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September 17, 2021

Governor Gavin Newsom
State Capitol
Sacramento, CA 95814

RE: AB 333 – Veto Request

Dear Governor Newsom:

Larry Morse, our beloved Director of Legislation, passed away unexpectedly late Tuesday evening. Before his untimely death, he wrote the attached veto request letter for AB 333. In honor of Larry and out of deep respect for his hard work on all legislative issues, I am submitting his original letter under his signature. Please know that the views so eloquently expressed in it are shared by elected and deputy members of this association. We cannot emphasize strongly enough the importance of a veto on this flawed proposal.

Very truly yours,

Greg Totten
Chief Executive Officer



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September 17, 2021

Governor Gavin Newsom
State Capitol
Sacramento, CA 95814

RE: AB 333 – Veto Request

Dear Governor Newsom:

The California District Attorneys Association respectfully urges that you veto Assembly Bill 333, which will dramatically increase the burden on prosecutors in their efforts to hold violent criminal street gang members accountable for the crimes they commit.

Although we worked with the author's office to address some of our concerns, our good faith negotiations were not reciprocated. CDAA, the San Diego County District Attorney's Office, and the San Diego Deputy District Attorneys Association engaged in what we believed to be productive discussions with the sponsors. In fact, we had signed off on an agreement to resolve our differences in the bill and had been waiting for several days to hear from the sponsors that we had, in fact, reached an accommodation. We were stunned when we finally were given notice by Senator Kamlager's office that she would not be taking the amendments we believed had been agreeable to all parties. **Five minutes later**, Senator Kamlager took the bill up for a vote on the Senate Floor.

This was a breach of basic legislative courtesy and fair dealing. In the belief that a resolution was at hand, CDAA had **not** produced a floor alert, **not** contacted senators, **not** organized the considerable opposition to the bill. We consider the Senate vote on AB 333 to be illegitimate as the members had not been given the opportunity to weigh the serious public safety implications of this flawed measure.

A veto would be appropriate and justified solely on the basis of the bad faith by the author's office in the handling of the bill.

Assemblyman Adam Gray, who had been the floor jockey for the bill when it was heard in the Assembly, declined to act as floor jockey when the bill returned to the Assembly for concurrence in Senate amendments because of the conduct of the negotiations. Signing AB 333 would reward the author for engaging in subterfuge to get her bill off the Senate floor.

As you know, concurrence votes are generally little more than a formality. That AB 333 struggled to get to 41 votes when it came up for concurrence on the Assembly Floor is indicative of the grave concerns that attend this legislation.

We urge the Governor's office to take the time to consult experienced gang prosecutors across California to understand how this bill will impact their ability to prosecute violent criminal street gangs. California is currently experiencing an alarming increase in gang crimes, and this is not the time to shackle prosecutors by creating additional and unreasonable hurdles that will result in more gang crimes and more violence in the poorer neighborhoods that bear the brunt of terror and intimidation that are a gang's stock in trade.

California's gang prosecutors would advise the Governor's office, as they did repeatedly in conversations with Senator Kamlager, and the sponsors of AB 333, that requiring a prosecutor to prove a gang is "organized" completely fails to grasp the essential nature of our state's criminal street gangs.

Unlike the Mafia, California criminal street gangs do not always have an established structural hierarchy and do not always coordinate criminal activities through whatever leadership might exist. Very often, their criminal actions are not even coordinated among each other. If a street-level criminal gang member decides to shoot a rival gang member, he is not required to seek approval from a so-called "shot-caller" in the same gang.

Any experienced gang prosecutor will advise the Governor's office that this requirement will hinder prosecutions against well-established gangs.

There is an additional, even more untenable provision within AB 333's new definition of a criminal street gang that will fail to address most violent gang crimes—that the gang member's crime be committed for a "common benefit to members of a gang where the common benefit is more than reputational." This added requirement substantially narrows the way in which a crime may benefit the gang member who commits the crime and the gang at large that

benefits from it. The hallmark motivation behind almost all gang crime is to increase the gang's *reputation* for fear and violence within its community and surrounding areas, allowing its members to operate with impunity by deterring victims and witnesses from reporting the gang's crimes. In addition to the victims directly impacted by the gang's violent acts, the underserved communities where gangs often operate suffer from the fear and intimidation that flows from gang members' power and control over the gang's claimed territory—these are reputational benefits that are very real within those communities.

This re-definition of the “criminal street gang” under the law will inevitably lead to many currently known criminal street gangs failing to qualify as a gang under the Penal Code, and many currently charged criminal defendants who have committed violent crimes such as murder, kidnapping, robbery, and extortion will have their gang enhancement dismissed. This legislative session made clear that this bill's sponsors' true intention is to undercut and undermine the charging of gang enhancements even if that means forcing a dismissal of the enhancement against those who have committed violent crimes. Such a goal is reckless and irresponsible in light of the surging gang and gun related crime rates, and the People of the State of California will suffer as a result.

In our negotiations, CDAAB and other opponents of AB 333 demonstrated again and again our willingness to meet many of Senator Kamlager's objectives. For example, we had not challenged language that creates a bifurcation process with regards to the gang allegation. This accomplishes the author's goal of obtaining greater assurances of the defendant's right to a fair trial and due process of law. While this provision will lengthen the duration of most gang trials, it is a procedural requirement that can be met, and we did not oppose its inclusion.

Similarly, we did not challenge the deletion of felony vandalism or identity theft from the definition of a criminal street gang even though such crimes are commonly committed by gang members. This removes seven crimes from the previous list of 33. We also did not challenge the prohibition of the use of currently charged offenses to prove the pattern of criminal gang activity even though it inhibits law enforcement's ability to prove a gang allegation against new and emerging gangs that have committed two or more crimes that would establish a pattern of criminal gang activity.

We did not challenge the new requirement that the “pattern of criminal gang activity” must be proven by prior predicate offenses that occurred “within 3 years of the prior offense” and “within 3 years of the date of the current offense, both significant changes to existing law. Nor did we challenge the substitution of the term “members” for the term “persons” in the definition of “pattern of criminal gang activity” now requiring that the predicate offenses were “committed on separate occasions or by two or more *members*”

Finally, we did not challenge the longstanding requirement that a gang allegation must be proven beyond a reasonable doubt under existing law despite the author’s repeated misstatements. This is the highest burden of proof in our legal system, and it applies equally to a jury’s findings on both the charged offense and the gang allegation.

All of the above is evidence that we negotiated fairly and in good faith. Unfortunately, that gate ultimately swung one way.

AB 333 could have been a true piece of negotiated legislation in which both sides worked to find a common ground. That was our objective and the manner in which we conducted negotiations. Opponents chose instead to engage in duplicity and the result is a bill that any experienced gang prosecutor would describe as little more than a windfall for the violent, criminal street gangs who are wreaking increasing havoc in California.

We respectfully urge you to veto AB 333.

Very truly yours,



Larry D. Morse II
Director of Legislation