

EDMUND G. BROWN JR.
Attorney General of California
DANE R. GILLETTE
Chief Assistant Attorney General
GARY W. SCHONS
Senior Assistant Attorney General
STEVE OETTING
Supervising Deputy Attorney General
COLLETTE C. CAVALIER
Deputy Attorney General
State Bar No. 193833
110 West A Street, Suite 1100
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2654
Fax: (619) 645-2581
Email: Collette.Cavalier@doj.ca.gov
Attorneys for Plaintiff and Respondent

SUPREME COURT
FILED

JUN 15 2010

Frederick K. Ohlrich Clerk

Deputy

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

QUANG MINH TRAN,

Defendant and Appellant.

Case No. S176923

Fourth Appellate
District, Division
Three, Case No.
G036560

Orange County
Superior Court, Case
No. 01WF0544

REQUEST FOR JUDICIAL NOTICE

Respondent respectfully moves this Court, under Evidence Code sections 452 and 459 and California Rules of Court, Rule 8.252, to take judicial notice of some of the legislative history of the STEP Act, California Penal Code section 186.20 *et seq.* Specifically, respondent respectfully requests judicial notice of the Senate Committee on Judiciary,

Analysis of Assembly Bill 2013(1987-1988 Reg. Sess.) as amended June 22, 1988, a copy of which is appended to this motion.

The attached document is the proper subject of judicial notice. (Evid. Code, § 452, subds. (a),(c); see *People v. Ledesma* (1997) 16 Cal.4th 90, 98, fn.4; *Hutnick v. US. Fidelity and Guaranty Co.* (1988) 47 Cal.3d 456, 465, fn. 7.) The document is relevant to this Court's determination whether the trial court abused its discretion in allowing the prosecution to introduce evidence of defendant's own uncharged criminal acts in order to prove a pattern of criminal activity for purposes of Penal Code section 186.22, subdivisions (a) and (e).

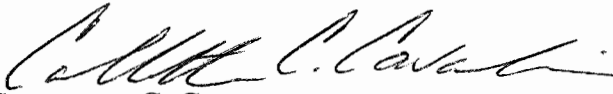
These materials were not presented to the trial court. However, the Court of Appeal took judicial notice of the document at respondent's request. The matter to be noticed does not relate to proceedings occurring after the judgment that is the subject of this appeal.

For these reasons, respondent respectfully requests that this Court take judicial notice of the attached document.

Dated: June 11, 2010

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of California
DANE R. GILLETTE
Chief Assistant Attorney General
GARY W. SCHONS
Senior Assistant Attorney General
STEVE OETTING
Supervising Deputy Attorney General


COLLETTE C. CAVALIER
Deputy Attorney General
Attorneys for Plaintiff and Respondent

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ATTACHMENT

SENATE COMMITTEE ON JUDICIARY
Bill Lockyer, Chairman
1987-88 Regular Session

AB 2013 (Moore)
As amended June 22
Hearing date: June 28, 1988
Penal Code
PAW

STREET TERRORISM ENFORCEMENT AND PREVENTION ACT

HISTORY

Source: Los Angeles City Attorney; Los Angeles District Attorney

Prior Legislation: None

Support: Los Angeles City Council; City of Compton, Crime
Committee; Southern Christian Leadership Conference;
Neighborhood Action Group, Hollywood

Opposition: American Civil Liberties Union; California Attorneys
for Criminal Justice; California Public
Defenders Association

Assembly Floor Vote: Ayes 74 - Noes 1

KEY ISSUES

SHOULD A PERSON WHO ACTIVELY PARTICIPATES IN ANY CRIMINAL STREET GANG WITH KNOWLEDGE THAT ITS MEMBERS OR PARTICIPANTS ENGAGE IN OR HAVE ENGAGED IN A PATTERN OF SERIOUS CRIMINAL ACTIVITY, AND WHO WILLFULLY PROMOTES, FURTHERS, OR ASSISTS IN ANY FELONIOUS CRIMINAL CONDUCT BY MEMBERS OF THE GANG, BE GUILTY OF A "WOBBLER"?

SHOULD A PERSON WHO IS CONVICTED OF A FELONY OR A MISDEMEANOR WHICH IS COMMITTED FOR THE BENEFIT OF, AT THE DIRECTION OF, OR IN ASSOCIATION WITH, ANY CRIMINAL STREET GANG, WITH THE SPECIFIC INTENT TO PROMOTE OR ASSIST IN ANY CRIMINAL CONDUCT BY THE GANG MEMBERS BE SUBJECT TO ADDITIONAL TWO OR THREE YEAR ENHANCEMENTS?

(More)

PURPOSE

Existing law contains no provisions which specifically make the commission of criminal offenses by individuals who are members of street gangs separate and distinctly punished offenses.

This bill would establish the "California Street Terrorism Enforcement and Prevention Act." It would enact the following provisions:

- 1) any person who actively participated in any criminal street gang with knowledge that its members or participants engage in or have engaged in a pattern of criminal activity, and who willfully promoted, furthered, or assisted in any criminal conduct by gang members or participants would be guilty of a "wobbler".
- 2) any person who was convicted of a felony or a misdemeanor which was 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 or participants, would be guilty of a crime and subject to a variety of enhancements, depending on the seriousness of the underlying offenses.
- 3) notwithstanding any other provision of law, the court would be permitted to strike the additional punishment in an unusual case where the interests of justice would best be served, if the court specified on the record and entered into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.
- 4) "pattern of criminal activity" would be defined as the commission, attempted commission, or solicitation of two or more of the following offenses, provided that at least one of the offenses occurred after the effective date of this bill and the last of those offenses occurred within three years after a prior offense, and the offenses are committed on separate occasions, or by two or more persons: assault with a deadly weapon or by means of force likely to produce great bodily injury; robbery; unlawful homicide or manslaughter; the sale, possession for sale, or offer to manufacture controlled substances, as defined; shooting at an inhabited dwelling or occupied motor vehicle; arson; or the intimidation of witnesses and victims.

(More)

This bill would not apply to employees engaged in concerted activities for their mutual aid and protection, or the activities of labor organizations or their members or agents.

The District Attorney of the County of Los Angeles and the City Attorney of Los Angeles would be required to submit a report to the Legislature on or before January 1, 1991, on the impact this bill had on the control of criminal street gang activity in Los Angeles County. The bill would be repealed on January 1, 1992.

The purpose of this bill is to provide law enforcement officials with the legal tools to "put the growing number of murdering, drug-pushing youth street gang members behind bars."

COMMENT

1. Need for legislation

According to the author, this bill would enact the California Street Terrorism Enforcement and Prevention Act which would provide for the criminal prosecution of gang members involved in criminal activity.

Proponents claim that scores of studies in recent years have determined that as many as 50,000 youths have joined one of the nearly 800 street gangs identified in California. "Youth gangs represent both big business and big-time crime in California." In the Los Angeles area, officials have linked members of the 450 criminal street gangs to 187 homicides in 1986. "Clearly, we must take a more aggressive approach to battling these gangs and AB 2013 will provide the legislative support needed by the police department's line officers, prosecutors and judges."

2. Criminal gang activity -- new offense

Under this bill, active participation in any criminal street gang would be an offense, if the activity met a number of conditions:

- (a) Any person who actively participated in any criminal street gang with knowledge that its members or participants engage in or have engaged in a pattern of criminal gang activity, and who willfully promoted, furthered, or assisted in any felonious conduct by the gang members or participants, would be punished by imprisonment in the county jail for a period not to exceed one year, or by imprisonment in the state prison.

(More)

Under this provision, an individual who actively participated in a gang which had established a pattern of criminal gang activity, as defined, and who willfully promoted felonious conduct by that gang would be subject to "wobbler" penalties, whether or not he or she had participated in the crimes. Opponents contend that individuals who have not committed crimes would be guilty of the crimes of others due to their involvement with these gangs.

Proponents of this bill claim that this bill would not criminalize mere membership in a gang. Courts have repeatedly held that mere association with a group having both illegal and legal aims cannot be punished unless there is proof that the defendant knows of, and either shares in or "specifically intends" to further the illegal aims. Scales v. United States (1961) 367 U.S. 203, 229.

- (b) Any person who was convicted of a felony or a misdemeanor which was 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 or participants would be given an enhancement based on the seriousness of the offense. The bill would allow the court to strike the additional punishment in an unusual case where the interests of justice would best be served.

In order to seek enhancements under this provision, the prosecutor would be required to prove that the underlying offense was committed for the benefit of, or in association with, the gang.

The sponsors believe that the "nexus" requirement established by this bill would be very difficult to prove except in the most egregious cases where a pattern of criminal gang activity was clearly shown. Opponents claim that it would not be difficult to prove gang association if the individual wore identifying clothing during the commission of the offense; they further state that the enhancements for felonies established by this bill are extremely severe and would not allow courts to differentiate between felonies, i.e., the enhancement for kidnapping would be the same as the enhancement for first degree murder.

(More)

3. Definitions

(a) Pattern of criminal gang activity-- would mean the commission, attempted commission, or solicitation, of two or more of the following offenses, provided at least one of those offenses occurred after the effective date of this Act, and the last of those offenses occurred within three years after the effective date of this Act after a prior offense, and the offenses are committed on separate occasions, or by two or more persons:

- (1) assault with a deadly weapon or by means of force likely to produce great bodily injury;
- (2) robbery;
- (3) unlawful homicide or manslaughter;
- (4) the sale possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances, as defined;
- (5) shooting at an inhabited dwelling or occupied motor vehicle;
- (6) arson;
- (7) the intimidation of witnesses and victims.

The sponsors of this bill chose these crimes because they considered them to be extremely serious crimes; in addition, they claim that these crimes are crimes which are typical of street gangs. Once a prosecutor established that any member of a gang had committed at least two of these crimes, the threshold for a pattern of criminal activity would be met. Any crime committed by any member in addition to this threshold would be punished more severely.

(b) Criminal street gang-- would mean any association or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated above, which had a common name or common identifying sign or symbol, whose members or participants individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(More)

(c) Prosecutor-- would be defined to include city attorneys.

4. Enhancements

Under this bill, any person who was convicted of a felony or a misdemeanor which was 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, would be punished as follows:

- a) if the criminal act which was committed was a misdemeanor, a person convicted would be imprisoned in the county jail for a period not to exceed one year, but not less than 180 days, and would not be eligible for release upon completion of sentence, parole, or any other basis, until he or she had served 180 days.
- b) any person who violated the provisions of this bill in the commission of a felony would, upon conviction, in addition and consecutive to the punishment for the felony be punished by an additional term of two years if the underlying felony was punishable by a maximum term of three years, or by an additional term of three years if the underlying felony was punishable by a maximum term exceeding three years.
- c) any person who violated this bill in the commission of a felony punishable by imprisonment in the state prison for life, would not be paroled until a minimum of 15 calendar years had been served.
- d) the court would be permitted to strike the additional punishment for the enhancements in an unusual case where the interests of justice would best be served, if the court specified on the record and entered into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

5. Opponent's arguments

(a) Freedom of association

According to the ACLU, both California law and the U.S. Constitution in the First Amendment recognize fundamental rights of freedom of association. "This bill purports to address the problem of youth violence. It in fact creates an overbroad and vague legal standard which raises serious questions of enforcement and invites selective prosecution which could be easily targeted against almost any association or group." The fact that some individuals in the group may choose, as individuals, to engage in criminal misconduct however should not criminalize membership by any person in the group.

(b) Patterns of violence already covered by existing law

Efforts to attribute "patterns of violence" to a group or organization, also known as criminal syndicalism, fail to recognize that express individualized intent is necessary to predicate criminal activity on behalf of any single person. Where such patterns of conduct or concerted action may be determined, the criminal law provides adequate sanctions under conspiracy and other laws concerning common criminal conduct.

6. Report to Legislature

This bill would require the Los Angeles District Attorney and the City Attorney of Los Angeles to submit a report to the Legislature by January 1, 1991, on the impact of this bill on the control of criminal street gang activity in the Los Angeles County. The report would include all of the following statistics:

- a) the number of arrests made under this bill;
- b) the number of prosecutions under this bill;
- c) the number of trials which have resulted from prosecutions under this bill and the number of pleas which have resulted;
- d) the number of convictions under this bill;
- e) the number and type of sentence enhancements which have been sought under this bill, and the number and kind of sentence enhancements which have been ordered by the courts.

(More)

7. Unrelated appropriation

This bill would extend the life of the appropriation of state funds available to assist the county involved in the investigation and prosecution of the Wilseyville murder case.

8. Sunset provision

This bill would remain in effect only until January 1, 1992, and as of that date would be repealed, unless a later enacted statute, which would be chaptered on or before that date, deleted or extended that date.

9. Urgency provision

This bill contains an urgency clause and would go into immediate effect if signed by the Governor. The reason for the urgency is to provide the tools necessary for law enforcement to stem the tide of illegal gang warfare without infringing upon the constitutional rights of any individual, at the earliest possible time.

DECLARATION OF SERVICE BY U.S. MAIL & ELECTRONIC SERVICE

Case Name: **PEOPLE v. QUANG MINH TRAN**

No.: **S176923**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On **June 14, 2010**, I served the attached **REQUEST FOR JUDICIAL NOTICE** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

Marleigh A. Kopas
Attorney at Law
P.O. Box 182
Topanga, CA 90290
(2 Copies)

Alan Carlson
Chief Executive Officer
700 Civic Center Drive West
Santa Ana, CA 92701

Tony Rackauckas
District Attorney
401 Civic Center Drive West
Santa Ana, CA 92701

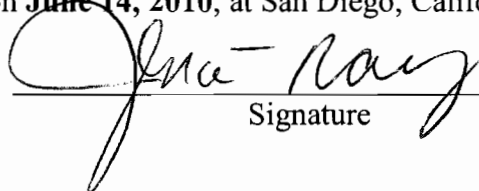
For delivery to:
Honorable Robert F. Fitzgerald, Judge

California Court of Appeal
Fourth Appellate District Division Three
601 W. Santa Ana Blvd.
Santa Ana, CA 92701

and furthermore declare I electronically served a copy of the above document from the Office of the Attorney General's electronic notification address of ADIEService@doj.ca.gov on **June 14, 2010** to Appellate Defender's, Inc.'s electronic notification address, eservice-criminal@adi-sandiego.com

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **June 14, 2010**, at San Diego, California.

Jena Ray
Declarant


Signature