

SUBJECT: New offense for coercing or soliciting a child into a gang

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Hinojosa, Dunnam, Garcia, Green, Keel, Nixon, Wise
0 nays
2 absent — Smith, Talton

WITNESSES: For — Jim Lyde, Texas Municipal Police Association; Victor Bond, Texas Gang Investigators Association; Howard E. Williams, Texas Police Chiefs Association; John “Rocky” Dyer, San Antonio Police Department
Against — None

DIGEST: HB 861 would create a new criminal offense for coercing, soliciting, or inducing a child under 17 years of age to participate in the activities of a criminal street gang by threatening the child or causing bodily injury.

It would be a state-jail felony, punishable by 180 days to two years in a state jail and an optional fine of up to \$10,000, to threaten a child with imminent bodily injury with intent to coerce, induce, or solicit participation in gang activities.

It would be a third-degree felony, punishable by two to 10 years in prison and an optional fine of up to \$10,000, to cause bodily injury with intent to coerce, induce, or solicit a child to participate gang activities.

HB 861 would take effect September 1, 1999.

SUPPORTERS SAY: HB 861 would give law enforcement officers and communities another tool to fight the growing threat of criminal street gangs to young people. There has been an explosion in the number of gang members in Texas. A 1997 attorney general’s report estimates that number to be at least 84,000 statewide. HB 861 could deter gang members from using force or coercion to expand their membership.

Gangs often force young people to join against their will. Coercion may include bodily assault, but it also may consist only of the threat of bad consequences if the child does not join in gang activities.

Under current law, it is often difficult for law enforcement authorities to prosecute gang members for these actions. Even if they can prove assault was threatened, this is only a Class C misdemeanor, with a maximum punishment of only a \$500 fine. This simply is not a tough enough penalty to deter gang members from recruiting children. By making these actions either state jail or third-degree felonies, HB 861 would give law enforcement officers a strong prosecution tool.

Although the 1993 Penal Code established broad categories and general provisions, in this situation the framework is inadequate due to the seriousness of gang activity and the need to protect children. The Legislature is not permanently bound by the Penal Code revisions of 1993. For example, the Legislature has enacted special provisions with stiffer penalties for assault committed against public servants, the elderly, disabled individuals, and especially children.

It is not out-of-proportion to punish persons who threaten or harm children by imposing state jail or third-degree felony penalties. Assault is punished as a third-degree felony if committed against a public servant and as a state jail felony if repeat offenses are committed against a family member.

**OPPONENTS
SAY:**

There is no need to create a special offense for what already is covered by existing Penal Code provisions on assault. It already is a Class A misdemeanor, punishable by up to one year in jail and/or a maximum fine of \$4,000, to cause bodily injury to another and a Class C misdemeanor, with maximum fine of \$500, to intentionally or knowingly threaten another with imminent bodily injury.

When the Penal Code was revised in 1993, the Legislature agreed there should not be varied treatment of victims subject to similar forms of harm. HB 861 would make a major change by changing the penalty for causing bodily injury in certain situations from a misdemeanor to a felony. The broad gap between felony and misdemeanor punishments should not be ignored based on the status of the victim or the intent of the threat or injury.

NOTES: The companion bill, SB 1728 by Ellis, has been referred to the Senate Criminal Justice Committee. A similar bill, SB 1579 by West, would make it an offense to solicit membership in a criminal street gang which, as a membership condition, requires the commission of a criminal offense.