

SPECIAL REPORT

Analysis from the National Council on Crime and Delinquency

Evaluating Federal Gang Bills

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Introduction

The Gang Abatement and Prevention Act of 2007 (S. 456) was introduced by Sen. Dianne Feinstein in January, 2007, and subsequently passed the following October. Its companion bill, the Gang Prevention, Intervention, and Suppression Act (H.R. 3547), sponsored by Rep. Adam Schiff, has been introduced in the House. The bills expand the current penal code regarding criminal street gangs, resulting in an over-reaching definition of both gangs and gang-related crimes. Additionally, they create an entirely new section of penalties pertaining to gang crimes, increasing the enhanced-sentences that are already in place. Both bills are referred to as the “Gang Abatement Act” in this text. However, distinction will be made between the Senate and House versions when they differ significantly.

Sen. Feinstein’s and Rep. Schiff’s legislation respond to an assumed rise in gang violence. The bills’ provisions call for suppression-heavy strategies, increasing punishments for gang crimes, and expanding the types of crimes that can be categorized as such. Years of research and evaluation have shown that these types of suppression strategies are not the solution to the gang problem. Yet, these bills propose more than \$1 billion in duplicative suppression, prosecution, and incarceration of “gangs” and “gang members,” leaving little money for community-based prevention and intervention programs that *have been proven* to work. Rep. Schiff’s bill has been cosponsored by 25 fellow legislators. However, 8 have withdrawn their support due to concerns of disproportionate effects the legislation will have on youth of color, which will be discussed at length.

In October of 2007, Rep. Bobby Scott introduced the Youth PROMISE Act (H.R. 3846), a bill which proposes to reduce gang violence by investing in promising and evidence-based prevention and intervention activities in high-need communities. This bill has bipartisan support from 87 members of Congress.

The National Council on Crime and Delinquency (NCCD) presents the following analysis of the two approaches. We compare the Gang Abatement Act (Feinstein/Schiff) to the Youth PROMISE Act (Scott), focusing on what research tells us about effective methods of reducing gang violence.

Where's the Fire?

Why has the federal government chosen to address gang violence now? Although the Gang Abatement Act states that violent crime rose 2.5% in 2005, the FBI's Crime in the United States (CIUS) report shows that, between 1997 and 2006, violent and property crimes have both decreased by nearly 23%.¹ The Bureau of Justice Statistics (BJS) reports that both violent and property crime rates are at a 30-year low, having dropped 56% and 70%, respectively, since 1973.² Moreover, gang-related violent crime has fluctuated in the past ten years, and current figures are neither alarmingly high nor low. A study by the University of Chicago of violent crimes in 100 American cities reflects a similar trend.³ Of the 100 cities, only 9 witnessed a rise in violent crime and in these 9 cities, most rates are well below their historic peaks of the 1990s. In fact, major cities such as Los Angeles, New York, and Chicago were among those listed as cities where violent crime is decreasing.

Defining "Criminal Street Gang" and "Gang Crime"

The following summarizes the current law, which defines a criminal street gang as an ongoing group, club, organization, or association of 5 or more persons--

- 1) that has as 1 of its primary purposes the commission of 1 or more criminal offense;

- 2) the members of which engage, or have engaged within the past 5 years, in a continuing series of offenses;
- 3) the activities of which affect interstate or foreign commerce.

The offenses that could be considered as gang crimes include:

- 1) federal felony involving a controlled substance, for which the maximum penalty is not less than 5 years;
- 2) federal felony crime of violence that has as an element the use or attempted use of physical force against another person;
- 3) conspiracy to commit any of the above offenses.

A set of predefined circumstances—including the promotion of the gang and prior conviction of a gang crime—determine whether these offenses are gang related.⁴

Gang Abatement Act

Gang Members as Defined:

The Gang Abatement Act changes the current law cited above to require that each of the gang members has committed at least one gang crime and that the group collectively has committed three or more gang crimes in the past five years. Despite these restrictions on the number of crimes, this modification in conjunction with the new—and broad—definition of gang crimes (discussed below), works primarily to cast a wider net over a large population. Though no definition of gangs and gang crimes is widely accepted, and though definitions vary, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) has identified certain characteristics that are common to most gangs:⁵

- 1) A self-formed group, united by mutual interests, that controls a particular territory, facility, or enterprise;
- 2) uses symbols in communications;
- 3) is collectively involved in crime.

Moreover, the Gang Abatement Act eliminates the first clause of the definition of gangs, also known as the pur-

pose clause (see above). It fails to distinguish between a criminal gang and a group of individuals who have committed various crimes, both serious and non-serious. The Heritage Foundation, a conservative think tank, points out that under the proposed definition, a group of sports coaches who have formed a betting pool could be deemed a gang, and each member could be convicted of a gang crime and penalized under the new gang penalties.⁶ Though cases like this are unlikely, the vagueness of the bill allows for a broad application and the application of harsh penalties to a population surely outside of that intended by the bill.

The bill's challenge in defining a gang has been encountered by many, from theorists and researchers to policy analysts. Studies devoted entirely to defining gangs have arrived at the same conclusion as a 2001 Crime and Delinquency article by Esbensen et al. that,

Given the permeability of gang membership, policies linking legal action to an individual's perceived status may erroneously criminalize that individual. As such, we suggest that legislation targeting gang status should be discouraged in favor of legislation focused on actual behavior.⁷

Gang Crimes as Defined:

Although the new definition of "gang" should, theoretically, reduce the likelihood of mistaken gang association, the bill's newly defined set of gang crimes is so broad that it would likely encompass more than the targeted gang population. And though the House version requires that gang crimes be committed "in furtherance of the group," the Senate version does not. Thus, according to the Senate version, it is possible for a suspected gang member to be convicted of a gang crime, even if it was not gang related. Moreover, gang crimes would carry even harsher penalties than the current ones, which will be discussed in the following section. The bill extends the definition of a gang crime from violent⁸ and drug crimes to also include:

- 1) Physical force against another, burglary, arson, kidnapping, or extortion;
- 2) obstruction of justice or tampering with or retaliat-

ing against a witness, victim, or informant;

- 3) illegal possession of firearms or explosives, racketeering, money laundering, or interstate transportation of stolen property;
- 4) harboring illegal aliens;
- 5) aggravated sexual abuse, exploitation, or other sex crime.

The logic of classifying many of the above crimes as gang related is questionable, at best. BJS reports that gang crimes (under the current definition) only account for 6% of all violent crimes, and OJJDP shows that most of the crimes committed by gangs are property crimes.⁹ Despite these findings, the proposed legislation still puts a large focus on violent crimes and barely mentions property crimes. Moreover, newly defined "gang crimes," such as harboring illegal aliens, do not relate exclusively to gangs and target more than just the gang population. The Gang Abatement Act is not founded upon evidence-based research, and NCCD questions the soundness of the proposed policies.

Youth PROMISE Act

The Youth PROMISE Act does not define "gang crime" or "gang." Because the Act does not add or modify criminal penalties, it does not need definitions for these terms. However, the prevention and intervention activities funded by the act must target "youth who are at risk of involvement in juvenile delinquency or street gang activity." By not limiting the target population to youth involved in street gangs, the Youth PROMISE Act helps to ensure that youth who have engaged in any delinquent behavior will benefit from the services offered. Given the difficulties of defining gang behavior, the focus on delinquent activity would target all youth in need of services.

Suppression vs. Prevention

Suppression tactics alone, such as gang enforcement teams and suppression units, have not been useful in deterring gang crimes. Previous efforts, like those of Operation Hammer and Operation Hardcore, have used gang enforcement teams, with the former focused on

arrests and the latter on prosecution. However, neither showed evidence of reducing the gang problem in Los Angeles.¹⁰ Despite the necessary legislation and funding, officers were poorly trained, detached from the issues, and uninformed on gang culture. Gang researchers Malcolm Klein and Irving Spergel have shown that “suppression tactics intended to make youth ‘think twice’ about gang involvement may instead reinforce gang cohesion, elevating the gang’s importance and reinforcing an ‘us versus them’ mentality.”¹¹ A study by Katz and Webb, “Policing Gangs in America,” also found that police gang units in Los Angeles, Las Vegas, Chicago, and Houston often became involved in criminal misconduct themselves, and all units were short-lived.¹² Another OJJDP report cites that sweeps—a popular tactic among gang suppression units—often resulted in the arrest of a large youth population.¹³ Many of the arrested youth were not gang members, and of those that were, very few had committed serious crimes.

A summary on gangs provided by The National Criminal Justice Reference Service, which is administered by the Department of Justice, noted that, “Incarceration does little to disrupt the violent activities of gang-affiliated inmates.”¹⁴ Furthermore, it cites a troubling statistic from the 2001 National Youth Gang Survey: “A large proportion of these jurisdictions reported that returning members [from incarceration] noticeably contributed to an increase in violent crime (63% of respondents) and drug trafficking (68%) by local gangs.”¹⁵ In fact, studies demonstrate that prisons and detention centers can be a breeding ground for potential gang members or other criminal activity.¹⁶ As much as youth in the community form gangs for protection and “family-like relationships,” incarcerated youth have an even greater need for protection.¹⁷ Detention does not provide the services individuals need in order to disassociate from gangs, but instead creates the conditions that make protection necessary.

Suppression tactics have not only been ineffective in reducing gang violence but also in providing the necessary services to get youth back on track;¹⁸ conversely, prevention and intervention programs show positive results in both areas.¹⁹ OJJDP’s recent publication, “Best practices to address community gang problems: OJJDP’s Comprehensive Gang Model,” reveals five strategies

focused on the community. These are: 1) community mobilization, 2) social intervention, 3) provision of opportunities, 4) organizational change and development, and 5) suppression. Suppression is reserved for the most “dangerous and influential gang members, removing them from the community.”²⁰ A meta-analysis of juvenile intervention practices found that evidence-based programs were more effective when implemented in community settings than when used in custodial settings.²¹ Community approaches are often more effective because they “dig deeper into the social and everyday issues that young people face, and they work on problem-solving skills that are more applicable to life in the community.”²² By recognizing that gang affiliation is often a response to system failures or community dysfunction, the model takes a comprehensive approach to reducing gang violence. By identifying the needs not only of individuals, but of the community itself, this comprehensive model maximizes community resources and applies the best research and evidence-based policies. Comprehensive programs are often the most effective in reducing gang violence because they address the roots of the gang problem and work to reduce the *delinquent behavior* of gang members instead of removing *the members themselves* from the community.

Gang Abatement Act

The Gang Abatement Act is focused mainly on suppression and enforcement tactics—increasing law enforcement, prosecution capabilities, and sentence lengths. It does not provide communities with new strategies or more resources towards programs with proven effectiveness in combating gang violence. Although the bill includes a list of prevention and intervention strategies that may be effective, they account for a minimal amount of the funding. Moreover, the term “prevention” is only loosely used in the bill, and many of its prevention programs should actually be categorized as suppression policies. The “prevention” programs listed include: designating existing High Intensity Gang Activity Areas, establishing enforcement teams, and enhancing the investigations and prosecutions of criminal street gangs. Of the grants allocated for prevention, there is no requirement that these programs be promising or evidence-based, a discussion of which is to follow.

Title I of the proposed legislation creates an entirely new penal section for gang-related crimes with longer maximum sentences. Not only are sentences longer, but they are applied to a broader set of crimes, as defined under “gang crimes.” For example, all murder offenses committed by a gang member would be subject to a sentence of life in prison, regardless of the nature or degree of the crime. In addition to these new penalties for gang members, another set of penalties, also lengthy, are detailed for accomplices and conspirators of gang-related crimes.

The proposed legislation goes beyond the creation of new gang penalties and, under Title II, details further reforms to violent crime penalties, supposedly “in order to reduce gang violence.” The bill uses the relationship between gangs, drugs, and guns to justify increased penalties. For example, Section 201 expands the penalties for all crimes, gang-related or otherwise, that are affiliated with drug-trafficking crimes, and Sections 202, 203, and 212, establish strict legislation for firearms possessions, which may or may not involve gang members.

Drugs. The Gang Abatement Act proposes to reduce gang violence by offering harsher penalties for crimes associated with drug-trafficking crimes. This assumes that, 1) drugs and gangs are related, and 2) gangs are responsible for the violence that results from drug-trafficking. However, only the first assumption has actually been found to be true. Most studies show that gang members are more likely to be involved in drug-trafficking than nonmembers, though primarily only with marijuana. On the other hand, agencies mostly reported that gangs did not control or distribute the drugs at the macro-level, but participated in the distribution at the street-level as a way to earn a living. Even though drug sales and distribution are high among gangs, gang members are not responsible for the majority of drug crimes. An OJJDP bulletin quoted a Los Angeles County District Attorney: “...drugs and gangs are not two halves of the same phenomenon. Though they [drugs and gangs] threaten many of the same neighborhoods, and involve some of the same people, gangs and drugs must be treated as separate evils.”²³

Guns. In an attempt to reduce gang violence, the bill proposes to criminalize the possession of firearms if an

individual was previously convicted of a gang-related misdemeanor or found to be in contempt of a gang injunction order. Current legislation prohibits gun ownership only if one has been convicted of a violent felony. The Act extends this prohibition to gang-related misdemeanors. An individual’s right to gun ownership should be based on his or her own violent or criminal history, not on assumed social associations to an organization that may commit violent crimes, especially under this bill’s loose definitions of “gang” and “gang crimes.”

Youth PROMISE Act

Rep. Scott’s Youth PROMISE Act will support evidence-based and promising prevention and intervention strategies proposed by communities that will come together through local councils. As defined by the Act, prevention efforts target youth and families who have not had substantial contact with the juvenile justice or criminal justice systems, and intervention programs target youth who are involved in, or who are identified by evidence-based risk assessment methods as being at high risk of continued involvement in juvenile delinquency or criminal street gangs. The Act will support effective programs based in the community; such programs have been shown to be more effective in community settings than in custodial settings.²⁴ It is more effective to work with youth in the community, than to wait until they are incarcerated.

The Act also supports law enforcement efforts; each year, \$100 million would be directed towards activities that promote youth-oriented policing, including the hiring and training of youth-oriented officers. These officers would focus on community policing and work with community-based agencies and local coordinating councils. They would receive training in youth development, systematic needs assessment, and the effectiveness of evidence-based and promising practices related to juvenile delinquency and gang prevention and intervention. Significantly, the Youth PROMISE Act states that local communities must ensure that their proposed plans will not increase the number of youth involved in the justice system. Allowing communities to invest in and work with their youth, with the collaboration of law enforcement, before they are further ensnared in the justice system is both humane and effective.

An Appropriate Role for the Federal Government?

Gang Abatement Act

Federalizing Crime. The Gang Abatement Act calls for the federalization of certain “gang crimes,” even though most are certainly not of a federal nature and most states already have specific sentencing guidelines for these crimes. Federalizing crimes that are not federal in nature violates both the constitutional integrity of a decentralized law enforcement and separate and distinct federal and state judicial systems. An American Bar Association (ABA) Task Force on Federalization of Criminal Law, headed by Edwin Meese III, reports that federalizing crimes not only blurs the distinction between the role of state and federal courts, but also often duplicates, and thus complicates, existing state laws. Indeed, most states already do have gang legislation in place and the Gang Abatement Act serves only to further complicate the mix of federal and state laws. According to the National Youth Gang Center, all but eight states have some form of gang-related legislation.²⁵ The result is that an individual is subject to two “appreciably different” sentencing outcomes. Furthermore, for crimes to be federalized, there should be a “distinctly federal interest beyond the mere conclusion that the conduct should be made criminal by some appropriate governmental entity.”²⁶ While many federal crimes may simply be symbolic, “...their presence on the books presents prosecutorial opportunities that may be exploited at any time in the future.”²⁷ Most importantly, the ABA’s Task Force found that this kind of federalization of crimes is hardly ever effective, as “federal law enforcement can only reach a small percent of such activity.”²⁸

Federal Suppression Efforts. Title III of the Gang Abatement Act designates greater federal resources to deter and prevent youth from joining gangs. Yet this section remains suppression heavy, allocating most resources to the Attorney General for investigation and prosecution purposes. The resources allow the Attorney General to designate High Intensity Gang Activity Areas, to hire additional personnel, to require that US

attorneys identify, investigate, and prosecute all gangs in their district, and to create a National Gang Activity Database to further these efforts. The database, which would collect information on gang members, their affiliations, firearms possessions, and criminal history, would be public information. Such a database would be duplicative of existing federal and state versions—yet another waste of resources and taxpayer dollars. Provisions for prevention programs are minimal. Further, while these bills also support some communities’ efforts to target gang violence, they call for increased involvement of federal agencies at the local level, which would minimize the local investment and role in enacting policies.²⁹

By focusing much of the work around the office of the Attorney General and federal resources, the Gang Abatement Act reduces the significance of local agencies in assessing the underlying problems that are at the heart of gang violence. In fact, the enforcement teams created by the Attorney General’s office consist mostly of other federal agencies, including the FBI, the DEA, US Marshals, and the Department of Homeland Security. Perhaps of greater concern is the creation of the national gang database, as the bill does not specify how gang members will be identified, what actions would lead to their inclusion, or how long they would be included. Many studies reveal that gang members “age out” and leave gangs after a year.³⁰ In fact, it is when gang members try to leave gangs that such a database would prove most dangerous. “Gang Wars,” a publication by the Justice Policy Institute, finds that such labeling complicates an individual’s ability to leave a gang; they will continue to be targeted by rival gangs as well as rejected by society due to their label. OJJDP has also found that this kind of labeling has the dual effect of continued rejection from social institutions and continued gang affiliation.³¹ As individuals are rejected due to their gang “status,” preventing them from integrating into the community, they are pushed back into gang life. If youth are expected to successfully leave gang life, they need to be incorporated into positive social activities and employment opportunities. Unless federal resources provide comprehensive services to communities, such as education and employment, suppression alone will be ineffective in deterring and preventing gang violence.

Youth PROMISE Act

Under the Youth PROMISE Act, communities facing the greatest gang and juvenile delinquency problems will form local councils to develop and implement an effective gang prevention plan. The local council will include representatives from law enforcement, health and mental health, local schools and other city agencies, court services, the business community, faith-based and community-based organizations, parents of minor children, and youth. The councils will receive grants to conduct objective strengths and needs assessments of their communities and develop and implement comprehensive plans to fight gangs through evidence-based and promising prevention and intervention practices. The selected communities will also have the opportunity to learn from each other's experiences.

NCCD's experience working closely with cities to develop and implement comprehensive citywide plans to combat gang violence supports this approach. These cities have stressed that, though they can learn from each other and adopt parts of existing approaches and models, it is very important that they are able to develop a plan that responds to their unique needs. Cities find that plans that are developed and have the support of a range of stakeholders in the community are more likely to be seen as legitimate, are easier to implement, and are more likely to gain community support. Cities have called for more resources from the state and federal government to support their work, but have not emphasized increased gang enhancements or added criminal penalties at the state or federal level.

Evidence-based Practices

Evidence-based programs are important, as considerable funding goes to programs that have not been shown to be effective. In fact, studies show that few social interventions, when evaluated in a scientifically rigorous manner, are found to produce significant and sustained effects.³² To be "evidence-based," an intervention must have shown positive and significant results when evaluated under a research design that includes a control or comparison group. Though random assignment is ideal,

it is not always feasible, and in such cases a quasi-experimental study with a well-matched comparison group may be appropriate.

Although there are a number of programs and interventions that work, there are others that are not only expensive, but have not been proven effective. Some programs have even been shown to increase crime. Researchers at the Washington State Institute for Public Policy conducted a systematic review of 571 rigorous comparison-group evaluations to identify effective crime-reduction approaches. Although they found a number of effective programs, some programs, such as Scared Straight, actually increased criminal behavior.³³ Similarly, the Surgeon General's review of the literature on youth violence revealed that, while some programs may be successful, others may not work, and others can actually be harmful to youth.³⁴ In particular, transferring youth to adult court has been shown to increase the criminality of the youth.³⁵

The Gang Abatement Act

The Gang Abatement Act calls for a number of practices aimed at improving the effectiveness of the interventions it supports. Unfortunately, these practices do not fulfill the requirements of rigorous, evidence-based research. The Act requires that local collaborative groups set up by the Attorney General include evaluation teams and collect information; the Attorney General must report on the groups' goals and objectives annually. Similarly, organizations receiving prevention grants are required to collect data to assess the effectiveness of the crime prevention, research, and intervention activities. Unfortunately, the Act does not require that the activities implemented by the local collaborative groups or using the gang prevention grants be fully evaluated; this is a wasted opportunity, given that some existing prevention and intervention programs have been proven effective, and others that are widely implemented have not shown any success. Further, there is no standard for how the activities of the local collaborative groups and the organizations receiving gang prevention grants will assess their effectiveness. Data collection to assess the effectiveness of a program is not the same as requiring

a rigorous, evidence-based evaluation of a program, and will not help expand the nation's understanding of what works to reduce gang violence. The Act establishes a National Gang Research, Evaluation, and Policy Institute; however, its proposed research agenda, though containing worthy goals such as how to foster and maximize the impact of the community's moral voice, does not focus on proven practices.

The Senate version of the Gang Abatement Act proposes grants to public and private entities to implement and rigorously evaluate innovative crime prevention and intervention strategies. However, this is only in the Senate version of the Act and accounts for a very small amount of the funding proposed under the Act.

Youth PROMISE Act

- Establishes a National Center for Proven Practices Research. This Center will collect and disseminate information to the public and the local councils on current research regarding evidence-based and promising practices related to juvenile delinquency and gang activity. The Center will also compile and share the particular programs and strategies that were effective in the Youth PROMISE Act communities.
- Requires that local councils partner with local researchers to assess their needs and strengths, prepare their plans, collect data, and evaluate their progress. The research partners are responsible for providing the local councils with information on fully vetted and promising practices related to reducing gang activity and youth violence.
- Mandates that the proposed plans include a combination of evidence-based promising prevention and intervention strategies that have been shown to be effective at reducing the rates of juvenile delinquency and criminal street gang activity.
- Lists a number of "model" programs that may work well in the selected communities. Though the Youth PROMISE Act does not mandate that communities implement any specific programs, it does include a

list of suggested programs and approaches that are backed by rigorous research. Programs such as the nurse-family partnership have been shown to deter violence for a sustained period of time and have been successfully replicated in multiple sites.³⁶

- Provides grants to state and local law enforcement agencies to hire and train youth-oriented police officers; the training will cover the effectiveness of evidence-based and promising practices related to juvenile delinquency and criminal street gang prevention and intervention, compared to traditional law enforcement.
- Establishes a Center for Youth-Oriented Policing, which, among other things, will develop, compile, and disseminate to youth-oriented police officers information about rigorous research and promising best practices for police to prevent and reduce juvenile delinquency and street gang activity.

With respect to juvenile delinquency and criminal street gang activity prevention and intervention, the Youth PROMISE Act defines an evidence-based practice as a practice "that has statistically significant juvenile delinquency and criminal street gang activity reduction outcomes when evaluated by an experimental trial, in which participants are randomly assigned...or a quasi-experimental trial, in which the outcomes for participants are compared with outcomes for a control group." A promising practice must have "outcomes from an evaluation that demonstrates that such a practice reduces juvenile delinquency and criminal street gang activity; or about which a study is being conducted to determine if such practice is evidence-based." Furthermore, the Youth PROMISE Act builds the requirement that the strategies be "evidence-based or promising" into the very definition of "intervention" and "prevention" activities. As such, all the intervention and prevention activities funded by the PROMISE Act, which account for the bulk of the Act's funding, must meet the clearly defined criteria. Further, not only must grantees report on the effectiveness of the prevention and intervention activities implemented, but they must choose to implement activities that have already been proven.

Overrepresentation of People of Color in the Justice System

People of color are heavily overrepresented in criminal and juvenile justice systems and in law enforcement's reports of gang membership. Beyond affecting the individuals incarcerated, this overrepresentation affects children, families, and communities of color. Children suffer as they are raised without their incarcerated parents, and communities face gender imbalances due to high male incarceration rates, declining political and economic significance, loss of economic power, and high rates of felony disenfranchisement.³⁷

According to BJS, African Americans represented approximately 900,000 of the nation's 2.3 million inmates held in state or federal prison or in local jails in midyear 2007.³⁸ African American males were incarcerated at six times the rate of White males, and Latino males were incarcerated at over two times the rate of White males.³⁹ Men of color of particular age groups are particularly vulnerable; one in nine African American men between 30 and 34 years of age is incarcerated.⁴⁰ Women of color are also substantially overrepresented; African American women were incarcerated at 3.7 times the rate of White women, and Latina women were incarcerated at 1.5 times the rate of White women.⁴¹ If current incarceration rates remain the same, BJS predicts that approximately one in three (32.2%) African American males, one in six Latino males (17.2%), and one in 17 White (5.9%) males will go to prison during their lifetime.⁴² Though females are expected to go to prison at much lower rates than males, women of color are similarly overrepresented compared to Whites in forecasted prison rates. African American females are expected to have a one in 18 chance (5.6%), Latina females to have a one in 45 chance (2.2%) and White females a one in 110 chance (0.9%) of ever going to prison.⁴³

Studies show that not only are people of color overrepresented in the juvenile and criminal justice systems, but this overrepresentation often increases as individuals move through the stages of the justice system. In a meta-analysis of 34 studies on race and the juvenile justice system, researchers found that about two-thirds of the studies of disproportionate minority contact (DMC)

showed negative "race effects" at one stage or another of the juvenile justice process.⁴⁴ NCCD's study of youth in the juvenile justice system revealed that youth of color, especially African American youth, are increasingly overrepresented as they move through the juvenile justice system.⁴⁵ That is true even when White youth and youth of color are charged with similar offenses. For example, while African American youth represent only 16% of the population, they are:

- 1) 28% of juvenile arrests,
- 2) 30% of referrals to juvenile court,
- 3) 34% of youth formally processed by the juvenile court,
- 4) 35% of youth judicially waived to criminal court,
- 5) 38% of youth in residential placement, and
- 6) 58% of youth admitted to state adult prison.

People of color are particularly vulnerable to being classified as gang members. The National Youth Gang Center conducted an annual survey of a nationally representative sample of law enforcement agencies serving larger cities, suburban counties, smaller cities, and rural counties since 1996. The latest figures, which average the results from 2001 through 2004, showed that law enforcement agencies reported gang members as being 35.7% African American, 48.2% Latino, and 9.5% White.⁴⁶ Similarly, a 1992 survey of police departments in 79 larger cities and 43 smaller cities found that the departments reported gang members as being predominantly African American (48%) and Latino (43%).⁴⁷ In both these samples, White gang members account for less than 10% of total gang members. Indeed, research shows that gang units are more likely to be formed in cities with larger Latino populations.⁴⁸

By contrast, youth surveys reveal much higher rates of White participation in gangs. The National Longitudinal Survey of Youth (NLSY) gathered data from a nationally representative sample of 9,000 youth between the ages of 12 and 16 at year end, 1996. Of youth who reported gang involvement in the previous 12 months, 42% were White, 27% African American, and 24% Latino.⁴⁹ The national evaluation of the Gang Resistance

Education and Training (GREAT) program incorporated a survey of 8th grade students in 42 schools located in 11 cities across the country. Judith Greene and Kevin Pranis found that by applying the prevalence rates in the GREAT sample to the US population, they produced a similar breakdown as the NLSY data: 46% White, 22% African American, and 25% Latino.⁵⁰

It is very difficult to reconcile the differences in racial and ethnic composition reported in law enforcement and youth surveys. The differences do not seem to be due to a difference in the seriousness of that youth's gang involvement or delinquent behavior. Gang-involved youth of all races report similar rates of delinquent behavior, including crime against persons, property crime, drug use, and drug sales.⁵¹ When researchers employed more stringent definitions of gangs to try to account for some of the difference, including a formal gang structure and specific delinquent behavior, the ethnic/racial breakdown of youth that self-report as gang members did not change.⁵²

There are a variety of reasons that youth surveys may report larger portions of White youth than law enforcement surveys, among them: suburban, small-town, and rural law enforcement agencies, where White gang youth are more likely to be active, may be less capable of tracking gang members than urban police agencies, urban police departments are more likely to use gang databases, which often do not have a process for removing youth from the gang list once their time with the gang has ceased, and law enforcement is trained to identify gang members as youth of color.⁵³ There are also several possible explanations for the overrepresentation of people of color in the justice system including increased policing in communities of color, the socioeconomic status of people of color and thus, their reliance on the public defense system, and sentencing laws that disproportionately affect them.⁵⁴

Gang Abatement Act

Despite the widely acknowledged overrepresentation of people of color in the justice system, and law enforcement's tendency to assume that gang youth are youth of color, the Gang Abatement Act does not include

any protections to minimize the disproportionate racial and ethnic impact of their proposed enforcement and suppression policies. Of particular concern is that the definition proposed is so broad that it will likely have the effect of targeting individuals of color, regardless of gang membership. The US Sentencing Commission reports that, in 2006, African Americans and Latinos made up approximately 70% of defendants convicted under code sections to be further "enhanced" by the Gang Abatement Act.⁵⁵ This new proposal reverses much of the progress already made in the area of juvenile justice. The Juvenile Justice and Delinquency Prevention Act (JJ-DPA)—originally passed in 1974, reauthorized in 2002, and currently in the process of another reauthorization—addresses several key issues, such as the overrepresentation of youth of color in the justice system (DMC) and the detrimental effects of incarcerating youth in adult prisons. The Act takes appropriate steps to require that, when possible, juveniles are treated separately from the adult criminal justice system and that states address the issues of DMC within their jurisdiction. The Gang Abatement Act runs counter to these mandates, addressing neither the effects of the legislation on the juvenile population nor on the problem of DMC.

The federal government has long recognized the importance of race and ethnicity in the administration of justice in this country; in 1988 the JJ-DPA was amended to require that states participating in formula grant programs determine if DMC exists and, if so, to demonstrate efforts to reduce it. It has been made clear that law enforcement agencies identify gang members as youth of color, and that race and ethnicity are central to understanding the experiences of individuals in the justice system. Last year, partly in response to the concerns of the racial disparity created by the difference in sentencing between crack and powder cocaine, the US Sentencing Commission lowered its sentencing guidelines for crack cocaine offenses. Two states, Connecticut and Iowa, now require that racial impact sentence statements be prepared for new proposed sentencing legislation. These statements should speak to the lack of consideration this bill places on certain racial populations and to the likely consequences. In a justice system that is already facing such racial disparities, these strategies promise to alleviate many of the unintended disparities prior to

adoption of new policies, rather than waiting until after the problems of DMC arise. It is particularly disappointing that the Act disregards the importance of race in the administration of justice, especially given the steps that the federal government has already taken to minimize these effects.

Youth PROMISE Act

The Youth PROMISE Act ensures that its proposed policies do not increase the number of youth of color in the justice system, and aims to alleviate some of the overrepresentation of these youth. In particular, local communities must ensure that their proposed plans will not increase the number of youth involved in the juvenile and criminal justice systems. Furthermore, the Youth PROMISE Act aims to reduce the overrepresentation of people of color by requiring that communities' proposed plans take into account the cultural and linguistic needs of the community and include strategies to improve indigent defense delivery systems, particularly for youth overrepresented in the justice system. The Youth PROMISE Act funds prevention and intervention programs proposed by communities; the communities with the highest concentration of youth, who are at risk of involvement or already involved in juvenile delinquency or criminal street gang activity, will be funded. Because people of color are more likely to rely on the public defense system, to live in communities with higher levels of juvenile delinquency and street gang activity, and to have limited positive activities for youth, they are likely to benefit from these considerations.⁵⁶

Special Needs of Youth

A large portion of gang members are under 18 years of age. According to the National Youth Gang Survey, youth under 18 years of age represented 37% of the individuals identified by law enforcement as gang members.⁵⁷ Researchers report that the typical age range for gang members is 12 to 24⁵⁸ and that the initial entry into gangs is around 11 years of age.⁵⁹

Studies have shown that youth lack some of the capabilities that are relevant to establishing culpability. Psy-

chosocial studies find that adolescents tend to employ short-sighted decision-making, poor impulse control, and vulnerability to peer pressure.⁶⁰ Neuroscientists have found that the adolescent frontal lobe has different quantities and types of cell matter as that of the adult brain; the frontal lobe is linked to long-term planning, ability to regulate aggression, and possibly moral judgment.⁶¹ In 2005, the US Supreme Court abolished the death penalty for juveniles who were below the age of 18 when they committed their offense; arguing that "juveniles' susceptibility to immature and irresponsible behavior" means their conduct is not as "morally reprehensible" as that of an adult.⁶² Further, as youth grow older, they tend to "age out" of delinquent behavior; harsh sentences and the gang member label may make it difficult for them to successfully reintegrate into society.⁶³ Studies have shown that youth can be very negatively impacted by incarceration and tough sentencing; youth seem to be particularly vulnerable and have particularly negative outcomes, when housed with adult criminals or when treated as adults in the criminal justice system. The Task Force on Community Preventive Services found that youth transferred to the adult criminal justice system were more likely to be re-arrested for a violent or other crime than comparable young offenders not transferred.⁶⁴ Youth in adult facilities are vulnerable to physical and sexual assault, the influence of negative "role models," limited educational and rehabilitation opportunities, inappropriate supervision, and suicide.⁶⁵

Gang Abatement Act

The Gang Abatement Act does not adequately account for the special needs of youth; this is particularly important as it calls for severe penalties, including life without parole, for *all* age groups. The bill does call for the US Sentencing Commission to examine the appropriateness of sentences for minors in the federal system, including the appropriateness of life sentences without possibility for parole for minor offenders. Unfortunately, this study will not be completed until a year after the enactment of the Act's provisions. It seems that given the extensive and growing knowledge of the developmental needs of youth, and the lack of a juvenile system at the

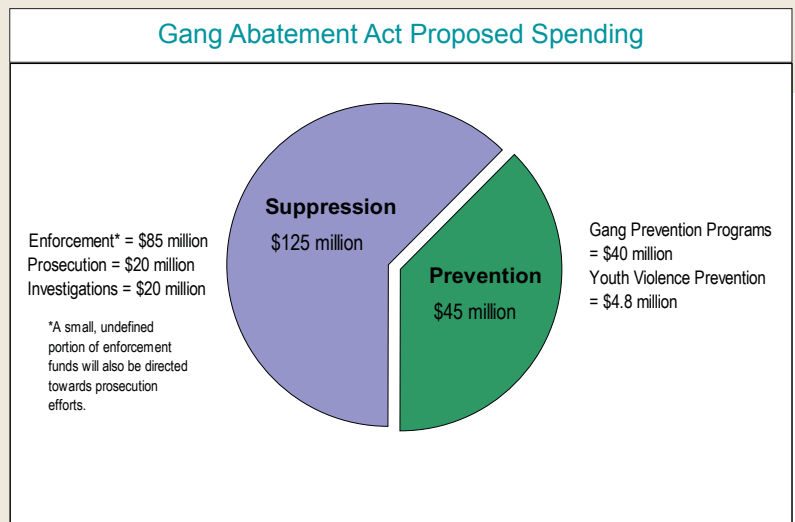
federal level, juveniles should not be subjected to the criminal penalties under the bill until the proposed study has been completed. Further, existing evidence—as well as US obligations under international law—suggests that life without the possibility of parole should not be considered for those who committed their crime before turning 18 years of age.

The Youth PROMISE Act

The Youth PROMISE Act funds several activities that aim to ensure that law enforcement and a community’s response to gang violence take into account the special needs of youth and the special vulnerability of youth in incarceration. The Act:

- Requires that each community’s PROMISE plan provides for the training of prosecutors, defenders, probation officers, judges, and other court personnel on issues concerning the developmental needs, challenges, and innovative opportunities for working with youth in the juvenile justice system.
- Requires that each community’s PROMISE plan ensures the number of youth involved in the juvenile and criminal justice systems do not increase as a result of the activities undertaken with the funds provided.
- Requires that each community’s PROMISE council includes at least two parents of minor children, and two local youth between the ages of 15 and 24.
- Establishes a center for Youth-Oriented Policing to develop a model training program that emphasizes youth development and evidence-based and promising practices related to juvenile delinquency and criminal street gang activity.
- Provides for the hiring and training of youth-oriented police officers who will work with PROMISE coordinating councils and community-based organizations. These officers will be trained to work with the community and to understand the developmental needs of youth.

By ensuring that those in law enforcement and court services are aware of the needs of youth, that youth are not more likely to enter into the juvenile or criminal justice system as a result of the community-based policies enacted, and by including youth and their families in composing the communities’ response to youth, the Youth PROMISE Act promotes a community response to youth that takes into account their special needs and vulnerabilities.



Fiscal Analysis

Title III of the Gang Abatement Act is designated as “Increased Federal Resources to Deter and Prevent Seriously At-Risk Youth from Joining Illegal Street Gangs and for Other Purposes.” Although the bill refers to the authorization of funds for “prevention,” a closer reading reveals that a large portion of the money is actually reserved for law enforcement and prosecution—categories that fall under suppression.

The Congressional Budget Office estimates that the implementation of the Senate version of this bill would cost \$1.1 billion over the 2008-2012 fiscal period, with about \$125 million appropriated annually for suppression and less than \$45 million reserved for prevention.⁶⁶ This CBO estimate does not factor in the costs of several important consequences of the bill—an increased number of prosecutions, convictions, and longer sen-

tences. Though it is difficult to forecast the additional number of individuals incarcerated due to this legislation, it is sufficient to say that there will be additional costs incurred besides the \$1.1 billion appropriated. For example, the federal judiciary estimates that, in FY 2007, it cost nearly \$25,000 to incarcerate a single person in federal prisons.⁶⁷ With more people in prison for longer periods, annual federal costs to incarcerate will easily surpass the current expenditure of \$49 billion.

Such an allocation of resources is contrary to research that shows that suppression efforts are often perceived to be the least effective of all methods, while prevention has been more useful in reducing gang violence. OJJDP's *Comprehensive Gang Models*, for example, stresses community mobilization, employment and educational opportunities, and social interventions before suppression strategies. Other evidence-based practices such as multisystemic therapy offer intensive services, counseling, and training, and have produced positive results. Studies have found that treatment and prevention programs show a greater return on each dollar invested than incarceration. A report by the Surgeon General that reviewed existing studies on ways to reduce youth violence concluded that "prevention is truly more cost-effective in the long run than incarceration."⁶⁸ The Justice Policy Institute finds that incarceration yields \$0.37 per dollar spent in reduced crime and public safety benefits to society, whereas treatment and prevention efforts yield over \$18.00 in return per dollar spent, a figure cited by the US Conference of Mayors in their 2008 *Comprehensive Gang Abatement Legislation*.⁶⁹ The savings to be realized in prevention efforts represent savings not only in justice and welfare costs, but also savings to victims and the added productivity of saved youth.

The Youth PROMISE Act proposes to spend approximately \$10 billion in the 2009-2013 fiscal period. While the Youth PROMISE Act contains larger initial costs,

several factors must be considered. First, the Act is an investment in all youth, whether low-risk, at-risk, or high-risk, providing them with the resources needed to stay away from crime and build healthy and promising lives. Second, research has shown that prevention and intervention programs such as those advocated for in this Act show a return on investment over time. A study by the Penn State Prevention Research Center shows that prevention programs that have proven effective in Pennsylvania "...not only pay for themselves but also represent a potential \$317 million return to the Commonwealth."⁷⁰ Similar studies by the Washington State Institute on Public Policy, the Justice Policy Institute, and the RAND Corporation have shown the same results.⁷¹

Both bills have significant long-term fiscal impacts that must be considered. While the Gang Abatement Act would grow in costs over time, the Youth Promise Act would not only recover its initial cost but also see savings grow from the investment.

Conclusion

Research and NCCD's experiences strongly favor the practices promoted in the Youth PROMISE Act. The Gang Abatement Act relies on strategies that have been used repeatedly in the past decades, only to yield the results of overcrowded prisons and a punitive culture in which our youth are being sent to correctional facilities not equipped to address their developmental needs. Such strategies are ineffective and costly, and reverse the progress the nation has already made in terms of juvenile justice and overrepresentation of people of color within the justice system. The Youth PROMISE Act appropriately rejects these failed policies, and embraces what years of research and practice have proven—that with the right programs, our youth can not only stay out of trouble but also have promising futures.

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The National Council on Crime and Delinquency, founded in 1907, is a nonprofit organization that promotes effective, humane, fair, and economically sound solutions to family, community, and justice problems. NCCD conducts research, promotes reform initiatives, and seeks to work with individuals, public and private organizations, and the media to prevent and reduce crime and delinquency.