**DRAFT**

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**“A Critique of The Step Act and Enhanced Sentencing,”**

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**This paper critiques California’s Street Terrorism Enforcement and Prevention Act (STEP Act) specifically and gang suppression in general. Gang enhancement and other get tough on crime era laws affected not just those convicted by the court but also young people of color, who have not committed crimes but are labelled as gang members, while their families, and communities are also labelled. The issue of labeling law-abiding people in targeted areas for gang suppression was promoted by ambiguities in the STEP Act.**

Gang violence was one of the nation's major problems in the 1980s. Juan Flores examines the criminalization of homeboys (hommies). He notes the word "gang member" relates to incarceration, drugs, and crime. The term is also associated with violence. In Los Angeles26,000 "gang members" were becoming involved in violence and drug trafficking. They were treated as "'organized criminal enterprises." As fear of gang violence grew, gang members became safety threats. Researchers and policymakers questioned the lack of gang control tactics.

Responding to gang violence, law enforcement agencies, like the Los Angeles Police Department (LAPD), sought mainly suppression and some prevention tactics to combat "gangs." The nation’s criminal justice policies flooded with suppression strategies, like gang units, causing increases in "gang member" conviction rates and lengthier sentences. Without questioning police practices or their methods of identifying gang members, these tactics allowed persecution of homies and people of color to be assumed "criminals" (Flores, 2-29).

The enactment of the STEP Act was an exemplary case. Lawmakers adopted gang policies and passed legislation like the 1988 California Street Terrorism Enforcement and Prevention (STEP) Act referred to as **gang enhancement**. The STEP Act attacked criminal gang activity and "gang members" who participate in an "ongoing organization, association, or group of three or more persons. The STEP Act was enacted in California and codified as Penal Code 186.22.43. Subdivision (a) criminalizes knowing participation in any "criminal street gang." Subdivision (b) allows the court system to enhance a defendant's sentence by 16 months to 15 years in prison if a felony is found to have been committed for the benefit of, at the direction of, or in association with a "criminal street gang." The STEP Act also regulates unwanted delinquent behavior, such as "gang members" associating with one another or loitering in public.

The enactment of the STEP Act expanded the definition of gang activity to a broader spectrum. This new definition brough ambiguity in defining gang~~s~~. This vagueness gave police discretion to determine what gang activity is and who is a "gang member." Criteria used to identify "gang members," within these policies, can vary from the type of clothing one wears to the geographic location a person resides in and or frequents (5-6). Instead of containing or preventing criminal activity, **the STEP Act exacerbated the "gang" problem** according to Flores*.* In addition, the STEP Act (or the gang suppression law) gave police the power to relocate suspected "gang members" from public spaces.

Incessant police enforcement of these policies, along with mass media depictions of "gangs," has created an image of threat for homies sustaining a stigma that "gang members" are menacing and crime prone. The dehumanizing perception of labeled "gang members and nonmembers," who are often young people of color, has allowed for legitimized repression of homies (6). The **word "gang member" carries a stigma** that disseminates fear in society and enables law enforcement to target youth—mainly criminalizing Latinos and Blacks. A 2009 study by Robert J. Duran found some people's harassment claims against law enforcement officers to be valid (Duran, 143-168). He found that Mexican Americans were searched three times more than Whites and were stopped based on their clothing, Latino heritage, and location in a particular neighborhood. Duran writes: police officers recognize how a war on gangs is hindered by traditional constitutional protections (144). Sidestepping disapproval, police have developed support to create tactics that have become legitimated in allowing continuous harassment of Latino and Black communities. In these areas across the US, 47 percent of Latino and 31 percent of Black youth are documented gang members (144).

In other words, one can be labeled associates or members of a gang simply for being near a gang. This labelling happens to family or friends of documented "gang members." Once labelled as a gang associate," they too are vulnerable to police harassment. This labeling results in hyper-policing of these communities. Since policymakers, law enforcement, and news outlets legitimize the repression of "gang members," violence towards "gangs" remains constant (Flores, 7)*.*

In 2000, the Gang Violence and Juvenile Crime Prevention Act passed, adding harsher policies to the STEP Act under Proposition 21 in California. Besides charging children as adults and allowing the death penalty on gang related offenses, this addition to the STEP Act meant that people assumed to be in a gang must register as "gang members" at local police departments(9).

**Cal Gang Database**

 A concrete definition of a "gang" or "gang member" does not exist. Law enforcement officers, specifically gang police, are given discretionary power to label almost anyone a "gang member." Once labeled as a "gang member," an individuals' information can be put in a gang database such as the Cal Gang Database. Unfortunate people entered into this database, until recently, were not notified, and information submitted into the database was never shared with them, thus leaving room for errors and legal challenges. The criteria to enter people into the database was vague enough for law enforcement to enter almost anyone in the system that they perceived to be "gang affiliates." For example, youth with family or friends, that police had identified as "gang members," can be added to the database, thus criminalizing, and stigmatizing them leading to severe consequences (9-10). Suspected gang members enter the database through a subjective process of "documentation." This results in serious legal and social consequences such as increased possibilities of conviction, longer sentences, loss of jobs and numerous stigmatizing effects (Wright, 115). Joshua Wright asserts that documentation without a hearing denies procedural due process guarantees of the Constitution. A hearing requirement would not only protect documentation practices from constitutional challenges by allowing input from the affected parties, but it also increases database accuracy. The databases’ efficacy and accuracy would be increased as a police tool in prosecuting gang crimes.

95% of the expert witnesses, used by prosecutors, are police "gang" detectives, and are the same people documenting others as "gang members." Based on their "training and experience" regarding "gangs," expert witnesses are often asked for testimony on gang affiliation and admissions often based on hearsay statements or opinions derived from circumstantial evidence. For example, "gang experts" can testify on "the meaning of gang graffiti or signs, gang rituals, or even gang psychology to prove someone or something is gang related. Most police gang experts are not social scientists. But the knowledge used to testify concerning "gangs" and document people as "gang members" may be from racially discriminatory police intelligence, investigations, and "gang" reporting processes resulting in labeling entire groups like Blacks and Latinos (Flores, 10).

**California has recently initiated legislation, such as AB90 (2017), SB 458 (Wright) and AB 2298 (Weber), to make the Cal Gang Database more transparent.** Individuals are to be informed that they are in the database and allowed to challenge their placement in this information system. Other states may still be continuing with the old non-transparent procedures. As part of their gang suppression work, law enforcement agencies throughout California collect personal information to label and track hundreds of thousands of individuals they suspect of being gang members. The vast majority of this information collection occurs apart from any ongoing investigations of specific crimes. The largest system for accessing gang member information is CalGang which is used by over 6,000 law enforcement officers in at least 56 counties.

**Gang Injunctions**

The **gang injunction** is another controversial police strategy attacking gang violence and further labeling communities of color. In 1987 the first civil gang injunction occurred in California. The Los Angeles City Attorney's Office described the injunction as "a powerful weapon to combat gang violence”. The City Attorney sought the injunction against alleged Playboy Gangster Crips gang members, a West Los Angeles gang. This city injunction prohibited alleged gang members "from congregating, talking on the street, littering or remaining in public for more than five minutes at a time. Just six of the twenty-three prohibitions, sought in the injunction, were granted by Judge Deering. The judge rejected the remaining provisions, including those enacting curfews, prohibiting the defendants from wearing certain clothing, and prohibiting the defendants from associating with each other (Gomez, 591-2). In 1993, the Los Angeles City Attorney filed an injunction against five hundred alleged Latino Blythe Street Gang members. Groups, like the American Civil Liberties Union (ACLU), Constitutional law experts, and local and national organizations, criticized the injunction. ACLU claimed the injunction would "outlaw legal activity," criminalizing normal affairs like talking with friends or visiting neighbors. Also, injunction opponents argued existing laws and practices could better control the Blythe Street Gangs’ criminal activities. The court, still, granted the injunction (Gomez, 591-2) .

The 1992 the US Supreme Court (SCOTUS) decision in City of Chicago v. Morales poses a challenge to anti-gang legislation. In this case Chicago created an ordinance requiring police officers to disperse any "criminal street gang member loitering in any public place with one or more other persons.” The Illinois Supreme Court held that the ordinance violated the Fourteenth Amendment’s Due Process Clause . In Morales, SCOTUS agreed, holding that the ordinance failed to create minimum guidelines for police. After Morales, cities and lower courts have struggled with vagueness and equal protection concerns (Gomez, 592).

For decades civil gang injunctions have been used in California and Chicago. Texas cities like Austin and San Antonio more recently began using them in combatting gang violence. In 1998 the Travis County District Attorney's Office, sought a civil injunction prohibiting gang members from "[s]tanding, sitting, walking, driving, gathering or appearing anywhere in public view [within the target area] with any other defendant herein, or with any other known 2-3 Crip criminal street gang member." The injunction also sought to prohibit defendants from[c]ommunicating or attempting to communicate with the occupants of any vehicle . . . [u]sing or possessing pagers or beepers ... [w]earing clothes which bear the name, colors or letters of the criminal street gang known as 2-3 Crips ... [u]sing words, phrases, physical gestures, or symbols .... which describe or refer to the gang known as "2-3 Crips."

The San Antonio injunction disturbed neighborhood residents. The injunction’s constitutionality was questioned by the president of the neighborhood association. In 1999, the Bexar County District Attorney filed a petition for a temporary injunction against allegedly documented members of two street gangs, the Klik and the Klan. The injunction was linked to a federal government pilot program targeting gang activities. Like its predecessor in Austin, the San Antonio injunction prohibited named defendants from engaging in activities that were already illegal, such as possessing weapons and fighting. As in the Austin case, the injunction prohibited defendants from "[a]ssociating, standing, sitting, walking, driving, bicycling, gathering or appearing anywhere in public view with any other Defendant herein, or with any other person, known to the Defendant, to be a Klik or Klan member" within the target area. The injunction also prohibited defendants from "[c]ommunicating with or attempting to communicate with the occupants of any vehicle." Violating the injunction was a Class A misdemeanor, punishable by up to one year in jail and a $4,000 fine, or both. Since 1999, Bexar County’s District Attorney hassecured four injunctions in San Antonio (Gomez, 596)

 To enforce a gang injunction, the defendant must be a gang member. Typically, identification comes from a gang experts’ opinion on a gang’s existence. A police officer is often the “expert” giving his opinion via an affidavit on the existence of, and whether the defendants are members of that gang. The testimony of gang experts offering opinions about gang membership has been considered sufficient to satisfy the admissibility requirements for expert opinions. However, Gomez notes a problem with the underlying data commonly used by gang experts. Within the context of the Texas Rule of Evidence 702, it is suggested that such testimony lacks the reliability necessary to support expert opinions regarding gang membership. Like all expert testimony, the testimony of gang experts on gang membership, must meet the relevance and reliability requirements of Texas Rule of Evidence 702. Rule 702, along with Rules 401, 403, and 703, require the trial judge to act as "gatekeeper," limiting expert witnesses’ testimony (Gomez, 600).

 Expert testimony offered pursuant to Rule 702 must endure a traditional relevancy analysis under Rules 401 and 402 of the Texas Rules of Evidence. Also, the scientific technique or procedure must be reliable.

When determining the reliability of a scientific technique or theory, a trial court might consider a number of factors, including but not limited to: (1) the extent to which the theory has been or can be tested; (2) the extent to which the technique relies upon the subjective interpretation of the expert; (3) whether the theory has been subjected to peer review and/or publication; (4) the technique's potential rate of error; (5) whether the underlying theory or technique has been generally accepted as valid by the relevant scientific community; and (6) the nonjudicial uses which have been made of the theory or technique. (Gomez, 599)

Experts testifying about nonscientific subjects must be relevant and reliable. Courts confront special problems with nonscientific expert testimony. For example, nonscientific testimony based on experience and observation may not be objectively tested. Nonscientific disciplines do not lend themselves to scrutiny based on objective retesting; the data cannot be validated.

Attacking nonscientific expert testimony by cross-examination is difficult. There is no assurance of the accuracy and truthfulness of nonscientific expert testimony. (Gomez, 599-6) Fareed Nassor Hayat, an Associate Law Professor at City University of New York (CUNY) writes: Police officers are not scientists. They are not using valid scientific methods to form their opinions. But they offer sociological and psychological expert testimony against criminal defendants. In gang cases, courts often do not apply Frye or Daubert expert standards to police officers’ testimony. They acknowledge the testimony’s nonscientific nature. But admission of such testimony allows juries to hear and accept, unvetted, unreliable and inadmissible junk science. Verdicts based on police officers' junk science testimony denies criminal defendants their Fifth Amendment due process right to a fair trial (Hayat, 195). Police gang experts have an ability to testify to specific evidence **shaping** the trial’s course of **alleged** gang members. This is because of a gang expert’s influence on the jury, intentional or not. Police gang experts usually do not have formal training in sociology or psychology, and do not base their opinions on approved scientific standards and controls. Yet even in the face of blatant falsity, especially when it comes to self-admissions of suspected gang members, these "experts" may testify as to whether the suspect is a gang member. Thus, the deference to and gang experts’ qualifications must be scrutinized (Gerard, 237). (mention Cal Gang and other ganf databases)

**The STEP Act Unfair and Unjust**

According to Sara Van Hofwegen, gang membership declined by around 100,000 individuals from 1996-2004, and the number of jurisdictions reporting gang activity also decreased (Van Hofwegan, 679). The traditional idea of a gang member is a young urban minority male. Despite this perception, recent trends show that gangs are more suburban. Trends show increases in female and Caucasian gang members. Caucasians are the dominant group for gangs formed after 1991 (683). Regardless, the application of the STEP Act and other anti-gang legislation has led to the incarceration of mostly Blacks and Latinos. Despite studies showing that gangs are becoming increasingly white, law enforcement continues to assert that gangs are mainly composed of minority youth. The Department of Justice's National Youth Gang Survey ("NYGS") reported in the year 2000 that only thirteen percent of all gang members were white*.*

Government gang statistics have been criticized as inaccurate. In their study on law enforcement gang task forces, Deborah Lamm Weisel and Sarah O'Connor Shelley found gang statistics as unreliable. They are compiled by law enforcement agencies, that are heavily dependent on police efforts, and "lacking integrity required for reliable counting” ( Weisel & Shelley). Even the NYGS administrators admits that changes in the Survey's estimates of gang composition are mainly due to changing definitions and approaches to measuring gangs. The discrepancy between law enforcement data gathering techniques and other statistics describing gang composition can be explained in part by law enforcement agencies’ refusal to label white groups as gangs, even when they meet all the elements of a jurisdiction's definition of a gang. In addition, the NYGS's definition of gangs excludes hate groups and motorcycle gangs, which are likely to be predominantly white. Likewise, Noelle Fearn, Scott Decker, and David Curry claim that members of anti-gang taskforces base their perceptions of gangs on "the least reliable" source of gang information, the media. Due to this inaccurate perception of gangs by law enforcement officials, scholars argue that gang databases are poor information on actual gang involvement because police target specific communities and place minority men in a database with little or no evidence of gang involvement. For example, police commonly place African American youth in gang databases merely because they have a childhood nickname or are seen congregating on a street corner. They are also likely to find themselves in the database because of their association with "known" gang members. As a result of these practices, black and other minority males are disproportionately targeted, arrested, and incarcerated for gang involvement at higher rates than their actual participation dictates (684).

 This disproportionate impact on minority men and boys reveals that the STEP Act is unfair in its application. Fairness in the legal system is a fundamental ideal of liberal democracies like the US. Our commitment to fairness is rooted in the belief that we are all equal before the law, a belief highlighted in the Declaration of Independence. In otherwards, a law must be executed evenhandedly on all people (685).

 Van Hofwagen writes: to live up to our ideal of enforcing laws fairly, we must apply our statutes equally to all individuals regardless of their race, socioeconomic status, or any other factor. She asserts the STEP Act is unfair. It allows law enforcement to impose its provisions on minorities disproportionately. Law enforcement agencies often and inaccurately see gangs as a primarily urban, minority, and a male problem, causing them to ignore white involvement. This view focuses disproportionate resources on perceived minority gang involvement. Law enforcement bias is also seen in propensities of gang task forces to label minority juveniles as a gang with little or no evidence of gang involvement. This bias increases by the refusal to recognize primarily Caucasian groups as gangs, even when they meet STEP Act provisions. Because of these biases, the STEP Act is disproportionately applied to minorities who find themselves more likely to face harsher sanctions for suspected gang activity than white individuals who engage in similar behaviors. Failure to apply the STEP Act equally to everyone ,violates American principles of equality under the law making the STEP Act unjust.

 The STEP Act’s unfairness also occurs because of the discretion it gives police to label specific individuals as gang members and choose what activities count as gang activities. As noted above, the STEP Act uses broad definitions to identify gangs, gang participation, and criminal activity. Researchers, including Robert Bursik and Harold Grasmick (Bursik & Grsmick, 2-13), argue that a major problem with anti-gang legislation is the absence of clear and narrow standards defining what constitutes criminal activity. These loose standards give police great discretion in identifying a gang. Similarly, the STEP Act's broad definitions allow law enforcement to overestimate the role of minority men and boys in gangs to disproportionately target, arrest, and incarcerate black males for gang activity (Van Hofwagen, 686).

 Besides the unfairness of the STEP Act, social scientists have demonstrated that it has been ineffective (Greene & Pranis, 25-29). Van Hofwagen notes an Illinois study that found that incarceration decreases the likelihood that individuals will age out of a gang. Fearn, Decker, and Curry argue that increased prison sentences for gang members strengthens gangs because incarcerating gang members together for lengthy prison terms increases the resilience of prison gangs. The overall recidivism rate for California felons was fifty-four percent in 2004; (138) in 2006, forty-one percent of convicted felons were reincarcerated within a year of release. (139) In Los Angeles County, recidivism rates are much higher, with estimates as high as seventy percent (Van Hofwagen, 690-91).

In **1988, the California legislature enacted "the STEP Act to eradicate criminal activity by street gangs"** within the state. The Act has been amended several times over the past two decades since it was approved in order to more effectively combat gangs. The state of California announced a renewed "war on gangs" in early 2007. Los Angeles County law enforcement began escalating gang crackdowns in order to eliminate gangs." As part of the war on gangs, Los Angeles County prosecutors have been more likely to seek the STEP Act's sentencing enhancements in order to elevate the prison terms of suspected gang offenders. The City of Los Angeles has been so aggressive combating gangs that it has spent over one billion dollars on surveillance and policing, as well as the incarceration costs of its increased sentences for gang members over the past twenty years (Van Hofwagen, 692).

Despite the aggressive use of the STEP Act's sentencing enhancements to combat gangs by law enforcement officials and prosecutors, the Act has not been a successful tool in the war on gangs. In addition, it has not been successful in combating crime more generally because its provisions have not contributed to decreasing criminal activity in Los Angeles County or the State of California.

 Since the STEP Act’s implementation in 1988, gang involvement in Los Angeles has escalated. Today, there are at least six times as many gangs and twice the number of gang members in Southern California than in 1988. According to former FBI Director Robert Mueller, gang activity has increased in Los Angeles. While former Police Chief William Bratton has asserted that gang activity increased by almost sixteen percent in 2006. The rise in gang activity has led many to conclude that "the STEP Act has done little or nothing to resolve Los Angeles' gang problem." The failure of the STEP Act has led to the conclusion that Los Angeles is "losing the war on gangs" (Van Hofwagen, 692)

By using gang suppression strategies, most anti-gang resources are not available for other approaches, like gang prevention and intervention. Gang suppression is the STEP Act’s only strategy. Many argue focusing on gang suppression is why Los Angeles has failed in combating gangs. The STEP Act's provisions criminalizing gang activity by imposing harsher sanctions for gang offenses contributes to the use of gang suppression only strategies against gangs. Suppression approaches contrasts with prevention and intervention tactics, that seek to prevent individuals from joining gangs or to help gang members end gang involvement (693). When youth are labeled as gang members and punished more strictly for suspected gang activity, gang member unity increases. Gang suppression techniques increase gang solidarity by magnifying a gang's alienation from mainstream society and its community. Gangs develop an "us against them" view reinforcing their members' ties to the gang. Increased, police focus on a gang may also strengthen the group by giving gangs a cohesive identity, increasing their importance as a group warranting police attention (693).

Furthermore, focusing on suppression frequently deteriorates good relations between minority communities and the police. Thus, police are viewed by minority communities as a source of unjust punishment and harassment rather than protection. An “oppositional culture” may develop as gangs and community members experience harassment by police gang units. Youth loose their respect for authority in a system they view as illegitimate. Community members also begin seeing the police as illegitimate because of gang suppression efforts leading to community harassment. In addition, these communities become less likely to assist police investigations, and this lack of cooperation hinders investigations of serious crimes (694).

Prevention and intervention strategies are a more effective strategy addressing the reasons why gangs form and why they maintain membership levels. The STEP Act does not include provisions focusing on fundamental reasons for gang membership. Law enforcement and lawmakers need to steer away from the Act's suppression-based provisions in responding to gang violence. Instead, strategies to combat gang violence should focus on eliminating causes of criminal gang activity and provide at-risk youths with options to gang activity.

Marginalization of individuals and communities is a reason for street gangs existence according to James Diego Vigil. Individuals join gangs because they are the only place where low- income and minority boys are accepted (Vigil, 30) . Likewise, Malcolm Klei**n** claims that the gang problem is not exclusive to any racial group (Klein,109). It is "the disadvantaged, marginalized and alienated" that are likely to join gangs. This holds for white gangs, whose members are likely to feel economically or socially marginalized.

The relationship between economic marginalization and gangs is indicated by statistics which reveal an inverse correlation between gang prevalence in a high-income area.Low-income youth are more likely to join gangs than middle and upper class youth. This disparity exists because low-income youth are excluded from participation in the mainstream economy facing difficulties finding employment. Gangs are an alternative source of jobs for urban youth and men who are often excluded from industry and unskilled labor work. For some, gang participation is a matter of economic survival (Van Hofwagen, 696, Green & Pranis). Thus, helping youth at-risk with employment is critical for addressing gang problems. Resources need to be created for living wage jobs in low-income communities.

**LA’S GRYD PROGRAM**

The city of Los Angeles began to recognize the failure of gang suppression, such as the STEP Act) when it launched the Gang Reduction and Youth Development program (GRYD) in 2011. GRYD was conceived as a comprehensive approach to gang violence. But unlike other comprehensive approaches, gang suppression was excluded from the primary model. Program services such as community engagement, gang prevention and intervention services, as well as street-based violence interruption, were formally launched in late 2011 (Brantingham, Tita, and Herz, 2021). GRYD services were available in some geographic areas but not others. Using a place-based difference-in-differences model, researchers estimated the effect of GRYD services on both violent and property crime*.* This analyses suggests a reduction in violent crime of around 18% in areas exposed to GRYD Comprehensive Strategy services, including aggravated assault and robbery. Similar declines were not observed in property crimes including burglary and car theft.

Brantingham, Tita, and Herz’, results suggest that comprehensive gang violence prevention programs have a significant impact on crime. The GRYD Comprehensive Strategy included elements in common with other violence prevention programs initiated elsewhere including Cure Violence (Butts, Roman, Bostwick, & Porter, 2015), the Comprehensive Anti-Gang Initiative (CAGI) (McGarrell et al., 2013), and the Los Angeles Gang Reduction Program (LA GRP) (Cahill et al., 2008), a direct precursor of GRYD. However, GRYD’s Comprehensive Strategy is notable in two ways. First, eligibility for both prevention and intervention services as well as the activities of the GRYD Community Intervention Workers (i.e., CIWs; street outreach workers) is based strictly on geographic criteria, allowing the creation of comparison groups that are often less precise in other programs. This has advantages for the oversight of service providers and ensuring model fidelity, which are significant challenges for other comprehensive gang violence prevention programs (see Butts et al., 2015), and for identifying appropriate comparison units and measuring effectiveness. Second, GRYD’s Comprehensive Strategy operates outside law enforcement’s purview. In the current politically charged atmosphere where the actions of local law enforcement are being highly scrutinized, GRYD offers an alternative to other gang violence reduction strategies that rely on suppression activities.

**Homeboy Industries**, a Los Angeles based gang intervention group, helps former gang members with employment. It has been praised for its efforts to help gang members leave gang lifestyles (Van Hofwagen, 698). The organization also provides free tattoo removal for former gang members and has helped over fifteen-hundred young people remove their gang tattoos, an important step in allowing former gang members find work. Also, Homeboy Industries assists recently released gang members in their transitions from prison back into their communities, by directing them in finding housing, schooling, and job training. Anti-gang resources need to be increasingly dedicated to building organizations like Homeboy Industries. This group has been successful with previously incarcerated to find alternatives to criminal gang activity.

Increasing the **quality of education** for individuals in at-risk communities and maintaining safe environments in schools is another step noted by Van Hofwagen. Without question schools are essential in helping youth gain skills to find jobs and develop productive commitments and attachments that will keep them from turning to gangs. Low-income schools should be given additional funding in order to better educate a vulnerable population and help children gain skills and tools to find legitimate employment and create careers paths.

One other step in eliminating gangs is to **strengthen family** and community ties among at-risk groups. Many researchers and scholars know that youth often join gangs because they lack alternative social networks and family support. Gang members are more likely to live in single parent homes than non-gang members, and single parents, who struggle to provide for their children, may not have the time or the resources to help their children develop a sense of belonging and support. Research (697) suggests that the prevalence of single parent families is elevated in low-income communities because the struggle for economic survival is placing tremendous stress on the family unit. An intervention policy that directs resources into providing increased economic opportunity for individuals within a community will help families remain together thereby reducing difficulties which can cause familial dissolution. Community ties are strengthened by increasing after school programs, which provide youth with positive, community building alternatives (697).

A study by Greene and Pranis compares the city of New York with Chicago and Los AngelesNew York City faced a widespread gang problem from the 1940s through the 1960s but has successfully curbed the problem over the past three decades. This is a sharp contrast to the intense panic concerning gangs in most of the United States. Many in New York claim New York doesn't have a chronic gang problem. New York’s success is attributed to its extensive use of social programs to address gangs. Among these programs are job training, mentoring, after-school activities, and recreational programs that have succeeded in helping at-risk individuals avoid and leave gangs. In 1947 New York City established a Youth Board initiating gang intervention (Greene & Pranis, 15-20). Board members-built relationships with gangs, helping them develop job skills and find jobs, as well as organized neighborhood athletic competitions and social events. The Youth Board's success was so great that by the mid-sixties, gang violence was no longer considered a major problem in New York City. Despite periodic resurgences in gang activity, gang membership in New York has not reached previous membership levels, even when gang membership escalated throughout the rest of the country. New York City's success at controlling violence levels has been largely attributed to its long-term investment in gang prevention and intervention. New York’s approach may be a model and an inspiration for Los Angeles and other cities seeking to address gang problems (Von Hof Wagen, 699).

Thus, those seeking solutions to gangs and crime in Los Angeles and other parts of California should expect less from suppression strategies, such as the STEP Act. Investing more resources into gang intervention and prevention strategies may yield results*.*  In addition, these programs can be evaluated for results.The city of Los Angeles made the decision to invest more efforts into prevention and intervention to mitigate gang violence several decades ago through the Gang Reduction and Youth Development Program (GRYD). A 2021 report presented results for the GRYD programs in 23 different zones in Los Angeles (Brantingham, Tita & Herz). This analysis indicated an 18% reduction in violent crimes in areas exposed to GRYD services. However, similar reductions were not demonstrated for property crimes like burglary and car theft.

**Changing or Abolishing the STEP Act**

Many critiques of the STEP Act desire changes as suggested by Erin Yoshino while others want enhanced sentencing abolished completely. Yoshino interviewed deputy district attorneys, public defenders and law enforcement officers in Los Angeles County to obtain their views on the STEP Act. He writes:

“The STEP Act should be revised to explicitly state that the "primary activity" of an alleged criminal street gang may only be proved through evidence of past conduct, not evidence of conduct committed during the current offense”(Yoshino, 145).

The defendant in People v. Gamez asserted that the idea of a criminal street gang according to the STEP Act is so overbroad that the Los Angeles Police Department ("LAPD") or the Humboldt County environmental activists (whose members may have committed one or more of the enumerated crimes) would qualify as criminal street gangs. This idea was rejected by the California Court of Appeal. The court stated that one of the group's "primary activities" must be the commission of one of the enumerated crimes, and the LAPD nor the Humboldt County environmental activists had as a primary activity the commission of an enumerated crime in the law. In determining a group's "primary activity" within the meaning of the STEP Act, the **California Supreme Court** held that the trier of fact may consider both prior conduct and conduct that occurred at the time of the current offense. However, Yoshino writes in employing such a definition, one could easily imagine a scenario in which the LAPD would meet this criterion for a criminal street gang. LAPD Officer I has been convicted of assault with a deadly weapon. LAPD Officer 2 is currentlycharged with assault with a deadly weapon (enumerated offense 186.22(e)(1)) (Yoshino, 146). During his trial, LAPD Officer I 's prior conviction and evidence of LAPD Officer 2's conduct for the current offense can be used to prove that assault with a deadly weapon was one of the LAPD's "primary activities." Once this has been established, the LAPD falls neatly within the contours of the current criminal street gang definition:

[A]ny 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 [therein], 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**. (CAL. PENAL CODE § 186.22 (f) West 2008) (Yoshino, 146)

Yoshino also recommends changes to the STEP Act to clarify ambiguities that occur in its language. In doing so, prosecutors have less discretion to file gang enhancements lacking merit, and courts would have improved guidelines ensuring fairness when enhancements have been filed.

**Predicate acts** are also addressed by Yoshino. Further **defining which crimes may constitute predicate acts** will help reduce gang enhancement’s prejudices. The Penal Code, for example, might be properly modified to exclude as a predicate act the commission of the instant crime and disallow the use of crimes committed on the same occasion, but by different persons. As it stands right now, if Codefendants 1 and 2 are being charged with battery of a third person, evidence of Codefendant l's participation and evidence of Codefendant 2's participation will, in the current language of the STEP Act, establish a "pattern of criminalactivity," while in reality their actions are an isolated incident but not a "pattern." The Penal Code should also be modified to incorporate the Court of Appeal's holding in People v. Gamez (which was subsequently overruled by the California Supreme Court in People v. Gardley) that predicate acts must be gang-related in order to avoid punishing a defendant for the unrelated actions of people with whom he associated.

***Gang enhancements*** *should also be* ***modified to apply only to proven gang members****. As the statute reads, "any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members," receives an enhanced sentence, regardless of whether he is a gang member or not. (252) Thus, nongang member defendants with the specific intent to assist gang member friends in stealing a car for an evening joyride would properly be included within the ambit of the STEP Act's gang enhancement, subjecting himself to a greatly increased sentence. The statute might more appropriately impose gang enhancements upon "any member of a criminal street gang who is convicted of a felony committed for the benefit of, at the direction or, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members." for the "unrelated actions of people with whom he associated.*

 Besides addressing ambiguities in the STEP Act's language, limiting its reach to those truly deserving of a gang enhancement**, the law must ensure a fair process for those properly within its ambit**. As a result, **the Penal Code should require bifurcation in those cases in which the gang evidence is not necessary to prove elements of the underlying crime.** Although Deputy District Attorney l's belief that gang evidence should be admitted without **bifurcation** when the gang enhancement is properly charged makes sense in theory, gang enhancements are actually being charged for improper purposes, such as to pressure the defendant to **plead guilty**. Additionally, such a policy would do nothing to ensure that a defendant is convicted based on evidence of the underlying crime, as opposed to the mere prejudice of the gang evidence. Thus, using bifurcation, when possible, is necessary to protect defendants against gang enhancements’ prejudicial nature.

In those instances, in which gang evidence is necessary to prove the underlying crime, such as evidence of motive, *evidentiary rules should be enacted such that only the evidence necessary to prove the crime is admissible at trial. The gang evidence needed to prove the remaining elements of the gang enhancement should be withheld for a* ***bifurcated proceed****ing after the defendant has been convicted of the underlying crime. While the prejudice of gang activity is still present at the trial, bifurcating the more prejudicial evidence required to prove the gang enhancements would mitigate the amount of prejudice to the defendant. For example, withholding testimony as to a gang's predicate acts, during which the most gruesome crimes are often chosen to demonstrate a gang's pattern of gang activity, would mitigate the risk of conviction based on guilt by association. Similarly, the Penal Code should require that a well-drafted jury instruction be given when bifurcation of the gang enhancement is not possible.*

Changing evidentiary rules regarding the admissibility of **defense expert** **witnesses** is another revision that helps ensure that defendants are not prejudiced by gang enhancements. Such rules may enlarge the scope of subjects on which a defense expert is able to testify. Also, in testifying about the nature of gangs, gang members and gang behavior, Malcolm W. Klein stated that defense expert witnesses might also testify about the criminological relevance or validity of the gang enhancement, as well as data on patterns of gang activity to contextualize the alleged offense. While this does not assist defense counsel in finding an expert witness when they are hard to come by, allowing him to put forth an expert witness to rebut the prosecution at the very least ensures that the courts and laws meant to protect people's rights do not further hinder a person in his own defense (Yoshino, 148).

**Conclusion**

Ultimately, the issue of gang violence may not be a matter for the courts or the Penal Code. This is a social problem that may more effectively be confronted by addressing issues within communities plagued by gangs. Laws, like the STEP Act, are nothing more than suppression legislation (as opposed to prevention or intervention). They are arguably only temporary solutions to a persistent problem. Gang violence is rooted in contributing factors to gang membership such as: the social disorganization and failures of families, schools and lack of employment. Additional contributing factors are poverty; racism; fragmented policies by criminal justice and social service agencies; and the presence of gangs in the community (148-49). Los Angeles recognized the shortcomings of gang suppression over a decades ago when the Office of Gang Reduction and Youth Development was created in 2007. This office is now under the Mayor’s Office.

Law enforcement personnel, interviewed by Yoshino made similar comments as noted in the previous paragraph. Critics, like Mr. Yoshino, are calling for revisions to the STEP Act. However, LA County’s previous District Attorney (DA), George Gascone, has instructed his deputy DAs to stop enforcing enhanced sentencing altogether. Of course, LA County represents one of the largest populations in the state. But the rest of California’s Counties have yet to follow this example. Leadership in the state legislature and the California Attorney General’s Office is needed to either to change the STEP Act or abolish it all together. Judges also need to play a critical role in this effort. Law enforcement’s attempts “to arrest its way out of the gang problem” simply has not worked.

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APENDIX I

 SPECIAL DIRECTIVE 20-08

TO: ALL DEPUTY DISTRICT ATTORNEYS

FROM: GEORGE GASCÓN

District Attorney

SUBJECT: SENTENCING ENHANCEMENTS/ALLEGATIONS

DATE: DECEMBER 7, 2020

This Special Directive addresses the following chapters in the Legal Policies Manual:

Chapter 2 Crime Charging - Generally

Chapter 3 Crime Charging - Special Policies

Chapter 7 Special Circumstances

Chapter 12 Felony Case Settlement Policy

Chapter 13 Probation and Sentencing Hearings

Effective **December 8, 2020**, the policies outlined below supersede the relevant sections of the abovementioned chapters of the Legal Policies Manual. Additionally, the following sections of the Legal Policies Manual are removed in their entirety. Chapter 2.10 - Charging Special Allegations, Chapter 3.02 - Three Strikes, Chapter 7 - Special Circumstances, Chapter 12.05 - Three Strikes, Chapter 12.06 - Controlled Substances.

**INTRODUCTION**

Sentencing enhancements are a legacy of California’s “tough on crime” era. (See Appendix.) It shall be the policy of the Los Angeles County District Attorney’s Office that the current statutory ranges for criminal offenses alone, without enhancements, are sufficient to both hold people accountable and also to protect public safety. While initial incarceration prevents crime through incapacitation, studies show that each additional sentence year causes a 4 to 7 percent increase in recidivism that eventually outweighs the incapacitation benefit.1 Therefore, sentence enhancements or other sentencing allegations, including under the Three Strikes law, shall not be filed in any cases and shall be withdrawn in pending matters.

1 Mueller-Smith, Michael (2015) “The Criminal and Labor Market Impacts of Incarceration.”, *available at* https://sites.lsa.umich.edu/mgms/wp-content/uploads/sites/283/2015/09/incar.pdf.

This policy does not affect the decision to charge crimes where a prior conviction is an element of the offense [i.e., felon in possession of a firearm (Penal Code § 29800(a)(1)), driving under the influence with a prior (Vehicle Code § 23152), domestic violence with a prior (Penal Code § 2

273.5(f)(1)), etc.], nor does it affect Evidence Code provisions allowing for the introduction of prior conduct (i.e., Evidence Code §1101, 1108, and 1109).

The specified allegations/enhancements identified in this policy directive are not an exhaustive list of all allegations/enhancements that will no longer be pursued by this office; however, these are the most commonly used allegations/enhancements.

**POLICY**

● Any prior-strike enhancements (Penal Code § 667(d), 667(e); 1170.12(a) and 1170.12 (c)) will not be used for sentencing and shall be dismissed or withdrawn from the charging document. This includes second strikes and any strikes arising from a juvenile adjudication;

● Any Prop 8 or “5 year prior” enhancements (Penal Code §667(a)(1)) and “3 year prior” enhancements (Penal Code §667.5(a)) will not be used for sentencing and shall be dismissed or withdrawn from the charging document;

● STEP Act enhancements (“gang enhancements”) (Penal Code § 186.22 et. seq.) will not be used for sentencing and shall be dismissed or withdrawn from the charging document;

● Special Circumstances allegations resulting in an LWOP sentence shall not be filed, will not be used for sentencing, and shall be dismissed or withdrawn from the charging document;

● Violations of bail or O.R. release (PC § 12022.1) shall not be filed as part of any new offense;

● If the charged offense is probation-eligible, probation shall be the presumptive offer absent extraordinary circumstances warranting a state prison commitment. If the charged offense is not probation eligible, the presumptive sentence will be the low term. Extraordinary circumstances must be approved by the appropriate bureau director.

**II. PENDING CASES**

At the first court hearing after this policy takes effect, DDAs are instructed to orally amend the charging document to dismiss or withdraw any enhancement or allegation outlined in this document.

**III. SENTENCED CASES**

Pursuant to PC § 1170(d)(1), if a defendant was sentenced within 120 days of December 8, 2020 they shall be eligible for resentencing under these provisions. DDAs are instructed to not oppose defense counsel’s request for resentencing in accordance with these guidelines. 3

**APPENDIX**

California has enacted over 100 sentencing enhancements, many of which are outdated, incoherent, and applied unfairly. There is no compelling evidence that their enforcement improves public safety. In fact, the opposite may be true. State law gives District Attorneys broad authority over when and whether to charge enhancements. The overriding concern is interests of justice and public safety.

The Stanford Computational Policy Lab studied San Francisco’s use of sentencing enhancements from 2005 to 2017. They released their report, *Sentencing Enhancements and Incarceration: San Francisco, 2005-2017* in October of 2019. The following policy is informed by the results of the Stanford study.

As noted in the study:

“During the 1980s and 90s, enhancements became more numerous and severe. Dozens of new enhancement laws were passed in a way that critics alleged was haphazard—in “reaction to the ‘crime of the month.’”

California’s massive rates of incarceration can be tied directly to the extreme sentencing laws passed by voters in the 1990’s, including the 1994 Three Strikes Law. In 1980, California had a prison population of 23,264. In 1990, it was 94,122. In 1999, five years after the passage of Three Strikes, California had increased its population to a remarkable 160,000. By 2006, the prison population had ballooned to 174,000 prisoners. California now has 130,000 people in state prison and 70,000 people in local jails.

The Stanford study found that the use of sentencing enhancements in San Francisco accounted for about **1 out of 4 years** served in jail and prison. This study found that the use of sentencing enhancements -- mostly Prop. 8 priors and Three Strikes enhancements -- accounted for half of the time served for enhancements. The study concluded that we could substantially reduce incarceration by ceasing to use enhancements. These enhancements also exacerbate racial disparities in the justice system: **45% of people serving life sentences in CDCR under the Three Strikes law are black**.

Gang enhancements have been widely criticized as unfairly targeting young men of color. Recent analyses by the LA Times suggest that the CALGANG database is outdated, inaccurate and rife with abuse. According to California Department of Corrections and Rehabilitation data from 2019, more than 90 percent of adults with a gang enhancement in state prison were either black or Latinx.

According to Fordham Law Prof. John Pfaff, “There is strong empirical support for declining to charge these status enhancements. Long sentences imposed by strike laws and gang enhancements provide little additional deterrence, often incapacitate long past what is required by public safety, impose serious and avoidable financial and public health costs in the process, and may even lead to greater rates of reoffending in the long run.”

According to Pfaff, a growing body of evidence-based studies have suggested that policing deters; long sentences do little. What deters most effectively is the risk of detection and apprehension in the first place. Other studies increasingly indicate that spending more time in prison can *cause* the 4

risk of later reoffending; as the harms and traumas experienced in prison grow, the ability to reintegrate after release falls.

That prison may actually increase the risk of reoffending while imposing serious costs on communities starkly illuminates the need to invest in alternatives. Such options do exist. One striking example: by expanding access to (non-criminal justice based) drug treatment, the expansion of Medicaid yielded billions in reduced crime in states that participated in the expansion.

By avoiding harsh sentencing and investing in rehabilitation programs for the incarcerated, we can reduce crime *and* help people improve their lives.

***The policies of this Special Directive supersede any contradictory language of the Legal Policies Manual.***

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APPENDIX 2





