

# Legal Memorandum

Executive Summary

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## Gang Crime: Effective and Constitutional Policies to Stop Violent Gangs

*David B. Muhlhausen, Ph.D., and Erica Little*

The Federal Bureau of Investigation reported in 2006 that violent crime incidents increased by 1.3 percent and property crime incidents decreased by 2.9 percent from 2005 to 2006. The small increase in violent crime needs to be interpreted with caution because the figure does not adjust for population growth. Thus, the actual increase in violent crime may be overstated.

Nevertheless, the potential for this slight increase to develop into a long-term trend is cause for concern. Some stories have also reported an increase in gang crime, fueling fears that gang crime might reassert itself as a major problem.

Due to the public safety concerns posed by criminal gangs, Members of Congress have proposed expanding the national government's role in fighting crime, overshadowing what has been the traditional realm of state and local governments. They also advocate expanding current national government programs thought to address gang crime, even though little evidence suggests that the existing national programs are successful in gang prevention or suppression.

The tendency to search for a solution at the national level is misguided and problematic. Federal crimes should address problems reserved to the national government in the Constitution. Criminal street gangs are a problem common to all of the states, but the crimes that they commit are almost entirely and inherently local in nature and

regulated by state criminal law, law enforcement, and courts.

Members of Congress should affirm the proper division of authority between the federal government and the states in combating violent crime by reducing federal intrusions into state and local crime-fighting activities.

To address gang-related crime appropriately, the national government should limit itself to handling tasks that are within its constitutionally designed sphere and that state and local governments cannot perform by themselves. Some crimes committed by gangs are predominantly interstate in nature, such as a purposeful scheme to transport stolen goods across state lines to evade detection using interstate or international banking facilities. Such conduct falls under Congress's constitutional power to regulate interstate commerce and already is the focus of federal criminal law.

In addition, the national government is well situated to help coordinate information sharing and research on law enforcement activities that involve reducing interstate gang-related crime, securing the nation's borders, deporting gang members who are

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(202) 546-4400 [heritage.org](http://heritage.org)

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illegal immigrants, and incarcerating them if they return to the United States illegally.

Along these lines, the federal government could combat gang crime in four ways:

- Improve information sharing and coordination,
- Secure the nation's borders,
- Deport illegal immigrants who commit gang crimes and incarcerate criminal illegal immigrants if they return to the United States illegally after deportation, and
- Improve international law enforcement coordination.

State and local governments are the most appropriate level of government to develop policies to

prevent and suppress most gang-related crime because gang crimes are almost entirely and inherently local in nature. On the prevention side, Boys and Girls Clubs and multisystemic therapy have a track record of success in preventing delinquency and may be promising gang-related crime-prevention programs. For gang suppression, Boston's Operation Ceasefire demonstrated that a law enforcement strategy based on generating a strong deterrent to gang violence can make a difference.

—David B. Muhlhausen, Ph.D., is Senior Policy Analyst in the Center for Data Analysis and Erica Little is Legal Policy Analyst in the Center for Legal and Judicial Studies at The Heritage Foundation.

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The Federal Bureau of Investigation reported in 2006 that violent crime incidents increased by 1.3 percent and property crime incidents decreased by 2.9 percent from 2005 to 2006.<sup>1</sup> The small increase in violent crime needs to be interpreted with caution because the figure does not adjust for population growth. Thus, the actual increase in violent crime may be overstated. Nevertheless, the potential for this slight increase to develop into a long-term trend is cause for concern. Some stories have also reported an increase in gang crime, fueling fears that gang crime might reassert itself as a major problem.

This development has led some to speculate that violent criminal gangs are particularly to blame for the rise in crime.<sup>2</sup> In 2004, the National Youth Gang Survey (NYGS), a nationally representative sample of law enforcement agencies, estimated that there were 760,000 active gang members and 24,000 gangs in the United States. About 25 percent of homicides in cities with populations of 100,000 residents or more in 2004 were suspected by police departments of being gang-related. The toll is higher in some large cities, including Los Angeles and Chicago, with more than half of all homicides thought to be gang-related.<sup>3</sup>

The prevalence of gangs and the number of crimes committed by gang members demonstrate that while gang activity may not be a new problem, it certainly presents serious contemporary issues. Due to the public safety concerns posed by criminal gangs, Members of Congress, including Senators Diane Feinstein (D-CA) and Robert Menendez (D-NJ),

### Talking Points

- To address gang-related crime appropriately, the national government should limit itself to tasks that are within its constitutionally designed sphere and that state and local governments are not well situated to perform.
- Criminal street gangs are a problem common to all states, but the crimes they commit are almost entirely and inherently local in nature and regulated by state criminal law, law enforcement, and courts. Thus, state and local governments are the right institutions to respond to the ordinary street crimes committed by gangs.
- The national government should secure the nation's borders, deport gang members who are illegal immigrants, incarcerate them if they return to the United States illegally, and produce research and coordinate information sharing on law enforcement activities that involve interstate gang-related crime.

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have proposed expanding the national government's role in fighting crime into what has been the traditional realm of state and local governments. They also advocate expanding current national government programs thought to address gang crime, even though little evidence suggests that the existing national programs are successful in gang prevention or suppression.

To address gang-related crime appropriately, the national government should limit itself to handling tasks that are within its constitutionally designed sphere and that state and local governments cannot perform by themselves. Criminal street gangs are a problem common to all the states, but the crimes that they commit are almost entirely and inherently local in nature and regulated by state criminal law, law enforcement, and courts. Thus, state and local governments are best suited to respond to the ordinary street crimes committed by gangs.

### **The Federal Role in Reducing Gang-Related Crime**

At least eight proposals to address gang violence on the federal level are currently pending before Congress.<sup>4</sup> Some, such as the Gang Abatement and Prevention Act of 2007 (S. 456), sponsored by Senator Feinstein, have been introduced several times before in various forms.<sup>5</sup> Others are new, like the Fighting Gangs and Empowering Youth Act of 2007 (S. 990), introduced by Senators Menendez and Frank R. Lautenberg (D-NJ). The different proposals represent a variety of methods

for addressing the problems, from creating new federal crimes to handing out large chunks of money for police salaries and creating programs to prevent gang recruitment. Regrettably, most of the proposed solutions disregard the constitutional framework on which the American system of government is based.

Senator Feinstein's bill is supported by members of both parties and, like many of these proposals, is laudable in its purpose but misguided. The bill aims to fight gang crime by adding an expansive definition of "gang crime" to the ever-growing list of federal crimes, as well as other new offenses such as the crime of gang recruitment. This not only treads on the police powers of the states, which already criminalize all the predicate crimes that the bill lists, but also is a dangerous use of federal criminal law.

The current bill identifies the prohibited conduct by using overly broad and vague definitions that cover too much conduct and too many persons. The bill's definition of a "criminal street gang" could include anything from the Rotary Club to a business organization if any single individual in the group is accused of committing a total of three crimes, only one of which needs to have occurred after the passage of the bill. One of the crimes must be a violent felony, but the other two crimes could be anything from unlawful possession of a firearm to fraud. Although the current bill narrows some of the definitions from the version introduced in the 109th Congress, the difficulty of defining gang crime suggests that federal

1. Press release, "Preliminary Crime Statistics for 2006," Federal Bureau of Investigation, June 4, 2007, at [www.fbi.gov/ucr/06prelim/pressrelease.htm](http://www.fbi.gov/ucr/06prelim/pressrelease.htm) (June 4, 2007).
2. The Gang Abatement and Prevention Act of 2007, S. 456, §3. See also Greg Gordon and Marisa Taylor, "Justice Department Tries to Show It Has Plans to Fight Rise in Crime," *Pittsburgh Post-Gazette*, January 17, 2007, p. A7.
3. Arlen Egley, Jr., and Christina E. Ritz, "Highlights of the 2004 National Youth Gang Survey," U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention *Fact Sheet*, April 2006, pp. 1-2, at [www.ncjrs.gov/pdffiles1/ojjdp/jfs200601.pdf](http://www.ncjrs.gov/pdffiles1/ojjdp/jfs200601.pdf) (June 1, 2007).
4. S. 144, sponsored by Senator Barbara Boxer (D-CA); H.R. 367, sponsored by Representative David G. Reichert (R-WA); H.R. 638, sponsored by Representative Bobby Jindal (R-LA); S. 456, sponsored by Senator Feinstein; S. 990, sponsored by Senator Menendez; H.R. 880, sponsored by Representative J. Randy Forbes (R-VA); H.R. 1070, sponsored by Representative Joe Baca (D-CA); and H.R. 1184, sponsored by Representative Diane E. Watson (D-CA).
5. See Brian Walsh and Erica Little, "Federalizing 'Gang Crime' Is Counterproductive and Dangerous," Heritage Foundation *WebMemo* No. 1221, September 22, 2006, at [www.heritage.org/Research/Crime/wm1221.cfm](http://www.heritage.org/Research/Crime/wm1221.cfm).

criminal law might not be the best tool with which to combat the behavior.

Even without its constitutional problems, S. 456 still creates significant federalism policy problems by involving the national government in fighting ordinary street crime—problems that most of the congressional proposals share. S. 990, Senators Menendez and Lautenberg’s bill, would involve the federal government in areas that are traditionally and most effectively addressed by state and local governments. The bill intends to be comprehensive, funding after-school programs for at-risk youth and law enforcement officers and creating a new federal crime of gang recruitment. In his floor statement, Senator Menendez described a proposal that suffers from the same problems of overbreadth and vagueness.

The federally funded programs for at-risk youth in S. 990 are of the type most effectively addressed at the state and local levels. Local operations can best address community problems because they have the familiarity, the knowledge, and—most important—the local accountability to improve their communities. Federal government programs simply do not have the same strengths and advantages.

S. 990 would also create a new federal entitlement program for state and local law enforcement agencies similar to the Community Oriented Policing Services (COPS) program. Research has shown that the COPS program failed to reach its intended goal of adding 100,000 police officers and was ineffective in reducing crime.<sup>6</sup> The grants were intended to supplement law enforcement funding to allow the placement of additional officers on the streets. Instead, the COPS program has encouraged inefficient use of resources as local agencies have grown dependent on the grants for their routine operations—something for which the grants were not intended. Senator Menendez’s bill would only perpetuate the problem by extending the ineffective grant program.

Congress’s desire to weigh in on gang activity is easy to understand. It is a complex problem that has not yet found an effective solution. What is needed is further study, not a federal government takeover that falsely promises a quick fix.

**Overfederalization of Crime.** The tendency to search for a solution at the national level is misguided and problematic. Federal crimes should address problems reserved to the national government in the Constitution.

In a speech to the American Law Institute, the late Chief Justice William Rehnquist reiterated what the Judicial Conference of the United States had stated years before: “Civil and criminal jurisdiction should be assigned to the federal courts only to further clearly defined and justified national interests.”<sup>7</sup> He went on to list the types of crimes to which the federal government should be limited: offenses against the federal government or its interests, crimes with a substantial multi-state or international aspect, crimes involving complex commercial or institutional enterprises, serious state or local government corruption, and crimes raising highly sensitive local issues.<sup>8</sup>

Criminal street gangs are a problem common to all of the states, but the crimes that they commit are almost entirely and inherently local in nature and regulated by state criminal law, law enforcement, and courts. For example, despite the fact that an automobile theft could involve interstate travel, it does not do so in most instances. State agencies investigate and prosecute such crimes. Adding the label of “gang crime” does not change the offense in a way that justifies or constitutionally authorizes federal involvement unless there really is significant interstate activity that has a *direct and substantial* effect on interstate commerce. In the same speech to the American Law Institute, Rehnquist repeated a principle enunciated by President Abraham Lincoln in the 19th century and President Dwight D. Eisenhower in the 20th

6. See David B. Muhlhausen, Ph.D., and Erica Little, “Federal Law Enforcement Grants and Crime Rates: No Connection Except for Waste and Abuse,” Heritage Foundation *Backgrounder* No. 2015, March 14, 2007, at [www.heritage.org/Research/Crime/bg2015.cfm](http://www.heritage.org/Research/Crime/bg2015.cfm).

7. William H. Rehnquist, 11 Fed. Sent. R. 132 (1998).

8. *Ibid.*



century: “Matters that can be adequately handled by the states should be left to them, [and] matters that cannot be so handled should be undertaken by the federal government.”<sup>9</sup>

When Congress adds to the federal criminal law, it generally claims to do so based on its power under Article I, Section 8 of the Constitution, which is known as the Commerce Clause, arguing that the activity being criminalized has some sort of effect on interstate commerce. This use of the Commerce Clause is far from the true meaning of the Constitution. As Justice Clarence Thomas wrote in his concurring opinion in *United States v. Lopez*, if Congress had been given authority over matters that simply “affect” interstate commerce, most of Article I, Section 8, which enumerates Congress’s powers, would be rendered surplusage.<sup>10</sup>

In addition to violating the constitutional structure of the U.S. government, federalizing crime also reduces accountability and efficiency as law enforcement agencies fight crime. By involving the federal government, Congress undermines the responsibility of state and local law enforcement to develop effective crime-reduction policies. Local officials can pass the buck by pointing the finger at federal enforcement authorities. The problem is compounded because federal action is often ineffective. Federalizing a crime is frequently a symbolic gesture, enabling Congress to say that it has addressed the problem without regard to whether or not the new laws will actually be implemented, much less actually reduce crime.<sup>11</sup> Although it may appear harmless, Congress’s gesture only impedes state and local enforcement in addressing a problem that should be solved primarily at the state and local levels.

In addition to undermining state and local accountability, federal involvement in crime fighting is detrimental to quintessential federal responsibilities. Enforcing criminal law that is not really national in scope is a misuse of federal resources and a distraction from true national concerns. By increasing the federal role in traditional state and local responsibilities, Congress needlessly drains federal resources that should be used for more urgent priorities such as pursuing foreign spies, combating counterfeiting, fighting international terrorism, and improving homeland security.

**Ineffective Interference.** In addition to creating new federal crimes, Congress has tried to fight gang crime through intergovernmental grants to subsidize the routine responsibilities of state and local criminal justice programs. Such intergovernmental grants have been used for police officer salaries and the operational expenses of juvenile delinquency prevention and correctional programs. While subsidizing the routine activities of state criminal justice systems is popular with Congress, especially when funding can be earmarked, this approach erodes the responsibilities of state and local governments. In addition, the federal government has had difficulty in monitoring and evaluating grant-funded programs to ensure that the funding is not being wasted.<sup>12</sup>

Federal programs are based on the myth that the federal government is more effective than state law enforcement in fighting crime.<sup>13</sup> However, studies that examine the federal government’s experience in fighting crime demonstrate otherwise. In 1997, the U.S. Department of Justice (DOJ) published a report by the University of Maryland’s Department of Criminology and Crimi-

9. See *United States v. Morrison*, 529 U.S. 598 (2000), in which the Supreme Court struck down the criminal provision of the federal Violence Against Women Act and rejected the attenuated chain of causation between crimes against women and their admitted impact on interstate commerce. The mere fact that many gangs have interstate affiliates or other connections is not enough.

10. *United States v. Lopez*, 514 U.S. 549, 589 (1995).

11. Paul Rosensweig, “The Gang Act Needs Modification,” Heritage Foundation *WebMemo* No. 494, May 3, 2004, at [www.heritage.org/Research/Crime/wm494.cfm](http://www.heritage.org/Research/Crime/wm494.cfm).

12. Laurie E. Ekstrand, “Office of Justice Programs: Problems with Grant Monitoring and Concerns About Evaluation Studies,” GAO-02-507T, testimony before the Subcommittee on Crime, Committee on the Judiciary, House of Representatives, March 7, 2002, at [www.gao.gov/new.items/d02507t.pdf](http://www.gao.gov/new.items/d02507t.pdf) (June 1, 2007).

13. Rosensweig, “The Gang Act Needs Modification.”

nal Justice that called on Congress to devote more resources to evaluating crime-prevention programs because many DOJ crime-prevention programs either were determined to be ineffective or had escaped scrutiny altogether.<sup>14</sup> Ten years later, Congress still has not given significant attention to ensuring that federally funded crime-prevention efforts are in fact preventing crime.

A prime example of a failed federal program that continues to receive popular support from the Administration and Congress is the Gang Resistance Education and Training (G.R.E.A.T.) program—an offshoot of the ineffective Drug Abuse Resistance Education (D.A.R.E.) program.<sup>15</sup> G.R.E.A.T., a school-based gang-prevention program, uses uniformed police officers as instructors in middle school classrooms to teach about the negative consequences of gang participation.<sup>16</sup>

G.R.E.A.T. appears to be successful when “intermediate effects” are used to measure effectiveness. In a national evaluation of G.R.E.A.T., the program was found to be associated with declines in student-reported victimization and risk seeking and increases in the negative perception of gangs, favorable attitudes toward police, and pro-social peer affiliations.<sup>17</sup> However, these intermediate effects are not as important as reducing gang membership and criminal activity—the ultimate goals of any gang-prevention program.

The same national evaluation found that G.R.E.A.T. did not have any statistically significant impact on gang membership, drug use, and total self-reported delinquency.<sup>18</sup>

Despite these underwhelming results, the program retains popular support in the Administration and Congress. Commenting on G.R.E.A.T., Professors Malcom W. Klein of the University of Southern California and Cheryl L. Maxson of the University of California, Irvine, conclude that the program, which “was modeled on a failed program with a positive image is, itself, a study in the application of conventional wisdom in the face of contrary empirical knowledge.”<sup>19</sup>

### What the Federal Government Should Do

Although gang crime is largely local in nature, the federal government does have a role to play. Some crimes committed by gangs are essentially interstate in nature, such as a purposeful scheme to transport stolen goods across state lines to evade detection using interstate or international banking facilities. Such conduct falls under Congress’s constitutional power to regulate interstate commerce and already is the focus of federal criminal law. That serious responsibility should not be diluted with federal investigations of vandalism or petty theft.

It should be noted, however, that the fact that a gang is national in scope is insufficient by itself to create the interstate nexus. The crime itself must warrant federal intervention.

In addition, the federal government has a role in producing and coordinating research and information sharing when the states are unable to do so in their individual capacities. State and local governments do not have access to all of the knowledge and experience in law enforcement that the federal

14. Lawrence Sherman, Denise Gottfredson, Doris Mackenzie, John Eck, Peter Rueter, and Shawn Bushway, *Preventing Crime: What Works, What Doesn't, What's Promising*, University of Maryland, Department of Criminology and Criminal Justice, 1997.

15. Overall, evaluations of D.A.R.E. indicate that the program is ineffective at preventing substance abuse. For a review of D.A.R.E. evaluations, see Denise C. Gottfredson, David B. Wilson, and Stacy Skroban Najaka, “School-based Crime Prevention,” in Lawrence W. Sherman, David P. Farrington, Brandon C. Welsh, and Doris Layton MacKenzie, eds., *Evidence-Based Crime Prevention* (New York: Routledge, 2002), pp. 56–163.

16. Finn-Aage Esbensen, D. Wayne Osgood, Terrance J. Taylor, Dana Patterson, and Adrienne Freng, “How Great Is G.R.E.A.T.? Results from a Longitudinal Quasi-Experimental Design,” *Criminology and Public Policy*, Vol. 1, No. 1 (November 2001), pp. 87–118.

17. *Ibid.*

18. *Ibid.*

19. Malcom W. Klein and Cheryl L. Maxson, *Street Gang Patterns and Policies* (Oxford: Oxford University Press, 2006), p. 96.

government does. For example, a given state may have only one or two large cities where it can collect crime data and test urban crime-reduction strategies. As a result, the states are not in a position to engage in meta-analysis of the various programs and efforts.

However, the federal government is not the only institution that could provide such a service. Foundations and universities could also fill this role. In addition, states can form associations for information sharing and collaboration, such as the National District Attorneys Association or the National Association of (state) Attorneys General.

Members of Congress should affirm the proper division of authority between the federal government and the states in combating violent crime by reducing federal intrusions into state and local crime-fighting activities. Instead of subsidizing the routine activities of state criminal justice systems, the federal government should stick to handling tasks that are within its constitutionally designed sphere and that state and local governments cannot perform by themselves.

Along these lines, the federal government could combat gang crime in four ways:

- Improve information sharing and coordination,
- Secure the nation's borders,
- Deport illegal immigrants who commit gang crimes and incarcerate criminal illegal immigrants if they return to the United States illegally after deportation, and
- Improve international law enforcement coordination.

**Information Sharing and Coordination.** A problem that is common to all the states, like gang crime, creates an avenue for federal action through

the sharing of information and research, including the rigorous analysis of information coming from state and local agencies. Whether it is sharing successful policies and effective innovations or analyzing data and other intelligence, the federal government is situated to perform this function.

Created in 2004, the Federal Bureau of Investigation's National Gang Intelligence Center (NGIC) is an example. The NGIC is intended to help federal, state, and local law enforcement to coordinate the collection of intelligence on gangs and then analyze and share the information.<sup>20</sup> The NGIC is anticipated to allow law enforcement to identify linkages between gang members and gang activities across the nation.

**Securing the Border.** Criminal gangs are not only a domestic problem; they are also a transnational problem.<sup>21</sup> Gangs such as 18th Street and Mara Salvatrucha (MS-13) are formed by migrants entering the United States from Mexico and Central America. These gangs are transnational criminal organizations with origins in the United States, but they are also active in Mexico and Central American countries. Most MS-13 members were born in El Salvador, Honduras, and Guatemala but have spent most of their lives living in the United States.<sup>22</sup> The transnational nature of these gangs is made possible by immigration, much of it illegal, across permeable national borders.<sup>23</sup>

To secure the border, Congress and the Administration should undertake a strategy that rapidly enhances resources at the border within two years. Congress and the Administration should also join with key states to enhance resources at the border as they relate to criminal activity by illegal aliens. To accomplish this task, Congress and the Administration should take advantage of a combination

20. Chris Swecker, Assistant Director, Criminal Investigation Division, Federal Bureau of Investigation, statement in hearing, *Gangs and Crime in Latin America*, Subcommittee on the Western Hemisphere, Committee on International Relations, U.S. House of Representatives, 109th Cong., 1st Sess., April 20, 2005.

21. For a discussion of the transnational nature of criminal gangs, see Stephen Johnson and David B. Muhlhausen, Ph.D., "North American Transnational Youth Gangs: Breaking the Chain of Violence," Heritage Foundation *Background* No. 1834, March 21, 2005, at [www.heritage.org/Research/UrbanIssues/bg1834.cfm](http://www.heritage.org/Research/UrbanIssues/bg1834.cfm).

22. Mary Helen Johnson, "National Policies and the Rise of Transnational Gangs," Migration Policy Institute, April 1, 2006, at [www.migrationinformation.org/USfocus/print.cfm?ID=394](http://www.migrationinformation.org/USfocus/print.cfm?ID=394) (March 28, 2007).

23. Johnson and Muhlhausen, "North American Transnational Youth Gangs."



of federal, state, and local assets, including volunteers operating under State Defense Forces, the National Guard, and private contractors.<sup>24</sup>

In particular, the federal government needs to seek the assistance of state and local law enforcement agencies in border communities in Texas, New Mexico, Arizona, and California through Department of Homeland Security (DHS) grants.<sup>25</sup> These state and local border agencies are uniquely suited to help to secure the border because they often have the best intelligence on threats in their areas and are very familiar with the local people and geography. Section 287(g) of the Immigration and Nationality Act (INA) provides an example of what this relationship might look like. The provision allows state and local agencies to enter into assistance compacts with the federal government so that they have the authority to investigate, detain, and arrest aliens on civil and criminal grounds.

**Illegal Immigrants Who Commit Crimes and Return to the United States Illegally After Deportation.** Each year, the federal government removes tens of thousands of foreign nationals who are convicted of crimes in addition to being in violation of the INA. From fiscal year (FY) 1998 to FY 2005, 610,440 criminal aliens were removed from the United States.<sup>26</sup> In FY 2005, the DHS removed 89,406 criminal aliens—68,840 of whom were from Mexico and 7,642 of whom were from Central America.<sup>27</sup>

When the convicted criminals illegally return to the United States, the federal government needs to enforce the laws already on the books. Under current federal law, any alien previously denied admission to or removed from the United States who

enters the United States can be prosecuted.<sup>28</sup> The basic penalty for reentry is a maximum sentence of two years. For those previously convicted of three or more misdemeanors involving drugs and crimes against persons or a felony (other than an aggravated felony), the maximum sentence is 10 years. For those with a previous conviction for an aggravated felony, the maximum sentence is 20 years.

To deter deported criminal aliens from returning to the United States, federal officials need to recognize that success will depend on the severity, certainty, and swiftness of punishment. Some may argue that U.S. Attorneys do not have the resources to enforce immigration law adequately, but this lack of resources is due at least partly to the overfederalization of crime. U.S. Attorneys are tasked with fighting ordinary street crime and not focused on enforcing immigration law and other crimes that merit national attention. The apprehension of criminal aliens returning to the United States will have little or no deterrent effect if U.S. Attorneys fail to function effectively in prosecuting criminal aliens who return to the United States unlawfully.

**International Law Enforcement Coordination.** The federal government should help U.S., Mexican, and Central American law enforcement agencies share intelligence and coordinate gang-suppression activities. The Department of Homeland Security should coordinate the deportation process with the countries of origin to ensure that local law enforcement agencies are aware of deportee arrivals. For instance, the DHS should continue to inform foreign governments about deportees with criminal records to ensure that deportees

24. For a more comprehensive plan for securing the border, see James Jay Carafano, Ph.D., Brian W. Walsh, David B. Muhlhausen, Ph.D., Laura P. Keith, and David D. Gentilli, "Better, Faster, and Cheaper Border Security," Heritage Foundation *Backgrounder* No. 1967, September 6, 2006, at [www.heritage.org/Research/Immigration/bg1967.cfm](http://www.heritage.org/Research/Immigration/bg1967.cfm).

25. James Jay Carafano, Ph.D., and David B. Muhlhausen, Ph.D., "State and Local Law Enforcement's Key Role in Better, Faster, Cheaper Border Security," Heritage Foundation *Executive Memorandum* No. 1015, November 22, 2006, at [www.heritage.org/Research/Immigration/em1015.cfm](http://www.heritage.org/Research/Immigration/em1015.cfm).

26. Calculations based on data from U.S. Department of Homeland Security, Office of Immigration Statistics, *2004 Yearbook of Immigration Statistics*, 2006, pp. 162–173, Table 43, at [www.dhs.gov/xlibrary/assets/statistics/yearbook/2004/Yearbook2004.pdf](http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2004/Yearbook2004.pdf) (June 1, 2007).

27. *Ibid.*, p. 161, Table 42.

28. 8 U.S. Code §1326.

receive appropriate treatment and processing when they arrive home.<sup>29</sup> The federal government is already doing some of this, but it could do more to make such coordination even more effective.

In addition, the Department of Justice should help law enforcement agencies from the United States, Mexico, and Central America to coordinate strategies and information sharing to combat transnational gangs. The Department of Justice has recently taken important steps in developing coordination with El Salvador by creating the Transnational Anti-Gang Unit (TAG). By partnering FBI agents with El Salvador's civilian police force, TAG is intended to help law enforcement better pursue and prosecute gang members.<sup>30</sup>

### **State and Local Policies for Reducing Gang-Related Crime**

State and local officials serve as the front-line forces in preventing and deterring crime in America. The combined efforts of aggressive and intelligent local policing and increased incarceration of serious and violent offenders have helped to reduce crime throughout the nation. To develop an effective response to gang activity, state and local officials can draw on a set of policies that have demonstrated success in reducing general crime.

**Promising Prevention Programs.** A first step in preventing gang membership is preventing delinquency. To prevent gang membership, state and

local officials should consider experimenting with prevention programs that have been found to be effective at reducing delinquency. Juveniles with a history of delinquency are more likely to join gangs and, once in the gang, to engage in higher rates of criminal activity than they would have otherwise.<sup>31</sup>

There are two primary types of delinquency-prevention programs: universal and selected. Universal prevention programs are "applied to an entire population of children, such as a classroom, school, or neighborhood." For instance, an after-school program is considered a universal prevention program. Selected prevention programs "target high-risk children who may already show some level of antisocial behavior."<sup>32</sup> For example, a prevention program that targets youth who display disruptive behavior in school is considered a selected program.

**Boys and Girls Clubs.** Boys and Girls Clubs are a good example of a universal after-school program. For decades, Boys and Girls Clubs have helped to keep children off the streets across the country.

Three evaluations of Boys and Girls Clubs indicate that these programs hold considerable promise in reducing delinquency.<sup>33</sup> In one evaluation, housing projects with Boys and Girls Clubs in the neighborhood had lower incidences of criminal activity, property damage, and drug-related activity than did housing projects without the clubs.<sup>34</sup>

29. Johnson and Muhlhausen, "North American Transnational Youth Gangs."

30. Press release, "Attorney General Alberto R. Gonzales Announces Aggressive New Joint Initiatives with El Salvador to Combat Transnational Gangs," U.S. Department of Justice, February 5, 2007, at [www.usdoj.gov/opa/pr/2007/February/07\\_ag\\_071.html](http://www.usdoj.gov/opa/pr/2007/February/07_ag_071.html) (April 3, 2007).

31. Rachel A. Gordon, Benjamin B. Lahey, Eriko Kawai, Rolf Loeber, Magda Stouthamer-Loeber, and David P. Farrington, "Antisocial Behavior and Youth Gang Membership: Selection and Socialization," *Criminology*, Vol. 42, Issue 1 (February 2004), pp. 55–88.

32. Gail A. Wasserman and Laurie S. Miller, "The Prevention of Serious and Violent Juvenile Offending," in Rolf Loeber and David P. Farrington, eds., *Serious and Violent Juvenile Offenders: Risk Factors and Successful Interventions* (Thousand Oaks, Calif.: Sage Publications, 1998), p. 199.

33. Roscoe C. Brown, Jr., and Dan W. Dodson, "The Effectiveness of a Boy's Club in Reducing Delinquency," *Annals of the American Academy of Political and Social Science*, Vol. 332, No. 1 (1959), pp. 47–52; Jean Baldwin Grossman and Joseph P. Tierney, "Does Mentoring Work? An Impact Study of the Big Brothers Big Sisters Program," *Evaluation Review*, Vol. 22, No. 3 (June 1998), pp. 403–426; and Steven P. Schinke, Mario A. Orlandi, and Kristen C. Cole, "Boys and Girls Clubs in Public Housing Developments: Prevention Services for Youth At-Risk," *Journal of Community Psychology*, OSAP Special Issue (1992), pp. 118–128.

34. Schinke *et al.*, "Boys and Girls Clubs in Public Housing Developments," pp. 118–128.

**Multisystemic Therapy.** Multisystemic therapy (MST), an example of a selected prevention program, has shown promise in reducing the delinquency of youth displaying serious antisocial behavior. A highly intensive and tailored counseling program aimed at individuals, not groups, MST recognizes that antisocial behavior is influenced by three areas where youth interact: family, school, and peer associations.<sup>35</sup> MST counselors work with parents, usually in the home, to improve discipline, enhance family relationships, increase youth interactions with pro-social peers, and improve school performance.<sup>36</sup>

Several randomized experiments have linked MST to reductions in offending by participants.<sup>37</sup> MST's demonstrated record with youths already displaying antisocial behavior suggests that it may hold considerable promise as a gang prevention program.

**Promising Policing Strategies.** New law enforcement strategies have been developed to reduce crime. Beginning in the 1970s and early 1980s, law enforcement agencies began to develop alternatives to the traditional police model that emphasized mo-

torized patrol, rapid response to calls for service, and retrospective investigation of crimes.<sup>38</sup>

One such strategy is called problem-oriented policing. In that strategy, the police develop a systematic process for inquiring into the nature of problems and then develop specific tactics to address these problems.<sup>39</sup> Police officers engaged in problem-oriented policing do not simply respond to calls for service with an arrest or engage in public relations activities with the community. Instead, the officer takes steps to define the specific problem, whether it is purse snatching or gang activity, and to identify its causes.<sup>40</sup> After analyzing the problem, the officer then develops a plan to resolve the problem. By using this methodology, officers may be able to prevent further occurrences by solving the root causes. For example, officers may encourage the community to exert more control over unruly youth to reduce gang activity.

While there are very few quantitative evaluations of gang-suppression programs,<sup>41</sup> an evaluation of problem-oriented policing in Boston targeting gang violence during the 1990s demonstrated that the

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35. Scott W. Henggeler, Gary B. Melton, and Linda A. Smith, "Family Preservation Using Multisystemic Therapy: An Effective Alternative to Incarcerating Serious Juvenile Offenders," *Journal of Consulting and Clinical Psychology*, Vol. 60, No. 6 (December 1992), pp. 953–961.
36. Cynthia Cupit Swenson, Scott W. Henggeler, Ida Taylor, and Oliver W. Addison, *Multisystemic Therapy and Neighborhood Partnerships: Reducing Adolescent Violence and Substance Abuse* (New York: The Guilford Press, 2005).
37. Charles M. Borduin, Scott W. Henggeler, David M. Blaske, and Risa J. Stein, "Multisystemic Treatment of Adolescent Sexual Offenders," *International Journal of Offender Therapy and Comparative Criminology*, Vol. 34, No. 2 (September 1990), pp. 105–113; Charles M. Borduin, Barton J. Mann, Llynn T. Cone, Scott W. Henggeler, Bethany R. Fucci, David M. Blaske, and Robert A. Williams, "Multisystemic Treatment of Serious Juvenile Offenders: Long-Term Prevention of Criminality and Violence," *Journal of Consulting and Clinical Psychology*, Vol. 63, No. 4 (August 1995), pp. 569–578; Scott W. Henggeler, W. Glenn Clingempeel, Michael J. Bronding, and Susan G. Pickrel, "Four-Year Follow-Up of Multisystemic Therapy with Substance-Abusing and Substance Dependent Juvenile Offenders," *Journal of the American Academy of Child and Adolescent Psychiatry*, Vol. 41, No. 7 (July 2002), pp. 868–874; and Henggeler et al., "Family Preservation Using Multisystemic Therapy."
38. Mark H. Moore, Robert C. Trojanowicz, and George L. Kelling, "Crime and Policing," in William Oliver, ed., *Community Policing: Classical Readings* (Upper Saddle River, N.J.: Prentice Hall, 2000). Originally published in U.S. Department of Justice, Office of Justice Programs, National Institute of Justice *Perspectives on Policing* No. 2, 1988.
39. Herman Goldstein, "Improving Policing: A Problem-Oriented Approach," in Oliver, *Community Policing*. Originally published in *Crime & Delinquency*, Vol. 25, No. 2 (April 1979), pp. 236–258.
40. *Ibid.* and John E. Eck and William Spelman, "Who Ya Gonna Call? The Police as Problem-Busters," in Oliver, *Community Policing*. Originally published in *Crime & Delinquency*, Vol. 33, No. 1 (January 1987), pp. 31–52.
41. Eric J. Fritsch, Tory J. Caeti, and Robert W. Taylor, "Gang Suppression Through Saturation Patrol and Aggressive Curfew and Truancy Enforcement," in Scott H. Decker, ed., *Policing Gangs and Youth Violence* (Belmont, Calif.: Wadsworth Publishing, 2003), p. 273.

strategy appears to reduce crime.<sup>42</sup> Sixty-one gangs, comprising about 1 percent of all Boston youth, were believed to be responsible for at least 60 percent of all youth homicides.<sup>43</sup> To address the problem, Operation Ceasefire was created in 1995 by the Boston Gun Project, a working group sponsored by the National Institute of Justice and consisting of the Boston Police Department; the Massachusetts departments of probation and parole; the Suffolk County District Attorney; the U.S. Attorney in Boston; the Bureau of Alcohol, Tobacco, and Firearms; the Massachusetts Department of Youth Services; the Boston School Police; and gang outreach and prevention “streetworkers.”<sup>44</sup>

Some of the federal government involvement in Operation Ceasefire appears to violate the federalist principles discussed in this paper,<sup>45</sup> but the information sharing was appropriate, and the other federal involvement was not critical to the program. Operation Ceasefire implemented two approaches to reduce youth homicides. The first approach used problem-oriented policing to target a small number of chronically offending youth gang members, while the second tried to disrupt illegal firearms trafficking.<sup>46</sup> This two-approach, problem-oriented policing strategy has been credited with reducing youth homicides in Boston.<sup>47</sup>

*Developing Partnerships with Criminal Justice Agencies and the Community.* Two of the major components of Operation Ceasefire were develop-

ing partnerships with criminal justice agencies and the community and exploiting all available laws to deter criminal activity and hold offenders accountable. The Boston police coordinated tactics with other law enforcement agencies to take advantage of each other’s strengths to reduce crime.

For example, probation and police officers began to share information and patrol together to produce mutual benefits. Previously unknown to the police, probation officers had important information not only on which gang members were on probation, but also on the terms of their probation (e.g., curfews and area restrictions). For probation officers, the presence of the police allowed for instant arrest of gang members who violated the conditions of their probation.<sup>48</sup> This on-the-spot sanction meant that gang members could no longer ignore the terms of their probation.

The working group also recognized that, for Operation Ceasefire to succeed, they would have to reach out to community leaders. For example, the program pulled in the help of social service providers and local clergy who walked the streets to explain that the violence needed to stop and that they supported the law enforcement efforts.<sup>49</sup>

*Pulling Levers.* Based on deterrence, Operation Ceasefire set out to reduce crime by “pulling levers” from already legally available resources to impose costs on offenders. This approach is based

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42. Anthony A. Braga, David M. Kennedy, Elin J. Waring, and Anne Morrison Piehl, “Problem-Oriented Policing, Deterrence, and Youth Violence: An Evaluation of Boston’s Operation Ceasefire,” *Journal of Research in Crime and Delinquency*, Vol. 38, No. 3 (August 2001), pp. 195–225, and Anthony A. Braga, David L. Weisburd, Elin J. Waring, Lorraine Green Mazerolle, William Spelman, and Francis Gajewski, “Problem-Oriented Policing in Violent Crime Places: A Randomized Controlled Experiment,” *Criminology*, Vol. 37, No. 3 (August 1999), pp. 541–580.

43. David M. Kennedy, Anne M. Piehl, and Anthony Braga, “Youth Violence in Boston: Gun Markets, Serious Youth Offenders, and a Use-Reduction Strategy,” *Law and Contemporary Problems*, Vol. 59, No. 1 (Winter 1996), pp. 147–196.

44. Braga *et al.*, “Problem-Oriented Policing, Deterrence, and Youth Violence.”

45. See *supra*, “Overfederalization of Crime” section, pp. 3–4.

46. Braga *et al.*, “Problem-Oriented Policing, Deterrence, and Youth Violence.”

47. Braga *et al.* conclude that the principal impact of Operation Ceasefire was almost certainly due to the deterrence-based pulling levers approach rather than the illegal firearms trafficking approach. See Braga *et al.*, “Problem-Oriented Policing, Deterrence, and Youth Violence,” p. 218.

48. Jack McDevitt, Anthony A. Braga, Dana Nurge, and Michael Buerger, “Boston’s Youth Violence Prevention Program,” in Decker, ed., *Policing Gangs and Youth Violence*, pp. 53–76.

49. *Ibid.*



on the recognition that gang members frequently use drugs in public, violate their probation, and have outstanding warrants for their arrest.<sup>50</sup> Thus, gang members were exposed to ample opportunities for law enforcement to “pull every lever” to crack down on them.

Members of Operation Ceasefire promised the gang members that if they continued their violence, their actions would provoke an immediate and intense response. The task force used early prosecutions to show gang members how they could avoid the same punishment.<sup>51</sup> The working group also campaigned systematically to explain to gang members the consequences of their violent actions. The gang members were told that every legally available sanction would be used to punish them for committing violent crimes.

A federally funded evaluation of Operation Ceasefire by Anthony A. Braga and his colleagues from Harvard University found that the intervention was associated with a 63 percent decrease in monthly youth homicides.<sup>52</sup> Further, Operation Ceasefire was associated with a 25 percent reduction in the monthly number of gun assaults and a 32 percent reduction in the monthly number of shots-fired calls for service.

While federal prosecutors were members of Operation Ceasefire and their actions may have contributed marginally to the success of the program, state governments should not rely on the national government to provide stiff sanctions on violent criminals. In fact, such a strategy may backfire. Relying on federal sentencing laws signals that state governments have abdicated their primary responsibility for providing public safety, and this could cause criminal gangs not to take

state law enforcement authorities as seriously as they should.

This shift in law enforcement strategy from making arrests to solving problems is a promising approach to reducing problems associated with gangs. Communities suffering from gang crime can use Boston’s Operation Ceasefire as a model. In Chicago, Operation Ceasefire–style warnings by law enforcement to offenders with a history of gun violence and gang membership have been linked to a reduction in gang-related homicides.<sup>53</sup> By improving coordination among criminal justice agencies, developing partnerships with the community, and a no-nonsense approach to pulling every lever available to deter and incapacitate violent gang members, other communities may be able to replicate the success of Operation Ceasefire.

Sadly, Boston’s Operation Ceasefire was ended in the late 1990s, apparently the victim of its own success, the transfer of experienced police officers from the program, and battles among the police, ministers, and criminologists to claim credit for the program’s success.<sup>54</sup> With the incidence of violent crime having risen in 2006, Boston officials are attempting to revive the program.<sup>55</sup>

Problem-oriented policing has been successful in other cities. A randomized evaluation in Jersey City, New Jersey, found that problem-oriented policing was effective at reducing crime.<sup>56</sup> With the assistance of researchers, the police matched 24 neighborhoods together based on their similarities. By random assignment, these neighborhoods were selected for problem-oriented policing or traditional patrols. Problem-oriented policing interventions, such as aggressive order maintenance

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50. David M. Kennedy, “Pulling Levers: Chronic Offenders, High Crime Settings, and a Theory of Prevention,” *Valparaiso University Law Review*, Vol. 31, No. 2 (Spring 1997), pp. 449–484.

51. Braga *et al.*, “Problem-Oriented Policing, Deterrence, and Youth Violence,” esp. p. 200.

52. *Ibid.*

53. Andrew V. Papachristos, Tracey L. Meares, and Jeffery Fagan, “Attention Felons: Evaluating Project Safe Neighborhoods in Chicago,” *Columbia Public Law Research Paper* No. 05–97, 2005.

54. Editorial, “Boston’s Armistice,” *The Boston Globe*, January 28, 2006, p. E12.

55. Suzanne Smalley, “City Hopes Gangs Will Be Scared Straight,” *The Boston Globe*, February 16, 2006, p. B2.

56. Braga *et al.*, “Problem-Oriented Policing in Violent Crime Places,” pp. 541–580.



and crime prevention changes in the physical environment, were found to reduce reported crimes and citizen emergency calls.

## Conclusion

The best way to prevent and suppress gang-related crime is to adhere to federalist principles that respect the allocation of responsibilities among national, state, and local governments. To address gang-related crime appropriately, the national government should limit itself to handling tasks that are within its constitutionally designed sphere and that state and local governments cannot perform by themselves. The national government should secure the nation's borders, deport gang members who are illegal immigrants, incarcerate them if they return to the United States illegally, and produce research and coordinate information sharing on law enforcement activities that involve interstate gang-related crime.

While criminal street gangs are a problem common to all of the states, the crimes that they commit are almost entirely and inherently local in nature and regulated by state criminal law, law enforcement, and courts. For this reason, state and local governments are the most appropriate level of government to develop policies to prevent and suppress most gang-related crime.

On the prevention side, Boys and Girls Clubs and multisystemic therapy have a track record of success in preventing delinquency and may be promising gang-related crime prevention programs. For gang suppression, Boston's Operation Ceasefire demonstrated that a law enforcement strategy based on generating a strong deterrent to gang violence can make a difference.

—David B. Muhlhausen, Ph.D., is Senior Policy Analyst in the Center for Data Analysis and Erica Little is Legal Policy Analyst in the Center for Legal and Judicial Studies at The Heritage Foundation.