

CRIMINAL GANG ABATEMENT ACT

Several provisions of juvenile justice legislation that died in the 106th Congress¹ have returned to life in the Criminal Gang Abatement Act (“CGAA”),² a proposal introduced by Senators Dianne Feinstein (D-Cal.) and Orrin Hatch (R-Utah). The CGAA has three primary purposes: to create zones in which local, state, and federal agencies work together to fight gangs; to discourage gangs from recruiting juveniles; and to increase both the funding and the scope of grants to law enforcement for combating gangs.³ Other parts of the bill would amend the law⁴ in response to recent court decisions⁵ and modify existing criminal statutes, primarily to lengthen sentences for gang-related crimes.⁶

The CGAA attempts to address comprehensively the persistent problem of gang-related violence in the United States. In a letter to Senator Feinstein endorsing the proposal, the executive director of the National Association of Police Organizations wrote that the legislation would “effectively combat the growth of gangs in the United States and give law enforcement the needed tools to fight the spread of youth gang violence.”⁷ In fact, the Act would give law enforcement little power that it does not already possess, instead making changes to the status quo that are primarily cosmetic. The most expensive part of the bill, the creation of High Intensity Interstate Gang Activity Areas (“HIIGAs”), would mimic a tactic that has had questionable success against the drug trade, while giving only passing attention to other approaches, such as prevention and intervention services, that some studies have suggested might work better. Its other components—expanding the use of juvenile records in adult sentencing, criminalizing gang recruitment, redefining the criminal street gang, and increasing sentences, among others—would only build on ex-

¹ S. 254, 106th Cong. (1999); H.R. 1501, 106th Cong. (1999).

² S. 1236, 107th Cong. (2001). No companion bill has appeared in the House, but Representative Elton Gallegly (R-Cal.) has introduced the more limited Anti-Gang Violence Act, H.R. 1775, 107th Cong. (2001).

³ *See* S. 1236, §§ 11, 2–4, 12.

⁴ *See id.* §§ 5, 10, 13.

⁵ *See* *Apprendi v. New Jersey*, 530 U.S. 466 (2000) (requiring that any fact, other than prior conviction, that would increase penalty for crime beyond statutory maximum be submitted to jury and proven beyond reasonable doubt). The CGAA would convert committing a crime in the name of a gang from a sentence enhancer to an independent crime. *See* S. 1236, §§ 5, 10. *See also* *United States v. Juvenile (RRA-A)*, 229 F.3d 737 (9th Cir. 2000) (interpreting Juvenile Delinquency Act to require arresting officer to carry out statutory parental notification requirements personally). The CGAA would allow any representative of the Attorney General, not only arresting officers, to notify juveniles and their parents or guardians of their rights. *See* S. 1236, § 13.

⁶ *See* S. 1236, §§ 6–8.

⁷ Press Release, Senator Dianne Feinstein, National Association of Police Organizations Endorses Feinstein/Hatch Gang Bill (Aug. 7, 2001), at <http://www.senate.gov/~feinstein/releases01/R-NAPO.htm>.

isting statutes that have so far yielded only marginal success in fighting gangs.

The CGAA is aimed at a significant nationwide problem. One half of the residents of America's cities, towns, and villages share their hometowns with members of youth gangs.⁸ Between 1970 and 1995, a problem that had been limited to only nineteen states expanded to touch all fifty and the District of Columbia.⁹ In one-quarter of the jurisdictions reporting a gang problem, authorities say that most or all of their gang members are involved in illegal drug sales.¹⁰ In more than half of the jurisdictions that are home to gangs, gang members "often" or "sometimes" use firearms in assaults.¹¹ Even though the number of gang members dropped during the most recent years for which estimates are available, from 846,000 in 1996 to 780,000 in 1998,¹² school shootings¹³ and the ongoing popularity of "gangsta rap"¹⁴ have kept policymakers focused on juvenile crime in general and youth gangs¹⁵ in particular. The media, too, have remained interested: since the turn of the millennium, newspapers in Boston, Buffalo, Hartford, New Orleans, San Francisco, and Washington have given gang violence front-page treatment.¹⁶

Congressional debate about juvenile crime peaked in 1999 in response to the Senate's Violent and Repeat Juvenile Offender Accountability and Rehabilitation Act¹⁷ and the House's Consequences for Juve-

⁸ See WALTER B. MILLER, U.S. DEP'T OF JUSTICE, *THE GROWTH OF YOUTH GANG PROBLEMS IN THE UNITED STATES: 1970-98*, at 16 tbl.4 (2001).

⁹ See *id.* at 19.

¹⁰ See NAT'L YOUTH GANG CENTER, U.S. DEP'T OF JUSTICE, *1998 NATIONAL YOUTH GANG SURVEY* 29 tbl.29 (2000).

¹¹ *Id.* at 30-31.

¹² See *id.* at 12 tbl.9. (2000).

¹³ See 145 CONG. REC. H4364 (daily ed. June 16, 1999) (statement of Rep. McCollum (R-Fla.)) ("[T]he tragic events at Columbine High School on April 20 have left us all asking tough questions, looking for real answers.").

¹⁴ See MILLER, *supra* note 8, at 46 ("In the 1990s, the substance of gang life was communicated to national audiences through a new medium known as gangsta rap.").

¹⁵ Researchers often define youth gangs as criminal groups made up primarily of twelve to twenty-four-year-olds. See *id.* at 6. Motorcycle gangs, hate groups, organized crime families, and other groups composed exclusively of adults are excluded. *Id.* at 5-6. Fifty-eight percent of law enforcement agencies responding to a recent survey identified a youth-gang crime as one in which a member of such a gang is the perpetrator or victim. See NAT'L YOUTH GANG CTR., *supra* note 10, at 25 tbl.25. Thirty-two percent said the characteristic feature of such a crime is that it is intended "to further the interests and activities of the gang." *Id.* The report on the survey left these "interests" undefined. See *id.*

¹⁶ See Charles A. Radin & Jamal E. Watson, *Activists Revisit Gang Strategy: Some See Complacency as Youth Violence Increases in Boston*, BOSTON GLOBE, Sept. 5, 2000, at A1; Lou Michel, *Homicide Upsurge*, BUFFALO NEWS, Jan. 2, 2002, at A1; Josh Kovner et al., *A City of Tension, Turf Wars*, HARTFORD COURANT, July 8, 2001, at A1; Steve Cannizaro, *N.O. Gang Suspects Rounded Up in Weekend Shooting Outside Bar*, NEW ORLEANS TIMES-PICAYUNE, Jan. 12, 2000, at A1; Jaxon Van Derbeken & Jonathan Curiel, *Police Blame S.F. Killings on Rap Gang War*, SAN FRANCISCO CHRON., May 5, 2000, at A1; Bill Miller, *Extreme Security for D.C. Trial of Alleged Drug Gang; Charges Include 18 Killings*, WASH. POST, Jan. 9, 2001, at A1.

¹⁷ S. 254, 106th Cong. (1999).

nile Offenders Act.¹⁸ These massive bills addressed such controversial issues as trying juveniles as adults¹⁹ and regulating gun shows.²⁰ Each house of Congress passed its own bill,²¹ but neither version survived conference committee to become law. Senators Feinstein and Hatch have retained just a few pieces of the Senate version in their current proposal.²²

The most ambitious element of the CGAA is the proposal to create HIIGAs. At a cost of \$100 million each year from 2002 through 2008,²³ the HIIGAs would be “modeled after”²⁴ the High Intensity Drug Trafficking Areas²⁵ (“HIDTAs”) that the nation’s “drug czars” have created since 1990.²⁶ The Attorney General would designate the new areas as zones in which federal, state, and local law enforcement would work together in regional task forces.²⁷ He or she could detail federal personnel to the areas, including non-Department of Justice personnel when the relevant department or agency heads agreed.²⁸ Forty percent of HIIGA financing would go toward grants for “community-based programs to provide

¹⁸ H.R. 1501, 106th Cong. (1999).

¹⁹ See S. 254, §§ 102–103; H.R. 1501, § 102. For a discussion of this element of the House bill, see generally Tara Kole, Recent Development, *Juvenile Offenders*, 38 HARV. J. ON LEGIS. 231 (2001).

²⁰ See S. 254, § 502. For a discussion of the debate over gun show regulations and the role that debate played in derailing Senate Bill 254, see generally Beth A. Diebold, Recent Legislative Activity, *Arrested! How Gun-Control Issues Have Placed a Halt on Juvenile Justice Reform*, 12 LOY. CONSUMER L. REV. 259 (2000). According to Diebold, “The gun show issues . . . have brought the legislative branch to a virtual impasse, causing the entire matter of juvenile justice legislation to remain unresolved at the close of the 106th Congress.” *Id.* at 260. Issues in dispute include “what type of venue qualifies as a ‘gun-show,’ whether or not background checks should be mandatory when individuals purchase guns from private sellers at gun shows, and how much time the FBI should be allowed to perform the background checks.” *Id.* at 260–61.

²¹ See 145 CONG. REC. S5725 (daily ed. May 20, 1999); 145 CONG. REC. H4573 (daily ed. June 17, 1999).

²² Compare S. 254, § 104 with S. 1236, § 13 (covering notification after minor’s arrest); compare S. 254, § 201 with S. 1236, § 2 (covering gang recruitment); compare S. 254, § 202 with S. 1236, § 4 (covering sentencing for using minors to distribute drugs); compare S. 254, § 203 with S. 1236, § 3 (covering use of minors in violent crimes); compare S. 254, § 204 with S. 1236, § 5 (covering criminal street gangs); compare S. 254, § 205 with S. 1236, § 11 (covering high intensity interstate gang activity areas); compare S. 254, § 206 with S. 1236, § 7 (covering witness tampering); compare S. 254, § 207 with S. 1236, § 12 (covering prosecutors’ grants); compare S. 254, § 208 with S. 1236, § 10 (covering sentencing gang members); compare S. 254, § 209 with S. 1236, § 6 (covering travel in aid of gangs); compare S. 254, § 210 with S. 1236, § 9 (covering juvenile drug offense as a sentencing factor); compare S. 254, §§ 1613, 1626, 1952 with S. 1236, § 8 (covering carjacking, areas of exclusive federal jurisdiction, and racketeering).

²³ See S. 1236, § 11(c)(1).

²⁴ 147 CONG. REC. S8209 (daily ed. July 25, 2001) (statement of Sen. Feinstein).

²⁵ 21 U.S.C. § 1706 (1994).

²⁶ See OFFICE OF NAT’L DRUG CONTROL POL’Y, EXECUTIVE OFFICE OF THE PRESIDENT, THE HIGH INTENSITY DRUG TRAFFICKING AREA PROGRAM 2001 ANN. REP. 2 (2001).

²⁷ See S. 1236, § 11(b).

²⁸ See *id.* § 11(b)(2)(B).

crime prevention and intervention services that are designed for gang members and at-risk youth” within the special zones.²⁹

Under the Act, the Attorney General would consider several factors in designating an HIIGA: local gangs’ interstate connections, the effects of out-of-state gangs and gang members on the area, the commitment local law enforcement has demonstrated to finding solutions to gang-related problems, and the potential impact of federal resources.³⁰ The Attorney General would make the final decision to establish an HIIGA, in consultation with the Secretary of the Treasury and the governors of the state or states in which the zone would operate.³¹

The CGAA also includes four provisions aimed at discouraging gangs from recruiting minors. The most controversial of these would expand the use of juvenile delinquency records in adult sentencing.³² Under current law, someone convicted in federal court of illegal gun possession—on grounds, for example, of being a felon, fugitive, or illegal alien³³—normally can be imprisoned for up to ten years.³⁴ If such a person has three previous violent felony or “serious drug offense” convictions, however, a mandatory minimum prison sentence of fifteen years takes effect.³⁵ Convicts with “three strikes” are also subject to fines of up to \$25,000.³⁶ Currently, juvenile convictions for violent felonies are counted as strikes.³⁷ Under the CGAA, juvenile convictions for “serious drug offense[s]”³⁸—those carrying up to ten years or more in prison³⁹—would be strikes as well.⁴⁰

While this sentence enhancement would lead to harsher punishment for juvenile delinquents who grow into adult criminals, other provisions of the Act would aim to reduce juvenile gang involvement by targeting adults responsible for recruiting juveniles. To accomplish this, the Act would create two new federal crimes. First, the Act would establish the crime of “us[ing] a minor to commit a [federal] crime of violence . . . or to assist in avoiding detection for such an offense.”⁴¹ For the purposes of

²⁹ *Id.* § 11(c)(2)(B).

³⁰ *See id.* § 11(b)(3). The Attorney General would consider these factors and any other criteria found to be appropriate. *See id.*

³¹ *See id.* § 11(b)(1). The Department of the Treasury is responsible for several law enforcement agencies that would be involved in HIIGAs, including the Bureau of Alcohol, Tobacco, and Firearms, *see* Treas. Dep’t Order No. 221 1972-1 C.B. 777; the Customs Service, *see* 19 U.S.C. § 2072(a) (1994); the Internal Revenue Service, *see* 26 U.S.C. § 7803(a)(1)(A) (1994); and the Secret Service, *see* 18 U.S.C. § 3056(a) (1994).

³² *See* S. 1236, § 9.

³³ *See* 18 U.S.C. § 922(g) (1994).

³⁴ *See id.* § 924(a)(2).

³⁵ *Id.* § 924(e)(1).

³⁶ *Id.*

³⁷ *See id.* § 924(e)(2)(C).

³⁸ S. 1236, 107th Cong. § 9 (2001).

³⁹ *See* 18 U.S.C. § 924(e)(2)(A).

⁴⁰ *See* S. 1236, § 9.

⁴¹ *Id.* § 3.

this new crime, anyone who “employs, hires, persuades, induces, entices, or coerces” a minor to commit a violent crime would be deemed to have “used” that minor.⁴² The penalty would be twice the maximum prison term and twice the maximum fine possible for the violent crime itself; second and subsequent offenses would carry triple the term and fine.⁴³

The second crime established by the Act would be traveling in interstate or foreign commerce to “recruit, solicit, induce, command, or cause another person to be or remain as a member of a criminal street gang, or conspire to do so, with the intent that the person . . . participate in” one of a list of gang offenses.⁴⁴ Those convicted under the statute would receive up to ten years in prison.⁴⁵ If the person recruited were a minor, the CGAA would give the sentencing judge additional discretion to hold the recruiter “liable for any costs incurred by the Federal Government, or by any State or local government, for housing, maintaining, and treating the person until the person attains the age of 18 years.”⁴⁶

The new crime of recruiting a gang member would function in concert with another part of the bill that would broaden the legal definition of a criminal street gang.⁴⁷ Under current law, a gang is a group of five or more people that has as one of its primary purposes the commission of, or the conspiracy to commit, serious drug offenses or federal violent felonies.⁴⁸ Gang members must “engage, or have engaged within the past 5 years, in a continuing series” of these crimes, and their activities must affect interstate commerce.⁴⁹ Under the CGAA, the minimum size of a gang would drop to three people.⁵⁰ Perhaps more importantly, several federal crimes would be added to those considered predicates of gang activity: recruiting a gang member, committing various explosives offenses, demanding kidnapping ransom or threatening kidnapping across state lines, transmitting illegal bets across state lines, laundering drug money, obstructing justice, bringing admissible or certain inadmissible aliens into the country illegally, bringing an alien into the country for the purposes of prostitution, conspiring or attempting to commit any of these crimes, and committing any state offense that would be one of these offenses if federal jurisdiction existed.⁵¹

The CGAA’s final provision aimed at discouraging gangs from taking advantage of juveniles would increase the penalties for using a minor

⁴² *Id.*

⁴³ *See id.*

⁴⁴ *Id.* § 2. The triggering offenses would be the predicates listed as part of the CGAA’s new definition of a criminal street gang. *See infra* text accompanying notes 47–51.

⁴⁵ *See* S. 1236, § 2.

⁴⁶ *Id.*

⁴⁷ *See id.* § 5.

⁴⁸ *See* 18 U.S.C. § 521(a), (c), (1994).

⁴⁹ *Id.* § 521(a)(2)(B)–(C).

⁵⁰ *See* S. 1236, § 5.

⁵¹ *See id.*

in a drug offense. Under current law, the crime carries a sentence of at least one year in prison for both first-time and repeat offenders.⁵² Under the proposed bill, first-time offenders would face at least three years in prison and repeat offenders would face at least five.⁵³

In addition to its explicitly gang-related provisions, the Act would expand the scope of a federal grant-making fund that currently supports violence and child-abuse prevention programs, coordination among law enforcement and other community members, and the use of “individualized sanctions” specially designed for the offenders on whom they are imposed.⁵⁴ Under the bill, such grants could also go toward hiring new prosecutors, paying for technology and training for prosecutors, and supporting community prosecution programs.⁵⁵ The Act would appropriate \$50 million for the program each year from 2002 through 2006⁵⁶—more than four times annually the \$12 million the program received in 2000.⁵⁷

Finally, the CGAA includes several other provisions that create another new crime, redefine some existing crimes, and lengthen the possible sentences for others.⁵⁸ The bill would establish a federal crime of interstate witness intimidation.⁵⁹ Conviction would carry a prison sentence of up to twenty years unless the crime resulted in a death, in which case the defendant could be sentenced to up to life in prison or death.⁶⁰ The CGAA would also eliminate intent to injure from the required elements of the federal versions of carjacking and, when committed within exclusive federal jurisdiction, assault with a dangerous weapon.⁶¹ Additionally,

⁵² See 21 U.S.C. § 861(b)–(c) (1994).

⁵³ See S. 1236, § 4.

⁵⁴ 42 U.S.C. § 13862 (1994).

⁵⁵ See S. 1236, § 12(a)(3). Community prosecution programs assign prosecutors to specific localities in which they “develop special relationships with members of the police department, businesses, non-profit organizations, educational institutions, the faith community and, of course, the citizens themselves [They] become problem solvers who are looking to improve the quality of life for the communities they serve.” Eric H. Holder Jr., *Community Prosecution*, PROSECUTOR, May–June 2000, at 31.

⁵⁶ S. 1236, § 12(b).

⁵⁷ 42 U.S.C. § 13867 (1994).

⁵⁸ See S. 1236, §§ 6–8.

⁵⁹ See *id.* § 6(a)(3). The Act would include in this crime anyone who, “by bribery, force, intimidation, or threat, directed against any person,” intentionally traveled in interstate or foreign commerce or used the mail “to delay or influence the testimony of or prevent from testifying a witness in a State criminal proceeding,” or caused “any person to destroy, alter, or conceal a record, document, or other object, with intent to impair the object’s integrity or availability for use in such a proceeding.” *Id.* For a description of one gang’s power to kill and intimidate witnesses, see Neely Tucker, *Brutal Gang’s Demise Leaves Legacy of Fear*, WASH. POST, Mar. 9, 2002, at A1.

⁶⁰ See S. 1236, § 6(a)(3).

⁶¹ See *id.* § 8(a)–(b)(1). Currently under federal law, a carjacker is one who, “with the intent to cause death or serious bodily harm,” takes or attempts to take a car from another “by force and violence or by intimidation.” 18 U.S.C. § 2119(a) (1994). The crime carries a sentence of up to fifteen years in prison. *Id.* § 2119(a)(1). If serious bodily injury results, the maximum sentence rises to twenty-five years, and if death results a defendant can be sentenced to up to life imprisonment or death. *Id.* § 2119(a)(2)–(3). The CGAA would

the bill would expand the definition of interstate or foreign murder-for-hire such that intent that the hired person commit any “felony crime of violence against the person”—not only murder—would qualify the hirer for conviction.⁶² Finally, the Act would double the maximum sentences for several violent crimes, and more than triple the maximum sentence for one.⁶³

The CGAA appears to overhaul the federal government’s approach to gangs. What little substantive change it does provide, however, may not be for the better. The Act’s major elements include some good ideas along with several significant flaws. While the Act’s provisions that would create HIIGAs are similar to those that established the HIDTAs,⁶⁴ there are important differences. The creation of HIDTAs was authorized by the same Act that established the Office of National Drug Control Policy (“ONDCP”).⁶⁵ The Director of the Office, popularly known as the “drug czar,” was assigned the responsibility of designating HIDTAs.⁶⁶ Though the ONDCP was to work in consultation with the Attorney General and other law enforcement officials, its grant of statutory authority freed it from excessive involvement with the office of the Attorney General.⁶⁷ The CGAA, on the other hand, envisions no similar “gang czar.”

strike the phrase “with intent to cause death or serious bodily harm” from the statute. S. 1236, § 8(a). Similarly, the bill would strike the phrase “with intent to do bodily harm” from the statute governing assault with a dangerous weapon in the special maritime and territorial jurisdiction of the United States. *Id.* § 8(b)(1). That crime is punishable by up to ten years in prison. 18 U.S.C. § 113(a)(3) (1994).

⁶² S. 1236, § 8(c)(1). Traveling or causing another to travel in interstate or foreign commerce or using the mail in a murder-for-hire scheme now carries a sentence of up to ten years in prison. 18 U.S.C. § 1958(a) (1994). If personal injury results, the defendant can receive up to twenty years; if death results, the defendant must receive either death or life imprisonment, or a fine of up to \$250,000. *Id.* Under the CGAA, these same penalties would apply if the hired person were supposed to commit any “felony crime of violence against the person.” S. 1236, § 8(c)(1) (internal quotation marks omitted).

⁶³ The Act would increase the penalty for using or attempting to use force to intimidate a witness, from up to ten years in prison, 18 U.S.C. § 1512(b)(3) (1994), to up to twenty, S. 1236, § 7(a)(1)(C)–(D)(ii); for voluntary manslaughter within the special maritime and territorial jurisdiction of the United States, from up to ten years, 18 U.S.C. § 1112(b) (1994), to up to twenty, S. 1236, § 8(b)(2); for threatening, in support of racketeering, to murder, maim, assault with a dangerous weapon, or assault resulting in serious bodily injury, from up to five years, 18 U.S.C. § 1959(a)(4) (1994), to up to ten, S. 1236, § 8(c)(2)(A)(i)(II); for attempting or conspiring to commit murder or kidnapping in support of racketeering, from up to ten years, 18 U.S.C. § 1959(a)(5) (1994), to up to twenty, S. 1236, § 8(c)(2)(A)(ii); and for attempting or conspiring to commit a crime involving maiming, assault with a dangerous weapon, or assault resulting in serious bodily injury, in support of racketeering, from up to three years, 18 U.S.C. § 1959(a)(6) (1994), to up to ten, S. 1236, § 8(c)(2)(A)(iii).

⁶⁴ See Anti Drug-Abuse Act of 1988, Pub. L. No. 100-690, § 1005(c), 102 Stat. 4181, 4186–4187 (1988) (current version at 21 U.S.C. § 1706(a) (1994)).

⁶⁵ See *id.* § 1002(a)–(b)(1).

⁶⁶ See *id.* § 1005(c)(1).

⁶⁷ See Charles Rangel, *Our National Drug Policy*, 1 STAN. L. AND POL’Y REV. 43, 52 (1989) (“The boundaries within which the drug czar can operate now appear to be very broad, with everything from research efforts and education to testing and enforcement under the ambit of his coordinating powers.”). Representative Rangel (D-N.Y.) was one of

The Act instead adds to the duties of the Attorney General, demanding that he or she create each HIIGA and including no provision for the delegation of that responsibility.⁶⁸

The criteria that would be used to select HIIGAs would also differ somewhat from those used to pick HIDTAs. The zones to be targeted in the war on drugs are those where drug-related activities “hav[e] a harmful impact in other areas of the country.”⁶⁹ The places that would receive federal assistance in fighting gangs, on the other hand, are those affected by gang members “located in, or . . . relocated from, other States” or foreign countries⁷⁰ and those “affected by the criminal activity of gangs that originated in other States or foreign countries.”⁷¹ Thus, while HIDTAs attack the roots of the country’s drug problem, HIIGAs would aim for the gang problem’s outer branches.⁷²

Interest in the supposed phenomenon of “gang migration” may have prompted the change in direction.⁷³ According to a federally sponsored report, the movement of gangs to new locations “has been mentioned with increasing frequency in State legislative task force investigations, government-sponsored conferences, and law enforcement accounts at the Federal, State, and local levels.”⁷⁴ Gangs have appeared in places “once thought to be immune to the crime and violence associated with street gangs in large metropolitan areas.”⁷⁵ If gang members were moving out of the inner cities, it might be reasonable to conclude that efforts to combat them there were working; shifting attention to their new homes, as the CGAA appears to do, would amount to chasing them down.⁷⁶ In this vein, the CGAA would require that at least ten percent of HIIGA financing go to rural states.⁷⁷

This approach is problematic, however, because there is little evidence that movement of gang members from one place to another is re-

the sponsors of the bill that created the ONDCP. *See id.*

⁶⁸ *See* S. 1236, § 11(b)(1).

⁶⁹ Anti Drug-Abuse Act, § 1005(c)(2)(C).

⁷⁰ S. 1236, § 11(b)(3)(B)(i), § 11(b)(3)(B)(ii).

⁷¹ *Id.* § 11(b)(3)(C).

⁷² Regardless of its law enforcement philosophy, the CGAA’s explicit attention here and in its other elements to the interstate nature of the gang problem should protect it from invalidation under *United States v. Lopez*, 514 U.S. 549 (1995) (holding federal statute prohibiting gun possession in school zones unconstitutional because statute did not require such possession to affect interstate commerce).

⁷³ CHERYL L. MAXSON, U.S. DEP’T OF JUSTICE, GANG MEMBERS ON THE MOVE 2 (1998) (defining gang migration as “the movement of gang members from one city to another.”).

⁷⁴ *Id.*

⁷⁵ *Id.* at 1.

⁷⁶ *See* 147 CONG. REC. S8209 (daily ed. July 25, 2001) (statement of Sen. Feinstein) (“As gangs have spread into rural areas and become more interstate and international, it has become more important than ever to ensure coordination between local, state, and federal law enforcement to combat gangs.”).

⁷⁷ S. 1236, § 11(c)(3).

sponsible for the gangs' presence in new areas of the country: "[l]ocal, indigenous gangs usually exist prior to gang migration"⁷⁸ In one study, for example, just 3.9% of 1100 cities surveyed saw out-of-town gang members move in before the creation of local gangs.⁷⁹ In other surveys, every responding city with more than 250,000 residents continues to report a gang problem year after year.⁸⁰ It seems unlikely, then, that gangs are abandoning the cities for the countryside. The proposed focus of the HIIGAs on the outer reaches of the nation's gangs—even as gangs' presence in core areas remains strong—makes little sense.

Despite these differences between the proposed HIIGAs and the HIDTAs that came before them, proponents of the CGAA rely on the claim that the HIDTAs are effective. When she introduced Senate Bill 1236, Senator Feinstein said the HIDTA program "work[s] well and provides a good model."⁸¹ She argued that the HIIGAs would be just as effective.⁸² Government reports show that some HIDTAs do in fact work. The Central Valley HIDTA, covering nine counties in and around Sacramento, California, predicted that it would dismantle ten methamphetamine laboratories in its first year of operation,⁸³ which would have made barely a dent in the reported "hundreds, if not thousands" of such labs in the area.⁸⁴ Instead, the HIDTA exceeded expectations by taking down fifty-six labs in just eight months.⁸⁵ Similarly, the Puerto Rico/United States Virgin Islands HIDTA attributes the dissolution of more than sixty drug-related organizations to its work since 1995.⁸⁶

Some of the reports from other HIDTAs, however, are not as positive. The one covering New York and New Jersey, for example, is able to claim only that it has "enhanced coordination and information sharing among law enforcement agencies."⁸⁷ Although coordination is a stated goal of the program, it is only a first step toward effective law enforcement. The Houston HIDTA, meanwhile, can offer only a mixed report: "The effectiveness of the investigation groups, through the cooperative

⁷⁸ MAXSON, *supra* note 73, at 8.

⁷⁹ *Id.* at 8 fig.3.

⁸⁰ See NAT'L YOUTH GANG CTR., *supra* note 10, at 10 tbl.4. The estimated numbers of gangs and gang members in all cities with 25,000 or more residents dropped slightly from 1996 to 1998, by two percent and six percent, respectively. See *id.* at 12 tbl.9. Decreases in national averages, however, were even greater, at seven and eight percent, respectively, suggesting that current law enforcement efforts are more successful in rural than in urban areas. See *id.*

⁸¹ 147 CONG. REC. S8209 (daily ed. July 25, 2001) (statement of Sen. Feinstein).

⁸² See *id.* ("[T]he high intensity interstate gang activity area program will help reduce the gang problem in the same way [the HIDTA program has reduced the drug problem]").

⁸³ See OFFICE OF NAT'L DRUG CONTROL POL'Y, *supra* note 26, at 28.

⁸⁴ Evelyn Nieves, *Drug Labs in Valley Hideouts Feed Nation's Habit*, N.Y. TIMES, May 13, 2001, at § 1, 1.

⁸⁵ See OFFICE OF NAT'L DRUG CONTROL POL'Y, *supra* note 26, at 28.

⁸⁶ *Id.* at 114.

⁸⁷ *Id.* at 81.

spirit of the HIDTA program, has caused criminal organizations to change the ways they are operating.”⁸⁸ Because the groups have not stopped functioning, however, this result is a partial success at best.

Some in the media have been less subtle in criticizing HIDTAs. In Las Vegas, an editorial objected to the designation of the area as an HIDTA, arguing,

If there is a way to convince people to stop frittering their lives away in drug use, it’s likely to be through stronger communities and families and churches and temples and treatment programs—all focuses of energy and money and public attention from which programs like HIDTA only divert us.⁸⁹

The CGAA appears to address this type of complaint—which could also be made against narrow efforts to fight gangs—by earmarking forty percent of HIIGA spending for “community-based programs to provide crime prevention and intervention services.”⁹⁰ The stipulation hints at the sort of non-traditional approach that the Act mostly overlooks, but it appears to have received little attention from the bill’s drafters: the CGAA does not describe the kinds of programs that might be eligible for funding, nor does it define “community-based,” “prevention,” or “intervention.”⁹¹

Other critics have charged that the HIDTAs are simply another way for politicians to bring money from Washington back to their home districts: “Every congressman has raised their hand and said, ‘I need relief from this problem too.’”⁹² The budget of the program has swelled from \$25 million distributed over five Areas in 1990 to \$191.3 million over twenty-six Areas in 2000.⁹³ Though some HIDTA budgets have been scaled back—the Houston Area’s, for example, peaked at \$11.9 million in 1992, but was just \$9.6 million in 2000—none of the Areas has been dissolved in the program’s first decade.⁹⁴ Doubts about the motivations behind the growth of HIDTAs, as well as about their effectiveness, suggest legislators should not be so quick to adapt the program to fight gangs.

⁸⁸ *Id.* at 47.

⁸⁹ Editorial, *Secret Programs Not Accountable*, LAS VEGAS REV.-J., Jan. 31, 2001, at 6B. For a comparison of the merits of law enforcement and non-traditional methods of reducing drug use, see Debate, *The War on Drugs: Fighting Crime or Wasting Time?*, 38 AM. CRIM. L. REV. 1537, 1544–47 (2001).

⁹⁰ S. 1236, 107th Cong. § 11(c)(2)(B)(2001).

⁹¹ *Id.* § 11.

⁹² Glenn Puit, *Drug Enforcement Program Adds Las Vegas to Ranks*, LAS VEGAS REV.-J., Jan. 28, 2001, at 1B (quoting Mark A. R. Kleiman, a professor at UCLA’s School of Public Policy and Social Research).

⁹³ OFFICE OF NAT’L DRUG CONTROL POL’Y, *supra* note 26, at 7.

⁹⁴ *See id.*

In addition to questions about its effectiveness, the HIDTA formula brings with it at least one internal contradiction that reappears in the proposal for HIIGAs. When designating HIIGAs, the Attorney General must consider both “the extent to which State and local law enforcement agencies have committed resources to respond to the problem of criminal gang activity in the area, as an indication of their determination to respond aggressively to the problem,”⁹⁵ and “the extent to which a significant increase in the allocation of Federal resources would enhance local response to gang-related criminal activities in the area.”⁹⁶ The HIDTAs were established with nearly identical criteria.⁹⁷ Yet there is an inherent tension between these criteria: the first favors the creation of new Areas where there is substantial preexisting local financing, while the second favors creating Areas where there is a dearth of local money. Each idea has merit. Local investment may truly demonstrate local support for anti-gang efforts, which federal officials are entitled to demand before getting involved.⁹⁸ On the other hand, federal dollars should go where they are needed most, that is, where local dollars do not exist.⁹⁹ A federal program should choose which constituency it intends to serve; trying to serve both with the same program will probably lead to confusion.

Despite these problems, there is evidence that the central idea behind HIIGAs—coordinating the various levels and divisions of government—is a good one. According to a recent survey of anti-gang efforts, “[m]any cities and counties claim success in pooling resources with Federal and State agencies to combat youth and adult gangs and related violence.”¹⁰⁰ The Los Angeles Metropolitan Task Force, for example, brought together local police, the Federal Bureau of Investigation, and the Bureau of Alcohol, Tobacco, and Firearms (“ATF”).¹⁰¹ Created in the wake of the city’s 1992 riots, the task force eventually led to nearly 300 federal and state convictions.¹⁰² A Department of Justice handbook for local police and prosecutors explains how federal agencies can help fight gangs: the

⁹⁵ S. 1236, 107th Cong. § 11(b)(3)(D) (2001).

⁹⁶ *Id.* § 11(b)(3)(E).

⁹⁷ *See* Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690 §§ 1005(c)(2)(B), 1005(c)(2)(D), 102 Stat. 4181, 4186–87 (current version at 22 U.S.C. §§ 1706(c)(2), 1706(c)(4) (1994)).

⁹⁸ *Cf. State Land and Water Conservation Act Oversight: Hearing Before the Subcomm. on National Parks and Public Lands of the House Comm. on Research*, 105th Cong. 16 (1997) (statement of Donald W. Murphy, Dir., Cal. Dep’t of Parks and Recreation) (praising a federal conservation fund for requiring state investment “so the States have incentive and responsibility”).

⁹⁹ *See Department of Justice Oversight: Hearing Before the Senate Comm. on the Judiciary*, 106th Cong. 13 (2000) (statement of Janet Reno, Att’y Gen., Dep’t of Justice) (“Federal dollars can . . . provid[e] communities . . . in crisis for violence with seed money to develop new programs.”).

¹⁰⁰ JAMES C. HOWELL, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PROGRAMS, U.S. DEP’T. OF JUSTICE, YOUTH GANG PROGRAMS AND STRATEGIES 30 (2000).

¹⁰¹ *See id.*

¹⁰² *See id.*

ATF can trace guns, analyze ballistics, and supply “buy money” for stings; the United States Marshals Service can contribute the resources of the federal witness protection program; the Immigration and Naturalization Service can deport aliens; and the Department of Housing and Urban Development can force property cleanup.¹⁰³ Federal agents, in return, can benefit from the information and experience local agents have gained in the field.¹⁰⁴ Though few challenge the idea that a multi-agency approach can work, only forty-nine percent of jurisdictions responding to a recent survey reported fighting gangs with a task-force method.¹⁰⁵ Of these, two-thirds were in large cities.¹⁰⁶ Perhaps, then, some sort of federal effort to promote such collaboration is necessary. The HIIGA proposal’s underlying goal is worthwhile, but the mixed success of the HIDTAs it mimics raises questions about its structure.

Another element of the CGAA that deserves scrutiny is the proposal to use juvenile convictions for drug offenses to enhance adult sentences. According to Senator Feinstein, this provision would “ensure[] that career criminals do not escape higher sentences just because their most serious drug offenses occurred when they were . . . juvenile[s].”¹⁰⁷ The Senator argues that “[g]angs recruit minors because they know that children are often not fully aware of their actions.”¹⁰⁸ Gangs, she claims, also recognize that juveniles will likely receive lighter sentences than adults,¹⁰⁹ presumably causing less of a disruption to gang operations. Theoretically, the CGAA would deter youthful offenders, because their juvenile convictions for drug crimes would come back to haunt them if they were convicted of illegal gun possession as adults.¹¹⁰ Though advocates of the bill have not said as much, these stiffer adult sentences might also hurt gangs by affecting long-time, and presumably high-ranking, members.

Courts in many states have held that judges may consider juvenile records in sentencing, even absent a statute explicitly allowing them to do so.¹¹¹ Where such statutes do exist, however, they sometimes attract controversy. In Senator Feinstein’s own state of California, certain adult felons are sentenced to five extra years for each of their previous convictions, including some juvenile adjudications.¹¹² The policy has been criticized for equating adult and juvenile convictions even though the court

¹⁰³ See BUREAU OF JUSTICE ASSISTANCE, U.S. DEP’T OF JUSTICE, URBAN STREET GANG ENFORCEMENT 81 (1997).

¹⁰⁴ See *id.*

¹⁰⁵ NAT’L YOUTH GANG CTR., *supra* note 10, at 37 tbl.40.

¹⁰⁶ *Id.* at 36.

¹⁰⁷ 147 CONG. REC. S8209 (daily ed. July 25, 2001) (statement of Sen. Feinstein).

¹⁰⁸ *Id.* at S8208.

¹⁰⁹ See *id.*

¹¹⁰ See S. 1236, 107th Cong. § 9 (2001) (amending 18 U.S.C. § 924(e)(2)(C) to include serious juvenile drug offenses as predicates for armed career criminal status).

¹¹¹ See Daniel E. Feld, Annotation, *Consideration of Accused’s Juvenile Court Record in Sentencing for Offense Committed as Adult*, 64 A.L.R.3D 1291, 1294 (1976).

¹¹² See CAL. PENAL CODE § 667 (West 1999).

procedures that produce them are different;¹¹³ juveniles in California, for example, do not have a right to a jury trial.¹¹⁴ Some also claim the statute undermines the state's sealed juvenile records statute,¹¹⁵ which is intended to serve as "a reward to the reformed juvenile . . . [that] provides motivation and incentive" to abandon criminal behavior.¹¹⁶ One state legislator introduced legislation last year that would have, among other measures, removed juvenile adjudications from consideration in applying the habitual offender law.¹¹⁷ The bill, however, was later revised to leave the current juvenile records provision in place.¹¹⁸

In Louisiana, it has been the courts that have limited the reach of a state habitual offender law that includes juvenile proceedings.¹¹⁹ The Louisiana statute classifies a specific list of drug- and violence-related juvenile delinquency findings as equivalent to adult felony convictions,¹²⁰ an approach quite similar to the one the CGAA proposes.¹²¹ A circuit of the Louisiana Court of Appeal has interpreted the statute literally and refused to count a finding of delinquency for second-degree battery as a prior conviction, because while a "second or subsequent aggravated battery" is listed among the juvenile offenses to be counted,¹²² second-degree battery is not.¹²³ Challenges such as these to the use of juvenile records in adult sentencing, from both state legislatures and judiciaries, counsel caution before expanding that use at the federal level.

While none of the provisions intended to combat gang recruitment of juveniles would create new weapons for law enforcement, they do propose enlarging existing tools by lengthening sentences. According to a study in Wichita, Kansas—where juvenile adjudication records for felony-level offenses are, as sentence enhancers, equivalent to adult records—the use of juvenile records lengthens prison terms by as much as four years.¹²⁴ The juvenile records had an impact on fifty-nine percent of cases; in the remainder, the juvenile records were "inconsequential" or

¹¹³ See Tonya K. Cole, Note, *Counting Juvenile Adjudications as Strikes Under California's 'Three Strikes' Law: An Undermining of the Separateness of the Adult and Juvenile Systems*, 19 J. JUV. L. 335, 342–43 (1998).

¹¹⁴ See *id.* at 342.

¹¹⁵ CAL. WELF. & INST. CODE § 781(a) (West 1998).

¹¹⁶ Cole, *supra* note 113, at 345.

¹¹⁷ A.B. 1652, 2001-2002 Assem., Reg. Sess. (Cal. 2001) (as introduced by State Assemblywoman Jackie Goldberg (D-45th Assem. Dist.) on Feb. 23, 2001).

¹¹⁸ See *id.* (as amended May 1, 2001).

¹¹⁹ 15 LA. REV. STAT. ANN. § 529.1(A)(1) (West 1992).

¹²⁰ See *id.*

¹²¹ See S. 1236, 107th Cong. § 9 (2001) (amending 18 U.S.C. § 924(e)(2)(C)).

¹²² 15 LA. REV. STAT. ANN. § 529.1(A)(2)(h) (West 1992).

¹²³ See *State v. Ayche*, 717 So. 2d 1218, 1222 (La. Ct. App. 1998), *cert. granted on other grounds*, 723 So. 2d 952 (La. 1999).

¹²⁴ See Neal Miller, *National Assessment of Criminal Use of Defendants' Juvenile Adjudication Records*, in BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, NATIONAL CONFERENCE ON JUVENILE JUSTICE RECORDS: APPROPRIATE CRIMINAL AND NONCRIMINAL JUSTICE USES 27, 28 (1997).

the defendants' adult records were so extensive that using juvenile records was unnecessary.¹²⁵ Considering juvenile records in adult sentencing, however, may be of limited value to law enforcement because it will only add to the sentences of people found delinquent as children and convicted of other crimes as adults—that is, people who could already be going to prison under current law. Even the new crimes that would be created would work only alongside existing crimes. Recruiting a gang member would be illegal only if the criminal gang already existed and if the recruiter intended the recruit to commit a specific crime.¹²⁶ Longer sentences may have some deterrent effect, but single-minded reliance on them will probably do little to reduce juvenile crime and gang involvement.¹²⁷

The CGAA's statutory redefinition of a gang is also problematic, in both its increase in the number of crimes that merit the title "gang crimes" and its reduction of the minimum size a group must reach to qualify as a gang.¹²⁸ The former change amounts to little more than increasing sentences for certain crimes. The latter has been attacked as expanding federal authority too far.

Adding to the list of gang predicates, combined with creating a new crime of gang-member recruitment, would increase sentences for a wide range of activities that are already criminal. While today only groups engaged in drugs or violence are considered gangs, the CGAA would apparently allow prosecution of groups of alien smugglers, kidnappers, and pimps, among others.¹²⁹ The Act's sponsors claim that the offenses to be added to the predicates of gang activity¹³⁰ are "commonly pursued by gangs."¹³¹ Senator Feinstein argues that drug gangs launder their profits and commonly use explosive-based booby traps to protect their operations.¹³² She claims that alien smuggling and harboring is especially

¹²⁵ *Id.*

¹²⁶ *See* S. 1236, 107th Cong. § 2 (2001).

¹²⁷ *See Youth Violence Prevention Program: Hearing Before the Subcomm. on Labor, Health and Human Services, and Education, and Related Agencies of the Senate Comm. on Appropriations*, 106th Cong. 48 (2000) [hereinafter *Youth Violence Prevention Program Hearings*] (prepared statement of Eric H. Holder Jr., Deputy Att'y Gen., Dep't of Justice) ("[T]he positive trend we have observed in recent juvenile arrest rates is due, at least in part, to the balanced approach we have adopted in juvenile justice—one that combines prevention programs for at-risk youth with early intervention and sanctions that hold offenders accountable . . .").

¹²⁸ *See* S. 1236, 107th Cong. § 5 (2001).

¹²⁹ *Compare* 18 U.S.C. § 521(c) (1994) *with* S. 1236, § 5.

¹³⁰ *See* S. 1236, § 5(a). These offenses include recruiting a gang member, committing various explosives offenses, demanding kidnapping ransom, threatening kidnapping across state lines, gambling illegally across state lines, laundering drug money, obstructing justice, bringing admissible or certain inadmissible aliens into the country illegally, bringing an alien into the country for the purposes of prostitution, conspiring or attempting to commit any of these crimes, and committing any state offense that would be one of these offenses if federal jurisdiction existed. *See id.*

¹³¹ 147 CONG. REC. S8208 (daily ed. July 25, 2001) (statement of Sen. Feinstein).

¹³² *See id.*

prevalent among gangs in San Francisco, Los Angeles, Boston, and New York.¹³³ These activities are already illegal, and organizing to perpetrate them is already punishable under the federal conspiracy statute.¹³⁴ By calling these acts not simply conspiracies but gang conspiracies, however, the CGAA would increase the penalty for such organization from five years in prison to ten.¹³⁵ To justify the adjective “gang,” prosecutors would need to prove only that at least three conspirators, rather than two, took part in the conspiracy,¹³⁶ and that the conspirators engaged in a continuing series of these crimes, either at the time of charging or during the previous five years.¹³⁷

When reducing the minimum size of a gang was proposed as part of the Senate’s and House’s juvenile justice bills in 1999,¹³⁸ the measure was opposed from both the left and the right. The American Civil Liberties Union, for example, argued that the new definition would be too inclusive: “Lowering the number of persons required to trigger prosecution under gang laws creates an overbroad provision that sweeps in persons who may have committed a crime together, but are not part of a gang.”¹³⁹ Conservatives, too, opposed broadening the reach of the law¹⁴⁰ and criti-

¹³³ *See id.*

¹³⁴ *See* 18 U.S.C. § 371 (1994).

¹³⁵ *Compare* 18 U.S.C. § 371 (1994) *with* 18 U.S.C. § 521(b) (1994). Professor Susan W. Brenner, evaluating state statutes that allow simultaneous charges of committing a crime and of committing that crime on behalf of a gang, calls this increasing liability for a single act “lateral compounding.” Susan W. Brenner, *RICO, CCE, and Other Complex Crimes: The Transformation of American Criminal Law?*, 2 WM. & MARY BILL RTS. J. 239, 275–79 (1993).

¹³⁶ *Compare* 18 U.S.C. § 371 (1994) *with* S. 1236, 107th Cong. § 5 (2001).

¹³⁷ *See* 18 U.S.C. § 521(a) (1994).

¹³⁸ *See* S. 254, 106th Cong. § 204(a)(1)(A) (1999); H.R. 1501 106th Cong. § 704(a)(1)(A) (1999).

¹³⁹ RACHEL KING ET AL., AM. C.L. UNION, JUVENILE DELINQUENCY: COMPARISON OF PRESENT LAW AND TWO PROPOSALS IN THE 106TH CONGRESS, H.R. 1501 AND S. 254 AS PASSED BY THE HOUSE AND SENATE RESPECTIVELY, AND ACLU RECOMMENDATIONS 20 (1999), available at <http://www.aclu.org/congress/1073099a.pdf>.

¹⁴⁰ *See Federalism and Crime Control: Hearing Before the Senate Comm. on Gov’t Affairs*, 106th Cong. 75–76 (1999) [hereinafter *Federalism and Crime Control Hearings*] (statement of Sen. Fred Thompson (R-Tenn.), Chairman, Senate Comm. on Gov’t Affairs) (“We get the camel’s nose under the tent—juvenile gangs, and then people who help juvenile gangs, then people who help people who help juvenile gangs, and we keep going in that direction.”). Senator Thompson’s comments, made on May 6, 1999, were echoed by the Supreme Court one month later when the Court struck down another anti-gang measure in *City of Chicago v. Morales*, 527 U.S. 41 (1999). In *Morales*, the Court invalidated a Chicago ordinance that called for the arrest of anyone who continued to loiter “with no apparent purpose” in the presence of a suspected gang member after a police officer’s order to disperse. *Id.* at 47. The Court held the ordinance unconstitutionally vague, because it “require[d] no harmful purpose and applie[d] to nongang members as well as suspected gang members.” *Id.* at 62. The CGAA would likely survive similar scrutiny because it would reach only people who committed crimes (in its expanded definition of a gang, and in its sentencing increases), see S. 1236, 107th Cong. §§ 4–10 (2001), or those who used others to commit crimes (in its recruitment and “use of a minor” provisions), see S. 1236, 107th Cong. §§ 2–3 (2001).

cized the explicitly gang-oriented elements of the bills as expanding federal authority into a matter better left to the states.¹⁴¹

Examining the causes of youth gangs' growth could suggest more effective methods of combating them. Certain factors such as the rise of the drug trade have aggravated the problems posed by inner-city gangs to the extent that a substantial investment in law enforcement such as that proposed by the CGAA probably is required.¹⁴² There are other factors, however, that contribute to the spread of gang activity that also must be taken into account. As then-Deputy Attorney General Eric H. Holder Jr. once testified, "in law enforcement now, we have to not only do the traditional kinds of things that we are expected to do—investigate cases, make good prosecutions—but we also have to be concerned with the social factors that tend to breed crime as well."¹⁴³

According to one Department of Justice report, "[m]ost people who study gangs agree that immigration has played a major role in the formation and spread of gangs for more than a century."¹⁴⁴ The CGAA's inclusion of alien smuggling as one of the new predicates of gang activity, as well as the HIIGAs' interest in areas affected by gang members from foreign countries, suggests that its architects, too, see a connection between gangs and immigration.¹⁴⁵ Rather than reclassifying the already criminal activity of alien smuggling as a criminal gang activity, it may be more productive to examine why generations of immigrants, from around the world, form gangs in the United States.¹⁴⁶ Research in this area and on how to ease immigrants' transition would be a useful government venture.

Looking beyond gangs to the more general social problem of youth crime, a central concern of the CGAA,¹⁴⁷ then-Secretary of Labor Alexis Herman once argued that "the best crime prevention strategy is in fact a jobs promotion strategy."¹⁴⁸ According to this theory, high unemployment

¹⁴¹ Reagan-era Attorney General Edwin Meese III went so far as to argue that the bills, if passed, "would have zero effect on violent crime or juvenile crime across the United States. It is the local officials, it is the local resources that are going to have the impact on this." *Federalism and Crime Control Hearings*, *supra* note 140, at 76 (statement of Edwin Meese III).

¹⁴² See MILLER, *supra* note 8, at 43.

¹⁴³ *Youth Violence Prevention Program Hearings*, *supra* note 127, at 9 (statement of Eric H. Holder Jr., Deputy Att'y Gen., Dep't of Justice).

¹⁴⁴ MILLER, *supra* note 8, at 43.

¹⁴⁵ See S. 1236, 107th Cong. §§ 5, 11(b)(3)(B)(2) (2001).

¹⁴⁶ See MILLER, *supra* note 8, at 43 ("Gangs in the 1800's were composed largely of recently immigrated Irish, Jewish, Slavic, and other ethnic populations. Major waves of immigration during the past 25 years have brought in a [sic] many groups . . . whose offspring have formed gangs in the classic immigrant gang tradition.")

¹⁴⁷ See 147 CONG. REC. S8208 (daily ed. July 25, 2001) (statement of Sen. Feinstein) ("I am very troubled by the fact that many youngsters, some barely in their teens, are lured into gangs by older children and start a life of crime even before they start high school.")

¹⁴⁸ *Youth Violence Prevention Program Hearings*, *supra* note 127, at 13 (statement of Alexis M. Herman, Sec'y of Labor, Dep't of Labor).

rates and low education levels are often “inextricably linked” to high crime rates.¹⁴⁹ Federal programs such as Job Corps¹⁵⁰ and youth opportunity grants¹⁵¹ operate in part under this rationale.¹⁵²

Other theories use sociological methods in attempting to explain why young people get involved with gangs, focusing on factors such as the absence of father figures in many children’s lives and the influence of the mass media.¹⁵³ One way these problems can be addressed is through community programs such as Boys and Girls Clubs that provide positive examples for youth.¹⁵⁴ According to one Columbia University study, federally supported Boys and Girls Clubs in public housing projects reduced the juvenile crime rate by thirteen percent, increased school attendance, and improved academic performance.¹⁵⁵ Many of these non-traditional approaches to law enforcement depend, like the CGAA’s HIIGA proposal, on interagency cooperation.¹⁵⁶ Unlike that of the HIIGAs, however, this cooperation functions at an interdisciplinary level, a distinction that draws further attention to the narrow view of law enforcement underlying the CGAA.¹⁵⁷

Another useful approach would be to follow the lead of areas that have succeeded in fighting gangs.¹⁵⁸ One study identified thirteen cities and towns where law enforcement reported gang problems in the 1970s but did not do so between 1990 and 1995.¹⁵⁹ The largest of these was Charleston, South Carolina, with a 1995 population of 80,400, and the smallest was Castroville, California, population 5,300.¹⁶⁰ Eleven of the thirteen were located in California, Massachusetts, or Pennsylvania; the policies of those states should also be considered.¹⁶¹ Though the study is only a survey of these success stories, it points out that research into the

¹⁴⁹ *Id.* at 14 (statement of Alexis M. Herman, Sec’y of Labor, Dep’t of Labor).

¹⁵⁰ See 29 U.S.C. §§ 2881–2901 (1994).

¹⁵¹ See 29 U.S.C. § 2914 (1994).

¹⁵² See *Youth Violence Prevention Program Hearings*, *supra* note 127, at 13 (statement of Alexis M. Herman, Sec’y of Labor, Dep’t of Labor).

¹⁵³ See MILLER, *supra* note 8, at 45–46. Such theories argue, for example, that gangs provide models of masculinity to boys who lack such models at home, and that the news and entertainment industry have glorified gangs. See *id.*

¹⁵⁴ See *Youth Violence Prevention Program Hearings*, *supra* note 127, at 46 (prepared statement of Eric H. Holder Jr., Deputy Att’y Gen., Dep’t of Justice).

¹⁵⁵ See *id.*

¹⁵⁶ See *id.* at 17 (prepared statement of Alexis M. Herman, Sec’y of Labor, Dep’t of Labor).

¹⁵⁷ See *id.* (“Staff from across the Department of Labor, as well as other Departments, including Justice, Education, Health and Human Services, and the Corporation for National Service have been working to connect our youth programs.”).

¹⁵⁸ See MILLER, *supra* note 8, at 46–47.

¹⁵⁹ See *id.* at 18 tbl.7. The thirteen cities and towns were Camarillo, Castroville, Manteca, and South Pasadena, California; Lake Bluff, Illinois; Belmont, Milton, and Winthrop, Massachusetts; Bristol Township, Cheltenham, Norristown, and West Chester, Pennsylvania; and Charleston, South Carolina. See *id.*

¹⁶⁰ *Id.*

¹⁶¹ See *id.*

methods that were used in these places could reveal useful approaches.¹⁶² These approaches could then be spread around the country through grants encouraging them, an approach that would appeal to those wary of expanding the federal criminal code.¹⁶³

Compared to the many areas the CGAA could have pursued but did not—immigration, underemployment, family problems, the media, and apparent local successes—the changes the bill would make to current gang policy are minor. The most significant move would be the creation of HIIGAs, which might or might not work but would certainly cost several hundred million dollars. Most of the bill's other provisions would simply add a few years to the sentences of criminals who are already being convicted under current law. The bill's grant provision would increase financing dramatically, but at the same time would change the rules to allow spending the money not on community-based solutions but on more prosecution. The persistence of the gang problem suggests that Congress should look for new approaches rather than simply tinkering with old ones through the Criminal Gang Abatement Act.

—Andrew E. Goldsmith

¹⁶² See *id.* at 47.

¹⁶³ See *Federalism and Crime Control Hearings*, *supra* note 140, at 76 (statement of Gerald B. Lefcourt, former President, Nat'l Assoc. of Crim. Def. Lawyers) (describing H.R. 1501's use of grants to states rather than expansion of federal agencies as "a better way to go than to create a Federal bureaucracy").