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**Use of Injunctions Against Gang Activity – Part 1:  
Basis of and Advantage of Injunctive Relief**

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**Introduction**

Many communities across the country have areas plagued by street gang crime. Gang members engage in a wide variety of violent criminal acts, as well as in a wide variety of activities which damage the ability of the ordinary citizen to go about their normal daily activities, work, attend school, engage in recreational activities, and raise their families. Instead, an atmosphere of fear, anxiety, and harassment is created by street gang members hanging out, demanding “tribute,” enforcing gang “turf” privileges, coercing other youths into joining, and engaging in violent actions such as drive-by shootings and other incidents of war with rival gangs.

Law enforcement certainly targets gang members for investigation, detention, arrest, and prosecution for particular crimes. But such actions may have the result of putting individual gang members out of commission for a period of time, while leaving the more general problem of the impact of gang presence in neighborhoods still prevalent. One weapon in the potential arsenal of law enforcement that some police departments and prosecutors are increasingly making greater use of is that of seeking civil injunctions against the gangs and their members, which seek to curtail some gang activity that, while

clearly harmful to the community, may be more difficult to combat through criminal prosecutions alone.

It has been [estimated](#) that there are over 800,000 gang members and 30,000 gangs in the U.S. today, and the continued existence of the problem despite the incarceration of significant numbers of gang members has led many police and prosecution agencies to explore whether tools in addition to criminal prosecution may have a beneficial impact.

This, the first in a series of articles, seeks to serve as an introduction to the topic, examining both the legal basis for seeking such injunctions and the advantage of injunctive relief against gang activity, focusing on the use of such injunctions in California as an example. Subsequent articles will summarize the existing caselaw on the subject from various state and federal courts, including constitutional and other challenges to the legality of such injunctions, some of the practical considerations necessary in seeking, obtaining, and enforcing such injunctions, such as who to serve and the types of proof needed, and some of the available literature about the impact such injunctions have had in communities that have utilized them.

In the course of the series, reference will also be made to related approaches, such as anti-gang/anti-loitering ordinances, such as that enacted by Chicago, and legal issues surrounding them.

At the end of this article, there is a listing of some useful resources on the topic, most of which are available, in whole or in part, online. Some materials critical of the use of such injunctions have been included in that section. Listing of any resource does not imply agreement or endorsement, but rather indicates that examining them may be of value. As always, readers are cautioned that the law may differ from state to state and even within judicial districts in particular states. Seeking to act in this area requires close consultation between police agencies and prosecutors' office, based on both applicable law and practical implications.

## **Basis for Seeking an Injunction**

Injunctions against gang activities are sought on the basis that such activities constitute a "public nuisance." Historically, at common law, public nuisances included a variety of activities injurious to public health, safety, morals, peace, and comfort, such as the existence of bodies of water breeding mosquitoes or the emission of foul odors or smoke.

Historically also, many types of public nuisance were both crimes and civil wrongs. Today, in many jurisdictions, crimes are limited to those clearly defined by statute. But still, many jurisdictions still have a common civil law of “public nuisance” which potentially covers a broader variety of activities that may be deemed injurious to the rights of the community even if they do not necessarily fall within the more narrow statutory definitions of a crime.

Public nuisance law has been used extensively in certain jurisdictions in recent years, notably in California, as well as in a number of other jurisdictions, for the purpose of combating gang activity.

In California, a state statute, California Civil Code Sec. 3479, defines nuisance in the following manner:

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

A variety of gang activity may fall within one or more of these definitions.

Public nuisance is defined in California Civil Code Sec. 3480 as “one which affects 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.” Public nuisance is also defined as a crime in California Penal Code Secs. 370-372.

Relying on these statutes, and the power of the courts to enjoin public nuisances, California prosecutors have sought, obtained, and enforced injunctive orders against gang activities.

What do such orders typically cover? They often include requirements that gang members not associate with each other in public, making it a violation of the court’s order, punishable through a variety of sanctions, including contempt of court, for violations. Deterring gang members from congregating in groups in public can lessen the threat and danger that gang members pose.

A “do not associate” provision of an anti-gang injunctive order barring gang members from “standing, sitting, walking, driving, gathering or appearing anywhere in public view” with their fellow gang members was upheld by the California Supreme Court in People ex rel. Gallo v. Acuna, #SO46980, 14 Cal 4<sup>th</sup> 1090, 929 P.2<sup>nd</sup> 596 (1997).

The court noted that 48 declarations submitted by the city in support of its application for injunctive relief painted a “graphic portrait” of life in the community of Rocksprings in San Jose, California as an “urban war zone.” In a four block area claimed as “turf” by one gang, gang members, most of whom lived elsewhere, treated the neighborhood as an “occupied territory,” congregating on sidewalks, lawns, and in front of apartment buildings “at all hours of the day and night.”

The court summarized the impact in this manner:

“They display a casual contempt for notions of law, order, and decency — openly drinking, smoking dope, sniffing toluene, and even snorting cocaine laid out in neat lines on the hoods of residents’ cars. The people who live in Rocksprings are subjected to loud talk, loud music, vulgarity, profanity, brutality, fistfights and the sound of gunfire echoing in the streets. Gang members take over sidewalks, driveways, carports, apartment parking areas, and impede traffic on the public thoroughfares to conduct their drive-up drug bazaar. Murder, attempted murder, drive-by shootings, assault and battery, vandalism, arson, and theft are commonplace. The community has become a staging area for gang-related violence and a dumping ground for the weapons and instrumentalities of crime once the deed is done. Area residents have had their garages used as urinals; their homes commandeered as escape routes; their walls, fences, garage doors, sidewalks, and even their vehicles turned into a sullen canvas of gang graffiti.”

As a result, community residents, the court found, were effectively “prisoners” in their homes, afraid to venture out, especially at night, or even let their children play outside in the daytime.

The court found that the state had not only a right to “maintain a decent society,” but “an obligation to do so.”

As the actions of the gang members constituted a public nuisance, the community’s right to security and protection outweighed any infringement on gang members’ purported expressive or associational rights that might be infringed upon by ordering them to not associate in public in this manner.

In addition to “do not associate” together orders, injunctions issued against gangs and their members have included prohibitions on intimidating members of the community, including threats or violence against witnesses to gang members’ criminal activity or the victims of such crimes, prohibitions on possessing firearms or imitation weapons or knowingly remaining in the presence of others who do, selling or possessing drugs, including dispensing prescription drugs unlawfully, possessing open containers of alcohol in public, trespassing on private property, violating curfew, possessing or using graffiti tools or creating graffiti, forcible gang recruitment, preventing through threats gang

members from leaving a gang (or threatening ex-gang members), and orders to refrain from other law violations, such as blocking the sidewalks.

In some instances, courts have also approved provisions mandating that gang members refrain from flashing gang signs, wearing or displaying gang symbols or paraphernalia, serve as “lookouts,” warn of police approach, or hang around particular locations, such as school premises.

### **Advantage of Injunctive Relief Against Gang Activity**

A major advantage for law enforcement in the use of injunctions against gang activity is that their issuance and enforcement is a civil matter. Unlike criminal prosecutions for drug possession or sales, for instance, in which it must be, for a successful prosecution, strictly proven, by evidence “beyond a reasonable doubt” that an individual gang member possessed or sold the illegal drugs, an injunctive order may require that gang members stay away from unlawful drugs, and any place where they have knowledge that such drugs are present. The proof needed to show a violation is a less stringent preponderance of the evidence.

In this manner, police and prosecutors need not, in circumstances where drugs are present among a gathering of gang members, prove that each individual actually possessed the drugs, but merely that they had knowledge of their presence. The individual gang member’s failure to leave then becomes a violation of a court order, subject to sanctions.

If injunctive orders go too far, however, are vague in defining what activity they are enjoining, raising problems of adequate notice for due process purposes, or are broader than needed, arguably sweeping into its prohibitions harmless or constitutionally protected rights of free expression and association arguably not linked to criminal or public nuisance activity, upper courts may strike them down.

While an important case decided by the U.S. Supreme Court concerning the City of Chicago’s anti-gang efforts involved a municipal ordinance, rather than a civil injunctive order, many of the Court’s concerns there point to issues that police and prosecutors will frequently encounter from critics of anti-gang injunctive orders.

In [Chicago v. Morales](#), #97-1121, 527 U.S. 41 (1999), the Court examined a Chicago Gang Congregation Ordinance prohibiting criminal street gang members from loitering in public places.

The ordinance empowered police officers observing persons reasonably believed to be gang members loitering in public places with others without an apparent purpose to order them to disperse, and then to arrest them for failing to promptly comply.

The U.S. Supreme Court affirmed an Illinois state Supreme Court ruling striking down the ordinance as violating due process in that it was too vague as to what it prohibited and imposed arbitrary restrictions on personal liberty.

The Court found that the ordinance encompassed a “great deal” of harmless behavior, and gave police officers improper absolute discretion to determine what activities constituted loitering with no apparent purpose.

Courts that have examined the validity of and enforcement of anti-gang injunctive orders have confronted similar challenges and issues, despite the non-criminal nature of injunctive orders. In the second article in this series, we shall examine in some detail various constitutional challenges to anti-gang injunctive orders.

## Resources

The following are some useful resources on the subject of this article.

- [Civil Gang Injunctions: A Guide for Prosecutors](#), by Max Shiner, American Prosecutors Research Institute, National District Attorneys’ Association, and Bureau of Justice Assistance, U.S. Department of Justice (June 2009).
- [Law Review articles related to anti-gang injunctions](#).
- [D.C. press release](#) on the need for a gang injunction (June 19, 2009).
- [ACLU Testimony](#) against proposed Washington, D.C. gang injunction legislation (May 18, 2009).
- [Comment: No Way Out: An Analysis of Exit Processes for Gang Injunctions](#), by Lindsay Crawford, 97 Calif. L. Rev. 161 (February, 2009).
- California Youth and Criminal Law: 2007 Juvenile Justice Reform and Gang Prevention Initiatives, 13 Berkeley J. Cr. L. 145 (Spring 2008).
- [Gang Injunction Resources](#), Office of the Public Defender, City and County of San Francisco. Includes legal briefs, research studies, press releases, news articles, and frequently asked questions.
- [Gang Injunctions](#), San Diego District Attorneys’ Office.

- [City of Hawaiian Gardens Gang Injunction: Frequently Asked Questions](#), Los Angeles County Sheriff's Department.
- [Cost-Benefit Analysis in Criminal Law](#), by Darryl K. Brown, 92 Cal. L. Rev. 323 (March 2004).
- The Effects of Civil Gang Injunctions on Reported Violent Crime: Evidence from Los Angeles County, by Jeffrey Grogger, 45 J. Law & Econ. 69 (April, 2002). [Abstract](#).
- Anti-Gang Ordinances After City of Chicago v. Morales, by Kim Strosnider, 39 Amer. Crim. L. Rev. 101 (Winter 2002). [Abstract](#).
- [Note: Enjoining the Constitution: The Use of Public Nuisance Abatement Injunctions Against Urban Street Gangs](#), by Matthew Mickle Werdegar, 51 Stan. L. Rev. 409 (January 1999).
- Note: Turf Wars: Street Gangs, Local Governments, and The Battle for Public Space, by Terence R. Boga, 29 Harv. C.R.-C.L.L. Rev. 477 (Spring 1993).

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- The purpose of this publication is to provide short articles to acquaint the reader with selected case law on a topic. Articles are typically six to ten pages long. Because of the brevity, the discussion cannot cover every aspect of a subject.
- The law sometimes differs between federal circuits, between states, and sometimes between appellate districts in the same state. AELE Law Journal

articles should not be considered as “legal advice.” Lawyers often disagree as to the meaning of a case or its application to a set of facts.

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