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# Turning Their Lives Around: California Cities Pioneer Gang Injunction Removal Procedures

By Brittany Vannoy\*

## I. INTRODUCTION

While the war on crime has traditionally been fought either on the streets or in the criminal courthouses, a recent shift has brought the war on crime into the civil courts.<sup>1</sup> This transition has been elicited by the civil gang injunction.<sup>2</sup> The civil gang injunction is a court-issued restraining order prohibiting members of enjoined criminal street gangs from activities which amount to public nuisances.<sup>3</sup>

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1. See The City Attorney's Report, Gang Injunctions: How and Why They Work (April 2007), [http://www.lacity.org/atty/index/attyindex56044606\\_04172007.pdf](http://www.lacity.org/atty/index/attyindex56044606_04172007.pdf) (providing a complete explanation of what a gang injunction is, what a gang injunction does, why such an injunction becomes necessary, how a gang injunction is enforced, and the consequences of violating an injunction) [hereinafter *City Attorney's Report*]. See also Larry Welborn, *D.A. seeks injunction against O.C. street gang*, THE ORANGE COUNTY REGISTER, July 14, 2006 (referencing the first modern anti-gang injunction, issued by the Los Angeles Superior Court in 1987 against the Playboy Gangster Crips).

2. City Attorney's Report, *supra* note 1.

3. *Id.*; see also Los Angeles Police Department Website, About Gang Injunctions, [http://www.lapdonline.org/search\\_results/content\\_basic\\_view/23424](http://www.lapdonline.org/search_results/content_basic_view/23424) (last visited Nov. 14, 2008) (including brief discussions of current community issues and a short explanation of what a gang injunction is and does). See *infra* Part III.A for a complete discussion of public nuisances, including statutory

Prohibited activities often include congregating or associating with other gang members in public, possessing or consuming alcoholic beverages in public, possessing illegal substances or weapons, and being in public areas past an imposed curfew.<sup>4</sup> Through applying nuisance abatement laws to known gangs and their members, gang injunctions have made it easier for law enforcement to stop gang violence before it escalates. Officers are now able to remove from the streets those in violation of an injunction, rather than having to wait until a more serious crime has been completed.<sup>5</sup> Gang injunctions may also be an impetus for young gang members to seek disassociation from their gangs.<sup>6</sup> Although gang injunctions have

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definitions, case law, and an explanation of how criminal street gangs' activities can be considered public nuisances.

4. See, e.g., *People v. San Fer*, Proposed Judgment Granting Permanent Injunction, <http://www.lacity.org/atty/pdf/Gang%20Injunctions/San%20Fer/San%20Fer.pdf>, (last visited Nov. 14, 2008) [hereinafter *People v. San Fer*] (providing a proposed judgment granting an injunction against San Fer, a San Fernando criminal street gang, developed and submitted jointly by the Los Angeles City Attorney's Office and the Los Angeles County District Attorney's Office). The San Fer injunction was developed by the Los Angeles City and District Attorneys conjunctively because the San Fer gang's territory included both areas of the City of Los Angeles as well as the City of San Fernando. See Los Angeles County District Attorney's Office, Judge Grants Permanent Injunction Against San Fernando Valley Gang, <http://da.co.la.ca.us/mr/081108c.htm> (last visited Dec. 3, 2008). See also *infra* note 34, for a discussion on when the City Attorney or the District Attorney is the prosecutorial agency which files the suit for the injunction. As of August 11, 2008, the San Fer injunction covered the largest area, or "Safety Zone," discussed *infra*, Part II.F.1, of any injunction issued in Los Angeles County. Judge Grants Permanent Injunction Against San Fernando Valley Gang, *supra* this note.

5. See City Attorney's Report, *supra* note 1. A person who violates an injunction can be held in contempt of court, a misdemeanor, the punishment for which is a maximum of six months in the county jail and/or a fine of \$1000. CAL. PENAL CODE § 166(a)(4) (West 2009). See also The Los Angeles City Attorney's Office Criminal and Special Litigation Branch, Gang Injunction Guidelines, [http://www.lacity.org/atty/Fighting\\_Gangs/Gang\\_Injunctions.pdf](http://www.lacity.org/atty/Fighting_Gangs/Gang_Injunctions.pdf) [hereinafter *Gang Injunction Guidelines*] (last visited Feb. 9, 2009). With the gang enhancements available through the STEP Act, the maximum jail time for criminal contempt of a gang injunction increases to one year. See *infra* Part III.B; see also CAL. PENAL CODE § 186.22 (West 2007).

6. City Attorney's Report, *supra* note 1. The Los Angeles Police Department reports a 13% decrease in gang violence since 2001 and a decrease in serious crime in areas protected by gang injunctions of as much as 53%. *Id.* In all, thirty-three

been criticized as serious infringements on civil rights (i.e., by restricting or nullifying the right to associate traditionally protected by the First Amendment), courts have consistently held that criminal street gangs are not protected by the First Amendment because they are not formed for the purpose of engaging in protected speech or religious activities.<sup>7</sup>

In April 2007, the Los Angeles City Attorney's Office created, and later that year implemented, the nation's first administrative removal, or "opt-out," procedure.<sup>8</sup> The procedure allows both individuals wrongfully named as gang members and individuals who have disassociated from their former gang to petition to have their names removed from the injunction.<sup>9</sup> On October 9, 2008, the first removal request was granted.<sup>10</sup> As of that date, however, the City Attorney's Office had received only fifteen removal applications.<sup>11</sup> Nevertheless, the first removal order was indeed significant, not merely as proof that gang members can effectively change their lives for the better, but also as proof that the City of Los Angeles is willing to recognize and encourage such personal growth. Since Los Angeles' initial introduction of the administrative removal procedure in 2007, other jurisdictions have begun implementing similar procedures.<sup>12</sup>

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injunctions have been issued, restricting the actions of fifty criminal street gangs in Los Angeles. Los Angeles Police Department Website, March 2008 COPS Count, [http://www.lapdonline.org/search\\_results/content\\_basic\\_view/23424](http://www.lapdonline.org/search_results/content_basic_view/23424) (last visited Nov. 14, 2008).

7. See, e.g., *People ex rel. Gallo v. Acuna*, 14 Cal. 4th 1090, 1111 (1997), discussed *infra* Part III.D.b.

8. See L.A. City Attorney Rocky Delgadillo Announces First Successful Completion of New Gang Injunction Removal Process (Oct. 9, 2008), [http://www.lacity.org/atty/attypress/attyattypress6956118\\_10092008.pdf](http://www.lacity.org/atty/attypress/attyattypress6956118_10092008.pdf); see also Sandy Banks & Patrick McGreevy, *L.A. Makes it Easier to Delete Names on Gang Injunction Lists*, L.A. TIMES, April 17, 2007, at A-1.

9. L.A. City Attorney Rocky Delgadillo Announces First Successful Completion of New Gang Injunction Removal Process, *supra* note 8. Once an individual's name is removed from the injunction, the restrictions are no longer applicable to that individual. See *id.*

10. *Id.*

11. *Id.*

12. Notably, in March 2008, San Francisco implemented its own administrative opt-out procedure. See San Francisco Office of the City Attorney News Release (March 24, 2008),

This comment analyzes the new opt-out procedures being pioneered in California jurisdictions, with special emphasis on the City of Los Angeles. It further seeks to report on the effectiveness and repercussions of such procedures. Part II gives a general overview of gang injunctions, introducing more specifically what they are, when they are necessary, to whom and where they apply, how they work, and how they are enforced, primarily looking at procedural guidelines drafted by the Los Angeles City Attorney's Office. Part III addresses the constitutionality of gang injunctions, with a brief discussion of relevant statutes and case law that have colored the development of gang injunctions. Part IV specifically focuses upon the nuances of the opt-out procedures, and takes a specific look at Los Angeles's example, analyzing what the future holds in the wake of these recent developments. Part V concludes this comment.

## II. GANG INJUNCTIONS GENERALLY

### *A. What is a Civil Gang Injunction?*

Gang injunctions are a proactive way for law enforcement to crack down on gang violence before it occurs.<sup>13</sup> Recognizing that public nuisance laws can be used to enjoin members of gangs whose activities infringe upon the rights of members of the community, City and District Attorneys have begun filing suits seeking injunctive relief against gangs that pose threats to the community's comfortable enjoyment of life and property.<sup>14</sup> Once the basis for an injunction is sufficiently established, a judge will grant a court order prohibiting notified gang members from certain activities, such as gathering with other gang members; being present at known gang hang-out being out past curfew for reasons other than church, school, or work; and

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[http://www.sfgov.org/site/cityattorney\\_page.asp?id=77808](http://www.sfgov.org/site/cityattorney_page.asp?id=77808) (announcing San Francisco's City Attorney and other local organizations, including the American Civil Liberties Union, had come to an agreement establishing an administrative "opt-out" procedure for individuals seeking to be removed from area gang injunctions).

13. See City Attorney's Report, *supra* note 1.

14. *Id.*

other conduct which could be considered a public nuisance.<sup>15</sup> An injunction subjects gang members not only to the already-existing laws that they continually ignore, but also further limits their actions and conduct.<sup>16</sup> In order to be held subject to the gang injunction, gang members must be on notice that their actions are being enjoined, and this is frequently accomplished by personal service of the injunction.<sup>17</sup>

*B. When Does a Civil Gang Injunction Become Necessary?*

As a gang grows in size, its ability to intimidate and terrorize its community increases as well.<sup>18</sup> As the gang continues to commit and promote crimes, particularly violent crimes, the community becomes more afraid of the gang, restricting its comfortable enjoyment of life and property, and essentially forcing residents to remain in their homes or subject themselves to intimidation by gang members.<sup>19</sup> Furthermore, as a gang becomes entrenched in an area, claiming it as its territory, the entire community may become less willing to report crimes, and witnesses of violent crimes may refuse to testify against dangerous gang members due to fear of retaliation.<sup>20</sup> Through these tactics, “gangs are able to subvert the constitutional protections of the legal system, such as the right to confront witnesses, and undermine

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15. See, e.g., *People v. San Fer*, *supra* note 4; see also Gang Injunction Guidelines, *supra* note 5 (providing a list of possible provisions to be included in future gang injunctions).

16. See City Attorney’s Report, *supra* note 1.

17. *Id.* In fact, an alleged gang member may attempt to challenge enforcement of the injunction against him if he is found to be in violation of it by claiming he had not been personally served with the injunction and thereby did not have sufficient notice of the injunction. Interview with Michael Fern, Deputy District Attorney, Los Angeles County District Attorney’s Office, in L.A., Cal. (Feb. 5, 2009) [hereinafter *Interview with Michael Fern*]. Under the Los Angeles City Attorney’s policy, only individuals personally served with a copy of the injunction will be held subject to its provisions. L.A. City Attorney Rocky Delgadillo Announces First Successful Completion of New Gang Injunction Removal Process, *supra* note 8. See also *infra* Part III.D.a (discussing sufficiency of notice in *People ex rel. Reisig v. Broderick Boys*, 149 Cal. App. 4th 1506 (Ct. App. 2007)).

18. City Attorney’s Report, *supra* note 1.

19. *Id.*

20. *Id.*

the criminal justice system.”<sup>21</sup> Because they pose such threats to their communities, criminal street gangs can be considered public nuisances for which an injunction becomes necessary to ensure the community of its right to comfortable enjoyment.<sup>22</sup>

### *C. Where Does a Civil Gang Injunction Apply?*

In order to be constitutionally valid, an injunction must be limited to a specified area in which a gang is known to function.<sup>23</sup> Indeed, as noted in *In re Englebrecht*, the area encompassed by the injunction should be no more than is “necessary to serve a significant government interest,” that being to enjoin the gang’s nuisance activities in the case of gang injunctions.<sup>24</sup> The boundaries of the injunction are therefore determined by the District or City Attorney’s consideration of complaints, crime reports, and other evidence of gang presence, which are used to establish the exact “territory” to which a gang lays claim.<sup>25</sup>

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21. *Id.*

22. See *infra* Part III.A.2 for a definition of public nuisances and an explanation of how gang members, because of their gang activity, can amount to enjoined public nuisances.

23. City Attorney’s Report, *supra* note 1. This is to avoid challenges that the provisions of the injunction are so overbroad such as to impermissibly burden the constitutional rights of those enjoined. Gang Injunction Guidelines, *supra* note 5 (citing *People v. Englebrecht*, 88 Cal. App. 4th 1236, 1262 (Ct. App. 2001)). Note, however, that the San Fer injunction, the largest is Los Angeles County, covers a 9.8 mile area. Judge Grants Permanent Injunction Against San Fernando Valley Gang, *supra* note 4. Thus, it seems that as long as the prosecution can present sufficient evidence of criminal activity within the specifically defined area, challenges based on “overbreadth” of the “Safety Zone” will likely fail. See *Englebrecht*, 88 Cal. App. 4th at 1261 (briefly touching upon the issue of “overbreadth,” both in terms of geographic provisions and associational provisions).

24. *In re Englebrecht*, 67 Cal. App. 4th 486, 495 (Ct. App. 1998).

25. City Attorney’s Report, *supra* note 1. These decisions are based upon initial reports developed and provided by law enforcement agencies who are the first actors in the process to obtain a gang injunction. Interview with Michael Fern, *supra* note 17. For more on this topic, see *infra* Part II.F, discussing how a gang injunction is put in place, from initial recognition of the problem to final adjudication in a court of law.

*D. To Whom Does a Civil Gang Injunction Apply?*

When a gang injunction is issued, it specifically names the gang to which it applies.<sup>26</sup> Once the gang itself is named, all personally served gang members and those acting on behalf of the gang are subject to the injunction.<sup>27</sup> Because a number of injunctions were initially challenged on insufficiency of notice grounds, recent injunctions have listed out as many known gang members as possible and police officers have taken to the streets to personally serve each gang member.<sup>28</sup> In addition to formally named and served gang members, the injunction will also apply to “persons acting under, in concert with, for the benefit of, at the direction of, or in association with” the gang and any of its members.<sup>29</sup> But, again, even these individuals must be on notice of the injunction in order to be subject to its provisions.<sup>30</sup> Notice is not only vital to the enforcement of injunctions, but also to the overall success of injunctions in “keep[ing] gang members from behaving in ways that publicize the gang, perpetuate the gang’s reputation, or increase the gang’s grip on a neighborhood.”<sup>31</sup>

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26. See, e.g., *People v. San Fer*, *supra* note 4.

27. See City Attorney’s Report, *supra* note 1; see also *Broderick Boys*, 149 Cal. App. 4th at 1519 (“Notice and an opportunity to be heard must precede deprivations of life, liberty or property.” (quoting *Albrecht v. Superior Court*, 132 Cal. App. 3rd 612, 619 (1982))). The court in *Broderick Boys* further noted that “[a]ctual notice is not required, only a method reasonably certain to give notice. But the method must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it.” *Broderick Boys*, 149 Cal. App. 4th at 1519.

28. See, e.g., *Broderick Boys*, *supra* note 17; see, e.g., *People v. San Fer*, *supra* note 4.

29. See *People v. San Fer*, *supra* note 4; see also *People v. Clover. Eastlake, Lincoln Heights, Proposed Judgment Granting Permanent Injunction*, <http://www.lacity.org/atty/pdf/Gang%20Injunctions/Clover.%20Eastlake%20&%20Lincoln%20Heights/Clover.%20Eastlake%20&%20Lincoln%20Heights%20w%20Map.pdf> (last visited Feb. 8, 2009).

30. The appellants in *Colonia Chiques* challenged the injunction’s applicability to unnamed parties who were associated with the gang. *People ex rel. Totten v. Colonia Chiques*, 156 Cal. App. 4th 31, 42 (Ct. App. 2007).

31. City Attorney’s Report, *supra* note 1.



### *E. How Does a Civil Gang Injunction Work?*

Common provisions of California gang injunctions include prohibitions on:

[a]ssociating with other known gang members in public; [c]onfronting, intimidating, annoying, harassing, threatening, challenging, provoking, assaulting or battering any person known to be a victim of or witness to gang activity; [p]ossessing or knowingly remaining in the presence of anyone who is in possession of any gun, ammunition, or weapon in any public place; [p]ossessing or knowingly remaining in the presence of anyone who is in possession of any controlled substance or drug paraphernalia; [b]eing present on any private property without the written consent of the owner; [d]efacing any public or private property or possessing graffiti tools; and [v]iolating a court-defined curfew, subject to exceptions.<sup>32</sup>

These prohibitions “undermine a gang’s ability to commit crime, to intimidate others, and to diminish the quality of life for residents of a community” by ensuring that gangs are not able to gather and associate in ways that pose a threat to the community.<sup>33</sup> It is believed that in such scenarios, gang members are able to promote the commission of crimes, encourage one another to commit crimes, pose as targets for rival gangs, and “serve as a constant reminder to the community that the gang is out there ready to strike.”<sup>34</sup>

### *F. Putting an Injunction in Place*

Drafting and compiling all the necessary data for filing an injunction can be a long and arduous task. While different jurisdictions may utilize different processes, the basic elements are likely similar. Most Los Angeles County gang injunctions are sought

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32. *Id.* (original formatting removed).

33. *Id.*

34. *Id.*

by either the Los Angeles City Attorney or the Los Angeles District Attorney.<sup>35</sup> The Los Angeles City Attorney's Office has published their gang injunction guidelines online.<sup>36</sup> These guidelines, while not carrying the force of law, serve as general guideposts for the pursuit of a gang injunction.<sup>37</sup> The following analysis will primarily be based upon the Los Angeles City Attorney's guidelines, although much of the procedure will be similar, though less formal, for other prosecutorial agencies.<sup>38</sup>

The Los Angeles City Attorney's Office guidelines detail essentially three steps in the process of obtaining a gang injunction: (1) initial evaluation; (2) gathering evidence against the gang; and (3) convincing a judge to issue an injunction.<sup>39</sup>

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35. Interview with Michael Fern, *supra* note 17. The Los Angeles County District Attorney's Office, rather than the Los Angeles City Attorney's Office, files a gang injunction when the injunction is sought in unincorporated areas of Los Angeles County and in cities whose City Attorneys have decided not to pursue gang injunctions themselves. *Id.* The Los Angeles County District Attorney's Office works primarily with the Los Angeles County Sheriff's Department, which services primarily unincorporated portions of Los Angeles County, rather than with the Los Angeles Police Department, which is specifically tasked to service the City of Los Angeles. *Id.* It is important to note, however, that the Los Angeles City Attorney's Office and the Los Angeles County District Attorney's Office may work in conjunction with one another to combine resources sufficient to procure an injunction within the Los Angeles city limits. *Id.*; see also *People v. San Fer*, *supra* note 4.

36. Gang Injunction Guidelines, *supra* note 5.

37. *Id.*

38. Interview with Michael Fern, *supra* note 17.

39. See City Attorney's Report, *supra* note 1; see also Gang Injunction Guidelines, *supra* note 5. In 2003-2004, the Los Angeles County Grand Jury drafted a report, which included a committee's findings on Civil Gang Injunctions in the county, and specifically addressed whether the use of gang injunctions should be continued. Grand Jury Report, [http://grandjury.co.la.ca.us/gjury03-04/LACGJFR\\_03-04.pdf](http://grandjury.co.la.ca.us/gjury03-04/LACGJFR_03-04.pdf) (last visited Feb. 9, 2009) [hereinafter *Grand Jury Report*]. The committee's findings detail the gang injunction procedures prior to the enactment of the City Attorney's guidelines. Their findings will be discussed *infra* Part IV, but their report of the preliminary work that goes into gang injunctions is important to note here, since much of the process the report identifies is similar to that undertaken currently by the Los Angeles County District Attorney's Office and other prosecutorial agencies. The Grand Jury's report details that prosecutors work with law enforcement officials in areas of high gang activity to gather information about gang activities that may be considered public nuisances. *Id.* at 193. For up to six months, prosecutors will go through thousands

## 1. Initial Evaluation

In the City of Los Angeles, before the decision to pursue an injunction is made, a Gang Deputy, a Gang Supervisor, and one or more designated Los Angeles Police Department gang experts make preliminary findings regarding a specified gang.<sup>40</sup> Together these

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of documents (including Field Identification Cards, statements given by suspects and witnesses to police, arrest records, and criminal convictions) to determine whether sufficient evidence exists to pursue a civil gang injunction against a criminal street gang. *Id.* The prosecutors in charge of gang injunctions compile all this information, draft affidavits, and submit them, with the petition for the gang injunction, to the court. *Id.* If a judge finds that a nuisance in fact exists, he will grant a preliminary injunction and schedule a hearing to determine whether a permanent injunction is in order. *Id.* Law enforcement officials will serve individuals named in the injunction with notice of the pending hearing. *Id.* Once the judge grants the preliminary injunction and notice has been given to enjoined individuals, anyone found in violation of the injunction can be cited for criminal or civil contempt of court, even before the injunction becomes permanent. *Id.* Then, at the permanent injunction hearing, individuals enjoined by the preliminary injunction can contest the injunction. *Id.* If none of the named parties attend the hearing, the judge will order a default permanent injunction against the gang and its members. *Id.* Once a gang injunction is granted, its existence serves as probable cause for investigation in case of a violation. *Id.* The injunction is a beneficial tool, as it prevents fearful citizens from having to serve as witnesses against criminal street gang members who may threaten, intimidate, or harm them in retaliation for their cooperation with law enforcement. *Id.* at 170.

40. Gang Injunction Guidelines, *supra* note 5. The City Attorney's Gang Injunction Guidelines (Guidelines) do not carry the force of law but are rather set up as a means by which the City Attorney's Office is able to ensure consistency in the pursuit of gang injunctions. *Id.* The Guidelines define a "Gang Deputy" as "a Deputy City Attorney within the Gang Prosecution and Prevention Section as well as any Deputy City Attorney prosecuting a case in which the defendant is a suspected gang member accused of violating a Gang Injunction," and a "Gang Supervisor" as "the Supervisor, an Assistant Supervisor, or a Deputy In Charge of the Gang Prosecution and Prevention Section. It also may include the Director of Anti-Gang Programs and Operations and the Chief of the Criminal Branch when a Gang Supervisor is unavailable, or when the required recommendation, decision, approval or action so merits." *Id.* "LAPD" refers to the Los Angeles Police Department. *Id.* The process for a gang injunction sought by the Los Angeles County District Attorney's Office, on the other hand, begins when law enforcement officers directly contact the District Attorney's Office regarding a problematic gang, giving the District Attorney's Office specific information as to the territorial boundaries of the gang, the gang's history of criminal conduct, and other necessary information that will provide a sufficient basis for the District Attorney's Office to pursue an injunction. Interview with Michael Fern, *supra* note 17.

entities must first determine that the gang falls within the legal definition of a criminal street gang.<sup>41</sup> The court in *Broderick Boys* gave this definition:

For purposes of a gang injunction, a person is a member of a gang if he or she “is a person who participates in or acts in concert with an ongoing organization, association or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of acts constituting the enjoined public nuisance, having a common name or common identifying sign or symbol and whose members individually or collectively engage in the acts constituting the enjoined public nuisance. The participation or acting in concert must be more than nominal, passive, inactive or purely technical.” [citation omitted] That is, a person is subject to the injunction if the state proves by clear and convincing evidence that the above definition is met.<sup>42</sup>

Second, there must be evidence that the gang’s conduct falls within the legal definition of a public nuisance.<sup>43</sup> A public nuisance is defined in California Civil Code § 3479.<sup>44</sup> Third, there must be evidence that the gang’s nuisance activity is conducted within a specifically defined geographic area, which, once the gang injunction is issued, becomes what is known as the “Safety Zone.”<sup>45</sup> Fourth, there must be evidence that the gang’s nuisance activities found to be conducted within the Safety Zone include at least one of the

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41. See *infra* Part III.B for various definitions of “criminal street gang.”

42. *Broderick Boys*, 149 Cal. App. 4th at 1517 (citing *Englebrecht*, 88 Cal. App. 4th at 1261).

43. See *infra* Part III.A.

44. *Id.*

45. Gang Injunction Guidelines, *supra* note 5. The establishment of a “safety zone” is significant because if an individual who is subject to the injunction conducts any of the enjoined activities within the “safety zone,” law enforcement officials may arrest the individual for violating the injunction and hold them in contempt of court. City Attorney’s Report, *supra* note 1.

following: “acts or threats of violence, drug dealing, the possession of illegal weapons or illegal possession of weapons, destruction or defacement of property, harassment of community members, or witness intimidation or retaliation.”<sup>46</sup> Fifth, there must be a determination that the injunction will cause the gang’s members to stop partaking in the enjoined nuisance activities.<sup>47</sup> Once the aforementioned entities conclude that these five prerequisites have been met by a clear and convincing evidence standard, a recommendation as to whether a gang injunction should be pursued must be sent to the Director of Anti-Gang Programs and Operations, the Chief of the Criminal Branch, and the City Attorney.<sup>48</sup> It is then up to the City Attorney, or, by his designation, the Chief of the Criminal Branch, whether to pursue the gang injunction and thus proceed to the next step.<sup>49</sup>

## 2. Gathering Evidence Against the Gang

Once the preliminary questions have been answered in the affirmative, the City Attorney’s Office must cooperate with local law enforcement to: (1) draft affidavits of police officers and civilian residents of affected areas which attest to the existence of the public nuisance the specified gang has created; (2) take photographs of graffiti and known gang members; (3) identify individual gang members by name, moniker, and appearance in order to name individuals within the injunction and ensure that personal service of process can later be attained; (4) establish to what area the “Safety Zone” by looking at records of past criminal activity; and (5) collect

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46. Gang Injunction Guidelines, *supra* note 5.

47. *Id.*

48. *Id.* “Clear and convincing evidence” is defined by Ballentine’s Law Dictionary as a “degree of proof higher than that of preponderance of the evidence.” *BALLENTINE’S LAW DICTIONARY* 3d ed. (1969). In the case of a gang injunction filed on behalf of the People by the District Attorney’s Office, this initial phase of the process is primarily conducted by law enforcement officials themselves, who then turn their evidence over to specially assigned Deputy District Attorneys. Interview with Michael Fern, *supra* note 17. These Deputy District Attorneys are then responsible for evaluating all the evidence and drafting a court document asking for a judge to find a gang injunction appropriate. *Id.*

49. Gang Injunction Guidelines, *supra* note 5.

documentary evidence of gang members' criminal convictions.<sup>50</sup> There must be strong evidence of the gang's nuisance activities within the specifically described Safety Zone in order to have hopes of successfully completing the third step.<sup>51</sup>

### 3. Convincing the Judge to Issue an Injunction

The final step is to present the evidence collected to a judge at an injunction hearing and persuade the judge that a public nuisance exists and a gang injunction is in order.<sup>52</sup> The prosecution must be able to establish, by clear and convincing evidence, both that the gang is a public entity capable of being sued and that its conduct amounts to a public nuisance.<sup>53</sup> This standard "is met by submitting to the court substantial proof of the crimes and nuisance activities in which the gang's members have engaged."<sup>54</sup>

Members of the enjoined gang are permitted, but are not required, to be present at the injunction hearing.<sup>55</sup> They may offer evidence in opposition to the People's case in order to contest the validity of the injunction itself, or the injunction as it applies solely to them.<sup>56</sup> If the individual gang members or their legal counsel do not appear at the hearing on the permanent injunction, the People may file for an entry of default judgment for the defendant's failure to answer the complaint.<sup>57</sup> The judge will then determine whether the provisions of the injunction appear to be constitutional and supported

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50. City Attorney's Report, *supra* note 1.

51. *Id.*

52. *Id.*

53. *See infra* note 91 (discussing how a gang can be considered a public entity, or "unincorporated association"); *see also Englebrecht*, 88 Cal. App. 4th at 1256 (holding that "[t]he need for a standard of proof allowing a greater confidence in the decision reached arises not because the personal activities enjoined are sublime or grand but rather because they are commonplace and ordinary"). *See infra* Part III.A for definition of "public nuisance."

54. City Attorney's Report, *supra* note 1.

55. Interview with Michael Fern, *supra* note 17.

56. *Id.*

57. *Id.*

by the evidence.<sup>58</sup> If the judge believes the permanent injunction is proper, he may grant the People's motion.<sup>59</sup>

### *G. Enforcement*

Under the City Attorney's guidelines, once a gang injunction is issued, personal notice of the injunction must be served upon all individuals who are to be held subject to it.<sup>60</sup> Thus, once a judge orders the injunction, police will take to the streets in effort to personally serve the injunction on every member or associate of the enjoined gang.<sup>61</sup> A knowing violation of the injunction is considered contempt of court, a misdemeanor, and an individual charged with a violation may be punished by imprisonment or fines.<sup>62</sup> A charge of contempt, however, must be prosecuted, and

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58. *Id.*

59. *Id.*

60. Gang Injunction Guidelines, *supra* note 5. In order to enforce the injunction against any individual gang member, it must be shown that he had knowledge of the injunction and was aware he was subject to it. *Broderick Boys*, 149 Cal. App. 4th at 1519. This does not, however, require actual knowledge. *Id.*

61. City Attorney's Report, *supra* note 1. The court in *Broderick Boys* defined a "gang member," "[f]or purposes of a gang injunction," as

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

*Broderick Boys*, 149 Cal. App. 4th at 1517 (citing *Englebrecht*, 88 Cal. App. 4th at 1261). Note that in order to be subject to an injunction, membership is not required, as associates of the gang who have notice of the injunction and act on its behalf are also enjoined from nuisance activities. *See, e.g.,* *People v. San Fer*, *supra* note 4 (enjoining San Fer gang members, including but not limited to those listed, as well as "all persons acting under, in concert with, for the benefit of, at the direction of, or in association with them or any of them.").

62. CAL. PENAL CODE § 166(a)(4) (mandating that the maximum penalty for contempt of court be six months in county jail, a fine of \$1000, or both).

the defendant has all of the rights due any criminal defendant, including the presumption of innocence, the right to an attorney, the right to a jury trial, the right to call witnesses on his or her behalf, and the right to confront and cross-examine witnesses against him or her and to see the prosecution's evidence.<sup>63</sup>

The defendant may also challenge the validity of the gang injunction itself at the contempt of court proceeding.<sup>64</sup> If the injunction itself is held to be invalid, the defendant has a complete defense to the charge of contempt and the charges will be dropped.<sup>65</sup>

The prosecution of the misdemeanor criminal contempt of court charge is similar to any other criminal prosecution, in that the prosecuting authority (i.e., the District Attorney or City Attorney) has the burden of proving the elements of the case beyond a reasonable doubt.<sup>66</sup> The elements of contempt of court for violation of a gang injunction are: (1) the accused had notice of the injunction, typically proven through evidence of personal service of the court order issuing the gang injunction; (2) the accused was a member or associate of the gang subject to the injunction at the time he violated the injunction; and (3) the accused did indeed violate the injunction by committing a prohibited action within the Safety Zone.<sup>67</sup> A corollary civil action carrying a maximum of up to five days of incarceration may also be filed.<sup>68</sup>

### III. CONSTITUTIONALITY OF GANG INJUNCTIONS

Since their inception, gang injunctions have been challenged on a number of constitutional grounds.<sup>69</sup> Courts, however, have largely

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63. City Attorney's Report, *supra* note 1 (citing *People v. Gonzalez*, 12 Cal. 4th 804, 818-819 (1996); *In re Berry*, 68 Cal. 2d 137, 147-148 (1968)).

64. *See Gonzalez*, 12 Cal. 4th 804.

65. Gang Injunction Guidelines, *supra* note 5.

66. City Attorney's Report, *supra* note 1.

67. *Id.*

68. Grand Jury Report, *supra* note 39.

69. *See, e.g., Acuna*, 12 Cal. 4th at 1099 (challenging injunction on jurisdictional and freedom of association grounds, as well as for "overbreadth"); *Broderick Boys*, 149 Cal. App. 4th at 1511 (challenging enforcement of injunction



upheld gang injunctions as a legitimate way for law enforcement to use civil laws to control the nuisance that gangs pose to our communities.<sup>70</sup> It is important to discuss the California statutes, provisions, and case law which are used in analyzing the background and development of gang injunctions, and support their constitutionality. These statutes are quoted and discussed below.

### *A. Nuisance Provisions*

California Civil Code § 3479 provides that

[a]nything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance.<sup>71</sup>

California Civil Code § 3480 further delineates a public nuisance from a private nuisance, a public nuisance being a nuisance “which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.”<sup>72</sup> A provision of the California Penal Code also defines a public nuisance:

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due to insufficient notice); *Englebrecht*, 88 Cal. App. 4th at 1242 (challenging injunction on unconstitutional infringement of associational rights grounds and challenging several provisions on other First Amendment grounds); *Colonia Chiques*, 156 Cal. App. 4th at 35 (challenging several provisions of the injunction for vagueness and alleging infringement of associational rights of enjoined parties).

70. *Acuna*, 12 Cal. 4th at 1125 (reinstating previously invalidated provisions and upholding injunction against claims of unconstitutionality); *Englebrecht*, 88 Cal. App. 4th at 1267 (affirming trial court’s issuance of the injunction); *Colonia Chiques*, 156 Cal. App. 4th at 51 (affirming all but the vague curfew provision of the injunction in question).

71. CAL. CIV. CODE § 3479 (West 1997).

72. CAL. CIV. CODE § 3480 (West 1997).

Anything which is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a public nuisance.<sup>73</sup>

Furthermore, California Penal Code § 372 makes it a misdemeanor to maintain a public nuisance.<sup>74</sup>

Criminal street gangs' activities in the community, "such as property crimes, crimes of violence, and narcotics sales, all of which are always a nuisance under the law because they are so harmful to the community[.]" clearly establish criminal street gangs as public nuisances.<sup>75</sup> Criminal street gangs also interfere with community members' comfortable enjoyment of life and property when their activities include the sale of controlled substances on public streets and in public parks; intimidating or threatening community members with violence should they try to stop the gang's activities or report them to the police; or obstructing individuals' free use of their property by congregating on lawns and in front of apartment buildings, leaving residents afraid to return to their homes.<sup>76</sup>

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73. CAL. PENAL CODE § 370 (West 1999); *see also Acuna*, 14 Cal. 4th at 1104 (discussing the similarity between California Penal Code §§ 370 and 371, and California Civil Code §§ 3479 and 3480, and citing *People ex rel. Busch v. Projection Room Theater*, 17 Cal. 3d 42, 49 (1976)).

74. CAL. PENAL CODE § 372 (West 1999). A nuisance fitting under either the California Civil Code's definition of a public nuisance or the California Penal Code's definition of a public nuisance may be enjoined by a court of equity, because "when such interferences [actual or threatened, with property or rights] appear[,] the jurisdiction of a court of equity arises, and is not destroyed by the fact that they are accompanied by or are themselves violations of the criminal law." *Acuna*, 14 Cal. 4th at 1107 (citing *In re Debs*, 158 U.S. 564, 593 (1895)).

75. City Attorney's Report, *supra* note 1 (citing *Acuna*, 14 Cal. 4th at 1108-09).

76. City Attorney's Report, *supra* note 1.

California Civil Code § 3491 provides that when a public nuisance is found to exist, available remedies include indictment or information, a civil action, or abatement through an injunction.<sup>77</sup> An injunction is defined by California Code of Civil Procedure § 525 as “a writ or order requiring a person to refrain from a particular act. It may be granted by the court in which the action is brought, or by a judge thereof; and when granted by a judge, it may be enforced as an order of the court.”<sup>78</sup> Gang injunctions are thus court orders, issued by a judge, which require gang members on notice of the injunction to refrain from partaking in enumerated activities which have been deemed public nuisances.<sup>79</sup> California Civil Procedure Code § 526 enumerates a variety of scenarios when an injunction may be deemed to be an appropriate remedy; these include:

- (1) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and the relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually.
- (2) When it appears by the complaint or affidavits that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury, to a party to the action.
- (3) When it appears, during the litigation, that a party to the action is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party to the action respecting the subject of the action, and tending to render the judgment ineffectual.
- (4) When pecuniary compensation would not afford adequate relief.

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77. CAL. CIV. CODE § 3491 (West 1997).

78. CAL. CIV. CODE § 525 (West 1997).

79. City Attorney's Report, *supra* note 1.

...[and]

(6) Where the restraint necessary to prevent a multiplicity of judicial proceedings.<sup>80</sup>

Clearly, then, gang injunctions are appropriate remedies against the public nuisances gangs impose upon community members. Community members are entitled to the comfortable enjoyment of life and property, and in order to restore to them this right, relief must consist of restraining the gang from committing and continuing its nuisance activities. Without an injunction, the commission and continuance of these activities would produce great, irreparable harm to community members. Gangs consistently violate the entire community's right to the comfortable enjoyment of life and property by trafficking drugs and loitering in public parks and in front of apartment homes. Thus, community members may be forced out of their neighborhoods due to fear of gang violence, or else be subjected to gang violence should they remain in their communities. A mere monetary judgment would be insufficient to rectify this problem. Individual gang members could not properly compensate the community for their nuisance activities through a mere transfer of money. It would be equally implausible for individual community members to seek injunctive relief against each individual gang member. Fear of retaliation alone would be sufficient to foreclose this possibility. Additionally, as noted in *Colonia Chiques*, "[i]f the gang [as a whole] could not be sued, respondent [City or District Attorney] would have to bring a new action for injunctive relief

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80. CAL. CIV. PROC. CODE § 526 (West 2009); *see also* CAL. CIV. CODE § 3422 (West 1997), which provides:

Except where otherwise provided by this title, a final injunction may be granted to prevent the breach of an obligation existing in favor of the applicant:

1. Where pecuniary compensation would not afford adequate relief;
2. Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief;
3. Where the restraint is necessary to prevent a multiplicity of judicial proceedings.

against each new member.”<sup>81</sup> Thus, the civil gang injunction may be the simplest and most effective tool law enforcement agencies have for enjoining an entire criminal street gang’s nuisance activities.

The power of city and district attorneys to pursue gang injunctions on behalf of the people is derived from California Civil Procedure Code § 731, which provides that “[a] civil action may be brought in the name of the people of the State of California to abate a public nuisance . . . by the district attorney of any county in which such nuisance exists, or by the city attorney of any town or city in which such nuisance exists.”<sup>82</sup> Thus, where a gang’s actions amount to a public nuisance, the city or district attorney can sue a gang in civil court, as an unincorporated public entity, and seek abatement of the gang’s nuisance activities on behalf of the affected community.<sup>83</sup> Furthermore, § 731 states that city and district attorneys “shall have [the] concurrent right to bring such action [seeking abatement via an injunction] for a public nuisance existing within a town or city.”<sup>84</sup> Thus, where gang problems span more than one city, both the city attorney’s office and the district attorney’s office may jointly or separately file for an injunction.<sup>85</sup>

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81. See *Acuna*, 14 Cal. 4th at 1102-1108 (analyzing the applicability of injunctions to nuisances which may also be deemed a crime by the legislature); *Colonia Chiques*, 146 Cal. App. 4th at 41 (analyzing whether, in view of the STEP Act, the California Legislature intended for criminal street gangs to be considered unincorporated associations and thereby capable of being parties to lawsuits). The court specifically states that when an indictable crime also violates the citizen’s and general public’s immediate right to the enjoyment of the thing interfered with, in the case of gang injunctions, the comfortable enjoyment of life and property, “[a] criminal prosecution is inadequate in such case, because it does not prevent the doing of the unlawful act.” *Acuna*, 14 Cal. 4th at 1108 (quoting *State v. Ehrlik*, 65 W. Va. 700, 708 (1909)).

82. CAL. CIV. PROC. CODE § 731 (West 1980).

83. *Id.*

84. *Id.*

85. *Id.* See, e.g., Los Angeles City Attorney’s News Release, City Attorney Delgadillo and District Attorney Cooley Secure Permanent Injunction Against Notorious San Fers Gang, Aug. 11, 2008, [http://www.lacity.org/atty/attypress/attyattypress6955036\\_08112008.pdf](http://www.lacity.org/atty/attypress/attyattypress6955036_08112008.pdf) (last visited Dec. 3, 2008); see also Judge Grants Permanent Injunction Against San Fernando Valley Gang, *supra* note 4.

### *B. Gang Statutes*

In 1988, California's legislature enacted the Street Terrorism Enforcement and Prevention (STEP) Act, codified as California Penal Code § 186.20 et seq., "to seek the eradication of criminal activity by street gangs by focusing upon patterns of criminal gang activity and upon the organized nature of street gangs."<sup>86</sup> Among its main provisions, the STEP Act allows for the increased punishment of individuals who are convicted of felonies "committed for the benefit of, at the direction of, or in association with a criminal street gang, [and] with the specific intent to promote, further, or assist in any criminal conduct by gang members."<sup>87</sup> The STEP Act even makes it a crime to be a member of a gang if, first, the individual knows "that [the gang's] members engage in or have engaged in a pattern of criminal gang activity," and second, the individual "willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang."<sup>88</sup>

Of special note for gang injunctions, the STEP Act provides that "a building or place used by members of a criminal street gang for specified illegal activities is declared a nuisance per se."<sup>89</sup> This gives

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86. See Orange County District Attorney's Office Website, Violent Crimes Gang & TARGET Units Law, <http://orangecountyda.com/home/index.asp?page=98> (last visited Feb. 9, 2009), quoting California Penal Code § 186.20. The act itself details that "California is in a state of crisis which has been caused by violent street gangs whose members threaten, terrorize, and commit a multitude of crimes against peaceful citizens of their neighborhoods." CAL. PENAL CODE § 186.21 (West 1999). It further notes that, at the time of its passage, there were nearly 600 criminal street gangs in California, that in 1986, Los Angeles County *alone* saw 328 gang-related murders, and the following year saw an eighty percent increase in this number. *Id.*

87. CAL. PENAL CODE § 186.22 (West 2007). The convicted gang member's sentence may be increased by a period of two, three, or four years of additional jail time, at the judge's discretion; if the gang member was convicted of a serious felony, five years are added to the prison term; and in the case of a violent felony, an additional ten years are added to the gang member's sentence. *Id.*

88. *Id.* Such offense is punishable by one year in the county jail or sixteen months in the state prison. *Id.*

89. *Acuna*, 14 Cal. 4th at 1119. *Acuna* then quotes the statute: "Every building or place used by members of a criminal street gang for the purpose of the commission of [specified] offenses . . . and every building or place wherein or upon which that criminal conduct by gang members takes place, is a nuisance which

city attorneys and district attorneys throughout the state, as well as the California Attorney General, broad authority to bring nuisance abatement actions to enjoin gang members from frequenting gang hang-outs such as public parks and streets. Also important to note are the STEP Act's definitions of "criminal street gang" and "pattern of criminal activity." The STEP Act defines a "criminal street gang" as

any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (25), inclusive, or (31) to (33), inclusive, of subdivision (e), having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.<sup>90</sup>

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shall be enjoined, abated, and prevented, and for which damages may be recovered, whether it is a public or private nuisance.'" *Id.* (citing CAL. PENAL CODE § 186.22a(a) (West 2008)) (italics omitted).

90. CAL. PENAL CODE § 186.22. The enumerated criminal acts are:

- (1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.
- (2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 of Part 1.
- (3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.
- (4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.
- (5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.
- (6) Discharging or permitting the discharge of a firearm from a motor vehicle, as defined in subdivisions (a) and (b) of Section 12034.
- (7) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.
- (8) The intimidation of witnesses and victims, as defined in Section 136.1.
- (9) Grand theft, as defined in subdivision (a) or (c) of Section 487.

The STEP Act defines a “pattern of criminal gang activity” as

the commission of, attempted commission of, conspiracy to commit, or solicitation of, sustained juvenile petition for, or conviction of two or more of the [enumerated] offenses, provided at least one of these offenses occurred after [September 23, 1988] and the last of those offenses occurred within three years after a prior offense, and the offenses were committed on separate occasions, or by two or more persons.<sup>91</sup>

Lastly, the STEP Act specifies that, in order to convict an individual who knowingly participates in the activities of a criminal street gang and who willfully promotes, furthers, or assists the gang’s

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- (10) Grand theft of any firearm, vehicle, trailer, or vessel.
  - (11) Burglary, as defined in Section 459.
  - (12) Rape, as defined in Section 261.
  - (13) Looting, as defined in Section 463.
  - (14) Money laundering, as defined in Section 186.10.
  - (15) Kidnapping, as defined in Section 207.
  - (16) Mayhem, as defined in Section 203.
  - (17) Aggravated mayhem, as defined in Section 205.
  - (18) Torture, as defined in Section 206.
  - (19) Felony extortion, as defined in Sections 518 and 520.
  - (20) Felony vandalism, as defined in paragraph (1) of subdivision (b) of Section 594.
  - (21) Carjacking, as defined in Section 215.
  - (22) The sale, delivery, or transfer of a firearm, as defined in Section 12072.
  - (23) Possession of a pistol, revolver, or other firearm capable of being concealed upon the person in violation of paragraph (1) of subdivision (a) of Section 12101.
  - (24) Threats to commit crimes resulting in death or great bodily injury, as defined in Section 422.
  - (25) Theft and unlawful taking or driving of a vehicle, as defined in Section 10851 of the Vehicle Code.

*Id.* § 186.22(f).

91. *Id.* § 186.22(e).



felonious criminal conduct, all the prosecution needs to prove is that the individual actively participates in the gang's criminal conduct.<sup>92</sup>

### *C. Statutes Regarding "Unincorporated Associations"*

When the city or district attorney sues a gang, they may choose to identify the gang, its members, or both.<sup>93</sup> When the criminal street gang itself is named as the defendant, it is sued as an "unincorporated association."<sup>94</sup> California Corporations Code § 18035 defines an "unincorporated association" as a "group of two or more persons joined by mutual consent for a common lawful purpose, whether organized for profit or not."<sup>95</sup> California Corporations Code § 18220 further provides:

the court or judge may make an order that service be made upon the unincorporated association by delivery of a copy of the process to one or more of the association's members designated in the order and by mailing a copy of the process to the association at its last known address. Service in this manner constitutes personal service upon the unincorporated association.<sup>96</sup>

However, there has been some discrepancy among various California courts of appeal as to whether the Corporation Code's definition encompasses criminal street gangs, since the prosecution rarely cites a common *lawful* purpose for which a criminal street

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92. *Id.* § 186.22(i). The prosecution need not prove that the individual "devotes all, or a substantial part, of his or her time or efforts to the criminal street gang," nor even that the individual is in fact a member of the gang. *Id.* Instead, active participation is sufficient. *Id.*

93. *See Colonia Chiques*, 156 Cal. App. 4th at 39-41 (discussing who may file an injunction against a criminal street gang); *see also* CAL. CIV. PROC. CODE § 369.5 (West 2004).

94. *See, e.g., People v. San Fer*, *supra* note 4.

95. CAL. CORP. CODE § 18035 (West 2005).

96. CAL. CORP. CODE § 18220 (West 2005).

gang is formed.<sup>97</sup> Instead of using the Corporation Code's definition, some courts turn to the test established in *Barr v. United Methodist Church*, which states that "[t]he criteria applied to determine whether an entity is an unincorporated association are no more complicated than (1) a group whose members share a common purpose, and (2) who function under a common name under circumstances where fairness requires the group be recognized as a legal entity."<sup>98</sup> When the city or district attorney chooses to use this alternative definition, the prosecution must turn to California Code of Civil Procedure § 369.5(a), which allows the gang to be sued as an unincorporated association and avoids the stricter requirements of the Corporations Code's definition.<sup>99</sup>

#### *D. Challenges & Case Law*

##### 1. Insufficient Notice

In *People ex rel. Reisig v. Broderick Boys*, the California Court of Appeal for the Third District addressed the sufficiency of notice given to one member of the Surenos criminal street gang.<sup>100</sup> The individuals challenging the injunction were served with the court order issuing the permanent injunction.<sup>101</sup> Initial service of the

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97. See *Broderick Boys*, 149 Cal. App. 4th at 1521 (holding that where prosecution failed to identify *any* lawful purpose for which the Broderick Boys criminal street gang was formed, the method of service, though according with California Corporations Code section 18220, was nevertheless insufficient because the prosecution had failed to prove that the Broderick Boys criminal street gang was an "unincorporated association" within the meaning of California Corporations Code section 18035). See also *Colonia Chiques*, 156 Cal. App. 4th at 39-41 (holding that, because California Corporations Code section 18000 specifies that the definitions in that chapter only apply to that title, a criminal street gang may still qualify as an "unincorporated association" under the *Barr v. United Methodist Church* test and may thereby be sued pursuant to California Code of Civil Procedure section 369.5(a)) (citing *Barr v. United Methodist Church*, 90 Cal. App. 3d 259 (Ct. App. 1979)).

98. *Barr*, 90 Cal. App. 3d at 266.

99. CAL. CIV. PROC. CODE § 369.5(a) (providing that "[a] partnership or other unincorporated association, whether organized for profit or not, may sue and be sued in the name it has assumed or by which it is known").

100. *Broderick Boys*, 149 Cal. App. 4th at 1522-24.

101. *Id.* at 1514.

preliminary injunction, however, had been served upon only one member of the enjoined gang, and that member did not live in the “Safety Zone” protected by the injunction.<sup>102</sup> While the court noted that service upon one member of an unincorporated association is sometimes sufficient, it cautioned that “‘one or more’ does not always mean *one* is enough.”<sup>103</sup> The district attorney, however, in this case failed to establish the Surenos as an unincorporated association, and even if they had, the fact that the individual served had expressed his intention not to appear at the hearing should have suggested that he should not be relied upon to notify the rest of the gang about the injunction hearing.<sup>104</sup> Thus, the court held that service on just one of the gang’s members was insufficient notice to all other members of the gang, thereby invalidating the permanent injunction in its entirety.<sup>105</sup> The court noted, however, that if the district attorney had established the gang as an unincorporated association, service on only one member could be effective, so long as that individual was of sufficient rank and character to presume notice would be given to the rest of the gang.<sup>106</sup>

## 2. Infringements Upon Civil Rights

In the landmark case of *People ex rel. Gallo v. Acuna*, the court confronted the issue of whether the First Amendment’s protection of the freedom of association could properly be restricted as applied to criminal street gangs.<sup>107</sup> The California Supreme Court held that the criminal street gang in question was “not an association of individuals formed ‘for the purpose of engaging in protected speech

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102. *Id.*

103. *Id.* at 1522.

104. *Id.* at 1523-24.

105. *Id.* at 1524, 1528.

106. *Broderick Boys*, 149 Cal. App. 4th at 1524. Because there was nothing to suggest the district attorney knew the rank of the individual served, even if the district attorney had established that the gang was an unincorporated association, the case would still have to be remanded for a determination as to whether the individual served was of sufficient rank and character such that it was reasonably certain the rest of the gang would thereby be notified. *Id.*

107. *Acuna*, 14 Cal. 4th at 1110.

or religious activities.”<sup>108</sup> Nor did the gang fit under the Constitution’s protection of associations with “intrinsic” or “intimate” value, and thus was not meant to be afforded the First Amendment’s protection of the freedom of association.<sup>109</sup> The court, citing *Madsen v. Women’s Health Center, Inc.*, 512 U.S. 753, 776 (1994), stated that “[f]reedom of association, in the sense protected by the First Amendment, ‘does not extend to joining with others for the purpose of depriving third parties of their lawful rights.’”<sup>110</sup> At base, the court argued,

[r]econciliation [between the individual’s right to expression and freedom of association on the one hand, and the community’s right to security and protection on the other] begins with the acknowledgement that the interests of the community are not invariably less important than the freedom of individuals. Indeed, the security and protection of the community is the bedrock on which the superstructure of individual liberty rests.<sup>111</sup>

The *Acuna* court also rejected defendants’ “overbreadth” claim.<sup>112</sup> In answering the penultimate question, whether the injunction’s provisions “burden no more speech than necessary to serve a significant governmental interest,”<sup>113</sup> the court held that the mere fact that the injunction’s provisions (such as restricting all forms of association, including “standing, sitting, walking, driving, gathering or appearing anywhere in public view”) were broad did not mean the *Madsen* standard was violated.<sup>114</sup> The court noted that “[i]t is the threat of *collective* conduct by gang members loitering in a specific and narrowly described neighborhood that the provision

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108. *Id.* at 1111 (citing *Bd. Of Dirs. of Rotary Int’l v. Rotary Club*, 481 U.S. 537, 544 (1987)).

109. *Acuna*, 14 Cal. 4th at 1110-12.

110. *Id.* at 1112.

111. *Id.* at 1102.

112. *Id.* at 1119-22.

113. *Id.* at 1120 (citing *Madsen v. Women’s Health Center, Inc.*, 512 U.S. 753, 765 (1994)).

114. *Acuna*, 14 Cal. 4th. at 1121

[against association] is sensibly intended to forestall. Given that overriding purpose, the prohibitions enumerated [ ] are not easily divisible.”<sup>115</sup> Thus, the “ban on any association between gang members *within the neighborhood*” was upheld as a constitutional restriction on the freedom of association when balanced against the high governmental interest in protecting the rights of area residents.<sup>116</sup>

### *E. Recent Case Law Upholding Gang Injunctions*

In 2007, the California Court of Appeal for the Second District heard *People ex rel. Totten v. Colonia Chiques*.<sup>117</sup> The case involved an appeal by two individuals challenging the grant of a permanent injunction against the Colonia Chiques criminal street gang in the City of Oxnard.<sup>118</sup> The appellants alleged many of the same contentions at issue in *Acuna*.<sup>119</sup> Specifically, appellants argued that (1) Colonia Chiques was not a jural entity capable of being sued since it did not amount to an “unincorporated association;” (2) unnamed parties could not be subject to the injunction; (3) enjoined parties’ associational rights were infringed by provisions restricting knowing association with other Colonia Chiques members; (4) the curfew provision included in the injunction was impermissibly vague; (5) the injunction itself was unconstitutionally vague for failure to particularly describe nonparties; and (6) the included “opt-out provision” was invalid.<sup>120</sup>

First, the court held that a gang *can* be sued as an unincorporated entity pursuant to California Code of Civil Procedure § 369.5(a).<sup>121</sup> In so holding, the court noted in dicta that to the extent the district court in *Broderick Boys* held otherwise, the court disagreed with the outcome of that case.<sup>122</sup> In making this determination, the court cited

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115. *Id.* (addressing the constitutionality of the restricted association mandates of “provision (a)” of the gang injunction at issue).

116. *Acuna*, 14 Cal. 4th at 1120-21.

117. *Colonia Chiques*, 156 Cal. App. 4th at 31.

118. *Id.* at 35.

119. *See id.*; *see also Acuna*, 521 U.S. at 1101.

120. *Colonia Chiques*, 156 Cal. App. 4th at 35.

121. *Id.* at 38-41.

122. *Id.* at 41.

to *Acuna*, dropping the “common lawful purpose” language necessitated by *Broderick Boys*, and instead applying the test identified in *Barr*.<sup>123</sup> It further supported its finding by referencing the legislative intent behind the STEP Act, which clearly envisioned that criminal street gangs could be sued.<sup>124</sup>

Second, in response to appellants’ contentions that unnamed parties could not be enjoined, the court held that since an injunction is applicable to both named parties as well as those through whom the enjoined party (i.e., the gang) may act, it was entirely permissible for an injunction to apply to individuals who act on behalf of, for the benefit of, or in association with the enjoined gang.<sup>125</sup> Additionally, the court, again citing to *Acuna*, noted that the injunction could prohibit enjoined individuals’ conduct irrespective of whether such conduct was done with the specific intent to further the gang’s purposes because the gang was responsible for the nuisance and “‘both the organization and the members through which it acts are subject to relief.’”<sup>126</sup>

Third, in analyzing the alleged infringement on the constitutional right to association, the court quoted *Englebrecht*’s requirement that “[a]n injunction may not burden the constitutional right to association more than is necessary to serve the significant governmental issue at stake;” thus, because the prohibition from association with other Colonia Chiques gang members applied *only within the Safety Zone*, the provision was constitutional.<sup>127</sup> The appellants further argued

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123. *Id.* at 39 (“‘Because the City *could* have named the gangs themselves as defendants and proceeded against them, its decision to name individual gang members instead does not take the case out of the familiar rule that both the organization and the members through which it acts are subject to injunctive relief.’”) (citing *Acuna*, 14 Cal. 4th at 1125). See also *supra* Part III.C (discussing *Barr v. United Methodist Church* test for “unincorporated association”).

124. *Colonia Chiques*, 156 Cal. App. 4th at 40. Had the STEP Act not envisioned the possibility of a gang’s ability to be sued, its provision that an action for money damages may be brought on behalf of the community injured by the gang’s nuisance activities would be meaningless. *Id.*

125. *Id.* at 42. Note, however, that the unnamed party must still be on notice of the injunction before it may be enforced against him. See *Broderick Boys*, 149 Cal. App. 4th at 1254.

126. *Colonia Chiques*, 156 Cal. App. 4th at 44 (quoting *Acuna*, 14 Cal. 4th at 1125).

127. *Id.* at 44-46 (quoting *Englebrecht*, 88 Cal. App. 4th at 1262).

that because the provision forbade even family members from associating, it violated “the constitutional right ‘to maintain close personal affiliations and to live with one’s family and relatives.’”<sup>128</sup> Because the court found that “gang and familial ties often overlap and gang membership is often multigenerational,” making an exception for family members who are subject to the injunction would tend to limit the injunction’s effectiveness.<sup>129</sup>

Fourth, the court agreed with appellants that the provision forbidding all enjoined individuals from being “outside” after 10 p.m. was unconstitutionally vague.<sup>130</sup> The court decided that the term “outside,” especially when compared with the specificity of the City of Oxnard’s juvenile curfew, gave insufficient notice to enjoined individuals of what conduct was forbidden.<sup>131</sup> Thus, the court invalidated this sole provision of the injunction.<sup>132</sup>

Fifth, the court upheld all but the curfew provision of the injunction against appellants’ claim that the injunction’s failure to particularly describe all nonparties enjoined by the injunction rendered the entire injunction unconstitutionally vague.<sup>133</sup> The court said that, because the injunction specifically applied to “members,” defined in accordance with *Englebrecht* and the STEP Act, it made clear that participation in the gang must be active as opposed to nominal or purely technical.<sup>134</sup> Thus, the description of individuals to be enjoined was deemed constitutional.<sup>135</sup>

Lastly, the California Court of Appeal held that where the underlying gang injunction was found to be valid and enforceable, so too, was the opt-out provision included therein.<sup>136</sup> Against appellant’s claim that the opt-out provision was merely a “bill of goods” and thereby invalid, the court held that since the underlying

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128. *Colonia Chiques*, 156 Cal. App. 4th at 45.

129. *Id.* at 46.

130. *Id.* at 47.

131. *Id.* at 48.

132. *Id.* at 49.

133. *Id.* at 50.

134. *Id.*

135. *Id.*

136. *Colonia Chiques*, 156 Cal. App. 4th at 51.

injunction was upheld, the accompanying opt-out provision providing for the removal of individuals from the injunction was also valid.<sup>137</sup>

#### IV. THE OPT-OUT PROCEDURE<sup>138</sup>

The Los Angeles City Attorney's Office was the first to create an administrative removal procedure allowing gang members to petition for removal from a gang injunction upon a showing of disassociation with the named gang.<sup>139</sup> Pursuant to this new procedure, each gang member served with an injunction has the opportunity to petition for

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137. *Id.*

138. The "Opt-Out Procedure" referred to throughout this section refers to that established solely by the Los Angeles City Attorney's Office. The Los Angeles County District Attorney's Office currently has no formal guidelines for removing individuals from its gang injunctions, and instead leaves it to courtroom proceedings to determine whether an individual will remain subject to a gang injunction. Interview with Michael Fern, *supra* note 17. Should an individual challenge his subjection to the injunction, he may request declaratory relief from the injunction. *Id.* If the individual is found to remain an active member or associate of the enjoined gang, the injunction will remain effective against him; otherwise the judge will order his removal from the injunction. *Id.* It is likely that no formal procedure or set of guidelines has been established by the District Attorney's Office because currently there are only two deputy district attorneys assigned to handle gang injunctions. *Id.* There are more than fifty deputy district attorneys working in the Hardcore Gang Division of the District Attorney's Office, which prosecutes gang members for murders, attempted murders, and other gang crimes. Grand Jury Report, *supra* note 39. The process for removal from injunctions sought by the District Attorney's Office poses somewhat of a "catch-22" for individuals who seek to leave the gang quietly, as the proceeding is held in open court and transcribed into public records. This potential for exposure, and thus retaliation by the gang against the individual, may discourage individuals from leaving their gangs. Perhaps the only real way to leave a gang "quietly" is for the former member to leave the community entirely and cut ties with his former gang. Interview with Michael Fern, *supra* note 17. More research and analysis in this area is required before any conclusions may be drawn as to this possibility. Other California jurisdictions, such as Orange County and the City of San Francisco, have begun to establish their own removal procedures as well. See, e.g., Orange County District Attorney's Office, Petition for Removal, [http://orangecountyda.com/docs/16113110112008vv\\_petition\\_for\\_removal.pdf](http://orangecountyda.com/docs/16113110112008vv_petition_for_removal.pdf) (last visited Feb. 9, 2009); see also San Francisco City Attorney's Office, Petition for Removal, [http://www.aclunc.org/docs/news\\_room/sf\\_petition\\_for\\_opt\\_out.pdf](http://www.aclunc.org/docs/news_room/sf_petition_for_opt_out.pdf) (last visited Feb. 9, 2009).

139. See Banks, *supra* note 8.



removal by filling out the removal petition, which is available at the City Attorney's website, or otherwise submitting the requested information by mail to the City Attorney's Office.<sup>140</sup> The petition allows gang members to disassociate from their gangs without having to put themselves at risk by making a public statement or leaving a paper trail accessible by the public.<sup>141</sup> The petition informs the gang member that he must provide to the City Attorney's Office sufficient information to establish that: (1) he is no longer or never was a member of the named gang; (2) he is not now acting and will not in the future act to promote, further, or assist any of the prohibited activities named in the injunction on behalf of the named gang; and (3) that he is not a member of any other criminal street gang.<sup>142</sup> Upon such a showing, and after an investigation by the City Attorney's Office's Reviewing Authority confirming the same, an individual's name may be removed from the injunction order; the injunction will no longer be enforceable against him.<sup>143</sup>

#### *A. How is it Done?*

For individuals enjoined by injunctions prior to the establishment of the removal procedure, those who believe they should no longer or never should have been subject to the injunction can immediately submit their petitions to the City Attorney's Office.<sup>144</sup> The process for newly enjoined individuals, however, may be somewhat different. When the City Attorney and District Attorney file an injunction together, an opt-out provision may be included in the order issuing the permanent injunction.<sup>145</sup> The following is a sample opt-out

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140. See Los Angeles City Attorney's Office Gang Injunction Removal Petition Information, [http://www.lacity.org/atty/pdf/InjunctionRemoval/Petition\\_Info\\_Sheet\\_Final.pdf](http://www.lacity.org/atty/pdf/InjunctionRemoval/Petition_Info_Sheet_Final.pdf) (last visited Dec. 3, 2008). See also Los Angeles City Attorney's Office Petition for Removal from Gang Injunction, [http://www.lacity.org/atty/pdf/Injunction\\_Petition\\_English.pdf](http://www.lacity.org/atty/pdf/Injunction_Petition_English.pdf) (last visited Dec. 3, 2008) [hereinafter *L.A. Office Petition*].

141. See *L.A. Office Petition*, *supra* note 140; see also Banks, *supra* note 8.

142. See *L.A. Office Petition*, *supra* note 140.

143. Gang Injunction Guidelines, *supra* note 5.

144. *Id.*

145. See *People v. San Fer*, *supra* note 4.

provision from a Proposed Judgment for a Permanent Injunction to be issued by the Los Angeles County Superior Court against the “San Fer” criminal street gang in August of 2008, after the City Attorney’s Office established the removal procedure and petition:

3. That this order includes an **Opt-Out Provision**, by which any member of Defendant San Fer, or any person who has been served with this injunction (“Served Person”) may move this Court under this Opt-Out Provision for an order that this injunction is not enforceable against him/her, which Plaintiff agrees shall be granted if upon hearing the motion it is shown there is not clear and convincing evidence that the Served Person is currently a member of Defendant San Fer. Such an order is to be without prejudice, each side shall bear its own costs and fees, and Served Person’s motion must satisfy each of the following requirements:

a. **Proper Notice:** A motion under this Opt-Out Provision shall be made on proper notice, properly served on Plaintiff’s counsel, and shall not be made on shortened time; and

b. **No Longer a Gang Member:** Served Person must file a noticed motion with this Court, and said motion must be supported by Served Person’s declaration, made under penalty of perjury, that Served Person is not or is no longer a member of Defendant San Fer gang, and Served Person has not engaged in any gang activity or any criminal activity for a period of three years immediately preceding the filing of said motion; and

c. **No Effect in Other Proceedings:** This provision and any orders resulting from it shall not be admissible in any civil or criminal action, and cannot be used for or against a Served Person for any purpose whatsoever, other than a civil or criminal contempt proceeding brought for violation of this judgment. Nor shall it be a defense to any civil or criminal contempt charge

that the Served Person was eligible to apply for an order under this provision[.]<sup>146</sup>

While the language of the provision in the San Fer injunction is somewhat formal, the actual procedure established by the City Attorney's Office's gang injunction guidelines is actually quite informal, neither requiring the submission of legal documents nor even the petition itself, so long as the necessary information is provided.<sup>147</sup>

### 1. The Petition

So that petitioners do not have to enter into any court proceedings or file court documents which leave a "paper trail" (and thereby allow gang members with whom the petitioner was formerly associated to access such public documents and possibly target and punish former members for leaving), the removal procedure established by the City Attorney's Office's guidelines allows petitioners to submit confidential documents directly to the City Attorney's Office through the mail.<sup>148</sup> Such documents, declarations, and affidavits need not be drafted by lawyers; instead they are highly informal and are held in strict confidence upon receipt.<sup>149</sup> The petition specifically requests that the petitioner provide the following information: the petitioner's full name, date of birth, and social security number or photo identification; the petitioner's home address and telephone number, and any alternative address at which the petitioner prefers to be contacted for safety or convenience; the name, address, and telephone number of the petitioner's place of employment; aliases or monikers the petitioner goes by or has gone by in the past; a signed statement that the petitioner is not currently or never was a member of the gang named in the injunction to which he is subject, is not or never was a member of any other criminal

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146. *Id.*

147. *See* L.A. Office Petition, *supra* note 140.

148. *Id.* The procedure was also established "[t]o address concerns that such a formal judicial procedure is too cumbersome a means for seeking removal from a gang injunction, and would require the assistance of counsel." Gang Injunction Guidelines, *supra* note 5.

149. *Id.*

street gang, and is not or never was acting to promote, further, or assist any gang's criminal or nuisance activity; a list of individuals who can verify the petitioner's claim that he is not currently or never was a member of a criminal street gang; and any other materials, documentation, testimonials, or evidence supporting the petitioner's claim that he is no longer or never was a member of a criminal street gang.<sup>150</sup> Additional evidence may include proof of tattoo removal; proof of enrollment in an educational institution; proof of employment; a list of references who can offer support to the petition; and the petitioner's own statements regarding if, when, how, and why the petitioner became involved in a criminal street gang; and if, when, how, and why the petitioner left the criminal street gang.<sup>151</sup>

## 2. How is the Petition Evaluated?

Petitioners submit proof of their disassociation to the Reviewing Authority, which is comprised of at least two of the following: the City Attorney, the Deputy Chief of the Citywide Branch Operations Division, the Deputy Chief of the Safe Neighborhoods Division, the Deputy Chief of the Special Operations Division, the Deputy Chief of the Safe Schools Division, or a senior supervisor within one of these divisions.<sup>152</sup> Such individuals, aside from the City Attorney himself, do not typically have any involvement with the gang injunction process.<sup>153</sup> In order to make the process simple yet reliable, the Reviewing Authority may consider any materials submitted by the petitioner; such "evidence" need not be legally admissible or formally prepared.<sup>154</sup> The petition, however, must be submitted within 90 days of personal service of the injunction, unless

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150. Gang Injunction Guidelines, *supra* note 5; see also L.A. Office Petition, *supra* note 140.

151. *Id.*

152. Gang Injunction Guidelines, *supra* note 5; City Attorney's Report, *supra* note 1.

153. Gang Injunction Guidelines, *supra* note 5.

154. *Id.* Consideration of the following is appropriate: "'relevant and reliable information,' which may include letters, emails, verbal reports, field interviews or other information provided by family members, community leaders, employers, teachers, ministers, landlords, former gang members, intervention specialists, probation officers and knowledgeable law enforcement personnel." *Id.*

good cause is otherwise shown.<sup>155</sup> The petition is now available online for all gang members personally served with a gang injunction.<sup>156</sup>

Upon receipt of the petition, but before the Reviewing Authority consider the petition, the Gang Deputy and LAPD gang experts review the petition and make a recommendation to the Reviewing Authority whether or not they believe there is sufficient evidence to suggest that the petitioner is no longer or never was a member of the enjoined gang.<sup>157</sup> The Gang Deputy and gang experts then pass the petition, their recommendation, and all supporting documents along to the Reviewing Authority.<sup>158</sup> The Reviewing Authority considers all available information, including the petition and any other reliable evidence and information, such as personal contacts with the designated gang expert, witnesses, and the petitioner himself.<sup>159</sup> With all of this information in mind, the Reviewing Authority determines whether there is sufficient evidence to conclude the petitioner is not or never was a member of the named gang, no longer or never did act to promote or further the gang's illegal or nuisance activities, and is not or never was a threat to act in furtherance of illegal or nuisance gang activities.<sup>160</sup> If there is sufficient evidence to find these three requisites in the affirmative, the Reviewing Authority will remove the petitioner's name from the injunction.<sup>161</sup>

Once a decision is made, the Reviewing Authority communicates its decision to the designated Gang Deputy and LAPD gang expert.<sup>162</sup> The Gang Deputy and LAPD gang expert are tasked with ensuring that the petitioner's name is removed from the injunction if

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155. *Id.* Good cause may include "the prior unavailability of this procedure to the Petitioner or recent completion of an educational, job training, or gang intervention program." *Id.*

156. See L.A. Office Petition, *supra* note 140. Other jurisdictions have made similar petitions available as well. See *supra*, note 138.

157. Gang Injunction Guidelines, *supra* note 5.

158. *Id.*

159. *Id.* The Reviewing Authority may consider its own evidence and conduct its own investigation if necessary. *Id.*

160. *Id.*

161. Gang Injunction Guidelines, *supra* note 5.

162. *Id.*

that is the decision of the Reviewing Authority.<sup>163</sup> The petitioner is contacted regarding the outcome of his petition at the address provided.<sup>164</sup>

While the eventual decision does have a legal impact in that a petitioner found not to be or never to have been a gang member will be removed from and thereby not subject to the gang injunction, the decision by the Reviewing Authority is not “an admission, factual finding, or legal determination by the City Attorney’s Office or LAPD cognizable in a court of law.”<sup>165</sup> Thus, if it is later determined by clear and convincing evidence that the gang member has returned to his former gang or is participating in its nuisance activities, the City Attorney’s Office may place the individual’s name back onto the injunction and reinstate its enforcement against him.<sup>166</sup> To the same ends, if the Reviewing Authority’s decision is to retain the injunction against the petitioner, the petitioner may resubmit a petition for removal when additional information becomes available which supports his claim that he is not or never was a member of the enjoined gang.<sup>167</sup>

### *B. Does it Work?*

A number of studies have looked at the efficacy of gang injunctions generally. In 1997 the American Civil Liberties Union conducted a study of the impact of Los Angeles gang injunctions after the 1993 issuance of the Blythe Street gang injunction.<sup>168</sup> The study looked at various law enforcement data between 1992 and 1995 in 19 reporting districts.<sup>169</sup> It reported that crime actually increased

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163. *Id.*

164. *Id.*

165. *Id.*

166. Gang Injunction Guidelines, *supra* note 5.

167. City Attorney’s Report, *supra* note 1; *see also* L.A. Office Petition, *supra* note 140.

168. *See* False Premise/False Promise: The Blythe Street Gang Injunction and Its Aftermath, A Report by the ACLU Foundation of Southern California, <http://www.streetgangs.com/injunctions/topics/blythereport.pdf> (last visited Feb. 9, 2009) [hereinafter *False Premise/False Promise*].

169. *Id.*

in the aftermath of the Blythe Street gang injunction.<sup>170</sup> Later studies, however, have found more promising results. For example, the Los Angeles County Civil Grand Jury conducted a study of Los Angeles gang injunctions in 2003-2004 and reported significant short-term reduction in what the Federal Bureau of Investigation identifies as “Part 1” crimes in the first year after civil gang injunction implementation.<sup>171</sup> The Grand Jury’s report cited to additional studies upon which it based its findings.<sup>172</sup> The Grand Jury noted that in his 2000 study of Los Angeles County gang injunctions, Jeffrey Grogger concluded reported violent crimes fell between five and ten percent after the issuance of gang injunctions, when compared with pre-injunction periods.<sup>173</sup> Thus, in answering its ultimate question, whether law enforcement and prosecutors should continue to pursue civil gang injunctions, the Grand Jury found that, combined with other efforts, civil gang injunctions were “a successful weapon against criminal acts” and should be continually and vigorously pursued.<sup>174</sup>

On October 9, 2008, the Los Angeles City Attorney’s Office announced the first successful removal of an individual from a gang injunction.<sup>175</sup> As of that date, the City Attorney’s Office had received just 15 petitions for removal from gang injunctions since the initiation of the administrative removal procedure in late 2007.<sup>176</sup> While this minute number may seem disheartening, the procedure is still relatively new and applies only to those injunctions issued by the Los Angeles City Attorney’s Office. Indeed, there are a number of plausible explanations for the low number of removal petitions being submitted. First, optimistically, perhaps the City Attorney’s Office

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170. *Id.*

171. Grand Jury Report, *supra* note 39. “Part 1” crimes were defined to be homicide, rape, robbery, aggravated assault, burglary, larceny, vehicle theft, and arson. *Id.*

172. *Id.*

173. *Id.* (citing Grogger, Jeffrey, *The Effects of the Los Angeles County Gang Injunctions on Reported Crime*, Los Angeles: University of California, Department of Policy Studies (2000)).

174. *Id.* (original formatting removed).

175. See L.A. City Attorney Rocky Delgadillo Announces First Successful Completion of New Gang Injunction Removal Process, *supra* note 8.

176. *Id.*

has been able to file injunctions which have been enforced only against individuals who truly are current, active members of enjoined criminal street gangs. The downside to this view is that this means that few gang members have chosen to leave their gangs, whether for reasons of loyalty, fear of retaliation by gang members, or otherwise. Another explanation may be that, because there have only been a limited number of injunctions issued since the removal procedure was instituted, few individuals know of its existence. Greater publicity and accessibility of the petition could remedy this possible issue. Also, looking, for example, at the San Fer Gang Injunction, the opt-out provision therein requires that individuals moving to be excluded from the injunction be able to declare that they have not participated in the gang's activities for three years prior to filing their motion to be excluded.<sup>177</sup> Thus, if the injunction really is an impetus for leaving the gang, individuals seeking to be removed from the San Fer injunction because they have left as a result of the imposition of the injunction still may not be able to file motions for removal. It is unclear whether the removal petition is available to these individuals since the San Fer injunction was filed jointly by the City and District Attorney's Offices. It is also possible that gang members are just recently leaving their gangs as a result of gang injunctions and are still attempting to generate a "positive paper trail," gaining employment and education, removing tattoos, and cultivating references so that their petitions will be granted when finally submitted. The fact that at least one of these initial petitions for removal has been granted is at the very least promising, as it shows that the City Attorney's Office is willing to recognize and encourage the personal growth and transformation of individuals who choose to leave their criminal street gang lifestyles for a safer, more secure future.

The Los Angeles City Attorney's Office has set an example for other California jurisdictions. Notably, in March 2008, the San Francisco City Attorney's Office announced it had put in place a similar administrative "opt-out" procedure for San Francisco gang injunctions.<sup>178</sup> The San Francisco City Attorney's Office teamed up

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177. *People v. San Fer*, *supra* note 4.

178. Office of the City Attorney News Release: 2008-03-24, Herrera, ACLU, Lawyers' Committee Reach Accord on Gang Injunction Opt Out Procedure, Administrative Removal Process is 'Fair, Transparent, Accessible, and Recognizes



with the American Civil Liberties Union of Northern California and the Lawyers' Committee for Civil Rights of the San Francisco Bay Area to jointly develop a fair and equitable process for enjoined San Franciscans to be removed from gang injunctions.<sup>179</sup> The combined effort with entities such as the American Civil Liberties Union, which has not made its distaste for gang injunctions unknown, may signify that gang injunctions will stand less opposition in the future.<sup>180</sup> Additionally, the Lawyers' Committee for Civil Rights has offered its aid to individuals seeking to petition for removal.<sup>181</sup> With the support of entities which at one time seemed vehemently opposed to them, gang injunctions might be able to reach their full potential.<sup>182</sup>

At the time of this publication, it appears that no studies have been conducted as to the efficacy of the administrative opt-out procedures being pioneered in California. It is likely that these procedures are still too young and too unpublicized, and thus have yet to reach their full impact. A close monitoring of gang membership, gang crimes, petitions for removal from gang injunctions, and successful removals of individuals from gang injunctions over the next few years will provide better insight as to the precise effects of the newly developed administrative opt-out procedures.

## V. CONCLUSION

Since their inception in the 1980s, civil gang injunctions have received a number of challenges and harsh criticisms.<sup>183</sup> With more recent studies suggesting the effectiveness of gang injunctions in abating the public nuisances that criminal street gangs create, it is

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That Individuals Can and Do Change for the Better', [http://www.sfgov.org/site/cityattorney\\_page.asp?id=77808](http://www.sfgov.org/site/cityattorney_page.asp?id=77808).

179. *Id.*

180. *See, e.g., False Premise/False Promise, supra* note 168.

181. *See* San Francisco City Attorney's Office, Petition for Removal, *supra* note 138.

182. *See False Premise/False Promise, supra* note 168.

183. *See Acuna, supra* note 7; *Colonia Chiques, supra* note 30; *Englebrecht, supra* note 42. *See also False Premise/False Promise, supra* note 168.

likely that gang injunctions are here to stay.<sup>184</sup> Therefore, it is fortunate that prosecutorial agencies such as the Los Angeles and San Francisco City Attorney's Offices have chosen to recognize that gang members can and do change for the better. Through administrative opt-out procedures, these agencies have provided for a safe and easy way for ex-gang members to start their lives anew and be removed from the gang injunctions that limited so many of their actions.

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184. See Grand Jury Report, *supra* note 39. See also City Attorney's Report, *supra* note 1. See also Los Angeles District Attorney's Gang Crime Report (April 2008), [http://da.co.la.ca.us/pdf/LADA\\_Gang\\_Crime\\_&\\_Violence\\_APR\\_2008.pdf](http://da.co.la.ca.us/pdf/LADA_Gang_Crime_&_Violence_APR_2008.pdf).

