



**Testimony of Becky Straus, Legislative Director  
In Opposition to HB 2851 and HB 2679  
House Committee on Judiciary  
March 28, 2013**

Chair Barker and Members of the Committee:

Thank you for the opportunity to provide comments in regard to two proposals before you today relating to “gang activity.” The ACLU is in opposition to both HB 2851 and HB 2679.

In short, HB 2851 mandates sentencing enhancements—even in instances where there is currently no sentence required—for felonies associated with the activities of criminal street gangs. HB 2679 creates the new crime of “criminal gang activity” with a Class C felony designation. The crime heightens penalties for a list of existing crimes when those crimes are committed “for the benefit of, at the direction of or in association with a criminal street gang and with the specific intent to promote, further or assist in the criminal act.” Additionally, HB 2679 requires that convictions for criminal gang activity be flagged as gang-related in the Law Enforcement Data System (LEDS) that is maintained by the Department of State Police. And the bill also mandates that courts, when imposing probation for “criminal gang activity,” impose specific enumerated conditions of probation.

Alternatives to these Proposals

We encourage the committee to refrain from moving forward with either of these bills and, instead, focus on other proven anti-gang strategies. Studies show that arresting gang kingpins for their crimes and investing in resources for at-risk individuals are more effective way to address any community’s issues with criminal gang activity. Evidence-based prevention and intervention techniques are proven to be both more effective, and a less costly, at addressing gang violence than suppression techniques.<sup>1</sup>

It seems also that current law is more than adequate to criminalize offenders committing crimes in furtherance of gang objectives. For example, the list of crimes under the definition “criminal acts” in HB 2679 ought to be adequate to respond to any such conduct but, beyond those tools, law enforcement agencies could use conspiracy laws or the Oregon Racketeering Influenced and Corrupt Organizations Act (ORICO) to address uniquely gang activity. The tool agencies may not use is to enhance penalties based on association and that is what these bills, in part, seek to do.

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<sup>1</sup> In March 2008, Harvard Law School’s Houston Institute for Race and Justice released a report entitled *No More Children Left Behind Bars* (available online here: <http://sccounty01.co.santa-cruz.ca.us/prb/media%5CInstitute%20for%20race%20and%20justice.pdf>)

## Civil Liberties Implications of HB 2851 and HB 2679

**The term “criminal street gang” in HB 2679 is vague:** any ongoing formal or information organization, association or group of three or more persons that has one of its primary activities the commission of criminal acts, that has a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal acts. The definition of “criminal street gang” in HB 2851 is not identical, but raises similar concerns as those raised in regard to HB 2679. Further, it is not clear what is meant by the term “primary activities.” It would seem under this definition that many associations not intended to be targeted could be swept up by this definition – for example, would a college fraternity that hosts loud and disruptive parties, or a group of activists engaging in civil disobedience, be a “criminal street gang”?

**Moreover, HB 2679 may impose penalties based merely on association.** A person could be charged with criminal gang activity if that person commits any of the listed existing crimes and does so “in association with” a criminal gang. It is unclear exactly how any such nexus between the activity and the gang membership would be determined. Similarly, HB 2851 provides for a sentencing enhancement if a person commits a listed crime “in association with” a criminal street gang. The risk here is that mere membership will be mistaken for association and subject a person to a heightened penalty, directly implicating that person’s right to association because it punishes simple association with others who may or may not be criminal.

And, clearly making a determination about who is a member of the gang is not an easy task. Of course gang members do not carry membership cards, and gang-affiliated colors, clothing, and signs have in many ways integrated themselves into youth culture.

**Unclear definitions implicate due process rights.** The breadth of the bill and the confusion that will result from its definitions, or lack thereof, risks violating a defendant’s due process rights because that defendant is not on notice of what activity is criminal. Moreover, vagueness in the language of these bills invites disparate or selective enforcement, should they become law.

**Probation conditions in HB 2679 impair associational freedoms.** The “no contact” requirements could, in practice, prevent rehabilitation and lead to absurd results: siblings, cousins, and even spouses are often in the same gangs; gang members with substance abuse problems could be prevented from being in the same group treatment programs; reformed gang members on probation could be prevented from reaching out to current gang members to help get them out of the gang life style.

For all of these reasons, we respectfully request that you do not move forward with either of these bills and instead direct your interest in addressing criminal gang activity to more proven methods of prevention.

Thank you for your consideration and please feel free to contact me with any questions or comments.