

12-1-2020

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Reimagining Criminal Justice: Black and Brown Youth in Gang Database Are Guilty Until Proven Innocent

"The gang database, as it used against our nation's youth, our literal future, should be terminated as a law enforcement practice immediately," says Irish Tapia, a student at Golden Gate University School of Law.

By **Irish Tapia** | December 01, 2020



Irish Tapia, a law student at Golden Gate University School of Law. (Photo: Courtesy Photo)

The Recorder has collaborated with students enrolled in Reimagining Criminal Justice, a seminar at Golden Gate University School of Law, to publish this series of student writings. This next generation of lawyers explore a broad range of topics touching on criminal and racial justice, and provide their perspectives and voices on myriad proposals for building a better, more just, system.

Sitting at the principal's office, again, a young man revisits the poor decisions he has made today. He has not yet figured out if the worst decision was the act that landed him there or that he failed to get away undetected. Regardless, consequences are moments away. But there are two very different endings to this story; not dissimilar to choosing between the 'red pill' or the 'blue pill.' Is the young man white or a young

man of color? Despite his age, and with no due process requirements, this young man may be inducted into the criminal system on this day. Along with local law enforcement, the school may bypass judicial proceedings and his right to legal counsel, finding him guilty until proven innocent of being a gang member.

Young men of color growing up across this nation face a hurdle most of us will never have to imagine. If a student of color is not diverted to the criminal justice system, suspended or expelled, they might nonetheless be labeled and marked as having gang affiliations, based solely on the discretion of local law enforcement. This 'identity' has significant long-term consequences. The "shared gang database" is real. Individuals named in the database do not have to agree to be listed, and they also do not have control over getting off it. A young man of color in a public school, wearing baggy pants and a T-shirt color too similar to one associated with a local gang (not always red or blue) cannot afford disciplinary action for bad behavior. Whether in self-defense or a mundane scuffle over a girlfriend, aggression is never allowed for a young man of color.

A scuffle, a loud dispute, or the elusive 'defiance of school personnel' will require the school to call on the assistance of the campus School Resource Officer (SRO). Since the 1980s, police on school campuses (<https://www.nytimes.com/2013/04/19/opinion/criminalizing-children-at-school.html>) have been increased by 40%, only facilitating law enforcement's immediate involvement in any potential behavioral occurrence at school. In the SRO's hands lies the pivotal assessment: Is this teenager a gang member?

The "shared gang database" is a shared criminal intelligence system that stores identified gang members' information. The data is shared and can be accessed, both statewide and nationally. Individuals listed range in age. While some may self-identify as gang members, others are 'identified' by police, such as SROs. Police might identify a gang member by their tattoos, their clothing, with whom they associate, or in some instances, in their taste in graffiti or vandalism. Police departments nationwide are "trained" in identifying gang members (https://www.lapdonline.org/la_gangs/content_basic_view/23468), and officers have full discretion. Should there be an error in their quickly made assessment, parents can follow a lengthy court procedure to remediate the 'minor' error.

In the past, working with mostly monolingual-Spanish speaking parents, I had the opportunity to assist many through the school disciplinary process, mostly expulsions. And although gang membership had been an issue in the locality, it was rarely, if ever, an element in the cases I worked. Teenagers (and younger) cut class, were caught with drug paraphernalia on their person, but most often were 'defiant to school personnel.' Time after time, whether the student was accompanied or alone at the time of the incident, gang-ties were consistently made. Worse, when parents managed to advocate for their children at their school successfully, they were not necessarily successful in deterring local law enforcement's attention towards their children. Once they were placed in the gang database, and within the scope of the local police, parents and their children were left hopeless.

How did we get to a place where our youths' mistakes became criminal? And most importantly, we label them criminals for potentially a lifetime where they will carry the burden. Up until 2018 (<https://static1.squarespace.com/static/55b673c0e4b0cf84699bdffb/t/5d7f9846de5a2c25a55a36e5/1568643144338>) in California, an individual could be listed in the gang database without their knowledge. Further, there were no procedural means of confirming that you were listed in the database or means of getting out of it. A person's gang-member identity was entirely at the discretion of law enforcement, and how long you stayed in a gang was also in their hands. Many went on to learn that they were in the database when applying for employment or when facing other criminal procedures.

In employment, the implications are grave; they are the difference between being considered for a job at all and being promptly shut out. In "Punishment Without a Crime," Alexandra Natapoff notes on the consequences (<https://eji.org/news/americas-massive-misdemeanor-system-deepens-inequality/>) related to employment, education, social services benefits, all from having a criminal record even when a person was not, in fact, convicted. In court, facing criminal charges unrelated to any gang activity, and although you are

not in a gang, it matters that your name is on the list. Sentencing enhancements, i.e., gang enhancements (<https://www.nytimes.com/2013/04/19/opinion/criminalizing-children-at-school.html>), are part of prosecutions many 'tools' in their "fight against crime," and they may be the ultimate factor in the severity of your sentencing.

Maybe just as hard as trying to survive as a young man of color in this country is trying to progress and outgrow your local authorities' social expectations. Worse, in the case of the gang database, they are expectations and 'identifiers' that will go with you even when you leave your local community. In essence, our black and brown youth are born to prove they are not in the deficit. But the American argument remains: "Everyone has the same opportunities and possibilities, you just have to work hard and earn them." Let's accept that's not true. Our black and brown youth have the burden of proof; they must prove they are not gang members and get passed a government accusation that came with no notice or within the boundaries of our constitutional right to due process.

Sure, there is gang violence. It would be ludicrous to deny it. This country has had a 'gang problem' for a long time, but organized crime is bigger than minority populations. A quick Google search of white-gangs, or motorcycle clubs, displays the ongoing violence, drug trafficking, and human trafficking that is 'white-organized-crime.' Organized crime and gang violence in this nation is not reserved for black and brown individuals. But that has never been the focus. For whatever reason, it has been systematically easier to target individuals in less affluent communities that rely on less representation within the frame of criminal policymaking decisions.

Although AB 2298 (https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB2298) made it mandatory that police notify an individual that they have been placed on the gang database and established a procedure for contesting such placement, the bill did not shift the burden of proof. Minors and their parents still need to prove they are not guilty. The bill was not a systematic change, but rather only a procedural one that checked off the box for Due Process mildly. In the case of minors, how many parents will download the appeal forms, serve the police department with a copy of the appeal, and prepare diligently for their appearance in court? Why is it 'easy' to enter a minors name on to a database but exceedingly complicated to get them off?

Surely we can all appreciate the spirit and the chaos of our youth, and who we have become, and what was cultivated out of those experiences. And for most of us, those are just memories; they are the past. But for our youth of color, those same experiences are potentially forever. Whether the gang database listing affects future employment or housing opportunities in the long run, in the immediate future, listed individuals can expect constant police surveillance and probable unwarranted stops (https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1067&context=cl_pubs) that don't require 'reasonable suspicion.' We cannot possibly uphold the gang database process as righteous and lawful, as it is most certainly unconstitutional. The gang database, as it used against our nation's youth, our literal future, should be terminated as a law enforcement practice immediately.

Irish Tapia is a current law student at Golden Gate University School of Law in San Francisco, focusing her studies on the criminal justice system as it specifically pertains to minors. She previously was employed by a statewide non-profit, advocating for students K-12 in disciplinary proceedings.