

National Institute of Justice

Research in Brief

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Issues and Findings

Discussed in this Brief: An NIJ-sponsored nationwide survey of local prosecutors' approaches to gang prosecution, a review of the State legislation targeted at street gang activity, and case studies of prosecution efforts at four sites.

Key issues: The presence of gangs is becoming more widespread, and gang-related violence and gang drug trafficking are increasing. Most research on gangs has been about their formation and reasons for individual participation, while little research has looked at community and criminal justice responses. This study examined prosecutors' perceptions of gang-related crime, local definitions of gangs, criminal statutes used against street gangs, Street Terrorism Enforcement and Prevention Acts, and problems dealing with gang cases.

Key findings: The study found that more than 80 percent of prosecutors acknowledged gangs were a problem in their jurisdiction and said they were vigorously pursuing prosecution of gang crimes. Ultimately, however, prosecutors believed that early intervention with children and youths and more effective services designed to strengthen families were necessary to prevent gang violence and crime. Additional findings include:

- Definitions of "gang" and gang-related crime varied widely from State to State and were established either by State statutes or operationally by police departments, prosecutors, and administrators of
- continued on page 2*

Prosecuting Gangs: A National Assessment

by Claire Johnson, Barbara Webster, and Edward Connors

Street gangs have been part of America's urban landscape for most of the country's history and a subject of research since at least the 1920's. But most street gangs in the first third of the century were small groups involved in delinquent acts or relatively minor crimes, primarily fights with other gangs. As the year 2000 approaches, there are many more different types of street gangs. Individual members, gang cliques, or entire gang organizations traffic in drugs; commit shootings, assaults, robbery, extortion, and other felonies; and terrorize neighborhoods. The most ambitious gang members have spread out from their home jurisdictions to other cities and States. An increasing number are supported by the sale of crack cocaine, heroin, and other illegal drugs, and they have easy access to more firepower than the average patrol officer. Further, in many impoverished and transitional neighborhoods, children are born into or must contend with second- and third-generation street gangs.

Until recently, research on gangs centered on exploring reasons for gang formation and participation, with a related emphasis on public policy that deters vulnerable youths from joining gangs. But the destruction and fear generated by today's street gangs have elevated the importance of research on effective com-

munity and criminal justice responses to them. Communities overwhelmed by violent gangs must have relief from the terror before revitalization, initiatives to strengthen families, school improvements, and other desired interventions can succeed. Prosecutors throughout the country are striving to help give communities breathing room by building strong cases that remove violent gang members from the streets. It is only in the last few years, however, that federally sponsored research has begun to look at the gang problem from the prosecutors' perspective and to explore the strategies they use.

NIJ research on gangs and gang prosecution

The legal options available to prosecutors to combat gangs vary considerably, as do the strategies they employ and the policy choices they make. To learn more about gang prosecution at the local level, the National Institute of Justice (NIJ) sponsored a National Assessment on Gang Prosecution, which was conducted by the Institute for Law and Justice.¹ This project, like other NIJ-supported national assessments in the past few years, was designed to obtain baseline information in a subject area in which comparatively little research had been done. It was one of six NIJ projects on gangs initiated in FY 1992; they included studies on gangs and migration

Issues and Findings

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gang prevention and intervention programs.

- Gangs formed on the basis of race or ethnic origin were the most prevalent gang types in both large and small jurisdictions. Drug trafficking was the most frequently reported crime among all gang types except Asian and hate (e.g., "skinheads") gangs.
- Prosecutors favored vertical prosecution of gang members and believed that a small group of gang prosecutors using this approach may be the more effective strategy.
- Prosecutors in 36 States used existing criminal codes to proceed against street gangs, while in 14 States they worked under recently enacted new code provisions on street gangs.
- Prosecutors cited problems in prosecuting juveniles (a large percentage of gang members) because State juvenile codes were not designed for the serious violence that characterizes street gang crime, and gang statutes generally do not cover juveniles.
- Prosecutors identified many areas for new legislation; they included driveby shootings, greater accessibility of juvenile records, and brandishing a weapon.
- Victim and witness cooperation and protection was reported to be a particular major issue because in gang crime, today's victim may become tomorrow's perpetrator seeking revenge. Effective State and local programs require special efforts to build trust and address victims' needs for protection.

Target audience: Prosecutors, researchers, judges, State and local legislators, corrections officers, victim advocates, and policymakers.

patterns, drug sales, criminal behavior, law enforcement anti-gang measures, and gangs in correctional facilities.

The study on gang prosecution had three main components: a national survey of a representative sample of local prosecutors; an examination of State laws and proposed legislation specifically targeted at street gang activity; and detailed case studies of gang prosecution efforts at four sites. The study addressed the following key issues:

- Prosecutors' perceptions of gang-related crime.
- Local definitions of gang-related crime.
- Extent of gang-related crime.
- Organizational arrangements to deal with gang-related crime.
- Criminal statutes used against street gangs.
- Street Terrorism Enforcement and Prevention Acts.
- Prosecution strategies and tactics.
- Problems in dealing with gang cases.
- Recommendations for dealing with street gangs.

Study methodology. A survey instrument covering the topics above was mailed to 368 State prosecutors' offices. All 175 counties with populations greater than 250,000 were included in the sample group. The other 193 prosecutors' offices were randomly selected from counties with from 50,000 to 250,000 residents. Eighty percent (140) of the prosecutors in large jurisdictions responded, with 84 percent (118 respondents) reporting gang problems in their jurisdictions; and 83 percent (160) of the small jurisdictions responded, with 46

percent (74 respondents) reporting gang problems. The analysis is based on the 192 completed surveys in which prosecutors reported having gang problems.

In addition to the survey, four site visits were made to examine how local prosecutors confront street gangs in different cities and States. The purpose was to compare the details of these prosecutors' operations with the more general findings of the national survey and the legislative review. The sites included two jurisdictions in States with gang legislation and two in States without gang legislation, which are identified below:

- Multnomah County (Portland), Oregon (no specific gang legislation).
- Suffolk County (Boston), Massachusetts (no specific gang legislation).
- Oklahoma County (Oklahoma City), Oklahoma (State gang legislation).
- Riverside County, California (Street Terrorism Enforcement and Prevention Act).

Defining gang and gang-related crime. "Gang" is not a historic legal term; that is, in the absence of statutory definition, gang is not a term of fixed legal meaning. For that reason, every State that has enacted a gang statute has undertaken to define gang, and these statutory definitions are similar. They state how many persons (usually a minimum of three) must be involved, what type of general activity they engage in, and the kinds of crimes involved. The type of activity is sometimes described in a separate definition of "pattern of criminal gang activity." In addition, many police departments have operational definitions of gang and gang-related crime to guide investigators, intelligence and crime analysts, and law enforcement officers. Gang prevention and intervention programs have also developed working definitions of gang.

Finally, distinctions are often made according to the level of commitment to a gang, for example, "hardcore member," "affiliate," and "wannabe."

One survey question asked prosecutors how their offices defined gang-related crime and offered two response alternatives: (1) any crime committed by a gang member, or (2) only a crime committed by a gang member that is related to a gang activity. The first option addressed gang members as individuals, the second, gangs as organizations. The distinction could produce substantial differences in data reported.²

Survey findings

The survey results show that 44 percent of prosecutors in large jurisdictions classified any crime committed by a gang member as a gang-related crime, whether or not the outcome of the crime benefited the gang. However, another 44 percent of large jurisdiction prosecutors defined a gang crime as only a crime committed by a gang member for the benefit of the gang. In some large jurisdictions, only crimes committed by a targeted gang leader or crimes of violence were treated as gang-related, an even more narrowly focused approach.

Although prosecutors in large jurisdictions were almost evenly divided in their definitions of gang-related crime between these two alternatives, only 27 percent of small jurisdiction prosecutors classified as gang related any crime committed by a gang member. Most small jurisdictions (59 percent) used the narrower definition. Prosecutors regarded street gangs as distinct from more sophisticated organized crime groups, but they seemed less interested than police in definitional issues. With some important exceptions,

prosecutors charged gang members and affiliates under State drug, homicide, assault, and other criminal laws far more often than they did under conspiracy, Racketeering Influenced Criminal Organizations (RICO), or specialized street gang laws. Unless they operated their own computerized gang data bases or employed their own gang investigators, prosecutors relied on police to track the number of gangs, gang sets, and gang members in their communities.

Gang-related violence. Extreme violence has become an integral element of the gang subculture. Seventy-eight percent of prosecutors in both large and small jurisdictions reported increases in gang-related violence from 1990 to 1993. According to prosecutors in large jurisdictions, more than 70 percent of all types of gangs found in their communities were involved in violent crimes. In 1991 the average number of gang-related homicides prosecuted was 8.9 in large jurisdictions and 1.75 in small jurisdictions; and the largest number of gang homicides prosecuted by a single office was 99 in Los Angeles County, California.

To gauge the effect of violent gang crime on caseloads, the survey asked for the number of gang-related homicides, driveby shootings, and violent crimes prosecuted per month in 1991.

Prosecutors in large jurisdictions handled an average of 15.1 gang-related violent crimes per month, compared to 3.3 in small jurisdictions. Further, in large jurisdictions, more than one-fifth of prosecutors handled an average of over 30 gang-related violent crimes per month (see exhibit 1).

Types of gangs and gang activity. The survey asked prosecutors to indicate the types of gangs operating within their jurisdictions; whether or not members of those gangs were involved in drugs and/or in committing violent crimes; and the types of drugs involved for gangs identified as drug traffickers.

With regard to types of gangs, the researchers sought to provide respondents with understandable choices on the survey questionnaire. Since historically most street gangs were formed—and continue to attract members—along racial or ethnic lines, the questionnaire gave respondents the following choices (Note: the questionnaire did not ask for distinctions in the cultural heritage of Hispanic or Asian gang members):

- Locally based, African-American gangs.
- Gangs based in the Los Angeles area (e.g., Crips, Bloods).

Exhibit 1: Gang-Related Violent Crimes Prosecuted in 1991 (n=146)

Number of Gang-Related Violent Crime Cases Prosecuted Per Month	Large jurisdictions n=87	Small Jurisdictions n=59
0	6.9%	23.7%
1	17.2%	32.2%
2-5	26.3%	35.7%
6-10	13.7%	8.5%
11-20	9.2%	0.0%
21-30	4.5%	0.0%
More than 30	21.3%	0.0%

- Gangs with origins in the Caribbean (e.g., Jamaican, Dominican Republic).
- Hispanic gangs.
- Asian gangs.
- Motorcycle gangs.

- Hate gangs (e.g., KKK, Aryan Nation).
- Other.

Among respondents who indicated they had gang problems, 83 percent in large jurisdictions and 60 percent in small jurisdictions reported the pres-

ence of local African-American gangs (i.e., gangs that originated in that jurisdiction as distinguished from Crips or Bloods from California) (see exhibit 2). The second most prevalent gang types in large jurisdictions were Hispanic gangs (reported by 64 percent of prosecutors), followed closely by motorcycle gangs

Exhibit 2: Types of Gangs and Their Crimes

Types of Gangs	Gangs in Large Jurisdictions (n=118)				Gangs in Small Jurisdictions (n=74)			
	Operate Here	Commit Violent Crimes	Engage in Drug Trafficking	Use These Types of Drugs	Operate Here	Commit Violent Crimes	Engage in Drug Trafficking	Use These Types of Drugs
Locally based, African-American gangs	83.1%	93.9%	93.9%	98.9% Cocaine 27.2% Heroin 54.3% Marijuana 9.8% Other	60.3%	84.1%	84.1%	97.3% Cocaine 21.6% Heroin 64.9% Marijuana 16.2% Other
Motorcycle gangs	61.9%	71.2%	90.4%	59.1% Cocaine 25.8% Heroin 57.6% Marijuana 72.7% Other	49.3%	61.6%	86.1%	74.2% Cocaine 19.4% Heroin 74.2% Marijuana 51.6% Other
Hispanic gangs	63.6%	97.3%	88.0%	89.4% Cocaine 48.5% Heroin 66.7% Marijuana 24.2% Other	42.5%	83.9%	80.6%	84.0% Cocaine 28.0% Heroin 92.0% Marijuana 20.0% Other
Hate gangs (e.g., KKK, Aryan Nation)	52.5%	74.2%	9.7%	33.3% Cocaine 16.7% Heroin 66.7% Marijuana 33.3% Other	23.3%	58.8%	29.4%	80.0% Cocaine 0.0% Heroin 60.0% Marijuana 20.0% Other
Asian gangs	51.7%	91.8%	45.9%	82.1% Cocaine 64.3% Heroin 32.1% Marijuana 14.3% Other	13.7%	90.0%	40.0%	75.0% Cocaine 50.0% Heroin 0.0% Marijuana 25.0% Other
Gangs based in the Los Angeles area (e.g., Crips, Bloods)	50.0%	89.8%	91.5%	98.1% Cocaine 22.2% Heroin 51.8% Marijuana 13.0% Other	41.1%	76.7%	96.7%	100.0% Cocaine 13.8% Heroin 55.2% Marijuana 20.7% Other
Gangs with origins in the Caribbean (e.g., Jamaican, Dominican Republic)	43.2%	78.4%	100.0%	96.1% Cocaine 3.9% Heroin 7.8% Marijuana 5.9% Other	16.4%	66.7%	100.0%	100.0% Cocaine 25.0% Heroin 66.7% Marijuana 33.3% Other
Other (specify)	28.8%	76.5%	41.0%	78.6% Cocaine 7.1% Heroin 50.0% Marijuana 14.3% Other	34.2%	72.0%	36.0%	88.9% Cocaine 22.2% Heroin 66.7% Marijuana 22.2% Other

(62 percent). Similarly, 49 percent of small jurisdiction prosecutors indicated that motorcycle gangs were present, followed by approximately 43 percent reporting Hispanic gangs. Approximately 88 percent of large and 81 percent of small jurisdiction prosecutors reported that the Hispanic gangs in their communities trafficked in drugs. Similarly, 90 percent of motorcycle gangs in large and 86 percent in small jurisdictions were reported to be involved in sales of drugs, including methamphetamines, cocaine, marijuana, and heroin.

The notoriety of the Crips and Bloods, two dominant gangs of the Los Angeles area, has led to a spread of their "colors" (manner of dress) and violent lifestyles to other cities. In large jurisdictions, 50 percent of prosecutors reported the presence of Crips and Bloods, with 90 percent involved in violent crime and 92 percent involved in drug trafficking. Somewhat fewer small jurisdictions reported Crips and Bloods (41 percent), but when present, they were reported to have similarly high rates of involvement in violent crime (77 percent) and drug trafficking (97 percent). However, the survey data did not reveal whether local Crips and Bloods had any continuing connection with Los Angeles Crips and Bloods. The site studies indicated that the names and colors often persisted long after the cessation of any real Los Angeles connection.

Asian and hate gangs were more frequently reported to be involved in violent crime than in drug trafficking. The presence of Asian gangs was reported by prosecutors in 52 percent of large but only in 14 percent of small jurisdictions. More than 90 percent of Asian gangs were associated with violent crimes, but only 46 percent (40

percent in small jurisdictions) were said to be involved in drug trafficking. Hate gangs, including skinheads and other groups, had the lowest reported involvement in drug trafficking in all jurisdictions, but they were characterized as violent by 74 percent of large jurisdiction prosecutors and 59 percent of respondents in small jurisdictions.

Caribbean-based gangs were reported in 43 percent of large and 16 percent of small jurisdictions, and they were virtually always reported to be involved in drug trafficking. This pattern was similar in small jurisdictions. These gangs dealt mainly in cocaine (more than 95 percent).

Prosecution strategies and tactics

Specialized gang units. Specialized gang units are common in police departments of cities with established, as well as emerging, gang problems,³ but are less common in prosecutors' offices. Where they are established, prosecutors' gang units generally use a vertical prosecution process, whereby one attorney (or a small group of attorneys knowledgeable about gangs) is designated to handle a case from its inception. This method is distinguished from other arrangements in which several different attorneys handle each case, depending on the stage of processing. Many of the prosecutors responding to the survey favored vertical prosecution by a specialized gang unit, particularly when coordinated with gang units of local law enforcement agencies.

The survey results indicate that 30 percent of prosecutors in large jurisdictions (5 percent in small) have formed gang units using vertical pros-

ecution to focus on gang members. In large counties, these units were usually staffed by two to four full-time attorneys. Los Angeles County had the largest gang unit with 48 full-time attorneys. Almost 40 percent of large and 62 percent of small counties assigned gang cases to attorneys on the basis of caseload.

In California, several jurisdictions surveyed combined vertical with proactive prosecution. The San Diego County, California, district attorney's office reported operations of a gang prosecution unit that has served as a national model for this approach.⁴ One San Diego assistant district attorney explained that "[w]hereas reactive prosecution tends to be more a response to a past chain of events (i.e., a crime occurring and police investigation being completed), 'proactive' implies an attempt to stop the crime from occurring or at least to participate in the initial investigation."⁵

In Riverside County, California, one of the case study sites, the district attorney's office has also taken a proactive approach. It operates an on-call program with 10 prosecutors, including gang prosecutors who handle murder cases. On these most serious crimes, the district attorney's office does not wait for cases to make their way through the system. Instead, gang prosecutors go out on the street with police to interview victims and witnesses and talk to gang members.

Victim/witness cooperation and protection. Prosecutors must often take extraordinary measures to protect witnesses in gang cases before, during, and after trial. They consistently stressed the importance of being able to offer protection immediately to ensure cooperation. In the survey,

prosecutors in large and small jurisdictions (89 and 74 percent respectively) agreed that one of their most significant problems was obtaining the cooperation of victims and witnesses. Reluctance of victims and witnesses to cooperate was seen to be based on at least three factors:

- Fear, both because of direct threats of retaliation and because of gang dominance of a neighborhood.
- A neighborhood culture that discouraged being a "snitch."
- Involvement of the victim or witness in gang activity. (Gang cases are often characterized by the rotating status of victim, witness, and defendant.)

Other problems cited include intimidation of victims and witnesses (a moderate or major problem for 81 percent of large and 68 percent of small jurisdictions), and victim and witness credibility (a moderate or major problem for 77 percent of large and 69 percent of small jurisdictions). A lack of resources for victim/witness protection was also considered a moderate or major problem by 74 percent of large and 66 percent of small jurisdiction prosecutors (see exhibits 3 and 4).

Because of these concerns, the need for special victim and witness protection efforts and programs is particularly important. Many prosecutors' offices reported encouraging the police to videotape all statements by witnesses to gang-related crimes in the event that these witnesses recant at trial, suffer a "loss of memory," or are killed. Others were paying increased attention to cases involving nonpolice witnesses to reverse a traditional neglect of these cases. Part of the battle here involves overcoming witnesses' distrust of the criminal justice system and their perceptions of the system as indifferent, inefficient, or a "revolving door."

Prosecutors' offices in which victim advocates work in tandem with investigators also reported considerable success with gang-related cases. The Suffolk County, Massachusetts, prosecutor's gang task force has a victim advocate and an investigator who both spend their time dealing directly with victims and witnesses in gang cases. The victim advocate regards this job as a significantly different kind of advocacy. The clients are primarily young adults ages 17 through 23. Handling these cases requires extensive personal contact; notices and

telephone calls are not enough. The victim advocate prepares witnesses for trial, reviews grand jury testimony with them, and reviews the district attorney's questions. Since many witnesses in gang cases do not have telephones, the advocate often goes to their homes to remind them of court dates and, if necessary, wakes them up and transports them to court. Because of close and consistent contact with victims and witnesses, the victim advocate also effectively serves as a fact finder for the gang prosecutors.

The Multnomah County victim-witness advocate also emphasizes that personal contact is very important to success in this work. An aggressive victim-advocate program, one that contacts the victim and witnesses immediately and develops and maintains their cooperation, can be one of the most significant factors in successful prosecutions. The Multnomah County advocate tries to build trust with the clients and keep them informed of the progress of the case. The advocate makes a point to be available by voice mail 24 hours a day. The gang unit lawyers also willingly go out on the street and visit witnesses with the advocate.

Exhibit 3: Prosecution Problems in Large Jurisdictions (n=118)

Problem	Not a Problem	Minor Problem	Moderate Problem	Major Problem
Obtaining cooperation of victims and witnesses	2.6 %	8.8 %	27.2 %	61.4 %
Intimidation of victims and witnesses	1.8 %	17.0 %	30.4 %	50.8 %
Lack of appropriate sanctions for juvenile gang members who commit crimes	9.7 %	22.2 %	21.2 %	46.9 %
Lack of early intervention for youth at risk of gang involvement	9.7 %	11.5 %	32.8 %	46.0 %
Lack of resources for witness protection	6.1 %	20.2 %	31.6 %	42.1 %
Victim and witness credibility	6.2 %	16.8 %	46.9 %	30.1 %
Inadequate police preparation of crime reports	33.3 %	41.2 %	20.2 %	5.3 %

Adequacy of criminal law

Street gangs are a social and political concern because of the crimes that their members commit. Gang members may have different motivations for their crimes than other criminals, but the crimes are proscribed by existing criminal law. Largely because of this, only a few legislatures have defined new substantive criminal offenses in response to rising gang activity.

In addition to defining basic criminal offenses—crimes against persons, property, and public order—State criminal codes set forth standards for criminal responsibility and define inchoate crimes. Those who aid and abet the commission of crimes, even though they do not directly participate in the criminal acts themselves, can also be held criminally responsible. Inchoate crimes such as attempt and conspiracy are punishable even though the crime itself is not completed. Conspiracy law also enables prosecutors to reach criminal conspirators who are not at the scene of the crime itself. All these factors mean that traditional criminal law can reach most gang crime.

Existing laws in most jurisdictions also may allow more options for prosecut-

ing than statutes specifically aimed at gang members and crimes. In Los Angeles, for instance: ". . . if it is established that a person is a gang member (e.g., through affiliation, clothing, witness testimony), the policy is to seek the maximum penalty. Pursuit of the maximum penalty is guided by the beliefs that gang members commit a greater variety of crimes than non-gang members; gang members commit crimes over a longer period of time than non-gang members; gang members are more violent than non-gang members. . . . In some States, conviction for a gang-related crime limits the range of possible sentences" ⁶

One example of this type of option is an Oklahoma State gang statute. Oklahoma County prosecutors reported that, in practice, the statute has not been very useful. By its terms, the statute is limited to contributing to the delinquency of a minor. Its sanctions are relatively light, and it requires proving a series of elements in addition to proving an underlying predicate crime. Oklahoma County has thus proceeded against gang members under the ordinary provisions of the Oklahoma criminal code and has had great success.

RICO. In its more than 20 years of existence, the Federal RICO statute has emerged as one of law enforcement's most effective tools for combating organized criminal activity. As one researcher has observed, "Because of the unique properties of its net-using predicate crimes, including many State crimes, when proved as part of an ongoing enterprise—RICO has been often used as the prosecutorial weapon which can snag heretofore insulated high-ranking criminal group members, and deliver heavy sentences beyond the scope of the penalties of the individual crimes themselves."⁷

However, with some exceptions, criminal street gangs are much less sophisticated and hierarchical than traditional organized crime groups. Although 31 States have a RICO statute,⁸ only 17 percent of large county prosecutors and less than 10 percent in small counties have ever used it against gang members. Thirty-six percent of prosecutors in both large and small counties reported that they did use State drug kingpin statutes against gang members. State conspiracy laws were used by 37 percent of large jurisdictions and 26 percent of small jurisdictions. Prosecutors also

Exhibit 4: Prosecution Problems in Small Jurisdictions (n=74)

Problem	Not a Problem	Minor Problem	Moderate Problem	Major Problem
Obtaining cooperation of victims and witnesses	10.1 %	15.9 %	30.4 %	43.5 %
Intimidation of victims and witnesses	13.2 %	19.2 %	25.0 %	42.6 %
Lack of appropriate sanctions for juvenile gang members who commit crimes	2.9 %	27.5 %	37.7 %	31.9 %
Lack of early intervention for youth at risk of gang involvement	15.7 %	18.6 %	34.3 %	31.4 %
Lack of resources for witness protection	7.1 %	27.1 %	37.2 %	28.6 %
Victim and witness credibility	1.4 %	30.0 %	41.4 %	27.2 %
Inadequate police preparation of crime reports	34.8 %	39.2 %	13.0 %	13.0 %

used habitual criminal acts, and criminal responsibility, narcotics, malicious harassment, and driveby shooting statutes.

STEP Acts. Street Terrorism Enforcement and Prevention (STEP) Acts, based on the RICO model, use a series of predicate crimes as the basis for sentence enhancements and provide for civil forfeiture of a street gang's assets and the proceeds of its criminal activities. Some States have added driveby shooting statutes. STEP Acts can be valuable because they turn specific intent crimes like attempted murder or aggravated assault into general intent crimes. These statutes are of particular interest for two reasons. First, they undertake to deal with street gangs in a comprehensive fashion at one place in the State code. Second, they attempt to address the constitutional issues likely to be raised in the prosecution of street gang cases.

Five States (California, Florida, Georgia, Louisiana, and Illinois) have enacted STEP Acts. California's STEP Act is the prototype because it links three definitions: "criminal street gang," "pattern of criminal gang activity," and "participation in a criminal street gang." A pattern of criminal gang activity in California means commission of one or more of seven predicate offenses on two or more separate occasions. A "criminal street gang" is an ongoing group that has as one of its primary activities the commission of one or more of these predicate crimes, plus "a common name or common identifying sign or symbol whose members individually or collectively engage in a pattern of criminal gang activity." "Participation in a criminal street gang" is a separate offense, carefully defined to guard against un-

constitutional infringement of the rights of free association and free speech.⁹

Riverside County, California, "steps" both street gangs and gang members by bringing them within the parameters of the STEP Act. It guides the compilation of intelligence pertaining to a particular gang, laying the foundation for identification of the gang and its members. The street gang unit of the City of Riverside police department compiles three related notebooks on a targeted gang. The first notebook contains copies of all incident, arrest, investigative, supplemental, and field interrogation reports pertaining to the gang. The second notebook contains the personal records of gang members and affiliates, including pictures, prints, rap sheets, and copies of any reports in which their names appear. The third consists of pictures of gang members, individually and together, showing their colors, tattoos, signs, and other indicia of street gang affiliation. The notebook also includes pictures of gang graffiti, with places and dates carefully recorded.

Riverside police officers also serve certain gang members with written notices, developed by the prosecutor, which state that a specific gang is considered a criminal street gang under the STEP Act and that participation in the gang can subject an individual to a sentence of 1 to 3 years. The carefully preserved record of notification destroys any claim that a defendant did not know of the street gang's criminal activity, knowledge being one of the bases for STEP Act prosecution. In addition, prosecutors reported that the notice itself has had an inhibiting effect on many gang members.

Gang legislation. There are two different approaches to gang legislation. One is to adopt a gang statute like California's STEP Act. The other is to amend existing criminal codes to add gang offenses. These approaches are not radically different. Instead of defining several new criminal offenses involving gangs, street terrorism acts specifically incorporate several parts of existing criminal codes by reference. Then they enhance penalties or create civil remedies, or both, for gang-related criminal activity.

Only 14 States have enacted new code provisions on street gangs. For the most part, these statutes have enhanced sanctions for crimes committed while participating in street gang activity, but they have not created many new substantive criminal offenses. Prosecutors in the other 36 States said they proceed against street gangs under existing provisions of their criminal codes. However, some States have legislated specifically on two typical gang offenses, random shootings and defacing property with graffiti, which have not always been adequately addressed by State criminal codes.

Special statutes. The survey of prosecutors asked what other criminal statutes prosecutors were using to combat gangs and received a variety of answers. They included habitual criminal acts, criminal responsibility provisions (i.e., aiding and abetting, or accomplice provisions), narcotics laws, malicious harassment, driveby shooting statutes, and others. When asked what they would like to see addressed by any new legislation, prosecutors mentioned a wide range of possibilities, including the following:

- Driveby shootings.
- Witness protection programs.
- Recruitment of gang members.
- Rural gang prevention laws.
- Lowering age on juvenile offenses.
- Vehicle forfeiture.
- Brandishing a weapon.
- Continuing criminal enterprise.
- Loitering.
- Greater accessibility of juvenile records.
- Automatic adult/juvenile certification for gang-related crimes.
- Pointing weapon from vehicle.

Adjudication. Once cases reach the courts, prosecutors are often frustrated with several factors that hamper the prosecution of gang members. Though it appears that sentencing enhancements might lessen the recycling of gang members through the criminal justice system, the State's resources must be considered in pursuing such enhancements. Gang members, especially juveniles, sometimes pass through the system without serving any sentence. Problems that have always existed within the juvenile justice system make gang prosecution especially difficult because so many gang members today are juveniles. Prosecutors expressed frustration with the effectiveness of the juvenile justice system in handling juveniles involved in gang crimes. Where criminal justice officials contend with a shortage of detention facilities, juveniles—even those with prior convictions—may receive only intensive probation for a felony charge. In such a situation, sentencing

enhancements and stricter penalties will have little effect on the gang problem.

State juvenile codes were not designed for the serious violence that characterizes contemporary street gang crime, and the gang statutes almost completely overlook juveniles. Often, the prosecutorial response to this difficulty is to seek transfer of serious juvenile offenders into adult court and correctional systems. But such transfers may be very difficult to obtain because of strong traditions favoring adjudication and treatment of juveniles within the juvenile court and corrections systems.

In Suffolk County, Massachusetts, the courts are very resistant to the transfer of juveniles. In one 5-month period in 1993, the juvenile prosecutor asked for nine transfers but obtained only one. The Commonwealth can and sometimes has appealed the juvenile court's retention of jurisdiction. Oklahoma County, however, reacts differently to juveniles who commit serious and violent crimes. Oklahoma juvenile law does not give juveniles the same wall of protection found in many other States. Juveniles aged 16 and 17 accused of violent crimes enumerated in the statute are tried as adults rather than juveniles. The burden is on the juveniles to demonstrate why they should not be certified for trial as an adult. This procedure is referred to as "reverse cert."¹⁰

In Multnomah County, Oregon, a change of policy with regard to juvenile prosecution has significantly altered the ratio of violent juvenile cases certified from the juvenile to the adult court system. By pursuing certification on all gun cases and all violent gang-related crimes, the office has persuaded the juvenile court of the seriousness of these offenses and the necessity of transfer.

Conclusions

The results of the national assessment on gang prosecution belie the common belief that cities have refused to recognize the presence of gangs. More than 80 percent of prosecutors responding from large cities acknowledged gangs in their jurisdictions. Prosecutors agreed that the presence of gangs has become more widespread, that the amount of gang-related violence has been increasing, and that violence and drugs have become paramount problems with regard to gang crime. Many observed that drug traffickers who were not affiliated with gangs were more like independent entrepreneurs, loosely aligned with one another through interdependent distribution of drugs. In contrast, street gangs were more organized as units to conduct business in drugs. Further, urban gangs were often seen as more dangerous, having access to more powerful weapons, and more prone to violence.

Prosecutors favored vertical prosecution of gang members. However, in many cases, this may mean vertical prosecution by a small group of gang specialists, rather than by a single prosecutor. The true advantage of a specialized gang unit is not necessarily in vertical prosecution of every case, but in having a small number of lawyers filter related cases. As prosecutors come to know gangs and gang members in their jurisdictions, they can see connections (such as retribution, territorial feuds) between what at first glance seem to be random or unrelated criminal incidents.

In the adjudication of cases, prosecutors reported they consider victim and witness cooperation and protection a major issue. In intergang violence, perpetrator, victim, and witness play

interchangeable and revolving roles. The likelihood of intimidation for pressing charges or agreeing to testify is always a factor in gang cases and should be among the first problems addressed by law enforcement and prosecutors. Today's victims or witnesses become tomorrow's perpetrators as they seek revenge against either an individual or a gang, or seek to regain lost face or lost territory. Furthermore, the high visibility of gang violence creates an intimidating atmosphere that keeps non-gang witnesses from coming forward.

Moreover, few State and local witness and victim protection programs are geared specifically toward victims and witnesses of gang crime. Strong victim and witness advocacy programs have been extremely valuable in attacking these problems. Ordinary victim-witness programs have not sufficed for gang cases. Gang members do not want or seek the help of police and prosecutors. They try to take care of their problems themselves, and people who live in gang-dominated neighborhoods fear the gangs. Personal contacts, special efforts to build trust, and attention to witnesses' need for protection are essential. Advocates must also help find witnesses, persuade them to testify, and support them in other ways. If special programs are not in place, jurisdictions must exercise other possible options, such as requests to the U.S. Attorney's Office to put witnesses in the Federal protection program, requests to obtain court protective orders prohibiting release of witnesses' names until just prior to testimony, and requests to deny bail to gang defendants.

In each of four sites visited in this study, gang prosecution units quickly shifted emphasis from drugs to violent crime to all crime committed by gang members. Traditional drug enforcement

techniques remained effective against traditional drug trafficking, but were not necessarily effective against other types of gang crime.

Prosecutors did not express optimism about gangs in the future. In their work, they have learned a great deal about gangs, gang members, and the circumstances that have produced them. The gang members who come to their attention are often far beyond the reach of social interventions designed to deter youths from involvement in gang or drug lifestyles. Although they stated that prosecuting gangs would not completely solve the gang problem, they intend to pursue prosecutions as vigorously as possible. But as indicated by their comments on the survey questionnaire and in interviews, gang prosecutors consistently advocated early intervention with children and youths and more effective services to strengthen families as the best way to prevent gang crime and violence.

Notes

1. The American Prosecutors Research Institute of the National District Attorneys Association assisted the project by reviewing the draft survey instrument, encouraging prosecutors to respond to the survey, and reviewing the final report on the project.

2. Maxon, C, and M. Klein, "Street Gang Violence: Twice as Great or Half as Great?" in C. Ron Huff, ed., *Gangs in America*, Newbury Park, CA: Sage Publications, 1990.

3. Institute for Law and Justice, results of a survey of 175 law enforcement agencies conducted for the Urban Street Gang Drug Trafficking Enforcement Program, unpublished, Bureau of Justice Assistance, 1992.

4. Ibid.

5. Williams, W.A., "The Case for Proactive Prosecution," *Criminal Justice Journal*, 13 (1992):391.

6. Conly, C.H., et al, *Street Gangs: Current Knowledge and Strategies*, Issues and Practices, Washington, D.C.: U.S. Department of Justice, National Institute of Justice, August 1993, p. 54.

7. Dombrink, J., "Draft Study of the Prosecution and Investigation of Asian Organized Crime," presented at the National Field Study on Gang Violence Conference, Office of Justice Programs, Los Angeles, CA, March 13-14, 1991.

8. Bonney, L.S., "The Prosecution of Sophisticated Urban Street Gangs: A Proper Application of RICO," *Catholic University Law Review*, 42:579-613.

9. *Schenck v. United States*. 249 U.S.47 (1919).

10. O.S.C. §1104.

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