

## The STEP Act and Criminal Street Gangs

**By: Killain Jones** on June 16, 2011

LOS ANGELES - Imagine that you have a close group of friends that you spend most, if not all, of your time with. Everyone in your community identifies you and your friends as one cohesive unit. As time progresses, the experiences that you share with your group of friends inspire you to develop a nickname. Let's say this nickname is the "Good ole Boys." As time progresses, that name is too long winded and your group decides to abbreviate your collective name to GOB. Before long, everyone around the community identifies you and your friends as GOB.

Let's further imagine that some of those friends experience hard times and decide the selling of drugs to help pay the bills isn't such a bad thing. Since GOB is like a family unit, the new found prosperity of one friend (let's call them members from now on) inspires that friend to invite the others in on the new way to make a few extra dollars. Like any business, competition is not usually welcomed and you find that GOB is having to stick up and protect their fellow member. In the process things get out of hand and people get hurt. What would you classify this group of friends as: buddies? Best friends? Well, under the California Street Terrorism Enforcement and Prevention Act (the STEP Act; Pen. Code, § 186.20 et seq) this could be considered a criminal street gang (§ 186.22, subd. (a)).

Let us look at what prompted the California Legislature to enact the STEP Act. In 1988, the government and law enforcement was under tremendous pressure to control the proliferation of street gangs in California. In 1986, California had nearly 600 known criminal street gangs. Los Angeles county alone there were 328 gang-related murders. In the the words of the STEP Act, "[i]t is the intent of the Legislature ... to seek the eradication of criminal activity and upon the organized nature of street gangs ... which is the chief source of terror created by street gangs."

The interesting part of the quoted language is the choice of words: eradication, organized and terror. These buzz words invoke fear and concern in the public which in turn can cause the erosion of Constitutional rights. Furthermore, the way the prosecution can prove that a criminal street gang exists is what is most disturbing.

There are three elements that the prosecution must prove (1) the group must be an ongoing association of three or more persons sharing a common name or common identifying sign or symbol; (2) one of the group's primary activities must be the commission of one of the specified predicate offenses; and (3) the group's members must "engage in or have engaged in a pattern of criminal gang activity." The specified predicate offenses is a laundry list of criminal activity that the Legislature considers to be heinous and related to criminal gang activity. The manufacture, sale and distribution of drugs is an example of a predicate offense. The "pattern of criminal gang activity" can include the current charge and an offense the defendant committed on a separate occasion.

The prosecution can also introduce the actions of other members of the “gang” to prove the pattern of “criminal gang activity.” If the prosecution is successful they can add (enhance the punishment) with six (6) months to ten (10) years on top of sentence for the currently charged offense. The Judge decides how much time to add on top (with statutory guidance). In a recent California Supreme Court opinion, the justices held that other gang members’ offense could be considered with defendant’s own offense to show pattern of gang activity. This was not considered to be prejudicial. *People v. Tran*, (2011) DJDAR 8650.

The law is a maze of rules with even more exceptions. Many times the results of the application of these rules can be anomalous and in other cases they reach the desired result. In the case of *Tran*, the result of the Legislature was achieved. But what about in the case of the imagined facts of GOB. Would that result be anomalous or expected?