

**The Florida Senate**  
**PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Criminal Justice Committee

BILL: SB 2704

INTRODUCER: Senator Aronberg

SUBJECT: Criminal Street Gangs

DATE: March 22, 2007

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	<b>Favorable</b>
2.	_____	_____	JU	_____
3.	_____	_____	JA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

Senate Bill 2704 will create the Gang Resistance Education and Training Program (G.R.E.A.T.) to be administered and developed by the Department of Juvenile Justice (in conjunction with the Department of Education and the Department of Law Enforcement). The program will be implemented “to the extent funded by law.” It will operate through formal agreements between law enforcement and education agencies, with the primary objective being gang membership prevention.

The bill will also make it a third degree felony for a criminal street gang member to purchase or possess a firearm (punishable by potential imprisonment up to five years and/or a fine up to \$5,000). (Criminal street gang membership, in and of itself, does not currently trigger criminal penalties when a gang member buys or possesses a firearm.)

This bill creates sections 874.10 and 874.11 of the Florida Statutes.

**II. Present Situation:**

Chapter 874, F.S., contains the “Criminal Street Gang Prevention Act of 1996.” It provides legislative findings and intent language; definitions of “criminal street gang,” “criminal street gang member,” “pattern of criminal street gang activity,” “criminal street gang associate,” and “gang-related incident”; enhanced criminal penalties for criminal street gang activity; and criminal penalties for recruiting criminal street gang membership.

Currently, there is no criminal penalty provided in this chapter for a criminal street gang member to possess or purchase a firearm. In 1999, the Florida Supreme Court held that the enhanced

penalty provision in s. 874.04, F.S., was unconstitutional because it punished mere association in a gang without requiring a nexus between criminal activity and gang membership.<sup>1</sup> The Legislature subsequently amended the statute in 2001 to require such a nexus.<sup>2</sup>

On the federal level, efforts to prevent gang-related delinquency and violence exist through the Gang Resistance Education and Training Program (G.R.E.A.T.). It originated in 1991 by the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives and the Phoenix Police Department. The program's main objective is preventing gang membership and delinquency and violence associated with such membership. It is a school-based, law enforcement officer-instructed classroom curriculum. The curriculum was revised and implemented nationally in 2003. There are five regional centers that provide training to sworn law enforcement officers to teach the G.R.E.A.T. curriculum in elementary and middle schools around the country. The Department of Justice provides competitive grant funding opportunities to state and local law enforcement agencies to implement the G.R.E.A.T. program. Since its inception, over 8,000 officers have been certified as G.R.E.A.T. instructors and over four million students have graduated from the program.<sup>3</sup>

According to the Department of Juvenile Justice (DJJ), the department provides limited training to law enforcement officers but incorporates gang-related information gathering and training within its probation, detention, and residential services. The certification curriculum is in the process of being revised. Gang affiliations are recognized as one of the 19 risk factors within the department's statewide Positive Assessment Change Tool. In addition, detention personnel currently screen juveniles for gang involvement characteristics upon admission and enter this information into the Juvenile Justice Information System.

### **III. Effect of Proposed Changes:**

Senate Bill 2704 will create the Gang Resistance Education and Training Program (G.R.E.A.T.) to be administered and developed by the DJJ (in conjunction with the Department of Education and the Department of Law Enforcement) as follows:

- Develop student curriculum;
- Train law enforcement officers to be program instructors; and
- Adopt necessary implementation forms and rules for the disbursement of available grant monies.

This program will be implemented "to the extent funded by law." It will operate through formal agreements between law enforcement and education agencies, with the primary objective being gang membership prevention.

The program will be designed to do the following:

- Provide children with necessary skills to fight stresses that trigger gang involvement;

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<sup>1</sup> *State v. O.C.*, 748 So. 2d 945 (Fla. 1999).

<sup>2</sup> Fla. Stat. s. 874.04, as amended in 2001 by ch. 2001-126, Laws of Florida.

<sup>3</sup> Department of Juvenile Justice 2007 Legislative Session Bill Analysis for SB 2704 (updated 3/22/07).

- Provide children with accurate knowledge about gang involvement;
- Provide children with skills to resolve conflicts without violence; and
- Assist in building rapport between children and law enforcement officers.

Finally, the bill will make it a third degree felony for a criminal street gang member to purchase or possess a firearm (punishable by potential imprisonment up to five years and/or a fine up to \$5,000). (Currently, criminal street gang membership, in and of itself, does not trigger criminal penalties when a gang member buys or possesses a firearm.)

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. Other Constitutional Issues:**

The bill's provision making it a crime for a criminal street gang member to buy or possess a firearm could face a constitutional challenge in light of the Florida Supreme Court's holding that mere membership in a gang without requiring a nexus between criminal activity and gang membership violates substantive due process.<sup>4</sup>

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

None.

##### **C. Government Sector Impact:**

According to the DJJ, there is no fiscal impact because the bill provides that this new program is to be implemented "to the extent funded by law."

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<sup>4</sup> *O.C.*, 748 So. 2d at 945 (discussed in the **Present Situation** of the analysis.)

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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