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May 8, 2009

To: Supervisor Don Knabe, Chairman
Supervisor Gloria Molina
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Supervisor Michael D. Antonovich

From: William T Fujioka
Chief Executive Officer

MOTION TO OPPOSE SB 282 (WRIGHT), WHICH WOULD LIMIT THE DURATION OF GANG INJUNCTIONS TO FIVE YEARS (ITEM NO. 5, AGENDA OF MAY 12, 2009)

Item No. 5 on the May 12, 2009, Agenda is a motion by Supervisor Knabe recommending the Board of Supervisors oppose SB 282 unless amended to remove a five-year limitation on criminal gang injunctions.

The provisions of SB 282 as amended on May 5, 2009, would specifically:

- Authorize a gang nuisance injunction issued under the Penal or Civil Code to be in effect for no longer than five years;
- Allow prosecutors to obtain a five-year extension of a gang injunction against a particular person who has violated that injunction or has been convicted of a new felony or misdemeanor;
- Make the finding that Federal law places a five-year limit on the retention of names in a gang registry database; and
- Make a finding that current State law provides no time limitation on the duration of a gang injunction as it applies to an individual.

According to the author's office, current law does not specify a fixed term for a gang injunction to apply to an individual. While there is a process for contesting the original injunction, the author's office indicates that a majority of the persons subject to the injunction do not have the means to oppose this action. Since the injunction has no end date, the individual could be subject to its terms until he or she dies, therefore, there should be an inexpensive process for being removed from the injunction where the onus of cost is not placed upon the individual.

The District Attorney's (DA) Office is opposed to this bill as it would place a limitation on the length of the injunction. The DA's Office indicates that it takes considerable effort and time by a number of criminal justice agencies to develop, obtain, and implement a gang injunction. In addition, the injunction may take time to become fully effective. According to the DA's Office, a mandatory review of the injunction before the court would result in a substantial additional workload to the Department.

The Probation Department is also opposed to SB 282 as it would weaken the provisions of existing and future gang injunctions by limiting them to a five-year period, and it indicates that gangs should be monitored for the life of the organization. A mandatory review of a gang injunction would result in significant additional workload for the County's criminal justice system. The Department also notes that the Los Angeles City Attorney's Office has a process to allow an individual with a history of good behavior and proper documentation to be removed from the injunction.

The Sheriff's Department is opposed to this bill because criminal gangs can remain in operation in excess of five years. The Department indicates that a five-year limitation on gangs would result in significant additional workload for the County's criminal justice system. The Sheriff's Department, however, supports a process that would allow an individual to be removed from an injunction with a history of good behavior and proper documentation.

The Public Defender's Office supports this bill as the first step toward placing time limitations on gang injunctions. As of March 2009, the 41 injunctions in the City of Los Angeles resulted in approximately 10,000 persons being placed under restrictions that prevent them from conducting specific activities within a defined geographical area. The Public Defender's Office is concerned that the injunctions affect a population that is disproportionately low-income and of color, and that gang injunctions are often overly broad and can include individuals that are no longer active, loosely affiliated, and/or have renounced the gang. For example, in a recent gang injunction sought by the Los Angeles City Attorney's Office against the "San Fer" gang in the San Fernando Valley, the filing included 500 "John and Jane Does". Since these persons have not been specifically identified, the Public Defender's Office notes that the injunction could improperly include persons who are not gang members.

In addition, the Public Defender's Office indicates that under current law there is no time limit imposed on the duration of the gang injunction, and persons affected are placed indefinitely under its restrictions regardless of their behavior. The Public Defender's Office notes that the five-year limitation proposed by SB 282 is consistent with Federal law which requires a five-year limit on names stored in the California Gang Database (Cal Gang) and State law which imposes a five-year limit on gang registration pursuant to the California Street Terrorism Enforcement and Prevention Act. The Public Defender's Office concludes that the bill properly provides a judicial process to review and extend the injunction, and notes that while the Los Angeles City Attorney's Office has a process that allows an individual to apply for removal from the injunction, it believes that the methodology is onerous and may be biased as the applications for removal are reviewed by the City Attorney rather than by an independent body.

Because the County has no existing policy on the operations of criminal gang injunctions, SB 282 is a matter of Board policy determination.

This bill is supported by the California Public Defenders Association, and it is opposed by the California District Attorneys Association. SB 282 passed the Senate Committee on Public Safety on April 28, 2009 on a 4 to 2 vote. It is now on the Senate Floor awaiting a vote.

WTF:GK
MAL:MR:SK:sb

c: Executive Officer, Board of Supervisors
County Counsel
District Attorney's Office
Public Defender's Office
Probation Department
Sheriff's Department