

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: Judiciary Committee

BILL: SB 2704

INTRODUCER: Senators Aronberg and Crist

SUBJECT: Criminal Street Gangs

DATE: April 20, 2007 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Favorable
2.	Maclure	Maclure	JU	Pre-meeting
3.			JA	
4.				
5.				
6.				

I. Summary:

This bill creates the Gang Resistance Education and Training Program 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.

This bill creates sections 874.10 and 874.11, Florida Statutes.

II. Present Situation:

Gang Problems and Prevention: The Federal Level

The prevalence and seriousness of gang problems have fluctuated over time and increased dramatically between the 1970’s and 1990’s.¹ By the late 1990’s, 3,700 identified localities in the United States had reported the presence of gang problems.² In 1998, Florida, with 125 cities, was in the top five states with the largest number of gang-problem cities.³ In 2000, 40 percent of

¹ NAT’L CRIMINAL JUSTICE REFERENCE SERV., THE GROWTH OF YOUTH GANG PROBLEMS IN THE UNITED STATES: 1970-98, (April 2001), http://www.ncjrs.gov/html/ojjdp/ojjdprpt_yth_gng_prob_2001/summary.html (last visited April 19, 2007).

² *Id.*

³ *Id.* The states with the largest number of gang-problem cities in 1998 were: California (363), Illinois (261), Texas (156), Florida (125), and Ohio (86).

surveyed law enforcement agencies reported active youth gangs in their jurisdictions.⁴ Eighty percent of agencies reporting youth gang activity in 2000 reported at least one occurrence in which one or more gang members used a firearm in an assault crime.⁵ Reports have shown that discouraging children and young adolescents from joining gangs may be the most cost-effective approach to reducing serious youth and adult gang crime.⁶

In 1991, the Gang Resistance Education and Training Program (G.R.E.A.T.) was created through a combined effort of the U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) and the Phoenix Police Department.⁷ The program's main objective is preventing gang membership and delinquency and violence associated with such membership.⁸ It is a school-based gang prevention program in which law enforcement officers teach a 9-week curriculum.⁹ Early studies on the program found students completing the G.R.E.A.T. curriculum reported lower levels of gang affiliation and delinquency than did comparison students.¹⁰ The curriculum was revised and implemented nationally in 2003.¹¹ There are currently 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.¹² The Bureau of Justice Assistance provides competitive grant funding opportunities to state and local law enforcement agencies to implement the G.R.E.A.T. program.¹³ 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.¹⁴

Gang Problems and Prevention: Florida

The Criminal Street Gang Prevention Act of 1996, codified in ch. 874, F.S., was enacted in an attempt to eradicate the terror created by criminal street gangs by providing enhanced criminal penalties for criminal street gang activity and by eliminating instrumentalities facilitating criminal street gang activity.¹⁵ 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

⁴ ARLEN EGGLEY, JR., AND MEHALA ARJUNAN, U.S. DEP'T OF JUSTICE, HIGHLIGHTS OF THE 2000 NATIONAL YOUTH GANG SURVEY, (February 2002), <http://www.ncjrs.gov/pdffiles1/ojjdp/fs200204.pdf> (last visited April 19, 2007).

⁵ *Id.*

⁶ JAMES C. HOWELL, U.S. DEP'T OF JUSTICE, YOUTH GANG PROBLEMS AND STRATEGIES, 11(August 2000), <http://www.ncjrs.gov/pdffiles1/ojjdp/171154.pdf> (last visited April 19, 2007).

⁷ GANG RESISTANCE EDUCATION AND TRAINING, HISTORY OF THE G.R.E.A.T. PROGRAM, <http://www.great-online.org/Organization/History.aspx> (last visited April 19, 2007) (hereinafter G.R.E.A.T.).

⁸ *Id.* at WELCOME TO THE G.R.E.A.T. WEB SITE, <http://www.great-online.org/Default.aspx> (last visited April 19, 2007).

⁹ FINN-AAGE ESBENSEN AND D. WAYNE OSGOOD, NAT'L INSTITUTE OF JUSTICE, NATIONAL EVALUATION OF G.R.E.A.T. (November 1997), <http://www.ncjrs.gov/txtfiles/167264.txt> (last visited April 19, 2007).

¹⁰ *Id.* Students in the program also showed lower rates of drug use, minor offending, property crimes, and crimes against persons.

¹¹ G.R.E.A.T., *supra* note 7.

¹² *Id.* at WELCOME TO THE G.R.E.A.T. WEB SITE.

¹³ *Id.* at FUNDING, <http://www.great-online.org/Program/Funding.aspx> (last visited April 19, 2007).

¹⁴ *Id.* at HISTORY OF THE G.R.E.A.T. PROGRAM.

¹⁵ Section 874.02, F.S.

between criminal activity and gang membership.¹⁶ The Legislature subsequently amended the statute in 2001 to require such a nexus.¹⁷

According to the Department of Juvenile Justice, 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:

This bill creates the Gang Resistance Education and Training Program (G.R.E.A.T.) to be administered and developed by the Department of Juvenile Justice (DJJ or the department), in conjunction with the Department of Education and the Department of Law Enforcement, as follows:

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

This program will be implemented "to the extent funded by law." It will operate through formal agreements¹⁸ between law enforcement and education agencies, with the primary objective being gang membership prevention.

The program is designed to do the following:

- Provide children¹⁹ with necessary skills to fight stresses that trigger gang involvement;
- 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 makes it a third-degree felony for a criminal street gang member to purchase or possess a firearm. A third-degree felony is punishable by potential imprisonment up to five years and/or a fine up to \$5,000.²⁰

The bill provides an effective date of July 1, 2007.

¹⁶ *State v. O.C.*, 748 So. 2d 945 (Fla. 1999).

¹⁷ Section 874.04, F.S., as amended by ch. 2001-126, L.O.F.

¹⁸ The bill does not provide requirements for implementing a "formal agreement."

¹⁹ The bill does not provide a specific age group of children the program encompasses.

²⁰ Sections 775.082 and 775.083, F.S. The bill also authorizes punishment for a felony of the third degree as provided in s. 775.084, F.S., the violent career or habitual felony offenders section.

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 scope of a person's substantive due process protections requires "that the means selected [by the Legislature to achieve its legitimate police-power objectives] *shall have a reasonable and substantial relation to the object sought to be attained and shall not be unreasonable, arbitrary or capricious.*"²¹

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.²²

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Department of Juvenile Justice (department), there is no identifiable fiscal impact because the bill provides that this new program is to be implemented "to the extent funded by law." Additionally, it appears that the program may be funded by federal grant money.²³

²¹ *O.C.*, 748 So. 2d at 948 (quoting *State v. Saiez*, 489 So. 2d 1125, 1127-28 (Fla. 1986)) (emphasis in original).

²² *Id.* at 950.

²³ See <http://www.great-online.org/Program/Funding.aspx> (last visited April 19, 2007).

However, the department may have a minimal impact to the extent it must develop and implement the program, adopt necessary forms to aid in implementing the program, and adopt rules for the disbursement of available grant funds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

VIII. Summary of Amendments:

None.

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