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DATE: March 8, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME PREVENTION, CORRECTIONS & SAFETY
ANALYSIS**

BILL #: HB 695
RELATING TO: Sentencing/Criminal Street Gangs
SPONSOR(S): Representative(s) Mack
TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY
 - (2) SMARTER GOVERNMENT
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

The bill amends sections 874.04 and 921.0024 relating to enhanced sentencing for criminal street gang members. The statute currently provides that upon a finding by the trial court that the defendant was a member of a criminal street gang at the time of the offense, the penalty for the crime may be enhanced. This language was declared unconstitutional by the Florida Supreme Court. The bill attempts to repair the constitutional defect by providing that the penalty for an offense may be enhanced upon a finding by the trial court that the defendant committed the offense for the purpose of furthering, benefiting or promoting a criminal street gang.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Section 874.04 provides that upon a finding by the trial court at sentencing that the defendant was a member of a criminal street gang at the time of the offense, the penalty for the offense may be enhanced. The definition section of the statute defines a criminal street gang as an organization or group of three or more persons who have a common name or identifying signs, colors, or symbols and have two or more members who, individually or collectively, engage in or have engaged in a pattern of criminal street gang activity. Sec. 874.03(1), Fla. Stat. The findings required as a basis for the enhancement must be found by a preponderance of the evidence. The section provides that the enhancement will be as follows:

- A misdemeanor of the second degree may be punished as if it were a misdemeanor of the first degree.
- A misdemeanor of the first degree may be punished as if it were a felony of the third degree.
- A felony of the third degree may be punished as if it were a felony of the second degree.
- A felony of the second degree may be punished as if it were a felony of the first degree.
- A felony of the first degree may be punished as if it were a life felony.

For purposes of establishing the lowest permissible sentence, section 921.0024 provides that on the Florida Criminal Punishment Code worksheet, the score for an offense shall be multiplied by 1.5 if the offender is found to have been a member of a criminal street gang at the time of the offense.

In State v. O.C., 748 So.2d 945 (Fla. 1999), the Florida Supreme Court found the language providing for enhanced sentencing if the defendant "was a member of a criminal street gang at the time of the offense was unconstitutional as a violation of substantive due process." The court concluded that "because the statute punishes gang membership without requiring any nexus between the criminal activity and gang membership, it lacks a rational relationship to the legislative goal of reducing gang violence or activity and thus fails to have a 'reasonable and substantial relation' to a permissible legislative objective."

C. EFFECT OF PROPOSED CHANGES:

The bill amends section 874.04 which provides that an offense may be reclassified if the defendant was a member of a criminal street gang at the time of the offense to provide that an offense may be reclassified upon a finding by the trial court that the defendant committed the offense for the purpose of furthering, benefiting or promoting a criminal street gang. The bill also amends section 921.0024 to change the language which currently requires sentencing points to be multiplied by 1.5 upon a finding that a defendant was a member of a criminal street gang at the time of the offense to provide that sentencing points shall be multiplied by 1.5 if the offense was committed for the purpose of furthering, benefiting or promoting a criminal street gang.

These changes are intended to correct the constitutional problem in the existing statute by requiring a nexus between a defendant's gang membership and the offense for which the defendant is being sentenced. These changes would render the statute substantially similar to California's statute. In State v. O.C., 748 So.2d 945 (Fla. 1999), in ruling that the Florida statute is unconstitutional, the Florida Supreme Court distinguished the Florida statute from the California statute which has been upheld by the California Supreme Court in People v. Gardeley, 927 P.2d 713 (Ca. 1997).

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 874.04 relating to enhanced penalties for offenses committed by criminal street gang member.

Section 2: Amends s. 921.0024 relating to worksheet for Criminal Punishment Code.

Section 3: Provides effective date of July 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference has not met to determine the prison bed impact of this bill on the Department. However, last year the conference determined that HB 435 which contained the criminal street gang provision of this bill would have an insignificant prison bed impact on the department.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

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