

## **Hearing Process – Challenging Application of Gang Court Orders**

### **Summary**

The Los Angeles Superior Court has issued Court Orders affecting persons who are members of criminal street gangs and persons who act in concert with criminal street gangs. If a person served with a gang-related Court Order wishes to challenge whether he should be subject to the Court Order, there shall be a procedure, set forth below, to hear the challenge. This procedure, with two due process steps, are designed to provide an expedited review while at the same time giving the greatest level of due process.

It should be noted that prior to serving a person with a Court Order, the City of Long Beach conducts an internal process to ensure only persons who should be subject to the Court Order are served. This internal process requires the approval of both an experienced gang detective and a prosecutor before the person is served.

Upon service of the Court Order there is a five (5) day waiting period that commences on the day the person is served and ends at 5:00PM on the fifth day thereafter. If a person requests a hearing during the waiting period, then the Court Order will not be enforced until the hearings set forth below are completed and only if it is determined the person is determined to be a person who should be subject to the Court Order. If a person requests a hearing after the waiting period, the Court Order will be enforceable while the hearings are in progress unless written notice from the City Prosecutor is given to the contrary.

### **Informal Review:**

A person requesting a hearing must first complete the Request for Hearing form. A hearing date and time shall be set for the requestor providing him an opportunity to present any information he or she wishes to present establishing that he is not an active gang member and/or should not be subject to the gang court order. The requestor shall be given the opportunity to attend and present written or verbal testimony from relevant witnesses, or other evidence.

The LBPD Gang Expert, the City Prosecutor's Chief Gang Prosecutor, and the City Prosecutor shall consider all information relating to the requestor's alleged gang membership and gang-related conduct. Criteria shall include: (a) prior statements or admissions of gang affiliation, (b) tattoos, clothing, graffiti, or use of symbols, phrases, or other identifiers associated with the gang, (c) prior criminal convictions, especially crimes that occur within the Safety Zone or in conjunction with gang members, (d) prior gang-related incidents involving the person (whether or not resulting in convictions), (e) statements from gang members and/or other persons considered reliable about the person's gang affiliation, (f) any other evidence highly probative to gang membership or gang-related conduct.

If the LBPD Gang Expert, the Chief Gang Prosecutor, and the City Prosecutor unanimously agree that there is clear and convincing evidence that the requestor is a member of a criminal street gangs or person who acts in concert with criminal street gangs and the persons should be subject to the Court Order, then a written notice of determination shall be sent to the requestor, along with notice that a formal hearing before a hearing officer may be requested. If all three do not unanimously agree, then a written notice of determination stating the Court Order shall not be applied to him shall be sent. No further action shall be taken against the requestor unless additional documentation is secured that would change the outcome of the hearing and the person is served again with the Court Order.

### **Hearing Officer Process:**

After completion of the Informal Review, if the LBPD Gang Expert, the Chief Gang Prosecutor, and the City Prosecutor unanimously agree that the requestor is a member of a criminal street gangs or person who acts in concert with criminal street gangs and the persons should be subject to the Court Order, then a written notice of determination shall be sent to the requestor, along with notice that a formal hearing before a hearing officer may be requested.

If, within ten (10) days of mailing of the notice of determination, a request for formal hearing is received, then the City Prosecutor shall propose at least three persons who are qualified to serve as a hearing officer, which may include retired judicial officers familiar with Long Beach gangs, retired law enforcement professionals familiar with Long Beach gangs, or any other person with similar understanding of local gangs, gang dynamics in general, crime reports, individual criminal history reports, or other relevant experience. The requestor shall choose from those proposed or state in writing why none of those proposed are qualified. No person shall be eligible to serve as hearing officer who is currently, or has been in the last 12 months, employed by (even in consulting capacity) the City of Long Beach or the requestor.

To ensure the hearing officer is neutral, the City Prosecutor's Office and the person requesting the hearing shall each pay one-half of the cost of the hearing in advance. The hearing officer shall consider the same information considered at the Informal Review, specifically: (a) prior statements or admissions of gang affiliation, (b) tattoos, clothing, graffiti, or use of symbols, phrases, or other identifiers associated with the gang, (c) prior criminal convictions, especially crimes that occur within the Safety Zone or in conjunction with gang members, (d) prior gang-related incidents involving the person (whether or not resulting in convictions), (e) statements from gang members and/or other persons considered reliable about the person's gang affiliation, (f) any other evidence highly probative to gang membership or gang-related conduct.

As with the Informal Review, the burden rests with the City Prosecutor to show by clear and convincing evidence that the requestor is a member of a criminal street gang or person who acts in concert with criminal street gangs, and the person should be subject

to the Court Order. The rules of evidence and hearsay shall not be applied strictly, but the hearing officer may exclude irrelevant or repetitious evidence. The City Prosecutor may record or have present a court reporter, and a transcript or copy of recording shall be made available to requestor upon paying the costs for same upon the conclusion of the hearing.

The Hearing Officer's determination shall be final. If the Hearing Officer's determination is in favor of the requestor, then the City Prosecutor shall reimburse the requestor for his half of the Hearing Officer's fees and no further action shall be taken against the requestor unless additional documentation is secured that would change the outcome of the hearing and the person is served again with the Court Order.

### **Expeditious Handling**

Both the Informal Review and the Hearing Officer process are intended to be completed expeditiously. Presumably, each step should take about 10-14 days to complete, although securing a Hearing Officer may cause minor delays in order to coordinate with the Hearing Officer's schedule.

As noted above, if a request for hearing is made during the 5-day waiting period the Court Order will not be enforced against the requestor, however, if significant delays in the hearing process are caused by requestor, then City Prosecutor may give written notice that enforcement of the Court Order will commence prior to the completion of the hearing process. If both the City Prosecutor and the requestor agree in advance, the Informal Review process may be skipped, in which case the parties will start with the Hearing Officer process without any Informal Review.