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Chapter 38: Gang Related Nuisance Proves Costly for Gang Members

Julia Y. Capozzi

Code Section Affected

Penal Code § 186.22a (amended).

SB 1126 (Cedillo); 2008 STAT. Ch. 38 (*Effective June 25, 2008*).

I. INTRODUCTION

Criminal street gangs have dramatically increased in number and membership throughout California.¹ Their notoriety and lack of discretion leaves communities struggling to find solutions.² In Los Angeles County alone, there are approximately 1,200 different street gangs consisting of over 70,000 members.³ Comparable numbers also exist in Northern California.⁴ Beyond the numbers, gangs inflict economic injury by causing insurance rates to go up and property value to go down.⁵ This, coupled with the rising rates of serious felonies, has left state and local governments scratching their heads for ways to curb gang activity and prevent growing membership.⁶

The California Legislature enacted Chapter 38 to provide an additional tool to combat gang activity throughout the state.⁷ In his signing statement, Governor Arnold Schwarzenegger stated that Chapter 38 “strengthens . . . statewide anti-gang efforts by giving prosecutors more tools to fight gang activity at the local level.”⁸

1. See *Governor Signs Anti-Gang Legislation: Law Aims to Hold Gangsters Personally Liable*, MY58.COM, June 25, 2008, <http://www.my58.com/print/16707506/detail.html> [hereinafter *Governor Signs Anti-Gang Legislation*] (on file with the *McGeorge Law Review*) (noting that Chapter 38 was enacted in response to a “dramatic increase in gangs across the state and their proliferation in suburban and rural areas”).

2. California Senate, Senator Gilbert A. Cedillo, SB 1126 Street Gang Assets (Cedillo) [hereinafter SB 1126 Street Gang Assets] (on file with the *McGeorge Law Review*).

3. *Id.*

4. See *Atty. Gen. Brown Announces Norteno Gang Crackdown in Stockton*, CAL. CHRON., May 30, 2008, <http://www.californiachronicle.com/articles/printFriendly/63499> [hereinafter *Norteno Gang Crackdown*] (on file with the *McGeorge Law Review*) (noting that the Norteno street gang in Stockton has 1,180 members and associates in Stockton alone).

5. See SB 1126 Street Gang Assets, *supra* note 2 (“Their illegal operations allow the gang to thrive while neighborhoods suffer. Their actions cause housing prices in the area to decline, businesses to close and insurance rates to go up, while the gang and gang leader’s [sic] profit.”).

6. See Maria L. La Ganga et al., *Violent Crime Climbs in Bay Area*, L.A. TIMES, Nov. 11, 2007, at B1 (noting that increasing gang violence in Oakland, California has “renewed calls for more police,” but Mayor Ron Dellums “has favored social explanations and fixes for crime problems”).

7. See *Governor Signs Anti-Gang Legislation*, *supra* note 1 (“[Chapter 38] will make it easier to hold gang members personally liable for harm to the community caused by their gangs.”).

8. *Id.*

II. BACKGROUND

A. *Criminal Street Gangs*

A criminal street gang is an “ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of . . . criminal acts.”⁹ Additionally, there must be a “common name or common identifying sign or symbol” that identifies the “organization.”¹⁰ Finally, it must be shown that the “organization” membership either collectively or individually “engage[s] in or [has] engaged in a pattern of criminal gang activity.”¹¹

Providing an exhaustive list of California street gangs is an increasingly tiresome endeavor, as thousands exist throughout the state.¹² Generally, criminal street gang membership centers on race or nationality.¹³ Thus, Hispanics typically join a predominantly or exclusively Hispanic gang such as the 18th Street Gang,¹⁴ the Mexican Mafia, or the Latin Kings;¹⁵ African Americans join predominantly African American gangs such as the Crips or Bloods; and Caucasians often join gangs such as the Aryan Brotherhood, Hell’s Angels, or the Nazi Lowriders.¹⁶

California communities are terrorized with gang related activities that provide great profits to the gang and its members at great cost to the community.¹⁷ Between 1996 and 2005, twenty-seven percent of homicides in California were gang related.¹⁸ In 2006, thirty-eight percent of Oakland’s

9. CAL. PENAL CODE § 186.22(f) (West 1999).

10. *Id.*

11. *Id.*

12. See SB 1126 Street Gang Assets, *supra* note 2 (noting the high numbers of gangs and gang members in California).

13. See Street Gangs, <http://www.streetgangs.com> (last visited Oct. 11, 2008) (on file with the *McGeorge Law Review*) (breaking down street gangs by race).

14. See Alex Alonso, *18th Street Gang in Los Angeles County*, STREETGANGS.COM, June 25, 2008, <http://www.streetgangs.com/18thstreet.html> (on file with the *McGeorge Law Review*) (noting that the 18th Street Gang is a Hispanic gang).

15. See Mexican Mafia, Surenos, http://www.knowgangs.com/gang_resources/profiles/surenos/ (last visited Jan. 30, 2009) (on file with the *McGeorge Law Review*) (“A small group of Mexican-American inmates organized themselves into what would become to be known as the Mexican Mafia.”); The Almighty Latino Kings Nation, http://www.knowgangs.com/gang_resources/profiles/kings/index.php (last visited Jan. 30, 2009) (on file with the *McGeorge Law Review*) (“Although the original members were of Puerto Rican decent, most members [of the Latino Kings] are now Mexican-American.”).

16. See Aryan Brotherhood, http://www.knowgangs.com/gang_resources/profiles/ab/ (last visited Jan. 30, 2009) (on file with the *McGeorge Law Review*) (“[The Aryan Brotherhood] was established to provide protection for White individuals from Black and Hispanic groups, most specifically the Mexican Mafia.”).

17. See *City Attorney Rocky Delgadillo Lauds Passage of Anti-Gang Bills by California State Senate*, CAL. CHRON., May 6, 2008, <http://www.californiachronicle.com/articles/60816> (on file with the *McGeorge Law Review*) (“Criminal street gangs are finding new and insidious ways to terrorize our communities, and to profit from their criminal activities” and they “maintain tight economic control over the neighborhoods they occupy.” (quoting Rocky Delgadillo, L.A. City Attorney)).

18. *Norteno Gang Crackdown*, *supra* note 4.

homicides were gang related,¹⁹ and in 2007, 216 deaths resulted from gang violence in Los Angeles.²⁰ However, gang violence is not limited to homicides; gangs engage in other criminal activity that is detrimental to communities such as drug trafficking, residential robbery, assault, carjacking, and prostitution.²¹

In response to the prevalent gang activity in Los Angeles, City Attorney Rockard J. Delgadillo in conjunction with the Los Angeles County District Attorney's Office filed a civil lawsuit against the San Fer Gang.²² The lawsuit sought an injunction against the San Fer Gang to restrict the gang's criminal activity.²³ On August 11, 2008, a Los Angeles judge granted the permanent injunction against the San Fer Gang.²⁴ Chapter 38 further allows prosecutors to seek monetary compensation for communities damaged by gang activity.²⁵

B. Prior Law

The Governor signed Senate Bill 271 (Chapter 34) into law on July 6, 2007 as a means of combating gang-related illegal activities and to diminish the destructive presence of gangs in the communities they inhabit.²⁶ Chapter 34 gives "any district attorney or any prosecuting city attorney" the authority to bring an action on the community's behalf for damages resulting from gang related nuisances.²⁷ Additionally, Chapter 34 allows state and local prosecutors to collect damages from "the criminal street gang or its members" from assets

19. La Ganga et al., *supra* note 6.

20. See Joel Rubin et al., *Gang-Related Killings in L.A. Plunge*, L.A. TIMES, Jan. 11, 2008, at B3 ("The LAPD recorded 216 gang-related deaths in 2007.").

21. See Press Release, Edmund G. Brown Jr., Att'y Gen., Cal. State., Attorney General Brown Announces Crackdown on Violent Richmond Gang, Nov. 13, 2008, available at http://ag.ca.gov/newsalerts/print_release.php?id=1631 (on file with the *McGeorge Law Review*) ("[The Deep Central Gang of Richmond] is one of the largest and most violent criminal street gangs in Richmond, engaging in drug trafficking, robbery, assault and prostitution."); *Norteno Gang Crackdown*, *supra* note 4 ("[The Norteno street gang] ha[s] committed an increasing number of gang-related shootings, stabbings, carjackings and residential robberies . . .").

22. Press Release, Rockard J. Delgadillo, City Att'y, L.A., L.A. City Attorney Rocky Delgadillo Seeks Injunction Against Notorious Valley Gang, Apr. 17, 2008, available at http://www.lacity.org/atty/attypress/attyattypress6952223_04172008.pdf (on file with the *McGeorge Law Review*).

23. *Id.*

24. Press Release, Los Angeles County District Attorney's Office, Judge Grants Permanent Injunction Against San Fernando Valley Gang, Aug. 11, 2008, available at <http://da.co.la.ca.us/mr/081108c.htm> (on file with the *McGeorge Law Review*).

25. CAL. PENAL CODE § 186.22a (amended by Chapter 38); Press Release, Los Angeles County District Attorney's Office, *supra* note 24.

26. Press Release, Office of the Governor, Cal. State, Gov. Schwarzenegger Signs Legislation to Protect Californians from Gangs, available at <http://gov.ca.gov/index.php?print-version/press-release/6897/> (last visited Oct. 11, 2008) (on file with the *McGeorge Law Review*); see also Philip Lee, Recent Statute, *Chapter 34: Hitting Criminal Street Gangs Where It Hurts—Their Wallets*, 39 MCGEORGE L. REV. 577, 577 (2008) (explaining the necessity of Chapter 34 to combat gangs that "have placed a financial strain on the communities [in which] they operate").

27. CAL. PENAL CODE § 186.22a(c) (West Supp. 2008).

“derived from the criminal activity being abated or enjoined.”²⁸ Due to the specificity of the statute to collect damages “derived from the criminal activity,” the collection of damages proved challenging for prosecutors.²⁹ Accordingly, “no case has ever been filed against an[] enjoined gang” or its members.³⁰

The prosecuting attorney could seek damages from “persons who knew or should have known of the unlawful acts.”³¹ Thus, under Chapter 34, a person need not necessarily be a member of a gang for liability to attach.

Any damages recovered from gang related nuisances were reserved for the damaged community or neighborhood where the nuisance occurred.³² Specifically, Chapter 34 required that recovered damages “be deposited into a separate segregated fund for payment to the governing body of the city or county in whose political subdivision the community or neighborhood is located.”³³ The funds were to be used “solely for the benefit of the community or neighborhood that has been injured by the nuisance.”³⁴

C. Nuisance

Penal Code section 186.22a(a) defines nuisance with specificity, and states that the “nuisance . . . shall be enjoined, abated, and prevented.”³⁵ Additionally, the provision allows for collection of damages resulting from the enjoined or abated nuisance irrespective of whether the nuisance is public or private.³⁶

The statute states that “any offense involving dangerous or deadly weapons, burglary, or rape” is a nuisance.³⁷ Additionally, “[e]very building or place used by members of a criminal street gang for the purpose of the commission” of certain listed offenses is also a nuisance.³⁸ Specifically, thirty-three enumerated offenses currently exist under Penal Code Section 186.22(e).³⁹ These offenses range widely from non-physical injury offenses such as counterfeiting to physical injury offenses such as homicide.⁴⁰

28. *Id.*

29. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1126, at 3 (June 10, 2008) (“[Existing statutory] language would render any money judgment obtained against the gang and its members almost certainly uncollectible.”).

30. *Id.*

31. CAL. PENAL CODE § 186.22a(c) (West 1999).

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.* § 186.22a(a).

36. *Id.*

37. *Id.*

38. *Id.*

39. See *id.* § 186.22(e) (West 1999 & Supp. 2008) (listing thirty-three offenses under this section, including assault, robbery, and homicide).

40. See *id.* (including a wide range of offenses).

Other non-physical injury offenses include robbery, burglary, grand theft,⁴¹ theft and unlawful taking or driving of a vehicle (joy-riding), looting, sale or distribution of controlled substances, arson, money laundering, felony extortion, felony vandalism, felony theft or fraudulent use of access cards or account information, fraudulent use of personal information,⁴² and wrongfully obtaining Department of Motor Vehicle documentation.⁴³ Several firearm offenses also constitute a nuisance such as the possession, sale, delivery or transfer of a firearm, carrying a concealed weapon or loaded firearm, as well as discharging a loaded firearm from a motor vehicle (drive-by shooting).⁴⁴

Physical injury offenses constituting a nuisance include intimidating a witness or victim, assault with a deadly weapon, rape, kidnapping, mayhem, torture, threats to commit crimes resulting in great bodily injury or death, or carjacking.⁴⁵

Finally, in addition to the enumerated offenses listed above, Section 186.22a makes clear that “every building or place wherein . . . criminal conduct by gang members takes place, is a nuisance.”⁴⁶ Thus, under Chapter 38, a prosecutor may seek damages for a wide variety of offenses that ultimately constitutes a nuisance on the suffering community.

III. CHAPTER 38

Chapter 38 became effective after the Governor signed SB 1126 into law on June 25, 2008.⁴⁷ Chapter 38 became immediately effective as “an urgency statute necessary for the immediate preservation of the public peace, health, or safety” due to the “recent increase in gang-related crimes.”⁴⁸

Chapter 38 changes prior law in two major ways. First, Chapter 38 allows the injured community or neighborhood to recover damages from “the criminal street gang or its members.”⁴⁹ This amendment provides that “[o]nly members of the criminal street gang who created, maintained, or contributed to the creation or maintenance of the nuisance shall be personally liable for the payment of the damages awarded.”⁵⁰ This differs from prior law, which allowed the collection of

41. See *id.* § 186.22(e)(9) (listing grand theft as a nuisance).

42. See *id.* § 186.22(e)(29) (“Unlawful use of personal identifying information to obtain credit, goods, services, or medical information.”).

43. See *id.* § 186.22(e)(30).

44. See *id.* § 186.22(e)(31)-(33).

45. See *id.* § 186.22(e).

46. *Id.* § 186.22a(a) (West 1999).

47. Email from Governor’s Office of External Affairs, to Yuliana Mendez, Polanco Fellow, Office of Senator Gilbert Cedillo (June 25, 2008, 05:49:00 PST) (on file with the *McGeorge Law Review*).

48. 2008 Cal. Stat. ch. 1126, §2.

49. CAL. PENAL CODE § 186.22a(c) (amended by Chapter 38).

50. *Id.*

damages from “persons who knew or should have known of the unlawful acts.”⁵¹ Thus, Chapter 38 applies only to criminal street gang members instead of anyone who knew or should have known of the unlawful acts.

Second, damages awarded to the injured community or neighborhood may be collected from *any* asset held by the member of the gang who “created, maintained, or contributed to the creation or maintenance of the nuisance.”⁵² This differs from prior law, which required that damages be paid or collected from assets that “were derived from the criminal activity being abated or enjoined.”⁵³ Thus, the prosecutor need not establish what assets were derived from the criminal activity and instead may pursue any asset belonging to the responsible gang member to satisfy the award for damages.⁵⁴

IV. ANALYSIS OF CHAPTER 38

Chapter 38 was introduced twenty-eight days after Chapter 34 was enacted.⁵⁵ It quickly became apparent that Chapter 34 was deficient in one major respect: prosecutors effectively could not collect awarded damages from gang members.⁵⁶ That is, proving what assets were derived from the enjoined nuisance activity deterred prosecutors from filing any case against an enjoined gang member due to the difficulty in establishing what assets were actually derived from the criminal activity.⁵⁷ Chapter 38 removes this inhibitor and allows a prosecutor to collect any assets belonging to a gang member to satisfy the judgment.

A. *Excessive Fines—Article I, Section 17 of the California Constitution*

Chapter 38’s opponents argue that it is overbroad because it extends personal liability for nuisance to *any* asset a gang member possesses.⁵⁸ Article I, Section 17 of the Constitution of the State of California ensures that “[c]ruel or unusual punishment may not be inflicted *or excessive fines imposed*.”⁵⁹ Thus, it seems that

51. *Id.* § 186.22a(c) (West 1999).

52. *Id.* § 186.22a(c) (amended by Chapter 38) (emphasis added).

53. *Id.* § 186.22a(c) (West 1999).

54. *Compare id.* § 186.22a(c) (amended by Chapter 38), *with id.* § 186.22a(c) (West 1999).

55. Letter from Ignacio Hernandez, Legislative Advocate, Cal. Att’y’s for Criminal Justice, to Gil Cedillo, Senator, Cal. State Senate (Mar. 17, 2008) [hereinafter Hernandez Letter] (on file with the *McGeorge Law Review*).

56. *See* ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1126, at 3 (June 10, 2008) (stating that the existing statutory language “would render any money judgment obtained against the gang and its members almost certainly uncollectible”).

57. *See id.* (“[T]he ‘derived from’ language restricts prosecutors in ways that plaintiffs, in a private nuisance action, would not be restricted.”).

58. *See* Hernandez Letter, *supra* note 55 (expressing concern that Chapter 38 allows for the seizure assets unrelated to the criminal activity) (emphasis added).

59. CAL. CONST. art. I, § 17 (emphasis added).

the reach of Chapter 38 in collecting any asset may infringe on the right not to have excessive fines imposed.

In determining whether an excessive fine has been imposed, a court must consider whether “[t]he amount of the forfeiture . . . bear[s] some relationship to the gravity of the offense that it is designed to punish.”⁶⁰ If the fine is “grossly disproportional to the gravity of a defendant’s offense” then it violates the Excessive Fines Clause of Article I, Section 17.⁶¹

While Chapter 38 is silent as to any standard for assessing damages for nuisance violations, the legislation is still bound by the outer limits of Article I, Section 17. Thus, a gang member found liable to a community or neighborhood for nuisance damages would be fined an amount that is proportionate to “the gravity of the offense.”⁶²

B. Gang Membership—The “Defining” Dilemma

Chapter 38 “specifically targets the gang members and their associates responsible for the damages to the community.”⁶³ Accordingly, Chapter 38 states that “[o]nly members of the criminal street gang” are personally liable for damages inflicted on the community or neighborhood.⁶⁴ However, opponents to Chapter 38 point out that “membership” in a gang is uncertain, thereby potentially applying to persons who dissent to the criminal activity or who are in the process of leaving their respective gangs.⁶⁵

In *People v. Englebrecht*, a California Appellate Court determined that “an active gang member is a person who participates in or acts in concert with [a criminal street gang].”⁶⁶ Additionally, the participation must be “more than nominal, passive, inactive or purely technical.”⁶⁷ The court’s definition is consistent with Penal Code Section 186.22(a), which states that “[a]ny person who actively participates in any criminal street gang” is subject to the Section.⁶⁸ However, formal membership need not be established; instead, only “[a]ctive

60. *People v. Urbano*, 128 Cal. App. 4th 396, 406, 26 Cal. Rptr. 3d 871, 878 (5th Dist. 2005). In *Urbano*, the Defendant was a Fresno Bulldog (a criminal street gang member), convicted of causing great bodily injury to a victim “solely to promote a criminal street gang” and was fined \$3,800. The court denied his argument that the fine was excessive under section 17 of the California Constitution due to the nature of the offense. *Id.* at 873, 878.

61. *Id.* at 878.

62. *Id.*

63. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1126, at 2 (June 10, 2008).

64. CAL. PENAL CODE § 186.22a (amended by Chapter 38).

65. Hernandez Letter, *supra* note 55; ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1126, at 6 (June 10, 2008).

66. 88 Cal. App. 4th 1236, 1261, 106 Cal. Rptr. 2d 738, 756 (4th Dist. 2001). The definition refers to “criminal street gang” as defined in Penal Code section 186.22(f).

67. *Englebrecht*, 88 Cal. App. 4th at 1261, 106 Cal. Rptr. 2d at 756.

68. CAL. PENAL CODE § 186.22(a) (West 1999).

participation in the criminal street gang . . . is required.”⁶⁹ Opponents to Chapter 38 are concerned by the broad definition of an active gang member, especially since Chapter 38 does not itself attempt to define who is a gang member for purposes of the statute.⁷⁰

However, Chapter 38 supporters argue that the lack of a concrete definition of gang membership is not per se detrimental to the legislation because safeguards exist.⁷¹ For instance, existing law relating to “nuisance, torts, and judgments . . . limit recovery of damages to those who have created, maintained or contributed to the creation or maintenance of the nuisance activity.”⁷² Accordingly, the State retains the burden of proving that an accused was at least “substantially responsible for the damages.”⁷³ Thus, supporters contend that this burden limits the possibility of dissenting individuals becoming liable under Chapter 38.⁷⁴

C. *The Deterrent Effect*

Finally, opponents argue that Chapter 38 is premature because, although it amends Chapter 34, it was introduced only twenty-eight days after Chapter 34 was enacted into law.⁷⁵ Supporters counter that Chapter 38 was urgently needed because, despite Chapter 34’s enactment the previous year, no case had been filed due to the high burden of proof required to establish that the awarded assets were “derived from” the criminal activity.⁷⁶ It remains unclear whether Chapter 34, without amendment, would have been an effective remedy to combat some of the economic harm caused by gangs.

Chapter 38’s proponents further argue that the power to seize any and all assets of gang members who contribute to community nuisance is the only way to loosen the tight grip street gangs have over their communities.⁷⁷ Proponents believe Chapter 38 provides the means to “fight back” and creates the tools

69. *Id.* § 186.22(i).

70. *Id.* § 186.22a(c) (amended by Chapter 38); *see also* ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1126, at 6 (June 10, 2008) (“Membership in a gang is an uncertain term . . . [with] no statutory definition.”).

71. *See* ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1126, at 5-6 (June 10, 2008) (“[Chapter 38,] as well as existing law, contains sufficient protections to safeguard those who do not create, maintain, or contribute toward the creation or maintenance of a public nuisance.”).

72. *Id.*

73. *Id.* at 6.

74. *Id.* at 6-7.

75. Hernandez Letter, *supra* note 55.

76. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1126, at 3 (June 10, 2008).

77. *See* Letter from Rockard J. Delgadillo, City Att’y, L.A., to Members of the California State Senate (Apr. 21, 2008) (on file with the *McGeorge Law Review*) (noting how gangs have tight economic control over neighborhoods, and Chapter 38 is a way to reduce that control).

communities need to thrive again.⁷⁸ The general hope is that gang-dominated communities will finally regain their independence from the effects of continued and increased gang activity.⁷⁹ Though far from a comprehensive fix to California's serious gang problems, proponents argue that Chapter 38 serves as a deterrent to gang members as they will be reluctant to engage in gang activities that they know may result in seizure of their assets.⁸⁰ Accordingly, the deterrent effects of Chapter 38 may decrease gang activity.⁸¹

V. CONCLUSION

Chapter 38's supporters believe that California is one step closer to eradicating criminal street gangs with the passage of this legislation.⁸² Criminal street gang members are on notice: they will be liable for the damage they inflict to their communities.⁸³ Gang members will no longer be able to hide assets merely because they were not derived from the criminal activity.⁸⁴

78. See Letter from Harriet Salarno, Chair, Crime Victims United of Cal., to Gil Cedillo, Senator, Cal. State Senate (Apr. 9, 2008) (on file with the *McGeorge Law Review*) (noting how prosecutors can now "step in the shoes of the victimized communities and fight on [their] behalf").

79. See *id.* (describing how Chapter 38 will allow prosecutors to seek monetary damages to be returned to the community).

80. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1126, at 1-2 (June 10, 2008) (noting that civil gang injunctions are an "effective means of deterring and abating the violence and public nuisance activity caused by criminal street gangs"). *But see* Corey Ordoñez, Recent Statute, *Anti-Gang Violence Parenting Classes: Early Parental Involvement Versus Career Criminals*, 39 MCGEORGE L. REV. 671, 674 (2008) ("One approach to curbing delinquent and gang-related behavior . . . is deterrence; the severity and likelihood of punishment provides a disincentive However, there is very little evidence supporting the theory that severe penalties act as a deterrence of a crime.").

81. See Letter from Gregory D. Totten, Dist. Att'y, County of Ventura, State of Cal., to Gilbert Cedillo, Senator, Cal. State Senate (Mar. 12, 2008) (on file with the *McGeorge Law Review*) ("The proposed amendment makes collections of damages possible and represents sound policy in the fight against criminal street gangs and their devastating impact on our communities.").

82. See, e.g., *id.* (explaining how Chapter 38 helps curb gang activity).

83. See CAL. PENAL CODE § 186.22a(c) (amended by Chapter 38) (stating that members of a criminal street gang "shall be personally liable for the payment of the damages awarded").

84. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1126, at 3 (June 10, 2008).