Urban Terrorists: Addressing Chicago's Losing Battle with Gang Violence

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INTRODUCTION

When the gangsters were clashing, [John] Stege [Chicago Chief of Detectives in 1927] always knew that he could summon the press to his office, wave around a seized machine gun or shotgun, and get his picture in the next day's papers, thus reminding the good citizens of Chicago that he was on the job. That he seldom made an arrest mattered little.¹

Almost a century later, these symbolic gestures are still being used by the city, as evidenced by the Gang Congregation Ordinance of 1992 (Original Ordinance) and the Gang Congregation Ordinance of 2000 (Revised Ordinance).² Chicago has long been an epicenter for gang violence; since the days of Al Capone, up to the modern-day Latin Kings, the streets of Chicago have been plagued with violence. And just as long as gangs have existed, so too has the tradition of police using empty gestures to appease public concern instead of effective strategies to combat gang activity and violence. As Professor John Hagedorn of the University of Illinois at Chicago noted, “We’ve been at war for 40 years with gangs and maybe it’s time to think about a different strategy; it’s not working all that well.”³ Although it may be hard to sell the citizens of Chicago on new gang-suppression strategies, the data indicates that prior strategies have been unsuccessful.

The events that took place in 2010 and 2011 prove that gang violence is still a predominant threat to Chicagoans' safety and that not much has changed with respect to successful gang prevention and intervention since the city's origins. In June 2010, the U.S. Supreme Court decided McDonald v. City of Chicago, holding that the Second Amendment right to keep and bear arms is fully applicable to the states by virtue of the Fourteenth Amendment.⁴ At around the same time, a series of gang-related handgun murders shook up the local

1. JONATHAN EIG, GET CAPONE 83 (2010).
4. See McDonald v. City of Chicago, 130 S. Ct. 3020 (2010). McDonald made it legal for private citizens to own and keep guns in their homes.

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community. That summer, Chicago saw the worst two-month run of fatal gun violence against the city’s police in forty years. Gang representatives, in an unprecedented move, held a press conference and met with police officials regarding gang-related street violence. In late 2010, then-Mayor Richard M. Daley pushed to deploy more police to combat street violence by 2011. In 2011, flash mobs terrorized tourists and beachgoers, causing newly elected Mayor Rahm Emanuel and newly minted Police Superintendent Garry McCarthy to re strategize their gang-suppression approaches. Groups of young gang members assaulted and robbed people in the city; in one instance, fifteen to twenty men between the ages of sixteen and twenty approached a man, threw a baseball at him, and assaulted him. These events of 2010 and 2011 highlight Chicago’s enduring struggle to end gang violence.

In light of recent events, it seems that the dilemma of how to end street-gang violence, which has always been simmering on Chicago

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5. See Mark Guarino, Why Gang Violence Plagues Chicago, CHRISTIAN SCI. MONITOR, Sept. 6, 2010, at 18. While murder rates for 2010 are not Chicago’s historical worst, several police murders and gang shooting deaths have “alarmed” Chicagoans and brought attention back to the city’s “chronic gang problem.” Id. As of August 12, 2010, the homicide count in Chicago was 273, more than half of 2009’s total of 458. Id. This number far outpaced murder rates in other big American cities, such as Los Angeles, which reported 313 murders in 2009. Id.


7. See Mark Guarino, Gangs vs. Chicago Police: An Open Feud over Blame for Street Violence, CHRISTIAN SCI. MONITOR, Sept. 2, 2010, at 8 (describing the press conference during which gang members told the police that they were not the only contributors to Chicago’s street violence and that police were also a cause).


9. Wikipedia defines a flash mob as a “group of people who assemble suddenly in a public place, perform an unusual and sometimes seemingly pointless act for a brief time, then disperse, often for the purposes of entertainment, satire, artistic expression or—in rare cases—violence. Flash mobs are organized via telecommunications, social media, or viral emails.” Flash Mob, WIKIPEDIA, http://en.wikipedia.org/wiki/Flashmob (last visited Nov. 15, 2011).


12. News outlets and reporters may have readers believing that flash mobs are a new phenomenon, but news reports dating back to the nineteenth century indicate that flash mobs were, and have always been, present and active in Chicago. See generally Whet Moser, A Brief History of Flash Mobs and Chicago Beach Violence, CHICAGO MAG.COM (June 8, 2011, 10:28 AM), http://www.chicagomag.com/Chicago-Magazine/The-312/June-2011/Flash-Mobs-and-Chicago-Beach-Violence.
law enforcement's back burner, has again begun to boil over. The need for effective and nondiscriminatory gang-violence prevention strategies is as urgent now as it has ever been. Now is an ideal time for Chicago to abandon its "heavy-handed" gang-suppression tactics in favor of community-driven gang-intervention programs that have proven successful in New York City, which has lower gang-violence statistics than Chicago. As Harold Pollack, co-director of the Chicago Crime Lab at the University of Chicago, stated, "There's no question that both the patrolling strength and the strategies in police departments make a difference in reducing crime," but "[w]e're missing a big policy opportunity to help, not only with increasing the size of the police, but with doing other violence-intervention efforts like youth employment."

Chicago's current approach to gang violence can be put into context by the Original Ordinance, which attempted to prevent gang-related crime by making it illegal for people to loiter. In City of Chicago v. Morales, a landmark case decided in 1999, the U.S. Supreme Court held that the Original Ordinance was unconstitutional because it violated due process, in that it was impermissibly vague on its face, and constituted an arbitrary restriction on personal liberties. After Morales, Chicago enacted the Revised Ordinance, which amended the Original Ordinance by making the language more specific and less arbitrary in application. However, the Revised Ordinance has not accomplished its desired effect of lowering gang violence. The Revised Ordinance is rarely used in Chicago's current efforts to reduce gang crime and is a clear example of Chicago's misguided and symbolic, rather than practical, suppression strategies.

Furthermore, it is up for debate whether the Revised Ordinance has in fact remedied the vagueness problem that plagued the first version. In many respects, the Revised Ordinance is still as vague and

14. New York's gangs are different than those of Los Angeles and Chicago because its gangs "have not been institutionalized and are of more recent origins." Email from John Hagedorn, Professor, Univ. of Ill., to author (Aug. 1, 2011, 12:25 CST) (on file with author). Although New York is a different city with unique problems, its approaches can be used as a loose model for Chicago's efforts to deter gang involvement and crime.
15. See Myers, supra note 13, at 300.
17. Id.
19. Id. at 41.
20. See infra notes 62–68 and accompanying text.
21. See Petrovic, supra note 2.
arbitrary as its predecessor, and it still allows for discriminatory application. Chicago must refocus its gang-suppression tactics and should use educational and social reform programs similar to those that have proven successful in New York City as its new weapons against gang prevalence.

Part II of this Comment examines the history of Chicago’s Gang Congregation Ordinance and the current gang-loitering enforcement climate in Chicago.\(^2\) It also examines New York City’s gang-violence intervention techniques and contrasts its success to Chicago. Part III analyzes Chicago’s current gang-violence suppression tactics, as illustrated by the Revised Ordinance arrest statistics.\(^2\)\(^3\) It concludes that the current tactics are ineffective and discriminatory, and provides an alternative method of gang prevention for Chicago to utilize.

II. Background

This Part explores the origins and recent developments of gang crime in Chicago, as well as New York City, in order to determine the techniques that have been successful in deterring gang crime. It presents the Original Ordinance as an illustration of one of the many faulty gang-violence suppression tactics. It also discusses *Morales* and the Revised Ordinance to determine if current Chicago techniques have improved over time.

A. Brief History of Chicago’s Strategy Pre-Morales

1. Chicago’s Strategies Prior to 1992

Gangs have run the streets of Chicago since the mid-twentieth century.\(^2\)\(^4\) Due to racial segregation and discrimination—which has made Chicago one of the most racially segregated cities in the nation—gangs proliferated in certain ethnic neighborhoods.\(^2\)\(^5\) In the 1960s, community organizations teamed up with gang leaders to create grassroots organizations aimed at providing gang youth with education and recreational programs.\(^2\)\(^6\) Mayor Daley feared that gang-member involvement in community organizations “would upset his political ma-

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22. See infra notes 24–117 and accompanying text.
23. See infra notes 118–73 and accompanying text.
chine” and called for more police intervention and arrests instead. The early 1970s, half of Illinois’s prisoners were affiliated with gangs. The gang ties these prisoners formed in prison remained as they were released, and they have since reshaped Chicago’s gang culture. When gang members sought more community-action programs to escape poverty, Daley responded by adopting policies further segregating them, effectively restricting them to housing projects and denying impoverished youth, gang members, and ex-convicts access to education.

2. The Gang Congregation Ordinance of 1992

In 1992, in the face of rising gang crime, Chicago’s City Council on Police and Fire held a series of hearings at which citizens were able to testify regarding problems they faced as a result of street-gang presence. Residents claimed that “gang members loiter as part of a strategy to claim territory, recruit new members, and intimidate rival gangs and ordinary community residents.” The Council concluded that street-gang presence was “largely responsible” for the high numbers of gang murders, drug crime, and intimidation in communities.

In June 1992, Chicago enacted its first Gang Congregation Ordinance, which prohibited gang members from loitering in public places. The Original Ordinance provided that a police officer could...
order "a person whom he reasonably believe[d] to be a criminal street gang member" to disperse from an area, and further arrest that person if he did not comply with the order. The Original Ordinance defined "loiter" as "remain[ing] in any one place with no apparent purpose."

In August 1992, the Chicago Police Department passed General Order 92-4, which provided officers with guidelines for enforcing the new law. The Order directed officers to target only people they had probable cause to believe were members of a gang in a specific district. This was an attempt to curb overly broad police discretion and discrimination. Even with the guidelines limiting the Ordinance's application, the police issued over 89,000 dispersal orders and arrested more than 42,000 people for violating the Original Ordinance in the three years following its enactment.

Despite its vigorous enforcement, Cook County trial courts disagreed as to the validity of the Original Ordinance. In City of Chicago v. Youkhana, police arrested James Youkhana, along with thirteen other defendants, for violating the Original Ordinance. Youkhana challenged the Original Ordinance by claiming that it was unconstitutionally vague. The circuit court and appellate court agreed, which provided the basis for those previously convicted under the Original Ordinance to challenge, and ultimately overturn, their convictions.

B. City of Chicago v. Morales

One such individual who was able to overturn his conviction was Jesus Morales. Morales and five other defendants were convicted of violating the Original Ordinance at a bench trial prior to the court's

37. JOURNAL OF PROCEEDINGS, June 17, 1992, supra note 36, at 18,294; see also CHI., ILL., CODE § 8-4-015.
38. JOURNAL OF PROCEEDINGS, June 17, 1992, supra note 36, at 18,294; see also CHI., ILL., CODE § 8-4-015.
40. General Order No. 92-4. "General Order 92-4 construes the ordinance to require probable cause to believe that a member of a criminal street gang is loitering, and there are rigorous standards for determining membership in a criminal street gang." Petition for a Writ of Certiorari, supra note 39, at 12 n.7.
41. General Order No. 92-4.
42. Morales, 527 U.S. at 49.
45. Id.
46. See Morales, 687 N.E.2d at 57; see also Hollister, supra note 33, at 229 ("Based on the Youkhana decision, the Illinois Appellate Court reversed Morales's conviction and Chicago appealed to the Supreme Court of Illinois.")).
decision in Youkhana and were sentenced to jail.\textsuperscript{47} Morales appealed the decision, and the appellate court reversed the convictions based on its holding in Youkhana.\textsuperscript{48} The City of Chicago appealed the reversal to the Supreme Court of Illinois, which agreed with the appellate court and held the Original Ordinance to be impermissibly vague.\textsuperscript{49} The City then appealed to the U.S. Supreme Court.

The Court held that the Original Ordinance was unconstitutionally vague.\textsuperscript{50} More specifically, the plurality concluded that the definition of loitering—"to remain in any one place with no apparent purpose"—was too vague to give an ordinary person notice as to what constitutes criminal conduct.\textsuperscript{51} The terms of the dispersal order were so unclear that a loiterer could not possibly understand how to comply: how far and for how long must he disperse?\textsuperscript{52}

The Court also reasoned that the Original Ordinance was unconstitutional because it violated "the requirement that a legislature establish minimal guidelines to govern law enforcement."\textsuperscript{53} The Court rejected the City's argument that the text of the statute imposed limitations on law enforcement that were sufficient to prevent vast police discretion.\textsuperscript{54} The "no apparent purpose" language provided police with the authority to subjectively decide someone's apparent purpose and issue a dispersal order.\textsuperscript{55} The Original Ordinance did not require one's loitering to be harmful, and it applied to gang members and non-gang members alike.\textsuperscript{56} The Court also concluded that General Order 92-4 did not provide sufficient enforcement guidelines to pass constitutional muster.\textsuperscript{57}

In a concurring opinion, Justice O'Connor outlined legislative guidelines that essentially provided the City of Chicago with a roadmap to reconstruct the Original Ordinance in such a fashion that could be constitutional.\textsuperscript{58} Justice O'Connor suggested that "reasonable alternatives to combat the very real threat posed by gang intimida-
tion and violence” may exist and implied that the City could have constructed the Original Ordinance more narrowly by precisely defining terms such as gang member, gang activity, and loiter. Justice O’Connor highlighted the City’s other laws that had similar goals to the Original Ordinance and declared that the Original Ordinance should explicitly apply only to loiterers who are known gang members loitering with a harmful purpose.

C. Chicago Post-Morales and the Chicago Gang Congregation Ordinance of 2000

Justice O’Connor’s opinion did not go unnoticed. In February 2000, Chicago revised the Gang Congregation Ordinance in precisely the manner she prescribed. The revision allows police to disperse anyone engaged in gang loitering in a public place. The Revised Ordinance also defines gang loitering—a definition not present in the original version. In addition, the Revised Ordinance specifies the appropriate timeframe and action for a person to comply with a dispersal order. “Tracy L. Meares, a University of Chicago law professor who helped draft the new ordinance, said it actually restrains police discretion . . . . The key . . . is that the ordinance criminalizes loitering with intent to commit a crime, rather than merely loitering without an identifiable purpose.”


60. Id.; see also id. at 52 n.17 (plurality opinion) (“In fact the city already [had] several laws that serve[d] this purpose. Deputy Superintendent Cooper, the only representative of the police department at the Committee on Police and Fire hearing on the ordinance, testified that, of the kinds of behavior people had discussed at the hearing, 90 percent of those instances [were] actually criminal offenses where people, in fact, can be arrested.” (citations omitted) (internal quotation marks omitted)). But see Kim Strosnider, Anti-Gang Ordinances After City of Chicago v. Morales: The Intersection of Race, Vagueness Doctrine, and Equal Protection in the Criminal Law, 39 AM. CRIM. L. REV. 101, 111–12 (“Justice Stevens, in rejecting the anti-gang ordinance in Morales, suggested Chicago already had plenty of prosecutorial tools at its disposal—without acknowledging that the state drug conspiracy statute post-dated the Morales ordinance and that the mob action statute was partially unenforceable due to the federal injunction.”).

61. Morales, 527 U.S. at 67 (O’Connor, J., concurring).


63. See DRESSLER, supra note 62, at 119.

64. See JOURNAL OF THE PROCEEDINGS, Feb. 16, 2000, supra note 62, at 25,709; see also CHI., ILL., CODE § 8-4-015.

65. See JOURNAL OF THE PROCEEDINGS, Feb. 16, 2000, supra note 62, at 25,710; see also CHI., ILL., CODE § 8-4-015.

Justice O'Connor's recommendations because it limits the discretion of police conduct and defines the conduct that is illegal or serves a harmful purpose.\textsuperscript{67} After the revision, the Chicago Police Department promulgated General Order 00-02, which again provided police with enforcement guidelines and limited the scope of possible enforcement.\textsuperscript{68}

A look at post-Morales gang-crime rates informs the analysis of the Revised Ordinance's effectiveness. Between 1991 and 2004, there were 3,422 gang-motivated murders in Chicago.\textsuperscript{69} The percentage of gang-related murder increased approximately 10%—from about 25% to around 35%—since 2000, the year after the Morales decision.\textsuperscript{70} This increase in Chicago gang activity was happening at a time when overall murder rates in Chicago and across the nation were on the decline.\textsuperscript{71}

Between January and August 2010, there were 313 murders, up from 308 murders in the same period for 2009.\textsuperscript{72} Out of the 313 murders, 105 had undetermined motives, while 93 were gang related.\textsuperscript{73} Thus, approximately 45% of all murders with determined motives were gang related.\textsuperscript{74} Of all murders within this time period, 61.2% of the murders involved gangs, meaning that either the victim or offender was associated with a gang or that the incident was gang related.\textsuperscript{75}

The high level of gang-related violence did not go unnoticed by the community. After crackdowns and criticism by city officials, the gang community responded to the public anger directed toward it. "You say it's gangs, drugs and guns. We say we need jobs, opportunities and contracts . . . . That's the resolution," proclaimed a self-identified former gang member after former Police Superintendent Jody Weis's gang summit in August 2010.\textsuperscript{76} Parole officers instructed gang mem-

\textsuperscript{68} Petrovic, supra note 2.
\textsuperscript{70} See id. at 1 & fig.1.
\textsuperscript{71} See id.
\textsuperscript{73} Id.
\textsuperscript{74} See id.
\textsuperscript{75} Id.
bers to attend a meeting with Weis, but these gang members were instead met by not only Weis, but also prosecutors with threats of increased sanctions for their criminal gang activities.\(^7\) In response, present and former gang leaders assembled and protested, arguing that the police were simply continuing the harassing, Jon Burge-style gang combat techniques.\(^8\) The gang crisis in Chicago is notably ongoing and unresolved.

\section{D. Alternative Policing Strategies}

While Chicago was spending funds on police enforcement, New York directed its funds to refurbishing its impoverished crime-prone neighborhoods.\(^9\) This, among the other distinctions illustrated below, highlights the critical differences between the history of Chicago's and New York City's gang problems, as well as their respective suppression and prevention tactics. The general distinction can be summed up as Chicago pouring money into heavy-handed police suppression and New York City investing in improving the neighborhoods most in need of aid.\(^10\)

\subsection{1. Chicago's Gang-Policing Strategy}

\subsubsection{a. The Chicago Alternative Policing Strategy}

Aside from anti-loitering ordinances, Chicago created the Chicago Alternative Policing Strategy (CAPS) in 1993, bringing police and the community together to fight street-gang crime.\(^11\) Initially, only five of Chicago's police districts were included in the program.\(^12\) These “prototype districts” were “diverse in terms of their demographics, economics, crime problems, and levels of community organization,” so they provided a testing ground for the CAPS program.\(^13\) As of 2011, CAPS is operational in all of Chicago's neighborhoods and has been recognized as one of the most ambitious community policing initia-

\begin{itemize}
\item \(^8\) Puccinelli, \textit{supra} note 76 (“[Former Chicago Police Commander Jon] Burge was convicted [in June, 2010] of lying about torturing criminal suspects into confessions into the 1970s and 80s.”).
\item \(^9\) \textit{GREENE} \& \textit{PRANIS}, \textit{supra} note 25, at 23.
\item \(^10\) For an interesting article comparing New York City’s and Chicago's gang histories, see John Hagedorn, \textit{The Gangs of . . .}, \textit{CHI. TRIB.}, Jan. 19, 2003, § 2, at 3.
\item \(^12\) Id.
\item \(^13\) Id.
\end{itemize}
tives in the United States.\textsuperscript{84} CAPS is administered via beat meetings that are held in all 285 Chicago police beats at least once a quarter. The meetings allow residents of the neighborhoods and police "to discuss chronic problems on the beat and to engage in problem solving using the CAPS five-step problem solving process."\textsuperscript{85} The creation of CAPS and the dialog it fostered between the community and police, at a time when the groups were becoming more isolated, seemed to initially work in curbing crime at a neighborhood level.\textsuperscript{86}

The Chicago Community Policing Evaluation Consortium reviewed the effectiveness of CAPS in 2004 after its initial success.\textsuperscript{87} The evaluation was based on data gathered by over sixty-five members of the Consortium from thousands of residents and police officers throughout Chicago.\textsuperscript{88} The Consortium graded the various parts of the pro-

\begin{footnotesize}
\begin{enumerate}
\item Identify and Prioritize—Through a democratic process of brainstorming and voting, select the most important issue for you and your neighbors from a list of issues that your block club is willing to work on. Some things to consider when you are prioritizing are, how many people does the issue affect, and if it is something that you will be able to impact in a reasonable amount of time.
\item Analyze—Using a "Crime Triangle" of location, victims and offenders will help focus your efforts. Ask "the who", "the what", "the where", "the when", "the why" and "the how" questions about all three sides of the triangle. A thorough analysis will help you develop more effective solutions.
\item Design strategies—Again, through a process of brainstorming and group discussion, plan what you are going to do about the issue and who is going to do it. Remember, everyone should have a role to play. Make sure that the strategies you chose are legal, feasible and won’t take too long.
\item Implement strategies—This is the time when you put your strategies in action. Particularly with respect to crime-related issues, the community, police and other City departments need to help each other to follow through and complete the tasks.
\item Evaluate and celebrate—This is the time to review with everyone how the strategies worked, what challenges may have been encountered, what strategies might need to be changed, and whether the issue has been completely addressed. Once you have evaluated the results you have achieved, always remember to celebrate your successes.
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\textsuperscript{84} See id.
\textsuperscript{85} What Are Beat Meetings . . . And Why Are They Important?, CHI. POLICE DEP’T, https://portal.chicagopolice.org/portal/page/portal/ClearPath/Get%20Involved/How%20CAPS%20works/Beat%20Meetings (last visited Nov. 12, 2011). The police department’s five steps to building a safer community include the following:

1. Identify and Prioritize—Through a democratic process of brainstorming and voting, select the most important issue for you and your neighbors from a list of issues that your block club is willing to work on. Some things to consider when you are prioritizing are, how many people does the issue affect, and if it is something that you will be able to impact in a reasonable amount of time.

2. Analyze—Using a “Crime Triangle” of location, victims and offenders will help focus your efforts. Ask “the who”, “the what”, “the where”, “the when”, “the why” and “the how” questions about all three sides of the triangle. A thorough analysis will help you develop more effective solutions.

3. Design strategies—Again, through a process of brainstorming and group discussion, plan what you are going to do about the issue and who is going to do it. Remember, everyone should have a role to play. Make sure that the strategies you chose are legal, feasible and won’t take too long.

4. Implement strategies—This is the time when you put your strategies in action. Particularly with respect to crime-related issues, the community, police and other City departments need to help each other to follow through and complete the tasks.

5. Evaluate and celebrate—This is the time to review with everyone how the strategies worked, what challenges may have been encountered, what strategies might need to be changed, and whether the issue has been completely addressed. Once you have evaluated the results you have achieved, always remember to celebrate your successes.

\textsuperscript{87} SKOGAN & STEINER, supra note 85, at 153.
\textsuperscript{88} See generally id.
\end{footnotesize}

Since CAPS began in 1993, the Consortium "surveyed about 48,500 residents, about two-thirds of them at home and one-third at beat meetings. Several thousand of these respondents were CAPS activists . . . , and another 5,000 were problem-solving training participants. [The Consortium] also surveyed about 13,600 police officers." \textit{id.}
gram, noting how difficult it is to coordinate an effective neighborhood-policing program in a large city like Chicago.89 CAPS received As for both the agency partnerships and reorganization categories; a B for public involvement; and a C for problem solving.90 The Consortium found “that efforts to solve local priority problems ha[d] not been very effective” and that “[o]ver time the effectiveness of beat meetings in setting problem-solving agendas for the public ha[d] declined. Officers have had no refresher training in problem-solving, and most of a decade has passed since resident activists were offered any training opportunities.”91

b. Project Safe Neighborhoods

Project Safe Neighborhoods (PSN), enacted by the U.S. Department of Justice in 2002,92 allows the Chicago Police Department, U.S. Attorney’s Office, Cook County State’s Attorney’s Office, and community organizations to collaborate in targeting the city’s most egregious criminal offenders and transferring their cases when punishment would be harsher under federal law.93 For instance, every case involving a state defendant charged with a gun crime can be reviewed for federal prosecution to impose the maximum penalty.94 “The aim of these prosecutions is to severely punish those who pose a significant danger to their communities and deter others from committing gun crime.”95 The program also contains an “Anti-Gang Initiative.”96 Because gang members in Chicago are often involved in gun violence, “Gang-Strategy teams” investigate gang activity in Chicago and focus on identifying high-ranking gang members that deserve higher enforcement scrutiny. The Anti-Gang Initiative’s strategy is twofold: First, to prioritize prevention programs to provide at-risk youth and ex-offenders returning to the community with opportunities that help them resist gang involvement; and second, to ensure robust enforcement when gang related violence does occur.97

89. Id. at 154.
90. Id. at 154–55.
91. Id. at 155.
95. Criminal Justice Initiatives, supra note 93.
96. Id.
97. Id.
In 2009, a committee conducted an evaluation of PSN in Chicago. The study indicated that homicide levels reduced at a greater rate in areas where PSN was active than in control neighborhoods. However, "more federal prosecutions and getting more guns off of the street [were] associated with a small portion of the observed drop in homicides in the PSN neighborhoods."

In addition to CAPS and PSN, Chicago employed other neighborhood-oriented programs such as Gang Violence Reduction Program (GVRP) and Neighbors Against Violence. According to one evaluation, GVRP seemed to slow violent gang-related crime in the area, with gang-related deaths decreasing. However, conflicting evaluations exist with regard to GVRP’s actual effect on curbing gang violence.

2. New York City’s Gang-Policing Strategy

In contrast with Chicago, New York City’s gang violence problem “represent[s] just a tiny blip on the New York crime screen.” New York’s recorded gang problems began as early as the 1940s, and the city’s first combative step toward reducing gang activity was the crea-
tion of the New York City "Youth Board" in 1947.\textsuperscript{106} This organization supported social gang-intervention strategies and deployed "street-level gang workers" in areas with high crime activity to establish relationships with the younger gang leaders.\textsuperscript{107} In the following decade the number of workers more than tripled and gangs' suspicion of the group began to dissipate.\textsuperscript{108} The organization focused on providing recreational programs, community-organized events, job opportunities, and mediation sessions for young gang members.\textsuperscript{109} The city's dedication to its social-driven anti-gang technique "fostered a far more constructive, less counterproductive response to gang violence than the harsh law enforcement tactics employed by police to suppress gangs in other cities."\textsuperscript{110}

The Youth Board worked with police to inform them about gang uprisings and wars and to encourage better patrol tactics.\textsuperscript{111} Despite the cooperation and positive results, police agencies continued to push for more police crackdowns and less social intervention, but were reined in because of the program's effectiveness.\textsuperscript{112} In the decades that followed, additional social programs—such as the Lower Eastside Neighborhood Association and Mobilization for Youth—were put in place to assist in job searches and training for gang members, and these programs largely abated the gang problem in New York.\textsuperscript{113}

In the 1980s a resurgence of sporadic and scattered street violence occurred, but the city did not attribute it to gang crime.\textsuperscript{114} A research study conducted by New York's leading urban anthropologist, Mercer Sullivan, determined that the violence was spurred by media coverage of gangs across the country and in New York.\textsuperscript{115} In the late 1990s, gang affiliations crept into New York, and people who had previously not been associated with modern notions of gangs began to so affiliate themselves.\textsuperscript{116}

\textsuperscript{106} The New York City Youth Board, BULL. NAT'L Ass'N SECONDARY-SCHOOL PRINCIPALS, Nov. 1957, at 28, 29, 188.
\textsuperscript{107} See id.; see also GREENE & PRANIS, supra note 25, at 15.
\textsuperscript{108} GREENE & PRANIS, supra note 25, at 15.
\textsuperscript{109} Id.
\textsuperscript{111} GREENE & PRANIS, supra note 25, at 15–16.
\textsuperscript{112} Id. at 16.
\textsuperscript{113} Id. at 16–17; see also JAMES C. HOWELL & G. DAVID CURRY, MOBILIZING COMMUNITIES TO ADDRESS GANG PROBLEMS 4–5 (2009), available at http://gangs.umd.edu/Downloads/Preven-
tion/OJJDP_Mobilizing_Communities_to_Address_Gang_Problems_Handout.doc.
\textsuperscript{114} GREENE & PRANIS, supra note 25, at 18.
\textsuperscript{115} See Mercer L. Sullivan, Maybe We Shouldn't Study "Gangs": Does Reification Obscure Youth Violence?, 21 J. CONTEMP. CRIM. JUST. 170, 186 (2005).
\textsuperscript{116} GREENE & PRANIS, supra note 25, at 19.
An examination of Chicago and New York City indicates that gang crime has a long and pervasive history in both. It further demonstrates that several methods for attacking the gang-crime problem exist and that some strategies are more successful and enduring than others.\textsuperscript{117}

III. ANALYSIS

Chicago's Revised Ordinance is just as problematic as its predecessor, and it is yet another failed attempt by Chicago police and government to sell the public on current gang-suppression techniques. In view of the high levels of gang activity and violence that have plagued Chicago since before \textit{Morales}, both gang-loitering ordinances and police-involved community programs such as CAPS and GVRP have failed in their efforts to stop gang activity in gang-prone neighborhoods.

This Part examines the data regarding dispersal orders since the \textit{Morales} decision. This data indicates that the use of the Revised Ordinance has decreased sharply and suggests racial and geographical discrimination in the issuance of dispersal orders. This Part also examines the Revised Ordinance in its current form and discusses aspects that are still problematic. It then analyzes the necessity and effectiveness of the Revised Ordinance and argues that alternative methods of preventing gang loitering and violence can be implemented with success. Stated simply, the Revised Ordinance is a concrete example of police tactics gone wrong.

A. Revised Ordinance Arrest Statistics

The Chicago Police Department compiled the following data breaking down dispersal orders issued since the enactment of the Revised Ordinance in 2000. The information in Figure 1 separates the orders by district. The information in Figure 2 separates the orders by race. Figure 3 breaks down the orders by age.

I. Statistics by Police District 2000–October 15, 2010

Chicago is divided into twenty-five districts, each headed by a district commander.\textsuperscript{118} Each district is divided into three sectors, which


are then divided into three to five beats.\(^1\) The purpose of this segmentation is to divide the city in a way that localizes police efforts to meet the particular needs of the constituents in each district.\(^2\) The majority of dispersal orders are issued in the southern and western parts of the city.\(^3\) The information contained in the chart below confirms that only a few districts account for the majority of all dispersal orders issued.\(^4\)

**Figure 1: Orders Issued by Police District**\(^5\)

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119. Id.
120. See id.
121. See infra note 123 & fig.1.
122. See infra notes 133–36 and accompanying text.
2. **Statistics by Race 2000–October 15, 2010**

The chart below breaks down orders issued by race. It illustrates that almost all dispersal orders are issued to Black and Hispanic individuals. Looking at this information in conjunction with the first chart suggests that these demographics are either being targeted based on race or, alternatively, their neighborhoods, which happen to have high concentrations of black and Hispanic residents. In either case, the data suggests that minorities are the main targets of dispersal orders under the Revised Ordinance.

![Figure 2: Orders Issued by Race](chart)

3. **Statistics by Age 2000–October 15, 2010**

The following chart divides dispersal orders issued by age range. The numbers indicate that the vast majority of orders are issued to people under thirty years of age. This is most likely a result of younger individuals having more of a presence in the neighborhood as opposed to older individuals who likely are not socializing or as present in the streets. It also seems likely that younger individuals who are more involved with gang activity are more likely to have street-level presence. Thus, the younger people are more likely to be cited in violation of the Revised Ordinance.

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B. Problems with the Revised Ordinance

While the plurality in Morales found the Original Ordinance void because it was vague and allowed broad police discretion in making arrests, it also failed to provide adequate enforcement guidelines. In fact, Morales's counsel, the American Civil Liberties Union, noted that the primary reason Morales and the other defendants were arrested was that the officer had observed “Hispanic teens hanging out on a corner in a predominantly white neighborhood. The city never proved Morales was a gang member.” It seems that the Ordinance, in its original form, allowed for unconstitutional racial discrimination in its application. Then, when the City of Chicago revised the Ordinance in 2000 in accordance with Justice O'Connor's opinion in Morales, it overcompensated for its prior vague language by creating guidelines that are too specific yet still unacceptably vague. Even though the Revised Ordinance now applies only to gang members, specifically defines loitering, and creates more precise guidelines for issuing and complying with a dispersal order, the revisions have brought about a new set of problems. The Revised Ordinance contains a provision that allows the superintendent of police to designate certain areas of the city—neighborhoods determined to have gang-loitering problems—in which the Ordinance will be enforced. Furthermore, even though the terms contain more narrow definitions, they are still too vague and open to varying interpretations to be constitutionally sound.

125. Id.
127. Strosnider, supra note 60, at 120–21 (footnote omitted).
128. See id. at 135–38.
129. Id. at 136.
130. Id. at 137.
1. Discretion Allows Geographical and Racial Discrimination

The first problematic aspect of the Revised Ordinance is the provision transferring discretion from beat officers to the superintendent of police. Originally, the beat police officers could make ad hoc decisions as to who should be arrested; now, the superintendent of police has the discretion to designate certain areas as enforcement “hot spots,” thereby choosing what area and what group of people the Revised Ordinance will be enforced against. This shift in discretion from one official to another does nothing to alleviate the unconstitutionality of the Original Ordinance. In fact, whereas the beat officer in cases such as Morales would make his own determination regarding whom to arrest, the Revised Ordinance currently allows the superintendent to effectively condemn an entire neighborhood and subject it to the enforcement of the Ordinance. While the discrimination in the first instance was happening on a person-by-person basis, the revision allows entire groups of people to be discriminated against and targeted simply because of the neighborhood in which they live.

The hot spots effectively create zones where the Ordinance is enforced—mostly concentrated in the poor and heavily minority-populated areas in the city. Additionally, the hot spots are not made public; “the Chicago Police Department has insisted on keeping them secret so it can keep targets of the ordinance guessing.” Statistics do show that a relatively small group of neighborhoods yields almost all of the violence in the city and that most offenders are “African American men who live in neighborhoods on the West or South sides of the city,” but these statistics should not allow police to create laws that are only applicable to those targeted areas. Allowing police to apply laws exclusively to certain parts of the city is unjust and discriminatory because it allows for enforcement largely based on racial classifications and socioeconomic factors. Furthermore, the superintendent need not disclose the selected areas to the public. The private nature of the Ordinance’s application does not even give people in hot spots a chance to change their behavior so as not to be its target. In several other cases, the Supreme Court invalidated ordinances that were “used as vehicles for state racism or [were] enforced primarily

131. See id. at 136.
132. See id. at 137.
133. Strosnider, supra note 60, at 138.
134. Id. at 136.
135. MEARES ET AL., supra note 92, at 1 ("The 'city's' crime problem is in fact geographically and socially concentrated in a few highly impoverished and socially isolated neighborhoods.").
against minorities.”\textsuperscript{136} This is precisely what is happening here. The police superintendent is able to target select communities composed predominantly of minorities and enforce a law that is not in force in many other parts of the city. At a minimum, the Ordinance should be applied in every police district to avoid such overt discrimination.

The Revised Ordinance still allows for discrimination and discretionary enforcement. The data indicates that Black and Hispanic people who are under the age of thirty and live in a few areas in the south and west sides of Chicago make up the vast majority of those who have ever received a dispersal order. The superintendent used his discretionary ability to designate the hot spots in selecting the enforcement locations resulting in particular groups being the main target of the Ordinance. The effect of this discretionary choice is that, for a number of reasons, police target only a small group of people.

2. Dispersal Orders Are Not Used to Reduce Gang Activity

a. Reduction in the Number of Orders Issued

In the three years the Original Ordinance was in effect prior to \textit{Morales}, “the police issued over 89,000 dispersal orders and arrested over 42,000 people for violating the ordinance.”\textsuperscript{137} The data shows that between January 2000 and October 2010, less than 3,000 orders had been issued. The reason for the drop in orders issued is unclear; however, it seems clear that, for one reason or another, the Revised Ordinance has fallen into disfavor. One possible explanation for the decline in its use is that Chicago has employed another tactic in its place, taking a cue from Justice O’Connor’s \textit{Morales} opinion.\textsuperscript{138} Another explanation is that officials simply found the Revised Ordinance to be ineffective.

b. Hollow Political Gesture

When the Revised Ordinance was enacted, its impact on gang loitering and crime prevention was difficult to predict.\textsuperscript{139} Research at the time showed that prosecutors did not use the statute; they preferred to charge the individuals with traditional crimes that were easier to prove.\textsuperscript{140} Enacting gang-related ordinances seemed to be a

\begin{flushleft}
\textsuperscript{137} City of Chicago v. Morales, 527 U.S. 41, 49 (1999) (plurality opinion).
\textsuperscript{138} Id. at 67 (O’Connor, J., concurring).
\textsuperscript{139} See Strosnider, \textit{supra} note 60, at 108.
\textsuperscript{140} Id.
\end{flushleft}
political reaction to public outcry and was mainly used by politicians—not police—to send a message to the community. For instance, the police did not solicit the Original Ordinance; Mayor Daley was the main driving force behind the Original Ordinance. It seems likely, given the testimony during the hearings in 1992, that Daley insisted that the Original Ordinance be enacted in response to community demand. In the years that followed, the numbers illustrate that the Original Ordinance was an ineffective method of gang prevention. Even with its revisions, the Revised Ordinance is still ineffective. It is merely an empty symbol aimed at proving to Chicagoans that the police are working to control gang violence, however futilely.

Compare the relatively low number of dispersal orders issued in the last ten years with the high rates of gang violence and there is no obvious correlation. The purpose of both ordinances was to decrease gang violence and gang presence in the streets, yet as far as the data available at the time of this Comment shows, gang violence has not decreased with an increase in dispersal orders.

3. Revised Ordinance Does Not Remedy the Original Ordinance’s Flaws

In addition to the arbitrary and discriminatory enforcement the Revised Ordinance allows, the meaning of the Revised Ordinance’s more specific language and accompanying definitions are also vague and subject to interpretation. Where phrases in the Original Ordinance such as “with no apparent purpose” were troubling to the Supreme Court, now phrases like “establish control” should be found equally troubling.

Accordingly, it may be impossible to craft a valid anti-gang loitering statute. While the first version was vague and allowed for overbroad
police discretion—and was thus unconstitutional—the second version is almost as vaguely worded, in that it transfers police discretion from the beat officers to their superiors and is only applicable in certain selected areas.\footnote{146} The ability to select areas in which to enforce the Revised Ordinance illustrates the legislature's ability "to enact provisions that apply only to minority groups or segments thereof without facing the political accountability attending the passage of a generally applicable statute."\footnote{147} This element is not an improvement on the old statute "in that it enables—even codifies—a more systematic targeting of the poor and racial minorities through the selection of enforcement hot spots by Chicago police. To date those hot spots have been concentrated on the city's poor and heavily minority South and West sides."\footnote{148} The targeted nature of the Revised Ordinance "implicates both due process and equal protection, the two doctrines intertwined in Morales. In this new Chicago ordinance, the dilemma of crafting a constitutional anti-gang ordinance becomes starkly apparent."\footnote{149}

C. Community-Based Programs, a Possible Solution to Chicago's Gang Problem

The intent behind the adoption of the Revised Ordinance was clear from the outset: to make neighborhoods safer and remove gang presence in the streets.\footnote{150} However, it has had a negligible, if any, effect on gang-related crime rates. The Revised Ordinance is nothing more than a symbolic tool used by legislatures to convince the public that methods are being implemented to solve Chicago's gang problem. The city should undertake a concerted, grassroots effort to provide social programs and education to the city's gang-involved youth instead of using targeted suppressive techniques. These tactics would attack the underlying root of the problem instead of suppressing the

\footnote{146} Id. at 137.
\footnote{147} Id.
\footnote{148} Id. at 137-38.
\footnote{149} Id. at 138.

On the one hand, vagueness doctrine's evolving arbitrary-enforcement requirement, as articulated by the Court in Kolender and now Morales, demands a specific, clearly targeted ordinance that is not susceptible to discriminatory enforcement by police. On the other hand, laws that are too specific—isolating enforcement only in particular hot spots and against particular groups—runs afoul of a fundamental tenet of due process: that the law is to be general in application. Further, laws that are specific to gangs are bound to have unequal effects on minority communities, given the heavy Hispanic and African-American representation in street gangs as shown by researchers and government surveys.

problem once it has manifested (when it is too late). Although some of Chicago's social programs—such as CAPS and PSN—are geared toward bolstering community involvement in gang-crime prevention, they are insufficient and are still focused on police enforcement. In other words, these programs join community efforts with law enforcement efforts. They are not like the purely social, educational, and vocational programs utilized in cities like New York City.\textsuperscript{151}

Chicago's adoption of CAPS in 1993, one year after the enactment of the Original Ordinance, appeared to be the perfect grassroots solution to gang presence in the community, perhaps even similar to the New York systems that were so successful at curbing gang violence.\textsuperscript{152} However, the 2004 report demonstrates that CAPS ultimately fell short in police and community involvement, as well as problem solving.\textsuperscript{153} Other programs yielded mixed results as to their effectiveness.

Through a program currently in place and successful in New York City, the Gang Prevention and Intervention Unit (GPIU), the Department of Education is getting involved in gang prevention by reaching out to school administrators.\textsuperscript{154} GPIU's mission "is to support the education of students in New York City public schools by providing high quality professional development, technical assistance, and collaborative intervention related to gang presence and gang activity within schools."\textsuperscript{155} This program targets youth before they begin experimenting with gang activity—the precise time that these children desperately need support to stay out of gangs. Chicago cannot stage meetings with established gang leaders and expect change; it must seek out the youth that will, without any anti-gang program intervention, end up in a gang.

Community-based, non-police-involved programs have proven to be the most effective intervention and prevention techniques in New York City, and they would be equally effective in Chicago. As in New York City, Chicago youth in gang-prone neighborhoods are profoundly wary of police and do not fully trust police-affiliated programs. Communities prone to gang violence are sometimes less

\textsuperscript{151} See Edwards & Steele, \textit{supra} note 3 ("A fear of police, . . . 'street justice mentality' and an absolute refusal to work with the system, crippled [Chicago's gang-suppression] efforts.").

\textsuperscript{152} See \textit{supra} notes 105–16 and accompanying text.

\textsuperscript{153} See Skogan & Steiner, \textit{supra} note 85, at 154–55.


\textsuperscript{155} Id.
inclined to develop partnerships with police, so it is important that there be independent programs as well. In addition to their skepticism of police programs, the "no-snitch" code makes it very difficult for police to gain cooperation from residents in neighborhoods with gang problems. In 2010, Cook County State’s Attorney Anita Alvarez said that “[t]he distrust of law enforcement is out there in many communities . . . . We have seen the effects of Burge . . . . They don’t trust the system. They don’t trust the police. And as a result, you have less people willing to cooperate.” This distrust is a main obstacle in front of a successful gang-violence reduction strategy and it further emphasizes the need for community-based, non-police programs.

D. Successful Community-Driven Programs in Chicago

If funding were funneled into creating more programs such as these, wheels would be set in motion to finally make a real attempt at stopping gang activity. The following instances of small, non-police-affiliated groups making a difference prove that programs can work. In Roseland (one of the most dangerous Chicago neighborhoods), a grandmother has been inviting kids into her home since 2003 in an effort to keep them away from gangs. Her nonprofit community program, entitled the “Kids Off the Block” Youth Community Center, has reached more than 1,500 would-be gang members. The program’s founder, Diane Latiker, has kept her home—and now an adjacent center—open twenty-four hours a day, seven days a week. She provides job interview training, sporting activities, field trips, and tutoring sessions with teachers or retired educators. She has said, “It doesn’t matter where [the kids] come from, what they’ve done . . . . We’ve had six gangs in my living room at one time . . . . But that was the safe place. And you know what? They respected that.” The program is primarily aimed at males aged 11–24 (the age group most commonly issued dispersal orders), and many young boys credit it for

157. See *Konkol & Main*, supra note 6. The “no-snitch” code refers to witness reluctance to aid police or prosecution in identifying criminals. See id.
158. Id.
161. Id.
162. Id.
163. Id. (third alteration in original).
saving their lives and keeping them out of jail and off the streets.¹⁶⁴ Latiker says, “Our young people need help . . . . All of them are not gang-bangers. All of them are not dropouts. But the ones that are, they need our help. Somehow or another, something ain’t right here. And why don’t we ask them about it?”¹⁶⁵ This program is effectively helping the main demographic targeted by the Revised Ordinance (as the data above seems to indicate) when the dispersal orders and police-involved programs have failed them.

Similarly, a Chicago couple that was constantly threatened by gangs with violence and destruction of their home, instead of choosing to relocate, started two after-school basketball programs, one called Beyond the Ball and the other called Bitty Ball,¹⁶⁶ to provide neighborhood kids “a place to play and a chance to stay out of gangs.”¹⁶⁷ To date, thousands of kids have participated in the program. “Some of the players were gang members—even from rival gangs. But inside the gym there were rules: No fighting. No gang-banging. No trouble.”¹⁶⁸ In that same neighborhood, the Little Village Youth Forum, a community program aimed at teaching teens how to avoid street violence, has inspired kids and parents to work to prevent violence and empower youth.¹⁶⁹ “The solution is not only to assign more police to the most violent areas in the city. There also has to be more emphasis on a comprehensive approach that includes police, neighborhood organizations, schools, parents, business and programs such as the Little Village Youth Forum.”¹⁷⁰ A police officer started his own community program “focus[ing] on working with kids rather than supervising or policing them.”¹⁷¹ He teaches them life skills and realizes that what the kids want is more youth-based activities and more face time.¹⁷²

These programs are not officially affiliated with police; they are simply instances of people trying to improve their neighborhoods, targeting their efforts to keep children out of gangs instead of arresting them. These examples illustrate the fact that Chicago’s youth living in gang-prone neighborhoods do not feel comfortable sharing informa-

¹⁶⁴ See id.
¹⁶⁵ Id.
¹⁶⁸ Id.
¹⁷⁰ Id.
¹⁷¹ See Edwards & Steele, supra note 3.
¹⁷² Id.
tion with the police, which is why new prevention and intervention tactics must be separate from the police in order to be successful. Police tactics contribute to the continued gang-violence problem as much as the illusory and symbolic ordinances they carry out.

The Revised Ordinance, as the data for the last ten years indicates, is not used frequently and has not had any meaningful effect on reducing gang violence. It is just one example of a law designed to carry out the legitimate goal of gang-crime prevention that in fact engenders discrimination and does not accomplish its goal. Chicago is a city plagued with gang violence, and it should use another method to eliminate gang crime: community programs that have no ties to Chicago police and are designed to empower youth—prevention and intervention rather than suppression. The success of the strategies implemented in New York City demonstrates that investing in neighborhood organizations in areas with significant gang problems can significantly reduce gang activity. Chicago should analyze how exactly New York City has managed to nearly eliminate gang violence and implement the most effective methods. The organizations and programs should likewise focus on providing recreational programs, community-organized events, job opportunities, and mediation sessions for young gang members. Like New York City, Chicago should dedicate resources primarily to community programs that are unrelated to police units in order to provide youths with tools to avoid gang membership all together.

IV. Conclusion

Chicago has a serious problem on its hands. Gang violence and crime is a daily occurrence and has been for years. The Revised Ordinance is but one example of the illusory and ineffective tactics that Chicago has used in attempting to address its gang problem. Chicago’s approach has largely been suppressive, and the city has tried to combat the problem by making arrests at a beat level. Data compiled after the Morales decision strongly suggests that the Revised Ordinance has fallen into disuse, and even when it is applied, it is still used with the same discriminatory and discretionary effect as its unconstitutional predecessor.

If Chicago wants to turn its gang-war failure into a success story, it must funnel resources into social programs that get to the heart of the gang issue by preventing potential gang members from joining and by giving existing members an exit strategy. The programs should be run

173. Id.
by independent entities not associated with the police and provide outlets to children before they enter gangs. Educational and community programs will provide alternatives to gang activity in gang-prone neighborhoods and reduce Chicago's gang problem; ineffective and misapplied ordinances will not.

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