Approved: 2-11-102
Date

MINUTES OF THE HOUSE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on February 12, 2002 in Room 526-S of the Capitol.

All members were present except:
Representative Karen DiVita-Johnson - Excused
Representative Kathe Lloyd - Excused
Representative Judy Morrison - Excused
Representative Candy Ruff - Excused

Committee staff present:
Jerry Ann Donaldson, Department of Legislative Research
Jill Wolters, Department of Revisor of Statutes
Sherman Parks, Department of Revisor of Statutes
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:
Gary Miller, Sedgwick County Forensic Science Center
Major Walt Way, Johnson County Sheriff's Department
Kyle Smith, Kansas Bureau of Investigation
Tom Winters, Sedgwick County Commissioner
Richard Euson, Sedgwick County Counselor
Kathy Sexton, Assistant City Manager
Ed Williams, Reno County Manager, Hutchinson
Judge Paul Buchannan, Chief Judge 18th Judicial District
Paul Davis, Kansas Bar Association
Representative Ward Loyd

Hearings on: **HB 2772 - Include in court costs is a fee for forensic services provided by Sedgwick County Regional Forensic Science Center**, were opened.

Gary Miller, Sedgwick County Forensic Science Center, appeared in support of the bill. The Forensic laboratory provides critical information to the county on a daily basis. They are very costly services to provide and the bill would assess $150 for each offense to cover the expenses. (Attachment 1)

Major Walt Way, Johnson County Sheriff's Department, requested that Johnson County be included into the bill since the Johnson County Sheriff's Department provides forensic lab services to the District Attorney in that county. (Attachment 2)

Kyle Smith, Kansas Bureau of Investigation, commented that the KBI has no problems with the proposed legislation. They currently collect only 15% of the fees that are assessed. He suggested making to bill apply to those labs that are accredited by the International Association of State Crime Laboratories Directors.

Hearings on **HB 2772** were closed.

Hearings on: **HB 2763 - Repealing two statutes that require certain size counties to provide courtroom and supplies for district court as judges deem necessary**, were opened.

Tom Winters, Sedgwick County Commissioner, explained that the bill would repeal statutes requiring counties to fund courtroom supplies. These statutes place elected officials in positions of voting to raise or lower taxes under contemp orders instead of being responsible to the taxpayers. He explained that there is an appeal process that the courts can go through if they do not like the budget that has been set by they county. The appeal process usually leads to a workable solution. (Attachment 3)

Committee discussion centered on the fact that current statute states that the county shall fund items deemed necessary not that it is discretionary. County Commissioner Winters agreed with the interpretation and stated that is why they would like the statute repealed.

MINUTES OF THE HOUSE JUDICIARY COMMITTEE at 3:30 p.m. on February 12, 2002 in Room 313-S of the Capitol.

Richard Euson, Sedgwick County Counselor, believes that there is a conflict between K.S.A. 20-349, which states that the County Commission shall have final say on budget for the courts and K.S.A. 20-713 which mandates that counties with the population between 47,000 and 65,000 shall provide supplies as the judge or judges deem necessary. K.S.A. 20-510 was repealed in 1969 that effected counties between 80,000 to 100,000. Sedgwick County wants to be treated fairly like those that were removed from the statutes in '69. (Attachment 4)

Kathy Sexton, Assistant City Manager, provided the committee with a handout that demonstrated Sedgwick County Commissioners support to the District Court. (Attachment 5) She believes that the County Commission should be held accountable to the citizens they represent not to the courts.

Ed Williams, Reno County Manager, Hutchinson, supported the proposed bill. Reno County has not experienced any fiscal problems related to the lack of budgetary control over the courts but it could happen when and if they request computerization. (Attachment 6)

Judy Moler, General Counsel for Kansas Association of Counties, did not appear before the committee, but requested her written testimony be included in the minutes. (Attachment 7)

Judge Paul Buchannan, Chief Judge 18th Judicial District, appeared before the committee in opposition to the bill and suggested making the statute apply to all counties, no matter what size and it should apply only to the Chief Judge of each District Court. (Attachment 8)

Paul Davis, Kansas Bar Association, was in opposition of the bill because it does not state who would fund those items that the courts deems necessary. (Attachment 9)

Hearings on **HB 2763** were closed.

Hearings on **HB 2769 - abatement of common nuisances; adding felonies committed by gang members to the list**, were opened.

Representative Ward Loyd appeared before the committee as the sponsor of the bill. He stated that this was the same bill that passed out of the House Chamber last year. The purpose of the bill is "gang abatement" through the use of civil injunction. (Attachment 10)

Hearings on **HB 2769** were closed.

The committee meeting adjourned at 6:30p.m. The next meeting was scheduled for February 13, 2002.

SEDGWICK COUNTY, KANSAS

REGIONAL FORENSIC SCIENCE CENTER

MARY H. DUDLEY, M.D. — DISTRICT CORONER-MEDICAL EXAMINER
JAIME L. OEBERST, M.D. — DEPUTY DISTRICT CORONER-MEDICAL EXAMINER
TIMOTHY P. ROHRIG, PH.D. — DIRECTOR, FORENSIC SCIENCE LABORATORIES
MARY L. KNOPICK ORR — FORENSIC ADMINISTRATOR

Testimony of Gary L. Miller
House Judiciary Committee
HB 2772
12 Feb 2002

Good Afternoon Mr. Chairman and Committee Members:

My name is Gary Miller; I am the Chief of Criminalistics at the Regional Forensic Science Center located in Wichita, Kansas.

The Forensic Science Center is a state of the art facility, which houses the 18th Judicial District Coroner and the Sedgwick County Forensic Science Laboratories. The Center was constructed in 1995 to promote the health and public safety of the citizens of Sedgwick County.

The Center is a unique facility in that it is the only Forensic Center in the state of Kansas and one of a few in the country which combines, *under one roof*, the functions of the Coroner [Medical Examiner] and a full service crime laboratory.

Forensic Science Laboratories provide critical information to the criminal justice system. Without scientific analyses conducted by Forensic Laboratories many cases would go untried, many police investigations would be stalled, innocent individuals may not be exonerated, and criminals would be on the street continuing to victimize our citizens. The challenge of improving and expanding forensic services comes at a significant cost. Many forensic analyses are complex; require costly equipment and considerable technical training. We must do everything we can to supply the appropriate training and necessary tools to our forensic scientists in their battle against crime.

Today, I stand before you in support of House Bill **2772**. This bill is an amendment to **KSA 28-176**, which currently authorizes the Kansas Bureau of Investigation Forensic Science Laboratory to receive a $150.00 court assessed fee for every forensic analysis that supports adjudication of a criminal case. This money is used to enhance the capabilities of the Forensic Laboratory in its support of law enforcement and the criminal justice system. We are asking, thru this bill, to have the statutory authority to receive a similar fee. This will **not** have a negative fiscal impact on the KBI.

1109 N. Minneapolis • Wichita, Kansas 67214-3129 • Telephone (316) 383-4500 • Fax (316) 383-

House Judiciary
Attachment 1
2-12-02

Currently, if the KBI works the criminal case, they are allowed to receive the court-assessed fee, whereas if we [i.e. the Center] work the same type of criminal case, upon conviction, no fee is assessed against the individual. Thus making the total punishment for the same crime less in Sedgwick County than the rest of the state of Kansas.

The ability to receive this fee will allow us to acquire additional revenue to maintain and support enhancements to our Forensic Science Laboratories in Sedgwick County, without seeking additional tax dollars.

Thank you for your time and I urge you to support the passage of House Bill **2772**.

I would be more than happy to respond to any questions you may have.

Testimony of:

Major Walter Way
Johnson County Sheriff's Office
Olathe, Kansas 66061

House Bill No. 2772

February 12, 2002

Chairman O'Neal, Members of the Judiciary Committee:

My name is Walter Way and I represent the Johnson County Sheriff's Office and Johnson County Government. I am appearing in support of House Bill No. 2772 and I am requesting an amendment to that Bill.

The Johnson County Sheriff's Office provides forensic laboratory services, without charge, to the Johnson County District Attorney's Office and Sheriff's Office, to 14 police departments in the county, to several fire department arson units, and occasionally to police agencies in adjoining counties who request our assistance with a major crime such homicide. Our laboratory is nationally accredited and it provides a broad range of forensic science services that includes DNA analysis, latent fingerprint identification, firearms and tool mark examinations, drug analysis, arson analysis, photographic services and questioned document examinations.

The Johnson County Sheriff's Laboratory provides forensic services that are comparable to those provided by both the Kansas Bureau of Investigation Laboratory and by the Sedgwick County Regional Forensic Science Center. We ask for the same statutory authority that has been granted to the KBI and that has been requested by Sedgwick County for the assessment of a $150 laboratory analysis fee. Our proposed language for further amendment to K.S.A. 28-176 is on the attached page.

As we all experience declining revenues and increased demands for service, we believe it more important than ever to have the ability to recover some of our costs for service from those adjudicated offenders who caused those expenses to be incurred. The authority to assess a laboratory analysis fee will be of benefit to the taxpayers of Johnson County.

Thank you for the opportunity to present this testimony. I would welcome any questions that you may have of me.

Proposed language for the Johnson County Sheriff's amendment to House Bill No. 2772 is as follows:

Section 1. K.S.A. 28-176 is hereby amended to read as follows: 28-176. (a)..... *and (3) $150 for each offense if forensic science or laboratory services are rendered or administered by the Johnson county sheriff's laboratory.*

(f) The fee for services rendered or administered by the Johnson county sheriff's laboratory shall be deposited in the Johnson county general fund and disbursed for the following:

(1) Providing criminalistic laboratory services;

(2) the purchase and maintenance of equipment for use by the laboratory in performing analysis; and

(3) education, training and scientific development of the laboratory's personnel.

02-12-02

Tom Winters

Commissioner - Third District
BOARD OF COUNTY COMMISSIONERS
SEDGWICK COUNTY, KANSAS

COUNTY COURTHOUSE - SUITE 320 - 525 NORTH MAIN - WICHITA, KANSAS 67203-3759
TELEPHONE (316) 660-9300 - FAX (316) 383-8275
EMAIL: twinters@sedgwick.gov

TESTIMONY HB 2763
Before The House Judiciary Committee
By Tom Winters, Sedgwick County Commissioner
February 12, 2002

Honorable Chairman O'Neal and members of the Committee, I appreciate the opportunity to testify in support of HB 2763. I am a county commissioner in Sedgwick County and I represent the 3rd district covering the western part of the County. I have been a county commissioner since 1993. I'm going to let the testimony of others from the County illustrate specifically how we fund the district court and to present the legal arguments for why county commissioners need clear statutory guidelines for determining district court funding. I want to testify as to how this statute, which we are asking you repeal, affected our 2002 budget process.

I was present during the budget hearing on May 25, 2001, when the Eighteenth Judicial District presented its supplemental budget request to the board of county commissioners. The supplemental budget request was for an additional $493,900. The County's budget staff was recommending that the county commission not approve this supplemental budget request. This was merely a hearing for departments to present supplemental requests to the County Commission for a determination to be made at a later time. After the Court made its presentation, Judge Buchanan approached the commission bench and served then Commission Chair, Carolyn McGinn, with a hand-written order directing the County to fund the entire supplemental budget. This order is attached to my testimony. Obviously we were all pretty much shocked by this turn of events.

But following the hearing and over the next couple of months the County Commission made a good faith effort to work with the Eighteenth Judicial District to resolve this budget issue. We had our budget staff work with the budget analyst for the Court and through these efforts reduced the amount from $493,900 to around $68,000. All that remained unfunded from the original handwritten order were two copiers, "other professional services" and some furniture. We proceeded to adopt our budget on August 8, without the additional $68,000 in funding. The following day we were served by Judge Buchanan with a restraining order, an affidavit in contempt and order for service enjoining the County Commission from certifying the 2002 budget until the remaining $68,000 was included. These documents are also attached to my testimony.

No elected official should ever be put in the position of voting on whether to raise or lower taxes under the threat of a contempt order for exercising that vote. Even though judges in Sedgwick County are elected, it is the responsibility of the county commission, and only the county commission to raise or lower taxes and be responsible to the taxpayers of Sedgwick County.

We ultimately decided to settle our suit with the Eighteenth Judicial District and pay an additional $45,000.

The Board of County Commissioners in Sedgwick County strongly believes that the Court needs to receive proper funding from the County. We will provide testimony to address the Court's budget over the past few years. But we also believe strongly that the legislative branch should ultimately be responsible for making budgetary decisions for the Courts.

We would appreciate your support in repealing these statutes and supporting HB 2763.

RESPONSIBLE LOCAL GOVERNMENT

House Judiciary
Attachment 3
2-12-02

Supplemental Requests – District Court

18th Judicial District

1. $21,500 - Microfilm Processor
   Replacement of broken equipment
2. $50,400 – Copier/Fax/Printer
   Replacement of broken equipment
3. 30,000 – Furniture Replacement
   Replacement of old and broken furniture for new judges
4. $180,000 – PC Replacement
   Replacement of old PC's that are no longer under warranty
5. $90,000 – Workstations for adult probation
6. $17,000 – New case management and latest technology training fund
7. $85,000 – Upgrade to most current software
8. $20,000 – Other professional services
   Department requests to raise Pro Team salaries to $300/day and increase in interpreter services

Discussion of Requests:
Recommending denying the request. Funding can be allocated within the operating budget. The requesting materials did not provide sufficient information for a meaningful evaluation of projects. Budget staff was not able to ascertain the return on the $493,900 investment requested by District Court. Furthermore, the case management system may change some of the processes in District Court operations. Additional investment may not be prudential before the completion of the case management system project.

The above eight items shall be included in the District Court budget for 2001
By the Court
Paul Sudoman
Chief Judge
May 25, 2001

ATTACHMENT #2

FILED 1110

2 29 PM '01

IN THE MATTER OF THE BOARD OF COUNTY COMMISSIONERS IN THE COUNTY OF SEDGWICK BUDGET FOR THE EIGHTEENETH JUDICIAL DISTRICT FOR THE YEAR 2002

In Re 01 AJ 2

RESTRAINING ORDER

Upon the facts in the Citation for Contempt, Carolyn McGinn, Betsy Gwin, Tim Norton, Tom Winters and Ben Sciortino, as members of the Board of County Commissioners of the County of Sedgwick are enjoined from certifying the 2002 County Budge until further order of the Court.

Paul Buchanan
Chief Judge

Certificate of Clerk of the District Court. The above is a true and correct copy of the original instrument which is on file or of record in this court.
Dated this 10 day of May, 19 2001
CLERK OF THE DISTRICT COURT
18th JUDICIAL DISTRICT
SEDGWICK COUNTY, KANSAS
By

DISTRICT COURT SEAL

IN THE MATTER OF THE BOARD OF COUNTY COMMISSIONERS IN THE COUNTY OF SEDGWICK BUDGET FOR THE EIGHTEENETH JUDICIAL DISTRICT FOR THE YEAR 2002

In Re CA AJ 2

AFFIDAVIT IN CONTEMPT

Heretofore, on May 25, 2001, the undersigned as Chief Judge of the Eighteenth Judicial District ordered the Board of County Commissioners to include certain items in the 2002 budget for the Eighteenth Judicial District. The Board of County Commissioners in adopting the 2002 budget did not include the following items in the budget as ordered:

Microfilm processor
Other Professional Services

Two items were funded in part as follows:

Copier/Fax Printer
Furniture

The failure to include such items in the budget constitutes a violation of the undersigned's order of May 25, 2001, a copy of which is attached marked as Exhibit A.

The members of the Board of County Commissioners of the County of Sedgwick are Carolyn McGinn, Betsy Gwin, Tim Norton, Tom Winters and Ben Sciortino.

The foregoing statements are true under the law of perjury of the State of Kansas.

Certificate of Clerk of the District Court. The above is a true and correct copy of the original instrument which is on file or of record in this court.
Dated this 10 day of Aug, 19 2001
CLERK OF THE DISTRICT COURT
18th JUDICIAL DISTRICT
SEDGWICK COUNTY, KANSAS
By

DISTRICT COURT SEAL

Paul Buchanan
Chief Judge

FILED

IN THE MATTER OF THE BOARD OF COUNTY COMMISSIONERS IN THE COUNTY OF SEDGWICK BUDGET FOR THE EIGHTEENETH JUDICIAL DISTRICT FOR THE YEAR 2002

DEC 12 2 20 PM '01

In Re 01 AJ2

ORDER FOR SERVICE

It is ordered that certified copies of this order, the Citation for Contempt, the Affidavit in Contempt, and Restraining Order be personally served on Carolyn McGinn, Betsy Gwin, Tim Norton, Tom Winters and Ben Sciortino.

It is further ordered that John Garrison make such service and due return thereof.

Paul Buchanan
Chief Judge

Certificate of Clerk of the District Court. The above is a true and correct copy of the original instrument which is on file or of record in this court.
Dated this 10 day of Dec to 2001
CLERK OF THE DISTRICT COURT
18th JUDICIAL DISTRICT
SEDGWICK COUNTY, KANSAS
By

SEAL

OFFICE OF THE COUNTY COUNSELOR
SEDGWICK COUNTY, KANSAS

Richard A. Euson
County Counselor

COUNTY COURTHOUSE • 525 N. MAIN, SUITE 359 • WICHITA, KS 67203-3790
PHONE (316) 383-7111 • FAX (316) 383-7007

Testimony in Support of HB 2763
Before the HOUSE JUDICIARY COMMITTEE
By Richard A. Euson, Sedgwick County Counselor
February 12, 2002

Honorable Chairman O'Neal and members of the Committee, thank you for this opportunity to testify in support of HB 2763. I am the County Counselor for Sedgwick County and have the statutory duty to represent the board of county commissioners. The bill that is before you would simply unify the rules for all Kansas counties in providing funding for the district courts. I ask you to support it in order to ensure uniform treatment of all counties and in order to promote fairness in the process used to provide those funds.

HB 2763 PRESERVES UNIFORM TREATMENT OF DISTRICT COURT FUNDING FOR ALL COUNTIES

K.S.A. 20-349 provides for a uniform procedure for all counties to fund budgets for district court expenses. It requires the chief judge in each judicial district to prepare a budget and to submit the same to the board of county commissioners of each county. It further provides that, "The board of county commissioners shall then have final authority to determine and approve the budget for district court operations payable by their county (emphasis added)."

K.S.A. 20-349 was first enacted in 1976 at the time of court unification, and it applies uniformly to all counties. However, two older statutes provide for a different procedure. K.S.A. 20-613a (which was first enacted in 1931 and which applies only to counties with a population of over 110,000 – Sedgwick, Johnson, Wyandotte and Shawnee) states that the county commissioners shall provide, "...books of records, blanks, stationery, supplies, furniture and equipment as in the judgment of the judge or judges shall be necessary for the proper conduct of the business of each division of the court (emphasis added)."

K.S.A. 20-713 (which was enacted in 1963 and which applies only to counties with a population of between 47,000 and 65,000 – Reno, Butler, Saline and Riley)

states also that the county commissioners shall provide, "...books of records, blanks, stationery, supplies, furniture and equipment as in the judgment of the judge or judges shall be necessary for the proper conduct of the business of each division of the court (emphasis added)."

You can readily see that these statutory procedures invite conflict over who should have ultimate authority to determine the district court's budget of expenses. HB 2763 would eliminate that conflict and would place all 105 counties on the same footing.

HB 2763 PROMOTES FAIRNESS IN THE PROCESS USED TO PROVIDE DISTRICT COURT FUNDING

The conflict in the statutes is essentially unfair. First, in ninety-seven counties, the local legislatures have final authority over district court expenses; in contrast, in eight counties, the district court judges have that final authority. That is unfair. Second, Sedgwick County has twenty-six divisions of district court. Under K.S.A. 20-613a, each individual district court judge has the final say to determine expenses. That is also unfair, and it could invite conflicting determinations of need from within the judicial branch itself. Third, at the state level the legislature, not the judiciary, makes the final determination on the courts' budget for state-funded expenses. It is essentially unfair to allow different sets of rules for local legislatures.

HB 2763 ENCOURAGES A SENSIBLE APPROACH TO THE DOCTRINE OF SEPARATION OF POWERS

Due to the existence of K.S.A. 20-613a and of the district court order issued by the Chief Judge, Sedgwick County was placed in the position of filing a lawsuit in the Supreme Court of the State of Kansas. The Chief Judge responded by immediately filing an accusation in contempt against each individual County Commissioner and by ordering that the Commissioners be restrained and enjoined from filing the 2002 budget. The Supreme Court issued a stay order which allowed the County to file its budget according to statute. The County settled the lawsuit with the Chief Judge in large part because there was no clear legal guidance as to how the two statutes could be resolved and also because losing it would subject Commissioners to possible jail time and substantial civil penalties.

No legislator should be subject to contempt of court for exercising his or her constitutional obligation to vote on matters of public importance, such as appropriations. There is no justification for having two separate set of rules for certain counties. If HB 2763 is not adopted, a Chief judge in any of the eight counties listed above will be free to determine a budget of expenditures simply by ordering the local legislative body to adopt a budget solely determined by the judiciary. That is not a proper application of the doctrine of separation of powers. The judicial branch should simply not be allowed to share in the functions of the legislative branch of government.

For the above reasons I ask you to support HB 2763.

SEDGWICK COUNTY, KANSAS
DIVISION OF INFORMATION & OPERATIONS
Kathy Sexton, Assistant County Manager & CIO

538 North Main ~ Wichita, KS 67203
Phone: 316-660-9852 Fax: 316-383-7673
Email: ksexton@sedgwick.gov
www.sedgwickcounty.org

Sedgwick County's Commitment to the 18th Judicial District
Testimony to the House Judiciary Committee
HB 2763
Tuesday, February 12, 2002

Annual Operating Budget – 2002 - $1,994,146

History of Budget Growth: 41% increase since 1993 ($1,418,925)
Recent Growth: 20.9% in 2000, 4.9% in 2001, 3.9% in 2002

New Case Management System – $1.1 million
(software, hardware, & technical support)

Facility Improvements 1994 – 2001 $2.3 million
2002 – 2004 $7.6 million

- *Updated various courtrooms, chambers, and support offices.*
- *Created a Courthouse Records Center to better store records and evidence.*
- *Renovated the exterior of the Courthouse.*
- *Renovating Courthouse elevators.*
- *Replacing Courthouse roof.*
- *Renovated exterior of the Historic Courthouse.*
- *Updated directional signage inside and outside of the Courthouse.*
- *Major maintenance including carpet, blinds, and paint.*
- *Remodeling 5th floor (former jail) to courtrooms, jury rooms, and chambers.*
- *Planning expansion of Juvenile Court building.*
- *Modernizing the Jury Room.*
- *Remodeling Traffic Department, Probation Intake, and PreSentence Investigation.*
- *Planning to remodel Court Clerk offices on four floors.*

Courthouse Security Department added in 1997 (2002 budget $943,373)

Accountability to the Public

State of Kansas
House Judiciary Committee
February 12, 2002

RE: HB 2763

Honorable Chairman O'Neal and Members of the Judiciary Committee, on behalf of Reno County, I am here to state our support for HB 2763 in order to repeal the provisions of K.S.A. 20-613a and 20-713, the latter of which currently applies to Reno County. These two statutes apply only to a few counties - those over 110,000 population and those between 47,000 and 65,000 population. In these counties, the Board of County Commissioners, unlike most legislative bodies, including the State of Kansas Legislature, cannot establish the budget for the courts.

This is not only contrary to the general practice in Kansas described in K.S.A. 20-349 but also detrimental to the traditional powers of such a body. The Board of County Commissioners is responsible for the overall budget and fiscal condition of the county, but seemingly cannot control one budget - the courts. The Kansas State Legislature is struggling with recent changes in our economy but one budget at the county level can jeopardize certain counties' obligations to tailor the entire budget to the demands of the electorate as well as changes in the economy.

Please understand that, at least in recent years, Reno County has not experienced any fiscal problem related to this lack of budgetary control over the courts. However, this lack of control over one area alone, such as computerization, could dramatically change this situation and, at the same time, prevent our having a budget which reflects the impact of the economy and our sensitivity to the burden placed upon property owners.

Thank you for your consideration of this important issue to counties.

Edward E. Williams
Reno County Administrator

House Judiciary
Attachment 6
2-12-02

KANSAS
ASSOCIATION OF
COUNTIES

TESTIMONY
House Judiciary Committee
On
HB 2763
February 12, 2002
By Judy A. Moler, General Counsel/Legislative Services Director

Thank you Chairman O'Neal and Members of the House Judiciary Committee for allowing the Kansas Association of Counties to provide written testimony on HB 2763.

The Kansas Association of Counties supports the passage of HB 2763. This bill would unify the rules for all Kansas counties in providing funds for the district courts. The repeal of the statutes mentioned in this bill (K.S.A. 20-613a and 20-713) would constitute the "clean-up" of the statutes governing the funding mechanism for district courts.

These two statutes were left on the books after the enactment in 1976 of court unification. The existence of these obsolete statutes has caused difficulty in one of our member counties (Sedgwick) during the last budget year.

The Kansas Association of Counties respectfully requests passage of HB 2763 in order to make uniform the budgeting by counties for district courts.

The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, educational and technical services and a wide range of informational services to its member counties. Inquiries concerning this testimony should be directed to Randy Allen or Judy Moler by calling (785) 272-2585.

6206 SW 9th Terrace
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Paul Buchanan
DISTRICT JUDGE

CHIEF JUDGE

(316) 383-8128
FAX: (316) 383-7560
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DISTRICT COURT
EIGHTEENTH JUDICIAL DISTRICT
SEDGWICK COUNTY COURTHOUSE
525 N. MAIN - 11TH FLOOR
WICHITA, KANSAS
67203

Members of the House Judiciary Committee:

Thank you for the opportunity to appear at this hearing on HB 2763.

I urge not the repeal of K.S.A. 20-613a but the amendment of that statute to apply to all counties in the State of Kansas. If this happens, K.S.A. 20-713 becomes superfluous.

K.S.A. 20-349 requires the board of county commissioners approve a budget that includes all expenditures payable by the county for operations of the district court in such county. The duty of the board is mandatory. It is not a discretionary matter.

There were reasons in the past for the passage of the two laws that are now up for repeal. The reasons for the statutes still exist. County commissions have few mandatory expenditures. Most county expenditures are discretionary. The county will plead that the cupboard is bare, but the duty to supply the court is a mandatory duty. If the court is to function properly it must have modern and up to date equipment. Proper financing of court operations and court facilities has been a problem for years. Can the commissioners, asking for repeal, give to this committee any assurance that there not be problems in the future.

Can a county commission build a palace for itself and only supply the court with a "Big Chief tablet?" We know for bid board proceedings that county departments get copy machines every few years, but the court is required to make do with copy machines that are twelve years old and have run more than a million copies. The county commissioner and county manager get annual pay raises, but refuse to allow additional money for judges pro tem who had not had a raise since about 1989 and in fact took a pay cut in a spirit of cooperation once when the county was pleading a money crisis. The county apparently evaluated copy machines by pushing the button to run a copy, and if it ran it was not in need of replacement. We have copy machines for which the manufacturer no

longer manufactures parts. Parts are obtained by scavenging parts from old machines and using the scavenged parts for repair.

Ordering county commissions to supply the courts is not a new thing. In *County of Neosho v. Stoddard*, 13 Kan. 207, (Page 157 in the second edition), the Supreme Court said:

> "It is the duty of the of the county commissioners and their duty alone to furnish a suitable court-room for their county, but if they do not do so, then some other remedy other than the one resorted to in this case must be involved." (The judge had ordered the sheriff to carpet the courtroom. The sheriff carpeted the floor the next day. The court said the remedy taken was wrong, not that the commissioners did not have the duty to do so.)

No chief judge is going to order the commission to do silly things or be wasteful. The commission has an obligation to the court given to it by the legislature. The duty is mandatory. The courts have mandatory duties imposed upon it by the legislature. Since the Court is a constitutional state department, the obligations for it from county government must control over the county discretionary expenditures.

Under present laws, the judge cannot order the commission to spent money except in accordance with the budget. My order was mandatory to put certain items in the budget. The commission ignored the order and adopted a budget without their inclusion in the budget.

We are dealing with a problem that is statewide. It is not limited to a few counties. I urge the amendment of K.S.A. 20-613a to apply to all counties.

Respectfully submitted

Paul Buchanan, Chief Judge,
Eighteenth Judicial District

KANSAS BAR ASSOCIATION
1200 SW Harrison St.
P.O. Box 1037
Topeka, Kansas 66601-1037
Telephone (785) 234-5696
FAX (785) 234-3813
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LEGISLATIVE TESTIMONY

February 12, 2002

TO: HOUSE JUDICIARY COMMITTEE

FROM: PAUL DAVIS, LEGISLATIVE COUNSEL

RE: HOUSE BILL 2763

My name is Paul Davis and I serve as Legislative Counsel to the Kansas Bar Association. The Kansas Bar Association is a diverse organization with 6,000 members, who are judges, prosecutors, plaintiffs' attorneys, defense attorneys, estate planning attorneys, etc. We are concerned about the potential passing of House Bill 2763 because it can only create ambiguity about whether the state or the county should settle district court bills.

With the revocation of K.S.A. 20-613a and 20-713, the only statute that would pertain to this matter would be K.S.A. 20-348, which states that the board of county commissioners shall be responsible for "expenses incurred for the operation of the district court in the county." This language is too ambiguous. Who is to say what is necessary for a district court to operate—there will be no guidelines to follow.

Inevitably, with the passage of HB 2763, the State of Kansas is going to be asked to fork over money to the counties to pay for expenses

that the counties should be held responsible for. Unfortunately, this has not been accounted for in the FY 2003 budget. Therefore, the State of Kansas will have to cut back on other expenses, and as we all know, there isn't any room for cutbacks in the Judicial Branch's budget.

It is the counties' responsibility to pay for all physical expenses that pertain to running a district court. House Bill 2763 may lessen that responsibility. We see no reason to repeal 20-613a and 20-713. This will probably cause headaches in the future and we will be back here in a short time to clear up the mess that this bill will create. **I urge you to oppose House Bill 2763.**

I thank you for your time and welcome any questions that you may have.

STATE OF KANSAS

WARD LOYD
REPRESENTATIVE, 123RD DISTRICT
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TOPEKA

HOUSE OF
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MEMBER: UTILITIES
TAX, JUDICIAL & TRANSPORATION BUDGET
CORRECTION & JUVENILE JUSTICE OVERSIGHT

TESTIMONY OF WARD LOYD
IN SUPPORT OF HB 2769

February 12, 2002

Chairman O'Neal and Committee Members:

I appear today on behalf of the City of Garden City, Kansas, and its residents, in support of favorable consideration of House Bill 2769. House Bill 2769 is identical to measures (House Bill 2775 and House Bill 2207) that was recommended for passage without amendment by the House Judiciary Committee in each 2000 and 2001, and then (House Bill 2207) favorably acted upon and passed out of the House of Representatives. Timing did not permit the issue to be scheduled for hearing in the Senate in 2000, and the Senate killed the bill during floor debate last year amid the noises of black helicopters. Thus, the matter is again submitted for consideration.

I provide you with testimony submitted from 2000 on HB 2775 by a representative of the City of Garden City, including a memorandum from the Investigations Division Commander of the Garden City Police Department. There is further submitted an issue paper, "Civil Approaches to Gang Abatement."

House Bill 2769 is modeled after a section of the California Penal Code (Section 186.20–186.28) known popularly as the "California Street Terrorism Enforcement and Prevention Act." The California code provision has been tested in court action, and upheld.

Chairman O'Neal and Members
House Judiciary Committee
Testimony in Support of HB 2769
by Rep. Ward Loyd
February 12, 2002

A review by Garden City officials of various intervention strategies designed to abate gang problems indicate two approaches that have been successful in other areas of the country. These primarily involve an anti-nuisance injunctive strategy against gangs or landlords or both, initiated by either the government or citizens. A secondary strategy involves educational efforts involving landlords, citizens, and students. HB 2769 addresses the former, and will be used as a part of the educational efforts.

The concept behind HB 2769 is "gang abatement" through the use of civil injunctions. Injunctions are easier to use, more efficient, and less costly than criminal prosecutions. Burdens of proof move from beyond a reasonable doubt to more likely true than not, and the need for and expense of providing appointed legal counsel goes away. Injunctions can be tailor-made to attack the specific gang conduct causing a public nuisance, and can target an area or a single locale – a flexibility that our judges do not presently enjoy. Injunctions serve as a vehicle to empower and mobilize neighborhoods, and provide a shelter to those who wish to take their neighborhood's back.

Neighbors must be contacted, and their support and declarations (affidavits) obtained. It is difficult to refute the declarations of residents or business owners who describe how their lives have been disrupted by gun shots, loud and vulgar language, fights or assaults, threats of violence, drinking alcohol in public, drug sales or abuse, and similar items. These declarations can be sealed by the Court and protect the residents from retaliation. All of this engenders cooperation between citizen and police, and build trust through establishment of partnerships.

Civil abatements do not replace criminal prosecutions, they complement them. This bill, if passed, will provide a tool by which to involve neighbors and neighborhoods in the process of community policing. If there is any incident in your communities of an increase in gang activity, this is a measure you should support and recommend to your local law enforcement officials and civil leaders.

In Session 2000 House Bill 2775 passed on final action by a vote of 123-0. Last year

Chairman O'Neal and Members
House Judiciary Committee
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the final action vote on House Bill 2207 was 114-10. The measure came out of Senate Judiciary with a favorable recommendation, but was the subject of a spirited floor debate over the issue of "civil forfeitures," given that the ultimate remedy in a civil nuisance action is the taking and razing of an offending structure, and was killed by a vote of 17-23. My take is that a few took advantage of a lack of knowledge on the part of a number of their fellows about the intent of this measure and the public policy which supports the civil nuisance laws, and I would like an opportunity to advance this educational endeavor once again.

Thank you.

City of Garden City

LEGISLATIVE TESTIMONY

TO: Chairman O'Neal and Members, House Judiciary Committee

FROM: Jim Kaup, on behalf of the City of Garden City

RE: **HB 2775; Common Nuisances-Felony Activity by Gang Members**

DATE: February 8, 2000

The 2000 State Legislative Policy Statement adopted by the City Commission of Garden City on December 28, 1999 provides:

> "The City supports legislation to amend the common nuisance statute, K.S.A. 22-3901, to add to the list of property declared to be common nuisances property that is used to maintain and carry on gang-related activities."

Like many communities in Kansas and across the nation, Garden City continues to face the problem of youth gangs. In order to deal effectively with this problem, we have engaged in a number of approaches, both proactive and reactive. The City has expanded the scope of its DARE program in the schools to focus even more attention on anti-gang education. In a cooperative program that involves the business community, private citizens, local law enforcement, and other municipal departments, we have significantly reduced the gang graffiti problem in Garden City through an aggressive approach to cleanup and by restricting the sale of spray paint to minors. The special "street gang unit" formed a few years ago in the Garden City Police Department continues to be highly active in identifying and investigating gang members, notifying parents, conducting surveillance, working closely with the schools through their administration and through the school resource officers assigned to them by the department, and arresting gang members on various criminal charges.

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As a consequence of all of our efforts, the community has achieved notable success in the reduction of gang activity and the decline in the number of our youth being recruited into local gangs.

However, there is still much that needs to be done in Garden City. Of particular concern to us is what happens to the quality of life in a neighborhood when a particular residence becomes a focal point for gang activity. Such locations become the neighborhood headquarters for vandalism, burglary, drug trafficking, and just plain intimidation. The hard-wording, law-abiding residents of the neighborhood are afraid for their safety, even while on their own property, and those residents fear for the influence this activity may have on small children in the neighborhood. The police respond as aggressively as possible when violations occur, but are often limited in what they can do. The community needs another option to address situations like this.

That is precisely what the City is asking for in House Bill 2775. We seek to expand the range of options available to us to combat gangs in our community, specifically by amending K.S.A. 22-3901 to enable the use of common nuisance statutes against gang activity. This legislation would add specified gang activity to the list of common nuisances. This would give local authorities the ability to file for injunctive and other relief currently provided for under K.S.A. 22-3901 *et seq*. Although new to Kansas, this method has been employed with some success by communities in other states, most notably in Arizona and California where similar laws have survived legal challenges.

It has been our experience in Garden City that complex community problems such as criminal gangs, substance abuse, and other related problems are best addressed on multiple fronts. We view this legislation as assisting us in this regard, by giving us another tool that we can utilize in our efforts to eliminate gang activity and keep the streets safe for our citizens. As such, the City of Garden City would like to convey its strong support for House Bill 2775.

We appreciate the sponsorship of this bill by our Representative, Ward Loyd. The City respectfully requests favorable action on HB 2775 by this Committee.

JMK:ag

Jim\Garden City\Gang Activity-Nuisance Statutes-Legislative Testimony1.wpd

MEMORANDUM

TO: Jim Kaup

FROM: Captain Michael D. Utz, Investigations Division Commander

DATE: February 8, 2000

SUBJECT: Overview of Law Enforcement Response to Gang Activity in Garden City

I am currently assigned as the Investigations Division Commander for the Garden City Police Department and oversee the administrative duties of the Garden City/Finney County Street Gang Unit (SGU). The SGU is comprised of officers and detectives from the Garden City Police Department, the Finney County Sheriff's Office, the Holcomb Police Department and the Kansas Highway Patrol. The SGU also has one prosecutor from the Finney County Attorney's Office assigned to the SGU. The SGU was formed in June of 1996.

Garden City began to notice gang activity in the early 1990's, and as many cities in the Midwest perceived these juveniles as "wanna bee's". As time went by, gang activity within the Midwest grew, and the gang problem in Garden City was no different. Gang members who were committing drive-by shootings, rapes, robberies, burglaries, aggravated assaults and aggravated battery victimized the community of Garden City. In February of 1996, one of the worst case scenarios occurred. Members of a street gang in Garden City murdered a 34-year old family man with four children. Six gang members were ultimately convicted for their role in the murder.

Currently, there are approximately 39-documented criminal street gangs in Garden City. There are at least 375-documented criminal street gang members and at least 75-criminal street gang associates. Over the past three years the SGU has been doing an excellent job identifying gang members, and investigating cases involving gang members are ultimately arrested and prosecuted. Gang members usually do their criminal acts when other gang members accompany them. They also enjoy hanging out at certain locations where they will consume alcohol and drugs, discharge firearms into the air, engage in criminal damage, fighting, etc. Unfortunately, after we arrest them and they bond out, they return back to their hang out. This reduces the quality of life in the neighborhoods that they hang out at, as well as reducing the safety of the young children in the neighborhood. The Garden City Police Department, as well as the SGU have responded to and have successfully cleaned up neighborhoods after having to put special enforcement in the neighborhood for several weeks, if not months.

In the last three years the SGU has done an excellent job combating the criminal street gangs. With the current operation of the SGU, each officer is assigned a task coordinating gang activities with the schools, parole, probation, SRS, other law enforcement agencies, etc. They are also assigned to monitor various gang members and their activities.

The SGU started a responsible retailer program with local retailers that sell spray paint. This program had the retailers voluntarily post signs that sale of spray paint to anyone under 18-years of age was unlawful, and also moved their spray paint displays to the front counters so they may be monitored by store employees. In 1996, there were over 250 reports of graffiti in Garden City, and there were only 25-reports of graffiti last year.

Once the SGU identifies a person as a member of a criminal street gang; an officer serves the parent of the gang member a letter notifying them that their child has been identified as a gang member. The overall consensus from most parents is that they were not aware of their child's activities in a gang.

There is no doubt that law enforcement in Garden City has taken every stride possible to curb activities by the criminal street gang. The SGU has found that any tool available to curb their criminal activities is another step in making our neighborhoods safe. Currently, the neighborhoods and streets are not controlled by any criminal street gang, but the next time they move into a neighborhood it would be advantageous to have additional laws to aid law enforcement in making the neighborhood safe again.

It is unfortunate that the current laws do not permit law enforcement and prosecutors to rid neighborhoods of criminal street gang activity that is disruptive and dangerous to the children in the neighborhood. We can not permit the criminal street gangs to hold our neighborhood hostage where the citizens are too afraid to come out on their front yard.

We would encourage you to support and pass the current bill on before you concerning adding the criminal street gang activities as part of the nuisance statute. We do appreciate your attention to this matter.

Michael D. Utz, Captain
Investigations Division Commander

IMLA ANNUAL CONFERENCE
WORK SESSION VIII

Civil Approaches To Gang Abatement
And Code Enforcement

Gang Abatement In A Community Context

by
Casey Gwinn, City Attorney
Office of the City Attorney
1200 Third Avenue, Suite 1620
San Diego, California 92101

IMLA ANNUAL CONFERENCE
November 16 - 18, 1997

GANG ABATEMENT IN A COMMUNITY CONTEXT

I. INTRODUCTION

Although remedies for public nuisances have been part of equity jurisprudence for centuries, it is only recently that prosecutors have started to use them. Prosecutors have discovered that using equitable remedies they can advance justice and fairness in situations where legal remedies are inadequate. Twenty-first century prosecutors will turn to the historical court of equity to take back houses, streets, neighborhoods and communities from criminal street gangs.

This paper focuses on recent strategies employed in California to fight against gang warfare and discusses case law that upholds those strategies. A review of the latest legal tools shows they are being successfully used to abate gang warfare in communities large and small. The paper encourages prosecutors to plan beyond individual battles and develop comprehensive, community-based partnerships and strategies so that they can ultimately win the war.

A. Definition of Gang Abatement

As used in this paper, "gang abatement" means the use of civil injunctions to prohibit specific gang activities. As with most states, California has a public nuisance statute authorizing municipal lawyers or district attorneys to seek injunctive relief to abate activity that is creating a public nuisance.

B. Civil Injunctions Versus Criminal Prosecution

1. Injunctive Orders are Effective Against Gangs

Why use civil injunctions or "abatements" against gang members who are entrenched in a neighborhood? Because, generally speaking, injunctions are easier to use, more efficient, and less costly than criminally prosecuting criminal street gangs.[1] And where criminal sanctions are effective, injunctions can be used in tandem with traditional prosecution. The time has come for creative solutions. In the preamble to the Street Terrorism Enforcement and Prevention (STEP) Act, the legislature has declared California "is in a state of crisis." Clearly, strategies more effective than traditional criminal prosecution are needed in order to respond to the growth of street gangs.

California has enjoyed some success in the use of injunctions to combat street gangs. In

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[1]Mary M. Cheh, Constitutional Limits on Using Civil Remedies to Achieve Criminal Law Objectives: Understanding and Transcending the Criminal-Civil Law Distinction, Hastings L.J. 1325, 1345-48 (1991).

1992, Burbank reported that within six months of obtaining a gang injunction there was a reduction in the crime rate and dissolution of the gang in the targeted area. In 1993, after the City of San Jose filed its gang injunction case, which reached the Supreme Court in People v. Acuna, 14 Cal. 4th 1090 (1997), there was an 80 percent reduction in drug activity in the targeted area. Given the successes enjoyed in California, the use of gang injunctions has spread to other jurisdictions.

2. Injunctions can be Tailor-made

Injunctions can be tailored-made to attack the specific gang conduct causing a public nuisance. One example is an order enjoining gang members from appearing in public view in a certain area. This provision is appropriate where a gang's threatening presence may seem invincible. The pinpoint sharpness of injunctive relief is backed by the hammer-like effect of contempt orders. If gang members violate the injunction they are subject to sanctions.

3. Constitutional Protections and the Civil Abatement Process

From a prosecutor's viewpoint, the civil abatement process can have several advantages over criminal prosecution. In a court of equity, there is no constitutional right to a jury trial. In the civil abatement process, the burden of proof is a preponderance of evidence, rather than the reasonable doubt standard required in criminal cases. In the case of civil remedies, the Sixth Amendment right to counsel does not apply, although gang members will sometimes request that counsel be appointed for them. These different constitutional standards have engendered debate. Some commentators have called for changes to require those seeking injunctive relief to meet the constitutional standards required for criminal defendants. Clearly, this is an evolving area.

4. Community Empowerment

The gang abatement process can be a foundation for empowering and mobilizing neighborhoods in order to prevent future nuisances. Gang abatements involve contacting neighbors to obtain their support and declarations. The degree of community cooperation and support you receive from the impacted area will affect the long-term success of the abatement. Other important factors include the percentage of home owners in the area and the gang's level of community support. These factors make it imperative to establish and build trusting relationships with residents of the impacted area. Such relationships can then develop into long-lasting partnerships with residents. You can translate such partnerships into success with the abatement process and beyond.

One of the roles of the community prosecutor is to help orchestrate and build the kinds of community support systems necessary to ensure the long-term success of the gang abatement. This process is easier to achieve if your police department has adopted a neighborhood policing philosophy. The San Diego Police Department has seen the fruits of that kind of law enforcement

philosophy. It emphasizes partnerships as the foundation for building community support.

Another means to assist the community restoration process is to have other neighborhood agencies involved in the abatement process. In San Diego, "Safe Streets Now"[2] is such a community organization. It helps residents develop into empowered neighborhood groups that deal with crime and community development issues. The efforts of such a catalyst give rise to Neighborhood Watch groups, community town councils, citizen patrols, and other neighborhood-based groups that foster neighborhood pride and buffer against the return or resurgence of street gangs.

C. Innovative Gang Abatement Strategies in California

Although California did not create gangs, they have become as much a part of the California culture as earthquakes, and they are just as deadly. The state of crisis is apparent every time there is the senseless death of a gang youth or innocent bystander. The literature shows that California prosecutors are adopting new approaches in combating criminal street gangs. Traditionally, prosecutors vigorously prosecute gang members for the crimes they commit. Although this approach is effective against the few who are caught and prosecuted, the problem is that individual prosecutions have failed to retard the growth in gang violence. Where the guilty are prosecuted for crimes, the old gangsters, "O.G.'s," are quickly replaced by a new crop of "gang bangers," and the cycle of violence and death continues.

Although civil gang abatements do not eradicate gang violence, they do disrupt the very nature of the gang activity, enjoining specific gang conduct. A primary objective of gang abatements is to stop gang conduct that causes a public nuisance. Another objective is to disrupt gang activities enough to stop violence *before* someone is killed or injured. In conjunction with criminal prosecution, gang abatements enhance law enforcement's ability to control gang behavior. Proactive gang abatement reduces the gang's collective power, and thus the threat the gang's presence creates.

Civil abatements do not replace criminal prosecutions, they complement them. Gang abatement attacks street gangs where they live, on the streets. Injunctions focus on something criminal prosecutions do not, the gang as an entity, an unincorporated association. One innovative approach to street gangs is taking place in Los Angeles.

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[2]Safe Streets Now is a community-based organization. It promotes community empowerment by assisting residents with crime and community development issues. For example, it brings small claims actions against owners of drug infested properties and helps residents establish citizen patrol groups. The contact person in San Diego is Bob Heider, (619) 399-5408.

Los Angeles District Attorney's Strategy Against Gang Environments (SAGE) Program[3]

The SAGE program is a prototype of the next generation of prosecution efforts against street gangs. SAGE was established by the Los Angeles District Attorney's Office in 1993. It was born of a recognition that individual law enforcement agencies working alone cannot fight gangs as well as they can working together in a multi-jurisdictional, collaborative approach. (One such collaborative approach to prosecuting gangs is Los Angeles's Community Law Enforcement and Recovery (CLEAR)[4] program.) The SAGE program provides Deputy District Attorneys to work in partnership with the community to combat local gang problems.

SAGE Deputy District Attorneys (DDAs) come from the District Attorney's Hardcore Gang Division to work in Los Angeles County communities. The SAGE DDA obtains restraining orders and injunctions to combat gang violence. The pilot program was in Norwalk in 1993 and was effective in combating local gang problems. Housed in the city or unincorporated area where they work, the SAGE DDA develops knowledge and expertise about local gangs and works with local law enforcement agencies, such as the police and probation departments. They also work with the community, including schools, churches, politicians, businesses, civic leaders, and community-based organizations.

SAGE DDAs have used civil injunctions against gangs, and have used the threat of injunctions to help arrange a gang truce. Although SAGE is an abatement program, it is flexible enough to be involved in other creative solutions to the gang problem. They have helped to develop a special education program for "at risk youth" as part of their outreach effort.

The SAGE program has three objectives: (1) to create an atmosphere that leads to cooperative conduct between community residents and law enforcement; (2) to identify gang members who are problems; and (3) to stop targeted criminal street gang members from committing acts that degrade the quality of life in the community.[5]

SAGE DDAs work with local law enforcement gang experts, patrol officers, and probation officers to tailor injunctions specific enough to address local gang problems. Once

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[3]Gil Garcetti, SAGE Strategy Against Gang Environments, A Handbook for Community Prosecution, June 1996.

[4]CLEAR is a collaboration of law enforcement agencies, all working together as a team to address one community's problem with a specific gang. CLEAR is designed to draw on the resources of all team agencies to apply a flexible and coordinated response to gang crime. CLEAR's mandate is simple - to address the problems caused by one criminal street gang's activities by rapidly deploying coordinated community-based law enforcement strategies.

[5]Gil Garcetti, *SAGE Strategy Against Gang Environments*, A Handbook for Community Prosecution, June 1996 at 1.

injunctions are obtained, SAGE DDAs work to ensure police and probation officers have copies of the order so they can identify and document violations. The SAGE DDA uses a computerized gang tracking system containing gang probation conditions. This allows them to accurately monitor and effectively account for probation violations. SAGE's multi-jurisdictional approach, coupled with a commitment to community partnership makes SAGE one of the most innovative responses to the gang problem.

D. Criteria to Consider in Identifying a Gang for Abatement

Prosecutors should consider whether a gang (1) is creating a public nuisance, (2) is limited to a specific geographic area or property, and (3) is an unincorporated association banding together for the primary purpose of engaging in criminal activity. Sometimes the public nuisance is not sufficiently well documented. In that case, you will need to develop an enforcement strategic plan to establish the public nuisance. Document gang member arrests, field interrogations (FIs), calls for service (CFS), and gather declarations from citizens. Review local ordinances and state statutes to determine whether all available tools are being used to document the nuisance activity. In California, for example, there is a statute prohibiting "loitering for drug activity" that has proved to be a useful tool.

Your jurisdiction's first gang abatement case will not only be a learning experience for the prosecutor but also an opportunity to educate the bench about the merits of gang abatement. Unfortunately, not all courts have embraced the use of civil injunctions to address the street gang problem. In cities like Oakland and Westminster, California, some courts have been unwilling to issue preliminary injunctions against gang conduct prohibited by criminal statutes. These courts have held that there is an "adequate remedy at law." Several courts have found some injunctive provisions to be overbroad and vague. These cases serve to remind prosecutors that injunctive provisions must be narrowly tailored so as not to infringe "intimate" or "expressive" First Amendment associational rights. Injunctions may "burden no more speech than necessary to serve" an important governmental interest. Roberts v. United States Jaycees, 468 U.S. 609, 619 (1984), Madsen v. Women's Health Center, Inc., 512 U.S. 753 (1994).

II. STATUTORY BASIS FOR GANG ABATEMENTS IN CALIFORNIA AND OTHER ENFORCEMENT OPTIONS

A. Public Nuisance Statutes

California's Street Terrorism Enforcement and Prevention Act authorizes the use of injunctive relief to abate disruptive gang activity, but most gang abatements in California are based on public nuisance statutes. The nuisance statutes are preferred for their simplicity and adaptability.

California Code of Civil Procedure section 731 authorizes the city attorney or district attorney to bring civil actions to abate public nuisances. California Civil Code section 3479

defines a "nuisance" as anything that is "injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any . . . public park, square, street or highway." California Civil Code section 3480 defines a public nuisance as "[a nuisance] which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal." California Civil Code section 3491 prescribes three remedies: indictment or information, a civil action, or abatement. These public nuisance statutes are designed to protect against injuries to *community rights*. Acuna 14 Cal. 4th at 1104.

1. Unreasonable and Substantial Interference Requirement

The interference with the community's quality of life must be both *substantial and unreasonable*. Acuna, 14 Cal. at 1105. "Substantial interference" is established by proof of significant harm. Significant harm is "a real and appreciable invasion of plaintiffs interest" that is "definitely offensive, seriously annoying or intolerable." Id. "Unreasonableness" is based on a comparative standard: whether the interference is actionable is determined by comparing the social utility of an activity to the gravity of the harm it inflicts looking at the situation as a whole. Id. Both standards are objective ones.

2. Establishing a Gang Abatement Action

a. Citizen Declarations

Gang abatement actions must overcome two evidentiary hurdles. The first is to establish that a public nuisance exists. The second is to prove that gang members are creating and maintaining the public nuisance. Both hurdles may be overcome using citizen and police declarations that document the activities and identify the individuals creating the nuisance.

Citizen declarations can establish the existence of a public nuisance - the *unreasonable and substantial interference* with their community rights. Such declarations carry great weight with the courts. It is difficult to refute the declarations of residents or business owners who describe how their lives have been disrupted by gun shots, loud and vulgar language, fights or assaults, threats of violence against adults and children, trespassing, littering, drinking alcohol in public, drug sales and abuse.

In some areas gangs are more aggressive in using intimidation and violence against residents. The greatest violence involves drug trafficking and deadly turf battles between rival gangs. Gang members use threats and acts of violence to prevent interference from neighbors. The legitimate fear of street terrorists complicates the task of obtaining citizen declarations and engaging citizens in the efforts to reclaim their neighborhood. One tactic to help protect residents is to ensure that their declarations are sealed by the court. Courts are likely to grant such requests when the city can show that complaining residents have been threatened. Another means to

reduce fear is to use gang abatement as part of a *comprehensive* effort to restore the community. Such an effort could involve redistribution of available resources: an increased law enforcement presence, recreational and community development, and code enforcement. When gang abatement is viewed as a first step, residents are more willing to take a personal risk and participate.

If citizens are willing to participate, their declarations can be instrumental in identifying gang members. Often residents have lived in their neighborhoods for a long time. They have watched neighborhood kids grow up to be gang members. Without knowing gang members' names, residents may be able to identify gang members' families, friends, or other associations.

In some cases, for various reasons, some residents may object to gang abatement efforts. Residents have been known to work against abatement efforts by denying the need for an injunction or by encouraging neighbors not to support it. It takes a broad base of community to support to counteract such opposition.

b. Police Declarations

If the citizen declarations are the heart of the case, then the patrol officer and gang detective declarations are the soul. Police declarations document the crimes and nuisance activities of the gang members and establish their gang affiliation. The lead gang detective needs the expertise on street gangs to testify about (1) an individual's identity as a member of the subject street gang, and (2) the crimes and disorderly conduct of the named gang members that establish the criminal nature of the street gang.[6]

The California courts have held that the question of whether a "criminal street gang" exists is a proper subject for expert opinion. In re Nathaniel C., 228 Cal. App. 3d 990, 1004-1005 (1991). Courts have also upheld expert witness testimony concerning such areas as gang psychology and sociology, including the social customs and methods of particular gangs. People v. Gamez, 235 Cal. App. 3d 957, 966 (1991)(overruled on other grounds by 14 Cal. 4th at 605).

An officer's expert opinion is required in order to establish (1) an individual's membership in a gang and (2) the gang's primary activities. An officer cannot establish these facts by relying simply on nonspecific hearsay and vague arrest information. To lay the foundation for an officer's testimony as an expert, the officer must have the appropriate background and training, personal knowledge and experience with the *subject* criminal street gang, information from the investigative files and police reports, and personal observations or reports of the observations of investigating officers. Id at 966-968.

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[6]Penal Code section 186.22(a) defines street gang member as "[a]ny person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct . . . ."

California Penal Code section 186.22(f) defines "criminal street gang." An expert's opinion can establish that a particular gang is in fact a criminal street gang. California Penal Code section 186.22 (e)[7] sets out what constitutes a "pattern of criminal activity." Proving such a pattern requires time-consuming investigative work to show that certain kinds of crimes were committed within a certain time by two or more individuals. It must be shown that in committing the crimes, the individuals' actions were "gang-related."[8]

Selecting which gang members to name in a complaint, either as individual gang members or, under California Code of Civil Procedure section 369.5, as members of an unincorporated association 369.5, should be a collaborative decision. In order to choose the most active and dangerous gang members and to establish the necessary nexus between the gang members and the nuisance activity, it is important to hear from the police, probation department, residents and other affected members of the community. In Acuna, the court found a sufficient nexus when (1) documented gang members were (2) present in the targeted area. The nexus is even stronger where, rather than being based on mere "presence," the nexus is based on an arrest. It is important to be able to defend the criteria by which you decide that some gang members will be named as defendants and others will not be named.

3. Limitations of Gang Injunctions Under *Acuna*

a. Constitutional Challenge - *Right of Association*

Gang injunctions based on public nuisance statutes have been attacked on several constitutional grounds. Recently, in Acuna for example, the defendants attacked a provision of an injunction granted the City of San Jose that enjoined 38 defendants from "*Standing, sitting, walking, driving, gathering or appearing anywhere in public view with any other defendant herein, or with any other known 'VST'. . . member . . . .*" Reversing the court of appeal, the California Supreme Court held that the street gang's conduct did not qualify as protected "expressive"or "intimate" association. The court found that based on its activities within a specified four-square-block area "the gang is not an association of individuals formed '*for the purpose* of engaging in protected speech or religious activities.' " Id. at 1110–1111 (quoting Board of Dirs.Of Rotary Int'l v. Rotary Club, 481 U.S. 537, 544, (1987) italics added).

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[7]Penal Code § 186.22(e) "[P]attern of criminal gang activity" means the commission of, attempted commission of, or solicitation of, sustained juvenile petition for, or conviction of two or more of the following offenses, provided at least one of these offenses occurred after the effective date of this chapter and the last of those offenses occurred within three years after a prior offense, and the offenses were committed on separate occasions, or by two or more persons.

[8]"Gang-related" crimes are "felon[ies] committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, . . ." Penal Code section 186.22(b)(1).

While acknowledging that the gang may exercise some discrimination in selecting its members, the court found that the gang did not possess the characteristics of an "intimate" association worthy of constitutional protection. Quoting Roberts v. United States Jaycees, 468 U.S. 609, 620, the court held that

> Such affiliations . . .'involve deep attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences, and beliefs but also distinctively personal aspects of one's life. Among other things . . . they are distinguished by such attributes as relative smallness, a high degree of selectivity in decisions to begin and maintain the affiliation, and seclusion from others in critical aspects of the relationship.

See id. at 1110.

While the Acuna court upheld the provision affecting the gang members' rights of association, the court held that such provisions must be narrowly tailored. Provisions affecting constitutionally protected rights must be framed in the narrowest terms "that will accomplish the pin-pointed objective of the injunction." Id. at 1127 (Kennard, J., consenting and dissenting). In Acuna, restrictions on association pertained to a four-square-block area called Rocksprings.

b. Constitutional challenge - *Overbreadth*

Overbreadth was a second ground on which the court of appeal had invalidated the restriction on association in Acuna. The California Supreme Court was concerned about the "inhibitory effect a contested statute may exert on the freedom of those who, although possibly subject to its reach, are *not* before the court." Id at 1113. The court found, however, that the constitutional challenge lacked merit because "*no one*, apart from the defendants themselves, is or can be subject to the prophylactic relief granted by the trial court." Id. Drawing a distinction between a statute and the provisions of an injunction directed toward "identifiable parties and to specific circumstances," the court found that there was no unrepresented class of individuals whose conduct might be affected by the provision.

Again, to avoid overbreadth, injunctive provisions need to be narrowly tailored to protect the defendants' associational rights. In enjoining defendants, the trial court must ensure that the injunction "burden no more of defendants' speech than necessary to serve the significant governmental interest at stake." Id. at 1115 (quoting Madsen v. Women's Health Center, Inc., 512 U.S. 753 (1994)).

c. Constitutional Challenge - *Void-For Vagueness*

In Acuna the court of appeal sustained vagueness challenges to two injunctive provisions. In analyzing the void-for-vagueness claims, the California Supreme Court used two principles as

"reliable guides." The first principle is the need for a "contextual application" in evaluating vagueness claims. The second constitutional principle is the concept of "reasonable specificity." "Reasonable specificity" allows courts to uphold language against vagueness challenges "if any reasonable and practical construction can be given its language or if its terms may be made reasonably certain . . . ." Id. at 1118 (quoting In re Marriage of Walton, 28 Cal. App. 3d 108, 116)

As to the provision enjoining the defendants from associating with any other named defendant or "any other known" gang member, the court imposed a *knowledge* requirement as a limiting construction. Before the City of San Jose could prevail in a contempt action against defendants who associate with "any other known" gang member, the City would have to show that the defendants knew of the associate's gang membership. Id.

Another provision of the injunction enjoined the defendants from "*confronting, intimidating, annoying, harassing, threatening, challenging, provoking, assaulting and/or battering any residents or patrons, or visitors to `Rocksprings,' . . . known to have complained about gang activity. . . .*" Id. at 1030. The California Supreme Court reversed the court of appeal and again imposed a knowledge requirement.

Defendants also challenged as vague, the failure to adequately define "confront," "annoy," "provoke," "challenge," and "harass." Relying on the holding in Madsen, 512 at U.S. 753 where the United States Supreme Court had upheld similar words against vagueness challenges, the California Supreme Court found no reason to find the words constitutionally infirm." The court took into account the context and objective of the injunction. After reviewing citizens' declarations that described the threats, intimidation, and harassment residents faced at the hands of the gang members in Rocksprings, the court found that the declarations clearly provided a contextual application sufficient to defeat a vagueness claim. Although the City of San Jose ultimately prevailed, the potential for constitutional challenges points up the need to narrowly tailor the provisions in injunctions.

B. California's Drug Abatement Statute as a Gang Abatement Tool

Where drug trafficking by gangs can be linked to specific properties, approaches such as that of the California Drug Abatement statute should not be overlooked Although the organizational structure of the typical gang is not particularly suited to the drug trafficking business, individual gang members, gang cliques, and a few gangs in certain geographical areas have made drug trafficking a primary activity.[9] Where gang members are involved in drug

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[9]James C. Howell, Ph.D., Youth Gangs in The United States: An Overview, National Youth Gang Center, December 1996 at 18.

trafficking, civil remedies designed to abate public nuisances can be effective in combating both gangs and drugs.[10]

The California Drug Abatement statute (California Health and Safety Code sections 11570–11587) authorizes the city attorney, district attorney or citizen to "maintain an action to abate and prevent the nuisance and perpetually to enjoin the person conducting or maintaining it, and the owner, lessee, or agent of the building or place, in or upon which the nuisance exists, from directly or indirectly maintaining or permitting the nuisance." Health and Safety Code section 11571. Under this statute, as in the general public nuisance statute, the plaintiff must establish the existence of the public nuisance and show that gang members are responsible for causing and maintaining it.

Drug Abatement actions in San Diego have two objectives: (1) to stop the narcotic activity occurring on private property—residential or commercial; and (2) to ensure the rehabilitation of the property consistent with minimum code enforcement standards, including housing, fire, health and other local and state code regulations. This approach is based on the "Broken Windows" theory, which observes that "serious street crime flourishes in areas in which disorderly behavior goes unchecked."[11] One broken window, caused by gangs or otherwise, that goes unattended invites more deterioration. At its extreme, social disorder becomes rampant. A drug house left unattended can send a whole neighborhood spiraling down out of control. A dual focus on drug abatement and code enforcement in a community context is the focus of San Diego's Drug Abatement Response Team (DART).[12]

1. Persons To Be Enjoined

California's drug abatement statute authorizes injunctive relief against one or all of the following individuals who maintain a public nuisance on their property: (1) the person conducting or maintaining the nuisance, (2) the owner, (3) the lessee, or (4) the agent of the building or place with a public nuisance caused by drug activity. In most California jurisdictions, cities file only

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[10]California Health and Safety Code section 11570 Nuisance

Every building or place used for the purpose of unlawfully selling, serving, storing, keeping, manufacturing, or giving away any controlled substance, precursor, or analog specified in this division, and every building or place wherein or upon which those acts take place, is a nuisance which shall be enjoined, abated, and prevented, and for which damages may be recovered, whether it is a public or private nuisance.

[11]James Q. Wilson and George L. Kelling, Broken Windows, The Atlantic Monthly, March 1982, at 34.

[12]DART is San Diego's multi-jurisdictional drug enforcement effort. DART's core members are a city prosecutor, narcotics officer, and building inspector.

against the property owner, but other parties responsible for the narcotics activity may also be named as defendants.

There are several reasons why drug abatement actions usually focus on property owners. First, the law holds property owners responsible for public nuisances on their property. Leslie Salt Co. v. San Francisco Bay Conservation, etc. Com., 153 Cal. App. 3d 605, 622. Second, and equally important, only the property owner can take the necessary action to abate the nuisance, e.g., instituting evictions, hiring a property manager, installing better lighting. As abatements are proceeding against property owners, criminal prosecution can proceed against the persons using and selling drugs on the property.

In San Diego, we have not made gang members parties to our abatement actions against property owners. We have, however, obtained TROs, Preliminary, and Permanent Injunctions against *individual gang members*, enjoining them from being within a specific radius of the subject property. Often stay-away orders are necessary against gang members who are members of the property owner's family. In such cases, property owners may be unable or unwilling to keep their gang banger family member off the property.

2. Injunctive Provisions Against Gang Members

When filing a drug abatement action, tie gang members into the process by preparing a list of documented gang members interviewed by police or arrested on the subject property. The names of potential gang members are gathered by reviewing arrest reports, crime reports, and incident reports pertaining to the property. The names are then reviewed by a gang detective who identifies documented gang members. Non-gang members who are arrested for narcotics violations on the property are also put on the stay-away list.

The court then enjoins the named individuals (gang members and narcotics offenders) from being on, or within a certain radius (e.g., 300 feet) of, the property. When the subject property is close to another location involved in a gang's drug trafficking, e.g, an intersection, both locations are specified in the stay-away order. These stay-away provisions include a map detailing the area from which gang members are restricted.

3. Citizen and Police Declarations

As in gang abatements based on the general public nuisance statutes, the drug abatement statute requires police and citizen declarations. The one difference is that in the case of the drug abatement statute, the gang expert documents that the gang is dealing drugs on a particular property. As always, the gang expert must establish the foundation for the expert's beliefs. Like the police declarations, the citizens' declarations must substantiate the existence of a public nuisance based on drug activities. Citizen declarations should also describe the impact of the drug activities on the peaceful and quiet enjoyment of their property.

4. Additional Evidence

When gang members live at or frequent a property, usually they "claim" the property with graffiti. Pictures depicting gang graffiti can establish a gang's association with a property. In a recent case, a gang painted an entire house their gang color. A picture of it made a convincing exhibit. Surveillance videos are also useful to show the court the kind of activity you are trying to enjoin, and that residents are forced to live with. Surveillance photos are easiest to obtain when gang members are associated with a specific property, rather than with a large area such as a park.

5. Benefits of a Gang/Drug Abatement Injunction

The drug abatement statute is effective in abating narcotics activities by gang members on specific properties. Drug abatement, however, is not without its challenges. Usually by the time the court order is issued, police and gang detectives are unable to find gang members at the property for service of process. The necessity of serving TROs and injunctions on *each named defendant* affords officers probable cause to contact and search gang members for weapons before serving them. The process of explaining the order, the map's perimeters, and the consequences for disobeying the order diminishes the gang's sense of authority over the property and the area.

Involving citizens as part of the abatement process creates an opportunity to mobilize citizen participation in community efforts. When gang activities that involve drugs are associated with one or two properties in particular, the drug abatement is more effective in addressing the problem than the general nuisance statute. When gangs in isolated areas are abated, neighborhood recovery may be quicker and easier. Service of process is simplified in drug abatement proceedings. Because gang members are not named parties, they do not have to be served with summons, complaints and other pleadings. But they are still bound by the court's stay-away order.

6. Limitations of Gang/Drug Abatement Injunctions

Drug abatement does not attack the criminal street gang itself. It excludes named gang members from areas within a specified radius of particular properties. However, it is a valuable tool when gang problems are in small, isolated areas.

C. Gang Abatement in San Diego - A Case Study

In San Diego, the general nuisance statute was effective in abating a nuisance at a residence used by gang members as a hang out. The drug abatement statute was not warranted because of the absence of documented narcotics activity on the property. Neighborhood residents, especially the main complainant who lived directly across the street from the hang out, were forced to suffer numerous indignities. They witnessed drug trafficking and abuse, drinking in public, large groups loitering on both sides of the street, loud and vulgar language, fights in the street, and shootouts in broad daylight. The access to their residences was blocked by incessant

traffic. And they had to endure threats and constant intimidation. Even the police were apprehensive about contacting individuals in front of the property, unless they had sufficient backup.

The City's strategy was to force the property owner to take affirmative steps to stop the gang's public nuisance activities. Citizens' declarations established that gang nuisance activity had been associated with the property for two years. Gang members used the house for parties on an almost daily basis. The property owner claimed to be afraid to evict the gang members.

One neighbor consistently complained. Research revealed an almost total absence of any enforcement history concerning the property. No arrests had been made; there was not so much as a field interview. To find out whether the complainant's claims were legitimate, the prosecutor decided to call a community meeting to discuss the property. The complainant provided the names and addresses of forty neighbors. The complainant went door-to-door encouraging them to attend. The meeting was held at a library away from the property in order to ensure the residents' anonymity and safety.

About thirty residents attended the meeting. Asked about problem locations in their neighborhood, approximately three-quarters of the group identified the gang hang-out as the major problem in the area. Two subsequent meetings were held to gather more information and build a relationship with the residents. Besides the community prosecutor, neighborhood policing officers, city council representatives, and representatives of neighborhood agencies attended. At the third meeting, a resident was elected to chair the group and to schedule additional meetings to monitor the gang abatement process.

Nine citizens' declarations were obtained from residents who either lived on the street or had personal knowledge of incidents involving gang members at the targeted house. Three police declarations were used in the abatement action, including one from a gang detective. The gang detective's declaration established the gang affiliation of the people hanging out at the property.

Six weeks after the last community meeting, a complaint was filed and a preliminary injunction was issued ordering the defendants—the property owners, not the gang members—to abate the public nuisance on their property. The defendants served an eviction notice on the family living on the property. Within sixty days of serving the injunction, the nuisance was abated.

Having reclaimed their street from "hoodlums," the neighborhood residents, with the assistance of an existing town council organization, formed their own town council association and continue to meet to discuss neighborhood issues.

III. REFORMING THE PROPERTY

Once a civil injunction has successfully abated gang activity on a commercial or residential property, the next step is to rehabilitate the property. Drug abatements can do more than stop narcotics activity. They are a means to ensure that code violations are corrected and that the property is rehabilitated. As a result, a crucial member of San Diego's DART team is the code enforcement inspector. At the initial stage of the process when a potential drug abatement case is identified, a housing inspector, accompanied by a DART police officer, conducts both an exterior and interior inspection of the property, noting all code violations.

The property owner is given notice of the violations and is told to correct them. If any violations remain when the injunction is granted, the property owner is *ordered* to correct them. If the property is a hotel, a multi-unit apartment complex, or commercial building, the injunction has special provisions. The owner may be required to (1) employ a 24-hour on-site security guard, (2) contract with a property management company, (3) provide adequate lighting, (4) adequately screen tenants, and (5) attend a landlord training class.[13]

In the case of a single-family home, a rehabilitated house free of trash, graffiti, and other code violations restores a sense of pride to the neighborhood. It sends a message that this is a community where crime will not be tolerated and residents may feel safe. The neighborhood is now more attractive to future businesses and residents.

Environmental Factors in Preventing Crime

A. Proactive Code Enforcement

Today, more than ever, law enforcement and community groups recognize that a crucial weapon in fighting and preventing crime in neighborhoods is a proactive code enforcement program. Vacant or dilapidated buildings, trash, abandoned cars, substandard housing, graffiti and blight serve as an open invitation for vandals, prostitutes, gang members, drug users, and other criminals to commit crime. On the other hand, aggressive enforcement of housing, building, zoning, fire, litter, and health and safety regulations, sends the message that law enforcement and the community care, and that crime and neglected properties will not be tolerated.

If residences are left vacant and unsecured, gang members are attracted to them. In San Diego, the owner of a vacant and unsecured building receives a Notice of Abatement from City code compliance inspectors, and is required to board and secure the property in ten days.[14] If the

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[13]The San Diego Police Department conducts an ongoing landlord training class designed to teach property owners to properly screen tenants and implement proactive security measures.

[14]Depending on the complexity of the case and property ownership, the inspector could also refer the case to the City Attorney to obtain a civil abatement order.

owner fails to take action, the City may abate the structure and assess the abatement costs as a lien against the property. In the case of a structurally unsafe or dangerous building, the City may require demolition of the property.

Even a boarded and secured property can attract gangs. In 1992, the San Diego City Attorney's Office and the City Manager's Office formed a strong partnership with the real estate industry, the Apartment Owners Association, banks, and the community to aggressively confront the problem of vacant properties throughout San Diego. One result was new legislation. San Diego's Vacant Properties Ordinance assesses the owner of a vacant and boarded structure a $250 fine per quarter, not to exceed $1000 per year for leaving the property in a boarded state over ninety days, unless they take certain action. The owner must (1) file a statement of intent explaining what they intend to do with the property, and (2) actively rehabilitate, lease, rent, or sell the property. The City Council funded a "Vacant Properties Coordinator" who identifies vacant properties throughout the City and facilitates rehabilitation. The Coordinator contacts owners to determine why the property is vacant, provides access to grants, involves non-profit agencies in rehabilitation efforts, conducts first-time home owner fairs in the community, and maintains a partnership with the banking and real estate industries.[15]

Because crime, including gang activity, is less likely to occur in neighborhoods where properties are maintained free of blight, it is imperative for municipalities to have a vigorous, proactive code enforcement program. An effective program involves the prosecutor, police, code enforcement inspectors, elected officials, and the community. Although the size and budget of the municipality dictate what code enforcement services can be provided, no matter what the size of the municipality, volunteers are crucial to a successful code enforcement program.

Since 1987, San Diego has provided training to thirty volunteer groups citywide. The groups identify neighborhood issues, prioritize violations, and attempt to obtain voluntary compliance without referring the case to City staff. Before initiating enforcement activities, volunteers must participate in training concerning communication skills, information on resources, and how to identify violations. Volunteers send letters to violators requesting voluntary compliance. If property owners do not comply, the case is referred to City code enforcement inspectors for enforcement action. Volunteer groups meet with City code enforcement staff each month. The meetings allow each volunteer group to turn over priority cases and ask questions about specific ordinances. Code enforcement staff report back to volunteers on cases referred for enforcement action.

Since 1984, San Diego has been fortunate enough to be able to dedicate prosecutors full-time to code enforcement in a specialized Code Enforcement Unit (CEU). In recent years, San Diego's code enforcement program has become increasingly more proactive . This past year city code inspectors and the police department created project teams to aggressively address problem

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[15]The City of San Diego recently received an award from the American Planning Association for its innovative Vacant Properties Program.

properties known to the police and the community. Police officers are becoming better able to identify code violations, and code enforcement efforts complement community policing.

CONCLUSION

Gangs, and the violence and drug trafficking associated with them, pose a serious threat to our communities. It will take our most thoughtful and creative approaches to meet this threat. Traditional criminal prosecution has not been sufficient. More is needed. Civil gang abatement, coupled with traditional prosecution, will more effectively address the destructive impact of gangs on our communities. We need programs like SAGE and others that combine criminal and civil enforcement. If, in addition to such programs, we build partnerships in our communities, we can hope not only to wage war on gangs, but ultimately to enjoy success.