

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 138
 SPONSOR: Senator Burt
 SUBJECT: Criminal Street Gang Activity
 DATE: October 29, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	<u> </u>	<u> </u>	<u>APJ</u>	<u> </u>
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>
4.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
5.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
6.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

Section 874.04, F.S., provides for enhanced penalties if the defendant committed the charged offense for the purpose of benefiting, promoting, or furthering the interests of a criminal street gang activity. Presently, the law is worded so that it appears that this finding is made at time of sentencing. The bill amends s. 874.04, F.S., so that to enhance a penalty under that statute, the jury must make a finding on the criminal street gang factor, which means the jury must find beyond a reasonable doubt that the defendant committed the charged offense for the purpose of benefiting, promoting, or furthering the interests of a criminal street gang activity.

This bill substantially amends s. 874.04, F.S., and reenacts s. 921.0024, F.S.

II. Present Situation:

Criminal Street Gang Penalty Enhancement

Section 874.04, F.S., provides for enhanced penalties if the court finds at sentencing that the defendant who committed the charged offense was a member of a criminal street gang at the time of the commission of the offense.

Section 921.0024, F.S., which relates to the Criminal Punishment Code worksheet computations and scoresheets, provides for the multiplication of subtotal sentence points by 1.5 if the offender is convicted of the primary offense and is found to have been a member of a criminal street gang at the time of the commission of the primary offense pursuant to s. 874.04, F.S.

In *Apprendi v. New Jersey*, 530 U.S. 466 (2000), the United States Supreme Court held “that any fact, other than a prior conviction, which increases a penalty beyond the prescribed statutory

maximum must be submitted to the *jury* and proved beyond a reasonable doubt.” *Grant v. Florida*, 26 Fla. L. Weekly D795b (Fla. 1st DCA, March 19, 2001), describing the holding in *Apprendi* (emphasis provided by the court). Presently, the law is worded so that it appears that the finding in s. 874.04, F.S., is made at sentencing upon showing the criminal street gang factor by a “preponderance of the evidence.” Therefore, the penalty enhancement in s. 874.04, F.S., may not be in accordance with *Apprendi*.

III. Effect of Proposed Changes:

Senate Bill 138 amends s. 874.04, F.S. to provide that, if a person is convicted of or adjudicated delinquent for committing a felony or misdemeanor that is committed for the purpose of benefiting, promoting, or furthering the interests of a criminal street gang, the court may sentence the person to an enhanced penalty as prescribed in that statute. The bill amends s. 874.04, F.S., so that to enhance a penalty under that statute, the jury must make a finding on the criminal street gang factor, which means the jury must find beyond a reasonable doubt that the defendant committed the charged offense for the purpose of benefiting, promoting, or furthering the interests of a criminal street gang activity. A finding of the criminal street gang factor made in this manner accords with the holding in *Apprendi*.

Section 921.0024(1)(b), F.S., is reenacted for the purpose of incorporating the amendment to s. 874.04, F.S., in a reference thereto.

The act takes effect July 1, 2002.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Insignificant

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
