

GANGS AND PROPOSITION 21

MATERIALS

- 1) Enough lesson handouts for each student (end of lesson).
- 2) Re-useable white board and markers if you want them (provided in the PICC).

ADDITIONAL PREPARATION

If you are unfamiliar with gangs in the Bay Area we suggest taking a brief look at the following two websites which contain basic information about the two biggest gangs in the area (Norteños and Sureños).

→ **Norteños:** <http://www.gangpreventionservices.org/norteno.asp>

→ **Sureños:** <http://www.gangpreventionservices.org/sureno.asp>

Additionally, please be on the lookout for students referring to rival gangs in a derogatory manner. If you hear the word “scrap” (derogatory for Sureño) or “chapete” (derogatory for Norteño) please ask the student to use the correct word for the gang. (Less likely to arise are “slob” for Blood and “crab” or “sandcrab” for Crip.) If you see them cross out an “s” or write a backwards “n” or write “3” “13” “XIII” “4” “14” or “XIV” please scratch it.

For the full text of Prop 21 you can look here:

<http://primary2000.ss.ca.gov/VoterGuide/Propositions/21text.htm>

TAKEAWAYS

- Students will understand the current laws regarding gang activity and the punishments they entail.
- Students will have discussed the perceptions that surround gangs and gang activity, and things that people are doing to change those perceptions.

WELCOME
(Time Check: 2 minutes)

Welcome the students to StreetLaw and remind them of its purpose and your names. Tell them that during this lesson they will learn about Proposition 21 and how the law treats gangs. Also remind the students that they should not tell you about their individual cases, though they can ask us questions about hypothetical situations.

Teaching Tip (for this whole lesson) – Sometimes the kids are reluctant to start talking about this topic because many of their lives have been directly affected by gangs in difficult and complicated ways. Remind them of confidentiality rules, and remind them how important it is to be respectful of each other’s views. Also, remember that the kids probably have much more concrete knowledge about this topic than we do – be careful about the statements you make and check for any biases before offering your opinions. That said, don’t be afraid to provoke discussion.

INTRO (& BRIEF DISCUSSION)
(Time Check: 10 minutes)

Tell the students that they are going to do a “story-whip” – that is, create a story together one sentence at a time. You will start the story and each student in the class will add a sentence to it until another teacher ends it. Tell the students that the first line of the story is “Joey (/Jane) was a 14-year-old boy (/girl) living in San Mateo.” Inform the students that the last line of the story will be “So Joey (/Jane) decided to join a gang.”

→ *Teaching Tip* – Write the first and last lines on the board

Tell the students that in order to fill in all of the stuff in the middle they should think about all of the things (life situation, family situation, friends, school, drugs, and so on) that might make someone decide to become a part of the gang.

→ *Teaching Tip* – If the students are having trouble facilitators should ask them questions to get them thinking or, if necessary, insert a sentence of their own.

→ *Teaching Tip* – If nobody in the class brings up anything *good* about gang membership—i.e. protection or a sense of community—a teacher should offer one or two such sentences as the story travels around the room. For example, add “Joey didn’t get bullied anymore at school once he joined a gang.”

→ *Teaching Tip* – If you have a large group you may want to split the class up into a couple smaller sections of 10 students for this activity. The activity can work well with larger groups because it allows the story to develop more fully and more issues arise, but it can also get repetitive and/or take up too much time.

Do the story-whip. After the story-whip Tell the class: Great job, everyone. You might have noticed that people join gangs for lots of reasons, some good and some not so good.

Next, ask the class: Are there good things about being a gang member? What might those be? What do gangs sometimes offer their members that they might not get elsewhere?

- Likely answers include: a sense of community/family, and a support network they might not get at home.
- **NOTE:** We want to acknowledge that people sometimes seek out gangs for positive reasons, and then let the lesson continue to make it clear that the negative consequences of gang membership are so severe that joining a gang—for whatever reasons—is not worth the price one often has to pay.

Tell the class: These are all good reasons why someone might want to join a gang. But the law generally doesn't care whether someone joined a gang for good or bad reasons – the law generally looks at gang membership as a bad thing no matter what (even as a crime all by itself). So now we're going to talk about the legal consequences of joining a gang, and try to figure out what might be the best choices in tough situations.

ACTIVITY 1: WHY WE HAVE GANGS LAWS **(Time Check: 15 minutes)**

Discussion: Ask the students:

- What do you think public attitudes are towards gang members?
- Why do you think we have gang enhancement laws? (Make sure the kids know that “gang enhancement laws” are just laws that say gang members get longer sentences than non-gang members *for the same crimes* – we'll discuss the details of Prop 21 soon.)

Teaching Tip – This can lead to a very in-depth discussion. Let it go for as long as you want if you feel it is productive.

Teaching tip – If you feel comfortable, it can make for a very productive conversation if you interject controversial viewpoints that are out there in society (e.g., some people think gang members are destined to a life of crime – what do you think? Or, some people think sending gang members to prison just makes gangs worse – what do you think?)

When it seems like an opportune moment, switch the discussion from why we have gang enhancement laws, to a discussion about *what some people are doing to prevent gang activity* altogether.

- Tell the students that there is a group called “Barrios Unidos” (ask if anyone knows what that means in English – it roughly means “united neighborhoods”) – their mission is “to prevent and curtail violence amongst youth by providing them with life enhancing

alternative.” Barrios Unidos has several chapters in California.¹

- Many of the people who started Barrios Unidos got in trouble as kids and then they made a commitment to use their lives in positive ways to try to make life better for other kids who were facing some of the same problems they faced – they believe that “community workers who have experienced and overcome the challenges facing young people today are best able to assist them in choosing life-affirming behaviors.”²
- Tell the students that we’re interested in knowing their opinions about the work of Barrios Unidos and whether they think of organizations like this will help prevent gang activity. Some of the efforts that the Santa Cruz chapter of Barrios Unidos focuses on are community outreach, community economic development (helping provide jobs for local youth), and running an alternative high school program to educate and develop young leaders so they can become positive role models of social change in our communities.³
- Ask the students what other strategies might be effective.
 - Support groups? Counseling? Anything else?
 - What would they do if they were part of a gang prevention task force?
- Solicit input from the students as to the reasons they think this might work and why they think it might not work (e.g., might work because will make kids aware, help them make good decisions; might not work if kids don’t take it seriously or get looked down on if they participate). This can be an excellent time to distinguish between **individual factors** for why it may work or not work (such as those listed in the previous sentence) and **societal factors** for why it may work or not work (such as racism, crooked cops, poverty, etc.)

Wrapping up the discussion:

- Congratulate the students on having such an open and honest discussion and thinking so clearly about reasons why these programs might or might not work.
- This is a great opportunity to reinforce to the students that, while they may rightfully feel that there are many problems with the world, there are people out there, many of whom got in trouble when they were kids, too (note: adjust this discussion if you are not in the juvenile hall), who are trying to change things.
- Keep the students focused on the future and what they can do to improve things; they have so much to contribute and you know they are going to do good things with their lives.

¹ See <http://www.barriosunidos.net/about.html>; <http://www.barriosunidos.net/partners.html>.

² http://www.beachflatscommunitycenter.org/bfcc/Barrios_Unidos_Kids_Club.html; see also <http://www.vera.org/files/public-hearing-4-day-1-e-gang-violence.pdf>.

³ http://www.santacruz.k12.ca.us/alt_ed/schools/chavez.html.

ACTIVITY 2: PROPOSITION 21
(Time Check: 20 minutes)

Introduction for students:

Ask the Students: Does anyone know what Proposition 21 is?

Proposition 21 made changes to the law for juveniles.⁴ It targets juveniles (and adults) who have committed gang-related crimes. It also targets those who commit violent and serious crimes. The changes can be divided into 6 categories (very briefly go over the first 5 before emphasizing the 6th, since that is what we'll actually be talking about):

- 1) Prop 21 requires more juvenile offenders to be tried in adult court
- 2) Prop 21 requires that certain juvenile offenders be held in local or state correctional facilities
- 3) Prop 21 changes the types of probation available for juvenile offenders.
- 4) Prop 21 reduces confidentiality protections for juvenile offenders
- 5) Prop 21 increases criminal penalties for certain serious and violent offenses
- 6) ***Prop 21 increases the penalties for gang-related crimes and requires adjudicated/convicted gang members to register with local law enforcement agencies***

Teaching Tip → Write these down on the board.

In this exercise, we will be discussing this last change – the changes to gang law.

The Gang/Conspiracy Law: Explain that before we can understand what it means to get higher penalties for a gang-related crime, we must understand how courts determine if a crime is gang-related.

Ask the Class: ***Can a person be charged with conspiracy for a felony that other gang members commit?***

Yes, if he or she:

- 1) Actively participates in
- 2) A Street gang with
- 3) Knowledge that the gang is engaged in or has engaged in a pattern of criminal gang activity and
- 4) Either willfully promotes, furthers, assists, or benefits from such felony conduct.⁵

⁴ See <http://primary2000.sos.ca.gov/VoterGuide/Propositions/21text.htm> for the text of Prop 21. See also <http://www.smartvoter.org/2000/03/07/ca/state/prop/21/>;

<http://primary2000.sos.ca.gov/VoterGuide/Propositions/21.htm>. A legislative analysis is available at <http://primary2000.sos.ca.gov/VoterGuide/Propositions/21analysis.htm>.

⁵ See the text of the proposition: “182.5. Notwithstanding subdivisions (a) or (b) of Section 182, any person who actively participates in any criminal street gang, as defined in subdivision (f) of Section 186.22, with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, as defined in subdivision (e) of Section 186.22, and who willfully promotes, furthers, assists, or benefits from any felonious criminal conduct by members of that gang is guilty of conspiracy to commit that felony and may be punished as specified in subdivision (a) of Section 182.”

Reassure the class that these words are confusing and hard to understand. We're going to be discussing some different scenarios so we will eventually understand exactly what *each part* of this rule means.

(1) *To be an "active participant" in a gang:*⁶

- I do not need to be an "active" member of the gang in the sense we may think about it:
 - I don't need to be jumped in
 - I don't have to spend a lot of time with the gang
 - As long as I spend SOME time with the gang (can be just a little time associating with them), I might be considered a participant

Ask the students if Greg could be considered a participant in the gang in the following scenarios:

- Scenario 1: Joe and Jim are gang members and are tagging a wall behind a store. Greg walks by and starts tagging with them. (Answer: Greg is a participant.)
- Scenario 2: Joe and Jim are gang members and are tagging a wall behind a store. They saw Greg walking by and asked him to stand on the street corner and lookout for cops. (Answer: Greg is a participant.)
- Scenario 3: Joe and Jim are gang members and are tagging a wall behind a store. Greg walks by, sees them, asks what's up and stops and watches as they finish tagging. (Answer: Greg is probably a participant. As long as he spends some time with the gang, even if it's just associating with them, he might be considered to be a participant.)
- Scenario 4: Joe and Jim are gang members and are tagging a wall behind a store. Greg walks by on his way to store. (Answer: Greg is not a participant.)

(2) *What is a "gang"?*⁷

- A group of 3 or more people
- With a common identifying sign or symbol
- People in the gang must commit crimes and get together to do things that are illegal

⁶ Prop 21 does not explicitly define "active participation," but it is clear that one does not need to be an actual member of a gang to actively participate. As section 186.22(i) states: "In order to secure a conviction, or sustain a juvenile petition, pursuant to subdivision (a), it is not necessary for the prosecution to prove that the person devotes all, or a substantial part of his or her time or efforts to the criminal street gang, nor is it necessary to prove that the person is a member of the criminal street gang. Active participation in the criminal street gang is all that is required."

⁷ See CA Penal Code section 186.22(f): As used in this chapter, "criminal street gang" means any ongoing organization, association or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (25), inclusive of subdivision (e), having 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 gang activity."

Ask the students if the people in these scenarios could be considered a gang.

- Scenario 1: Molly, Mara, and Kim all hang out together and call themselves “The MMK.” They have a special hand shake. Once a week after school they get together and steal clothes from the mall. (Answer: Yes, a gang.)
- Scenario 2: Molly, Mara, and Kim are all part of the 3 person basketball team. They named themselves “MMK” and created a three-headed monster as their logo and only wear black when they play basketball games. (Answer: No, not a gang...nothing illegal.)

*(3) What counts as “knowledge” that the gang is engaged in a “pattern of criminal gang activity”?*⁸

- A “pattern” is when people who are part of the gang have committed 2 or more crimes, either on separate occasions, or on the same occasion if 2 or more people committed the offense
- “Knowing” is pretty easy to prove
- If I know about the gang, and I know that some of things they do are illegal, I can go down for any crimes they do even if I don’t know the specifics

Ask the students if Dave has knowledge or should have knowledge the gang is involved in a pattern of criminal activity.

- Scenario 1: Dave invites his friends over to his house everyday to play video games. Everyday at 5 PM his friends leave and Dave stays home and keeps playing. It turns out that when they leave, Dave’s friends go and sell drugs. (Answer: No knowledge.)
- Scenario 2: Dave invites his friends over to his house everyday to play video games. Everyday at 5 PM his friends leave and Dave stays home and keeps playing. Dave gets about 5 video games a week from his friends yet he knows they don’t have a job. He also knows that they are always yellow, a color he knows is associated with a local gang. (Answer: yes, knowledge b/c he should have known.)

(4) What does it mean for a person to “benefit” from the gang?

- Could be money or property
- Might be anything a gang member does because being in a gang helps turf issues, self esteem, satisfaction with being part of a group
- Not very difficult to show

Ask the students if the police could prove Janis benefited from the gang’s crimes.

- Scenario 1: A bunch of Janis’ friends are in a gang and they go steal clothes from a store and give Janis some of the clothes. (Answer: Yes, clearly benefited.)

⁸ See CA Penal Code section 186.22(e): “As used in this chapter, ‘pattern of criminal gang activity’ means the commission of, attempted commission of, conspiracy to commit, or solicitation of, sustained juvenile petition for, or conviction of two or more of the following offenses, provided at least one of these offenses occurred after the effective date of this chapter and the last of those offenses occurred within three years after a prior offense, and the offenses were committed on separate occasions, or by two or more persons: [list of offenses follows].” See also 22 Cal. Jur. 3d Criminal Law: Post-Trial Proceedings § 186 (2007).

- Scenario 2: Janis hangs out with a gang. She knows they do drugs and get in fights. One day she is hanging out with her friends who are in the gang and they say they are going to beat a kid up in a rival gang. Janis goes home. Later that day her friends do beat up a kid in a rival gang but Janis didn't help in any way. (Answer: Yes, she benefited. Janis could be charged with conspiracy to commit assault and battery because they consider her to be a participant in a gang.)
- Scenario 3: Janis hangs out with a gang. She knows they do drugs and get in fights. One day Janis is at home sick. Her friends who are in gang decide they are going to go beat up somebody in a rival gang. Janis knows nothing about this. (Answer: Yes, she benefited. The police can prove this if the gang's reputation goes up, they stake out their territory, or get any money or property from the crime they commit, then the court may find that the gang and everybody in it has benefited from the illegal activity.)

Congratulate the class for doing such a good job of acting and breaking down this very complicated law!

Tell the students that now, we are doing to discuss PUNISHMENTS:

Under Prop 21 penalties for gang-related crimes are harsh:

- As we discussed, a youth can be 'convicted' of a crime because he associated with other gang members who actually committed the crime, based on a theory of conspiracy⁹
- If the youth is a gang member and is *actually involved in the crime* (note: Duc was "actually involved" in the crime because he was driving the car, even though he didn't pull the trigger), he will get a longer (enhanced) sentence.
 - Any crime: 2-4 years + punishment for the crime¹⁰
 - Serious crime: 5 years + punishment for the crime¹¹
 - Violent crime: 10 years + punishment for the crime¹²
 - Home invasion, robbery, car jacking, felony shooting: 15 years + punishment for the crime¹³
 - Murder: gang involvement is now an aggravating factor, so the death penalty is an option¹⁴
- Also, for any crime: I have to register as a gang member with the police. I will

⁹ As above, Prop 21 changes the CA Penal Code, section 182.5, to state: "Notwithstanding subdivisions (a) or (b) of Section 182, any person who actively participates in any criminal street gang, as defined in subdivision (f) of Section 186.22, with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, as defined in subdivision (e) of Section 186.22, and who willfully promotes, furthers, assists, or benefits from any felonious criminal conduct by members of that gang *is guilty of conspiracy to commit that felony* and may be punished as specified in subdivision (a) of Section 182." (emphasis added).

¹⁰ See revised CA Penal Code section 186.22(b)(1).

¹¹ See revised CA Penal Code section 186.22(b)(1).

¹² See revised CA Penal Code section 186.22(b)(1).

¹³ See revised CA Penal Code section 186.22(b)(4)(1).

¹⁴ See text of Prop 21, revising Section 190.2 of the CA Penal Code. See also <http://primary2000.sos.ca.gov/VoterGuide/Propositions/21analysis.htm>.

stay on this registry for 5 years.¹⁵

- *Teaching Tip* – If you have time, ask the students what they think of this part of the law, and why it exists.
 - Some reasons may include:
 - To prevent people from associating with gangs
 - To get the guys ‘at the top’ who get other people to commit crimes for them
 - To keep track of who is in a gang
 - To question me about others in the gang
 - To know to question me if another crime is committed by my gang
 - To figure out if I was involved in any past crimes committed by my gang
- For many gang-related crimes I can be sent to adult court and an adult prison¹⁶

CONCLUSION
(Time Check: 2-5 minutes)

Summarize the Activities:

- This week, we talked about attitudes towards gangs (including why people join gangs and what people are doing to prevent people from joining gangs), what a gang is, and how Prop 21 increases punishments for gang-related crimes.
- This is a really complex area of the law and it is something that the police are taking very seriously. Public attitudes towards gangs are pretty negative, and there is a lot of public pressure to prosecute gang members harshly.
- The point of this lesson was not to tell you what to do or how to think. We understand that there can be tremendous pressures for people to be involved with gangs, particularly if members of their family or people in their neighborhood are gang involved. The point of this lesson, as with all of our lessons, is to give everybody more knowledge so that they can make informed decisions about their own behavior.

¹⁵ See <http://primary2000.sos.ca.gov/VoterGuide/Propositions/21analysis.htm> and text of Prop 21.

¹⁶ See *id.*

Gangs and Prop 21

WHAT MAKES A GANG?

- 3 or more people with...
- Unifying symbol or color who...
- Engage in criminal activity.

WHAT MAKES A GANG MEMBER?

According to the law, a person can be charged with *conspiracy* for a felony that *other gang members* commit if he or she:

Just hanging out with gang

Look above: "What makes a

"Knowledge" doesn't mean knowing for sure. If you should know, that

Actively participates in a street gang with knowledge that the gang is engaged in or have engaged in a pattern of criminal activity and either willfully promotes, furthers, assists, or benefits from such felony conduct.

Don't have to show that you actually helped commit the offense. "Benefits" can mean all kinds of things - not just getting money, but getting respect, or a reputation, or turf can count as "benefit"

A "pattern" is when people who are part of the gang have committed 2 or more crimes, either on separate occasions, or on the same occasion if 2 or more people committed the offense

ORGANIZATIONS OFFERING GANG INTERVENTION SERVICES (there are similar services all over)

Barrios Unidos offers a wide variety of help avoiding and getting out of gang life. Tons of activities, groups, jobs, and resources are available through their Community Outreach and Economic Development programs. 1817 Soquel Avenue, Santa Cruz (with other branches across CA) and on the web at www.barriosunidos.org, or call (831) 457-8208.

Mexican American Community Services Agency offers an array of programs - ranging from tutoring and homework assistance to substance abuse counseling, recreation, and college/career planning, as well as several specialized gang intervention programs for people between 14 and 21. Programs near you can be found by calling (408) 928-1122.

Project New Start, a program for at-risk or gang-affiliated youth who want to change their lives, offers tattoo removal and mentoring, as well as other support services. 3775 Beacon Ave, 2nd Floor, Fremont, (510) 792-4964.

The **Boys and Girls Club** offers activities and a community alternative to gang life. The nearest club can be found by calling 1-800-854-CLUB.

Catholic Charities of Santa Clara County has a Gang Prevention and Intervention service. Special counselors offer anyone between the ages of 13 and 18 individual and family support, support groups, gang intervention, mediation, and more. They provide services across San Jose, but are based at 921 S. First Street in San Jose. Call (408) 468-0100.