

Executive Summary

Under a grant from the National Institute of Justice, the Institute for Law and Justice (ILJ) has conducted an assessment of state prosecution of criminal street gangs. This assessment has three major components: (1) a national survey of state prosecutors to learn their assessment of and reaction to street gang activity; (2) a review of state legislation specifically targeted at street gang activity; and (3) four case studies that examined in detail how local prosecutors confront street gangs.

The street gangs discussed in this study are predominately youth and young adult gangs. They engage in street violence, often against each other, often for the sake of violence itself rather than for some other purpose. Prosecutors have concentrated on gang-related violent crime, and to this end, they have found existing criminal law adequate for most purposes.

Prosecutor Survey

ILJ conducted a nationwide survey of 368 prosecutors' offices, including all 175 counties with more than 250,000 people and 193 prosecutors randomly selected from counties of 50,000 to 250,000 population. Eighty percent (140) of the prosecutors in large jurisdictions responded, with 84 percent (118 respondents) reporting gang problems in their jurisdictions; and 83 percent (160) of the small jurisdictions responded, with 46 percent (74 respondents) reporting gang problems. ILJ performed a detailed analysis of the 192 survey responses that reported having gang problems.

Prosecutors were asked to indicate which of several categories of gangs are present in their jurisdictions. Responses from large and small jurisdictions are significantly different. The largest gang category, local African-American, is present in 83 percent of large jurisdictions and 60 percent of small jurisdictions. Caribbean-based gangs are reported in 43 percent of large and 16 percent of small jurisdictions, but unlike the other gang categories, they are always reported as involved in drug trafficking.

The notoriety of the Crips and Bloods, the two dominant gangs of the Los Angeles area, has led to a spread of their colors and violent life-styles to many other cities. In large jurisdictions, 50 percent report the presence of Crips and Bloods, with 90 percent involved in violent crime, and 92 percent involved in drug trafficking. Small jurisdictions report Crips and Bloods at a lower rate, 41.1 percent, but with similarly high rates of involvement in violent crime (77 percent) and drug trafficking (97 percent). However, ILJ cannot tell from its data whether local Crips and Bloods have any continuing connection with Los Angeles Crips and Bloods. ILJ's site studies indicate that the names and colors persist long after any real Los Angeles connection has been broken.

Asian and hate gangs are reported to be more involved in violent crime than in drug trafficking. Asian gangs are reported in 52 percent of large but only 14 percent of small jurisdictions, with over 90 percent active in crimes of violence, but only 46 percent (40 percent in small counties) active drug traffickers. In large jurisdictions, close to 75 percent of hate gangs are involved in violent activity, though fewer than 10 percent are involved in drug trafficking.

In large counties, over 90 percent of Caribbean, Crips and Bloods, and local African-American gangs are reported to traffic in drugs. This pattern is similar in small jurisdictions. These gangs deal mainly in cocaine—over 95 percent that deal in drugs deal in cocaine. Approximately 60 percent of large jurisdictions have motorcycle gangs, 90 percent of which are said to traffic in drugs, primarily methamphetamine. Fewer than 50 percent of small jurisdictions report motorcycle gangs, but over 80 percent of them traffic in drugs. Hate gangs in all jurisdictions have the lowest reported involvement in drug trafficking.

About a third of prosecutors in large jurisdictions have formed gang units (38 counties or 32 percent), using vertical prosecution to focus on gang members. These units are usually staffed by two to four full-time attorneys. Los Angeles County has the largest office with 48 full-time attorneys.

Although 31 states have a RICO statute, only 17 percent of large county prosecutors and fewer than 10 percent of small county prosecutors have ever used RICO against gang members. Thirty-six percent of all prosecutors have used state drug kingpin statutes against gang members. Prosecutors also use criminal conspiracy, habitual criminal acts, criminal responsibility, narcotics, malicious harassment, and drive-by shooting statutes. Only 14 states have enacted gang

statutes, and prosecutors in the other 36 states are using traditional criminal code provisions with substantial success.

Prosecutors in all jurisdictions agree on the most significant problems in gang cases. Obtaining the cooperation of victims and witnesses was cited as a major or moderate problem by 150 prosecutors (78percent). Other problems are intimidation of victims and witnesses (cited by 73 percent), lack of early intervention programs for youth at risk of gang involvement (71 percent), victim and witness credibility (70 percent), and lack of resources for victim and witness protection (74 percent). On a positive note, the majority of prosecutors are satisfied with police department reports.

Asked for suggestions, the prosecutors had an abundance of recommendations. A recurring, and perhaps the most important theme of all, is the need for early intervention for youthful offenders. Prosecutors feel a sense of futility and frustration. The means available to them, primarily enforcement of criminal codes and imposition of criminal sanctions, come too late. They strongly advocate programs that keep youth from being involved in delinquency and crime to begin with.

Several jurisdictions referred to the need for stronger firearms control, both federal and state. Many prosecutors favor vertical prosecution by a specialized gang unit, particularly when coordinated with gang units of local law enforcement agencies. Teamwork and coordination were emphasized in many responses.

Legislative Review

ILJ reviewed state criminal codes for special measures to deal with street gang activity. Only 14 states have enacted new code provisions on street gangs, and most of these enhance sentences on existing criminal offenses. Prosecutors in the other 36 states proceed against street gangs under existing provisions of their criminal codes. Because virtually everything objectionable about street gangs is already against the law, it is not particularly surprising that most states have not seen a need to enact new code provisions.

Five states (California, Florida, Georgia, Louisiana, and Illinois) have enacted Street Terrorism Enforcement and Prevention Acts. California's is the prototype. It links three definitions: "criminal street gang," "pattern of criminal gang activity," and "participation in a criminal street gang." A pattern of criminal gang activity means commission of one or more of seven predicate offenses on two or more separate occasions. The predicate offenses are assault with a deadly weapon, robbery, homicide, narcotics trafficking, arson, shooting at an inhabited building or vehicle, and intimidation of victims or witnesses.

A "criminal street gang" is an ongoing group that has as one of its primary activities the commission of one or more of these predicate crimes, plus "a common name or common identifying sign or symbol whose members individually or collectively engage in a pattern of criminal gang activity."

"Participation in a criminal street gang" is a separate offense, carefully defined so as to guide around unconstitutional infringement of the rights of free association and free speech.

The California Street Terrorism and Prevention Act is obviously based on the RICO model, using a series of predicate crimes as the basis for sentence enhancements, and providing civil forfeiture of the assets of a street gang and proceeds of its criminal activities. The Florida, Georgia, and Louisiana Street Terrorism Acts copy most of California's provisions. Illinois, however, has copied only the definitions, limiting its act to the provision of civil remedies for governmental entities within the state.

Some states have added drive-by shooting statutes. Their value is to turn specific intent crimes like attempted murder or aggravated assault into general intent crimes. They have been very useful where enacted.

Case Studies

ILJ also conducted four case studies of prosecutors' offices in different states. The sites selected included two in states with gang legislation and two in states without gang legislation.

The first site was Multnomah County, Oregon. Oregon has no specific gang legislation, although it has enacted a drive-by shooting statute at the urging of the Multnomah County prosecutor.

Organized in mid-1988, the Multnomah County gang unit is a vertical prosecution unit with four prosecutors and a victim advocate. It concentrates on violent felonies committed by gang members, working in close collaboration with the Portland Police Bureau, which has its own gang enforcement team and has taken the lead in developing gang intelligence.

The Multnomah County office has achieved an excellent overall record and has succeeded in destroying some gangs by removing their leaders from the scene. Collaboration with the United States Attorney brought long terms for drug trafficking Crips and Bloods from California.

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

The second site was Suffolk County, Massachusetts, where the principal jurisdiction is Boston. Both the Boston Police Department and the Metropolitan Boston Transit Authority (MBTA) have gang intelligence operations of great value to the prosecutor's office.

The Suffolk County gang prosecution unit, first organized in 1989, had seven full-time personnel at the end of 1992, including three full-time prosecutors, an investigator, and a victim-witness advocate. While it started with violent youth crimes involving firearms, the unit gradually shifted emphasis to "citizen witness" cases. Because victims and witnesses in gang cases are often much like the gang defendants themselves, there had been a tendency to let these cases slide. Taking the position that these victims and witnesses had as much right to public protection as anyone else, the unit successfully concentrated its efforts on making these cases.

Oklahoma County, Oklahoma, was selected for study because of an Oklahoma statute defining criminal street gang. In practice, this statute has been completely useless. By its terms, the statute is limited to contributing to the delinquency of a minor. Its sanctions are relatively light, and it requires proving a

series of elements in addition to proving an underlying predicate crime. Oklahoma County proceeds against gang members under the ordinary provisions of the Oklahoma criminal code and has had great success in doing so.

Riverside County, California, was chosen to study how a prosecutor uses the California Street Terrorism and Prevention Act. The Riverside County Prosecutor's Office, which serves 39 different law enforcement agencies, has taken the lead in organizing and disseminating gang intelligence. Of the four sites visited, it is the only one that compiles lists of gangs and gang sets and provides them to law enforcement. In the other sites, the largest police agency performs gang intelligence coordination, compilation, and dissemination.

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

Police officers also serve gang members with a written notice, developed by the prosecutor, that a specific gang is considered a criminal street gang under the Street Terrorism and Prevention Act (STEPA), and that participation in the gang can subject the individual to a sentence of one to three years. The notice itself has had an inhibiting effect on many gang members, but the carefully preserved record of service destroys any claim that a defendant did not know of the street gang's criminal activity, knowledge being one of the bases for STEPAs prosecution.

The Riverside County Prosecutor's Office has been highly successful in prosecution of violent gang-related crime, effectively destroying some gangs within the county. The Street Terrorism Act has been a highly useful tool in these prosecutions.

Conclusions

ILJ's prosecutorial survey results belie the belief that cities refuse to recognize the presence of gangs. Over 80 percent of prosecutors responding from large cities acknowledge gangs in their jurisdictions.

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

In its four site visits, ILJ found strikingly different views on whether to proceed by direct indictment or go through preliminary hearings. Suffolk County strongly advocates direct indictment, eliminating early confrontations between reluctant witnesses and violent defendants. Aggregating several charges in the grand jury, the prosecutor pressures defendants to plead to some charges, reducing the chance that their cases will ever go to trial. When pleas end a case, the courtroom confrontation between witness and defendant never takes place.

Riverside County and Oklahoma County take the opposite view for several reasons. Riverside County wants the testimony of reluctant witnesses on record as soon as possible. Delaying appearance of a witness implicitly promises that the witness will be available for trial, a promise often hard to keep. Second, Riverside County does not want to grant immunity to witnesses before the grand jury, a very realistic consideration given the people most often involved in gang cases. Oklahoma County uses preliminary hearings to see how witnesses do on the stand under the pressures of having the defendant present and of defense cross-examination.

Prosecution of gang cases differs from prosecution of other violent crimes because it is difficult to get victims and witnesses to cooperate. Inter-gang violence involves, perpetrator, victim, and witness in interchangeable and revolving roles. Today's victims or witnesses become tomorrow's perpetrators as they seek revenge against an individual or a gang, or seek to regain lost respect or

lost territory. Furthermore, the high visibility of gang violence creates an intimidating atmosphere that keeps non-gang witnesses from coming forward.

Strong victim and witness advocacy programs have been the best way of attacking these problems. But ordinary victim-witness programs will not suffice for gang cases. Gang victims and witnesses are qualitatively different from other victims and witnesses. Gang members do not usually want or seek the help of police and prosecutor. They try to take care of their problems themselves. People who live in gang-dominated neighborhoods fear the gangs.

Many special efforts must be made in gang cases. Advocates must find the witnesses, persuade them to give their evidence, and support them in a variety of ways. These witnesses may not have jobs, cars, or phones, so advocates must personally visit their homes to notify them of a hearing or transport them to court. The job cannot be accomplished by telephone or mail. Persuasive skill, rooted in compassion and integrity, is essential.

The prosecutor survey shows a strong connection between gangs and drug trafficking. This response may be slightly misleading. Prosecutors have responded on the basis of cases that they see, which in turn are the cases brought to them by local police agencies. For their part, police find drug cases easier to make than other gang cases, and the sample of cases that they bring to prosecutors is likely to have a large proportion of drug cases.

In each of the four sites visited in this study, gang prosecution units quickly shifted emphasis from drugs to violent crime to all crime committed by gang members. Traditional drug enforcement techniques remained effective against traditional drug trafficking, but were not necessarily effective against gang crime.

Drug trafficking does not fully explain gangs, nor do gangs fully explain drug trafficking. If gangs were to disappear overnight, drugs would remain a serious problem, and if drugs were to disappear overnight, gangs would still be a serious problem. These two problems intersect and complicate each other, but there are still large areas in which they are independent of each other.

What drugs have done for street gangs is provide a source of income. Some law enforcement officers question the ability of many street gangs to sustain an economic enterprise for long. In every city visited, drug investigation and

prosecution units devoted most of their efforts to more sophisticated organizations than street gangs. Gang prosecution units concentrated on violence.

Prosecutors strongly recommended getting guns out of the hands of gangs. Disarming gangs will not destroy them, since gangs do not form because of guns. But guns give gangs the power to terrorize society.

Drive-by shootings are possible only because of guns. Guns make it possible to kill from a distance, to kill from concealment, to kill without intending to kill. The least responsible, most dangerous members of our society have ready access to arsenals of powerful weapons that give them power that they could never otherwise attain.

Prosecutors are not optimistic about gangs in the future. They do not believe that prosecution is the answer, although they fully intend to prosecute gangs as vigorously as possible. But gang prosecutors see these problems at their worst. Gang members prosecuted by gang prosecution units are far beyond the reach of social interventions designed to deter youth from involvement in gang or drug life-styles.

Prosecutors know a great deal about the kinds of people they deal with and the circumstances that have produced them. That is why gang prosecutors advocate early intervention—"Prenatal if I could figure out how to do it," says one respondent—stronger social services for families and young mothers, and keeping guns out of their hands.