



<http://www.caliberties.org/>

California Civil Liberties Advocacy  
1017 L Street, No. 791  
Sacramento, CA 95814  
(916) 426-9338

April 16, 2019

Senate Public Safety Committee  
Attn: Senator Nancy Skinner (Chair)  
State Capitol, Room 2031  
Sacramento, CA 95814

**Re: Senate Bill 516 (Skinner) – SUPPORT**

Dear Senator Skinner and Members of the Senate Public Safety Committee:

California Civil Liberties Advocacy is proud to support SB 516 to increase fairness and reduce racial bias in the court process. SB 516 will ensure greater balance and fairness in California's court system by requiring that arguments for a gang enhancement are separated from the arguments on a defendant's underlying charges.

**SB 516 reflects California's new vision for public safety.**

Gang enhancements were first created in 1988 when the State Legislature passed the California "Street Terrorism Enforcement and Prevention Act" (STEP Act), establishing PC 186.22. Then, in 2000, California voters passed Proposition 21 that increased the penalties for a gang enhancement. During that era of the 80s through the early 2000s, officials and law enforcement argued that tough suppression tactics and harsh sentencing were the best strategies to ensure greater public safety. As a result, the "war on gangs" and "war on drugs" resulted in extreme disparities in the criminalization and incarceration of people of color, and the build-up of the largest prison system in the history of the world. Harsh "gang suppression" policies - that have included gang enhancements as a central strategy - have greatly increased problematic racial profiling tactics disproportionately impacting Black, Brown and API youth and communities.

Since then, California law enforcement officials, elected officials and the voters have begun to build a more balanced approach that includes refocusing on protection of due process; increased fairness in policing, court and sentencing; and investment in youth and community development including community intervention. SB 516 reflects this new vision.

**Gang enhancements were first created in California, established by the 1988 STEP Act and expanded by Proposition 21.**

**Penal Code 186.22(b) PC, allowing for a gang sentencing enhancement,** provides that anyone who commits a felony for the benefit of, in association with, or under direction of a gang will receive a mandatory prison sentence *in addition and consecutive to* the penalties they receive for the underlying felony.

Depending on the circumstances of the offense, Penal Code 186.22(b) PC could mean an additional two (2) to fifteen (15) years, or even twenty-five (25)-years-to-life when it's used as a penalty under the Three Strikes Law, even if you're not a gang member, and even if you aren't the individual who was most directly responsible for committing the underlying offense. Youth who are transferred into adult court also face gang enhancements.

**It is common that the sentence on a gang enhancement exceeds the sentence on the controlling offense.**

Currently, the arguments for a gang enhancement occur at the same time that arguments are presented for the controlling offense. With the people watching the process – juries, victims, the general public or media who are in court, as well as the judge and other court personnel – an individual is judged not only by their actions, but by the past actions and notoriety of an entire neighborhood. Prosecutors present evidence and witnesses not only on the incident, but also present evidence and witnesses as to the criminal activity and violence currently and historically for attributed to a gang that could have hundreds or even thousands of members.

Furthermore, the application of gang enhancements disproportionately impacts people of color, promoting racial profiling that has ensured harsher policing, prosecution and sentencing based on the race of the individual and the racial demographics of their zip code.

**SB 516** would recognize the inherent prejudice of gang evidence at trial. This bill would require the jury in a criminal case to first determine guilt on the substantive crime charged with no reference to any gang evidence, then if convicted, the same trier of fact would determine if the defendant is guilty of the gang enhancement or a gang offense under Penal Code section 186.22.

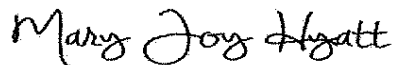
Currently, “gang evidence is admissible if it is logically relevant to some material issue other than character evidence, is not more prejudicial than probative, and is not cumulative.” (*People v. Avitia* - 2005 - 127 Cal.App.4 185, 192.) As a result, gang evidence may be relevant to establish the defendant’s motive, intent, or some fact concerning the charged offense other than criminal propensity as long as the probative value of the evidence outweighs its prejudicial effect. (*People v. Williams* - 1997 - 16 Cal.4 153, 193.) The burden is placed on the accused to show that the gang evidence’s probative value is outweighed by the threat of undue prejudice.

Courts have consistently reiterated the extreme prejudice of gang evidence at trial. The California Supreme court said: “*The authorization we found in Calderon for bifurcation of a prior conviction allegation also permits bifurcation of the gang enhancement. The predicate offenses offered to establish a pattern of criminal gang activity need not be related to the crime, or even the defendant, and evidence of such offenses may be unduly prejudicial, thus warranting bifurcation. Moreover, some of the other gang evidence, even as it relates to the defendant, may be so extraordinarily prejudicial, and of so little relevance to guilt, that it threatens to sway the jury to convict regardless of the defendant’s actual guilt.*” (*People v. Hernandez*, 33 Cal.4th 1040, 1049)

Requiring gang evidence to be tried separately from the underlying offense would ensure even application of bifurcation across California and provide the necessary safeguards to due process. SB 516 reduces racial bias, and brings greater balance and fairness to California's court system, ensuring that people are first judged by their own actions before facing punishment for the actions and reputation of an entire neighborhood.

For all of these reasons, we strongly support SB 516.

Sincerely,

A handwritten signature in black ink that reads "Mary Joy Hyatt". The signature is written in a cursive, flowing style.

Mary Joy Hyatt

Legislative Advocate

(916) 426-9338, ext. 509

[mj.hyatt@caliberty.net](mailto:mj.hyatt@caliberty.net)