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GANG INJUNCTIONS

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You asked about gang injunctions and how the legislature might replicate California's model.

Most of the information presented in this report is based on a monograph by Los Angeles Assistant City Attorney Max Shiner (*Civil Gang Injunctions: A Guide for Prosecutors* (American Prosecutors' Institute, June 2009)).

http://www.ndaa.org/pdf/Civil_Gang_Injunctions_09.pdf

SUMMARY

Gang injunctions are civil court orders that prohibit gangs, gang members, people associating with them, or a combination of these, from engaging in certain activities within an area the court identifies as their "turf." Los Angeles city attorneys began to use this tool in the mid-1980s to control rampant gang activity. The city now reportedly has 37 active injunctions restricting the activities of 57 gangs. We are not aware of any Connecticut town that has used this strategy.

The injunction is based on the legal theory that criminal street gangs create public nuisances when they engage in activities that substantially interfere with the community's comfortable enjoyment of life and property. Depending on a case's particular circumstances, injunctions can prohibit illegal conduct, such as drug sales, vandalism, trespassing, and weapons possession. But they can also regulate lawful conduct, such as congregating in groups, associating with particular people, and wearing gang colors.

Connecticut could replicate California’s model by adopting its definitions of “criminal street gang,” “pattern of gang activity,” “nuisance” and “public nuisance.”

The statutes would likely have to conform with constitutional limitations the U.S. Supreme Court has established for gang ordinances, which appear to apply to gang injunctions as well. Thus, they would have to: (1) be narrowly tailored and minimize interference with lawful conduct, (2) clearly describe what they prohibit, and (3) include standards that are sufficiently clear to avoid arbitrary and capricious enforcement (*Chicago v. Morales*, 527 U.S. 41 (1999) (plurality opinion)).

CALIFORNIA’S STATUTORY SCHEME

In California, a city or county attorney seeking a gang injunction must prove by a preponderance of the evidence that (1) a criminal street gang is engaging in a pattern of gang activity that, collectively, creates a public nuisance; (2) its activities are ongoing; and (3) they are mainly concentrated in a clearly identifiable location. Violations are usually prosecuted as misdemeanor contempt of court, an offense punishable by relatively small fines, short jail sentences, or both. In some cases, they are prosecuted as criminal contempt, a more serious crime carrying slightly higher penalties.

Criminal Street Gang

California law defines a “criminal street gang” as 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 one or more criminal acts, having a common name or identifying sign or symbol and whose members, individually or collectively, engage in or have engaged in a pattern of criminal gang activity (Cal. Penal Code §186.22 (f)).

Pattern of Criminal Gang Activity

A “pattern of criminal gang activity” is the commission, by two or more people of, or attempted commission of, or conspiracy to commit, or any solicitation of, sustained juvenile petition for, or conviction of, two or more of 30 enumerated criminal offenses. The offense must have been committed on at least two separate occasions within three years of one another. The enumerated offenses generally involve unlawful weapon use or possession, violent crimes, property crimes, and identity theft (Cal. Penal Code § 186.22e).

Nuisance and Public Nuisance

The linchpin of California's gang injunction strategy is its treating a pattern of gang activity as a public nuisance. By statute, a "nuisance" is anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free passage or use of any . . . public park, square, street, or highway" (Cal. Civil Code § 3479). Most criminal gang activities fall within one or more of those categories.

A "public nuisance" is a nuisance that affects an entire community or neighborhood, or any considerable number of people, although the extent of the damage inflicted on individuals may be unequal (Cal. Civil Code § 3480). A companion law makes it a crime to create a public nuisance (Cal. Penal Code §§ 370-372).

INJUNCTIVE RELIEF

Well-settled common and statutory law authorizes local authorities to take legal action to abate (eliminate) public nuisances. Court remedies include orders enjoining perpetrators from engaging in activities that create the nuisance.

Once the injunction applicant (in Connecticut this would probably be the attorney general) has established the existence of a public nuisance, the court may enjoin those activities it finds reasonably necessary to abate it. Injunctions appear to be enforceable only against named parties who have notice of what they prohibit.

Table 1 shows concepts and corresponding language frequently used in Los Angeles' gang injunctions.

Table 1: California Gang Injunction Concepts and Model Language*

Concept	What the Injunction Prohibits
Do not associate	driving, standing, sitting, walking, gathering or appearing anywhere in public view or anyplace accessible to the public with any known member of [the gang named in the injunction], but not including (1) when all individuals are inside a school attending class or on school business, and (2) when all individuals are inside a church, provided, however, that this prohibition against associating shall apply to all claims of travel to or from any of these locations
No intimidation	confronting, intimidating, annoying, harassing, threatening, challenging, provoking, assaulting, or battering any person known to be a witness to any activity of [the gang], known to be a victim of the gang, or known to be a person who has complained about any activity of the gang
No firearms, imitation firearms, or dangerous weapons	anywhere in public view or anyplace accessible to the public, (1) possessing any firearm, imitation firearm, ammunition, or illegal weapon [as defined by penal law] or (2) knowingly remaining in the presence of such firearm, imitation firearm, ammunition, or dangerous weapon. For purposes of this provision, an imitation firearm means a replica of a firearm that is so substantially similar in physical properties to an existing firearm as to lead a reasonable person to conclude that the replica is a firearm.
Stay away from drugs	without a prescription, (1) selling, possessing, or using any controlled substance or related paraphernalia, including but not limited to rolling papers and pipes used for illegal drug use (2) knowingly remaining in the presence of anyone selling, possessing, or using any controlled substance or such related paraphernalia, or (3) knowingly remaining in the presence of any controlled substance or such related paraphernalia
Stay away from alcohol	anywhere in public view or anyplace accessible to the public, except on properly licensed premises, (1) possessing an open container of an alcoholic beverage, (2) knowingly remaining in the presence of anyone possessing an open container of an alcoholic beverage, or (3) knowingly remaining the presence of an open container of an alcoholic beverage
No trespassing	being present on or in any property not open to the general public, except (1) with the prior written consent of the owner, owner's agent, or the person in lawful possession of the property or (2) in the presence of, and with the voluntary consent of the owner, owner's agent, or the person in lawful possession of the property

Table 1 (continued)

Concept	What the Injunction Prohibits
Obey curfew	being outside between the hours of 10:00 p.m. on any day and 5:00 a.m. of the following day, unless (1) going to or from a legitimate meeting or entertainment activity, (2) actively engaged in some business, trade, profession, or occupation which requires such presence, or (3) involved in a legitimate emergency situation that requires immediate attention
No graffiti or graffiti tools	damaging, defacing, or marking any public property or private property of another, or possessing any spray paint container or felt tip marker
No forcible recruiting	making any threats or doing anything threatening, including but not limited to striking, battering, destroying or damaging personal property or disturbing the peace to cause a person to join the gang
No preventing a member from leaving the gang	making any threats or doing anything threatening, including but not limited to striking, battering, destroying or damaging personal property, or disturbing the peace (1) to prevent a person from leaving the [gang] or (2) to any person known to have left the [gang]
Obey all laws	failing to obey all laws (1) which prohibit violence and threatened violence including murder, rape, robbery by force or fear, assault and battery, (2) which prohibit interference with the property rights of others, including trespass, theft, driving or taking a vehicle without the owner's consent, and vandalism, or (3) which prohibit the commission of acts which create a nuisance, including the illegal sale of controlled substances and blocking the sidewalk

Source: Max Shiner, *Civil Gang Injunctions: A Guide for Prosecutors* (American Prosecutors' Institute (June 2009)).

* as cited by Max Shiner, above

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