

## Cities to gangs: Stop, or we'll sue.

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Byline: Kimberly Atkins

Looking to stem gang violence and alleviate fears of residents who say they are intimidated and terrorized by gangs in their neighborhoods, more city officials are turning to a civil remedy: seeking injunctions against gang members to keep them away from certain areas and from each other.

As an increasing number of cities across the country add gang injunctions to their arsenal of crime-fighting tools, they are also carefully limiting their scope to fend off constitutional challenges. At the same time, cities are defending their policies against criticism by civil rights groups who say the injunctions lead to civil liberties violations and racial profiling.

Within the last year alone, prosecutors in Fort Worth, Texas, West Palm Beach, Fla., St. Paul, Minn., Riverside, Calif., San Francisco and a number of other cities have begun using civil injunctions against gang members.

Cities in California and Texas have been using gang injunctions for years, and other jurisdictions are increasingly looking to those cities for guidance on starting injunction policies of their own.

"We were getting reports from our police departments of increased gang activity, and it was affecting the livability of our downtown area," said John Choi, city attorney of St. Paul, Minn., where a new state law allowing city attorneys and the state attorney general to seek gang injunctions went into effect Aug. 1.

During a convention of community prosecutors several years ago, St. Paul officials spoke with a number of California prosecutors about gang injunctions, and that started the ball rolling for the Minnesota legislation.

"We created a new cause of action to address and mitigate the impact of gang activity," said Choi. "It is a great tool for us to have in our toolbox."

Unlike programs from the 1980s in cities like Los Angeles and Chicago, where plans to ban alleged gang members from large areas of the community were struck down by courts as unconstitutional, prosecutors are now using crime databases to document and build cases against specific gang members in order to keep them out of limited geographical areas, and to keep them away from other gang members.

Prosecutors say these injunctions are a valuable tool - when used correctly.

"We put together a program where we would be able to use the Texas laws for public nuisance and for violating an injunction, be able to use the definition of gang activity as established by the state [(Street Terrorism Enforcement and Prevention Act)], and work with the legislature to increase the number of crimes that fall under that category," said Susan Reed, district attorney of Bexar County, Texas, which includes San Antonio.

In California, where a large and growing number of law enforcement officials are implementing gang injunction programs, the practice has won approval from the state's highest executive.

In July, Gov. Arnold Schwarzenegger signed a bill that gives all city attorneys the ability to seek gang injunctions by providing better access to state and local criminal history records that can be used to support the petitions.

After signing the bill, Schwarzenegger issued a statement calling the use of gang injunctions "an important component in our efforts to curb gang activity, because it gives cities greater access to the crucial information they need in order to stop these criminal organizations from terrorizing our neighborhoods."

Critics see 'waste'

Groups such as the ACLU have blasted the practice, saying that it gives law enforcement officials too much leeway, leaving residents vulnerable to having their constitutional rights violated and being targeted based on impermissible standards such as race.

"Under the criminal system, a police officer must have probable cause to make an arrest," said Vanita Gupta, a staff attorney in the ACLU's New York office. "By using civil injunctions, you lower the threshold and increase the discretion of enforcement to declare certain individuals as suspected gang members. It takes away that layer of protection that you have under a criminal system, and [can lead to] racially suspect decisions."

Critics also point to recent studies, which question the effectiveness of gang injunctions in curbing crime.

A report released in July by the Justice Policy Institute, a Washington, D.C.-based think tank that promotes alternatives to incarceration, found that cities like New York, which does not use gang injunctions, have been more effective in stemming gang violence than cities like Los Angeles and Chicago, which rely on injunctions and other tough enforcement tactics.

The report also found that using trained workers to implement gang intervention programs like those that exist in New York are less costly than gang injunction programs, which require the creation of large databases and increased surveillance and result in longer incarceration periods.

Janet Greene, co-author of the report, titled "Gang Wars: The Failure of Enforcement Tactics and the Need for Effective Public Safety Strategies," has sharply criticized legislation filed by California Democrats Sen. Diane Feinstein and Rep. Adam Schiff that would create a national gang member database and earmark \$700 million for enforcement efforts, not prevention programs.

"It is unfortunate that this new legislation threatens to continue this legacy of waste," Greene said in a statement.

Another study, a 2004 report compiled by criminology and policy professors from the University of California and the University of Southern California that was submitted to the U.S. Department of Justice, assesses how the use of gang injunctions in San Bernardino, Calif. affected residents.

While the study found an initial drop in the incidents of intimidation by gang members and fear of gangs on the part of community members, the injunctions did not produce long-term benefits.

Vital tool

Law enforcement officials and prosecutors maintain the practice gives them a vital tool in fighting crime and stress that the programs have carefully drafted guidelines to ensure that they are both effective and constitutional. And they acknowledge that injunctions are not a panacea.

"This is not a magic bullet to solve St. Paul's gang problems or other issues," said Choi. "But it is another tool we have now on the enforcement end. There are a lot of other things that we are doing in terms of prevention."

In Los Angeles, city officials revised the guidelines for gang injunctions in April to include stricter

safeguards, including adopting a strict definition of gang member, mandating that injunctions only be enforced against gang members who have been personally served, requiring documented evidence of gang activity to establish gang membership beyond a reasonable doubt, and implementing a review process for existing injunctions and a clear process for lifting them.

Reed said officials have taken a careful approach in her county, a move that allowed the injunction program to survive a court challenge to its constitutionality, and that this has been effective in reducing gang activity in San Antonio.

The program identifies "safety zones" - limited areas law enforcement targets to reduce gang activity - and requires that every person covered under an injunction be personally served to satisfy all notice requirements. It also states that the determination of whether a person is a gang member must be supported by documentation - either a recent conviction for gang activity, documented gang activity witnessed by police officers who carry special "gang sheets" to identify members or an admissions by the individual of gang membership.

The penalties for violating an injunction are intended to be a deterrent, but they are not overly harsh, Reed said.

"Violating an injunction is a Class A misdemeanor, which [results in] up to a year" in jail, she said.

"You are not talking about sending them to prison for life. But you are giving police the ability to patrol and police and deal with gang activity."

She also said there is no danger of reformed gang members being unfairly targeted.

"We are not relying on 10-year old gang activity," Reed said. "We are relying on activities that have occurred within the last year to 18 months."

Such a narrow approach is key if city officials want to avoid running into constitutional problems and other dangers, said James Hernandez, professor of criminal justice at California State University in Sacramento.

"The use of injunctions can be an extremely effective approach, but it is also open to abuse," he said.

Hernandez also cautioned that injunctions can be overused, a danger heightened by the fact that district attorneys are elected officials who often feel pressured to use tougher approaches to combating crime in order to get reelected.

"You can have district attorneys [who are] powerful politicians, riding roughshod over people's rights," Hernandez said. "The problem is the actual crime rate [across the country] is not increasing as fast as the rate of gang injunctions."