

Date of Hearing: April 6, 2021  
Counsel: Cheryl Anderson

## ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

AB 333 (Kamlager) – As Amended March 30, 2021

**SUMMARY:** Redefines the terms “pattern of criminal gang activity” and “criminal street gang” for the purposes of the gang offense, enhancement, and alternate penalty under the STEP Act and requires bifurcation of gang-related prosecutions from prosecutions that are not gang-related. Specifically, **this bill:**

- (1) Requires that the offenses used to establish a “pattern of criminal gang activity” have commonly benefited at least one specified member of the gang other than the person who committed the offenses and that the common benefit from the offenses be more than reputational.
- (2) Removes burglary, looting, felony vandalism, and specified personal identity fraud violations from the crimes that define a “pattern of criminal gang activity.”
- (3) Prohibits the use of the currently charged crime to prove the “pattern of criminal gang activity.”
- (4) Requires the prosecution to prove that the defendant knows the person or people who committed the offenses used to establish the “pattern of criminal gang activity.”
- (5) Requires the prosecution to prove that the person or people who committed the offenses used to establish a “pattern of criminal gang activity” was or were a member of the criminal street gang subset at the time those offenses were committed, and that the offenses were committed for the benefit of, at the direction of, or in association with, the criminal street gang, with the specific intent to promote, further, or assist in criminal conduct by members of the criminal street gang at issue.
- (6) Requires the prosecution to prove that the offenses used to establish a “pattern of criminal gang activity” were committed within three years of the date of the current offense.
- (7) Redefines “criminal street gang” to require the prosecution to prove an established hierarchy and that the members collectively engage in, or have engaged in, “a pattern of criminal gang activity.”
- (8) Requires, if requested by the defense in a case where a gang enhancement is alleged, that the defendant’s guilt of the underlying offense first be proved and that a separate proceeding on the enhancement occur after a finding of guilt.

- (9) Requires that a gang offense be tried separately from all other counts that do not otherwise require gang evidence as an element of the crime. The charge may be tried in the same proceeding as a gang enhancement or alternate penalty.
- (10) Includes findings and declarations.

**EXISTING LAW:**

- (1) Enacts the California Street Terrorism Enforcement and Prevention (STEP) Act which seeks the eradication of criminal activity by street gangs by focusing upon patterns of criminal gang activity and upon the organized nature of street gangs, which together, are the chief source of terror created by street gangs. (Pen. Code, §§ 186.20 & 186.21.)
- (2) 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 enumerated criminal offenses, having a common name or identifying sign or symbol, and whose members individually or collectively engage in a pattern of criminal gang activity. (Pen. Code § 186.22, subd. (f).)
- (3) Provides that any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity and who willfully promotes, furthers, or assists, in any felonious conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or two or three years. (Pen. Code § 186.22, subd. (a).)
- (4) Provides that, except as specified, any person who is convicted of a felony committed for the benefits 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, shall, upon conviction for a felony, receive a sentence enhancement of two, three, or four years, in the court’s discretion. (Pen. Code §186.22, subd. (b)(1)-(2).)
- (5) Requires, until January 1, 2022, the court to select the sentence enhancement that, in the court’s discretion, best serves the interests of justice, as specified. Requires, as of January 1, 2022, the court to order the imposition of the middle term of the sentence enhancement, unless there are circumstances in aggravation or mitigation. (Pen. Code §186.22, subd. (b)(3).)
- (6) Specifies the enhanced punishment for specific felony offense, as follows:
- (a) For a serious felony, five years;
  - (b) For a violent felony, ten years;
  - (c) For home invasion, carjacking, or shooting from a vehicle, a minimum of 15 years-to-life;
  - (d) For extortion or intimidation of a witness, a minimum of seven years-to-life; and,

- (e) For any other felony punishable in the state prison for life, a minimum of 15 years before parole eligibility. (Pen. Code §186.22, subd. (b)(4).)
- (7) Provides that if the court grants probation or suspends the execution of sentence imposed upon the defendant for a violation of the gang offense, or in cases involving a true finding of the gang enhancement, the court must require that the defendant serve a minimum of 180 days in a county jail. (Pen. Code §186.22, subd. (c).)
- (8) Provides that any person who is convicted of an offense punishable as a felony or a misdemeanor (wobbler), which is 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, shall be punished by imprisonment in a county jail not to exceed one year, or by imprisonment in a state prison for one, two, or three years, provided that any person sentenced to imprisonment in the county jail shall be imprisoned for a period not to exceed one year, but not less than 180 days, and shall not be eligible for release upon completion of sentence, parole, or any other basis, until he or she has served 180 days. If the court grants probation or suspends the execution of sentence imposed upon the defendant, it shall require as a condition thereof that the defendant serve 180 days in a county jail. (Pen. Code §186.22, subd. (d).)
- (9) Defines “pattern of criminal gang activity” as the commission of, attempted commission of, conspiracy to commit, or solicitation of, or conviction of two or more enumerated offenses, provided at least one of the offenses occurred after the effective date of the statute and that the last of the offenses occurred within three years after a prior offense, and the offenses were committed on separate occasions, or by two or more persons. (Pen. Code §186.22, subd. (e).)
- (10) Authorizes the court, notwithstanding any other law, to strike the additional punishment for the gang enhancement or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served. (Pen. Code §186.22, subd. (g).)
- (11) Enacts a number of public safety provisions, including increased penalties for gang-related crimes, creation of a new crime of conspiracy related to gang activity, and required registration for adults and minors who have been convicted of participation in a street gang, or where the gang enhancement was found to be true. (Proposition 21, approved by voters in the March 7, 2000 election.)
- (12) Provides that a prior conviction enhancement allegation, except for the issue of identity, must be tried by the same jury deciding the issue of guilt. (Pen. Code § 1025.)
- (13) Gives the court broad authority to conduct criminal trials, including the authority to bifurcate trial issues. (Pen. Code, § 1044; *People v. Calderon* (1994) 9 Cal.4<sup>th</sup> 69, 72, 74-75.)
- (14) Requires, when a defendant pleads not guilty by reason of insanity, the guilt and sanity phase to be tried in separate phases. (Pen. Code, § 1026.)
- (15) Provides for a bifurcated trial process in determining guilt separately from punishment in cases where the death penalty may be imposed. (Pen. Code, § 190.1.)

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

- 1) **Author's Statement:** According to the author, “As a sitting Member of the Committee on Revision of the Penal Code, I listened to expert testimony detailing how gang enhancements are rarely applied toward the most serious and violent offenses. Often applied toward misdemeanor offenses, they disproportionately affect people of color. AB 333 will advance the movements toward criminal, racial and social justice by ensuring gang enhancements are only used when necessary and fair.”
- 2) **The Gang Statute (STEP Act):** “In 1988, the Legislature enacted the California Street Terrorism Enforcement and Prevention Act (the STEP Act). (§ 186.20 et seq.)” (*People v. Hernandez* (2004) 33 Cal.4th 1040, 1047.) The underlying purpose of the STEP Act was to eradicate criminal activity by street gangs. (*People v. Rodriguez* (2012) 55 Cal.4th 1125, 1129.)

Penal Code Section 186.22 has three separate charging provisions. First, subdivision (a) of the statute contains the criminal offense of gang participation. It prohibits actively participating in a criminal street gang combined with willfully promoting, furthering, or assisting in any felonious conduct by members of that gang. The gravamen of the offense is the “participation in the gang itself.” (*People v. Herrera* (1999) 70 Cal.App.4th 1456, 1467, fn. omitted.)

The second provision is an enhancement allegation contained in subdivision (b)(1). If pleaded and proved, it increases the sentence for an underlying felony. The allegation is applicable to any 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.”

The third, subdivision (d) of the statute, is an alternate penalty allegation which technically applies to all felonies and misdemeanors “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,” but whose practical application is to raise the sentences only for gang-related misdemeanors.

- 3) **“Criminal Street Gang” and “Pattern of Criminal Gang Activity” Components of the Gang Statute:** The “criminal street gang” component (i.e., the gang’s existence) applies to all three gang provisions. The statute “defines ‘criminal street gang’ as any ongoing association that consists of three or more persons, that has a common name or common identifying sign or symbol, that has as one of its ‘primary activities’ the commission of certain specified criminal offenses, and that engages through its members in a ‘pattern of criminal gang activity.’” ([§ 186.22], subd. (f), italics [omitted].) A gang engages in a ‘pattern of criminal gang activity’ when its members participate in ‘two or more’ specified criminal offenses (the so-called ‘predicate offenses’) that are committed within a certain time frame and ‘on separate occasions, or by two or more persons.’ (*Id.*, subd. (e).)” (*People v. Loewen* (1997) 17 Cal.4th 1, 4.)

A “pattern of criminal gang activity” can be proven, among other things, through evidence of the charged offense and another offense committed on a prior occasion by the defendant's fellow gang member. (*People v. Gardeley* (1996) 14 Cal.4th 605, 625, disapproved on another ground in *People v. Sanchez* (2016) 63 Cal.4th 665, 686, fn. 13.)

Where the prosecution's theory of the existence of a criminal street gang turns on the existence and conduct of one or more gang subsets — for example, when “the prosecution seeks to prove the street gang enhancement by showing a defendant committed a felony to benefit a given gang, but establishes the commission of the required predicate offenses with evidence of crimes committed by members of the gang's alleged subsets” — then the prosecution must prove an associational or organizational connection between the gang and the subsets. (*People v. Prunty* (2015) 62 Cal.4<sup>th</sup> 59, 67-68.) According to the Court:

In certain circumstances, gangs may constitute loosely coupled, amorphous organizations that routinely operate covertly. [Citations.] Prosecutors need not—and in some cases, could not—show that these groups resemble formally structured, hierarchical enterprises such as businesses or professional associations.

(*People v. Prunty, supra*, 62 Cal.4th at 77.)

Because the gang offense punishes “any” felonious conduct committed by two or more gang members, the felonious criminal conduct underlying active gang participation does not have to be gang-related, or committed for the benefit of a gang. (*People v. Albillar* (2010) 51 Cal.4th 47, 55.) On the other hand, it is well-established that the gang enhancement allegation under Penal Code section 186.22, subdivision (b)(1) does require that the crime must be gang-related. (*People v. Albillar, supra*, 51 Cal.4th at p. 60.) The alternate penalty provision under Penal Code section 186.22, subdivision (d) also applies to a gang-related crime. (*People v. Briceno* (2004) 34 Cal.4<sup>th</sup> 451, 459.)

A crime is not gang-related simply because it is committed by gang members. (*People v. Albillar, supra*, 51 Cal.4th at p. 60.) However, where an expert opines that “particular criminal conduct benefited a gang by enhancing its reputation for viciousness[, this] can be sufficient to raise the inference that the conduct was ‘committed for the benefit of . . . a[] criminal street gang’ within the meaning of section 186.22[, subdivision ](b)(1).” (*Id.* at p. 63.) “However, the expert's testimony must be grounded in admissible evidence to impose a gang enhancement. ‘[P]urely conclusory and factually unsupported opinions’ that the charged crimes are for the benefit of the gang because committing crimes enhances the gang's reputation are insufficient to support a gang enhancement. [Citation omitted.]” (*People v. Kopp* (2019) 38 Cal.App.5<sup>th</sup> 47, 70, citing *People v. Ramirez* (2016) 244 Cal.App.4th 800, 819–820 [concluding that opinion evidence that all violent crimes committed by Sureño members benefit the Sureños because they increase the Sureños' reputation made no sense].)

This bill would redefine the terms “pattern of criminal gang activity” and “criminal street gang.” In doing so, this bill would limit the scope of who may be considered to be from the same criminal street gang, would require proof of organization (an established hierarchy), and would require that the theory of benefit to the gang be more than a benefit to the gang's

reputation. Additionally, the bill would remove several nonviolent crimes from the list of predicate offenses that define a “pattern of criminal gang activity.”

- 4) **Bifurcation of Trial:** The court has broad authority to grant bifurcation when requested. (Pen. Code, § 1044.) In cases where gang evidence is to be introduced, the California Supreme Court has acknowledged that such evidence could be highly prejudicial:

The predicate offenses offered to establish a “pattern of criminal gang activity” (§ 186.22, subd. (e)) need not be related to the crime, or even the defendant, and evidence of such offenses may be unduly prejudicial, thus warranting bifurcation. Moreover, some of the other gang evidence, even as it relates to the defendant, may be so extraordinarily prejudicial, and of so little relevance to guilt, that it threatens to sway the jury to convict regardless of the defendant's actual guilt.

(*People v. Hernandez* (2004) 33 Cal. 4th 1040, 1049.) To mitigate the prejudice to the defendant, the Court held that a trial court has the discretion, but is not required, to bifurcate the trial on the gang enhancement, thereby allowing the prejudicial gang evidence to be introduced only after the defendant has been convicted of the underlying crime. (*Ibid.*)

However, requests for bifurcation are rarely granted. (Yoshino, *California’s Criminal Gang Enhancements: Lessons from Interviews with Practitioners* (2008) 18 So. Cal. L. Rev. 117, 137, fn. omitted.) Even when the gang evidence is prejudicial, other factors favor joinder resulting in a denial of the request for bifurcation: “Trial of the counts together ordinarily avoids the increased expenditure of funds and judicial resources which may result if the charges were to be tried in two or more separate trials.” (*People v. Hernandez, supra*, 33 Cal. 4th 1050 citing *Frank v. Superior Court* (1989) 48 Cal.3d 632, 639.)

This bill would require bifurcation of gang-related prosecutions from prosecutions that are not gang-related.

- 5) **Committee on Revision of the Penal Code:** On January 1, 2020, the Committee on the Revision of the Penal Code (“Committee”) was established within the Law Review Commission to study the Penal Code and recommend statutory reforms. (SB 94, Ch. 25, Stats. 2019; Gov. Code, § 8280.) The Committee’s objectives are as follows:

Simplify and rationalize the substance of criminal law;

Simplify and rationalize criminal procedures;

Establish alternatives to incarceration that will aid in the rehabilitation of offenders; and,

Improve the system of parole and probation.

(Gov. Code, § 8290.5, subd. (a).) In making recommendations to achieve these objectives, the Committee may recommend adjustments to the length of sentence terms. (Gov. Code, § 8290.5, subd. (b).) The Committee is required to prepare an annual report that describes its work in the prior calendar year and its expected work for the subsequent calendar year. (Gov. Code, § 8293, subd. (b).)

In its first annual report, the Committee noted:

...Black and Latinx people comprise 92% of the people sentenced under California's gang enhancement statute. The racial disparity is even starker in the state's largest jurisdiction: Over 98% of people sentenced to prison for a gang enhancement in Los Angeles are people of color. Yet research shows that white people make up the largest group of youth gang members. It is difficult to imagine a statute, especially one that imposes criminal punishments, with a more disparate racial impact.

(<http://clrc.ca.gov/CRPC.html> [as of 3/20/2021] at p. 44, fn. omitted.) The Committee further noted:

All 50 states and the District of Columbia have enacted some form of anti-gang measures.

But in comparison to California, other states require more evidence of connection or organization between gang members for gang enhancements to apply. For example, in Illinois, to qualify as a criminal street gang, it must be shown that a group has "an established hierarchy. In Arkansas, a person commits the offense of engaging in a criminal gang when they commit two or more predicate offenses "in concert" with two or more other persons. In Maryland, a "criminal organization" is required to have an "organizational or command structure," and to convict a person of participating in a criminal organization, the prosecution must prove the defendant had knowledge of the pattern of criminality of members of the gang.

Other state courts have treated expert witness testimony about an accused's gang membership with caution and required such testimony to be closely connected to direct evidence. For example, the Minnesota Supreme Court has warned "that criminal gang involvement is an element of the crime does not open the door to unlimited expert testimony," and gang activity must therefore be proven by "firsthand knowledge." New Mexico's Supreme Court reached a similar result.

At least three states (Indiana, Tennessee, and Rhode Island) require gang enhancements to be proven in a separate phase of trial.

(<http://clrc.ca.gov/CRPC.html>, *supra*, at p. 47, fn. omitted.)

The Committee recommended the following:

Focus the definition of "criminal street gang" to target organized, violent enterprises.

Remove nonviolent property crimes from the list of predicate gang-related felonies.

Require the defendant to know the person responsible for any predicate gang-related offense.

Prohibit use of the current offense as proof of a “pattern” of criminal gang activity.

Require direct evidence of current and active gang involvement and violence, and limit expert witness testimony.

Bifurcate direct evidence of gang involvement from the guilt determination trial.

(<http://clrc.ca.gov/CRPC.html> , *supra*, at p. 44.)

Along the lines of the Committee’s recommendations, this bill would redefine the term “criminal street gang” (see Pen. Code, § 186.22, subd. (f)) which is a component of all three provisions of the gang statute (see Pen. Code, § 186.22, subds. (a), (b), & (d)). In particular, this bill’s definition of “criminal street gang” would include a requirement that the prosecution prove that the organization, association or group of three or more persons has an “established hierarchy.” It would also require the prosecution to prove the members collectively, rather than individually, engage in, or have engaged in a “pattern of criminal gang activity.”

The bill would also redefine “pattern of criminal gang activity” (see Pen. Code, § 186.22, subd. (e)) which implicates all three provisions of the gang statute (see Pen. Code, § 186.22, subds. (a), (b), & (d)). To begin, the bill would remove several non-violent theft crimes from the enumerated predicate offenses necessary to establish a pattern – burglary, looting, felony vandalism, and specified personal identity fraud violations. Further, the predicate offenses used to establish the pattern would have to have commonly benefited at least one specified gang member other than the defendant charged, and the common benefit must have been “more than reputational.”

In order to prove a “pattern of criminal gang activity,” the prosecution would also have to prove the defendant knows the person or people who committed the predicate offenses. And the prosecution would have to prove that the person or persons who committed the predicate offenses were members of the criminal street gang at the time those offenses were committed, and that those offenses were committed for the benefit of, at the direction of, or in association with, the criminal street gang, with the specific intent to promote, further, or assist in criminal conduct by members of the criminal street gang at issue. Additionally, the predicate offenses must have been committed within three years of the current offense.

Lastly, this bill would require an alleged gang enhancement or alternate penalty to be tried separately from the underlying offense, if the defense requests it. A gang offense would have to be separately tried from other counts that do not require gang evidence as an element of the crime. The gang offense could, however, be tried together with a gang enhancement or alternate penalty.

- 6) **Argument in Support:** According to the *Young Women’s Freedom Center*, a co-sponsor of this bill: “California’s gang enhancement laws have caused immeasurable damage to our communities by criminalizing culture and relationships among people in low-income Black and Latino communities. While no empirical studies have been conducted to show that gang enhancements deter crime or violence, it is well documented that they have been applied



inconsistently and disproportionately against people of color: 92% of people who receive gang enhancements are people of color. Gang enhancements have been the drivers of mass incarceration because of their vague definitions and weak standards of proof. They are responsible for the collective trauma of countless families and communities and are used as bargaining tools by the prosecution to seek longer sentences.

“AB 333 is an important step forward to undoing the harm of gang enhancements by addressing several damaging effects of ‘gang evidence’ at trial and narrowing the applicability of such evidence.

“First, AB 333 limits the possibility of a charged person being convicted based on mere rumor, speculation, and conjecture. Current law allows a person to be convicted of a gang enhancement based largely on speculation that the type of offense they are being charged with boosts the reputation of an alleged gang. AB 333 prevents such an assumption by requiring evidence that the offense was committed with the goal of benefitting the alleged gang.

“Second, AB 333 safeguards against someone’s prior convictions being used to convict another person – even though the two may have never even met. Under current law, a ‘pattern of gang activity’ can be established by the evidence of another person’s previous convictions who are alleged to be from the same gang as the currently charged individual. This has led to absurd results, where gang enhancements are common for people who have never even met each other. AB 333 ends prosecutors’ ability to claim people are gang members simply because they may come from the same community, be related, or know each other.

“Third, AB 333 protects against wrongful convictions based on what would otherwise be inadmissible ‘character evidence.’ Under current law, ‘gang evidence’ can be presented at the same time a jury is deciding if the charged person is even guilty of the charges against them. This evidence can consist of decades-old alleged prison or street gang criminal history, is often racially discriminatory, is almost entirely from biased law enforcement ‘gang experts’, and often has nothing to do with the actual defendant or the alleged crime.

“Research shows how prejudicial ‘gang evidence’ is. In many cases, ‘gang evidence’ not only taints the perception of the jury against the defendant but causes racial fear-mongering. One study found that just mentioning a person was seen near gang members increased guilty verdicts from 44% to 60%, and saying the defendant was a member of a gang increased guilty verdicts to 63%.<sup>1</sup> The only way to avoid wrongful convictions based on highly prejudicial ‘gang evidence’ is to present that evidence *after* the jury decides if the charged person is guilty of anything at all. Furthermore, in many cases, ‘gang evidence’ from different cases is presented during trials that have nothing to do with the current case. To address this, AB 333 requires that the guilt phase of the trial be separated or ‘bifurcated’ from the gang allegations portion of a trial.

---

<sup>1</sup> “Eisen, M. et al. (2013). Examining the Prejudicial Effects of Gang Evidence on Jurors. J. Forensic Psych, Practice.”

“AB 333 will help to curtail the disproportionate effect of gang enhancements on communities of color. These enhancements are often charged against young people merely because of where they live and grew up. Law enforcement ‘gang experts’ often refer to ‘gangs’, communities of color, and racial groups synonymously, using residence, cultural identity and social justice themes as evidence of a person’s involvement in a gang. Social relationships between members of the same ethnic group, within the same community, and even within family members are often deemed as gang-related. Gang enhancements significantly increase penalties faced by people of color, sometimes doubling, tripling, quadrupling or imposing a life sentence that would otherwise be unavailable for the charged offense.”

- 7) **Argument in Opposition:** According to the *San Diego Deputy District Attorneys Association*: “This bill eviscerates the current Penal Code section 186.22(b) gang enhancement that is a critical tool in curbing gang violence....

[¶]...[¶]

***“Requiring that the charged defendant “know” the people used for pattern of criminal activity is unduly onerous, does nothing to protect the charged defendant, and potentially prejudices the defendant on trial***

“AB 333 requires that the prosecution prove *beyond a reasonable doubt* that the charged defendant knows the people in the two certified prior convictions. This is unnecessary and especially onerous. First, it is unnecessary because two prior convictions are needed to establish the existence of the criminal street gang itself, and these predicate crimes have nothing to do with the current charged crime or gang allegation. Second, proving that someone “knows” another person who may have been separately convicted of a gang-related crime sounds great in theory, but it is completely irrelevant and superfluous. Is it enough that the two are in photographs together? How does a prosecutor prove this fact beyond a reasonable doubt?

“Moreover, this requirement would have an adverse impact on the stated goal of AB333 and would in fact be more prejudicial to the defendant on trial. In order to ensure a fair trial, it is often the common practice of prosecutors to intentionally *not* use predicate offense convictions that bear any ties to the defendant on trial so as to clearly delineate the separate legal purpose for which those other convictions are being introduced – simply establishing the existence of the gang as a whole, not proving the guilt of the accused on trial. Adding this proposed knowledge requirement will then lead to the defendant being more closely associated with other persons who have committed felony offenses that establish the pattern of criminal activity, and would increase the potential prejudice to the defendant on trial. Finally, adding this additional requirement does nothing to protect the charged defendant from being wrongly convicted of a gang enhancement.

***“The new bill illogically requires bifurcation of the gang enhancement from the underlying charge, doing so will dramatically increase the costs to the court system and unduly consume valuable judicial resources***

“Requiring that the People first prove the substantive charge, for example, a murder, before proving up the gang allegation is illogical. Murders for the benefit of the gang or murders in

association with other gang members are often done for a singular gang purpose. The very motive for the murder is gang-related. For example, the murder may be a retaliation killing of a rival gang member, or an internal gang dispute where a member is killed for a perceived slight. It is impossible to excise the motive from a gang retaliation murder. Motive, under the law, can be one type of evidence of guilt. When a charged defendant pleads not guilty, the People have an obligation to put on all evidence that demonstrates guilt, including motive evidence. This bill strips the People from being able to prove their case beyond a reasonable doubt.

“Perhaps the more devastating impact of mandatory bifurcation of the gang enhancement is the increased cost and consumption of valuable court resources that would result if all this state’s courthouses were required to extend the length of trials and potentially empanel separate juries to make separate determinations of guilt for the underlying crimes and the truth of the gang allegations. Our courts are cash-strapped as it is, and the significant backlog of cases due to the COVID pandemic and resulting health and safety protocols currently makes it all the more difficult to operate in the justice system. Adding an additional financial burden to the judicial system under the current crises with little to no benefit to the defendant on trial is unwise and misplaced.

***“Requiring a common benefit to another gang member and that the common benefit be more than reputational misunderstands the primary motivations and operations inherent within violent street gang culture***

“Gang crimes oftentimes only make sense when one begins to understand the motivations and operations of a person who commits a crime for the benefit of, in association with, or at the direction of a violent criminal street gang. Fear and intimidation of the surrounding community where the gang operates tends to be the primary motivation behind all gang-related crimes. Respect within this narrow subculture is often synonymous with fear and intimidation imposed upon crime victims, witnesses, and the gang’s very own community. Excising this primary benefit from a jury’s consideration in determining whether the charged defendant committed the crime to benefit the gang marginalizes the very communities that experience that fear and intimidation that results from gang violence.”

**8) Related Legislation:**

- a) SB 481 (Durazo), amends Proposition 21 by extending resentencing provisions to certain inmates serving a sentence of life without the possibility of parole for gang-related murder. SB 481 was referred to the Senate Committee on Public Safety on March 18, 2021.

**9) Prior Legislation:**

- a) SB 516 (Skinner), of the 2019-2020 Legislative Session, would have required gang enhancements to be tried in separate phases from other criminal charges that do not require gang evidence. SB 516 was held on the Senate Committee on Appropriations’ suspense file.

- b) AB 264 (Low), Chapter 270, Statutes of 2017, required the court to consider issuing a restraining order for up to 10 years in gang cases, and expanded the court's authority to issue post-conviction restraining orders to cover witnesses to the qualifying crimes.
- c) AB 1123 (Patterson), of the 2013-2014 Legislative Session, would have abrogated a California Supreme Court case by redefining the term “criminal conduct by members of a gang” for the purposes of the crime of active participation in a criminal street gang. AB 1123 failed passage in this committee.
- d) SB 296 (Wright), of the 2011-2012 Legislative Session, would have established a process whereby a person subject to a gang injunction could petition for a hearing for exemption or relief from the injunction in whole or in part, and would have required that the person seeking relief establish that he or she was not a gang member, had not supported acts prohibited by the injunction, and had not within three years obtained gang tattoos, been arrested or been documented to have associated with gang members. SB 296 was vetoed by the Governor.
- e) AB 2590 (Feuer), of the 2007-2008 Legislative Session, would have revised the definition of “criminal street gang” and “active participant” for the purposes of the STEP Act. AB 2590 was held on the Assembly Committee on Appropriations’ suspense file.
- f) Proposition 21, of the March 7, 2000 election, enacted a number of public safety provisions, including several gang provisions. Proposition 21 increased penalties for gang-related crimes, created a new crime of conspiracy related to gang activity, and required registration for adults and minors who have been convicted of participation in a street gang, or where the gang enhancement was found to be true.
- g) SB 1555 (Robbins), Chapter 1256, Statutes of 1987, and AB 2013 (Moore), Chapter 1242, Statutes of 1987, both enacted the STEP Act. Both bills were signed by the Governor on the same day, but SB 1555 was chaptered last.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Nextgen California (Sponsor)  
 Anti-recidivism Coalition (Co-Sponsor)  
 San Francisco Public Defender (Co-Sponsor)  
 Silicon Valley De-bug (Co-Sponsor)  
 Young Women's Freedom Center (Co-Sponsor)  
 A New Way of Life Re-entry Project  
 Alliance for Boys and Men of Color  
 American Civil Liberties Union  
 Asian Americans Advancing Justice - California  
 Asian Solidarity Collective  
 Brotherhood Crusade  
 Building Justice San Diego (homework San Diego)  
 California Attorneys for Criminal Justice

California Coalition for Women Prisoners  
California Immigrant Policy Center  
California Public Defenders Association (CPDA)  
California United for a Responsible Budget (CURB)  
Californians for Safety and Justice  
Center on Policy Initiatives  
Ceres Policy Research  
Change Begins With Me Indivisible Group  
Chrysalis Center  
Communities United for Restorative Youth Justice (CURYJ)  
Community Agency for Resources Advocacy and Services  
Community Solutions for Children, Families and Individuals  
Courage California  
Criminal Justice Clinic, UC Irvine School of Law  
Cure California  
East Bay Community Law Center  
Ella Baker Center for Human Rights  
Fresno Barrios Unidos  
Homeboy Industries  
Immigrant Legal Resource Center  
Initiate Justice  
Insight Center for Community Economic Development  
Kern County Participatory Defense  
LA Defensa  
Legal Services for Prisoners With Children  
National Association of Social Workers, California Chapter  
National Center for Youth Law  
People's Collective for Justice and Liberation  
Pillars of The Community  
Prison Yoga Project  
Re:store Justice  
Rubicon Programs  
San Diego County Building & Construction Trades Council  
San Francisco Taxpayers for Public Safety  
San Mateo County Participatory Defense  
Secure Justice  
Showing Up for Racial Justice (SURJ) At Sacred Heart in San Jose  
Showing Up for Racial Justice (SURJ) San Diego  
Showing Up for Racial Justice North County  
Smart Justice California  
Starting Over INC.  
Success Stories Program  
Team Justice  
The W. Haywood Burns Institute  
Think Dignity  
UC Berkeley's Underground Scholars Initiative (USI)  
Uncommon Law  
Underground Scholars Initiative Berkeley  
Uprise Theatre

Urban Peace Institute  
We the People - San Diego  
Youth Alive!

20 Private Individuals

**Opposition**

California Coalition of School Safety Professionals  
California District Attorneys Association  
California Peace Officers Association  
California Police Chiefs Association  
California State Sheriffs' Association  
City of Placentia  
Los Angeles County Sheriff's Department  
Los Angeles School Police Officers Association  
Palos Verdes Police Officers Association  
Peace Officers Research Association of California (PORAC)  
Riverside Sheriffs' Association  
San Diegans Against Crime  
San Diego Deputy District Attorneys Association  
Santa Ana Police Officers Association

2 private individuals

**Analysis Prepared by:** Cheryl Anderson / PUB. S. / (916) 319-3744