

**TESTIMONY BEFORE SENATE COMMITTEE ON  
TRANSPORTATION & HOMELAND SECURITY  
REGARDING TRANSNATIONAL GANGS &  
GANG INJUNCTIONS**

**The University of Texas at El Paso  
November 10, 2009**



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## Fighting Transnational Gangs with Civil Injunctions



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<http://www.epcounty.com/CA/>

## Gangs In El Paso

### ■ El Paso:

Active Gangs: 539  
Gang members: 5,665  
Males: 5,072 Females: 341  
Minors: 252

*Source: Gang Unit of the El Paso Police Dept.*



### ■ Juárez

Active Gangs: 460  
Aztecas, Mexicles, K-13.  
Members of the Azteca gang: 9,000

*Source: "La Jornada" Newspaper April 2006.*



### ■ Transnational Gangs

Barrio Azteca, Hermanos de Pistoleros Latinos, Mexican Mafia and Texas Syndicate, Bloods

## **Barrio Azteca Gang**

- Connections with Mexican Drug trafficking Organizations.
- Barrio Azteca controls powdered cocaine, heroin, and marijuana distribution in El Paso.
- Involved in the smuggling of drugs into the U.S. and its distribution nationwide.
- Also involved in crimes such as alien smuggling, arson, assault, auto theft, extortion, intimidation, kidnapping, robbery and weapons trafficking.

## **Barrio Azteca Gang A problem in our community**

- **Founded in Texas prisons in 1986**
- **Over 2,000 members nationwide**
- **Concentrated activities in Downtown El Paso**

## Traditional Route: Criminal Prosecution

### Gangsters get prison



**5 Aztecas  
draw life;  
15 years for  
associate**

By David Gonzalez  
and Adriana M. Chavez  
El Paso Times

EL PASO — Five members of the Norte Azteca gang were sentenced to life in prison and an associate received a 15-year sentence in El Paso federal court Tuesday.

Federal prosecutors and investigators indicted the five members of the Norte Azteca gang Tuesday, charging them with racketeering, conspiracy and other crimes.

The indictment, obtained through a search of the district court records, said the defendants were actively involved in the Norte Azteca gang, including a murder, the indictment said. The defendants were charged with racketeering, conspiracy and other crimes, including a murder, the indictment said. The defendants were charged with racketeering, conspiracy and other crimes, including a murder, the indictment said.



Below, three Norte Azteca gang members were led into a courtroom after they were sentenced to life in prison Tuesday in federal court. Top, heavily armed FBI agents searched Norte Azteca gang members.

Three Norte Azteca gang members were led into a courtroom after they were sentenced to life in prison Tuesday in federal court. Top, heavily armed FBI agents searched Norte Azteca gang members.

Source:  
El Paso Times  
April 14, 2009

## Injunction vs. Prosecution?

- Local Police frustrated by the Aztecas' crimes
- Searching new approach to solve problem
- Traditional prosecution:
  - Misdemeanor conviction and probation.

## **Injunction vs. Prosecution?**

- **Injunction stops conduct difficult to prosecute**
- **Violation of injunction easier to prove**

## **Identify and Meet with Community Leaders**



## **Foundation for Obtaining a Gang Injunction**

- **Identify and Meet Affected Stakeholders**
- **Obtain Community Buy-In**
  - **Find witnesses to prove need for injunction**
  - **Area neighbors, the most affected**
  - **Assistance required in enforcing injunction**

## **Foundation for Obtaining a Gang Injunction**

- **Anticipate criticism / Minimize opposition**
  - **Explain to media the need for the injunction**
  - **Meet groups most likely to oppose (Civil Rights)**
  - **Include neighborhood associations**
  - **Include church groups**
  - **Include business community**

## Texas Laws used for the Injunction

- **Public Nuisance:**
  - Habitual use of any place for the purpose of engaging in organized criminal activities.
- **Criminal Street Gang:**
  - **As defined in Texas Penal Code §71.01**  
*“Three or more persons having a common identifying sign or symbol or an identifiable leadership who continuously or regularly associate in the commission of criminal activities.”*

## Texas Laws used for the Injunction

- **Organized Criminal Activity:**
  - **As defined in Texas Penal Code §71.02**  
*“A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, he commits or conspires to commit one or more...(crimes)*

# Gang Injunction



# Gang Injunction Granted

**El Paso Times**  
 www.elpasotimes.com  
 4B Thursday, April 24, 2003

## Limits set on South Side gang to make neighborhood safer

**By Jimmy Rojas-Cobos**  
 El Paso Times

Fear of becoming a crime victim lives South Side residents.

Maria Garcia, 42, lives in a neighborhood in the city's South Side. She said she has seen a lot of people who have been shot or killed. She said she has seen a lot of people who have been shot or killed. She said she has seen a lot of people who have been shot or killed.

**Safe Community Zone**  
 A court order prohibits 39 known barrio areas gang members from associating with each other within the zone. The zone is bounded by the Cesar Chavez Border Highway, San Antonio Avenue, Oliver Street and Santa Fe Street.

**MEXICO**  
 A court order prohibits 39 known barrio areas gang members from associating with each other within the zone. The zone is bounded by the Cesar Chavez Border Highway, San Antonio Avenue, Oliver Street and Santa Fe Street.

The members are known for youth trafficking and for participating in other organized criminal activities, including murder, extortion, drug trafficking, assault and retaliation.



## Gang Injunction Granted

- April of 2003
- Injunction for 2 years
- Safe Community Zone
- Included 33 Gang Members



## Safe Community Zone



## What does an injunction get you?

### Prohibits Defendants:

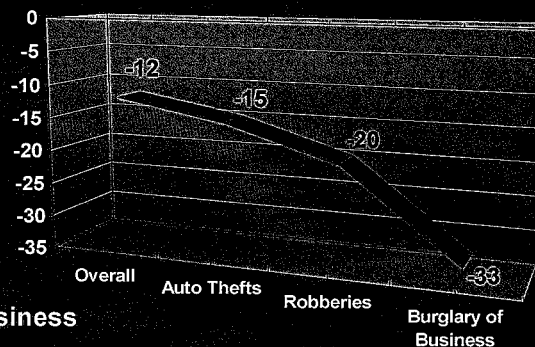
- Associating with other gangs
- Using, selling or possessing drugs
- Entering some properties
- Using cell phones or pagers
- Using abusive, profane language
- Violating curfew
- Other illicit activities



## Injunction Results

### Crime Decreased

- 12 % Overall
- 15 % Auto Thefts
- 20 % Robberies
- 33 % Burglary of Business



Source: El Paso Police Dept.

# New gang injunction filed against the Bloods

## Injunction clamps down on gang

By Ramon Bracamonte  
El Paso Times

EL PASO — The county attorney on Friday publicly labeled 27 people as members of the Bloods street gang, and was granted a temporary injunction barring them from gathering anywhere in El Paso County.

The temporary injunction will remain in effect until a court hearing is held to determine whether the injunction will become permanent.

The temporary injunction creates two "safer neighborhoods" in Northeast El Paso, where punishments for the alleged gang members would be

### Temporary injunction guidelines 5B

more severe if they were convicted of a crime. County Attorney José Rodríguez and El Paso Police Chief Greg Allen said members of the Bloods routinely spend their nights assaulting people, intimidating others and selling drugs in these areas.

So why not arrest these gang members if they are breaking the law with impunity? reporters asked Allen at a news conference he called to discuss the gang.

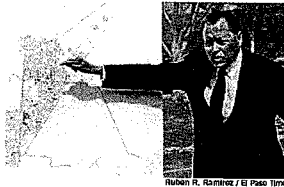
Allen said the injunction

would make it easier to stop the gang from operating because officers no longer would have to see its members commit a crime and victims no longer would have to testify against them.

"Many times police are reactive. Now we can be proactive," the chief said. "We no longer have to catch them in the act to question them."

Rodríguez said the injunction would not violate anybody's rights because there is no constitutional protection for someone involved in a criminal organization.

"You do not have the right to be a part of a criminal organization. Please see Injunction 5B



Ruben R. Ramirez / El Paso Times

County Attorney José Rodríguez announced a gang injunction during a news conference Monday with El Paso Police Chief Greg Allen at Nolan Richardson Park.

## Recommendations

1. Defendants in a gang injunction brought under Civil Practice and Remedies Code § 125.061 are not entitled to court appointed counsel or attorney.\*
2. All of the gang injunction statutes should be incorporated into one Code.\*
3. Lower the graffiti pecuniary loss amount to less than \$500.\*
4. Clarify whether evidence of arrests of defendants can be used as "qualifying" offenses under §§ 125.061 and 125.062 as evidence of proof of gang activity during a period of 12 months.\*

\* See Exhibit "A" for a detailed explanation of recommendations.



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# FIGHTING TRANSNATIONAL GANGS WITH CIVIL INJUNCTIONS

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## EXHIBIT "A" LEGISLATIVE RECOMMENDATIONS

1. **Defendants in a gang injunction brought under Civil Practice and Remedies Code § 125.061 are not entitled to court appointed counsel or attorney.**

**Rationale:** The court appointment of counsel for defendants in Criminal Street Gang nuisance injunction proceedings will become a serious issue in the coming years. The 2009 injunction case against the Bloods gang in El Paso County became the first case in Texas where the court appointed counsel for the defendants. The potential expense to a county for court appointed counsel may have the result of counties and municipalities not pursuing injunction proceedings.

In other injunction and protective order cases the defendant is not entitled to court appointed counsel. While the consequences of violating an injunction may result in a fine, incarceration or both, the notion of the "presumption of violation" of the injunction should not be the basis for a court appointing counsel in these types of cases.

The legislature must clarify the issue of whether defendants in a street gang injunction case are entitled to court appointed counsel.

2. **All of the gang injunction statutes should be incorporated into one Code.**

**Rationale:** Currently gang injunction statutes are found in the Civil Practice and Remedies Code (Chapter 125, Common & Public Nuisances and Subchapter D, Membership in Criminal Street Gang), the Code of Criminal Procedure (Chapter 61, Criminal Combination and Criminal Street Gang Intelligence Database; Submission Criteria) and the Penal Code (Chapter 71- Organized Crime). The ability to utilize a comprehensive statute dealing with gang injunctions would streamline the statute and reduce confusion.

3. **Lower the graffiti pecuniary loss amount to less than \$500.**

**Rationale:** The offense of Graffiti is a very common crime committed by members of a criminal street gang due to its use by members to mark territory or communicate to rival gangs. Many times the damage to property does not exceed \$500.00. Section 125.061 (3) (G) (i) requires that the pecuniary loss be \$500.00

or more, in order to qualify as a “gang activity”. Lowering the pecuniary loss to less than \$500.00 (which is a Class B misdemeanor under § 28.08 Penal Code) would allow for the use of more acts of graffiti.

4. **Clarify whether evidence of arrests of defendants can be used as “qualifying” offenses under §§ 125.061 and 125.062 as evidence of proof of gang activity during a period of 12 months.**

**Rationale:** It is unclear whether evidence of the arrest, only, of suspected combination or criminal street gang members for “qualifying” offenses occurring during the 12 month period required by §125.061 (2) is admissible into evidence.

Article 61.02 (c) (2) (C) (vi) allows for the arrest of an individual for “... an offense or conduct consistent with criminal street gang activity” to be considered as criteria for gang affiliation. However, none of the other “gang injunction” laws address this question.

Due to the protracted period in which a criminal charge is disposed, it is very difficult for attorneys prosecuting a gang injunction to have conviction judgments available to offer into evidence as proof of an individual’s gang activity during a 12 month period. They should be allowed to use the arrest records as proof of gang activity.