1987-1988 Reg. Sess.) as amended July 9, 1987 (Exhibit B)
- C. Assembly Committee on Public Safety, Report on Assembly Bill 2013, “A Reply Memorandum,” as amended August 30, 1988 (Exhibit C.)
- D. Assembly Ways and Means Committee, Republican Analysis of Assembly Bill 2013, (1987-1988 Reg. Sess.) August, 20, 1987 (Exhibit D.)
- E. Senate Committee on Judiciary, Analysis of AB 2013, hearing date March 22, 1988, (Exhibit E.)

Each of the attached exhibits is the proper subject of judicial notice under Evidence Code section 452. Subdivision (c) of that provision provides that judicial notice may be taken of “Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.”

Pursuant to this authority, it is appropriate to take judicial notice of senate and assembly analyses such as Exhibits A and B. (*People v. Snyder* (2000) 22 Cal.4th 304, 309 [judicial notice of senate committee analysis]; *People v. Ledesma* (1997) 16 Cal.4th 90, 98 [judicial notice of assembly bill analysis]; *Jevne v. Superior Court* (2005) 35 Cal.4th 935, 948 [“In

determining legislative intent, we may also consider a senate floor analysis.”].)

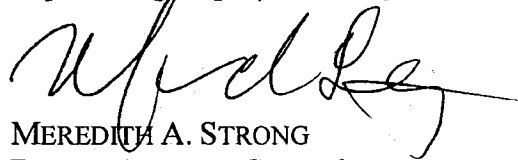
### CONCLUSION

For the reasons stated above, respondent respectfully requests that this Court take judicial notice of the documents attached in Exhibits A through E.

Dated: April 15, 2011

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
DANE R. GILLETTE  
Chief Assistant Attorney General  
GARY W. SCHONS  
Senior Assistant Attorney General  
STEVE T. OETTING  
Supervising Deputy Attorney General



MEREDITH A. STRONG  
Deputy Attorney General  
*Attorneys for Plaintiff and Respondent*

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AMENDED IN ASSEMBLY MAY 26, 1987  
AMENDED IN ASSEMBLY APRIL 23, 1987

CALIFORNIA LEGISLATURE—1987-88 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2013**

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Introduced by Assembly Member Moore

March 6, 1987

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An act to ~~add Section 421 to~~ amend Sections 272 and 422 of, and to add Chapter 11 (commencing with Section 186.20) to Title 7 of Part 1 of, the Penal Code, relating to crimes, making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2013, as amended, Moore. Crimes.

Under existing law, there are no provisions which specifically proscribe membership in street gangs as a criminal offense.

This bill would enact the Criminal Street Gang Control Act of 1987 which would provide that any person who becomes a member of, or who maintains membership in, a criminal street gang, as defined, with knowledge that 2 or more of its members engage in a pattern of criminal acts, as defined, and who promotes, furthers, or assists any criminal activity committed by the gang members, shall be punished by imprisonment in the county jail or state prison, as specified.

This bill would impose a state/mandated local program by creating a new crime.

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

This bill would provide that any person who actively

*will result in death or great bodily injury to another person, with the specific intent that the statement is to be taken as a threat, even if there is no intent to actually carry it out, which, on its face and under the circumstances in which it is made is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened a gravity of purpose and an immediate prospect of execution. This bill would make this offense either a misdemeanor or a felony punishable either by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison, thereby imposing a state-mandated local program.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: ~~majority~~  $\frac{2}{3}$ . Appropriation: ~~no~~ yes. Fiscal committee: yes. State-mandated local program: yes.

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

1     ~~SECTION 1.~~ This act shall be known and may be  
2     SECTION 1. Chapter 11 (commencing with Section  
3     186.20) is added to Title 7 of Part 1 of the Penal Code, to  
4     read:

5  
6     CHAPTER 11. STREET TERRORISM ENFORCEMENT  
7                             AND PREVENTION ACT

8  
9     186.20. This chapter shall be known and may be cited  
10    as the "California Street Terrorism Enforcement and  
11    Prevention Act."

12    186.21. The Legislature hereby finds and declares  
13    that it is the right of every person regardless of race,  
14    color, creed, religion, national origin, sex, age, sexual  
15    orientation, or handicap to be secure and protected from  
16    fear, intimidation, and physical harm caused by the  
17    activities of violent groups and individuals. It is not the  
18    intent of the Legislature in enacting this chapter to

1 interfere with the exercise of rights protected by the  
2 United States Constitution or by the California  
3 Constitution. The Legislature recognizes the  
4 constitutional right of every citizen to harbor and express  
5 beliefs on any lawful subject whatsoever and to lawfully  
6 associate with others who share similar beliefs.

7 The Legislature, however, further finds that the State  
8 of California is in a state of crisis which has been caused  
9 by violent street gangs whose members threaten,  
10 terrorize, and commit a multitude of crimes against the  
11 peaceful citizens of their neighborhoods. These activities,  
12 both individually and collectively, threaten the very  
13 foundation of civilized society and are not  
14 constitutionally protected. It is the intent of the  
15 Legislature in enacting this chapter to seek the  
16 eradication of criminal activity by street gangs by  
17 focusing upon patterns of criminal gang-related activity  
18 and upon the organized nature of street gangs, which  
19 together are the chief source of terror created by street  
20 gangs. The Legislature further finds that an effective  
21 means of punishing and deterring the criminal activities  
22 of street gangs is through forfeiture of the profits,  
23 proceeds, and instrumentalities acquired, accumulated,  
24 or used by street gangs.

25 186.22. (a) Any person who actively participates in  
26 any criminal street gang with knowledge that its  
27 members or participants engage in or have engaged in a  
28 pattern of criminal gang activity with the specific intent  
29 to promote, further, or assist in any criminal conduct by  
30 its members or participants, shall be punishable by  
31 imprisonment in the county jail for a period not to exceed  
32 one year, or by imprisonment in the state prison.

33 (b) Any person who actively participates in any  
34 criminal street gang with knowledge that its members or  
35 participants engage in or have engaged in a pattern of  
36 criminal gang activity, and who willfully promotes,  
37 furthers, or assists in any criminal conduct by gang  
38 members or participants, is punishable by imprisonment  
39 in the state prison.

40 (c) Any person who is convicted of a felony or a

AMENDED IN ASSEMBLY JUNE 3, 1987  
AMENDED IN ASSEMBLY MAY 26, 1987  
AMENDED IN ASSEMBLY APRIL 23, 1987

CALIFORNIA LEGISLATURE—1987-88 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2013**

**Introduced by Assembly Member Moore**

**March 6, 1987**

---

An act to amend Sections 272 and 422 of, and to add Chapter 11 (commencing with Section 186.20) to Title 7 of Part 1 of, the Penal Code, relating to crimes, making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2013, as amended, Moore. Crimes.

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

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



state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote:  $\frac{2}{3}$ . Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. Chapter 11 (commencing with Section  
2 186.20) is added to Title 7 of Part 1 of the Penal Code, to  
3 read:

4  
5 CHAPTER 11. STREET TERRORISM ENFORCEMENT  
6 AND PREVENTION ACT  
7

8 186.20. This chapter shall be known and may be cited  
9 as the "California Street Terrorism Enforcement and  
10 Prevention Act."

11 186.21. The Legislature hereby finds and declares  
12 that it is the right of every person regardless of race,  
13 color, creed, religion, national origin, sex, age, sexual  
14 orientation, or handicap to be secure and protected from  
15 fear, intimidation, and physical harm caused by the  
16 activities of violent groups and individuals. It is not the  
17 intent of the Legislature in enacting this chapter to  
18 interfere with the exercise of rights protected by the  
19 United States Constitution or by the California  
20 Constitution. The Legislature recognizes the  
21 constitutional right of every citizen to harbor and express  
22 beliefs on any lawful subject whatsoever and to lawfully  
23 associate with others who share similar beliefs.

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

1 both individually and collectively, ~~threaten~~ the very  
2 foundation of civilized society present a clear and present  
3 danger to public order and safety and are not  
4 constitutionally protected. It is the intent of the  
5 Legislature in enacting this chapter to seek the  
6 eradication of criminal activity by street gangs by  
7 focusing upon patterns of criminal gang-related activity  
8 and upon the organized nature of street gangs, which  
9 together are the chief source of terror created by street  
10 gangs. The Legislature further finds that an effective  
11 means of punishing and deterring the criminal activities  
12 of street gangs is through forfeiture of the profits,  
13 proceeds, and instrumentalities acquired, accumulated,  
14 or used by street gangs.

15 186.22. (a) Any person who actively participates in  
16 any criminal street gang with knowledge that its  
17 members or participants engage in or have engaged in a  
18 pattern of criminal gang activity with the specific intent  
19 to promote, further, or assist in any criminal conduct by  
20 its members or participants, shall be punishable by  
21 imprisonment in the county jail for a period not to exceed  
22 one year, or by imprisonment in the state prison.

23 (b) Any person who actively participates in any  
24 criminal street gang with knowledge that its members or  
25 participants engage in or have engaged in a pattern of  
26 criminal gang activity, and who willfully promotes,  
27 furthers, or assists in any criminal conduct by gang  
28 members or participants, is punishable by imprisonment  
29 *in the county jail for a period not to exceed one year, or*  
30 *by imprisonment* in the state prison.

31 (c) Any person who is convicted of a felony or a  
32 misdemeanor which is committed for the benefit of, at  
33 the direction of, or in association with, any criminal street  
34 gang, with the specific intent to promote, further, or  
35 assist in any criminal conduct by gang members or  
36 participants, shall be punished in the following manner:

37 (1) Any person who violates this subdivision in the  
38 commission or attempted commission of a misdemeanor,  
39 shall be punished by imprisonment in the county jail not  
40 to exceed one year, or by imprisonment in the state

AMENDED IN ASSEMBLY JULY 9, 1987  
AMENDED IN ASSEMBLY JUNE 25, 1987  
AMENDED IN ASSEMBLY JUNE 9, 1987  
AMENDED IN ASSEMBLY JUNE 3, 1987  
AMENDED IN ASSEMBLY MAY 26, 1987  
AMENDED IN ASSEMBLY APRIL 23, 1987

CALIFORNIA LEGISLATURE—1987-88 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2013**

**Introduced by Assembly Member Moore**

March 6, 1987

---

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2013, as amended, Moore. Crimes.

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

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

*to employees engaged in concerted activities for their mutual aid and protection, or the activities of labor organizations or their members or agents.*

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

Vote:  $\frac{2}{3}$ . Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. Chapter 11 (commencing with Section  
2 186.20) is added to Title 7 of Part 1 of the Penal Code, to  
3 read:

4  
5 CHAPTER 11. STREET TERRORISM ENFORCEMENT  
6 AND PREVENTION ACT  
7

8 186.20. This chapter shall be known and may be cited  
9 as the "California Street Terrorism Enforcement and  
10 Prevention Act."

11 186.21. The Legislature hereby finds and declares  
12 that it is the right of every person regardless of race,  
13 color, creed, religion, national origin, sex, age, sexual  
14 orientation, or handicap to be secure and protected from  
15 fear, intimidation, and physical harm caused by the  
16 activities of violent groups and individuals. It is not the  
17 intent of the Legislature in enacting this chapter to  
18 interfere with the exercise of rights protected by the  
19 United States Constitution or by the California  
20 Constitution. The Legislature recognizes the  
21 constitutional right of every citizen to harbor and express  
22 beliefs on any lawful subject whatsoever ~~and~~, to lawfully  
23 associate with others who share similar beliefs, to  
24 petition lawfully constituted authority for a redress of

1 *perceived grievances, or to participate in the electoral*  
2 *process.*

3 The Legislature, however, further finds that the State  
4 of California is in a state of crisis which has been caused  
5 by violent street gangs whose members threaten,  
6 terrorize, and commit a multitude of crimes against the  
7 peaceful citizens of their neighborhoods. These activities,  
8 both individually and collectively, present a clear and  
9 present danger to public order and safety and are not  
10 constitutionally protected. It is the intent of the  
11 Legislature in enacting this chapter to seek the  
12 eradication of criminal activity by street gangs by  
13 focusing upon patterns of criminal gang-related activity  
14 and upon the organized nature of street gangs, which  
15 together are the chief source of terror created by street  
16 gangs. The Legislature further finds that ~~an effective~~  
17 ~~means of punishing and deterring the criminal activities~~  
18 ~~of street gangs is through forfeiture of the profits,~~  
19 ~~proceeds, and instrumentalities acquired, accumulated,~~  
20 ~~or used by street gangs.~~ *there are nealy 600 criminal*  
21 *street gangs operating in California, and that the number*  
22 *of gang-related murders is increasing. The Legislature*  
23 *also finds that in Los Angeles County alone there were*  
24 *328 gang-related murders in 1986, and that gang*  
25 *homicides in 1987 have increased 80 percent over 1986.*

26 186.22. (a) Any person who actively participates in  
27 any criminal street gang with knowledge that its  
28 members engage in or have engaged in a pattern of  
29 criminal gang activity, and who willfully promotes,  
30 furthers, or assists in any felonious criminal conduct by  
31 gang members, shall be punished by imprisonment in the  
32 county jail for a period not to exceed one year, or by  
33 imprisonment in the state prison.

34 (b) Any person who is convicted of a felony or a  
35 misdemeanor which is committed for the benefit of, at  
36 the direction of, or in association with, any criminal street  
37 gang, with the specific intent to promote, further, or  
38 assist in any criminal conduct by gang members, shall be  
39 punished in the following manner:

40 (1) Any person who violates this subdivision in the

AMENDED IN ASSEMBLY AUGUST 18, 1987

AMENDED IN ASSEMBLY JULY 9, 1987

AMENDED IN ASSEMBLY JUNE 25, 1987

AMENDED IN ASSEMBLY JUNE 9, 1987

AMENDED IN ASSEMBLY JUNE 3, 1987

AMENDED IN ASSEMBLY MAY 26, 1987

AMENDED IN ASSEMBLY APRIL 23, 1987

CALIFORNIA LEGISLATURE—1987-88 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2013**

**Introduced by Assembly Member Moore**

March 6, 1987

---

---

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2013, as amended, Moore. Crimes.

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

This bill would provide that any person who actively participates in any criminal street gang, as defined, with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, as defined, and who willfully furthers, or assists in, any felonious criminal conduct by gang members, shall be punished by imprisonment in the county

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

1 SECTION 1. Chapter 11 (commencing with Section  
2 186.20) is added to Title 7 of Part 1 of the Penal Code, to  
3 read:

4

5 CHAPTER 11. STREET TERRORISM ENFORCEMENT  
6 AND PREVENTION ACT  
7

8 186.20. This chapter shall be known and may be cited  
9 as the "California Street Terrorism Enforcement and  
10 Prevention Act."

11 186.21. The Legislature hereby finds and declares  
12 that it is the right of every person regardless of race,  
13 color, creed, religion, national origin, sex, age, sexual  
14 orientation, or handicap to be secure and protected from  
15 fear, intimidation, and physical harm caused by the  
16 activities of violent groups and individuals. It is not the  
17 intent of the Legislature in enacting this chapter to  
18 interfere with the exercise of rights protected by the  
19 United States Constitution or by the California  
20 Constitution. The Legislature recognizes the  
21 constitutional right of every citizen to harbor and express  
22 beliefs on any lawful subject whatsoever, to lawfully  
23 associate with others who share similar beliefs, to petition  
24 lawfully constituted authority for a redress of perceived  
25 grievances, or to participate in the electoral process.

26 The Legislature, however, further finds that the State  
27 of California is in a state of crisis which has been caused  
28 by violent street gangs whose members threaten,  
29 terrorize, and commit a multitude of crimes against the  
30 peaceful citizens of their neighborhoods. These activities,  
31 both individually and collectively, present a clear and  
32 present danger to public order and safety and are not  
33 constitutionally protected. It is the intent of the  
34 Legislature in enacting this chapter to seek the  
35 eradication of criminal activity by street gangs by  
36 focusing upon patterns of criminal gang-related activity  
37 and upon the organized nature of street gangs, which  
38 together are the chief source of terror created by street

1 gangs. The Legislature further finds that there are nearly  
2 nearly 600 criminal street gangs operating in California,  
3 and that the number of gang-related murders is  
4 increasing. The Legislature also finds that in Los Angeles  
5 County alone there were 328 gang-related murders in  
6 1986, and that gang homicides in 1987 have increased 80  
7 percent over 1986.

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

16 (b) Any person who is convicted of a felony or a  
17 misdemeanor which is committed for the benefit of, at  
18 the direction of, or in association with, any criminal street  
19 gang, with the specific intent to promote, further, or  
20 assist in any criminal conduct by gang members, shall be  
21 punished in the following manner:

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

36 (2) Except as provided in paragraph (3), any person  
37 who violates this subdivision in the commission or  
38 attempted commission of a felony shall, upon conviction  
39 of that felony or attempted felony, in addition and  
40 consecutive to the punishment prescribed for the felony



AMENDED IN SENATE AUGUST 30, 1988  
AMENDED IN SENATE AUGUST 5, 1988  
AMENDED IN SENATE AUGUST 2, 1988  
AMENDED IN SENATE JUNE 23, 1988  
AMENDED IN SENATE APRIL 4, 1988  
AMENDED IN ASSEMBLY SEPTEMBER 1, 1987  
AMENDED IN ASSEMBLY AUGUST 18, 1987  
AMENDED IN ASSEMBLY JULY 9, 1987  
AMENDED IN ASSEMBLY JUNE 25, 1987  
AMENDED IN ASSEMBLY JUNE 9, 1987  
AMENDED IN ASSEMBLY JUNE 3, 1987  
AMENDED IN ASSEMBLY MAY 26, 1987  
AMENDED IN ASSEMBLY APRIL 23, 1987

CALIFORNIA LEGISLATURE—1987-88 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2013**

---

---

**Introduced by Assembly Member Moore**  
**(Principal coauthor: Senator Robbins)**  
**(Coauthors: Senators Cecil Green, Lockyer, Torres, and**  
**Watson)**

March 6, 1987

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

Date of Hearing: July 13, 1987  
Counsel: Melissa K. Nappan

AB 2013

ASSEMBLY COMMITTEE ON PUBLIC SAFETY  
Larry Stirling, Chair

AB 2013 (Moore) - As Amended: July 9, 1987

ISSUE: SHOULD THERE BE SPECIFIED CRIMINAL SANCTIONS FOR PARTICIPATION IN CRIMINAL STREET GANGS?

DIGEST

- 1) Current law contains no provisions which specifically make commission of criminal offenses by members of criminal street gangs a separate offense from the crime actually committed.

This bill would make it an alternate felony/misdemeanor, punishable by up to one year in the county jail, or 16 months, two or three years in state prison, to actively participate in a criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal activity and willfully promote, further, or assist in any felonious conduct by gang members.

- 2) Current law contains no specific sentencing provisions for offenses committed in furtherance of gang activities.

This bill would provide that:

- a) Any person convicted of a misdemeanor with the intent to promote the gang activities shall be imprisoned for up to a year in the county jail or in state prison.
- b) Any person convicted of a misdemeanor with the intent to promote gang activity which has been reduced from a felony pursuant to Penal Code Section 17(b) must serve a minimum of 180 days in jail.
- c) A sentence enhancement of two or three years be imposed in addition to any jail time served upon the conviction of a felony which is in furtherance of gang activity. (Two years if the underlying felony is punishable by a maximum of three years; and otherwise three years.)
- d) A minimum of 15 calendar years must be served before parole on any life prison term imposed for a gang related felony.
- e) The court may strike these enhancements in the interests of justice.

COMMENTS

1) DEFINITIONS.

a) Criminal Street Gang. The bill specifically defines a "criminal street gang" as an association or group of three or more persons which has a common name or symbol, whose members either individually or collectively engage or have engaged in a pattern of criminal gang activity, and which has as one of its primary activities the commission of one or more of the criminal acts defined below (Section 1b).

b) Pattern of Activity. A "pattern of criminal gang activity" is defined as the commission, attempted commission, or solicitation of two or more of the following offenses:

- \* Assault with a deadly weapon or with force likely to produce great bodily injury.
- \* Robbery.
- \* Homicide or manslaughter.
- \* Sale, possession for sale, or manufacture of specified controlled substances.
- \* Shooting at an inhabited dwelling or motor vehicle.
- \* Arson.
- \* Intimidation of witnesses.

At least one of these offenses must occur after the date this bill is chaptered, and the last must occur within three years after that. The offenses must be committed on separate occasions or by at least two persons.

c) No Definitions. The bill does not define what a "member" is. All levels of gang "membership" exist ranging from hard core criminal members, to peripheral members who join for status, recognition, or the emotional need to belong. Opponents of the bill state that only hard core members should be targeted, and that the lack of definition of these terms might allow a person who is only peripherally involved to be criminally liable for the conduct of others.

2) PURPOSE. The sponsors state that criminal street gangs represent large scale big business and large-scale crime in California, particularly in Los Angeles. (The sponsors also note that similar problems exist in San Francisco, San Diego, Oakland, and San Jose). In the Los Angeles

area, law enforcement officials believe that there are between 40,000 and 50,000 members in about 500 gangs. They linked members of gangs to 186 homicides and over 5000 violent crimes in 1986. Prosecutors and law enforcement have increased efforts in this area, but enhanced prosecution programs have not been effective enough. Although there have been more arrests and convictions of individuals, the sponsors state that the "heart of the enterprise" has yet to be reached. The sponsors state that this bill is intended to reach that goal, and compare it to federal laws targeting organized crime.

- 3) NEED. According to the Attorney General's Gang Task Force Report, the number of gangs and gang members have steadily increased since 1979 (from 300 gangs in 1979 to 500 today). However, the number of gang-related murders has steadily decreased (from 350 in 1980 to 186 today). The Los Angeles District Attorney's Office claims a 95% conviction rate for gang-related crime under enhanced prosecution efforts. If the conviction rate is 95% under current law, is the creation of new offenses necessary?

Opponents of the bill also note that sending gang members to prison may also have a counterproductive effect. In their book, "Understanding Street Gangs," Sergeants Robert Jackson and Wesley McBride state that sending gang members to prison increases their status in the gangs. Opponents also state that correctional institutions are currently fertile recruitment grounds for gang members. Members of the Los Angeles Public Defender's Office (Juvenile Division) also state that many juveniles join gangs for status, and rarely make much money from their activities, except those involved in drug sales. Opponents state that drug sales are adequately punished by current laws. Further, to punish juveniles who are often intimidated by other juveniles into joining the gangs under threats of extortion or beatings is poor public policy and does little to curb the gang problem.

- 4) NEW OFFENSE AND SENTENCE ENHANCEMENTS. Under this bill, active participation in a criminal street gang, with knowledge of its activities and the willful promotion, assistance, or furtherance of any of the felonious criminal activities would be an alternate felony/misdemeanor.

Also, a defendant who is convicted of a crime which was committed for the benefit, or at the direction of the gang with the intent to further the criminal activities of the gang would be subject to a variety of sentence enhancements. Any gang member serving a life term for a felony committed in furtherance of gang activity would have to serve a minimum of 15 years prior to being paroled. These enhancements could be stricken by the court in appropriate cases.

- a) Arguments Against. The American Civil Liberties Union (ACLU) states that to punish membership in a criminal street gang "creates an overbroad and vague legal standard which raises serious questions of

enforcement and invites selective prosecution which could be easily targeted against any association or group..it could be applied against organizations whose primary purpose was political and lawful promotions of beliefs and opinions. The fact that some individuals in the group may choose, as individuals, to engage in criminal misconduct however should not criminalize membership by any person in the group."

Further, punishing members of a group for a "pattern of violence" fails to recognize that express individualized intent is necessary for a criminal conviction of any one person. Adequate sanctions exist under current law if that person has the requisite intent and activity.

The ACLU also notes that by providing sentence enhancements and minimum sentences, gang members are being punished more severely simply for their association. This is even clearer in the case of minimum time to be served prior to parole. An "ordinary" first degree murderer under current law does not have to serve 15 years before he is considered for parole. Under this bill, a kidnapper who is a gang member (and committed the crime in furtherance of gang activities) would have to serve more time than the murderer before being eligible for parole. Not only is this an illogical sentencing scheme, but it may be unconstitutional.

California Attorneys for Criminal Justice (CACJ) also states that gang members who commit crimes are currently punishable by other existing statutes, including aiding and abetting and conspiracy provisions. They note that language proscribing "members" or "active participation" is vague and could be used against peripheral members as well as hard core participants.

- b) Author's Response. A criminal street gang is clearly defined in the bill to require that the group or its members are engaged in a pattern of specific serious criminal activity. No group whose members are not engaged in the commission of such offenses is included in the definition. Further, mere membership is not punishable under the bill. The United States Supreme Court has held that mere association with a group cannot be punished unless there is proof that the defendant knows of and intends to further its illegal aims. (Scales v. United States (1961) 367 U.S. 203, 229). This bill imposes sanctions on active participation in the gang only when the defendant knows of felonious criminal activity and willfully promotes, furthers or assists it.

The sponsors state that current law does not adequately punish this type of organized crime. Conspiracy laws require an agreement to commit a crime, and an "overt act," which cannot always be shown in the case of a gang member. For example, where a gang member is driving a car with other gang members who then shoot into a home, the driver may or may not be guilty of the shooting depending on his knowledge and

intent. Under this bill, he would be guilty of an alternate felony/misdemeanor regardless of his intent concerning the shooting.

- 5) LABOR ORGANIZATIONS. The bill contains a specific exclusion for employees engaged in activities of labor organizations.
- 6) SUNSET. The author proposes to amend the bill in Committee to provide a 3-year sunset provision, with a report to be submitted at the end of the second year.

SOURCE: Los Angeles City Attorney  
Los Angeles District Attorney

SUPPORT: None on file

OPPOSITION: American Civil Liberties Union  
California Attorneys for Criminal Justice  
California Public Defenders Association

Date of Hearing: June 29, 1987  
Counsel: Melissa K. Nappan

AB 2013

ASSEMBLY COMMITTEE ON PUBLIC SAFETY  
Larry Stirling, Chair

AB 2013 (Moore) - As Amended: June 25, 1987

- ISSUE:
- I. SHOULD THERE BE SPECIFIED CRIMINAL SANCTIONS FOR PARTICIPATION IN CRIMINAL STREET GANGS?
  - II. SHOULD THERE BE PROVISIONS FOR VICTIMS OF STREET GANGS TO PURSUE CIVIL ACTIONS INCLUDING INJUNCTIONS AND SUITS FOR MONETARY DAMAGES?
  - III. SHOULD THERE BE CIVIL FORFEITURE PROVISIONS FOR PROFITS OF GANG-RELATED ACTIVITY?
  - IV. SHOULD IT BE AN ALTERNATE FELONY/MISDEMEANOR FOR PARENTS OF MINORS WHO VIOLATE PROVISIONS OF THIS BILL TO KNOWINGLY RECEIVE PROCEEDS FROM GANG ACTIVITY?
  - V. SHOULD THE LAW WHICH MAKES IT A FELONY TO THREATEN A CRIME WHICH WILL RESULT IN GREAT BODILY INJURY OR DEATH BE AMENDED?

DIGEST

- 1) Current law contains no provisions which specifically make commission of criminal offenses by members of criminal street gangs a separate offense from the crime actually committed.

This bill would make it an alternate felony/misdemeanor, punishable by up to one year in the county jail, or 16 months, two or three years in state prison, to actively participate in a criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal activity and willfully promote, further, or assist in any felonious conduct by gang members.

- 2) Current law contains no specific sentencing provisions for offenses committed in furtherance of gang activities.

This bill would provide that:

- a) Any person convicted of a misdemeanor with the intent to promote the gang activities shall be imprisoned for up to a year in the county jail or in state prison.
- b) Any person convicted of a misdemeanor with the intent to promote gang activity which has been reduced from a felony pursuant to Penal Code Section 17(b) must serve a minimum of 180 days in jail.

- c) A sentence enhancement of three years be imposed in addition to any jail time served upon the conviction of a felony which is in furtherance of gang activity.
  - d) A minimum of 15 calendar years must be served before parole on any life prison term imposed for a gang related felony.
  - e) The court may strike these enhancements in the interests of justice.
- 3) Current law provides no specific laws pertaining to the forfeiture of proceeds of gang-related activity.

This bill would:

- a) Provide for civil forfeiture proceedings for money or property which is derived from or used in association with a criminal street gang.
  - b) Make it an alternate felony/misdemeanor, punishable by up to one year in the county jail or 16 months, two or three years in state prison, for a parent of a minor in violation of these laws to knowingly receive proceeds that the minor received as a result of the violation, if the parent did not exercise reasonable care and control over the minor and allowed him or her to violate the law.
- 4) Current law does not provide a specific civil action for damages and costs sustained by a victim of a street gang.

This bill would:

- a) Authorize civil actions against a gang for recovery of damages and costs sustained by victims.
  - b) Authorize a prosecutor to bring an injunction against the criminal street gang or its members.
  - c) Authorize the Attorney General to intervene or act as amicus in any civil action brought under this law.
- 5) Current law makes it a felony to threaten to commit a crime which will result in death or great bodily injury, if it causes another person to fear for his or his family's safety, causes the evacuation of a building, interferes with public services, or otherwise causes serious disruption of public activities. (This law was held to be unconstitutional by the California Supreme Court [See Comment #4b.] )

This bill would amend that law to make it an alternate felony/misdemeanor to threaten a crime which will result in death or great bodily injury, with the specific intent that the statement be taken as a threat even where



there is no intent of actually carrying it out, and where the intent is specific enough to convey to the person an immediate prospect of execution.

- 6) This bill also establishes a Gang Violence Prevention and Education Revolving Fund to be administered by the Office of Criminal Justice Planning (OCJP) to be disbursed for education and prevention activities. All fines and forfeitures received under this bill would be transferred into this Fund.

COMMENTS

1) DEFINITIONS.

- a) Criminal Street Gang. The bill specifically defines a "criminal street gang" as an association or group of three or more persons which has a common name or symbol, whose members either individually or collectively engage or have engaged in a pattern of criminal gang activity, and which has as one of its primary activities the commission of criminal acts.
- b) Pattern of Activity. A "pattern of criminal gang activity" is defined as the commission, attempted commission, or solicitation of two or more of the following offenses:
- \* Assault with a deadly weapon or with force likely to produce great bodily injury.
  - \* Robbery.
  - \* Homicide or manslaughter.
  - \* Sale, possession for sale, or manufacture of specified controlled substances.
  - \* Shooting at an inhabited dwelling or motor vehicle.
  - \* Arson.
  - \* Intimidation of witnesses.
- At least one of these offenses must occur after the date this bill is chaptered, and the last must occur within three years after that.
- c) No Definitions. The bill does not define what a "member" is. All levels of gang "membership" exist ranging from hard core criminal members, to peripheral members who join for status, recognition, or the emotional need to belong. Opponents of the bill state that only hard core members should be targeted, and that the lack of definition of

these terms might allow a person who is only peripherally involved to be criminally liable for the conduct of others.

- 2) PURPOSE. The sponsors state that criminal street gangs represent large scale big business and large-scale crime in California, particularly in Los Angeles. (The sponsors also note that similar problems exist in San Francisco, San Diego, Oakland, and San Jose). In the Los Angeles area, law enforcement officials believe that there are between 40,000 and 50,000 members in about 500 gangs. They linked members of gangs to 186 homicides and over 5000 violent crimes in 1986. Prosecutors and law enforcement have increased efforts in this area, but enhanced prosecution programs have not been effective enough. Although there have been more arrests and convictions of individuals, the sponsors state that the "heart of the enterprise" has yet to be reached. The sponsors state that this bill is intended to reach that goal, and compare it to federal laws targeting organized crime.
- 3) NEED. According to the Attorney General's Gang Task Force Report, the number of gangs and gang members have steadily increased since 1979 (from 300 gangs in 1979 to 500 today). However, the number of gang-related murders has steadily decreased (from 350 in 1980 to 186 today). The Los Angeles District Attorney's Office claims a 95% conviction rate for gang-related crime under enhanced prosecution efforts. If the conviction rate is 95% under current law, is the creation of new offenses necessary?

Opponents of the bill also note that sending gang members to prison may also have a counterproductive effect. In their book, "Understanding Street Gangs," Sergeants Robert Jackson and Wesley McBride state that sending gang members to prison increases their status in the gangs. Opponents also state that correctional institutions are currently fertile recruitment grounds for gang members. Members of the Los Angeles Public Defender's Office (Juvenile Division) also state that many juveniles join gangs for status, and rarely make much money from their activities, except those involved in drug sales. Opponents state that drug sales are adequately punished by current laws. Further, to punish juveniles who are often intimidated by other juveniles into joining the gangs under threats of extortion or beatings is poor public policy and does little to curb the gang problem.

4) CRIMINAL PROVISIONS:

- a) New Offense and Sentence Enhancements. Under this bill, active participation in a criminal street gang, with knowledge of its activities and the willful promotion, assistance, or furtherance of any of the felonious criminal activities would be an alternate felony/misdemeanor.

Also, a defendant who is convicted of a crime which was committed for the benefit, or at the direction of the gang with the intent to further the criminal activities of the gang would be subject to a variety of sentence enhancements. Any gang member serving a life term for a felony committed in furtherance of gang activity would have to serve a minimum of 15 years prior to being paroled. These enhancements could be stricken by the court in appropriate cases.

- (1) Arguments Against. The American Civil Liberties Union (ACLU) states that to punish membership in a criminal street gang "creates an overbroad and vague legal standard which raises serious questions of enforcement and invites selective prosecution which could be easily targeted against any association or group..it could be applied against organizations whose primary purpose was political and lawful promotions of beliefs and opinions. The fact that some individuals in the group may choose, as individuals, to engage in criminal misconduct however should not criminalize membership by any person in the group."

Further, punishing members of a group for a "pattern of violence" fails to recognize that express individualized intent is necessary for a criminal conviction of any one person. Adequate sanctions exist under current law if that person has the requisite intent and activity.

The ACLU also notes that by providing sentence enhancements and minimum sentences, gang members are being punished more severely simply for their association. This is even clearer in the case of minimum time to be served prior to parole. An "ordinary" first degree murderer under current law does not have to serve 15 years before he is considered for parole. Under this bill, a kidnapper who is a gang member (and committed the crime in furtherance of gang activities) would have to serve more time than the murderer before being eligible for parole. Not only is this an illogical sentencing scheme, but it may be unconstitutional.

California Attorneys for Criminal Justice (CACJ) also states that gang members who commit crimes are currently punishable by other existing statutes, including aiding and abetting and conspiracy provisions. They note that language proscribing "members" or "active participation" is vague and could be used against peripheral members as well as hard core participants.

- (2) Author's Response. A criminal street gang is clearly defined in the bill to require that the group or its members are engaged in a pattern of specific serious criminal activity. No group whose members are not engaged in the commission of such offenses is included in the definition. Further, mere membership is not

punishable under the bill. The United States Supreme Court has held that mere association with a group cannot be punished unless there is proof that the defendant knows of and intends to further its illegal aims. (Scales v. United States (1961) 367 U.S. 203, 229). This bill imposes sanctions on active participation in the gang only when the defendant knows of felonious criminal activity and willfully promotes, furthers or assists it.

The sponsors state that current law does not adequately punish this type of organized crime. Conspiracy laws require an agreement to commit a crime, and an "overt act," which cannot always be shown in the case of a gang member. For example, where a gang member is driving a car with other gang members who then shoot into a home, the driver may or may not be guilty of the shooting depending on his knowledge and intent. Under this bill, he would be guilty of an alternate felony/misdemeanor regardless of his intent concerning the shooting.

- b) Threats of Crimes. This bill amends Penal Code Section 422, which was held unconstitutional by the California Supreme Court. The Court in People v. Miramani (1981) 30 Cal.3d 375, held that this law was unconstitutionally vague and that statutes penalizing threats must be narrowly directed at threats which truly pose a danger to society. The bill proposes language which requires a specific intent that the speech be taken as a threat, as well as the requirement that it be so "unequivocal, unconditional, immediate, and specific as to convey to the person threatened a gravity of purpose and an immediate prospect of execution." The bill also amends the crime so that it is a "wobbler" instead of a straight felony.
- c) Parental Liability. Under current law, any parent who fails to exercise reasonable care to control a minor child and who allows that child to violate a law is guilty of a misdemeanor. This bill would make it a "wobbler" for the parent who violated that law to also knowingly receive proceeds from gang activity.

The sponsors state that this section is intended to be used against parents who actually encourage their minor children to participate in gang activity. Opponents state that this section could punish the parent of a child who was unable to control that child, if he or she accepted money from the child for groceries, knowing that the money came from gang activities.

- 5) CIVIL CAUSES OF ACTION. The bill contains specific provisions for injunctions and suits for damages caused by criminal street gangs.
  - a) Injunctions. The bill would authorize a prosecutor to enjoin a criminal street gang or the place used for purposes of criminal conduct

by a gang as a nuisance. The court could issue a temporary restraining order or injunction where the existence of a violation was shown to its satisfaction by a complaint or affidavit.

- b) Damages. A victim of a violation under this bill would be authorized to sue for damages, punitive damages, and attorney's fees. The victim could sue the person who committed the crime, any other member of the gang who had the specific intent to further or assist the criminal conduct of the gang, or the gang itself. Further, the bill allows for a civil penalty of twice the proved damages, attorney's fees, and costs, which would be deposited into the Gang Violence Prevention and Education Revolving Fund. The bill specifies which organizations may apply for funding from this Fund.

\* Service of Process. Service of Process could be made by delivery of a copy of the process to any three or more gang members who could be reasonably expected to give notice to other gang members. (This determination is to be made by the court.) Service of process to three gang members arguably does not meet due process requirements for the entire gang. Further, the proposal that the court determine whether the chosen three members' "character is such that he could reasonably be expected to give notice to the other members" appears to be vague and possibly unworkable.

\* Expedited Hearing. The bill also proposes that in any civil action brought by a prosecutor under this law or a civil forfeiture action shall have precedence over all other actions, except criminal proceedings, election contests, and hearings on injunctions.

The sponsors of the bill state that this is good public policy because the property in a forfeiture action would already have been seized and the owner of the property should be entitled to a speedy determination of the case. However, there are equally good reasons to expedite many civil cases, and long waiting lists for courtrooms in many jurisdictions. This procedure raises the obvious question of whether a prosecutor should be permitted to dictate to the presiding judge of a court the priority of civil cases.

- 6) Forfeiture Provisions. The bill provides that any property interest used in the course of, derived from, which were proceeds of, or received in exchange for proceeds of a pattern of criminal activity would be subject to civil forfeiture. The prosecutor may file a civil petition in conjunction with any civil or criminal proceeding. The prosecutor would then have the burden of proof that the property was acquired by the offender when he was a member of a street gang, and that the property was acquired by proceeds of a crime. The property could be seized initially by means of a search warrant, unless exigent circumstances existed, or the search was incident to a lawful arrest.

SOURCE: Los Angeles City Attorney  
Los Angeles District Attorney

SUPPORT: None on file

OPPOSITION: American Civil Liberties Union  
California Attorneys for Criminal Justice  
California Public Defenders Association

Date of Hearing: June 8, 1987  
Counsel: Melissa K. Nappan

AB 2013

ASSEMBLY COMMITTEE ON PUBLIC SAFETY  
Larry Stirling, Chair

AB 2013 (Moore) - As Proposed to be Amended In Committee

- ISSUE:
- I. SHOULD THERE BE SPECIFIED CRIMINAL SANCTIONS FOR PARTICIPATION IN CRIMINAL STREET GANGS?
  - II. SHOULD THERE BE PROVISIONS FOR VICTIMS OF STREET GANGS TO PURSUE CIVIL ACTIONS INCLUDING INJUNCTIONS AND SUITS FOR MONETARY DAMAGES?
  - III. SHOULD THERE BE CIVIL FORFEITURE PROVISIONS FOR PROFITS OF GANG-RELATED ACTIVITY?
  - IV. SHOULD THE PROSECUTOR BE PERMITTED TO ISSUE INVESTIGATORY SUBPOENAS IN CONNECTION WITH PROSECUTIONS UNDER THIS BILL?
  - V. SHOULD IT BE AN ALTERNATE FELONY/MISDEMEANOR FOR PARENTS OF MINORS WHO VIOLATE PROVISIONS OF THIS BILL TO KNOWINGLY RECEIVE PROCEEDS FROM GANG ACTIVITY?
  - VI. SHOULD THE LAW WHICH MAKES IT A FELONY TO THREATEN A CRIME WHICH WILL RESULT IN GREAT BODILY INJURY OR DEATH BE AMENDED?

DIGEST

- 1) Current law contains no provisions which specifically make commission of criminal offenses by members of criminal street gangs a separate offense from the crime actually committed.

This bill would make it an alternate felony/misdemeanor, punishable by up to one year in the county jail, or 16 months, two or three years in state prison, to either :

- a) Actively participate in a criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity with the specific intent to promote, further, or assist its criminal conduct, or
  - b) Willfully promote, further, or assist the criminal activity.
- 2) Current law contains no specific sentencing provisions for offenses committed in furtherance of gang activities.

This bill would provide that:

- a) Any person convicted of a misdemeanor with the intent to promote the gang activities shall be imprisoned for up to a year in the county jail or in state prison.
  - b) Any person convicted of a misdemeanor with the intent to promote gang activity which has been reduced from a felony pursuant to Penal Code Section 17(b) must serve a minimum of 180 days in jail.
  - c) A sentence enhancement of three years be imposed in addition to any jail time served upon the conviction of a felony which is in furtherance of gang activity.
  - d) A minimum of 15 calendar years must be served before parole on any life prison term imposed for a gang related felony.
- 3) Current law provides no specific laws pertaining to the forfeiture of proceeds of gang-related activity.

This bill would:

- a) Make it an alternate felony/misdemeanor, punishable by up to one year in the county jail or 16 months, two or three years in state prison, for any person to receive the proceeds, either directly or indirectly, from a pattern of criminal gang activity in which he has participated as a principal.
  - b) Provide for civil forfeiture proceedings for money or property which is derived from or used in association with a criminal street gang.
  - c) Make it an alternate felony/misdemeanor, punishable by up to one year in the county jail or 16 months, two or three years in state prison, for a parent of a minor in violation of these laws to knowingly receive proceeds that the minor received as a result of the violation, if the parent did not exercise reasonable care and control over the minor and allowed him or her to violate the law.
- 4) Current law does not provide a specific civil action for damages and costs sustained by a victim of a street gang.

This bill would:

- a) Authorize the victim of an act by a criminal street gang to pursue a civil action against the gang for recovery of damages and costs sustained by him.



- b) Authorize a prosecutor to bring an injunction against the criminal street gang or its members for present and future violations.
  - c) Authorize the Attorney General to intervene or act as amicus in any civil action brought under this law.
- 5) Current law does not authorize the district attorney to issue investigative subpoenas for records and documents prior to the filing of criminal charges.

This bill would provide that where a prosecutor has reason to believe that a person or entity has knowledge of evidence relevant to an investigation under this bill, he may petition the court for an investigatory subpoena, and compel production of records and documents in that person or entity's possession.

- 6) Current law makes it a felony to threaten to commit a crime which will result in death or great bodily injury, if it causes another person to fear for his or his family's safety, causes the evacuation of a building, interferes with public services, or otherwise causes serious disruption of public activities. (This law was held to be unconstitutional by the California Supreme Court [See Comment #4c.]

This bill would amend that law to make it an alternate felony/misdemeanor to threaten a crime which will result in death or great bodily injury, with the specific intent that the statement be taken as a threat even where there is no intent of actually carrying it out, and where the intent is specific enough to convey to the person an immediate prospect of execution.

- 7) This bill also establishes a Gang Violence Prevention and Education Revolving Fund to be administered by the Office of Criminal Justice Planning (OCJP) to be disbursed for education and prevention activities. All fines and forfeitures received under this bill would be transferred into this Fund.

COMMENTS

1) DEFINITIONS.

- a) Criminal Street Gang. The bill specifically defines a "criminal street gang" as an association or group of three or more persons which has a common name or symbol, and whose members either individually or collectively engage or have engaged in a pattern of criminal gang activity.
- b) Pattern of Activity. A "pattern of criminal gang activity" is defined as the commission, attempted commission, solicitation, or conspiracy to commit two or more of the following offenses:

Opponents of the bill also note that sending gang members to prison may also have counterproductive effect. In their book, "Understanding Street Gangs," Sergeants Robert Jackson and Wesley McBride state that sending gang members to prison increases their status in the gangs. Opponents also state that correctional institutions are currently fertile recruitment grounds for gang members. Members of the Los Angeles Public Defender's Office (Juvenile Division) also state that many juveniles join gangs for status, and rarely make much money from their activities, except those involved in drug sales. Opponents state that drug sales are adequately punished by current laws. Further, to punish juveniles who are often intimidated by other juveniles into joining the gangs under threats of extortion or beatings is poor public policy and does little to curb the gang problem.

4) CRIMINAL PROVISIONS:

- a) New Offense and Sentence Enhancements. Under this bill, active participation in a criminal street gang, with knowledge of its activities and the specific intent to further them, would be an alternate felony/misdemeanor. Active participation with knowledge and willful promotion, assistance, or furtherance of any of the criminal activities would also be an alternate felony/misdemeanor.

Also, a defendant who is convicted of a crime which was committed for the benefit, or at the direction of the gang with the intent to further the criminal activities of the gang would be subject to a variety of sentence enhancements. Any gang member serving a life term for a felony committed in furtherance of gang activity would have to serve a minimum of 15 years prior to being paroled.

- (1) Arguments Against. The American Civil Liberties Union (ACLU) states that to punish membership in a criminal street gang "creates an overbroad and vague legal standard which raises serious questions of enforcement and invites selective prosecution which could be easily targeted against any association or group..it could be applied against organizations whose primary purpose was political and lawful promotions of beliefs and opinions. The fact that some individuals in the group may choose, as individuals, to engage in criminal misconduct however should not criminalize membership by any person in the group."

Further, punishing members of a group for a "pattern of violence" fails to recognize that express individualized intent is necessary for a criminal conviction of any one person. Adequate sanctions exist under current law if that person has the requisite intent and activity.

The ACLU also notes that by providing sentence enhancements and minimum sentences, gang members are being punished more severely simply for their association. This is even clearer in the case of minimum time to be served prior to parole. An "ordinary" first degree murderer under current law does not have to serve 15 years before he is considered for parole. Under this bill, a kidnapper who is a gang member (and committed the crime in furtherance of gang activities) would have to serve more time than the murderer before being eligible for parole. Not only is this an illogical sentencing scheme, but it may be unconstitutional.

California Attorneys for Criminal Justice (CACJ) also states that gang members who commit crimes are currently punishable by other existing statutes, including aiding and abetting and conspiracy provisions. Members who do not commit crimes should not be punished for their association with people who do. CACJ also notes that language proscribing "members" or "active participation" is vague and could be used against peripheral members as well as hard core participants. Although the bill specifies that the gang must be one which is involved in a pattern of criminal activity, opponents state that the definition would allow a situation where a very peripheral member could be convicted of a felony for trespassing with the gang, if one of the gang members had twice been convicted for robbery within ten years.

- (2) Author's Response. A criminal street gang is clearly defined in the bill to require that the group or its members are engaged in a pattern of specific serious criminal activity. No group whose members are not engaged in the commission of such offenses is included in the definition. Further, mere membership is not punishable under the bill. The United States Supreme Court has held that mere association with a group cannot be punished unless there is proof that the defendant knows of and intends to further its illegal aims. (Scales v. United States (1961) 367 U.S. 203, 229). This bill imposes sanctions on active participation in the gang only when the defendant knows about and specifically intends to further the criminal activity; or where he knows of the criminal activity and willfully promotes, furthers, or assists it.

The sponsors state that current law does not adequately punish this type of organized crime. Conspiracy laws require an agreement to commit a crime, and an "overt act," which cannot always be shown in the case of a gang member. For example, where a gang member is driving a car with other gang members who then shoot into a home, the driver may or may not be guilty of the shooting depending on his knowledge and intent. Under this bill, he would be guilty of an alternate felony/misdemeanor regardless of his intent concerning the shooting.

- b) Investigative Subpoenas. Under current law, the district attorney is authorized to obtain records necessary for prosecution only after criminal charges are filed unless he obtains a search warrant or a subpoena through the use of a grand jury investigation. Under current law, the Attorney General is authorized to issue administrative subpoenas for documents necessary to a pending investigation prior to the filing of criminal charges.

This bill proposes to give the district attorney the power to issue an investigatory subpoena if there is a "reasonable inference" that a provision of this bill is about to be or has been violated, and that the violator is subject to prosecution. The subpoena may require production of books, records, or other documents and materials under the control of an individual or organization. Thus, the prosecutor would be able to obtain documents under his investigatory subpoena power that he would not otherwise be able to obtain without probable cause to search required under a search warrant.

According to the sponsors, the primary purpose of this section is to compel a reluctant witness to speak with law enforcement or prosecuting authorities. The sponsors state that a witness who would otherwise not speak to authorities out of fear might come forward and give information if he were subpoenaed and threatened with contempt proceedings if he did not cooperate. The sponsors state that although the bill would allow the seizure of records and documents from a witness or victim of a crime without a search warrant, they are mainly interested in the witness himself, and not records or documents.

The author proposes to amend the bill to require a greater standard of evidence before a investigatory subpoena may be issued. The bill currently proposes a standard of a "reasonable belief" that the evidence is relevant. The proposed amendments would require probable cause - which is the standard required for a search warrant. The investigatory subpoena would still, however, broaden existing powers of the district attorney by allowing him to compel a witness's attendance prior to any criminal proceeding, and to subpoena the records and documents of a person who is not charged with any crime - and may, in fact, be the victim of a crime.

The sponsors recognize that threatening a witness who is afraid for his life with five days in jail for contempt might not always be a successful procedure. However, it is hoped that if the witness can be reached via this tool, he can be informed about witness assistance programs and possibly convinced that he will be protected if he gives information.

AB 1292 (Frazee) introduced earlier this session, proposed that district attorneys be given the same power as the Attorney General with regard to investigatory subpoenas. This bill failed passage in Committee.

- c) Threats of Crimes. This bill amends Penal Code Section 422, which was held unconstitutional by the California Supreme Court. The Court in People v. Miramani (1981) 30 Cal.3d 375, held that this law was unconstitutionally vague and that statutes penalizing threats must be narrowly directed at threats which truly pose a danger to society. The bill proposes language which requires a specific intent that the speech be taken as a threat, as well as the requirement that it be so "unequivocal, unconditional, immediate, and specific as to convey to the person threatened a gravity of purpose and an immediate prospect of execution." The bill also amends the crime so that it is a "wobbler" instead of a straight felony.
- d) Parental Liability. Under current law, any parent who fails to exercise reasonable care to control a minor child and who allows that child to violate a law is guilty of a misdemeanor. This bill would make it a "wobbler" for the parent who violated that law to also knowingly receive proceeds from gang activity.

The sponsors state that this section is intended to be used against parents who actually encourage their minor children to participate in gang activity. Opponents state that this section could punish the parent of a child who was unable to control that child, if he or she accepted money from the child for groceries, knowing that the money came from gang activities.

- 5) CIVIL CAUSES OF ACTION. The bill contains specific provisions for injunctions and suits for damages caused by criminal street gangs. Persons "aggrieved" by actions of a gang member which is in furtherance of gang activity, may sue the gang and recover actual and punitive damages, and attorneys fees. It is unclear what is meant by the term "aggrieved." If the meaning is the usual civil tort actions (battery, intentional infliction of mental distress, et cetera), then current law would already permit these actions.

If the intent is to broaden the law to cover other actions not already defined by current law, the language used is too vague to define the cause of action.

- a) Injunctions. The bill would authorize a prosecutor to enjoin a criminal street gang and its members from present or future violations. The court could issue a temporary restraining order or injunction where the existence of a violation was shown to its satisfaction by a complaint or affidavit.

b) Damages. A victim of a violation under this bill would be authorized to sue for damages, punitive damages, and attorney's fees. The victim could sue the person who committed the crime, any other member of the gang who had the specific intent to further or assist the criminal conduct of the gang, or the gang itself. Further, the bill allows for a civil penalty of twice the proved damages, attorney's fees, and costs, which would be deposited into the Gang Violence Prevention and Education Revolving Fund. The bill specifies which organizations may apply for funding from this Fund.

\* Service of Process. Service of Process could be made by delivery of a copy of the process to any three or more gang members who could be reasonably expected to give notice to other gang members. (This determination is to be made by the court.) Service of process to three gang members arguably does not meet due process requirements for the entire gang. Further, the proposal that the court determine whether the chosen three members' "character is such that he could reasonably be expected to give notice to the other members" appears to be vague and possibly unworkable.

\* Expedited Hearing. The bill also proposes that in any civil action brought by a prosecutor under this law, the prosecutor would be permitted to file a certificate stating that the case was of public importance and should be expedited. The bill states that the judge shall then immediately designate a judge to hear and make a determination on the action. Further, the bill provides that a civil forfeiture action (See Comment 6, below), shall have precedence over all other civil actions.

The sponsors of the bill state that this is good public policy because the property in a forfeiture action would already have been seized and the owner of the property should be entitled to a speedy determination of the case. However, there are equally good reasons to expedite many civil cases, and long waiting lists for courtrooms in many jurisdictions. This procedure raises the obvious question of whether a prosecutor should be permitted to dictate to the presiding judge of a court the priority of civil cases.

Further, if a civil case is expedited against a defendant who has a pending criminal case, and is heard prior to the defendant's criminal case, it might raise constitutional problems. Would the defendant receive immunity for his testimony in the civil proceedings; or would he be forced to incriminate himself in order to defend the civil forfeiture action?

6) Forfeiture Provisions. The bill provides that any property interest used in the course of, derived from, which were proceeds of, or received in exchange for proceeds of a pattern of criminal activity would be subject to

civil forfeiture. The prosecutor may file a civil petition in conjunction with any civil or criminal proceeding. The prosecutor would then have the burden of proof that the property was acquired by the offender when he was a member of a street gang, and that the property was acquired by proceeds of a crime. The property could be seized initially by means of a search warrant, unless exigent circumstances existed, or the search was incident to a lawful arrest.

SOURCE: Los Angeles City Attorney  
Los Angeles District Attorney

SUPPORT: None on file

OPPOSITION: American Civil Liberties Union  
California Attorneys for Criminal Justice  
California Public Defenders Association





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CONCURRENCE IN SENATE AMENDMENTS

AB 2013

AB 2013 (Moore) - As Amended: August 30, 1988

ASSEMBLY VOTE 74-1 (September 3, 1987) SENATE VOTE ( )  
(Unavailable)

Original Committee Reference: PUB. S.

DIGEST

Urgency statute. 2/3 vote required.

Under current law:

- 1) There are no provisions which specifically make commission of criminal offenses by members of criminal street gangs a separate offense from the crime committed.
- 2) There are no specific sentencing provisions for offenses committed in furtherance of gang activities.

As passed by the Assembly, this bill:

- 1) Made it an alternate felony-misdemeanor, punishable by up to one year in the county jail, or 16 months, two or three years in state prison, to actively participate in a criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal activity and willfully promote, further, or assist in any felonious conduct by gang members.
- 2) Provided that:
  - a) Any person convicted of a misdemeanor which is committed with the specific intent to promote gang activities shall be imprisoned for up to a year in the county jail or in state prison.
  - b) Any person convicted of a misdemeanor which is committed with the specific intent to promote gang activity and has been reduced from a felony pursuant to Penal Code Section 17(b) must serve a minimum of 180 days in jail.
  - c) A sentence enhancement of two or three years be imposed in addition to any jail time served on the conviction of a felony which is in furtherance of gang activity. (Two years if the underlying felony is punishable by a maximum of three years; otherwise, three years.)

- continued -

AB 2013

371.6-0054

- d) A minimum of 15 calendar years must be served before parole on any life prison term imposed for a gang related felony.
- e) The court may strike these enhancements in the interests of justice.
- 3) Specifically defined a "criminal street gang" as an association or group of three or more persons which has a common name or symbol, whose members either individually or collectively engage or have engaged in a pattern of criminal gang activity, and which has as one of its primary activities the commission of one or more of the criminal acts defined below.
- 4) Defined a "pattern of criminal gang activity" as the commission, attempted commission or solicitation of two or more enumerated following offenses:
- 5) Contained a January 1, 1991 sunset date, with a report to be submitted by the Los Angeles County District attorney by January 1, 1990.

The Senate amendments

- 1) Change the alternate felony/misdemeanor penalty for participation in a street gang to up to one year in county jail or one, two, or three years in state prison.
- 2) Change the felony enhancement for commission of an offense in furtherance of gang activity to one, two, or three years at the court's discretion.
- 3) Extend the report deadline for the Los Angeles District Attorney to January 1, 1991 and require the City Attorney of Los Angeles to report also.
- 4) Extend the sunset to January 1, 1992.

FISCAL EFFECT

Unknown.

Susan Shaw Goodman  
445-3268  
8/31/88:apub's

AB 2013  
Page 2

ASSEMBLY BILL 2013 — A REPLY MEMORANDUM

INTRODUCTION

The analysis of AB 2013 contains a thorough recitation of the opposition objections to the bill. The purpose of this memorandum is to reply to the opposition arguments to AB 2013. For clarity, this memorandum will reproduce each opposition argument as it appeared in the analysis and then have the reply of the sponsors, the Los Angeles City Attorney and the Los Angeles District Attorney.

OPPOSITION ARGUMENT #1

No Definitions. The bill does not define what a "member" or "participant" is. All levels of gang "membership" exist ranging from hard core criminal members, to peripheral members who join for status, recognition, or the emotional need to belong. Opponents of the bill state that only hard core members should be targeted, and that the lack of definition of these terms might allow a person who is only peripherally involved to be criminally liable for the conduct of others.

SPONSORS' REPLY

It is true that the bill does not specifically define the word "participant". However, this is a commonly used word which is defined in the dictionary. Statutes frequently contain words which are more difficult to define, such as "fraudulent". Whether one "actively participates" is an issue for the trier of fact.

In construing the membership clause of the Smith Act, the United States Supreme Court in Scales v. United States interpreted the word "membership" to be limited to "active" membership. It stated "nor do we think that the objections on the score of vagueness is a tenable one. The distinction between 'active' and 'nominal' members is well understood and common parlance [citation] and the point at which one shades into the other is something that goes not to the sufficiency of the statute, but to the adequacy of the trial court's guidance to the jury by way of instructions in that particular case. Black's Law Dictionary defines the word 'participate' to be 'to receive or have a part or share of; to partake of; experience in common with others; to have or enjoy a part or share in common with others; partake; as to participate in a discussion. To take part in . . . as to participate

in joys or sorrows; to take equal shares and proportions; to share or divide.'"

The bill as written will not apply to the so called casual member. To be held criminally culpable, gang members must have requisite specific intent and knowledge. AB 2013, in fact, goes beyond the active membership test of Scales, by requiring active participation, rather than mere membership.

OPPOSITION ARGUMENT #2

NEED. According to the Attorney General's Gang Task Force Report, the number of gangs and gang members have steadily increased since 1979 (from 300 gangs in 1979 to 500 today). However, the number of gang-related murders has steadily decreased (from 350 in 1980 to 186 today). The Los Angeles District Attorney's Office claims a 95% conviction rate for gang-related crime under enhanced prosecution efforts. If the conviction rate is 95% under current law, is the creation of new offenses necessary?

SPONSORS' REPLY

The cited gang statistics are incorrect. There are presently 597 street gangs in California. In 1986, law enforcement officials believe there were 328 gang homicides in Los Angeles County. The cited figure of 186 murders is for the City of Los Angeles only.

1980.....	351
1981.....	292
1982.....	205
1983.....	216
1984.....	212
1985.....	271
1986.....	328

Law enforcement officials state that gang homicides in 1987 have increased over eighty percent from last year, and violent crime has increased by twenty-four percent.

Regarding the 95% conviction rate in our office, this statistic is meaningless as it does not involve sentencing considerations, and with this bill we also intend to reach gang members not covered by present law.

OPPOSITION ARGUMENT #3

Opponents of the bill also note that sending gang members to prison may also have counterproductive effect. In their book, "Understanding Street Gangs," Sergeants Robert Jackson and Wesley McBride state that sending gang members to prison increases their status in the gangs. Opponents also state that correctional institutions are currently fertile recruitment grounds for gang members. Members of the Los Angeles Public Defender's Office (Juvenile Division) also state that many juveniles join gangs for status, and rarely make much money from their activities, except those involved in drug sales. Opponents state that drug sales are adequately punished by current laws. Further, to punish juveniles who are often intimidated by other juveniles into joining the gangs under threats of extortion or beatings, for their membership is poor public policy and does little to curb the gang problem.

SPONSORS' REPLY

It is true that certain gang members who have been to prison are regarded as having greater status when they are released. But what is the alternative that the opponents of AB 2013 would suggest? Surely, society cannot tie its hands and refuse to punish gang related crime because of this factor. Certainly, the gang members who are sent to prison are removed from their street environment for the duration of their sentence. Experts believe that when hardcore gang members are removed from the gang, the gang will itself dissipate, or at least have its criminal activity greatly reduced. Experts state that gang members engage in robberies, burglaries, extortion, and other activities which lead to profit. As explained earlier, the statute does not punish anyone for a mere membership in a gang. Knowledge and specific intent or actual promotion of crime is required.

OPPOSITION ARGUMENT #4

Arguments Against. The American Civil Liberties Union (ACLU) states that to punish membership in a criminal street gang "creates an overbroad and vague legal standard which raises serious questions of enforcement and invites selective prosecution which could be easily targeted against any association or group..it could be applied against organizations whose primary purpose was political and lawful promotions of beliefs and opinions. The fact that some individuals in the group may choose, as individuals, to engage in criminal misconduct however should not criminalize membership by any person in the group."

Further, punishing members of a group for a "pattern of violence" fails to recognize that express individualized intent is necessary for a criminal conviction on any one person. Where that person has the requisite intent and activity, adequate sanctions exist under current law.

SPONSORS' REPLY

This is really a restatement of the first argument against AB 2013. The bill does not enable the selective prosecution of any association. The bill's preamble, the predicate offenses, and the knowledge and intent requirements all preclude such a use of the statute.

OPPOSITION ARGUMENT #5

The ACLU also notes that by providing sentence enhancements and minimum sentences, gang members are being punished more severely simply for their association. This is even clearer in the case of minimum time to be served prior to parole. An "ordinary" first degree murderer under current law does not have to serve 15 years before he is considered for parole. Under this bill, a kidnapper who is a gang member (and committed the crime in furtherance of gang activities) would have to serve more time than the murderer before being eligible for parole. Not only is this an illogical sentencing scheme, but it may be unconstitutional.

SPONSORS' REPLY

To repeat, no one is being punished simply for their association. The enhancement section provides additional penalties for crimes committed for the benefit of, at the direction of, or in association with any criminal street gang, with a specific intent to promote further or assist in any criminal conduct by participants or members in that gang. The enhancements recognize the fact that crimes committed by gangs are a greater threat to society than they would be otherwise due to the organized and collegial nature of street gangs. This is similar to the basis for punishment for conspiracy which recognizes that when two or more individuals conspire to commit a crime, they are a greater threat to public safety. Further, these sentencing enhancements serve the purpose of focusing penalties on hardcore gang members who commit more crimes than other members. No case is cited by anyone holding that such a scheme is unconstitutional.

OPPOSITION ARGUMENT #6

California Attorneys for Criminal Justice (CACJ) also states that gang members who commit crimes are currently punishable by other existing statutes, including aiding and abetting and conspiracy provisions. Members who do not commit crimes should not be punished for their association with people who do. CACJ also notes that language proscribing "members" or "active participation" is vague and could be used against peripheral members as well as hard core participants. Although the bill specifies that the gang must be one which is involved in a pattern

ARGUMENT #6, continued

of criminal activity, opponents state that the definition would allow a situation where a very peripheral member could be convicted of a felony for trespassing with the gang, if one of the gang members had twice been convicted for robbery within ten years.

SPONSORS' REPLY

Conspiracy provisions are different than our RICO-type statute. Aiding and abetting merely punishes persons who assist in the commission of a particular crime. Neither conspiracy nor aiding and abetting recognizes the fact that crimes committed by persons in association with a street gang, with a specific intent of furthering criminal activity, is a greater threat to society than otherwise equal crimes. Additionally, neither of these concepts allows the targeting of individuals who are active participants in street gangs with knowledge that other members or participants have engaged in a pattern of crimes and either specifically intend to promote criminal activity or actually promote further or assist in any criminal activity.

It is true that persons who commit misdemeanors in association with street gangs, with a specific intent of promoting other criminal conduct will be subject to the enhancements. However, a member of a violent street gang involved in a pattern of criminal activity who knows of the criminal activity and who spray paints the placard of the street gang on a home with the specific intent of that placard being used as a territorial threat and to promote further criminal conduct, would be subject to the provisions. Graffiti is not simply a property offense, it is an intricate part of criminal gang activity. Also, other misdemeanors committed in association with a criminal street gang with a specific intent of promoting criminal conduct likewise would be more serious than a misdemeanor would otherwise be.

OPPOSITION ARGUMENT #7

Parental Liability. Under current law, any parent who fails to exercise reasonable care to control a minor child and who allows that child to violate a law is guilty of a misdemeanor. This bill would make it a "wobbler" for the parent who violated that law to also knowingly receive proceeds from gang activity.

The sponsors state that this section is intended to be used against parents who actually encourage their minor children to participate in gang activity. Opponents state that this section could punish the parent of a child who was unable to control that child, if he or she accepted money from the child for groceries, knowing that the money came from gang activities.

SPONSORS' REPLY

The bill amends Penal Code Section 272 which punishes "contributing to delinquency of a minor". It provides that every parent or legal guardian who violates the contributing to the delinquency section, and who as a result of that violation, knowingly receives any proceeds derived directly or indirectly from a pattern of criminal gang activity is punishable as a wobbler. This section would not punish any parent who is unable to control their minor child, because that person would not be guilty of "contributing to the delinquency of a minor". Additionally, this provision is not conceptually different from receiving stolen property. If a parent receives money knowing that the money is stolen, he or she would be criminally liable pursuant to Section 496 of the Penal Code even if that money was used for purchasing groceries. The punishment here is a wobbler the same as is receiving stolen property.

OPPOSITION ARGUMENT #8

CIVIL CAUSES OF ACTION. The bill contains specific provisions for injunctions and suits for damages caused by criminal street gangs. Persons "aggrieved" by actions of a gang member which is in furtherance of gang activity, may sue the gang and recover actual and punitive damages, and attorneys fees. It is unclear what is meant by the term "aggrieved." If the meaning is the usual civil tort actions (battery, intentional infliction of mental distress, et cetera), then current law would already permit these actions.

If the intent is to broaden the law to cover other actions not already defined by current law, the language used is too vague to define the cause of action.

SPONSORS' REPLY

The term "aggrieved" is a term of art that is used frequently throughout the California Codes. It is used, here, to define the usual civil tort actions mentioned. It is not an attempt to create new torts. However, the civil provisions of the proposed statute do assist in bringing gangs and participants into court for civil remedies. It allows gangs to be treated as "unincorporated associations", and provides for a method by which they be served with process. In addition to damages and punitive damages pursuant to Civil Code Section 3294, these provisions would provide for attorney's fees for any victim. These provisions provide for imputed liability to all persons actively participating in the gang with the specific intent to promote further



or assist in any criminal conduct by members or participants of the gang. The provisions also provide for injunctive relief against gangs and gang members. Lastly, the provisions provide that any persons found to be liable for damages pursuant to this new law would also be liable to the State of California for a civil penalty of twice the proved damage, reasonable attorneys fees and costs, said damages to be collected only when full satisfaction of any judgment entered in favor of a victim. Any monies collected in this manner, would be deposited in the prevention and education fund.

OPPOSITION ARGUMENT #9

Service of Process. Service of Process could be made by delivery of a copy of the process to any three or more gang members who could be reasonably expected to give notice to other gang members. (This determination is to be made by the court.) Service of process to three gang members arguably does not meet due process requirements for the entire gang. Further, the proposal that the court determine whether the chosen three members' "character is such that he could reasonably be expected to give notice to the other members" appears to be vague and possibly unworkable.

SPONSORS' REPLY

As stated above, this legislation proposes to treat street gangs as unincorporated associations. The Corporations Code provides that unincorporated associations may designate offices or agents for service of process. Also, they may be served by delivery of process to one or more members and by mailing a copy of the process to the association at its last known address. (See Corporations Code Section 24007.) Of course, street gangs do not designate agents for service or process nor do they have known street addresses. Therefore, there must be another means for service of process. Hence, the provision authorizing the court to determine whether the appropriate members were selected for service of process. The language of the statute was derived from a case reviewing the due process requirements for service upon incorporated associations. (See Operative Plasters v. Case (CADC 1937) 93 Fd.2nd 56, 65.)

OPPOSITION ARGUMENT #10

Expedited Hearing. The bill also proposes that in any civil action brought by a prosecutor under this law, the prosecutor would be permitted to file a certificate stating that the case was of public importance and should be expedited. The bill states that the judge shall then immediately designate a judge to hear and make a

ARGUMENT #10 continued

determination on the action. Further, the bill provides that a civil forfeiture action (See Comment 6, below), shall have precedence over all other civil actions.

The sponsors of the bill state that this is good public policy because the property in a forfeiture action would already have been seized and the owner of the property should be entitled to a speedy determination of the case. However, there are equally good reasons to expedite many civil cases, and long waiting lists for courtrooms in many jurisdictions. This procedure raises the obvious question of whether a prosecutor should be permitted to dictate to the presiding judge of a court the priority of civil cases.

Further, if a civil case is expedited against a defendant who has a pending criminal case, and is heard prior to the defendant's criminal case, it might raise constitutional problems. Would the defendant receive immunity for his testimony in the civil proceedings; or would he be forced to incriminate himself in order to defend the civil forfeiture action?

SPONSORS' REPLY

The State of California is in a state of crisis which has been caused by gang violence. Neighborhoods are literally being taken over by gangs. In addition, the rate of criminal activity is up and something must be done to stem the tide. Providing expedited civil actions are necessary if we are to give prosecutors, victims and our neighborhoods and cities the remedies they need. Further, because the property to be seized is detained by law enforcement until a determination of a forfeiture action is complete, there would be serious due process problems with failure to give these actions priority.

With regard to the Fifth Amendment issues, the federal courts have produced a large body of law as to how the right of self incrimination applies in civil forfeiture cases. California courts could rely upon that law in interpreting the new provisions.



**DPA**  
ASSEMBLY WAYS AND MEANS COMMITTEE  
REPUBLICAN ANALYSIS

AB 2013 (Moore)  
8/20/87 (129)

AB 2013 (Moore) -- STREET GANGS

Version: 8/18/87 and proposed author's amendments  
Vice Chairman: Bill Baker  
Recommendation: Support  
Subject to Gann Limit: Yes  
Vote: 2/3 (Urgency & Appropriation)

→ hlt # 02 2608 /  
attached

Summary: Enacts a comprehensive law to impose penalties on participation in a criminal street gang. Among other things the bill would 1) Specifies certain minimum sentences for specified gang related activities; 2) Provides a two-year or three-year sentence enhancement felonies done in furtherance of gang activities; 3) Requires 15 years imprisonment actually be served by any person sentenced to life imprisonment for criminal street gang activities; and 4) gives the court discretion to strike these enhancements in the interests of justice. 5) Requires the LA District Attorney to submit a report to the Legislature by 1/1/90, on the impact this bill had on the control of criminal street gang activity. Fiscal effect: Unknown additional General Fund costs as a result of additional state prison commitments. LA County has indicated that they will absorb the cost of preparing and submitting a report.

Supported by L.A. District Attorney (source); L.A. City Attorney (source) Opposed by ACLU, CA Attorneys for Criminal Justice, CA Public Defenders Assoc. Governor's position: None on file

Comments: This bill is designed to give law enforcement legal tools to pursue criminal street gang members -- especially the leaders of criminal street gangs. It is similar in concept to the federal Racketeering and Corrupt Organizations Act, which has been used effectively to jail leaders of the Mafia.

The main benefit of this approach is that it would allow law enforcement to go after the leaders of criminal street gangs. These leaders often use other members to commit the drug dealing, extortion, murder, and other gang activities. Yet jailing of the leaders would be the most effective way to reduce the power of the street gangs.

Assembly Republican Committee Vote  
Public Safety -- 7/13/87  
(4-1) Ayes: All Republicans  
Noes:  
N.V.:  
Abs.:

Consultants: Bill Gausewitz/Jeanne Cain

*Warp's Means*  
ASSEMBLY PUBLIC SAFETY COMMITTEE  
REPUBLICAN ANALYSIS

AB 2013 (Moore) -- STREET GANGS

Version: 7/9/87 *8/18/87*

*and ~~last~~ proposed ~~enrollments~~*  
Lead Republican: ~~Paul Zeltner~~

Recommendation: Support

Vote: 2/3 (Urgency & Appropriation)

Summary: Enacts a comprehensive law to impose penalties on participation in a criminal street gang. Among other things the bill would 1) Specifies certain minimum sentences for specified gang related activities; 2) Provides a two-year or three-year sentence enhancement felonies done in furtherance of gang activities; 3) Requires 15 years imprisonment actually be served by any person sentenced to life imprisonment for criminal street gang activities; and 4) gives the court discretion to strike these enhancements in the interests of justice. Fiscal effect: Unknown *additional*

*CAAN: Yes*

Supported by L.A. District Attorney (source); L.A. City Attorney (source) Opposed by ACLU, CA Attorneys for Criminal Justice, CA Public Defenders Assoc. Governor's position: None on file

Comments: This bill is designed to give law enforcement legal tools to pursue criminal street gang members -- especially the leaders of criminal street gangs. It is similar in concept to the federal Racketeering and Corrupt Organizations Act, which has been used effectively to jail leaders of the Mafia.

The main benefit of this approach is that it would allow law enforcement to go after the leaders of criminal street gangs. These leaders often use other members to commit the drug dealing, extortion, murder, and other gang activities. Yet jailing of the leaders would be the most effective way to reduce the power of the street gangs.

Assembly Republican Committee Vote  
Public Safety -- 7/13/87

( ) 4-1 Ayes: *All Republicans*  
Noes:  
N.V.:  
Abs.:

Consultant: Bill Gausewitz *Joanne Cain*

*5) Requires the  
Attorney General  
to submit a  
report to the  
legislature by  
1/1/90, on the  
impact this bill  
had on the  
control of  
criminal street  
gang activity*

Legislative Analyst  
August 22, 1987

ANALYSIS OF ASSEMBLY BILL NO. 2013 (Moore)  
As Amended in Assembly August 18, 1987  
1987-88 Session

AB 2013 (Am. 8/18/87)

Fiscal Effect:

- Cost:
1. Estimated General Fund costs of up to \$115,000 in 1987-88, \$155,000 in 1988-89, and \$78,000 in 1989-90 to prepare a specified report.
  2. Unknown General Fund costs resulting from additional commitments to state prison.

Revenue: None.

Analysis:

This bill, an urgency measure, creates new crimes related to criminal street gangs, and requires the Attorney General to prepare a specified report.

Specifically, this bill establishes criminal penalties for willfully promoting or assisting in any felonious criminal conduct of a street gang, as defined. The measure further provides for sentence enhancements that would result in an additional county jail or state prison term for persons committing crimes in order to promote or assist street gang members.

The bill specifies that punishments for the crimes and enhancements established by the measure would range from imprisonment in the county jail for a period not to exceed one year, up to a maximum of 15 years in the state prison.

In addition, the bill requires the Attorney General to report to the Legislature, on or before January 1, 1990, on the impact of this measure on the control of criminal street gang activity in the state. Specifically, the bill requires the Attorney General to report the number of arrests, prosecutions, trials, convictions and sentence enhancements resulting from this measure.

The provisions of this measure would sunset on January 1, 1990.

#### Fiscal Effect

The Attorney General's office would incur additional General Fund costs to prepare the specified report. The Department of Justice estimates that these costs would be up to \$115,000 in 1987-88, \$155,000 in 1988-89, and \$78,000 in 1989-90.

This bill also would increase General Fund costs by an unknown amount, to the extent that additional persons are committed to state prison as a result of its provisions. The Department of Corrections has no estimate of these costs.

Mandated Local Program. This measure would result in unknown additional local law enforcement and incarceration costs. The bill contains a crimes and infractions disclaimer.

45/s4

Honorable Gwen Moore  
 Member of the Assembly  
 State Capitol, Room 2117  
 Sacramento, CA 95814

DEPARTMENT Finance	AUTHOR Moore	BILL NUMBER AB 2013
SPONSORED BY	RELATED BILLS SB 1555	AMENDMENT DATE August 18, 1987

BILL SUMMARY

AB 2013 would enact the Street Terrorism Enforcement and Prevention Act. The intent of this act is to eradicate the criminal activities of street gangs by specifying sentencing terms for criminal activities of gang members.

This bill is to take effect immediately as an urgency statute.

SUMMARY OF CHANGES

This bill has not been analyzed previously.

SUMMARY OF COMMENTS

This act would provide additional tools necessary for law enforcement to control the increasing criminal activities and warfare of street gangs.

FISCAL SUMMARY--STATE LEVEL

Code/Department Agency or Revenue Type	SO LA CO RV	(Fiscal Impact by Fiscal Year)						Code Fund
		(Dollars in Thousands)						
		FC	1987-88	FC	1988-89	FC	1989-90	
0820/Justice	SO	C	\$155	C	\$155	C	\$155	001/GF
5240/Corrections	SO	C	\$88	C	\$88	C	\$88	001/GF
5460/Youth Authority	SO	C	\$138	C	\$138	C	\$138	001/GF

Impact on State Appropriations Limit--No

ANALYSIS

A. Specific Findings

Current law does not make the commission of a crime by members of street gangs a separate and distinctly punishable offense.

This bill would specify the punishment for specified criminal activities of street gangs. This bill would also require the Attorney General to submit a report by January 1, 1990 to the Legislature on the impact of this act on the control of criminal street gang activity in the State.

This act would remain in effect only until January 1, 1991.

POSITION: Neutral, if amended. Department Director Date

Principal Analyst (211) D. Alonzo	Date 8-24-87	Program Budget Manager Wallis L. Clark	Date 8/24/87	Governor's Office Position noted Position approved Position disapproved by: date:
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BILL ANALYSIS  
 CJ:0090A/1335C

Form DF-43 (Rev 07/87 Buff)



BILL ANALYSIS/ENROLLED BILL REPORT--(Continued)		Form DF-43
AUTHOR	AMENDMENT DATE	BILL NUMBER
Moore	August 18, 1987	AB 2013

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**ANALYSIS****A. Specific Findings (Continued)**

Finance staff recommends that the statistical reporting provisions for the Attorney General be deleted because the individual local agencies could gather the requested information.

The Local Cost Estimate indicates that the crimes and infractions disclaimer is appropriate.

**B. Fiscal Analysis**

The Department of Justice indicated that the cost to complete the specified report would be \$155,000 to fund four positions (1 Criminal Intelligence Specialist, 1 Program Technician, 2 Statistical Clerk, and 1 Research Analyst).

Finance staff believes that the specified reporting requirement could be absorbed within existing resources, and do not necessarily concur with the cost estimate. Actual cost would be reviewed as part of the regular budget preparation process.

This bill would result in additional state prison and Youth Authority incarcerations. A cost estimate is indeterminable because the number of additional incarcerations can not be estimated. However, if 10 persons were sent to prison as a result of this bill, it would cost approximately \$88,000 per year. If 10 persons were incarcerated in the Youth Authority, the estimated cost would be about \$138,000 per year.

CJ:MM2/0090A/1335C

PROPOSED AMENDMENTS FOR AB 2013  
As amended August 18, 1987

On page 6, delete lines 35-40.

On page 7, delete lines 1-9.

CJ:MW3/0090A/1335C



Local Cost	NO. 1	ISSUE DATE 'AUG 24 1987	BILL NUMBER AB 2013
ESTIMATE	AUTHOR		DATE LAST AMENDED
Department of Finance	Moore		August 18, 1987

I. SUMMARY OF LOCAL IMPACT:

Enacts the "Street Terrorism Enforcement And Prevention Act" which makes it a crime to knowingly participate in criminal street gang activity.

Urgency measure.

II. FISCAL SUMMARY--LOCAL LEVEL

	1987-88	1988-89	1989-90
	(Dollars in Thousands)		
Reimbursable Expenditures:	--	--	--
Non-Reimbursable Expenditures:	--	--	--
Revenues:	--	--	--

III. ANALYSIS:

Current law does not distinguish between crimes committed by individuals and those committed by members of criminal street gangs. This measure would enact the Street Terrorism Enforcement And Prevention Act. It would provide that any member of a criminal street gang who promotes or assists in the commission of a misdemeanor may be punished by imprisonment in the State prison or county jail for at least 180 days, and up to one year. If the offense is a felony then imprisonment could be up to three years in the State prison. If the offense is punishable by life imprisonment, the person could not be paroled until he or she has served at least 15 years in prison. These provisions would sunset on January 1, 1991, unless they are extended by subsequent legislation.

To the extent that additional persons are imprisoned, or persons are imprisoned for lengthier periods, State and local prison costs would increase. While the magnitude of this increase is unknown the Department of Corrections estimates that it costs approximately \$17,500 annually to house an inmate in the State prison. Local jail costs are estimated to be approximately \$16,500 per prisoner, per year.

Under Section 6(b) of Article XIII B of the California Constitution, any costs to a unit of local government which result from legislation defining a new crime or changing an existing definition of a crime are not "state mandated costs" and therefore are not reimbursable by the State. In addition, Section 17556(a)7 of the Government Code prohibits the Commission on State Mandates from considering any claims for reimbursement of costs from a local entity based on such legislation or on legislation which eliminated a crime or changed the penalty for a crime. It should be noted, however, that Section 2246.2 of the Revenue and Taxation Code requires that funding be included in the Governor's Budget to reimburse local entities for one-half of any additional detention and probation costs in excess of 1 percent of such costs in the preceding year incurred as the result of a bill which increased the penalty for a crime. Any local entity which believes that this bill falls within the purview of these provisions may, as provided by law, file a written request for these funds with the Department of Finance.

The "crimes and infractions" disclaimer in the bill is appropriate.

PREPARED Date \* REVIEWED  
 (634) *Ring Nicholas* \*  
 LR:1444L *8/21/87* \*

Date \* APPROVED Date  
 \* *James M. Agan* \*  
 \* *8/24/87* \*

SENATE COMMITTEE ON JUDICIARY  
Bill Lockyer, Chairman  
1987-88 Regular Session

AB 2013 (Moore)  
As amended September 1.  
Hearing date: March 22, 1988  
Penal Code  
PAW

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STREET TERRORISM ENFORCEMENT AND PREVENTION ACT

HISTORY

Source: Los Angeles City Attorney; Los Angeles District Attorney

Prior Legislation: None

Support: Los Angeles City Council; City of Compton, Crime  
Committee; Southern Christian Leadership Conference;  
Neighborhood Action Group, Hollywood

Opposition: American Civil Liberties Union; California Attorneys  
for Criminal Justice; California Public  
Defenders Association

(THIS ANALYSIS REFLECTS AUTHOR'S AMENDMENTS TO BE OFFERED IN  
COMMITTEE.)

KEY ISSUES

SHOULD A PERSON WHO ACTIVELY PARTICIPATES IN ANY CRIMINAL STREET  
GANG WITH KNOWLEDGE THAT ITS MEMBERS OR PARTICIPANTS ENGAGE IN OR  
HAVE ENGAGED IN A PATTERN OF SERIOUS CRIMINAL ACTIVITY, AND WHO  
WILLFULLY PROMOTES, FURTHERS, OR ASSISTS IN ANY FELONIOUS  
CRIMINAL CONDUCT BY MEMBERS OF THE GANG, BE GUILTY OF A  
"WOBBLER"?

SHOULD A PERSON WHO IS CONVICTED OF A FELONY OR A MISDEMEANOR  
WHICH IS COMMITTED FOR THE BENEFIT OF, AT THE DIRECTION OF, OR IN  
ASSOCIATION WITH, ANY CRIMINAL STREET GANG, WITH THE SPECIFIC  
INTENT TO PROMOTE OR ASSIST IN ANY CRIMINAL CONDUCT BY THE GANG  
MEMBERS BE SUBJECT TO ADDITIONAL TWO OR THREE YEAR ENHANCEMENTS?

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PURPOSE

Existing law contains no provisions which specifically make the commission of criminal offenses by individuals who are members of street gangs separate and distinctly punished offenses, nor are there provisions which authorize the forfeiture of the proceeds of gang-related activity.

This bill would establish the "California Street Terrorism Enforcement and Prevention Act." It would enact the following provisions:

- 1) any person who actively participated in any criminal street gang with knowledge that its members or participants engage in or have engaged in a pattern of criminal activity, and who willfully promotes, furthers, or assists in any criminal conduct by gang members or participants would be guilty of a "wobbler".
- 2) any person who was convicted of a felony or a misdemeanor which was 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 or participants, would be guilty of a crime and subject to a variety of enhancements, depending on the seriousness of the underlying offenses.
- 3) notwithstanding any other provision of law, the court would be permitted to strike the additional punishment in an unusual case where the interests of justice would best be served, if the court specified on the record and entered into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.
- 4) "pattern of criminal activity" would be defined as the commission, attempted commission, or solicitation of two or more of the following offenses, provided that at least one of the offenses occurred after the effective date of this bill and the last of those offenses occurred within three years after a prior offense, and the offenses are committed on separate occasions, or by two or more persons: assault with a deadly weapon or by means of force likely to produce great bodily injury; robbery; unlawful homicide or manslaughter; the sale, possession for sale, or offer to manufacture controlled substances, as defined; shooting at an inhabited dwelling or occupied motor vehicle; arson; or the intimidation of witnesses and victims.

(More)

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

The District Attorney of the County of Los Angeles would be required to submit a report to the Legislature on or before January 1, 1991, on the impact this bill had on the control of criminal street gang activity in Los Angeles County. The bill would be repealed on January 1, 1992.

The purpose of this bill is to provide law enforcement officials with the legal tools to "put the growing number of murdering, drug-pushing youth street gang members behind bars."

COMMENT

1. Need for legislation

According to the author, this bill would enact the California Street Terrorism Enforcement and Prevention Act which would provide for the criminal prosecution of gang members involved in criminal activity.

Proponents claim that scores of studies in recent years have determined that as many as 50,000 youths have joined one of the nearly 800 street gangs identified in California. "Youth gangs represent both big business and big-time crime in California." In the Los Angeles area, officials have linked members of the 450 criminal street gangs to 187 homicides in 1986. "Clearly, we must take a more aggressive approach to battling these gangs and AB 2013 will provide the legislative support needed by the police department's line officers, prosecutors and judges."

2. Criminal gang activity -- new offense

Under this bill, active participation in any criminal street gang would be an offense, if the activity met a number of conditions:

- (a) Any person who actively participated in any criminal street gang with knowledge that its members or participants engage in or have engaged in a pattern of criminal gang activity, and who willfully promoted, furthered, or assisted in any felonious conduct by the gang members or participants, would be punished by

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

Under this provision, an individual who actively participated in a gang which had established a pattern of criminal gang activity, as defined, and who willfully promoted felonious conduct by that gang would be subject to "wobbler" penalties, whether or not he or she had participated in the crimes. Opponents contend that individuals who have not committed crimes would be guilty of the crimes of others due to their involvement with these gangs.

Proponents of this bill claim that this bill would not criminalize mere membership in a gang. Courts have repeatedly held that mere association with a group having both illegal and legal aims cannot be punished unless there is proof that the defendant knows of, and either shares in or "specifically intends" to further the illegal aims. Scales v. United States (1961) 367 U.S. 203, 229.

- (b) any person who was convicted of a felony or a misdemeanor which was 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 or participants would be given an enhancement based on the seriousness of the offense. The bill would allow the court to strike the additional punishment in an unusual case where the interests of justice would best be served.

In order to seek enhancements under this provision, the prosecutor would be required to prove that the underlying offense was committed for the benefit of, or in association with, the gang.

The sponsors believe that the "nexus" requirement established by this bill would be very difficult to prove except in the most egregious cases where a pattern of criminal gang activity was clearly shown. Opponents claim that it would not be difficult to prove gang association if the individual wore identifying clothing during the commission of the offense; they further state that the enhancements for felonies established by this bill are extremely severe and would not allow courts to differentiate between felonies, i.e., the enhancement for

(More)



kidnapping would be the same as the enhancement for first degree murder.

3. Definitions

- (a) Pattern of criminal gang activity-- would mean the commission, attempted commission, or solicitation, of two or more of the following offenses, provided at least one of those offenses occurred after the effective date of this Act, and the last of those offenses occurred within three years after the effective date of this Act after a prior offense, and the offenses are committed on separate occasions, or by two or more persons:
- (1) assault with a deadly weapon or by means of force likely to produce great bodily injury;
  - (2) robbery;
  - (3) unlawful homicide or manslaughter;
  - (4) the sale possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances, as defined;
  - (5) shooting at an inhabited dwelling or occupied motor vehicle;
  - (6) arson;
  - (7) the intimidation of witnesses and victims.

The sponsors of this bill chose these crimes because they considered them to be serious crimes; in addition, they claim that these crimes are crimes which are typical of street gangs. Once a prosecutor established that any member of a gang had committed at least two of these crimes, the threshold for a pattern of criminal activity would be met. Any crime committed by any member in addition to this threshold would be punished more severely.

- (b) Criminal street gang-- would mean any 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 above, which had a common name or common identifying sign

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or symbol, whose members or participants individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(c) Prosecutor-- would be defined to include city attorneys.

4. Enhancements

Under this bill, any person who was convicted of a felony or a misdemeanor which was 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, would be punished as follows:

- a) if the criminal act which was committed or attempted was a misdemeanor, a person convicted would be imprisoned in the county jail for a period not to exceed one year, but not less than 180 days, and would not be eligible for release upon completion of sentence, parole, or any other basis, until he or she had served 180 days.
- b) any person who violated the provisions of this bill in the commission or attempted commission of a felony would, upon conviction, in addition and consecutive to the punishment for the felony or attempted felony, be punished by an additional term of two years if the underlying felony was punishable by a maximum term of three years, or by an additional term of three years if the underlying felony was punishable by a maximum term exceeding three years.
- c) any person who violated this bill in the commission of a felony punishable by imprisonment in the state prison for life, would not be paroled until a minimum of 15 calendar years had been served.
- d) the court would be permitted to strike the additional punishment for the enhancements in an unusual case where the interests of justice would best be served, if the court specified on the record and entered into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

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5. Opponent's arguments

(a) Freedom of association

According to the ACLU, both California law and the U.S. Constitution in the First Amendment recognize fundamental rights of freedom of association. "This bill purports to address the problem of youth violence. It in fact creates an overbroad and vague legal standard which raises serious questions of enforcement and invites selective prosecution which could be easily targeted against almost any association or group." The fact that some individuals in the group may choose, as individuals, to engage in criminal misconduct however should not criminalize membership by any person in the group.

(b) Patterns of violence already covered by existing law

Efforts to attribute "patterns of violence" to a group or organization, also known as criminal syndicalism, fail to recognize that express individualized intent is necessary to predicate criminal activity on behalf of any single person. Where such patterns of conduct or concerted action may be determined, the criminal law provides adequate sanctions under conspiracy and other laws concerning common criminal conduct.

6. Report to Legislature

This bill would require the Los Angeles District Attorney to submit a report to the Legislature on the impact of this bill on the control of criminal street gang activity in the Los Angeles County. The report would include all of the following statistics:

- a) the number of arrests made under this bill;
- b) the number of prosecutions under this bill;
- c) the number of trials which have resulted from prosecutions under this bill and the number of pleas which have resulted;
- d) the number of convictions under this bill;
- e) the number and type of sentence enhancements which have been sought under this bill, and the number and kind of sentence enhancements which have been ordered by the courts.

(More)

7. Sunset provision

This bill would remain in effect only until January 1, 1992, and as of that date would be repealed, unless a later enacted statute, which would be chaptered on or before that date, deleted or extended that date.

8. Urgency provision

This bill contains an urgency clause and would go into immediate effect if signed by the Governor. The reason for the urgency is to provide the tools necessary for law enforcement to stem the tide of illegal gang warfare without infringing upon the constitutional rights of any individual, at the earliest possible time.

\*\*\*\*\*

**DECLARATION OF SERVICE BY U.S. MAIL & ELECTRONIC SERVICE**

Case Name: **The People v. Tommy Angel Mesa**

No.: **S185688**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On April 15, 2011, I served the attached **RESPONDENT'S MOTION FOR JUDICIAL NOTICE** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

The Honorable Helios J. Hernandez  
Riverside County Superior Court  
Riverside Hall of Justice  
4100 Main Street  
Department 63  
Riverside, CA 92501

The Honorable Paul E. Zellerbach  
District Attorney  
Riverside County District Attorney's Office  
3960 Orange Street  
Riverside, CA 92501

Fourth Appellate District  
Division One  
Court of Appeal of the State of California  
750 B Street, Suite 300  
San Diego, CA 92101

and I furthermore declare, I electronically served a copy of the above document from Office of the Attorney General's electronic notification address [ADIEService@doj.ca.gov](mailto:ADIEService@doj.ca.gov) on April 15, 2011 to Richard DeLa Sota electronic notification address [elasota45003@gmail.com](mailto:elasota45003@gmail.com) to Appellate Defenders, Inc.'s electronic notification address [eservice-criminal@adi-sandiego.com](mailto:eservice-criminal@adi-sandiego.com).

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 15, 2011, at San Diego, California.

A. Curiel  
Declarant

  
Signature