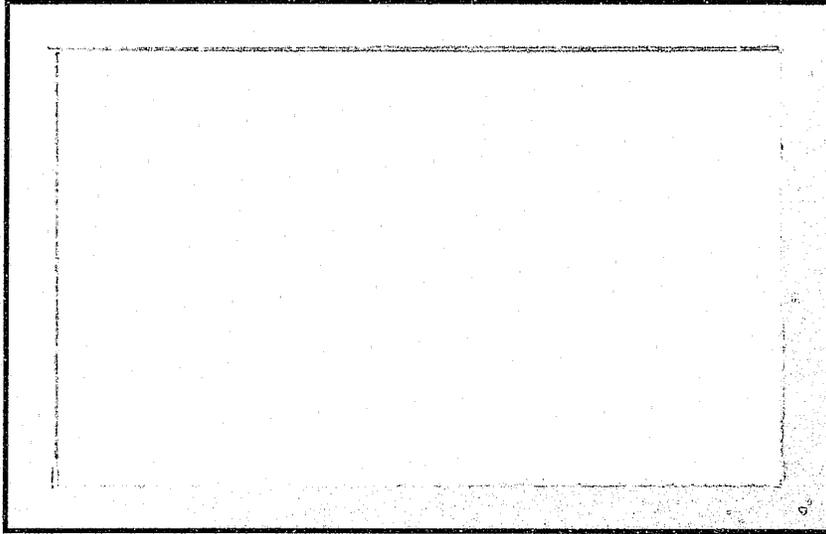


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BACKGROUND PAPER 91-3

STREET GANGS

150476

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STREET GANGS

I

INTRODUCTION

Street gangs have always been a component of urban America. In 1927, Frederick Thrasher conducted a study that focused on over 1,300 street gangs that existed in Chicago, Illinois. Although street gangs have existed in America for over two centuries, in recent years gang-related violence and crime have escalated rapidly.

The purpose of this background paper is to provide information on the scope and nature of the gang problem in the United States and Nevada. This paper discusses local and State responses to gang problems and summarizes activities within Nevada to control gang-related violence and crime.

II

SCOPE OF THE GANG PROBLEM

Law enforcement officials, researchers, policymakers and others studying street gangs do not agree on an all encompassing definition of "street gang," but certain common elements appear in most modern street gangs. Gangs appear to be more structured than other delinquent groups, but are still loosely organized. Most gangs have certain organizational and geographical characteristics, symbols, and criminal activities that make them identifiable.

Modern street gangs generally consist of the following types of members: core members including leaders, regulars, peripheral or fringe, and "wannabees" or recruits. Some gangs are interracial and multiethnic while others are dominated by one primary race or ethnicity.

A. CHARACTERISTICS OF STREET GANGS

Street gangs form and operate for a variety of reasons. Some gang activities center on making money, while others are involved in gang-type social interaction.

1. Income-Producing Activities

Some gangs are formed for the primary purpose of making money. The majority of these gangs are involved in the sale

of drugs. Gang members can make in excess of \$1,000 per day selling rock cocaine. The other major money activities that involve gangs are extortion, robbery, and theft. Some gangs are unable to control drug turf, so they pursue these other criminal activities to make money.

2. Other Gang Activities

Many gangs are formed for self-protection. This is sometimes a result of the prior presence of other gangs. These gangs are normally "turf"-related gangs and protect the areas they inhabit. Drug-dealing gangs are not turf protecting like these gangs, except where the turf is valuable for drug dealing. These gangs tend to be more nomadic.

Gang members can be identified by the clothing they wear. Each gang has a unique article of clothing ranging from hats, bandanas and footwear to the way clothes are worn. Gang members use graffiti to mark their boundaries and as a means of communication. Death threats among rival gangs are often relayed by graffiti.

Gang wars have always existed, but the modern "drive-by-shooting" has become a common part of gang wars. Not all gangs conduct drive-by-shootings. Some of these activities are random while others are directed at particular rival gang members.

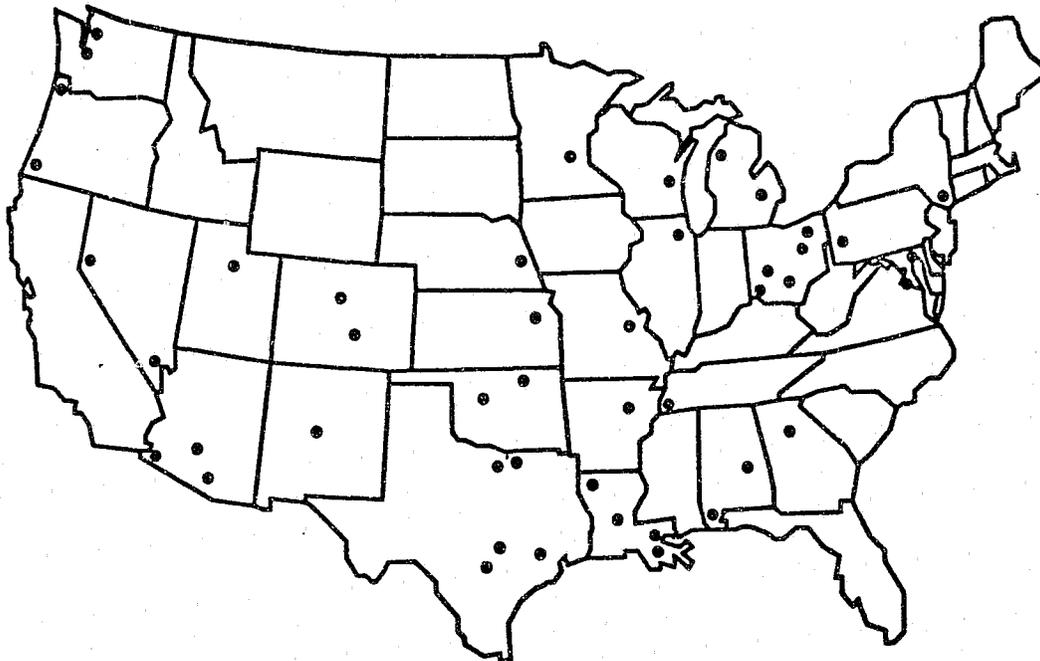
B. THE EXPANSION OF STREET GANGS

A recent survey of 45 major U.S. cities representing all four regions of the country, conducted by noted gang expert Dr. Irving Spergel of the University of Chicago, revealed that 75 percent of the identifiable gang members had prior police records. An average of 22 percent of the total crimes in a jurisdiction were attributed to gangs. Approximately 45 percent of gang incidents in these cities involved gang members who were adults (age 18 or older). Respondents of the survey indicated that approximately 1,439 gangs with 120,636 members existed in these major U.S. cities.

A conference held in September of 1989 by the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention (OJJDP) reported that gangs had been identified in all 50 states. Growth of street gangs in Los Angeles (L.A.), California, was reported to have increased by 71 percent between 1985 and 1988. The number of gang-related homicides also increased by 71 percent during that period. Gang violence in L.A. rose by 88 percent from

1987 to 1988. In 1989, 511 homicides in the L.A. area were attributable to gang-related activities.

The spread of gangs across the Nation is due in part to the lucrative drug markets that these gangs aspire to control. The map below indicates the locations where members of L.A. gangs have been identified.*



*Source: Los Angeles Police Department.

The spread of drug-related street gangs occurs when a market becomes saturated or dried up due to law enforcement activity. Many gang members then go to different states with a promising drug market and attempt to push out the local dealers and establish a drug trade. These gangs may then establish branches of the original gangs, or they may form a new gang. Persons already in the area, including existing drug dealers, are sometimes recruited as new gang members. In some cases, many original gang members may relocate to the new gang.

Gangs originating in L.A. and Chicago have been found in such unlikely places as Omaha, Nebraska, where a "Mad Dads" community group was formed to combat the problem. While the spread of gangs is due in part to the drug trade, it is also the "in" thing to do in many areas for young persons. The gang way of life is portrayed to many youngsters as being a family that will stand behind them in addition to a social organization.

C. STREET GANGS IN NEVADA

Gangs have been present in Nevada over time as they have been in most states; however, gang-related crimes and violence recently have escalated in the Las Vegas and Reno areas, and L.A. gangs have spread to both areas. The statistics relative to L.A. gangs are of particular importance to Nevada because of the close proximity of that area.

1. The Las Vegas Area

Prior to 1988, Las Vegas Metropolitan Police Department (Metro) had identified a few small gangs in certain areas of the city. In 1988, Metro found that several groups had begun to form in the Las Vegas area and that these gangs were adopting the same names as the gangs that were active in the Los Angeles area. The "Piru Bloods," the "Bounty Hunters," the "Compton Crips," the "Grape Street Crips," and a Hispanic gang known as the "18th Street Gang" are all associated with L.A. gangs. Metro discovered that identifiable members of L.A. gangs had also moved into the Las Vegas area to coordinate and establish gangs.

Los Angeles-type gang activities have been increasing in Nevada, including the distribution of cocaine and drive-by shootings. In mid-1989, Metro estimated that there were 25 separate gangs totaling 2,500 members with most members in their late teens or early twenties. Metro logged 68 drive-by shootings between January and November of 1990 and believes there are many more that are not reported. There have been six gang-related murders in the Las Vegas area. It should be noted that the police are currently seeing a trend toward younger gang members between 14 and 17 years of age.

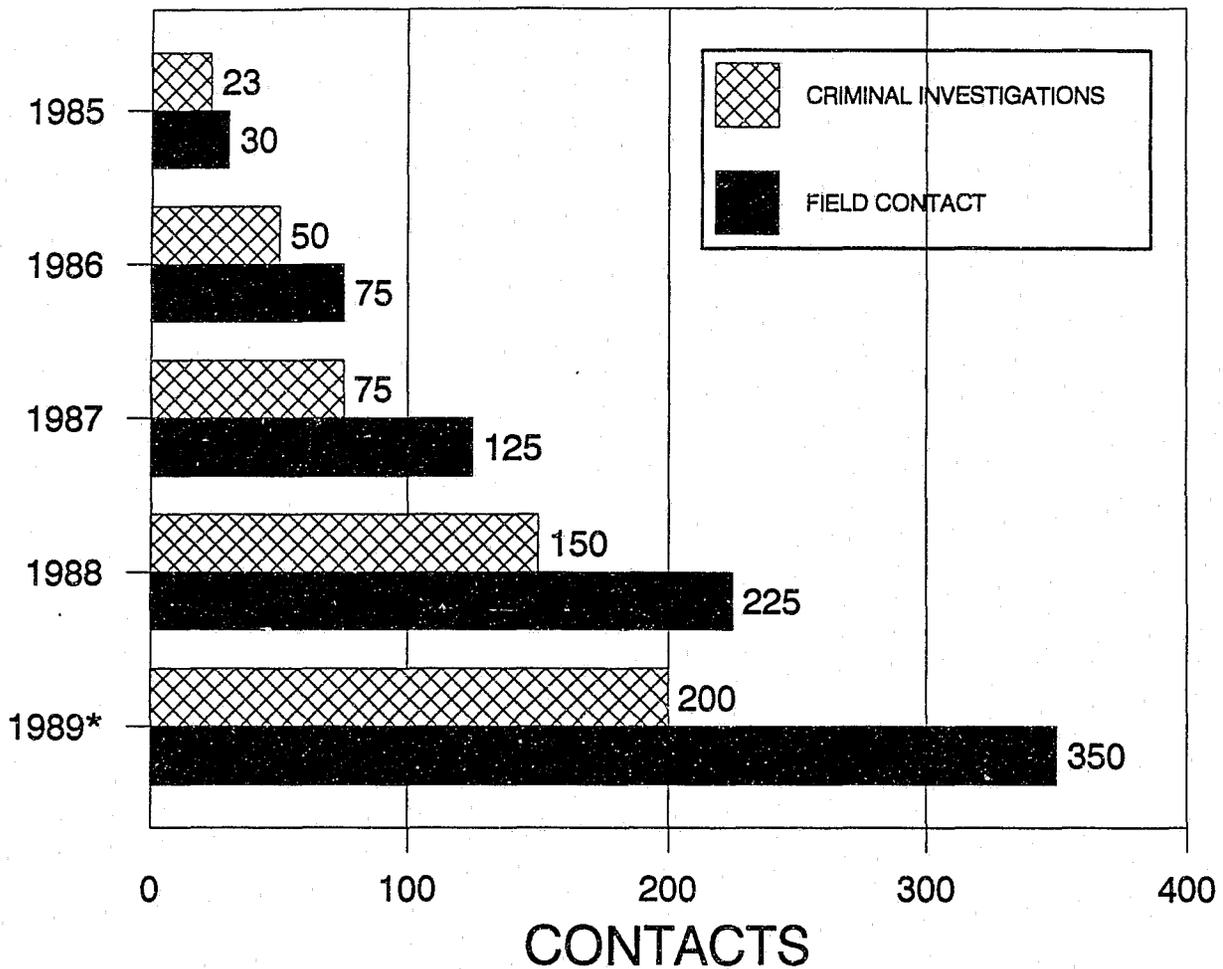
As of December 1990, Metro has identified over 50 separate gangs in Clark County with an estimated membership of 5,000. This indicates that the gang population has doubled over the last year and a half. At least three separate gangs have been identified in each high school located in the Las Vegas area.

2. The Reno Area

The Reno Police have also experienced a similar rise in gang members and gang-related violence and crime. The "L.A. Crips" gang first appeared in Reno in 1987. In 1988, the "Bloods" gang and a "Nazi Skinhead" white power/hate group were identified. In 1989, numerous new gangs were identified. Reno Police estimate that currently there are

approximately 18 separate gangs with 419 total members. Approximately 15 percent to 25 percent of these are "core" members. The chart below indicates the number of contacts police have had with gang members and the number of police investigations for gang-related violence or crime from 1985 through present.

**GREATER RENO/SPARKS AREA
POLICE DEPARTMENT
GANG CONTACTS**



* 1989 includes 11 months only.
Source: Reno/Sparks Police Department

III

LOCAL RESPONSES TO STREET GANGS

In considering statewide responses to gang activities, it is important to understand the extent and involvement of local governments and communities. Because gang-related crime first impacts "home," communities tend to be much quicker to respond. Legislative action should be coordinated with existing local activities and enacted with a view toward their impact on these communities.

The OJJDP has formulated a suggested plan for policymakers in establishing strategy to combat gang problems. An effective strategy requires a cooperative effort among the State, city, county, community, and school institutions to achieve gang deterrence. The OJJDP identifies prevention, intervention, and supervision as the three major components of a system to combat gang problems. Prevention involves schools, law enforcement, recreation, mental health, housing, community agencies, and churches. Intervention involves law enforcement, prosecution and the courts. Supervision includes correctional agencies, probation, and parole. Local governments are heavily involved in the prevention area and state legislatures are more involved in establishing standards for intervention and supervision.

A. LOCAL RESPONSES IN THE UNITED STATES

According to the survey of cities by Dr. Spergel, increased law enforcement is the dominant response to gang problems by local governments. Most cities reported separately organized units, specific written policies, and special training to deal with gangs. The Columbus, Ohio, Police Department offers a good example of a local police department approach. The department has consolidated its four major functions - prevention, intelligence, enforcement, and investigation - usually performed by four different departments, into one Youth Violence Crime Section when dealing with gangs. The police department reported improved intelligence collection and information sharing that has resulted in all officers of the Section being able to recognize each gang member by sight.

The City of Paramount, California, has developed a community plan that contains elements common to most cities attempting to discourage gang membership. The program involves the community through the neighborhood meetings and potential gang members by direct contact through the school system. The plan has three elements.

First, neighborhood parent/community gang meetings are held. These meetings are educational and are designed to inform communities about the impact of gang membership on family members, typical pregang behavior, examples of gang activities, resources to discourage gang membership, and understanding gang terminology and graffiti.

The second part of the program involves a fifth grade anti-gang curriculum designed to teach the negative aspects of gang activity. The program consists of fifteen 55-minute units including books and videos. It stresses the prevention aspect of the problem and attempts to "deglorify" gangs.

The third part of the program involves intermediate school follow-up. It reinforces and expands previous concepts taught at the elementary level.

The Community Youth Gang Services Project is a private, nonprofit community-based organization under contract with the City of Los Angeles to curb street gang violence and to prevent recruitment of new gang members. It is another example of a local program and is funded in part by the State. The program stresses prevention through an education program on career paths/alternatives to gangs, a graffiti removal and year-round employment program, and gang awareness presentations.

B. LOCAL RESPONSES IN NEVADA

1. The Las Vegas Area

Spurred by a recent murder allegedly committed by a gang member on the grounds of a high school in Las Vegas, the Clark County School District and related entities have become very active in gang deterrence.

A defunct school security committee was resurrected to develop ideas to curb gang violence in schools. The committee consists of police officers and personnel, school administrators, members of the school board, parents, school-related unions, lawyers, professors, and security personnel. The committee surveyed 30 other school districts by telephone and conducted on-site visits of three of these districts - New Orleans, Louisiana; Pittsburgh, Pennsylvania; and Portland, Oregon. These cities are similar in size and extent of gang problems.

Based on this research, the task force proposed and the school board approved a number of recommendations. In the

area of security, the task force recommended the use of metal detectors at extracurricula events. Surveillance cameras are targeted for use in at least four high schools. A proposal to use dogs on school grounds that can identify drugs and firearms by smell is also being considered.

An additional blue ribbon task force is being formed to coordinate activities of the entire community. This committee is expected to focus on educating the community on gang recognition and prevention.

The University of Nevada-Las Vegas is offering a class on youth gangs in Las Vegas. The course includes the history of gangs, gang activities, community and local education and resistance options, and the impact of narcotics and money in breeding violence and perpetuating gang membership.

The Clark County Classroom Teachers Association has recommended that the Clark County School Board adopt a five-point plan developed by the union. This plan is designed to curb gang-related violence in schools. The following five points make up the plan:

- Any student who participates in a gang-related violent act will be expelled from school and will not be allowed to return to a regular school. (Students are currently sent to juvenile reform school and returned to regular school after a maximum of 45 days.)
- Criminal prosecution of students who commit violent acts.
- Identification cards for junior and senior high students, a measure intended to keep nonstudent members from trespassing on campus.
- A systemwide emergency procedure to be implemented when a shooting or other serious violent incident occurs.
- A task force to deal with gang-related acts and the creation of a computerized list of active gang members to be distributed to each school.

The union believes it is also necessary to avoid treating incidents as "gang" related as this tends to glorify the gang members. Rather, these incidents should be treated as acts of violence while avoiding their gang implications.

The Las Vegas Metro has created a special enforcement division that focuses on gang activities. Officers in the unit receive special training on dealing with gangs. Metro is

also establishing "substations" within heavy traffic gang areas for greater presence and closer contact with the community.

2. The Reno Area

In 1989, there were approximately 18 community organizations in Reno devoted to curbing gang crimes and violence. These organizations ranged from neighborhood groups to school officials to churches. Some of these groups are not active at present, but remain formed and could become active if gang activity escalates.

Northern Nevada also has a Youth Gang Task Force. This task force is composed of police, sheriffs and school personnel from Reno, Sparks, Carson City, Minden-Garderville and Fallon; as well as representatives from the University of Nevada, Reno; Nevada's Highway Patrol and the Federal Bureau of Investigation. The task force primarily serves an informational role, allowing associated organizations to keep track of local gang members and associated activity. In addition, the task force evaluates current gang deterring efforts and discusses new related strategies.

Washoe County School District and its school police are also active in gang deterrence and educational activities. District personnel work closely with the Youth Gang Task Force as well as the sheriff and the Cities of Reno and Sparks. Drug Abuse Resistance Education (D.A.R.E.) programs, which specifically address gangs and drugs, are a part of all county school curricula.

The Reno Police Department does not have a gang unit, but has detectives trained specifically to deal with gangs. The detectives track gang members and maintain a data base on gang activities. They coordinate efforts with other law enforcement agencies and cities and act as liaisons to the Youth Gang Task Force. They attempt to ensure that the approach to dealing with gangs is a unified one.

IV

STATE LEGISLATIVE RESPONSES

With the exception of a few states, legislatures have not been active in responding to gang activities. This may be because it is sometimes viewed as a local issue that is most effectively handled at the local level. State legislatures have been involved to some extent by providing funds for

local governments to assist in gang-deterrence programs. States have been primarily active in providing law enforcement with additional tools to provide stringent penalties for gang activities. Enacting new and tougher laws has the advantage of deterring gang activity. The disadvantage of this approach is the impact on the prison and juvenile reform system.

Testimony before the Nevada State Senate and Assembly Committees on Judiciary during the 1989 legislative session focused on the problems with this approach. Prisons are already overcrowded, and new and longer sentences may aggravate that problem. There is also a concern that gangs are rapidly forming and growing within the prison system. One of the goals in dealing with gangs is to induce members to disassociate with gangs and prevent others from joining gangs. Time in prison may actually boost and strengthen gang membership.

California

California's State Legislature has been the most active in pursuing legislative solutions to gang problems. Since 1988, the California Legislature enacted nearly 50 laws aimed at curbing drugs/gangs. Briefly, these laws can be categorized as follows:

- New Crimes/Sentence Enhancements -- The "California Street Enforcement and Prevention Act," makes it a criminal offense to participate in a criminal street gang and provides that anyone who promotes or assists any felonious criminal conduct by a gang member can be sent to prison (California Penal Code, Chapter 11). Other measures increase the penalties for the sale of drugs to minors on or near school grounds, playgrounds, and parks. Providing spray paint to minors is also made a criminal activity. Buildings used by gangs for criminal activity can also be declared a nuisance.
- Forfeiture -- Measures strengthen the State's ability to seize the assets of drug dealers, including certain minors who deal drugs.
- Gang Member Identification -- Measures create a computerized data base system to identify and track gang members and a remote fingerprint network which can be used to identify gang members.

- Weapons -- Measures prohibit the use of certain firearms and enhance penalties for the sale and possession of other firearms. Some of the targeted firearms are the weapons of choice for gang members.

The California Council on Criminal Justice's "Final Report of the State Task Force on Gangs and Drugs," published in 1989, contains a comprehensive discussion of recommendations for legislative activity. The legislative recommendations portion is attached as Attachment 1.

The California Task Force's recommendations deal with gangs and drugs. Some unique provisions which have a direct bearing on gangs and their activities are summarized as follows:

1. Stricter treatment of juveniles who commit serious crimes. Measures include use of the death penalty and life without parole for murder committed by a juvenile. Also, the institution of a statewide curfew for juveniles is recommended.
2. Enact a comprehensive Racketeering Influence and Corrupt Organization Act. The Federal law is designed to combat organized crime, but could be tailored to gangs.
3. Amend narcotics asset forfeiture provisions. Measures include forfeitures of vehicles used in drive-by shootings, use of funds from forfeitures for Gang Violence Suppression Program.
4. Enhance penalties for distribution of drugs in or near schools.
5. Expansion of the Enterprise Zones and Economic and Employment Incentive Areas to provide increased economic development and job opportunities within gang-affected communities.
6. Enact legislation to initiate a constitutional amendment that would require parents to be responsible for the costs of detaining their children within juvenile facilities.

Colorado

Chapter 153, Section 7, 1989 Colorado Session Laws, defines drive-by-crime and provides penalties for such activities. Vehicles used in these crimes are subject to forfeiture.

Colorado has also established a computerized data base to track gang members.

Florida

Section 943.0572 of the Florida Statutes of 1989, establishes a youth gang data base to identify and track gang members.

Illinois

Chapter 37, Section 805-4 of the Illinois Annotated Statutes (IAC) allows the prosecution of minors as adults where a felony has been committed in furtherance of the criminal activity of a gang.

Chapter 127, Section 55-3 of IAC creates a special gang unit within the Department of Criminal Investigation. The gang unit is charged with cooperation and consultation with community organizations dealing with gangs. The gang unit is required to establish mobile units of trained personnel to respond to gang activities.

V

THE NEVADA LEGISLATIVE EXPERIENCE

Nevada has provisions regarding general crimes of a nature that are committed by gang members, but the 1989 Legislature also enacted at least seven laws directed, in part, at curbing gang violence and crime. These laws are summarized below.

- Assembly Bill 329 added Section 202.287 to Nevada Revised Statutes (NRS) which provides a prison term of 1 to 6 years and/or a fine of up to \$5,000 for anyone convicted of discharging a firearm out of a motor vehicle in a populated area. This law is designed to punish and prevent drive-by shootings.
- Assembly Bill 31 added Section 193.161 of NRS which doubles the prison term for anyone who commits a felony on a school bus. Assembly Bill 31 also added Section 453.3345 of NRS which doubles the penalty for selling drugs on or near school grounds, school bus stops, playgrounds, public swimming pools, recreation centers, video arcades, and campuses of the University of Nevada.

- Assembly Bill 30 added Section 453.3343 of NRS which doubles the prison term for anyone convicted of using a minor as an agent to sell drugs. This law is designed to deter the common gang practice of using "wannabees" as lookouts and drug runners.
- Assembly Bill 836 amended Sections 315.011 through 315.061 of NRS to provide a mechanism for the eviction of certain persons convicted of possession, use or distribution of illegal drugs in a public housing unit. This law can be used to curb gang use of certain low-income housing as "crack houses."
- Assembly Bill 823 amended NRS 202.290 by increasing the penalty for discharging a firearm in a place where a person might be endangered from a misdemeanor to a gross misdemeanor. (This law applies in cases where no injury results.)
- Assembly Bill 346 added Section 202.265 to NRS which prohibits persons from carrying certain weapons or firearms on the property of a public or private school, or the University of Nevada. Such weapons carried in violation of the law are subject to forfeiture.
- Assembly Bill 395 amended NRS 392.466 by providing additional penalties against pupils who are found in possession of dangerous weapons on school property, at school events or on school buses.

Recently a grand jury indicted three gang members in Las Vegas under the Racketeering Influence And Corrupt Organization Act (RICO). This act was designed to combat organized crime but could possibly be used against gangs. It is believed to be the first case in the country to use RICO in this fashion.

VI

PROPOSED LEGISLATION

Three bills have been drafted for the 1991 legislative session that deal specifically with gang-related issues. A bill has been drafted that will make it illegal for a person to be a member of a "criminal" street gang. This is similar to the approach taken by California, discussed earlier. The California law has not been challenged in court.

An argument can be made that this kind of restriction violates the First Amendment right to association in the *United States Constitution*. The First Amendment does not mention the right to freedom of association, but the U.S. Supreme Court has interpreted this amendment to include a right to associate or join together with other persons for expressive or political activity. It could be argued that this law prohibits such association and is, therefore, unconstitutional. Supporters of the concept argue that freedom of association is protected, but not absolutely. States may restrict the right to associate if the legislation serves a "compelling State interest" unrelated to the suppression of ideas.

A bill has been drafted that would require students to wear uniforms in schools. This bill is designed to prevent gang members from wearing their "colors" and other symbols that identify them as gang members in schools.

A bill has also been drafted to require parents of gang members to be financially liable for damages caused by their children's participation in gang-related activities.

VII

CONCLUSION

Statistics indicate that gang-related crimes and violence have escalated throughout the United States. Statistics for the State of Nevada are consistent with the Nation, and it is clear that gangs are increasing and violence and crime are rising.

Local governments throughout the Nation and within Nevada are implementing programs that focus on education and community involvement to curb gang violence. Among other things, state legislatures can expect to be asked to help local governments by providing funds for programs and statewide coordination.

State legislatures are most active in enacting laws that punish and penalize gang members for gang-related violence and crimes. State legislatures will continue to be involved in enacting laws aimed at gang deterrence.

VIII

SELECTED REFERENCES

Assembly Office of Research, Assembly California Legislature. "Drug/Gang Related Legislation," Sacramento, California, October 1988.

Boyle, John and Gonzales, Anthony. "Using Proactive Programs to Impact Gangs and Drugs," Law and Order, August 1989.

Bryant, Dan. "Communitywide Responses Crucial for Dealing with Youth Gangs," Juvenile Justice Bulletin, September 1989.

California Council of Criminal Justice. "State Task Force on Gangs and Drugs: Final Report." Sacramento, California, January 1989.

Fagan, Jeffrey. "The Social Organization of Drug Use and Drug Dealing Among Urban Gangs," Criminology, 1989.

"Gunfire in L.A.: Life in the Streets," article in USA Today newspaper, December 7, 1989.

Huff, Ronald C. "Youth Gangs and Public Policy," Crime and Delinquency, October 1989.

Klein, Malcolm, et al. "Gang Involvement in Cocaine 'Rock' Trafficking," Center for Research on Crime and Social Control, Social Science Research Institute, University of Southern California, May 1988.

McKinney, Kay C. "Juvenile Gangs: Crime and Drug Trafficking," Juvenile Justice Bulletin, September 1989.

National Conference of State Legislatures. Meeting Summary "Wearing Colors: An Examination of Juvenile Gangs," March 31 - April 1, 1989.

Russell, Diane. "Report: All County Schools have Gangs," article in Las Vegas Review Journal, June 5, 1990.

Spergel, Irving. "Executive Summary: Survey of Youth Gang Problems and Programs in 45 Cities and 6 Sites," University of Chicago, May 1990.

"What Can be Done to Stop the Crips and Bloods Advance Across the United States," Crime Control Digest, December 11, 1989.

IX

ATTACHMENT 1

RECOMMENDATIONS FOR LEGISLATIVE ACTIVITY
TO CONTROL GANGS IN CALIFORNIA

CALIFORNIA COUNCIL ON CRIMINAL JUSTICE

STATE TASK FORCE
ON
GANGS AND DRUGS

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FINAL REPORT

JANUARY 1989

LEGISLATIVE RECOMMENDATION 1:

Enact legislation that would provide stricter treatment of juveniles who commit serious crimes. The Task Force recommends the following changes to the Welfare and Institutions Code:

- a. Amend the Welfare and Institutions Code, including Section 707, as well as Section 190 *et seq.*, of the Penal Code, to mandate that any 16- or 17-year-old juvenile who is charged with a serious "Proposition 8" felony, as defined in Section 1192.7 of the Penal Code, or who is charged with the sale or possession for sale of any controlled substance, or who is charged with any offense involving the use of any type of firearm or possession of a firearm at the time of commission or arrest, shall be automatically tried as an adult and subject to the imposition of an adult sentence.

Under current law, an adult of 18 years of age or older can be punished severely for the commission of serious felonies, narcotics trafficking, or offenses involving the use of a firearm. However, a person under the age of 18 years, if found guilty of the identical offense, receives a disproportionately lighter sentence if found suitable for treatment by the juvenile court.

- b. Amend Welfare and Institutions Code Section 707, as well as Section 190 *et seq.*, of the Penal Code, defining the crime of murder and its punishment to mandate that 16- or 17-year-old juveniles charged with the commission of special circumstances murder be subject to the term of life imprisonment without the possibility of parole.

In a case of special circumstances murder, even if the juvenile is tried as an adult under current law, a 16- or 17-year-old cannot be sentenced to death or life without the possibility of parole.

It is urged that this treatment of 16- and 17-year-old murderers be changed as recommended.

- c. Amend Section 707 of the Welfare and Institutions Code to provide, in cases involving felony offenses, that all juveniles 16 years of age or older involved in gang activity as defined by Penal Code Section 186.2

Q. "...You were arrested at age nine, but you were arrested 40 or 50 times before you were treated as an adult. Would it have made a difference in your life style at all if the judge who handled you the first time for bike theft had maybe slammed you a little harder?" —Task Force Member

A. "Yes, I think it would have, if they would have went harder on me at that time." —Secret Witness

Q. "Why do you think that is?" —Task Force Member

A. "Because they kept on giving me breaks and so I got comfortable, I didn't care if I came back." —Secret Witness

are rebuttably presumed to be unfit for treatment by the juvenile court, and are suitable to be tried as adults.

Violent street gang activity has been proven to be directly related to the ages of the participants, with the most violent conduct occurring between the ages of 16 and 21. Existing law must be revised to allow the criminal justice system to deal more realistically with juveniles who commit adult crimes.

- d. **Further amend the Welfare and Institutions Code to provide that 14- and 15-year-old minors who are charged with the commission of special circumstances murder are to be tried as adults and, upon conviction, shall serve a minimum term of 20 years, including automatic transfer from the Department of the Youth Authority to the Department of Corrections upon attaining the age of 21 years.**

Q. "When you were 16...if you knew that you could have gotten the death penalty when you were 16 for committing homicide, would that have made any difference to you?"

—Task Force Member

A. "Yeah, but I knew I couldn't get the death penalty."
—Secret Witness

Street gang members have demonstrated the acumen to recognize that the younger an offender is, the more lenient he or she will be treated by the court system. This has resulted in the gangs using the younger "pee-wees" ("wannabees") as shooters in felonies involving the use of firearms. The current law must be amended to deter younger murderers who currently do not face lengthy incarceration.

LEGISLATIVE RECOMMENDATION 2:

Enact a comprehensive Racketeer Influenced and Corrupt Organization Act (RICO) statute similar to the existing federal provision.

Since 1970, the federal government and some states have enacted RICO statutes. Under the federal statute, 18 USC 1961-1968, the penalty for acquiring a business with criminally tainted money is confiscation of the business, even if the business is run legitimately. Criminal forfeiture also is authorized if the legitimate business is used for an illegal activity, such as a front for bookmaking, or where the business was acquired or controlled through illegal methods such as extortion. The rationale behind the federal RICO statute is the eradication of the financial benefits of organized criminal activities, and a resultant deterrence of infiltration into legitimate businesses.

California's Health and Safety Code provides for forfeiture of illegally obtained assets in narcotics cases, and Penal Code Section 186 (California Control of Profits of Organized Crime Act) also provides for the forfeiture of profits acquired as a result of specified criminal activities. However, this state lacks a comprehensive RICO statute similar to the federal model. A comprehensive California RICO statute, prohibiting conspiracy to commit acts relating to racketeering, would give prosecutors a proven and effective tool to successfully convict narcotics traffickers and nullify the benefits of their illegal activities. The need for such legislation will become particularly urgent if the youths currently engaged in drug-related gang activity become better organized, like traditional organized crime groups, and start funneling their ill-gotten assets into legitimate businesses.

LEGISLATIVE RECOMMENDATION 3:

Amend the state narcotics asset forfeiture laws to:

- a. **Eliminate the 1994 sunset clause from the statute language and make it identical to existing federal forfeiture provisions.**

Legislation initiated by Governor Deukmejian for antidrug/gang statutes called for the utilization of asset forfeiture to create an adverse business climate for drug traffickers by seizing their assets and thereby reducing the profitability of their illicit commercial activity. However, the existing statutes contain a 1994 sunset clause which will invalidate this valuable enforcement tool. The Governor's Office of Criminal Justice Planning has given considerable support and effort to help formulate AB 4162 by Assemblyman Katz (Chapter 1492, Statutes of 1988) into a forfeiture statute that parallels the federal forfeiture provisions. As good as this latest revision is, it is recommended that California's asset forfeiture provisions be further amended so they are identical to the existing federal statute and that the sunset clause be eliminated.

- b. **Provide for the forfeiture of any vehicle used in a drive-by shooting.**

AB 3104 by Assemblyman Zeltner, which provides for the forfeiture of vehicles used in drive-by shootings, was defeated in the Assembly Committee on Public Safety.

"We think that our department, along with every other department, should have an extremely large asset seizure. You're dealing coke and you have a BMW, that BMW should belong to the City and County of San Francisco. If you have a house, a legitimate business that's derived as the result of profits of criminal activity, that should belong to the people of the City and County of San Francisco. Take the money out. That's the first step. Strict enforcement on those people that are doing it, doing it hard." —Tom Gerard, Inspector, San Francisco Police Department

"What we need are laws that are going to act swiftly on these people, which are going to deny them of their liberty, and which will have their assets forfeited quickly."

*—Robert Martinez,
Judge, Los Angeles
Superior Court*

As a result, there is currently no effective mechanism for the forfeiture of a vehicle used in a drive-by shooting that would allow the proceeds from such a forfeiture to be used by law enforcement authorities. Such a forfeiture provision would deter drive-by shootings and assist law enforcement in gang related investigations.

- c. **Commit an amount from the Asset Forfeiture Fund to the Gang Violence Suppression Program budget within the Governor's Office of Criminal Justice Planning.**

AB 4162 (Chapter 1492, Statutes of 1988) reformed the procedures by which assets involved in certain controlled substances offenses are seized and forfeited. The bill also directs that 90 percent of the value of the assets forfeited be distributed to the state and local law enforcement agencies that participated in the investigation leading up to the seizure, and which processed the forfeiture. The remaining 10 percent of the assets is to be deposited into a newly created Asset Forfeiture Distribution Fund, that is administered by the Governor's Office of Criminal Justice Planning. From this Fund, the Department of Mental Health's Primary Prevention Program is to receive \$1.5 million annually, and \$1 million is to be available to appropriate to the Los Angeles County Office of Education, in 1989 and 1990 only, to administer a gang prevention program authorized for Los Angeles schools in AB 3723 (Chapter 1250, Statutes of 1988).

Considering that the need to provide enhanced gang and drug prevention programs is statewide in nature, it is recommended that once funding of the Los Angeles schools project is completed after 1990, the state drug asset forfeiture law be amended to direct \$1 million annually from the Asset Forfeiture Distribution Fund to the Gang Violence Suppression Program to allow for expanded funding of community-based organizations providing gang and drug prevention services.

LEGISLATIVE RECOMMENDATION 4:

Enact legislation to establish policy to provide stricter treatment of offenders who use weapons:

- a. Amend Subdivision (a) of Section 245 of the Penal Code by adding a provision that would make assault with a machine gun punishable by a mandatory term of life imprisonment with the possibility of parole.

Assault with a deadly weapon, committed with a machine gun, currently is treated the same as an assault with a single-shot firearm. Given the deadly nature of a fully automatic firearm, and the potential for the indiscriminate killing or wounding of innocent bystanders, it is recommended that Subdivision (a) of Section 245 of the Penal Code be amended by adding a provision that would make assault with a machine gun punishable by a mandatory term of life imprisonment with the possibility of parole.

- b. Amend Subdivision (a) of Section 245 to provide for a mandatory term of 4, 8 or 12 years of imprisonment for assault with a high-capacity, semiautomatic firearm.

A semiautomatic firearm requires manipulation of the trigger mechanism for each shot fired, and does not shoot a continuous stream of bullets as does a fully automatic weapon. Hence, while possessing a high degree of "fire power," it does not present such a high degree of lethality or danger to innocent bystanders as does a machine gun. Therefore, it is recommended that the use of a semiautomatic firearm, equipped with a high-capacity magazine, in an assault be proportionately punished less severely than use of a machine gun. Such proportionate punishment, still recognizing that a semiautomatic firearm equipped with a high-capacity magazine is potentially more dangerous than a semiautomatic firearm traditionally used for sporting purposes, would be accomplished by amending Subdivision (a) of Section 245 to provide for a mandatory term of 4, 8 or 12 years of imprisonment.

- c. Amend the Penal Code by adding a mandatory sentence enhancement section covering murder, shooting into a dwelling or vehicle, kidnapping,
-

"I have been in some homes where those bullets came flying through the walls; fortunately, no one died in those, but I did see, what these people have to live with every day. Now, that's not America. That's not the way it should be, and it seems incumbent on us to guarantee that the people feel some degree of safety in conducting their business, walking around the streets, and sitting and relaxing in the confines of their own homes."

*—Paul Zeltner,
Assembly Member,
54th District,
Lakewood*

robbery, escape, or witness intimidation that would enhance the sentence for the underlying felony as follows:

- Use of a machine gun by a principal – an additional term of 5, 10 or 15 years;
- Use of a high-capacity semiautomatic firearm by a principal – an additional term of 3, 4 or 5 years; and
- Any principal armed with a machine gun – an additional term of 3, 4 or 5 years.

Sections 1203.06 and 12022.5 of the Penal Code, which together compose California's "Use A Gun – Go To Prison" law, require that personal use of a firearm receives a mandatory state prison sentence and the most severe sentence enhancement.

It is necessary in the context of street gang prosecution to modify this situation by making the mandatory sentencing provision applicable to all principals to any of the violent felonies enumerated where a firearm is used, irrespective of which one of the principals personally used the firearm. Inasmuch as the aggravating factors attending the use of a machine gun or a high-capacity semiautomatic firearm in an assault also are present when such firearms are used in perpetration of any violent felony, it is recommended that mandatory sentencing and severe sentence enhancements should apply to all principals to violent felonies where such weapons are used.

- d. Amend Section 1385 of the Penal Code to prohibit a judge from striking any sentence enhancement for misuse of a machine gun or high-capacity semiautomatic firearm.

Section 1385 of the Penal Code and the California Rules of Court give the trial courts of this state virtually unlimited discretion to "strike" sentence enhancements. The only existing limitation on this discretion is found in Subdivision (b) of Section 1385 of the Penal Code, which precludes striking the five-year sentence enhancement imposed for prior serious felony convictions.

It is recommended that the sentence enhancements proposed above be mandatory, due to the danger that the misuse of machine guns and high-capacity semiautomatic firearms presents to society.

"There's a need to develop measures to curb the ready availability of assault type weapons. That is not a plea for gun control. Please don't mistake it for such. I'm sure you've had paraded before you the various types of weapons that these folks don't hesitate to use out there. When a 16-year-old kid can wind up with a weapon for his own purposes to maim, destroy, and take human life, there's something seriously wrong." —Peter Sarna, Captain, Oakland Police Department

- e. **Amend the Penal Code to provide that the punishment for an ex-felon who possesses a machine gun will be a mandatory term of 4, 8 or 12 years, and a term of 3, 6 or 9 years for possession of a high-capacity semiautomatic firearm by an ex-felon.**

Currently, possession of a machine gun is a felony punishable by 16 months, or two or three years in state prison, without provision for higher penalties for such illegal possession by a convicted felon. It is therefore recommended that a section be added to the Penal Code punishing an ex-felon who possesses a machine gun with a mandatory term of 4, 8 or 12 years, and a term of 3, 6 or 9 years for possession of a high-capacity semiautomatic firearm by an ex-felon;

- f. **Amend the Penal Code to provide that carrying a semiautomatic firearm and an easily accessible, loaded high-capacity magazine for that specific semiautomatic firearm in an automobile be a felony punishable by a term of 1, 2 or 3 years.**

To deter drive-by shootings involving high-capacity semiautomatic firearms, it is further recommended that the Penal Code be amended to provide that carrying a semiautomatic firearm and a loaded high-capacity magazine for that specific semiautomatic firearm simultaneously in an automobile be a felony punishable by a term of 1, 2 or 3 years.

- g. **Amend Section 12220 of the Penal Code to provide a term of imprisonment of 3, 4 or 5 years for illegal possession of a machine gun.**

The current punishment for possession of a machine gun is 16 months or two or three years of imprisonment. The increasing prevalence of automatic weapons in gang related violence indicates that the current penal sanctions are not sufficient to deter the illegal possession or use of machine guns. Hence, it is recommended that the penal sanctions for illegal possession of a machine gun be raised to 3, 4 or 5 years.

- h. **Amend the Penal Code to provide that the intentional conversion of a firearm into a machine gun shall be punished by a term of imprisonment of 3, 4 or 5 years.**

"We have a number of photographs that have been seized during search warrants where you can find infants - and I mean infants - being posed by their parents with Mac 10 machine guns, wearing gang colors. You literally have generations of gang members." —Keith Burt, Assistant District Attorney, San Diego County

"I find parents who are denying the fact that their children are drug users or gang-bangers; who are fearful of their own children; who are supportive of the fact that their children are bringing in money that helps them buy a better car, helps them improve their house." —Sister Elisa Martinez, Coordinator, Concerned Parent Program, East Los Angeles

Although it is currently a felony to possess a combination of parts designed and intended to convert any firearm into a machine gun, there is a need to provide a proportionately higher punishment for the act of intentionally converting a firearm into a machine gun.

Note: The range of years for the sentence enhancements is based (a) upon the proposed sentencing schedule in SB 2500, which will totally restructure the determinate sentencing law, and (b) an attempt to make the enhancement for use of a machine gun proportionally higher than for use of a semiautomatic firearm.

LEGISLATIVE RECOMMENDATION 5:

Amend Section 666 of the Penal Code by adding Section 11550 of the Health and Safety Code to the list of those violations that may be charged as an alternative felony/misdemeanor if the defendant has suffered a prior conviction for violation of Section 11550 or any of the offenses enumerated in Section 666.

Section 11550 of the Health and Safety Code provides that anyone who is under the influence of a controlled substance, including heroin, is guilty of a misdemeanor, regardless of the number of prior convictions for violation of that section.

Section 11550 has resulted in the creation of a cycle of arrest, conviction, and incarceration, followed by almost immediate rearrest of narcotics addicts who fail to "kick" their drug habits while incarcerated for short periods of time. The current, overly lenient misdemeanor sentence provided in Section 11550 provides neither an adequate deterrent, nor a sentence that is proportionate to the harm that habitual narcotics offenders cause society.

Individuals who are habitually under the influence of narcotics present a greater danger to society than narcotics users who are apprehended and stop their abuse of narcotics. Given that the habitual narcotics abuser, without fail, supports his or her habit by property crime and/or theft offenses, charging the habitual narcotics user with a felony for being under the influence of drugs is proportionate to the harm that such an offender causes the community. Additionally, the prospect of doing "hard time" in a state prison may act as a deterrent to further abuse of controlled substances.

LEGISLATIVE RECOMMENDATION 6:

Amend Section 11353.5 of the Health and Safety Code so that it conforms with Title 21 of the United States Code, Section 845a, relating to the distribution or manufacturing of drugs in or near schools and colleges.

Title 21 of the United States Code, Section 845a, provides that a person convicted of distributing or manufacturing a controlled substance on a school ground, or within 1,000 feet of a school ground, shall be punished by a term of imprisonment, or fine, or both, twice that which is normally authorized as a penalty for selling or manufacturing narcotics. Additionally, a first time offense of selling or manufacturing drugs on or within 1,000 feet of a school requires a parole term twice the length of the normal parole term required for simply selling or manufacturing drugs.

In 1988, the Legislature passed, and the Governor signed two bills relating to the sale of drugs on or near school grounds. SB 2698 by Senator Ed Davis (Chapter 1266, Statutes of 1988) applies the higher sentence of 5, 7 or 9 years to anyone convicted of selling or providing drugs on school grounds to a minor under the age of 18, provided that the offender is at least five years older than the minor who was subject to the sale. AB 3451 by Assembly Member Jack O'Connell (Chapter 1248, Statutes of 1988) doubles the sentence for sale, or possession for sale of cocaine, heroin, or PCP, if the offense takes place on, or within 1,000 feet of a school ground.

While the passage of these two bills brings important additional tools to law enforcement in combating drug dealing to school age youth, they do not bring California's laws up to full conformity with the federal statute. It is recommended that state law be further amended to require double the fine, if a fine is levied against an offender, for the specified drug offenses committed on or near school grounds, and that the term of parole for a first offense be twice that given to one convicted for a standard offense of sale, or possession for sale, of controlled substances..

LEGISLATIVE RECOMMENDATION 7:

Enact legislation that would eliminate, by constitutional amendment, postindictment preliminary hearings in cases in which the defendants have already been indicted by a grand jury.

The use of the grand jury by either prosecutors or law enforcement agencies has declined since *Hawkins v. Superior Court*

"The Hawkins case is probably one of the major stumbling blocks of the criminal justice system that has come down from the former supreme court." —Ronald S. Coen, Judge, Los Angeles Superior Court

"Before Hawkins the grand jury system had benefits similar to the federal courts and was of far more use to the prosecutors. It's time, in my opinion, that's the legislature reverse Hawkins and reinstate the California grand jury with its traditional powers." —John Dougherty, District Attorney, Sacramento County

(1978) 22 Cal.3d 584 held that a defendant accused by way of an indictment has a right to a preliminary hearing. This decision adds significantly to the length of the jury and trial process. The grand jury indictment provides for a thorough review of charges sufficient to hold the defendant over for trial. The 1986 State Task Force on Youth Gang Violence also found the *Hawkins* decision to place undue burdens on court processes and recommended measures to overturn this decision. The growing court caseloads of gang and drug cases require more speedy trials to ensure swift justice. The Task Force recommends legislation that will, by constitutional amendment, eliminate the preliminary hearing in cases in which the defendant has been indicted by a grand jury.

LEGISLATIVE RECOMMENDATION 8:

Enact legislation to enable and to fund the Governor's Office of Criminal Justice Planning in administering a training program for prosecutors, law enforcement officers and the judiciary regarding the investigative functions of a criminal grand jury.

The Task Force recommends that OCJP allocate funds to train the judiciary, prosecutors and law enforcement officers on the utilization of the grand jury system as both an investigative and a prosecution resource. The reduction in the use of the grand jury has resulted in a commensurate reduction in prosecutors' experience with grand jury processes. These attorneys require further training in preparing grand jury presentations.

Inasmuch as a major narcotics trafficking prosecution may include money laundering, asset forfeiture considerations and a complex conspiracy, the use of the grand jury should be a viable option more readily utilized by law enforcement and prosecution authorities.

A grand jury still may inquire into all public offenses committed or triable within its county and present them to the Superior Court by indictment. Therefore, if the grand jury is made aware of a narcotics trafficking operation that has been ongoing within its county, it may investigate the operation.

This broad scope of inquiry, together with its subpoena power, makes the grand jury an ideal tool to utilize when tracking the paper trail of a money laundering operation, tracing assets subject to forfeiture, or determining the scope of a conspiracy to sell drugs. Although a person accused by way of an indictment has the right to a preliminary hearing, utilization of the grand jury will result in the prosecution having a well-prepared case to present

to the court. It will also result in a case that has been prepared to the satisfaction of a group of individuals representing a cross section of the community and who mirror the composition of a trial jury.

Unfortunately, the use of the grand jury by either prosecutors or law enforcement agencies has declined since the State Supreme Court's Hawkins decision. As a result, very few judges, prosecutors or police investigators have experience with grand juries. The Task Force recommends, therefore, that training conferences for the Career Criminal Apprehension Program; the Career Criminal Prosecution Program and the Major Narcotics Vendor Program; and the Gang Violence Suppression Program, include materials dealing with the use of the grand jury as an enforcement and prosecution tool.

LEGISLATIVE RECOMMENDATION 9:

Enact legislation that would allow hearsay testimony in the preliminary hearing.

Current law does not allow for hearsay testimony in the preliminary hearing. When victims and witnesses are required to be present at a preliminary hearing, they are subjected to additional stress of cross-examination and potential intimidation from the defendant or his associates. This is of particular concern in gang- and drug-related cases, where intimidation and retaliation of victims and witnesses is common, and victim or witness cooperation is oftentimes limited.

Allowing hearsay testimony within the preliminary hearing would also be beneficial from a law enforcement perspective. Presently, every officer involved in a case investigation may need to come forth and describe the details of the case for which they have firsthand knowledge. This requires assigning officers away from their patrol or investigative activities, many times on a costly officer court overtime basis. This affects overall personnel costs for all departments and puts a strain on officer resources. If hearsay testimony were allowed, a single officer could represent the facts of the investigation in the preliminary hearing, subject to the verification of the facts within the subsequent trial.

*"Well, I like to think I can spot a gang member when he comes into my court just based on all the years of my work in the D.A.'s office, but I'm not sure that that is shared by some of my colleagues. We sometimes see just the tip of the problem in the municipal court."
—Judy Champagne, Judge, Los Angeles Municipal Court*

LEGISLATIVE RECOMMENDATION 10:

Revise the provisions of the Penal Code and the Rules of the Court relating to sentencing in order to limit a trial court's discretion to grant probation to narcotics traffickers.

Statistics compiled by the California Bureau of Criminal Statistics reveal that of those arrested in California for narcotics trafficking, only 4 percent are sentenced to prison. Of those later convicted in this state's courts for narcotics trafficking offenses, only 17 percent were sentenced to prison. These statistics clearly demonstrate that there is a need to impose some form of mandatory sentence in cases involving narcotics trafficking as is also recommended in the Washington drug strategy.

It is recommended that Subdivision (a) of Section 1203.073 of the Penal Code and the Rules of Court relating to sentencing be amended to limit a trial court's discretion to grant probation to narcotics traffickers.

All too often, lenient judges utilize Rule 414 of the California Rules of Court as a justification to grant dealers probation. Rule 414 provides that the criteria for granting probation include the "danger of addiction to or abuse of alcohol, narcotics, dangerous drugs, or other mood or consciousness altering substances" that, as an "unusual case," justifies a grant of probation. Inasmuch as narcotics traffickers are often narcotics users themselves, the application of this provision of Rule 414 in narcotics trafficking cases must be severely limited, if not disallowed.

LEGISLATIVE RECOMMENDATION II:

Enact legislation, through constitutional amendment, that would require judicial officers to consider the protection of the public in setting bail or allowing a defendant to be released on his or her own recognizance in all criminal prosecutions.

Gang members often appear in court charged with misdemeanor dangerous weapons offenses, such as: carrying a concealed firearm, (Penal Code Section 12025), possessing a sawed-off shotgun (Penal Code Section 12020), carrying a loaded firearm in a public place (Penal Code Section 12031), knowingly permitting a person to discharge a firearm from a motor vehicle (Penal Code Section 12034), or exhibiting a firearm in a threatening manner (Penal Code Section 417). Penal Code Section 1270 presently requires judicial officers to order the release of persons charged with misdemeanor offenses on their own recognizance unless the court finds that an own-recognizance release will not reasonably assure the appearance of the defendant, as required. The indiscriminate use of deadly and dangerous weapons by drug-dealing gang members was well documented during the Task Force's public hearings. Equally well documented was the concern expressed by citizens

dismayed because gang members, arrested for seemingly serious weapons offenses, were back on the street the very next day. The court should have the authority to consider the protection of society in light of the offenses charged, or the defendant's prior record, in determining whether to release the defendant on his or her own recognizance or the level at which to set bail.

LEGISLATIVE RECOMMENDATION 12:

Enact legislation that would amend Section 1078 of the Penal Code to provide for judicial *voir dire* of prospective jurors in criminal trials.

Criminal trials are often unnecessarily prolonged by attorneys who use the jury selection process to argue their cases. The length of trials in California is approximately 30 percent longer than in Colorado and New Jersey. This finding comes from the first nationwide study on trial time. The primary difference between California and the other states occurs during *voir dire*. In California, the attorneys have the primary responsibility for conducting *voir dire*. In federal courts and most state courts, the judges conduct *voir dire*. There are significant time savings to be gained in promoting judicial *voir dire*. To remedy this situation and to reduce court congestion, it is recommended that Section 1078 of the Penal Code be amended to provide that all questions designed solely for assisting in the intelligent exercise of the right to peremptory challenges, and not applicable to the determination of bias, shall be propounded by the court. If either the defense or the prosecution requests a question or inquiry to be presented to the panel of prospective jurors, the court would, in its discretion, propound the question unless it determines that such an inquiry is clearly inappropriate.

"Our courts should be efficient and they should process cases swiftly, but really they do neither." —Richard Niedorf, Judge, Los Angeles Municipal Court

LEGISLATIVE RECOMMENDATION 13:

Enact legislation that would amend the California Constitution to allow *voir dire* of prospective jurors in open court, in capital cases.

The California Supreme Court in a 1980 decision (*Hovey v. Superior Court* 28 Cal.3d 1) required that *voir dire* of prospective jurors' attitudes on capital punishment be conducted individually and in private sessions in the judge's chambers.

Prosecution of death penalty cases is often unnecessarily prolonged by the *in camera* jury selection process in capital cases. To remedy this and to reduce court congestion, it is recommended

that the California Constitution be amended to eliminate the current requirement of individual *in camera voir dire* of prospective jurors in capital cases.

LEGISLATIVE RECOMMENDATION 14:

Enact legislation that will expand the designation of Enterprise Zones and Economic and Employment Incentive Areas in order to provide increased economic development and job opportunities within gang-affected communities.

The California Legislature has established, through the Department of Commerce, the Enterprise Zone and Employment Incentive Area programs to provide incentives for business development in economically depressed communities. Presently, there are 19 such designated Enterprise Zones and Employment Incentive Areas within the state. These programs encourage the placement or expansion of businesses in these areas in order to provide job opportunities and economic revitalization. Expansion of these areas is imperative in addressing one of the root causes of criminal gang activities and drug dealing, namely, the lack of sufficient job opportunities.

"I say the business community has to be there with the kind of compact or business partnership program that we've been working on really in the later years. I think it has to get to that level in the schools, and this is going to be done by tutors or mentoring programs or adopt-a-school, where the business people come into the school room. They show that, yes, it is possible to make some money if you stay in this program and there is excitement and comraderie and prestige." —Brian Van Camp, Chair and Founder, Citizens for Better Sacramento

LEGISLATIVE RECOMMENDATION 15:

Enact legislation to eliminate heroin and cocaine addiction and drug sales from any consideration for diversion to Penal Code Section 1000 drug programs and allow the program to concentrate on the drug users who can benefit from the educational and counseling concepts that are intended by these programs.

Present law allows any defendant arrested on drug related charges to request diversion to a drug treatment program in lieu of prosecution and potential incarceration. The present drug diversion alternative is frequently abused by the drug offender who repeatedly cycles through these drug education programs. The statute and programs were designed for short-term drug education, not long-term intensive treatment. Drug sellers and addicts do not and cannot benefit from this program; the drug addicts, because the type of treatment they need involves structure, control and intensive treatment; the sellers, because the program is used as a subterfuge to avoid facing the penalties for drug sales.

LEGISLATIVE RECOMMENDATION 16:

Enact legislation to place on the ballot a constitutional amendment that will require parents to be responsible for the costs of detaining their children within juvenile facilities.

Each jurisdiction is presently responsible for the costs associated with housing juveniles within juvenile detention facilities. Juveniles may be detained numerous times on status offenses, such as curfew violations. Considering the level of juvenile involvement in gangs, a mechanism within the law to encourage parental responsibility for the child's actions is deemed necessary.

In 1984 the California Supreme Court (*in re Jerald C.* (1984) 36 Cal.3d 1) ruled that it was unconstitutional to collect such costs due to the punishment aspect of the juvenile court law. Subsequent legislation in 1984 allowed counties to collect for incidental costs that would be required of parents, no matter where a juvenile was located. This recommendation is needed to address the constitutional question and to allow counties to collect costs that are legitimately the obligation of the parents.

"It's an interesting experience to sit at the juvenile center and read the booking sheets of the minors who are booked into the juvenile hall. You get the sudden feeling that you're in the wrong town, because you note that most of those kids have Southern California addresses." —Robert Keldgord, Chief Probation Officer, Sacramento County

LEGISLATIVE RECOMMENDATION 17:

Enact legislation to mandate that the Department of Corrections develop and implement a comprehensive narcotics treatment, education and diversion program for all inmates in all of its penal institutions.

Other states have successfully formulated antinarcotics strategies that California may wish to emulate that include innovative education and treatment programs directed at convicted narcotics offenders. California has a myriad of drug education and treatment programs, administered by both state and local agencies, but the California Rehabilitation Center is the only Department of Corrections institution offering a comprehensive drug rehabilitation program for sentenced offenders.

Inasmuch as most crime is related to narcotics abuse, it is submitted that California's prisons represent a "captive market" of narcotics consumers in the literal sense. It is, therefore, recommended that legislation be introduced that would mandate the Department of Corrections to develop and implement a comprehensive narcotics treatment, education and diversion program for inmates in all of its institutions.

Section 2931 of the Penal Code should be amended to provide that Department of Corrections inmates shall not be awarded

"What seems to be the more difficult thing now is implementation. It's very good to say we should have drug treatment programs and prevention programs, but what kind of programs and who funds them." —John Conley, Orange County

"A recent arrest of a Los Angeles gang member revealed the following: \$9,000 in small denominations, an \$80,000 home purchased with a down payment of \$27,000 in 5s, 10s and 20s delivered to the escrow company in a brown paper bag. A pool at the residence was purchased with \$12,000 in cash. A Mercedes-Benz was in the garage."
 —Ed Harvey,
 Detective,
 Riverside County
 Sheriff's Department

"...Anytime we work a major organization now, our policy...is to work the criminal drug violations and parallel it with financial investigation so that we can track the assets, the cash flows. When we present the case for indictment, we can also forfeit and seize the organization's moneys and assets to put them out of the money game completely, if we're successful."
 —George Vinson,
 Supervising Senior
 Resident Agent,
 FBI

"good-time"/"work-time" sentence credits unless they successfully complete a comprehensive narcotics treatment, education and diversion program.

LEGISLATIVE RECOMMENDATION 18:

Enact legislation to amend the current provisions of the state's electronic surveillance law to parallel the federal statute.

Electronic surveillance, commonly known as "wiretapping," provides an effective tool for investigating serious offenses. Wiretaps allow investigators to move quickly and effectively against criminal activity. The current California wiretap law, amended in 1988, allows for the use of wiretaps in investigating suspected drug offenses. Evidence gained related to such offenses may be used in court. However, evidence gained through the use of the wiretaps related to other serious offenses, such as murder or kidnaping, cannot be used in court. The state's electronic surveillance law should be amended to parallel the federal law, thereby broadening the scope of the use of wiretaps to investigate serious felonies other than drug offenses.

LEGISLATIVE RECOMMENDATION 19:

Enact legislation that will provide for the forfeiture of any leasehold, and attendant deposits, where there has been illegal narcotics-related activity in the leased or rented property.

The mobility of gang/drug-trafficking operations leads to the use of rented homes and apartments for drug use and sales. Landlords may have little clout in evicting such undesirable tenants. These types of tenants bring with them potential gang- and drug-related crime and violence. Neighborhoods are unnecessarily subjected to the presence of drug-dependent individuals and drug buyer and dealer traffic.

The State of Washington's strategy against drug-trafficking contains an innovative forfeiture provision that the Task Force recommends that California adopt. If a rental agreement for a dwelling or commercial building prohibits a tenant from engaging in illegal activities on the premises, a landlord may evict a tenant for any violation of Washington's state narcotics laws and the tenant forfeits all deposits to the landlord. Such an eviction operates as a legal defense protecting the landlord from any collateral prosecution regarding those drugs. In the event that

police find or seize drugs in a rented building, they must notify the landlord so he or she can initiate the eviction proceedings.

Such a statute will have a most beneficial effect on enforcement efforts against "crack houses" and "shooting galleries" or other places that become a narcotics trafficking problem. By placing the burden on the landlord to initiate the eviction, this statute does not increase the existing work load of either law enforcement or prosecutors. It is, therefore, suggested that Section 1161 of the Code of Civil Procedure be amended to incorporate provisions providing for eviction of narcotics abusers, as well as for the forfeiture of their leasehold and all deposits.

LEGISLATIVE RECOMMENDATION 20:

Enact legislation to provide adequate funding for the expansion of the prison system and/or any California detention facility, including secure facilities for juvenile offenders.

Expanded resources are required to support the growing demand for corrections facilities, personnel and training. Overcrowding is a statewide problem. However, jails throughout the state are overcrowded. Los Angeles County facilities hold well over 23,000 inmates in buildings originally designed to hold 12,000. The California Department of Corrections reported that for the third straight year, over 90 percent of the prison violence involved or was instigated by 10 percent of the active inmate population.

To accomplish the mission of aggressive enforcement, prosecution, and removing criminal gang members and drug pushers from the streets, additional correctional institutions are needed so that prescribed sentences can be meted out to those who have been convicted.

LEGISLATIVE RECOMMENDATION 21:

Amend Penal Code Section 594 (Vandalism) to make gang-related graffiti, regardless of the dollar amount of damage, an alternate misdemeanor or felony with increased penalties.

Graffiti contributes to urban deterioration. Although gangs are not the exclusive perpetrators, they are responsible for almost all graffiti found in our inner-city neighborhoods. Increased punishment for these perpetrators should be a priority.

"Led by their school counselor, about 15 Hollenbeck Junior High School students have met at 6:00 a.m. every day since last fall to paint over graffiti sprayed on the classroom buildings at night. The crew kept painting over a graffiti message that showed up every morning until the vandals finally scrawled, 'We Quit', and never defaced the wall again." —Alex Cota, Concerned Citizen, Los Angeles

LEGISLATIVE RECOMMENDATION 22:

Enact legislation to implement a statewide curfew law and to recommend that communities with current curfew ordinances make a renewed, concentrated enforcement effort in the area of juvenile curfew violations.

According to Los Angeles Police authorities, there is evidence that strict enforcement of curfew laws results in a significant reduction of street crime. In addition to providing probable cause for detention, it serves to remove the "lookouts," "drug supply runners" and gun bearers from our streets. This weakens the gang and their drug-trafficking activities, making them even more susceptible to other enforcement efforts. There is a correlation between curfew violations and the extent of crime in an area. In the absence of applicable state law, cities and counties should enact and enforce curfew laws that meet community needs.

Presently, for the first offense, the juvenile is released into the custody of his parents or legal guardians, and both are counseled. Subsequent offenses can result in the juvenile being jailed in Central Juvenile Hall for contempt of court if he refuses a court order to obey the law. The California Supreme Court recently ruled in favor of detention, in juvenile hall, for curfew violators found in contempt of court. Strict enforcement of curfew laws will help to abate the gang and drug problem.

"We need to stop treating first time offenders with kid gloves. Start increasing the periods of incarceration by weekly, monthly increments, it's called being accountable, responsible for one's actions."

*—Mike Ramirez,
Parole Agent,
California
Department of the
Youth Authority*

LEGISLATIVE RECOMMENDATION 23:

Enact legislation to require that the State Department of Education, the Governor's Governor's Office of Criminal Justice Planning and the Department of the Youth Authority develop and implement a statewide mandated gang and drug prevention program within all public schools in the state to:

- a. **Teach social values and self-esteem to youths, commencing with kindergarten;**
 - b. **Teach social responsibility and, most importantly, family values and parenting skills;**
 - c. **Teach students in all grades how to avoid involvement with gangs and drugs;**
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- d. Train teachers and administrators on how to implement this curriculum, and how to detect and intervene with gang- and drug-related or "at risk" behavior; and
 - e. Mandate the California State Commission on Credentialing to require all teachers and administrators to complete the gang and drug prevention program as a requirement for certificate renewal.

A uniform policy must be established and legislation enacted to provide funding and guidelines to ensure that an approved curriculum for a statewide school based gang and drug prevention program be implemented. Statewide direction is needed to guide the schools in implementing this program. The program must be aimed at diverting the state's youths by providing them with the personal skills and value systems necessary to compete successfully in this world. Statewide policy must be defined to impress upon teachers and administrators the importance of gang and drug prevention education and the critical role that the schools play in fighting this growing problem.

"I think we must teach standards, we must get away from the 1960s idea that there are no values. We must begin to focus on the values that we hold dearly in America, the values that got us to where we are, and we must be willing to enforce those standards with quick justice, especially for the very young." —Dr. B. David Brooks, President, Thomas Jefferson Research Center

LEGISLATIVE RECOMMENDATION 24:

Enact legislation to establish Juvenile Justice Centers within individual communities throughout the state.

The Juvenile Justice Center program is a community-based hearing panel composed of a judge, probation officers, an investigative officer(s) from local law enforcement agencies and a representative from the school district. With each subsequent arrest, juveniles are returned to the assigned Juvenile Justice Center to be heard by the same hearing panel that is familiar with the juvenile's case. The juveniles are reviewed and screened by the panel to determine their individual needs.

This continuity enables the system to more effectively adjudicate juvenile cases with efficiency, while monitoring the juveniles' progress. The system improves the cooperative efforts and communication between the affected agencies and the court.

The Juvenile Justice Centers afford the opportunity for those concerned to concentrate their efforts on resolving the problem. Juvenile offenders and their parents are unable to escape through the anonymity of appearing in several courts. Currently, two such

community-based Juvenile Justice Centers have proven successful in the Los Angeles area offering an ideal model for statewide implementation.

LEGISLATIVE RECOMMENDATION 25:

Enact legislation to fund and establish Juvenile Assessment Centers through the Governor's Office of Criminal Justice Planning and the California Department of the Youth Authority Youth Services Bureau, the probation authority and the juvenile court to screen juvenile status offenders. The process must take appropriate action within the current six-hour time limit in which the juvenile can be legally detained.

*"We have got to replace that hero who is making three hundred dollars per day."
—Robert Winter,
Sheriff, Santa Clara County*

The Juvenile Assessment Centers, as proposed, would be staffed by the juvenile court, State Department of Social Services and appropriate county agencies, which would have as their primary objective the welfare of the juvenile. The juvenile assessment center also would concern itself largely with family preservation or family reunification. The legislation should provide the juvenile court with the authority and sufficient time to review and screen status offenders in a secure facility long enough to determine the individual needs of the juvenile and evaluate the family problems or environment. The juvenile court should be able to place a juvenile into a shelter if the home environment is found to be unsatisfactory. The Assessment Centers would provide the juvenile and/or the parents with:

- Education testing and assessment;
- Counseling;
- Psychological testing and therapy;
- Health services; and
- Referral to public or private agencies for additional assistance.

LEGISLATIVE RECOMMENDATION 26:

Enact legislation to mandate that the State Department of Education establish a program to require testing of all juveniles in primary grades to determine physiological or psychological learning disabilities.

Many of the "at risk" juveniles who drop out of school have physical or mental impairments that result in learning deficiencies. These disabilities or deficiencies include lack of good

hearing, poor eyesight, dyslexia and even lack of memory retention as a result of malnutrition or unbalanced diet. The disorders or poor health create a learning disability not conducive to the scholastic endeavors in a school environment. The juvenile becomes frustrated, discouraged, depressed and often becomes a disciplinary problem. Those experiencing failure may leave school in an effort to escape from the situation. The juvenile ultimately drops out, is unemployed and falls prey to the insidious allure of gangs and drugs.

We must test children at an early age and attempt to ascertain if there is a learning handicap to reduce the attrition rate and to provide the necessary health services or remedial training.

Federal Agency Recommendations

State and local authorities are not able to combat the problem of drug trafficking by street gangs alone. The Task Force recommends increased cooperation with federal authorities to curtail the violence and increased availability of drugs occasioned by gang activity.

FEDERAL AGENCY RECOMMENDATION 1:

Increase the availability of federal resources to state and local gang- and drug-related case investigations.

As the mobility of gang members continues to increase, interagency coordination is imperative. Local criminal justice authorities can no longer address the complexity and interstate mobility of the gang drug traffickers. Additional resources are needed from authorities if investigations are to result in increased incarceration of gang members.

More federal narcotics enforcement agents are needed. Personnel should be added to the Los Angeles based Drug Enforcement Administration, Federal Bureau of Investigation, U.S. Attorney's Office, U.S. Coast Guard and the U.S. Customs. More personnel are needed to expand investigations and to prosecute narcotics violations.

California communities adjacent to ports are valuable cocaine markets for drug traffickers, but they are also the point of transshipment of drugs, primarily cocaine, to other regions. According to Los Angeles police authorities, the Columbian cocaine cartels, and Mexican drug-trafficking organizations are smuggling huge quantities of cocaine across the southwestern border into Los Angeles for transshipment to cities in other states and to Asian countries.

"You can't expel an unskilled, uneducated gang member out of the school and put him in the community because you're just moving the problem from one place to the other. That is tantamount to feeding the recruitment process for gangs. Schools should assume greater responsibility for problem kids."

*—Thomas Wright,
Deputy Probation
Officer, Orange
County*

"The problem we have is that due to our free society and mobility, we don't take the time to really know who is living next-door."

*—Sam Lazar,
Chairman, Oakland
Citizen Crime Pre-
vention Community
Program*