

CONCURRENCE IN SENATE AMENDMENTS
AB 333 (Kamlager)
As Amended July 13, 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.

Senate Amendments

- 1) Add burglary back to the list of crimes that define a "pattern of criminal gang activity."
- 2) Specify that to "benefit, promote, further, or assist" means "to provide a common benefit to members of a gang where the common benefit is more than reputational. Examples of a common benefit that are more than reputational may include, but are not limited to, financial gain or motivation, retaliation, targeting a perceived or actual gang rival, or intimidation or silencing of a potential current or previous witness or informant."
- 3) Extend the sunset date to continue allowing judges the discretion to impose the lower, middle, or upper term of imprisonment authorized by the gang enhancement until January 1, 2023.

COMMENTS

As Passed by the Assembly, this bill:

- 1) Required that the offenses used to establish a "pattern of criminal gang activity" have commonly benefited a criminal street gang and that the common benefit from the offenses be more than reputational.
- 2) Removed burglary, looting, felony vandalism, and specified personal identity fraud violations from the crimes that define a "pattern of criminal gang activity."
- 3) Prohibited the use of the currently charged crime to prove the "pattern of criminal gang activity."
- 4) Required 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.
- 5) Redefined "criminal street gang" to require the prosecution to prove an ongoing, organized association or group of three or more persons instead of an ongoing organization, association, or group of three or more persons.
- 6) Specified that offenses used to establish a "pattern of criminal gang activity" be committed by members, as opposed to persons.

- 7) Required, 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.
- 8) Required 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.
- 9) Included findings and declarations.

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."

Arguments in Opposition

According to the *San Diego Deputy District Attorneys Association*: "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.

...

"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

According to the Senate Appropriations Committee:

- 1) *Courts*: Unknown, potentially-major workload cost pressures in the low millions of dollars annually to the courts to bifurcate gang-related and non-gang related charges in a prosecution. While the superior courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to increase the amount appropriated to backfill for trial court operations. For illustrative purposes, the Budget Act of 2021 allocates \$118.3 million from the General Fund for insufficient revenue for trial court operations. (General Fund*)
- 2) *State prisons*: Unknown, potentially-significant savings annually in reduced state incarceration costs for individuals whom the courts sentence to a shorter term of imprisonment and/or are not sentenced to prison as a result of the narrowing of what constitutes a "pattern of criminal gang activity" under this measure. Additionally, AB 333 may lead to an unquantifiable but potentially-significant increase or decrease in future state prison costs to the extent that the splitting of gang- and non-gang-related charges results in longer or shorter prison terms than what would be imposed under the existing determinate sentencing law (DSL) scheme. The fiscal year 2020-2021 per capita cost to detain a person in a state prison is \$112,691 annually, with an annual marginal rate per person of over \$13,000. If AB 333 leads to shorter terms of incarceration, aside from marginal cost savings per individual, the Department of Corrections and Rehabilitation (CDCR) would experience an institutional cost savings only if the number of persons incarcerated decreased to a level that would effectuate the closing of a prison yard or wing. (General Fund)

*Trial Court Trust Fund

VOTES:

ASM PUBLIC SAFETY: 6-2-0

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

NO: Lackey, Seyarto

ASSEMBLY FLOOR: 43-27-9

YES: Aguiar-Curry, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Bryan, Burke, Carrillo, Chiu, Cooley, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Jones-Sawyer, Kalra, Lee, Levine, Low, Maienschein, McCarty, Medina, Mullin, Nazarian, Quirk, Quirk-Silva, Reyes, Luz Rivas, Robert Rivas, Santiago, Stone, Ting, Ward, Akilah Weber, Wicks, Wood, Rendon

NO: Bigelow, Chen, Choi, Cooper, Cunningham, Megan Dahle, Davies, Flora, Fong, Frazier, Gallagher, Irwin, Kiley, Lackey, Mathis, Mayes, Muratsuchi, Nguyen, Patterson, Petrie-Norris, Ramos, Rodriguez, Salas, Seyarto, Smith, Valladares, Voepel

ABS, ABST OR NV: Arambula, Calderon, Cervantes, Chau, Daly, O'Donnell, Blanca Rubio, Villapudua, Waldron

SENATE FLOOR: 25-10-5

YES: Allen, Atkins, Becker, Bradford, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Hertzberg, Hueso, Kamlager, Laird, Leyva, Limón, McGuire, Min, Pan, Portantino, Roth, Rubio, Skinner, Wieckowski, Wiener

NO: Bates, Borgeas, Dahle, Grove, Hurtado, Jones, Melendez, Nielsen, Ochoa Bogh, Wilk

ABS, ABST OR NV: Archuleta, Caballero, Newman, Stern, Umberg

ASSEMBLY FLOOR: 38-27-13

YES: Aguiar-Curry, Bauer-Kahan, Bennett, Berman, Bloom, Burke, Carrillo, Chiu, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Holden, Jones-Sawyer, Kalra, Lee, Levine, Low, Maienschein, McCarty, Medina, Mullin, Nazarian, Quirk, Reyes, Luz Rivas, Robert Rivas, Santiago, Stone, Ting, Ward, Akilah Weber, Wicks, Wood, Rendon

NO: Bigelow, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Fong, Frazier, Gallagher, Irwin, Kiley, Lackey, Mathis, Muratsuchi, Nguyen, O'Donnell, Patterson, Petrie-Norris, Ramos, Rodriguez, Salas, Seyarto, Smith, Valladares, Voepel

ABS, ABST OR NV: Arambula, Boerner Horvath, Calderon, Cervantes, Chau, Chen, Flora, Grayson, Mayes, Quirk-Silva, Blanca Rubio, Villapudua, Waldron

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