

By Senator Burt

16-44A-02

1                                   A bill to be entitled  
 2           An act relating to criminal street gang  
 3           activity; amending s. 874.04, F.S.; revising  
 4           the procedure under which the court may  
 5           sentence a person to an enhanced sentence when  
 6           the person is convicted of or adjudicated  
 7           delinquent for committing an offense for the  
 8           purpose of benefiting, promoting, or furthering  
 9           the interests of a criminal street gang;  
 10          deleting a requirement that the court make such  
 11          finding at sentencing; deleting a requirement  
 12          that such finding be made by a preponderance of  
 13          the evidence; reenacting s. 921.0024(1)(b),  
 14          F.S., relating to the worksheet for the  
 15          Criminal Punishment Code, to incorporate the  
 16          amendment to s. 874.04, F.S, in a reference  
 17          thereto; providing an effective date.

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 19 Be It Enacted by the Legislature of the State of Florida:

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 21           Section 1. Section 874.04, Florida Statutes, is  
 22 amended to read:

23           874.04 Criminal street gang activity; enhanced  
 24 penalties.--If a person is convicted of or adjudicated  
 25 delinquent for committing a felony or misdemeanor that is ~~Upon~~  
 26 ~~a finding by the court at sentencing that the defendant~~  
 27 ~~committed the charged offense~~ for the purpose of benefiting,  
 28 promoting, or furthering the interests of a criminal street  
 29 gang, the court may sentence the person to an enhanced penalty  
 30 ~~the penalty for any felony or misdemeanor, or any delinquent~~  
 31 ~~act or violation of law which would be a felony or misdemeanor~~

1 ~~if committed by an adult, may be enhanced. Each of the~~  
2 ~~findings required as a basis for such sentence shall be found~~  
3 ~~by a preponderance of the evidence.~~The enhancement will be as  
4 follows:

5 (1)(a) A misdemeanor of the second degree may be  
6 punished as if it were a misdemeanor of the first degree.

7 (b) A misdemeanor of the first degree may be punished  
8 as if it were a felony of the third degree. For purposes of  
9 sentencing under chapter 921 and determining incentive  
10 gain-time eligibility under chapter 944, such offense is  
11 ranked in level 1 of the offense severity ranking chart. The  
12 criminal street gang multiplier in s. 921.0024 does not apply  
13 to misdemeanors enhanced under this paragraph.

14 (2)(a) A felony of the third degree may be punished as  
15 if it were a felony of the second degree.

16 (b) A felony of the second degree may be punished as  
17 if it were a felony of the first degree.

18 (c) A felony of the first degree may be punished as if  
19 it were a life felony.

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21 For purposes of sentencing under chapter 921 and determining  
22 incentive gain-time eligibility under chapter 944, such felony  
23 offense is ranked as provided in s. 921.0022 or s. 921.0023,  
24 and without regard to the penalty enhancement in this  
25 subsection. For purposes of this section, penalty enhancement  
26 affects the applicable statutory maximum penalty only.

27 Section 2. For the purpose of incorporating the  
28 amendment made by this act to section 874.04, Florida  
29 Statutes, in a reference thereto, paragraph (b) of subsection  
30 (1) of section 921.0024, Florida Statutes, is reenacted to  
31 read:

1           921.0024 Criminal Punishment Code; worksheet  
2 computations; scoresheets.--

3           (1)

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5                           (b) WORKSHEET KEY:

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7 Legal status points are assessed when any form of legal status  
8 existed at the time the offender committed an offense before  
9 the court for sentencing. Four (4) sentence points are  
10 assessed for an offender's legal status.

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12 Community sanction violation points are assessed when a  
13 community sanction violation is before the court for  
14 sentencing. Six (6) sentence points are assessed for each  
15 community sanction violation, and each successive community  
16 sanction violation; however, if the community sanction  
17 violation includes a new felony conviction before the  
18 sentencing court, twelve (12) community sanction violation  
19 points are assessed for such violation, and for each  
20 successive community sanction violation involving a new felony  
21 conviction. Multiple counts of community sanction violations  
22 before the sentencing court shall not be a basis for  
23 multiplying the assessment of community sanction violation  
24 points.

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26 Prior serious felony points: If the offender has a primary  
27 offense or any additional offense ranked in level 8, level 9,  
28 or level 10, and one or more prior serious felonies, a single  
29 assessment of 30 points shall be added. For purposes of this  
30 section, a prior serious felony is an offense in the  
31 offender's prior record that is ranked in level 8, level 9, or

1 level 10 under s. 921.0022 or s. 921.0023 and for which the  
2 offender is serving a sentence of confinement, supervision, or  
3 other sanction or for which the offender's date of release  
4 from confinement, supervision, or other sanction, whichever is  
5 later, is within 3 years before the date the primary offense  
6 or any additional offense was committed.

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8 Prior capital felony points: If the offender has one or more  
9 prior capital felonies in the offender's criminal record,  
10 points shall be added to the subtotal sentence points of the  
11 offender equal to twice the number of points the offender  
12 receives for the primary offense and any additional offense. A  
13 prior capital felony in the offender's criminal record is a  
14 previous capital felony offense for which the offender has  
15 entered a plea of nolo contendere or guilty or has been found  
16 guilty; or a felony in another jurisdiction which is a capital  
17 felony in that jurisdiction, or would be a capital felony if  
18 the offense were committed in this state.

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20 Possession of a firearm, semiautomatic firearm, or machine  
21 gun: If the offender is convicted of committing or attempting  
22 to commit any felony other than those enumerated in s.  
23 775.087(2) while having in his or her possession: a firearm as  
24 defined in s. 790.001(6), an additional 18 sentence points are  
25 assessed; or if the offender is convicted of committing or  
26 attempting to commit any felony other than those enumerated in  
27 s. 775.087(3) while having in his or her possession a  
28 semiautomatic firearm as defined in s. 775.087(3) or a machine  
29 gun as defined in s. 790.001(9), an additional 25 sentence  
30 points are assessed.

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1 Sentencing multipliers:

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3 Drug trafficking: If the primary offense is drug trafficking  
4 under s. 893.135, the subtotal sentence points are multiplied,  
5 at the discretion of the court, for a level 7 or level 8  
6 offense, by 1.5. The state attorney may move the sentencing  
7 court to reduce or suspend the sentence of a person convicted  
8 of a level 7 or level 8 offense, if the offender provides  
9 substantial assistance as described in s. 893.135(4).

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11 Law enforcement protection: If the primary offense is a  
12 violation of the Law Enforcement Protection Act under s.  
13 775.0823(2), the subtotal sentence points are multiplied by  
14 2.5. If the primary offense is a violation of s. 775.0823(3),  
15 (4), (5), (6), (7), or (8), the subtotal sentence points are  
16 multiplied by 2.0. If the primary offense is a violation of s.  
17 784.07(3) or s. 775.0875(1), or of the Law Enforcement  
18 Protection Act under s. 775.0823(9) or (10), the subtotal  
19 sentence points are multiplied by 1.5.

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21 Grand theft of a motor vehicle: If the primary offense is  
22 grand theft of the third degree involving a motor vehicle and  
23 in the offender's prior record, there are three or more grand  
24 thefts of the third degree involving a motor vehicle, the  
25 subtotal sentence points are multiplied by 1.5.

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27 Offense related to a criminal street gang: If the offender is  
28 convicted of the primary offense and committed that offense  
29 for the purpose of benefiting, promoting, or furthering the  
30 interests of a criminal street gang as prohibited under s.  
31 874.04, the subtotal sentence points are multiplied by 1.5.

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Domestic violence in the presence of a child: If the offender is convicted of the primary offense and the primary offense is a crime of domestic violence, as defined in s. 741.28, which was committed in the presence of a child under 16 years of age who is a family household member as defined in s. 741.28(2) with the victim or perpetrator, the subtotal sentence points are multiplied by 1.5.

Section 3. This act shall take effect July 1, 2002.

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SENATE SUMMARY

Revises the requirements for the court in sentencing a person to an enhanced sentence when the person is convicted of or adjudicated delinquent for committing an offense for the purpose of benefiting, promoting, or furthering the interests of a criminal street gang. Deletes the requirement that the court find by a preponderance of the evidence that the offense was committed for the purpose of furthering the interests of a criminal street gang.