



San Francisco's Proposed Gang Injunction: What will it mean, what are the problems, and how will it work?

San Francisco's City Attorney is seeking a preliminary injunction against individuals it believes are members or associates of an alleged street gang called Oakdale Mob. The Oakdale Mob is said to be responsible for criminal activity in a four-block area of the Bayview neighborhood in San Francisco.

On Monday, October 30, 2006, a civil court judge did not agree to issue a preliminary injunction as requested by the city. It did impose a temporary restraining order against 22 individuals identified and named by the city attorney which will prohibit certain activities within the four square blocks surrounding Oakdale Avenue and Baldwin Court. The temporary restraining order, or TRO, will be in effect until the next court hearing, scheduled for November 22, 2006.

Because the community does not have a place to challenge this proceeding in court, it is imperative that it is educated on the issue and permitted to voice its concerns and interests in the imposition of an injunction. To assist in that purpose, the following information has been compiled.

What does it mean?

An injunction is a court order that prohibits a named person or people from continuing a particular activity. In this case, the San Francisco City Attorney, Dennis Herrera, is seeking an injunction to stop a public nuisance in the Bayview District.¹ The public nuisance is alleged to be illegal drug sales and possession, possession of illegal firearms and assaults with a firearm. The City Attorney aims to secure a preliminary injunction against the Oakdale Mob to stop criminal activity that threatens the public safety of residents who live within and near the intersection of Oakdale and Baldwin Court. According to the City Attorney, a high number of police reports and resident complaints inspired him to seek the injunction.

- The injunction would be issued against the Oakdale Mob, called a "criminal street gang" and "an unincorporated association" by the City Attorney in court papers.
- The injunction would impose 11 specific restrictions on the presence and activities of certain individuals identified by the city as gang members or associates. These restrictions would include a 10 pm curfew, a prohibition

against associating with any other gang member or associate in public, and other activities already prevented by law.

- If the court imposes this injunction, anyone who has received notice from the city that he or she is listed on the injunction will be prohibited from all the activities listed. A violation of the injunction would result in being in contempt of a court order. Anyone seen doing any of the prohibited activities may be picked up by the police on contempt and held for five days per violation or could be charged criminally and placed in jail for 6 months.
- The injunction would show up on employment background checks for those individuals named, and clearing a name from the injunction may be difficult.

If the judge agrees to issue the preliminary injunction at the hearing on November 22, its conditions will remain in effect until the validity and necessity of the injunction is resolved by a jury trial, a trial before a judge or a settlement. If the preliminary injunction is deemed to be legitimate, it will become a permanent injunction.

What are the problems?

Gang injunctions present many problems due to the severe limitations they can impose on individual rights. One of the most commonly discussed issues is that they are overbroad, or include too many people who may not be causing problems in a community. Often, it is the restrictions themselves that may be too broad. In 1999, the U.S. Supreme Court found that police could not be given unchecked authority to arrest citizens, even when they are presumed to be gang members. Thus, injunctions must be targeted and narrow, naming only people known to create a public nuisance in a certain geographic area.

Perhaps the greatest concern to a community threatened by a gang injunction is an injunction's disregard for the criminal process. Once identified by the city as a member or associate in the alleged Oakdale Mob, and notified of an injunction, men and women who are present in the four-block area surrounding Oakdale Avenue and Baldwin Court may be picked up by the police for generally non-criminal conduct, like talking to a friend or standing still. Should a police officer believe the friend to be another gang member, or that the individual is loitering with an intent to purchase or sell drugs, the individual can be arrested and held in contempt of court.

In San Jose, individuals named in a gang injunction were prohibited from climbing trees, talking to someone in a car, making loud noises or carrying marbles.ⁱⁱ These activities would not result in police action were it not for the injunction, and without a very clear understanding of all the terms of the injunction, people identified as gang members became vulnerable to arrest anytime they were present in the designated area.

Gang injunctions have been used widely in Southern California since the 1980s. Only minimal research has been completed on their efficacy, but law enforcement agencies frequently point to anecdotal evidence to support their continued use. In a study completed by scholars at University of California, Irvine and University of Southern

California, a gang injunction was determined to provide the community affected with less gang presence, less gang intimidation and less fear of gang confrontation.ⁱⁱⁱ However, over the intermediate and long-term, the community did not experience lower crime rates and had minimal increase in trust in police intervention. The study also suggested that the geographic area to be covered by an injunction be carefully defined based on a finding that an area included under injunction, but with little gang interference experienced more crime and fear after the imposition of the injunction. Finally, the researchers proposed that injunctions are considered in conjunction with positive neighborhood alternatives that will improve social organization and opportunities for youth.

Will it work?

Residents exposed to ongoing criminal activity have every right to demand remedial action by their city. The San Francisco City Attorney calls the injunction a law enforcement tool that will aid the residents to reclaim their neighborhood and parks. What the city may be missing, however, is the detrimental impact the injunction will have on the community itself, and the inability of an injunction to promote positive programs in the neighborhood affected. According to a former ACLU attorney who successfully fought a gang injunction in Oakland in 1994, “whether they work in reducing crime or not, they flagrantly violate the rights of groups targeted specifically because of their age, ethnicity and relationships.”^{iv}

Given the probation-like restrictions that will be imposed on individuals, it is important to understand the likelihood of increased vulnerability to the criminal justice system that will result for individuals who live in or near the proposed four-block vicinity in Bayview. Juveniles and young adults may become targets of police attention based on incorrect information or presumptions due to appearances. Further, individuals may be restricted from attending family gatherings, working in community programs or participating in civic events because of the injunction’s broad prohibition against association between two or more people thought to be members or associates of Oakdale Mob.

Studies relied on by both the City Attorney and the American Civil Liberties Union show conflicting outcomes over variable periods of time. The short-term effects of gang injunctions generally show decreased crime rates in neighborhoods affected. Neighborhoods also reported fewer occurrences of gang intimidation, and less fear of confrontation with gang members. However, over a longer period of time, or more than one year, the intermediate and long-term effects are questionable or inconsequential.

Importantly, the study out of University of California, Irvine called for efforts by cities using gang injunctions to develop or improve positive, alternative programs for youth who may be involved in or associated with gangs.

In San Francisco, it became obvious after the hearing on October 30 that the gang injunction could potentially disrupt the efforts of a county funded program that recruits former or current gang members into community restorative employment. Under the

terms of the Temporary Restraining Order now in place, any individual subjected to the TRO who participates in the program may only work with a maximum of one other individual subjected to the TRO while under the supervision of a work employee.

The Next Step

The San Francisco Superior Court will consider the injunction at a hearing on November 22, 2006. Until then, the judge ordered that a TRO be imposed on only the 22 or 23 individuals named in the suit, and only upon their notification of the order. Thus, between now and November 22, certain individuals who engage in any of the restricted activity in the four-block zone may be picked up by the police for violating the terms of the TRO.

It is important that all residents living in or near the four-block area understand the terms of the standing order, and become informed of the terms and effects of the injunction, should it come to pass. The injunction could eventually affect many more than the 22 or 23 people currently exposed.

Research on the results of civil gang injunctions, though limited, indicates that community safety may improve if injunctions are used in concert with positive efforts to offer educational, vocational and personal growth opportunities to community members. Support and treatment may provide more long-lasting change in negative gang behavior, and ultimately address the ultimate causes of gang development. A community impacted by a gang injunction should demand positive interventions and opportunities for its members to offset and prevent the potential criminal consequences of the injunction for certain of its members.

City agencies like Department of Children, Youth and their Families and the Mayor's Office on Criminal Justice must develop programs for the community to avoid further nuisance and crime in their neighborhoods, and non-profits serving the community should prepare themselves to respond to community questions and concerns about the injunction. These non-profits are in the best position to offer guidance and alternatives to the at-risk youth and families who will be targeted should the injunction be imposed.

ⁱ Public nuisance is defined in California Civil Code sections 3479 and 3480.

ⁱⁱ See *People ex rel. Gallo v. Acuna* (1997) 14 Cal. 4th 1090.

ⁱⁱⁱ Maxson, Cheryl L., Hennigan, Karen M., Sloane, David C. (2005). "It's Getting Crazy Out There: Can a Civil Gang Injunction Change a Community?" *Criminology & Public Policy* 4, 3: 577-606.

^{iv} Ed Chen, former ACLU-Northern California attorney, prevented the injunction against the B Street Boys in 1994. Quote provided by Los Angeles Youth Justice Coalition.

The Center on Juvenile and Criminal Justice is a nonprofit, nonpartisan organization that offers policy analysis, program development and technical assistance in the criminal justice field. For more information, please visit www.cjcj.org or contact Megan Corcoran at 415-621-5661, ext. 309.