

Legislative Bulletin.....May 11, 2005

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H.R. 1279 - Gang Deterrence and Community Protection Act of 2005

Summary of the Bill Under Consideration Today:

Total Number of New Government Programs: 1

Total Cost of Discretionary Authorizations: \$387 million over five years

Effect on Revenue: \$0

Total Change in Mandatory Spending: \$0

Total New State & Local Government Mandates: 0

Total New Private Sector Mandates: 0

Number of Bills Without Committee Reports: 0

Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority: 0

H.R. 1279 – Gang Deterrence and Community Protection Act of 2005 (Forbes)

Order of Business: The bill is scheduled to be considered on Wednesday, May 11th, under a structured rule.

Summary: H.R. 1279 creates a new program authorizing nearly \$400 million over five years for the Department of Justice to work with state and local authorities to investigate and prosecute criminal street gangs. The measure broadens current punishment and prohibition in federal law addressing criminal street gang activity and provides for the federal prosecution of juveniles 16 years of age and older who commit acts of violence.

The bill redefines “criminal street gang” as a group consisting of three members committing two or more gang crimes, which is a lower threshold than current law. “Gang crime,” as defined in H.R. 1279, includes the following criminal activities:

- “A crime of violence;

- “A crime involving obstruction of justice, tampering with or retaliating against a witness, victim, or informant, or burglary; and
- “A crime involving the manufacturing, importing, distributing, possessing with intent to distribute, or otherwise dealing in a controlled substance or listed chemicals.”

Establishment of “High Intensity Interstate Gang Activity Areas”

H.R. 1279 authorizes \$50 million each year, for five years, for the purpose of establishing High Intensity Interstate Gang Activity Areas. The bill also authorizes \$7.5 million each year, for five years, to the U.S. Attorney General to hire 94 additional Assistant U.S. attorneys, each to be assigned to a high intensity interstate gang activity area. High Intensity Interstate Gang Activity Areas is defined as, “an area within a State that is designated as a high intensity interstate gang activity area” by the U.S. Attorney General after consultation with the Governors of appropriate States. According to the text, the Attorney General is to consider the following when designating a high intensity interstate gang activity area:

- “the current and predicted levels of gang crime activity in the area;
- “the extent to which violent crime in the area appears to be related to criminal street gang activity, such as drug trafficking, murder, robbery, assaults, carjacking, arson, kidnapping, extortion, and other criminal activity;
- “the extent to which State and local law enforcement agencies have committed resources to:
 - “respond to the gang crime problem and participate in a gang enforcement team;
- “the extent to which a significant increase in the allocation of Federal resources would enhance local response to the gang crime activities in the area; and
- “any other criteria that the Attorney General considers to be appropriate.”

H.R. 1279 reauthorizes at \$20 million each year, for five years, the Community-Based Justice Grants for Prosecutors, a program last authorized from FY96 to FY00, with the FY00 authorization set at \$12 million. The funds are to be used to carry out the following directives, which have been added to the Community-Based Justice Grants for Prosecutors program:

- hire additional prosecutors;
- fund technology, equipment, and training for prosecutors and law enforcement to identify gang members and maintain informational databases; and
- fund technology, equipment, and training for prosecutors to prosecute young violent offenders.

Establishment of “Street Gang Enforcement Teams”

According the bill, “In order to provide Federal assistance to high intensity interstate gang activity areas, the Attorney General shall—

- “establish criminal street gang enforcement teams, consisting of Federal, State, and local law enforcement authorities, for the coordinated investigation, disruption, apprehension, and prosecution of criminal street gangs and offenders in each high intensity interstate gang activity area;
- “direct the reassignment or detailing from any Federal department or agency (subject to the approval of the head of that department or agency, in the case of a department or agency other than the Department of Justice) of personnel to each criminal street gang enforcement team;
- “provide **all necessary funding** for the operation of the criminal street gang enforcement team in each high intensity interstate gang activity area; and
- “provide **all necessary funding** for national and regional meetings of criminal street gang enforcement teams, and all other related organizations, as needed, to ensure effective operation

of such teams through the sharing of intelligence, best practices and for **any other related purpose**” (emphasis added).

According to H.R. 1279, the criminal street gang enforcement teams are to consist of agents and officers from the following entities:

Federal Bureau of Investigation; Drug Enforcement Administration; Bureau of Alcohol, Tobacco, Firearms, and Explosives; United States Marshals Service; Directorate of Border and Transportation Security of the Department of Homeland Security; Department of Housing and Urban Development; State and local law enforcement; and Federal, State, and local prosecutors.

Mandatory Sentencing Changes Included in H.R. 1279

The following chart outlines current and proposed mandatory sentences for gang related crime, as modified by H.R. 1279.

Criminal Offense	Current mandatory sentence	Proposed mandatory sentence
Criminal street gang activity resulting in death	N/A	Death or life in prison
Criminal street gang activity resulting in kidnapping, aggravated sexual abuse, or maiming	N/A	Life or not less than 30 yrs
Criminal street gang activity resulting assault causing bodily injury	N/A	Life or not less than 20 yrs
Carjacking	Not more than 25 yrs	Not less than 10 or more than 30 yrs
Use of interstate commerce facilities resulting in kidnapping, aggravated sexual abuse, maiming, or conspiracy to commit such an act	Not more than 20 yrs	Life or not less than 30 yrs
Use of interstate commerce facilities in crime of violent assault, conspiracy of assault, resulting in serious bodily injury	Not more than 20 yrs	Life or not less than 20 yrs
Violent crimes in aid of racketeering resulting in kidnapping, aggravated sexual abuse, or maiming.	Kidnapping-any term of yrs or life Maiming- not more than 30 yrs	Life or not less than 30 yrs
Violent crimes in aid of racketeering including assault resulting in serious bodily injury	Not more than 20 yrs	Life or not less than 20 yrs
Violent crimes during and related to drug trafficking resulting in death	N/A	Death or life in prison
Use or possession of firearms in crimes of violence and drug trafficking resulting	Not less than 5 yrs	Not less than 7 yrs
If firearm is discharged during crimes of violence and drug trafficking resulting	Not less than 10 yrs	Not less than 15 yrs
If firearm is used to wound, injure, or maim during crimes of violence and drug trafficking resulting	Differs depending on weapon type	Not less than 20 yrs

Court Proceeding Provisions

Forfeitures upon conviction;

H.R. 1279 requires the court to order that the convicted individual forfeit to the United States:

- “any property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, the violation; and
- “any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as a result of the violation.”

Additionally, H.R. 1279 cross references the definitions in the Controlled Substances Act (21 U.S.C 853), to define property, both tangible and intangible, to outline appropriate procedures for governmental seizure and maintenance of forfeited property, and define the Attorney General’s authority to restore seized property to the individual under certain circumstances.

Limiting attorney access

Current law allows a judge to order an individual convicted of a felony as outlined by the act (including street gang crime, racketeering or racketeer influenced and corrupt organizations), to cease communication with a specific person, **other than an attorney**, if there is a “probable cause to believe that association or communication with such person is for the purpose of enabling the defendant to control, manage, direct, finance, or otherwise participate in an illegal enterprise” (emphasis added). H.R. 1279 deletes the attorney exception from current law.

Court jurisdiction;

H.R. 1279 provides that cases involving violent crimes in aid of racketeering activity and violent crimes during and related to drug trafficking resulting in death may be brought in:

- “the judicial district in which the crime of violence occurred; or
- “any judicial district in which racketeering activity of the enterprise occurred.”

Additionally, the measure provides that in capital cases, the trial is to be “held in the district where the offense was committed or in any district in which the offense began, continued, or was completed.” Also, if the offense for which the individual is on trial “involves activities which affect interstate or foreign commerce, or the importation of an object or person into the United States, such offense may be prosecuted in any district in which those activities occurred.”

The bill establishes a statute of limitations stating, “no person shall be prosecuted, tried, or punished for any noncapital felony, crime of violence, including any racketeering activity or gang crime which involves any crime of violence, unless the indictment is found or the information is instituted not later than 15 years after the date on which the alleged violation occurred or the continuing offense was completed.”

Juvenile Offender Provisions

Under H.R. 1279, the U.S Attorney General, in certain circumstances, may prosecute as an adult a juvenile who is alleged to have committed an act of violence after his 16th birthday.

Additional Information: Recent news reports have highlighted alien gang activity, specifically that of the gang known as MS-13. The Committee contends gangs have become national in nature, traveling across state lines to accomplish their goals, no longer concentrating only in urban regions. MS-13 membership consists mostly of alien criminals from El Salvador, and “has been estimated to include 8,000 to 10,000 members operating in 31 States.” Locally, MS-13 is active in Northern Virginia and Prince William County, Maryland. The Committee reports, “Based on the latest available National Youth Gang Survey, it is now estimated that there are over 750,000 gang members.” In regards to juvenile gang activity, the Committee states, “In 2003, juvenile gang members committed over 800 murders across the nation. Gangs have been directly linked to illegal drug trafficking, human

trafficking, identification documentation falsification, violent maimings, assault and murder, and the increased use of firearms to commit deadly crimes.”

H.R. 1279 authorizes federal funds for prosecution and the establishment of the High Intensity Interstate Gang Activity Areas. According to the bill sponsor, these authorizations are in addition to the almost \$2.1 billion in federal funds currently spent on gang programs, a majority directed to prevention programs. (Source: [Committee Report 109-074](#))

Committee Action: On March 14, 2005, the bill was introduced and referred to the House Judiciary Committee, which considered it, held a mark-up, and reported it to the full House by a vote of 16-11, on April 20, 2005.

Cost to Taxpayers: According to CBO, implementation of H.R. 1279 would cost approximately \$370 million from 2006-2010, subject to appropriation. The CBO includes roughly \$60 million to incarcerate individuals in the federal prison system for longer periods of time than they would serve under current law.”

Does the Bill Expand the Size and Scope of the Federal Government?: Yes. H.R. 1279 creates a new program authorizing nearly \$400 million over five years for the Department of Justice to work with state and local authorities to investigate and prosecute criminal street gangs. Additionally, the Committee estimates that lengthened sentencing requirements will eventually increase the prison population by approximately 900 prisoners, and states, “If the increase in prison population is significantly higher than estimated, construction of a new federal prison might be required.”

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No. However, the legislation does broaden and increase federal mandatory sentencing for gang-related crime.

Constitutional Authority: The Committee on the Judiciary, in House Report 109-074, cites Article I, Section 8, of the Constitution. House Rule XIII, Section d(1), requires that all committee reports contain “a statement citing the *specific* powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution.” [emphasis added]

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