

105TH CONGRESS
1ST SESSION

S. 54

To reduce interstate street gang and organized crime activity, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 21, 1997

Mr. HATCH (for himself, Mrs. FEINSTEIN, Mr. D'AMATO, Mr. HARKIN, and Mr. REID) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To reduce interstate street gang and organized crime activity, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Gang Violence
5 Act”.

6 **SEC. 2. INCREASE IN OFFENSE LEVEL FOR PARTICIPATION**
7 **IN CRIME AS A GANG MEMBER.**

8 (a) DEFINITION.—In this section, the term “criminal
9 street gang” has the same meaning as in section 521(a)

1 of title 18, United States Code, as amended by section
2 3 of this Act.

3 (b) AMENDMENT OF SENTENCING GUIDELINES.—

4 Pursuant to its authority under section 994(p) of title 28,
5 United States Code, the United States Sentencing Com-
6 mission shall amend the Federal sentencing guidelines to
7 provide an appropriate enhancement, increasing the of-
8 fense level by not less than 6 levels, for any offense, if
9 the offense was both committed in connection with, or in
10 furtherance of, the activities of a criminal street gang and
11 the defendant was a member of the criminal street gang
12 at the time of the offense.

13 (c) CONSTRUCTION WITH OTHER GUIDELINES.—

14 The amendment made pursuant to subsection (b) shall
15 provide that the increase in the offense level shall be in
16 addition to any other adjustment under chapter 3 of the
17 Federal sentencing guidelines.

18 **SEC. 3. AMENDMENT OF TITLE 18 WITH RESPECT TO CRIMI-**

19 **NAL STREET GANGS.**

20 (a) IN GENERAL.—Section 521 of title 18, United
21 States Code, is amended—

22 (1) in subsection (a)—

23 (A) by striking “(a) DEFINITIONS.—” and
24 inserting the following:

25 “(a) DEFINITIONS.—In this section:”, and

1 (B) by striking “‘conviction” and all that
2 follows through the end of the subsection and
3 inserting the following:

4 “(1) CRIMINAL STREET GANG.—The term
5 ‘criminal street gang’ means an ongoing group, club,
6 organization, or association of 3 or more persons,
7 whether formal or informal—

8 “(A) a primary activity of which is the
9 commission of 1 or more predicate gang crimes;

10 “(B) any members of which engage, or
11 have engaged during the 5-year period preced-
12 ing the date in question, in a pattern of crimi-
13 nal gang activity; and

14 “(C) the activities of which affect inter-
15 state or foreign commerce.

16 “(2) PATTERN OF CRIMINAL GANG ACTIVITY.—
17 The term ‘pattern of criminal gang activity’ means
18 the commission of 2 or more predicate gang crimes
19 committed in connection with, or in furtherance of,
20 the activities of a criminal street gang—

21 “(A) at least 1 of which was committed
22 after the date of enactment of the Federal
23 Gang Violence Act;

1 “(B) the first of which was committed not
2 more than 5 years before the commission of an-
3 other predicate gang crime; and

4 “(C) that were committed on separate oc-
5 casions.

6 “(3) PREDICATE GANG CRIME.—The term
7 ‘predicate gang crime’ means an offense, including
8 an act of juvenile delinquency that, if committed by
9 an adult, would be an offense that is—

10 “(A) a Federal offense—

11 “(i) that is a crime of violence (as
12 that term is defined in section 16) includ-
13 ing carjacking, drive-by-shooting, shooting
14 at an unoccupied dwelling or motor vehicle,
15 assault with a deadly weapon, and homi-
16 cide;

17 “(ii) that involves a controlled sub-
18 stance (as that term is defined in section
19 102 of the Controlled Substances Act (21
20 U.S.C. 802)) for which the penalty is im-
21 prisonment for not less than 5 years;

22 “(iii) that is a violation of section
23 844, section 875 or 876 (relating to extor-
24 tion and threats), section 1084 (relating to

1 gambling), section 1955 (relating to gam-
2 bling), chapter 44 (relating to firearms), or
3 chapter 73 (relating to obstruction of jus-
4 tice);

5 “(iv) that is a violation of section
6 1956 (relating to money laundering), inso-
7 far as the violation of such section is relat-
8 ed to a Federal or State offense involving
9 a controlled substance (as that term is de-
10 fined in section 102 of the Controlled Sub-
11 stances Act (21 U.S.C. 802)); or

12 “(v) that is a violation of section
13 274(a)(1)(A), 277, or 278 of the Immigra-
14 tion and Nationality Act (8 U.S.C.
15 1324(a)(1)(A), 1327, or 1328) (relating to
16 alien smuggling);

17 “(B) a State offense involving conduct that
18 would constitute an offense under subparagraph
19 (A) if Federal jurisdiction existed or had been
20 exercised; or

21 “(C) a conspiracy, attempt, or solicitation
22 to commit an offense described in subparagraph
23 (A) or (B).

1 “(3) STATE.—The term ‘State’ includes a State
2 of the United States, the District of Columbia, Puer-
3 to Rico, Guam, the Virgin Islands, and any other
4 territory of possession of the United States.”; and

5 (2) by striking subsections (b), (c), and (d) and
6 inserting the following:

7 “(b) CRIMINAL PENALTIES.—Any person who en-
8 gages in a pattern of criminal gang activity—

9 “(1) shall be sentenced to—

10 “(A) a term of imprisonment of not less
11 than 10 years and not more than life, fined in
12 accordance with this title, or both; and

13 “(B) the forfeiture prescribed in section
14 413 of the Controlled Substances Act (21
15 U.S.C. 853); and

16 “(2) if any person engages in such activity after
17 1 or more prior convictions under this section have
18 become final, shall be sentenced to—

19 “(A) a term of imprisonment of not less
20 than 20 years and not more than life, fined in
21 accordance with this title, or both; and

22 “(B) the forfeiture prescribed in section
23 412 of the Controlled Substances Act (21
24 U.S.C. 853).”.

1 (b) CONFORMING AMENDMENT.—Section 3663(c)(4)
 2 of title 18, United States Code, is amended by inserting
 3 before “chapter 46” the following: “section 521 of this
 4 title.”.

5 **SEC. 4. INTERSTATE AND FOREIGN TRAVEL OR TRANSPOR-**
 6 **TATION IN AID OF CRIMINAL STREET GANGS.**

7 (a) TRAVEL ACT AMENDMENTS.—

8 (1) PROHIBITED CONDUCT AND PENALTIES.—
 9 Section 1952(a) of title 18, United States Code, is
 10 amended to read as follows:

11 “(a) PROHIBITED CONDUCT AND PENALTIES.—

12 “(1) IN GENERAL.—Any person who—

13 “(A) travels in interstate or foreign com-
 14 merce or uses the mail or any facility in inter-
 15 state or foreign commerce, with intent to—

16 “(i) distribute the proceeds of any un-
 17 lawful activity; or

18 “(ii) otherwise promote, manage, es-
 19 tablish, carry on, or facilitate the pro-
 20 motion, management, establishment, or
 21 carrying on, of any unlawful activity; and

22 “(B) after travel or use of the mail or any
 23 facility in interstate or foreign commerce de-
 24 scribed in subparagraph (A), performs, at-
 25 tempts to perform, or conspires to perform an

1 act described in clause (i) or (ii) of subpara-
2 graph (A),
3 shall be fined under this title, imprisoned not more
4 than 10 years, or both.

5 “(2) CRIMES OF VIOLENCE.—Any person
6 who—

7 “(A) travels in interstate or foreign com-
8 merce or uses the mail or any facility in inter-
9 state or foreign commerce, with intent to com-
10 mit any crime of violence to further any unlaw-
11 ful activity; and

12 “(B) after travel or use of the mail or any
13 facility in interstate or foreign commerce de-
14 scribed in subparagraph (A), commits, attempts
15 to commit, or conspires to commit any crime of
16 violence to further any unlawful activity,
17 shall be fined under this title, imprisoned for not
18 more than 20 years, or both, and if death results
19 shall be sentenced to death or be imprisoned for any
20 term of years or for life.”.

21 (2) DEFINITIONS.—Section 1952(b) of title 18,
22 United States Code, is amended to read as follows:

23 “(b) DEFINITIONS.—In this section:

24 “(1) CONTROLLED SUBSTANCE.—The term
25 ‘controlled substance’ has the same meaning as in

1 section 102(6) of the Controlled Substances Act (21
2 U.S.C. 802(6)).

3 “(2) STATE.—The term ‘State’ includes a State
4 of the United States, the District of Columbia, and
5 any commonwealth, territory, or possession of the
6 United States.

7 “(3) UNLAWFUL ACTIVITY.—The term ‘unlaw-
8 ful activity’ means—

9 “(A) predicate gang crime (as that term is
10 defined in section 521);

11 “(B) any business enterprise involving
12 gambling, liquor on which the Federal excise
13 tax has not been paid, narcotics or controlled
14 substances, or prostitution offenses in violation
15 of the laws of the State in which the offense is
16 committed or of the United States;

17 “(C) extortion, bribery, arson, robbery,
18 burglary, assault with a deadly weapon, retalia-
19 tion against or intimidation of witnesses, vic-
20 tims, jurors, or informants, assault resulting in
21 bodily injury, possession of or trafficking in sto-
22 len property, illegally trafficking in firearms,
23 kidnapping, alien smuggling, or shooting at an
24 occupied dwelling or motor vehicle, in each case,
25 in violation of the laws of the State in which

1 the offense is committed or of the United
2 States; or

3 “(D) any act that is indictable under sec-
4 tion 1956 or 1957 of this title or under sub-
5 chapter II of chapter 53 of title 31.”.

6 (b) AMENDMENT OF SENTENCING GUIDELINES.—

7 (1) IN GENERAL.—Pursuant to its authority
8 under section 994(p) of title 28, United States Code,
9 the United States Sentencing Commission shall
10 amend chapter 2 of the Federal sentencing guide-
11 lines so that—

12 (A) the base offense level for traveling in
13 interstate or foreign commerce in aid of a
14 criminal street gang or other unlawful activity
15 is increased to 12; and

16 (B) the base offense level for the commis-
17 sion of a crime of violence in aid of a criminal
18 street gang or other unlawful activity is in-
19 creased to 24.

20 (2) DEFINITIONS.—In this subsection—

21 (A) the term “crime of violence” has the
22 same meaning as in section 16 of title 18, Unit-
23 ed States Code;

24 (B) the term “criminal street gang” has
25 the same meaning as in 521(a) of title 18,

1 United States Code, as amended by section 3 of
2 this Act; and

3 (C) the term “unlawful activity” has the
4 same meaning as in section 1952(b) of title 18,
5 United States Code, as amended by this sec-
6 tion.

7 **SEC. 5. SOLICITATION OR RECRUITMENT OF PERSONS IN**
8 **CRIMINAL GANG ACTIVITY.**

9 (a) PROHIBITED ACTS.—Chapter 26 of title 18,
10 United States Code, is amended by adding at the end the
11 following:

12 **“§ 522. Recruitment of persons to participate in**
13 **criminal street gang activity**

14 “(a) PROHIBITED ACT.—It shall be unlawful for any
15 person to—

16 “(1) use any facility in, or travel in, interstate
17 or foreign commerce, or cause another to do so, to
18 recruit, solicit, request, induce, counsel, command,
19 or cause another person to be a member of a crimi-
20 nal street gang, or conspire to do so; or

21 “(2) recruit, solicit, request, induce, counsel,
22 command, or cause another person to engage in a
23 predicate gang crime for which such person may be
24 prosecuted in a court of the United States, or con-
25 spire to do so.

1 “(b) PENALTIES.—A person who violates subsection
2 (a) shall—

3 “(1) if the person recruited—

4 “(A) is a minor, be imprisoned for a term
5 of not less than 4 years and not more than 10
6 years, fined in accordance with this title, or
7 both; or

8 “(B) is not a minor, be imprisoned for a
9 term of not less than 1 year and not more than
10 10 years, fined in accordance with this title, or
11 both; and

12 “(2) be liable for any costs incurred by the
13 Federal Government or by any State or local govern-
14 ment for housing, maintaining, and treating the
15 minor until the minor reaches the age of 18.

16 “(c) DEFINITIONS.—In this section—

17 “(1) the terms ‘criminal street gang’ and ‘pred-
18 icate gang crime’ have the same meanings as in sec-
19 tion 521; and

20 “(2) the term ‘minor’ means a person who is
21 younger than 18 years of age.”.

22 (b) SENTENCING GUIDELINES.—Pursuant to its au-
23 thority under section 994(p) of title 28, United States
24 Code, the United States Sentencing Commission shall
25 amend chapter 2 of the Federal sentencing guidelines to

1 provide an appropriate enhancement for any offense in-
 2 volving the recruitment of a minor to participate in a gang
 3 activity.

4 (c) TECHNICAL AMENDMENT.—The chapter analysis
 5 for chapter 26 of title 18, United States Code, is amended
 6 by adding at the end the following:

“522. Recruitment of persons to participate in criminal street gang activity.”.

7 **SEC. 6. CRIMES INVOLVING THE RECRUITMENT OF PER-**
 8 **SONS TO PARTICIPATE IN CRIMINAL STREET**
 9 **GANGS AND FIREARMS OFFENSES AS RICO**
 10 **PREDICATES.**

11 Section 1961(1) of title 18, United States Code, is
 12 amended—

13 (1) by striking “or” before “(F)”; and

14 (2) by inserting before the semicolon at the end
 15 the following: “, (G) an offense under section 522 of
 16 this title, or (H) an act or conspiracy to commit any
 17 violation of chapter 44 of this title (relating to fire-
 18 arms)”.

19 **SEC. 7. PROHIBITIONS RELATING TO FIREARMS.**

20 (a) PENALTIES.—Section 924(a)(6) of title 18, Unit-
 21 ed States Code, is amended—

22 (1) by striking subparagraph (A);

23 (2) by redesignating subparagraph (B) as sub-
 24 paragraph (A);

25 (3) in subparagraph (A), as redesignated—

1 (A) by striking “(B) A person other than
2 a juvenile who knowingly” and inserting “(A) A
3 person who knowingly”;

4 (B) in clause (i), by striking “not more
5 than 1 year” and inserting “not less than 1
6 year and not more than 5 years”; and

7 (C) in clause (ii), by inserting “not less
8 than 1 year and” after “imprisoned”; and

9 (4) by adding at the end the following:

10 “(B) Notwithstanding subparagraph (A), no
11 mandatory minimum sentence shall apply to a juve-
12 nile who is less than 13 years of age.”.

13 (b) SERIOUS JUVENILE DRUG OFFENSES AS ARMED
14 CAREER CRIMINAL PREDICATES.—Section 924(e)(2)(A)
15 of title 18, United States Code, is amended—

16 (1) in clause (i), by striking “or” at the end;

17 (2) in clause (ii), by adding “or” at the end;

18 and

19 (3) by adding at the end the following:

20 “(iii) any act of juvenile delinquency that
21 if committed by an adult would be an offense
22 described in clause (i) or (ii);”.

23 (c) TRANSFER OF FIREARMS TO MINORS FOR USE
24 IN CRIME.—Section 924(h) of title 18, United States

1 Code, is amended by striking “10 years, fined in accord-
 2 ance with this title, or both” and inserting “10 years, and
 3 if the transferee is a person who is under 18 years of age,
 4 imprisoned for a term of not less than 3 years, fined in
 5 accordance with this title, or both”.

6 **SEC. 8. AMENDMENT OF SENTENCING GUIDELINES WITH**
 7 **RESPECT TO BODY ARMOR.**

8 (a) DEFINITIONS.—In this section—

9 (1) the term “body armor” means any product
 10 sold or offered for sale as personal protective body
 11 covering intended to protect against gunfire, regard-
 12 less of whether the product is to be worn alone or
 13 is sold as a complement to another product or gar-
 14 ment; and

15 (2) the term “law enforcement officer” means
 16 any officer, agent, or employee of the United States,
 17 a State, or a political subdivision of a State, author-
 18 ized by law or by a government agency to engage in
 19 or supervise the prevention, detection, investigation,
 20 or prosecution of any violation of criminal law.

21 (b) SENTENCING ENHANCEMENT.—The United
 22 States Sentencing Commission shall amend the Federal
 23 sentencing guidelines to provide an appropriate sentencing
 24 enhancement, increasing the offense level not less than 2

1 levels, for any crime in which the defendant used body
2 armor.

3 (c) APPLICABILITY.—No Federal sentencing guide-
4 line amendment made pursuant to this section shall apply
5 if the Federal crime in which the body armor is used con-
6 stitutes a violation of, attempted violation of, or conspir-
7 acy to violate the civil rights of a person by a law enforce-
8 ment officer acting under color of the authority of such
9 law enforcement officer.

10 **SEC. 9. ADDITIONAL PROSECUTORS.**

11 There are authorized to be appropriated \$20,000,000
12 for each of the fiscal years 1998, 1999, 2000, 2001, and
13 2002 for the hiring of Assistant United States Attorneys
14 and attorneys in the Criminal Division of the Department
15 of Justice to prosecute juvenile criminal street gangs (as
16 that term is defined in section 521(a) of title 18, United
17 States Code, as amended by section 3 of this Act).

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