

ASSEMBLY THIRD READING

AB 333 (Kamlager)

As Amended March 30, 2021

Majority vote

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.

Major Provisions

- 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.

COMMENTS

According to the Author

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."

Arguments 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."

Arguments 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?

"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."

FISCAL COMMENTS

Unknown. This bill is keyed non-fiscal by the Legislative Counsel.

VOTES

ASM PUBLIC SAFETY: 6-2-0

YES: Jones-Sawyer, Bauer-Kahan, Quirk, Santiago, Wicks, Lee

NO: Lackey, Seyarto

UPDATED

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