

SUBJECT: Coercing, inducing, or soliciting membership in a criminal street gang

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 10 ayes — Gallego, Christian, Fletcher, Kent, Miklos, Moody, Pierson, Riddle, Vaught, Vo

0 nays

1 absent — Hodge

WITNESSES: For — (*Registered, but did not testify*: Katrina Daniels, Bexar County District Attorney's Office; Kevin Petroff, Harris County District Attorney's Office; Ballard Shapleigh, Office of the District Attorney, El Paso, Texas)

Against — (*Registered, but did not testify*: Matthew Simpson, ACLU of Texas)

On — Shannon Edmonds, Texas District and County Attorneys Association; James Wrentz, Texas Department of Public Safety

BACKGROUND: Penal Code, sec. 71.022 penalizes the solicitation of membership in a criminal street gang. A person commits an offense if the person knowingly causes, enables, encourages, recruits, or solicits another person to become a member of a criminal street gang which, as a condition of initiation, admission, membership, or continued membership, requires the commission of any conduct which constitutes an offense punishable as a class A misdemeanor or a felony. A first offense is a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000). A second or subsequent offense is a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000).

Penal Code, sec. 22.015 also penalizes the coercion, solicitation, or inducement of gang membership. A person commits an offense if, with intent to coerce, induce, or solicit a child to actively participate in the activities of a criminal street gang, the person:

- threatens the child with imminent bodily injury; or
- causes bodily injury to the child.
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An offense involving a threat of imminent bodily injury is a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000). An offense involving bodily injury is a third-degree felony.

Penal Code, sec. 22.015 defines a criminal street gang as three or more persons having a common identifying sign or symbol or an identifiable leadership who continuously or regularly associate in the commission of criminal activities.

**DIGEST:**

HB 2187 would add Penal Code, sec. 71.022(a-1) concerning the law on coercing, inducing, or soliciting membership in a criminal street gang. A person would commit an offense if, with intent to coerce, induce, or solicit a child to actively participate in the activities of a criminal street gang, the person threatened the child with imminent bodily injury or caused bodily injury to the child. A “child” would be defined as an individual younger than 17 years of age.

HB 2187 would repeal sec. 22.015 of the Penal Code.

The bill would take effect on September 1, 2009. The law in existence before the effective date would continue to exist for the purposes of prosecuting applicable offenses that took place before the effective date.

**SUPPORTERS  
SAY:**

HB 2187 is a clean-up bill that would harmonize two existing crimes concerning coercing, inducing, or soliciting membership in a criminal street gang. The bill would not change the elements of each offense but would provide that all initial offenses would be a third-degree felony, and all second and subsequent offenses would be second-degree felonies.

The penalties would remain unchanged except in two circumstances. First, the penalty for coercing gang membership by “threatening a child with imminent bodily injury” would be increased from a state-jail felony to a third-degree felony. Under current law, the penalty for encouraging an adult to join a criminal street gang through the commission of certain crimes is higher than the penalty for physically threatening a child into joining. HB 2187 would address this disparity by equalizing the penalty for these crimes.

Second, the existing penalty enhancement for repeat convictions of inducing criminal activity as part of a gang initiation under sec. 71.022 also would apply to the offense of coercion through threat of or actual violence now found in sec. 22.015. Currently, a member of a criminal street gang with a conviction under sec. 71.022 can avoid that enhancement by limiting his criminal conduct to that described by sec. 22.015. HB 2187 would eliminate this hole in the law by making all repeat offenses eligible for an enhancement from a third degree to a second-degree felony.

HB 2187 would help prevent children from joining criminal street gangs by enhancing the penalty on those who use the threat of violence and on those who use the threat of or actual violence a second or subsequent time. Further, it is appropriate to use the definition of criminal street gang found in the Penal Code, sec. 71.01, because these gangs represent a significant threat to individual safety and property. According to the LBB, HB 2187 would not result in a significant fiscal implication for the state.

OPPONENTS  
SAY:

HB 2187 is not needed. While the current offenses deal with the same general topic of gang recruitment, they address different means. Current law is clear: the offenses apply to different means of coercion. Therefore, it is appropriate that the Penal Code continue to address them separately, as it has done since 1999, when the offenses were created.

HB 2187 would utilize an inappropriate definition of criminal street gang. Penal Code, sec. 72.01 covers any three people with a common sign or symbol engaged in criminal activity. It does not differentiate between children and adults or between lesser offenses and major crimes. It would be bad public policy to subject delinquent youth to the same penalties as members of prison gangs, drug cartels, or transnational gangs. Research suggests that intervention is most effective at two times in a potential gang member's life — before the person is involved with gangs, and the first contact with law enforcement. Given that that the first brush with the criminal justice system is one of the best opportunities to redirect a youth out of gang culture, it would be wrong to instead incarcerate them and expose them to prison gangs and other criminal influences.

HB 2187 is a penalty enhancement that the state cannot afford. HB 2187 would enhance the penalty for coercion to join a criminal street gang through threats of violence. This would result in longer prison sentences and increased costs to state and local government. The state is facing a

tight budget, and the next biennium is expected to be even tighter. The state's criminal justice system can ill afford additional penalty enhancements at this time.