

Chicago's Gang Congregation Ordinance

In the United States, particularly in urban areas, criminal street gangs pose a great danger. They often try to take over parts of a city, battling other gangs in turf wars, and terrorizing residents. Like other major cities, Chicago has had much experience with gangs. In the 1990s, more than 100 criminal gangs roamed its streets. In an eight-year period, Chicago gangs committed more than 60,000 crimes, including 20,000 violent crimes and 894 homicides.

In 1992, the Chicago City Council's Committee on Fire and Police conducted public hearings on the city's street gangs. Many local residents testified about the terror they felt on city streets. One woman said, "When I walk out my door, these guys are out there . . . They watch you . . . They know where you live. They know what time you leave, what time you come home. I am afraid of them." Another resident said, "I have never had the terror that I feel every day when I walk down the streets of Chicago. . . I have had my windows broken out. I have had guns pulled on me. I have been threatened. I get intimidated on a daily basis. . . ."

From the hearings, the City Council concluded that street gangs exercised control over identifiable areas of the city . . . by loitering in those areas and intimidating law-abiding from entering those areas. As a result, city officials concluded that the loitering of gang members in the streets "creates a justifiable fear for the safety of persons and property in the area."

In June of 1992, the City Council responded to safety concerns by passing the Gang Congregation Ordinance, and the mayor signed it into law. For someone to violate this law, four things must happen:

- First, a police officer must reasonably believe that a street gang member is present in a group of two or more.
- Second, the people must be "loitering," which the law defines as staying "in any one place with no apparent purpose."
- Third, the officer must issue an order for the group to disperse.
- Fourth, the people must disobey the order.

If convicted, an offender could face up to six months in jail, a fine up to \$500, and up to 120 hours of community service.





Within two months of the ordinance’s passage, the Chicago Police Department issued General Order 92-4, containing guidelines on how it was going to enforce the law. The purpose of the guidelines was “to ensure that the anti-gang loitering ordinance is not enforced in an arbitrary or discriminatory way.” The guidelines limited enforcement to “designated areas;” though not made public, these “designated areas” were identified by police as places where gangs had a “demonstrable effect *on the activities of law-abiding persons.*”

They further allowed only officers in the Gang Crime Section and other specific officers to make arrests under the ordinance. They also spelled out criteria for identifying gang members.

The ordinance was in effect from August 1992 to December 1995. During that period, police issued over 89,000 dispersal orders and arrested over 42,000 people for violating the law.

Many of these people were put on trial. Thirteen trials were held. In each trial, lawyers for the defendants challenged the constitutionality of the ordinance. Eleven judges ruled that the ordinance was unconstitutional, and the prosecutors appealed. Two trial judges, however, upheld the law, and the ensuing trials convicted some defendants. These defendants appealed their convictions.

The Illinois Appellate Court ruled that the ordinance was unconstitutional. The court made its decision in December 1995, and police stopped enforcing the ordinance.

The City of Chicago appealed to the Illinois Supreme Court. This court also ruled that the law was unconstitutional. According to the court, the law was too vague. First, ordinary, law-abiding citizens are unable to know what conduct the law prohibits. Second, the law gives police “absolute discretion” to decide who is or is not a loiterer. In other words, police are authorized to enforce the law in an arbitrary way. The City of Chicago appealed to the U.S. Supreme Court. The U.S. Supreme Court decided to hear the case.

The City of Chicago argued that the law was not vague. First, ordinary citizens would know when the law has been violated once police gave an order to disperse. Second, police did not have too much discretion in applying the law. General Order 92-4 did not permit police to give an order to disperse to people who were already moving or who had an apparent purpose. (Remember, “loitering” describes people without an apparent purpose.) Also, police could only arrest those who disobeyed the dispersal order. Finally, police cannot order dispersal unless the police reasonably believed that at least one loiterer was a gang member.

In 1999, the U.S. Supreme Court issued its opinion in *City of Chicago v. Morales*. (Jesus Morales was one of the defendants in the case. The name of the party appealing the case is always listed first.) The court agreed with the Illinois Supreme Court and found Chicago’s Gang Congregation Ordinance to be unconstitutional.

The court ruled that the law violated the 14th Amendment’s due process clause, which, among other things, requires fair notice. The court said that the meaning of staying “in any one place with no apparent purpose” was unclear. “[T]he purpose of the fair notice

requirement is to enable the ordinary citizen to conform his or her conduct to the law. . . . Although it is true that a loiterer is not subject to criminal sanctions unless he or she disobeys a dispersal order, the loitering is the conduct that the ordinance is designed to prohibit. If the loitering is in fact harmless and innocent, the dispersal order itself is an unjustified impairment of liberty.”

The court also ruled that the ordinance did, in fact, give police too much discretion in applying the law. An officer’s decision that someone had “no apparent purpose” was “inherently subjective,” meaning it was totally up to the officer on the scene. The court warned that this gives the police too much power: “Presumably an officer would have discretion to treat some purposes – perhaps a purpose to engage in idle conversation . . . – as too frivolous to be apparent if he suspected a different ulterior [criminal] motive.”

Following the court’s decision in *Chicago v. Morales*, the city council passed a revised ordinance. In the revised version, enforcement was limited to “hot spots” identified by police and neighborhood residents. Also, police must use an objective standard to identify gang loitering:

Gang loitering means remaining in any one place under circumstances that would warrant a reasonable person to believe that the purpose or effect of that behavior is to enable a criminal street gang to establish control over identifiable areas, to intimidate others from entering those areas, or to conceal illegal activities.

In April 2018, residents of Chicago’s West Side testified before the city council again. They demanded a stronger ordinance. They cited increased drug sales and prostitution on the streets. Frequent gun violence and homicides led one woman to testify that life on Chicago’s West Side is like “living in a war zone.”

A spokesperson for the American Civil Liberties Union warned local officials against strengthening the ordinance. “We saw the effects of a broad, sweeping loitering ordinance in the late 1990s,” he wrote in an email to a local newspaper, “mass arrests of young men of color, many of whom were guilty of nothing more than being in their own neighborhoods.”

For discussion:

1. Consider how each branch of government was involved in this policy.
 - Legislative branch: List the actions and which legislative body carried them out.
 - Executive branch: List the actions and which body in the executive branch carried them out.
 - Judicial branch: List the actions and which levels and/or bodies of the judicial branch carried them out.
2. Are gang ordinances an effective policy for addressing urban crime? Why or why not?