

Testimony to the Illinois Senate Public Health Committee

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Stephanie Kollmann

Thank you for the opportunity to testify today. Your committee is wholly appropriate for this important conversation, as the issue of gang databases is one impacting the health of people around this city and state.

Many concerns have been raised concerning the gang database. Among them: transparency, due process, accuracy, and the consequences that defamatory labels have upon a person. One need look no further than the dire circumstances of Wilmer Catalan-Ramirez, a client of my colleagues at the MacArthur Justice Center, to see how the Chicago Police's gang database and broad information-sharing can permanently and negatively affect physical health, family unity, economic well-being – even mere *presence* in this city. In Wilmer's case, as you surely know and others may testify, the database entry was fabricated out of ethnicity and location, not criminal activity, and was inaccurate.

I am here today to talk about cases beyond Wilmer's family tragedy. You have heard rumors for decades about this database and its uses and until very recently – yesterday in fact – its basic data was wholly obscured from the public.

In this hearing, and in coming weeks, you will hear many renewed critiques. Among them: police refusal to be transparent about the database, even at an anonymized level for public accountability purposes, at the same time CPD allows access to over 500 law enforcement agencies, including federal immigration authorities, and its officers share the database's information at will with community members, interfering with housing, employment, and education. Others will focus on the lack of due process rights surrounding inclusion, use, and removal, or the consequences of defamation due to inaccurate entries.

Because these points will be made by others, I would like to focus on two aspects of this issue you might not otherwise have a frame to consider: the destructive pervasiveness of the gang database in the lives of young people of color in this city, and way the gang database is used to justify otherwise-discouraged police behavior and criminal justice practice.

First, as this is not the Criminal Law committee, I want to specifically note that joining a gang¹ is not, has never been, and can never be a crime in and of itself. The general public often does not know this, so if there is any confusion on this point, it is important that we reach a common understanding on that before proceeding. But Americans recognize the absolute right to join (or leave) any interest or identity group, regardless of any label the government gives that group.

Unfortunately, Illinois law does not always respect this distinction; a law last year narrowed gang-related parole revocations to unlawful behavior, not mere contact with a member; some courts have also struck down contact as an overbroad probation condition. However, there are still people imprisoned in the

¹ Illinois law defines a street gang for most purposes as "any combination, confederation, alliance, network, conspiracy, understanding, or other similar conjoining, in law or in fact, of 3 or more persons with an established hierarchy that, through its membership or through the agency of any member engages in a course or pattern of criminal activity." 740 ILCS 147/10

Illinois Department of Corrections *today* because they simply spoke to or spent time with someone the government put in the gang database. In addition, gang membership (not gang-related criminal activity) is used to increase sentencing for some crimes – unconstitutionally, in my view.

The database contains tens of thousands of Chicagoans who have never been convicted of a crime; many have not even been arrested; many are erroneously included, and tens of thousands have not been actively involved in organized criminal activity for decades.

Gang membership is *not* a lifelong activity; research indicates that 78% of people who join a gang do so before they turn 18 (13-15 is typical age of entry); 9 out of 10 of them stop gang-related activity within two years.

But the truth about gang-related activities does not mesh with the City of Chicago’s policy choice and high valuation on its database. Within the demographic of young Black men aged 20-29² – again, an age demographic highly unlikely to contain active gang members:

- About 60,000 live in the City of Chicago, as of the last Census
- ~25,000 (up to 42% of population) are in the gang database
- 53,418 (up to 89% of population) are on the Strategic Subject List (as of two years ago; it has since expanded to include more entries)
- As many as 1 in 3 of Black men in their 20s in Chicago appear in both the Strategic Subject List and the gang database. – ~20,000 (19,777)

Though not to the same degree, Latinx young people and Black women in the same age cohort are also overrepresented in these databases.

Is the gang database over-inclusive and inaccurate? Laughably so (this is one reason it has been de-emphasized it as a factor for the Strategic Subject Algorithm – recorded gang affiliation is not actually a very good predictor). Police claim it is a valuable tool for investigation (note, however, that CPD closed fewer than 1 of every 10 shootings in 2017; perhaps it is not so valuable after all).

Few people know that after the City of Chicago’s gang loitering ordinance was struck down by both the Illinois Supreme Court and the United States Supreme Court (*People v. Morales*), the City passed a revised ordinance. We still have an anti-gang-loitering ordinance and dozens of young people are arrested for violating it every year – without any accompanying criminal charges. But this hides the scope of harm.

According to the author of the revised loitering ordinance, it is designed to “authorize dispersal orders whenever the police reasonably believe that gang or drug activity is afoot.”³

If two of every five young black men in Chicago are in the gang database, any officer pulling up to a young person or group of friends may think s/he “reasonably” believes that gang activity is afoot upon observing benign behavior like shouting, shoving, stonewalling, staring, facing away, or texting – all of the typical things that young people do. When an officer asks for ID, runs names, and then tells youth to leave on pain of arrest for gang loitering, those young people grow up internalizing that they simply do

² The Chicago Police Department refuses to disclose the total number of members of the gang database. The 128,000 records published by ProPublica do not include current minors and no aggregate number was provided.

³ Lawrence Rosenthal, *Gang Loitering and Race*, 91 J. CRIM. L. & CRIMINOLOGY 99, 102 (2001).

not have the right to exist in public. Freedom of movement, freedom of association, freedom of expression, freedom of assembly – these are *not* familiar to young Chicagoans of color. Perhaps you – adults who wield power through your political, professional, and community stature – can imagine yourselves exercising these rights. But imagine that you are like many of our clients, who are not only hassled, but often struggle with anxiety, feelings of worthlessness, agoraphobia, and other severe symptoms of post-traumatic stress. Imagine that, like many of the young people with deep justice system involvement, you have a cognitive disability that makes it hard to effectively assert your rights. Imagine that you are young, and afraid, and yes – angry, too. Where are your rights in action, then?

The Chicago Police Department has not provided the public with an annual report since 2010.⁴ In that most recent report, the agency recorded that it ordered 45,692 people to disperse for gang or narcotics loitering; 98.5% complied and were not arrested.⁵ How many hundreds of thousands of young Chicagoans have been hustled out of the way in the last seven years? And how could the reasonableness of these police actions be meaningfully investigated, challenged, or reviewed in our current system?

The real damage is to the fabric of society itself. Arresting up to 89% of Black men in their 20s within a 4-year span is a practice that breaks our city apart. Racially-charged epithets like “thug” and “gangbanger” are used to isolate people through individual and group blame, but when we ask for the facts to support these accusations, we see why it feels like entire communities are destroyed under this umbrella. And for what? To use the gang label in order to send more people into the prisons that grow and strengthen gangs?

The issue with this policy choice is not *just* that it isn’t fair and doesn’t work, though this is true. It’s that the word “gang” and an entry in a computer are wielded as a free pass for bad police practice, including outright racial suppression. We can be better than this. Young people are counting on us to be.

I am happy to take your questions.

⁴ <https://home.chicagopolice.org/inside-the-cpd/statistical-reports/annual-reports/>

⁵ <https://home.chicagopolice.org/wp-content/uploads/2014/12/2010-Annual-Report.pdf> at 44.