

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 43 Criminal Activity

SPONSOR(S): Safety & Security Council; Snyder and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 76

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|------------------------------|------------------|------------------|----------------|
| 1) Safety & Security Council | 16 Y, 0 N, As CS | Cunningham/Davis | Havlicak |
| 2) Policy & Budget Council | | Leznoff | Hansen |
| 3) _____ | _____ | _____ | _____ |
| 4) _____ | _____ | _____ | _____ |
| 5) _____ | _____ | _____ | _____ |

SUMMARY ANALYSIS

On June 20, 2007, the Eighteenth Statewide Grand Jury was impaneled to investigate the growing problem of gang violence in Florida. CS/HB 43 makes a variety of changes to Florida law relating to criminal gangs, encompassing many of the Statewide Grand Jury's January 2008 recommendations. CS/HB 43 renames chapter 874, F.S., the "Criminal Gang Prevention Act" and replaces the term "criminal street gang" with "criminal gang" throughout the chapter and other referencing statutes.

The bill makes it a crime for a person to:

- Initiate, organize, plan, finance, direct, manage, or supervise criminal gang-related activity;
- Use electronic communication to further any criminal purpose, to intimidate or harass other persons, or to advertise his or her presence in the community for a gang-related purpose;
- Possess or manufacture any unlawfully issued identification document for a gang-related purpose.

In addition the bill:

- Provides additional registration requirements for felons convicted of gang-related offenses and a penalty for failing to comply with such requirements.
- Provides enhanced penalties if it is found that a defendant committed an offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.
- Creates a 3rd degree felony for certain felons and delinquents to possess a bulletproof vest, and increases the penalty for certain felons who have been found to have committed a gang-related offense to possess a firearm.
- Requires courts to suspend the driver's license of persons convicted of criminal gang-related offenses.
- Adds criminal gang-related duties to the Florida Violent Crime and Drug Control Council and creates the Drug Control Strategy and Criminal Gangs Committee within the Council.
- Creates terms and conditions of community supervision prohibiting certain offenders from communicating with criminal gang members, except as authorized for the purpose of aiding in the investigation of criminal activity.
- Adds items to the list of things a court must consider when determining whether to release a defendant on bail or other conditions.
- Amends the penalties for tampering and harassing witnesses.

On February 26, 2008 the Criminal Justice Impact Conference found the bill to have a potentially significant impact on the inmate population.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Maintain Public Security – This bill authorizes the Department of Law Enforcement to compile and retain additional information regarding criminal gangs for law enforcement purposes, and authorizes local law enforcement agencies to compile criminal gang information and to notify prosecutors of an arrested individual's suspected criminal gang membership status.

Promote Personal Responsibility – This bill makes it a crime for any person to use electronic communication to intimidate or harass other persons, or to advertise his or her presence in the community for the purpose of benefiting, promoting, or furthering the interests of a criminal gang. This bill also makes it a crime for any person to possess or manufacture any blank, forged, stolen, fictitious, fraudulent, counterfeit, or otherwise unlawfully issued identification document for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.

Safeguard Individual Liberty – This bill creates terms and conditions of community supervision that prohibits certain offenders from communicating with criminal gang members, except as authorized by certain entities for the purpose of aiding in the investigation of criminal gang activity.

B. EFFECT OF PROPOSED CHANGES:

Registration

Section 775.13, F.S., currently requires convicted felons to, within 48 hours after entering any county, register with sheriff of such county, be fingerprinted and photographed, list the crime for which convicted, place of conviction, sentence imposed, name, aliases, address, and occupation. The penalty for failing to register is a second degree misdemeanor.

Effect of the Bill

CS/HB 43 requires persons who have been convicted of a felony that was found to have been committed for the purpose of benefitting, promoting, or furthering the interests of a criminal gang to identify themselves as such an offender when they register. The penalty for failing to register is a 3rd degree felony.¹

Prohibition on Possessing Firearms

Currently, s. 790.23, F.S., makes it a 2nd degree felony² for any person to own or to have in his or her care, custody, possession, or control any firearm, ammunition, or electric weapon or device, or to carry a concealed weapon, including a tear gas gun or chemical weapon or device, if that person has been:

- Convicted of a felony in the courts of this state;
- Found, in the courts of this state, to have committed a delinquent act that would be a felony if committed by an adult and such person is under 24 years of age;
- Convicted of or found to have committed a crime against the United States which is designated as a felony;
- Found to have committed a delinquent act in another state, territory, or country that would be a felony if committed by an adult and which was punishable by imprisonment for a term exceeding 1 year and such person is under 24 years of age; or

¹ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

² A second-degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

- Found guilty of an offense that is a felony in another state, territory, or country and which was punishable by imprisonment for a term exceeding 1 year.

Effect of the Bill

CS/HB 43 makes the above-described offense a 1st degree felony³ punishable for a term of years not exceeding life, or as provided in ss. 775.082, 775.083, and 775.084, if it was committed by a person who has previously qualified or currently qualifies for the penalty enhancements provided for in s. 874.04, F.S.⁴ The bill ranks this offense as a level 7 offense in the Criminal Punishment Code offense severity ranking chart.

Prohibition on Possessing Bulletproof Vests

Currently, a person commits the offense of unlawfully wearing a bulletproof vest⁵ when, acting alone or with one or more other persons and while possessing a firearm, he or she commits or attempts to commit certain violent crimes and, in the course of and in furtherance of such crimes, he or she wears a bulletproof vest.⁶ This offense is a 3rd degree felony. At this time, Florida law does not prohibit any group of persons from simply *possessing* a bulletproof vest.

Federal law⁷ currently prohibits a person from purchasing, owning, or possessing body armor, if that person has been convicted of a felony that is a crime of violence⁸ or an offense under state law that would constitute a crime of violence. The federal law provides an affirmative defense if the person obtained prior written certification from his or her employer that the defendant's purchase, use, or possession of body armor was necessary for the safe performance of lawful business activity, and that the use and possession by the defendant were limited to the course of such performance.

Effect of the Bill

CS/HB 43 creates s. 790.231, F.S., which makes it a 3rd degree felony for a person to *possess* a bulletproof vest if they have been:

- Convicted of a felony in the courts of Florida;
- Found by a Florida court to have committed a delinquent act that would be a felony if committed by an adult and such person is under 24 years of age;
- Convicted of or found to have committed a crime against the United States which is designated as a felony;
- Found to have committed a delinquent act in another state, territory, or country that would be a felony if committed by an adult and which was punishable by imprisonment for a term exceeding one year and such person is 24 years of age;
- Convicted of or found to have committed an offense that is a felony in another state, territory, or country and which was punishable by imprisonment for a term exceeding one year; or
- Found, pursuant to s. 874.04, F.S., to have committed any offense for the purposes of benefitting, promoting, or furthering the interests of a criminal gang.

The bill specifies that the bulletproof vest prohibition does not apply to:

³ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

⁴ Section 874.04, F.S., as amended by CS/HB 43, provides enhanced penalties upon a finding by the factfinder that a defendant committed an offense for the purpose of benefitting, promoting, or furthering the interests of a criminal street gang.

⁵ "Bulletproof vest" is defined by s. 775.0846, F.S., as "a bullet-resistant soft body armor providing, as a minimum standard, the level of protection known as "threat level I," which shall mean at least seven layers of bullet-resistant material providing protection from three shots of 158-grain lead ammunition fired from a .38 caliber handgun at a velocity of 850 feet per second."

⁶ s. 775.0846, F.S.,

⁷ See 18 USC 931.

⁸ "Crime of violence" is defined by 18 USC 16 as (1) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another or, (2) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

- Persons convicted of a felony whose civil rights have been restored; and
- Persons who are authorized to possess a bulletproof vest by law enforcement officials, prosecutorial authorities, or the court, for the purpose of aiding in the investigation of criminal activity.

Public Nuisances

Nuisances that tend to annoy the community, injure the health of the citizens in general, or corrupt the public morals are declared by statute to be misdemeanors of the second degree punishable as provided in s. 775.083⁹, F.S.¹⁰ Nuisances may also be abated and enjoined.¹¹

Section 823.05, F.S., provides, in part, that a person is deemed to have “maintained a nuisance” if they “erect, establish, continue, or maintain, own or lease any building, booth, tent or place which tends to...be frequented by the class of persons mentioned in s. 856.02.” Section 856.02, F.S., related to vagrants, was repealed in 1972.

Effect of the Bill

CS/HB 43 removes the obsolete reference to s. 856.02, F.S. The bill also adds to the nuisance statute by declaring criminal gangs, criminal gang members, and criminal gang associates who engage in the commission of criminal gang-related activity nuisances, which shall be abated and enjoined. The bill also declares the *use* of a location on two or more occasions by a criminal gang, criminal gang member, or criminal gang associate for the purposes of engaging in criminal gang-related activity a nuisance which shall be abated and enjoined.¹²

CS/HB 43 also specifies that the state or any of the state’s agencies, instrumentalities, subdivisions, or municipalities having jurisdiction over nuisance violations may institute civil proceedings.

Chapter 874, F.S. – Existing Sections of Statute

Legislative Intent

Chapter 874, F.S., establishes the “Criminal Street Gang Prevention Act of 1996” (Act). The Act was enacted based upon a legislative finding that the state is facing a mounting crisis caused by criminal street gangs, and that criminal street gang activities present a clear and present danger that the state has a compelling interest in preventing.¹³ The legislature further specified that the intent of the Act was to eradicate the terror created by criminal street gangs by providing enhanced penalties and by eliminating the patterns, profits, proceeds, instrumentalities, and property facilitating criminal street gang activity, including gang recruitment.¹⁴

Effect of the Bill

The bill renames the Act the “Criminal Gang Prevention Act” and replaces the term “criminal street gang” with “criminal gang” throughout chapter 874, F.S. The bill adds that the state has a compelling interest in halting the danger posed by the proliferation of criminal gangs and the graduation from more primitive forms of criminal gangs to highly sophisticated criminal gangs. The bill specifies that the legislature has found that street gangs, terrorist organizations, and hate groups have evolved into increasingly sophisticated and complex organized crime groups, and adds that it is the intent of the legislature to outlaw certain conduct associated with the existence and proliferation of criminal gangs.

⁹ Section 775.083, F.S., provides that second degree misdemeanors are punishable by a \$500 fine.

¹⁰ See s. 823.01, F.S.

¹¹ Section 60.05, F.S., sets forth the procedures used to abate and enjoin nuisances.

¹² The bill specifies that the terms “criminal gang,” “criminal gang member,” and “criminal gang associate” are to have the same meaning as provided for in s. 874.03, F.S. (as amended by CS/HB 43).

¹³ Section 874.02, F.S.

¹⁴ *Id.*

The bill also provides that timely reporting and exchange of criminal gang information facilitates the ability of law enforcement agencies to monitor and anticipate criminal activities of gangs and their members. Additionally, timely standardized reporting of such information supports the identification of gang members via the criminal justice information system and contributes to law enforcement officer safety. The bill expresses the intent of the legislature to encourage state and local law enforcement to facilitate the exchange of information through the statewide criminal gang database provided for in s. 874.09, F.S.

Definitions

Section 874.03, F.S. provides the following definitions:

- "Criminal street gang" means a formal or informal ongoing organization, association, or group that has as one of its primary activities the commission of criminal or delinquent acts, and that consists of three or more persons who have a common name or common 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.
- "Criminal street gang member" is a person who is a member of a criminal street gang and who meets two or more of the following criteria:
 - o Admits to criminal street gang membership.
 - o Is identified as a criminal street gang member by a parent or guardian.
 - o Is identified as a criminal street gang member by a documented reliable informant.
 - o Resides in or frequents a particular criminal street gang's area and adopts their style of dress, their use of hand signs, or their tattoos, and associates with known criminal street gang members.
 - o Is identified as a criminal street gang member by an informant of previously untested reliability and such identification is corroborated by independent information.
 - o Has been arrested more than once in the company of identified criminal street gang members for offenses which are consistent with usual criminal street gang activity.
 - o Is identified as a criminal street gang member by physical evidence such as photographs or other documentation.
 - o Has been stopped in the company of known criminal street gang members four or more times.
- "Pattern of criminal street gang activity" means the commission or attempted commission of, or solicitation or conspiracy to commit, two or more felony or three or more misdemeanor offenses, or one felony and two misdemeanor offenses, or the comparable number of delinquent acts or violations of law which would be felonies or misdemeanors if committed by an adult, on separate occasions within a 3-year period.
- "Criminal street gang associate" means a person who:
 - o Admits to criminal street gang association; or
 - o Meets any single defining criterion for criminal street gang membership.
- "Gang-related incident" means an incident that, upon investigation, meets any of the following conditions:
 - o The participants are identified as criminal street gang members or criminal street gang associates, acting, individually or collectively, to further any criminal purpose of the gang;
 - o A reliable informant identifies an incident as criminal street gang activity; or
 - o An informant of previously untested reliability identifies an incident as criminal street gang activity and it is corroborated by independent information.

Effect of the Bill

The bill replaces the terms "criminal street gang" with "criminal gang." Additionally, the term "criminal street gang member" is replaced with "criminal gang member."

The bill adds “terrorist organizations” and “hate groups” to the definition of “criminal gang,” and clarifies that the term “ongoing” means that “the organization was in existence during the time period charged in a petition, information, indictment, or action for civil injunctive relief.” The bill specifies that “primary activities” mean that “a criminal gang spends a substantial amount of time engaged in such activity, although such activity need not be the only, or even most important activity, in which the criminal gang engages.”

The bill redefines the term “criminal gang member” as follows:

- “Criminal gang member” is a person who meets two or more of the following criteria:
 - o Admits to criminal gang membership.
 - o Is identified as a criminal gang member by a parent or guardian.
 - o Is identified as a criminal gang member by a documented reliable informant.
 - o Adopts the style of dress of a criminal gang.
 - o Adopts the use of a hand sign identified as used by a criminal gang.
 - o Has a tattoo identified as used by a criminal gang.
 - o Associates with one or more known criminal gang members.
 - o Is identified as a criminal gang member by an informant of previously untested reliability and such identification is corroborated by independent information.
 - o Is identified as a criminal gang member by physical evidence.
 - o Has been observed in the company of one or more known criminal gang members four or more times.
 - o Has authored any communication indicating responsibility for the commission of any crime by the criminal gang.

The bill removes the definition of “gang-related incident” and “pattern of criminal street gang activity” and creates the following definitions:

- “Criminal gang-related activity” means:
 - o An activity committed with the intent to benefit, promote, or further the interests of a criminal gang, or for the purposes of increasing a person’s own standing or position within a criminal gang;
 - o An activity in which the participants are identified as criminal gang members or criminal gang associates acting individually or collectively to further any criminal purpose of a criminal gang;
 - o An activity that is identified as criminal gang activity by a documented reliable informant; or
 - o An activity that is identified as criminal gang activity by an informant of previously untested reliability and such identification is corroborated by independent information.
- “Electronic communication” has the same meaning as provided in s. 934.02¹⁵ and includes, but is not limited to, photographs, video, telephone communications, text messages, facsimile, electronic mail messages as defined in s. 668.602¹⁶, and instant message real-time communications with other individuals through the Internet or other means.

¹⁵ Section 934.02, F.S., defines “electronic communication” as any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system that affects intrastate, interstate, or foreign commerce, but does not include any wire or oral communication; any communication made through a tone-only paging device; any communication from an electronic or mechanical device which permits the tracking of the movement of a person or an object; or electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.

¹⁶ Section 668.602, F.S., defines “electronic mail message” as an electronic message or computer file that is transmitted between two or more telecommunications devices; computers; computer networks, regardless of whether the network is a local, regional, or global network; or electronic devices capable of receiving electronic messages, regardless of whether the message is converted to hard copy format after receipt, viewed upon transmission, or stored for later retrieval.

- "Hate group" means an organization whose primary purpose is to promote animosity, hostility, and malice against a person or persons or against the property of a person or persons because of race, religion, disability, sexual orientation, ethnicity, or national origin.
- "Terrorist organization" means any organized group engaged in or organized for the purpose of engaging in terrorism as defined in s. 775.30. This definition shall not be construed to prevent prosecution of individuals acting alone under this chapter.

Penalty Enhancements

Section 874.04, F.S., permits a court to enhance penalties if it finds, by a preponderance of the evidence, that a defendant committed an offense for the purpose of benefiting, promoting, or furthering the interests of a criminal street gang.

Effect of the Bill

In 2000, the United States Supreme Court held that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime...must be submitted to a jury, and proved beyond a reasonable doubt."¹⁷ To comply with this holding, the bill rewrites the statute to permit enhanced penalties upon a finding by the factfinder that the defendant committed the charged offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang. The bill requires that such finding be made beyond a reasonable doubt.

Causing, Encouraging, Soliciting, or Recruiting a Person to Join a Criminal Street Gang

Section 874.05, F.S., makes it third-degree felony to intentionally cause, encourage, solicit, or recruit a person to join a criminal street gang that requires as a condition of membership or continued membership the commission of any crime. Such offense is a 2nd degree felony if it is a second or subsequent offense.

Effect of the Bill

The bill amends s. 874.05, F.S., to make it a third-degree felony to intentionally cause, encourage, solicit, or recruit a person to *become a criminal gang member* where a condition of membership or continued membership is the commission of any crime.

Civil Cause of Action

Section 874.06, F.S., currently provides that persons or organizations who establish, by clear and convincing evidence, coercion, intimidation, threats, or other harm to that person or organization in violation of this chapter have a civil cause of action for treble damages, an injunction, or any other appropriate relief in law or equity. Upon prevailing, the plaintiff may recover reasonable attorney's fees and costs.

Effect of the Bill

The bill provides that upon prevailing, the plaintiff may recover attorney's fees in the trial and appellate courts and the costs of investigation and litigation that reasonably incurred. The bill specifies that prevailing plaintiffs have a right or claim that is superior to any right or claim that the state has in the same property or proceeds.

The bill further provides that in addition to any remedies provided for by ss. 60.05 and 823.05, the state has a civil cause of action against any person or organization if it proves by clear and convincing evidence that it has been injured by reason of a violation of this chapter by the person or organization. The bill specifies that the state has a civil cause of action for treble damages, injunctive relief, or any

¹⁷ *Apprendi v. New Jersey*, 530 U.S. 466, (2000).

other relief in law or equity which the court deems appropriate. If the state prevails, it may also recover attorney's fees in the trial and appellate courts and the costs of investigation and litigation that are reasonably incurred. The state may not recover punitive damages. The defendant is entitled to recover reasonable attorney's fees and court costs if the court finds that the state raised a claim that was without factual or legal support and was vexatious, frivolous, or brought in bad faith.

The bill provides that a person who knowingly violates a temporary or permanent order issued under this section or s. 60.05 commits a misdemeanor of the first degree.¹⁸

Forfeiture

Section 874.08, F.S., provides that the following are subject to seizure and forfeiture under the Florida Contraband Forfeiture Act, s. 932.704, F.S.:

- All profits, proceeds, and instrumentalities of criminal street gang activity and criminal street gang recruitment;
- All property used or intended or attempted to be used to facilitate the criminal activity of any criminal street gang or of any criminal street gang member; and
- All property used or intended or attempted to be used to facilitate criminal street gang recruitment.

Effect of the Bill

The bill replaces the term "criminal street gang" with "criminal gang."

FDLE's Gang Database

Section 874.09, F.S., authorizes the Department of Law Enforcement (FDLE) to develop and manage a statewide criminal street gang database to facilitate exchange of information pursuant to the intent and purpose of the Act.

Effect of the Bill

The bill replaces the term "criminal street gang" with "criminal gang."

The bill authorizes FDLE to:

- Notify all law enforcement agencies that reports of criminal gang members or associates shall be entered into the database as soon as the minimum level of data specified by the department is available to the reporting agency and no waiting period for the entry of that data exists.
- Compile and retain information regarding criminal gangs and their members and associates in a manner that allows the information to be used by law enforcement and other agencies deemed appropriate for investigative purposes.
- Compile and maintain a data repository relating to criminal gangs and their members and associates in order to develop and improve techniques used by law enforcement agencies and prosecutors in the investigation, apprehension, and prosecution of members and affiliates of criminal gangs.

The bill also authorizes *local* law enforcement agencies to:

¹⁸ A first-degree misdemeanor is punishable by up to one year imprisonment and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

- After carrying out any arrest of any individual whom they believe to be a member or associate of a criminal gang, create or update that individual's electronic file within the database.
- Notify prosecutors of the accused individual's suspected criminal gang membership or associate status.

Chapter 874, F.S. – New Sections of Statute

CS/HB 43 adds the following new sections of statute to chapter 874, F.S.:

Section 874.045, F.S. – Arrest and Prosecution Under Other Provisions

CS/HB 43 specifies that nothing in chapter 874, F.S., shall prohibit the arrest and prosecution of a criminal gang member under chapter 876¹⁹, chapter 895²⁰, chapter 896²¹, s. 893.20²², or any other applicable provision of law except to the extent otherwise prohibited pursuant to a statutory or constitutional provision.

Section 874.10, F.S. – Directing the Activities of a Criminal Gang

CS/HB 43 makes it a first degree felony, punishable by imprisonment for a term of years not exceeding life, or as provided in ss. 775.082, 775.083, and 775.084, for a person to initiate, organize, plan, finance, direct, manage, or supervise criminal gang-related activity. The bill ranks this offense as a level 7 offense in the Criminal Punishment Code offense severity ranking chart.

Section 874.11, F.S. – Electronic Communication

CS/HB 43 makes it a third degree felony for any person to, for the purpose of benefiting, promoting, or furthering the interests of a criminal gang, use electronic communication to intimidate or harass other persons, or to advertise his or her presence in the community, including, but not limited to, such activities as distributing, selling, transmitting, or posting on the Internet any audio, video, or still image of criminal activity.

Section 874.12, F.S. – Identification Documents: Unlawful Possession or Creation

CS/HB 43 makes it a second degree felony for any person to possess or manufacture any blank, forged, stolen, fictitious, fraudulent, counterfeit, or otherwise unlawfully issued identification document for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.

The bill provides that the term "identification document" includes, but is not limited to, a social security card or number, a birth certificate, a driver's license, an identification card pursuant to s. 322.051, F.S., a naturalization certificate, an alien registration number, a passport, and any access credentials for a publicly operated facility or an infrastructure facility covered under 18 U.S.C. s. 2332f.

Section 874.13, F.S. – Commission of a Gang-Related Offense by a Habitual Felony Offender

CS/HB 43 provides that any person who qualifies as a habitual felony offender and who thereafter commits an offense that was found, pursuant to s. 874.04, F.S., to have been committed for the purpose of benefiting, promoting, or furthering the interests of a criminal gang commits a 1st degree felony punishable by a term of years not exceeding life, or as provided in ss. 775.082, 775.083, and 775.084. The bill ranks this offense as a level 7 offense in the Criminal Punishment Code offense severity ranking chart.

Section 874.14, F.S. – Suspension of Driver's Licenses

¹⁹ Criminal Anarchy, Treason, and Other Crimes Against Public Order.

²⁰ Offenses Concerning Racketeering and Illegal Debts.

²¹ Offenses Related to Financial Transactions.

²² Continuing criminal enterprise.

CS/HB 43 requires courts to order the suspension of the driver's license of persons convicted or adjudicated delinquent of any offense contained in ch. 874, F.S., and of persons who have been found, pursuant to s. 874.04, F.S., to have committed a crime for the purpose of benefitting, promoting, or furthering the interests of a criminal gang. The first suspension of a driver's license under this section must be for a period of 6 months while second or subsequent suspensions must be for 1 year. The bill also specifies that if the person whose license is being suspended is sentenced to a term of incarceration, the court must direct the Department of Highway Safety and Motor Vehicles to commence the suspension of the person's driver's license upon the person's release from incarceration. The bill specifies that a person whose driver's license has been suspended is eligible for issuance of a license for business or employment purposes under if the person is otherwise eligible for the driving privilege.

Racketeer Influenced and Corrupt Organization (RICO) Act

Florida's RICO Act²³ makes it a 1st degree felony:

- For any person who has with criminal intent received any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise;
- For any person, through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property;
- For any person, through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property;
- For any person employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt; or
- For any person to conspire or endeavor to violate any of the provisions of subsection (1), subsection (2), or subsection (3).

The term "racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit any crime that is chargeable by indictment or information under the following provisions of the Florida Statutes:

- s. 210.18, relating to evasion of payment of cigarette taxes;
- s. 403.727(3)(b), relating to environmental control;
- s. 409.920 or s. 409.9201, relating to Medicaid fraud;
- s. 414.39, relating to public assistance fraud;
- s. 440.105 or s. 440.106, relating to workers' compensation;
- s. 443.071(4), relating to creation of a fictitious employer scheme to commit unemployment compensation fraud;
- s. 465.0161, relating to distribution of medicinal drugs without a permit as an Internet pharmacy;
- ss. 499.0051, 499.0052, 499.00535, 499.00545, and 499.0691, relating to crimes involving contraband and adulterated drugs;
- Part IV of chapter 501, relating to telemarketing;
- ch. 517, relating to sale of securities and investor protection;
- s. 550.235, s. 550.3551, or s. 550.3605, relating to dogracing and horseracing;
- ch. 550, relating to jai alai frontons;
- s. 551.109, relating to slot machine gaming;

²³ ch. 895, F.S.

- ch. 552, relating to the manufacture, distribution, and use of explosives;
- ch. 560, relating to money transmitters, if the violation is punishable as a felony;
- ch. 562, relating to beverage law enforcement;
- s. 624.401, relating to transacting insurance without a certificate of authority, s. 624.437(4)(c)1., relating to operating an unauthorized multiple-employer welfare arrangement, or s. 626.902(1)(b), relating to representing or aiding an unauthorized insurer;
- s. 655.50, relating to reports of currency transactions, when such violation is punishable as a felony;
- ch. 687, relating to interest and usurious practices;
- s. 721.08, s. 721.09, or s. 721.13, relating to real estate timeshare plans;
- ch. 782, relating to homicide;
- ch. 784, relating to assault and battery;
- ch. 787, relating to kidnapping or human trafficking;
- ch. 790, relating to weapons and firearms;
- s. 796.03, s. 796.035, s. 796.04, s. 796.045, s. 796.05, or s. 796.07, relating to prostitution and sex trafficking;
- ch. 806, relating to arson;
- s. 810.02(2)(c), relating to specified burglary of a dwelling or structure;
- ch. 812, relating to theft, robbery, and related crimes;
- ch. 815, relating to computer-related crimes;
- ch. 817, relating to fraudulent practices, false pretenses, fraud generally, and credit card crimes;
- ch. 825, relating to abuse, neglect, or exploitation of an elderly person or disabled adult;
- s. 827.071, relating to commercial sexual exploitation of children;
- ch. 831, relating to forgery and counterfeiting;
- ch. 832, relating to issuance of worthless checks and drafts;
- s. 836.05, relating to extortion;
- ch. 837, relating to perjury;
- ch. 838, relating to bribery and misuse of public office;
- ch. 843, relating to obstruction of justice;
- s. 847.011, s. 847.012, s. 847.013, s. 847.06, or s. 847.07, relating to obscene literature and profanity;
- s. 849.09, s. 849.14, s. 849.15, s. 849.23, or s. 849.25, relating to gambling;
- ch. 874, relating to criminal street gangs;
- ch. 893, relating to drug abuse prevention and control;
- ch. 896, relating to offenses related to financial transactions
- ss. 914.22 and 914.23, relating to tampering with a witness, victim, or informant, and retaliation against a witness, victim, or informant;
- ss. 918.12 and 918.13, relating to tampering with jurors and evidence.²⁴

Effect of the Bill

CS/HB 43 redefines the term “racketeering activity” to include crimes chargeable by a *petition* under the above-listed provisions of the Florida Statutes. The bill also adds the following crimes to the above list:

- s. 316.1935, relating to fleeing or attempting to elude a law enforcement officer and aggravated feeling or eluding;
- s. 777.03, relating to commission of crimes by accessories after the fact;
- ch. 794, relating to sexual battery, but only if such crime was committed with the intent to benefit, promote, or further the interests of a criminal gang, or for the purpose of increasing a criminal gang member’s own standing or position within a criminal gang;
- s. 775.13(5)(b), relating to registration of persons found to have committed any offense for the purpose of benefiting, promoting, or furthering the interests of a criminal-gang.

Criteria for Bail Determination

Article I, section 14, of the Florida Constitution provides, with some exceptions, that every person charged with a crime or violation of a municipal or county ordinance is entitled to pretrial release on reasonable conditions. Courts may impose any number of conditions of pretrial release that are intended to ensure the defendant's presence at trial. Bail, one of the most common conditions of pretrial release, requires an accused to pay a set sum of money to the sheriff. If a defendant released on bail fails to appear before the court at the appointed place and time, the bail is forfeited.

When determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be, courts must consider the following:

- The nature and circumstances of the offense charged.
- The weight of the evidence against the defendant.
- The defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition.
- The defendant's past and present conduct, including any record of convictions, previous flight to avoid prosecution, or failure to appear at court proceedings. However, any defendant who had failed to appear on the day of any required court proceeding in the case at issue, but who had later voluntarily appeared or surrendered, shall not be eligible for a recognizance bond; and any defendant who failed to appear on the day of any required court proceeding in the case at issue and who was later arrested shall not be eligible for a recognizance bond or for any form of bond which does not require a monetary undertaking or commitment equal to or greater than \$2,000 or twice the value of the monetary commitment or undertaking of the original bond, whichever is greater. Notwithstanding anything in this section, the court has discretion in determining conditions of release if the defendant proves circumstances beyond his or her control for the failure to appear. This section may not be construed as imposing additional duties or obligations on a governmental entity related to monetary bonds.
- The nature and probability of danger which the defendant's release poses to the community.
- The source of funds used to post bail.
- Whether the defendant is already on release pending resolution of another criminal proceeding or on probation, parole, or other release pending completion of a sentence.
- The street value of any drug or controlled substance connected to or involved in the criminal charge. It is the finding and intent of the Legislature that crimes involving drugs and other controlled substances are of serious social concern, that the flight of defendants to avoid prosecution is of similar serious social concern, and that frequently such defendants are able to post monetary bail using the proceeds of their unlawful enterprises to defeat the social utility of pretrial bail. Therefore, the courts should carefully consider the utility and necessity of substantial bail in relation to the street value of the drugs or controlled substances involved.
- The nature and probability of intimidation and danger to victims.
- Whether there is probable cause to believe that the defendant committed a new crime while on pretrial release.
- Any other facts that the court considers relevant.²⁵

Effect of the Bill

As indicated above, courts must consider the source of the funds used to post bail. CS/HB 43 adds to this provision by providing that the court must consider the source of the funds used to post bail *or*

²⁵ s. 903.046, F.S.

procure an appearance bond, particularly whether the proffered funds, real property, property, or any proposed collateral or bond premium may be linked to or derived from the crime alleged to have been committed or from any other criminal or illicit activities. The bill specifies that the burden of establishing the non-involvement in or non-derivation from criminal or other illicit activity of such proffered funds, real property, property, or any proposed collateral or bond premium falls upon the defendant or other person proffering them to obtain the defendant's release.

CS/HB 43 also adds the following consideration to the above list:

- Whether the crime charged is a violation of Chapter 874 or alleged to be subject to enhanced punishment under Chapter 874. If any such violation is charged against a defendant or if the defendant is charged with a crime that is alleged to be subject to such enhancement, he or she shall not be eligible for release on bail or surety bond until the first appearance on the case, to ensure the full participation of the prosecutor and the protection of the public.

Tampering and Harassing Witnesses

Witness Tampering

It is currently a 3rd degree felony for a person to knowingly use intimidation or physical force, or threaten another person, or attempt to do so, or engage in misleading conduct toward another person, or offer pecuniary benefit or gain to another person, with intent to cause or induce any person to:

- Withhold testimony, or withhold a record, document, or other object, from an official investigation²⁶ or official proceeding²⁷;
- Alter, destroy, mutilate, or conceal an object with intent to impair the integrity or availability of the object for use in an official investigation or official proceeding;
- Evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official investigation or an official proceeding;
- Be absent from an official proceeding to which such person has been summoned by legal process;
- Hinder, delay, or prevent the communication to a law enforcement officer or judge of information relating to the commission or possible commission of an offense or a violation of a condition of probation, parole, or release pending a judicial proceeding; or
- Testify untruthfully in an official investigation or an official proceeding.²⁸

Effect of the Bill

CS/HB 43 amends the penalties for witness tampering. Specifically, the bill provides that tampering with a witness, victim, or informant is a:

- 3rd degree felony where the official investigation or official proceeding affected involves the investigation or prosecution of a misdemeanor.
- 2nd degree felony where the official investigation or official proceeding affected involves the investigation or prosecution of a third degree felony.
- 1st degree felony where the official investigation or official proceeding affected involves the investigation or prosecution of a second degree felony.
- 1st degree felony, punishable by a term of years not exceeding life or as provided in ss. 775.082, 775.083 or 775.084, where the official investigation or official proceeding affected involves the investigation or prosecution of a first degree felony or a first degree felony punishable by a term of years not exceeding life.

²⁶ Section 914.21, F.S., defines the term "official investigation" as any investigation instituted by a law enforcement agency or prosecuting officer of the state or a political subdivision of the state or the Commission on Ethics.

²⁷ Section 914.21, F.S., defines the term "official proceeding" as a proceeding before a judge or court or a grand jury, a proceeding before the Legislature, a proceeding before a federal agency that is authorized by law, or a proceeding before the Commission on Ethics.

²⁸ s. 914.22, F.S.

- Life felony, punishable as provided in ss. 775.082, 775.083 or 775.084, where the official investigation or official proceeding affected involves the investigation or prosecution of a life or capital felony.
- 3rd degree felony where the offense level of the affected official investigation or official proceeding is indeterminable or where the affected official investigation or official proceeding involves a noncriminal investigation or proceeding.

Harassing a Witness

It is a 1st degree misdemeanor for a person to intentionally harass, or attempt to harass another person, thereby hindering, delaying, preventing, or dissuading any person from:

- Attending or testifying in an official proceeding or cooperating in an official investigation;
- Reporting to a law enforcement officer or judge the commission or possible commission of an offense or a violation of a condition of probation, parole, or release pending a judicial proceeding;
- Arresting or seeking the arrest of another person in connection with an offense; or
- Causing a criminal prosecution, or a parole or probation revocation proceeding, to be sought or instituted, or from assisting in such prosecution or proceeding;

Effect of the Bill

CS/HB 43 amends the penalties for harassing a witness. Specifically, the bill provides that harassing a witness, victim, or informant is a:

- 1st degree misdemeanor where the official investigation or official proceeding affected involves the investigation or prosecution of a misdemeanor.
- 3rd degree felony where the official investigation or official proceeding affected involves the investigation or prosecution of a third degree felony.
- 2nd degree felony where the official investigation or official proceeding affected involves the investigation or prosecution of a second degree felony.
- 1st degree felony where the official investigation or official proceeding affected involves the investigation or prosecution of a first degree felony.
- 1st degree felony, punishable by a term of years not exceeding life or as provided in ss. 775.082, 775.083 or 775.084, where the official investigation or official proceeding affected involves the investigation or prosecution of a felony of the first degree punishable by a term of years not exceeding life or a prosecution of a life or capital felony.
- 3rd degree felony where the offense level of the affected official investigation or official proceeding is indeterminable or where the affected official investigation or official proceeding involves a noncriminal investigation or proceeding.

Florida Violent Crime and Drug Control Council

In 1993, the legislature passed the Florida Violent Crime Act of 1993, which created the Florida Violent Crime Council (Council) within FDLE. The Council was created to address the violent crime occurring in Florida and to develop strategies to combat it. The 2001 Legislature amended the statute, renaming the Council as the Florida Violent Crime and Drug Control Council (VCDCC).²⁹

The VCDCC, which serves in an advisory capacity to FDLE, is comprised of 14 law enforcement professionals who meet quarterly to review major cases and crime trends with the purpose of making funding decisions assisting multi-jurisdictional drug cases, major violent crime investigations and by providing the technical and forensic expertise to complete these investigations.³⁰

Legislative Findings

²⁹ "2006 Annual Report," Violent Crime and Drug Control Council, December 2006.

³⁰ http://www.tbnweekly.com/pinellas_county/content_articles/091107_pco-05.txt

The VCDCC was created based upon a legislative finding that there was a need to develop and implement a statewide strategy to address violent criminal activity and drug control efforts by state and local law enforcement agencies, including investigations of illicit money laundering.

Effect of the Bill

CS/HB 43 adds to the legislative findings by declaring a need to develop and implement a statewide strategy to address *crimes committed by criminal gangs*.

Duties of the Council

The duties of the VCDCC are outlined in s. 943.031, F.S. Currently, the VCDCC *must*:

- Provide advice and make recommendations, as necessary, to the executive director of FDLE;
- Receive periodic reports from regional violent crime investigation and statewide drug control strategy implementation coordinating teams which relate to violent crime trends or the investigative needs or successes in the regions, factors, and trends relevant to the implementation of the statewide drug strategy, and the results of drug control and illicit money laundering investigative efforts funded in part by the council.
- Maintain and utilize criteria for the disbursement of funds from the Violent Crime Investigative Emergency and Drug Control Strategy Implementation Account within the Department of Law Enforcement Operating Trust Fund or other appropriations provided to the Department of Law Enforcement by the Legislature in the General Appropriations Act. The criteria shall allow for the advancement of funds as approved by the council.
- Review and approve all requests for disbursement of funds from the Violent Crime Investigative Emergency and Drug Control Strategy Implementation Account within the Department of Law Enforcement Operating Trust Fund and from other appropriations provided to the department by the Legislature in the General Appropriations Act.

Additionally, the VCDCC *may* advise the executive director on the feasibility of undertaking initiatives which include, but are not limited to, the following:

- Establishing a program which provides grants to criminal justice agencies that develop and implement effective violent crime prevention and investigative programs and which provides grants to law enforcement agencies for the purpose of drug control and illicit money laundering investigative efforts or task force efforts that are determined by the council to significantly contribute to achieving the state's goal of reducing drug-related crime as articulated by the Office of Drug Control, that represent a significant illicit money laundering investigative effort, or that otherwise significantly support statewide strategies developed by the Statewide Drug Policy Advisory Council established under s. 397.333, subject to the limitations provided in this section. The grant program may include an innovations grant program to provide startup funding for new initiatives by local and state law enforcement agencies to combat violent crime or to implement drug control or illicit money laundering investigative efforts or task force efforts by law enforcement agencies, including, but not limited to, initiatives such as:
 - o Providing enhanced community-oriented policing.
 - o Providing additional undercover officers and other investigative officers to assist with violent crime investigations in emergency situations.
 - o Providing funding for multiagency or statewide drug control or illicit money laundering investigative efforts or task force efforts that cannot be reasonably funded completely by alternative sources and that significantly contribute to achieving the state's goal of reducing drug-related crime as articulated by the Office of Drug Control, that represent a significant illicit money laundering investigative effort, or that otherwise significantly support statewide strategies developed by the Statewide Drug Policy Advisory Council established under s. 397.333.

- Expanding the use of automated fingerprint identification systems at state and local levels.
- Identifying methods to prevent violent crime.
- Identifying methods to enhance multiagency or statewide drug control or illicit money laundering investigative efforts or task force efforts that significantly contribute to achieving the state's goal of reducing drug-related crime as articulated by the Office of Drug Control, that represent a significant illicit money laundering investigative effort, or that otherwise significantly support statewide strategies developed by the Statewide Drug Policy Advisory Council established under s. 397.333.
- Enhancing criminal justice training programs which address violent crime, drug control, or illicit money laundering investigative techniques or efforts.
- Developing and promoting crime prevention services and educational programs that serve the public, including, but not limited to:
 - o Enhanced victim and witness counseling services that also provide crisis intervention, information referral, transportation, and emergency financial assistance.
 - o A well-publicized rewards program for the apprehension and conviction of criminals who perpetrate violent crimes.
- Enhancing information sharing and assistance in the criminal justice community by expanding the use of community partnerships and community policing programs.

Effect of the Bill

CS/HB 43 revises the VCDCC's duties by requiring the VCDCC to:

- Receive periodic reports from regional violent crime investigation and statewide drug control strategy implementation coordinating teams which relate to violent crime trends, including discussions regarding the activity of significant criminal gangs in the region.
- Maintain and use criteria for the disbursement of funds from the Violent Crime Investigative Emergency and Drug Control Strategy Implementation Account or any other account from which the council may disburse proactive investigative funds as may be established within the Department of Law Enforcement Operating Trust Fund or other appropriations provided to the Department of Law Enforcement by the Legislature in the General Appropriations Act. The criteria shall allow for the advancement of funds to reimburse agencies regarding violent crime investigations as approved by the council, and the advancement of funds to implement proactive drug control strategies or significant criminal gang investigative efforts as authorized by the Drug Control Strategy and Criminal Gang Committee or the Victim and Witness Protection Review Committee. Regarding violent crime investigation reimbursement, an expedited approval procedure shall be established for rapid disbursement of funds in violent crime emergency situations.

The bill specifies that "significant criminal gang investigative efforts" eligible for proactive funding must involve an effort against a known criminal gang that:

- Involves multiple law enforcement agencies;
- Reflects a dedicated significant investigative effort on the part of each participating agency in personnel, time devoted to the investigation, and agency resources dedicated to the effort;
- Reflects a dedicated commitment by a prosecuting authority to ensure that cases developed by the investigation will be timely and effectively prosecuted;
- Demonstrates a strategy and commitment to dismantling the criminal gang via seizures of assets, significant money laundering, and organized crime investigations and prosecutions, or similar efforts.

The bill specifies that the VCDCC may require satisfaction of additional elements, to include reporting criminal investigative and criminal intelligence information related to criminal gang activity and members in a manner required by FDLE, as a prerequisite for receiving proactive criminal gang funding.

CS/HB 43 also revises the VCDCC's duties by providing that the VCDCC *may* advise the executive director on the feasibility of undertaking initiatives which include, but are not limited to, the following:

- Establishing a program which provides grants to criminal justice agencies that develop and implement effective violent crime prevention and investigative programs and which provides grants to law enforcement agencies for the purpose of drug control, criminal gang, and illicit money laundering investigative efforts or task force efforts that are determined by the council to significantly contribute to achieving the state's goal of reducing drug-related crime as articulated by the Office of Drug Control, that represent significant criminal gang investigative efforts, that represent a significant illicit money laundering investigative effort, or that otherwise significantly support statewide strategies developed by the Statewide Drug Policy Advisory Council established under s. 397.333, subject to the limitations provided in this section. The grant program may include an innovations grant program to provide startup funding for new initiatives by local and state law enforcement agencies to combat violent crime or to implement drug control, significant criminal gang investigative efforts, or illicit money laundering investigative efforts or task force efforts by law enforcement agencies, including, but not limited to, initiatives such as:
 - o Providing enhanced community-oriented policing.
 - o Providing additional undercover officers and other investigative officers to assist with violent crime investigations in emergency situations.
 - o Providing funding for multiagency or statewide drug control, criminal gang, or illicit money laundering investigative efforts or task force efforts that cannot be reasonably funded completely by alternative sources and that significantly contribute to achieving the state's goal of reducing drug-related crime as articulated by the Office of Drug Control, that represent significant criminal gang investigative efforts, that represent a significant illicit money laundering investigative effort, or that otherwise significantly support statewide strategies developed by the Statewide Drug Policy Advisory Council established under s. 397.333.
- Identifying methods to enhance multiagency or statewide drug control, criminal gang, or illicit money laundering investigative efforts or task force efforts that significantly contribute to achieving the state's goal of reducing drug-related crime as articulated by the Office of Drug Control, that represent significant criminal gang investigative efforts, that represent a significant illicit money laundering investigative effort, or that otherwise significantly support statewide strategies developed by the Statewide Drug Policy Advisory Council established under s. 397.333.
- Enhancing criminal justice training programs which address violent crime, drug control, illicit money laundering investigative techniques or efforts, or efforts to control and eliminate criminal gangs.

CS/HB 43 also creates the Drug Control Strategy and Criminal Gang Committee (Committee) within the VCDCC. The committee consists of the following members:

- The Attorney General or a designate;
- The designate of the executive director of FDLE;
- The secretary of the Department of Corrections (DOC) or a designate;
- The director of the Office of Drug Control within the Executive Office of the Governor or a designate; and
- The state attorney, the two sheriffs, and the two chiefs of police, or their designates.

The Committee must review and approve all requests for disbursement of funds from the Violent Crime Investigative Emergency and Drug Control Strategy Implementation Account within the FDLE Operating Trust Fund and from other appropriations provided to FDLE by the Legislature in the General Appropriations Act.

The bill further requires entities receiving any proactive funding provided by the VCDCC through the Committee to report the results of the investigations to the VCDCC once the investigation has been completed. The Committee must require ongoing status reports on ongoing investigations using such findings in its closed sessions.

Terms and Conditions of Community Supervision

Chapter 948, F.S., entitled "Probation and Community Control," contains a variety of statutes that establish terms and conditions of probation and community control. Similarly, chapter 947, F.S., entitled "Parole Commission," establishes terms and conditions of parole, conditional release, and control release.

Effect of the Bill

CS/HB 43 creates s. 948.033, F.S., and amends ss. 947.18, and 947.1405, F.S. to require courts, as a condition of supervision, to prohibit offenders who have been found by a court to have committed their crime for the purpose of benefiting, promoting, or furthering the interests of a criminal gang, from knowingly associating with other criminal gang members or associates, except as authorized by law enforcement officials, prosecutorial authorities, or the court, for the purpose of aiding in the investigation of criminal activity.

Conforming Changes

CS/HB 43 makes technical conforming changes to ss. 893.138, 921.0022, 921.0024, 921.141, 943.325, 984.03, 985.03, 985.047, and 985.433, F.S., to conform language.

C. SECTION DIRECTORY:

Section 1. Amends s. 775.13, F.S., relating to registration of convicted felons, exemptions; penalties.

Section 2. Amends s. 790.23, F.S., relating to felons and delinquents; possession of firearms, ammunition, or electric weapons or devices unlawful.

Section 3. Creates s. 790.231, F.S., relating to felons and delinquents; possession of bulletproof vests.

Section 4. Amends s. 823.05, F.S., relating to places declared a nuisance; may be abated and enjoined.

Section 5. Amends s. 874.01, F.S., renaming the chapter.

Section 6. Amends s. 874.02, F.S., relating to legislative findings and intent.

Section 7. Amends s. 874.03, F.S., relating to definitions.

Section 8. Amends s. 874.04, F.S., gang-related offenses; enhanced penalties.

Section 9. Creates s. 874.045, F.S., relating to arrest and prosecution under other provisions.

Section 10. Amends s. 874.05, F.S., relating to causing, encouraging, soliciting, or recruiting criminal gang membership.

Section 11. Amends s. 874.06, F.S., relating to civil cause of action.

Section 12. Amends s. 874.08, F.S., relating to criminal gang activity and recruitment; forfeiture.

- Section 13.** Amends s. 874.09, F.S., relating to crime data information.
- Section 14.** Creates s. 874.10, F.S., relating to directing the activities of a criminal gang.
- Section 15.** Creates s. 874.11, F.S., relating to electronic communication.
- Section 16.** Creates s. 874.12, F.S., relating to identification documents; unlawful possession or creation.
- Section 17.** Creates s. 874.13, F.S., relating to commission of gang-related offenses by habitual felony offenders.
- Section 18.** Creates s. 874.14, F.S., relating to suspension of driver's license.
- Section 19.** Amends s. 895.02, F.S., relating to definitions.
- Section 20.** Amends s. 903.046, F.S., relating to purpose of and criteria for bail determination.
- Section 21.** Amends s. 914.22, F.S., relating to tampering with or harassing a witness, victim, or informant; penalties.
- Section 22.** Amends s. 943.031, F.S., relating to Florida Violent Crime and Drug Control Council.
- Section 23.** Creates s. 948.033, F.S., relating to condition of probation or community control; criminal gang.
- Section 24.** Amends s. 947.18, F.S., relating to conditions of parole.
- Section 25.** Amends s. 947.1405, F.S., relating to conditional release program.
- Section 26.** Amends s. 893.138, F.S., relating to local administrative action to abate drug-related, prostitution-related, or stolen-property-related public nuisances and criminal gang activity.
- Section 27.** Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.
- Section 28.** Amends s. 921.0024, F.S., relating to Criminal Punishment Code; worksheet computations; scoresheets.
- Section 29.** Amends s. 921.141, F.S., relating to sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence.
- Section 30.** Amends s. 943.325, F.S., relating to blood or other biological specimen testing for DNA analysis.
- Section 31.** Amends s. 984.03, F.S., relating to definitions.
- Section 32.** Amends s. 985.03, F.S., relating to definitions.
- Section 33.** Amends s. 985.047, F.S., relating to information systems.
- Section 34.** Amends s. 985.433, F.S., relating to disposition hearings in delinquency cases.
- Section 35.** Directs the Division of Statutory Revision to redesignate the title of chapter 874, F.S., as "Criminal Gang Enforcement and Prevention."
- Section 36.** This bill takes effect October 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

On February 26, 2008 the Criminal Justice Impact Conference found the bill to have a potentially large impact on the inmate population.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

On February 26, 2008 the Criminal Justice Impact Conference found the bill to have a potentially large impact on the inmate population. This bill creates three first degree felony offenses punishable by life imprisonment that are ranked in level 7 of the Criminal Punishment Code offense severity several ranking chart, and creates numerous unranked first, second, and third degree felony offenses. To that extent, this bill may have a prison bed impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

Additionally, portions of this bill appear to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because they are criminal laws.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

The bill sponsor submitted the following statement:

FSS 874 has not been revised since 1996. Since that time, criminal gangs have evolved into more lethal and destructive entities. This bill, if enacted, will expand the law from dealing only with traditional street gangs to include hate crime and terrorist organizations, and will enumerate additional RICO predicate crimes, enabling law enforcement to attack these groups with racketeering prosecutions. This legislation contains several important statewide Grand Jury recommendations and was crafted with the help of special state attorney prosecutors and law enforcement.

The chair of the Safety & Security Council chose not to submit any further comments regarding the council substitute.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On January 23, 2008, the Safety & Security Council adopted one strike-all amendment and four amendments to the strike-all amendment and reported the bill favorably as a council substitute. The amendments did the following:

- Added a provision requiring felons who have been found to have committed a crime for the purposes of benefitting, promoting, or furthering the interests of a criminal gang to register with the sheriff within 48 hours of entering into a county.
- Enhanced the penalty for certain felony to possess a firearm.
- Revised definitions relating to criminal gangs.
- Made it a 1st degree felony, punishable by imprisonment for a term of years not exceeding life, or as provided in ss. 775.082, 775.083, and 775.084, for a person to initiate, organize, plan, finance, direct, manage, or supervise criminal gang-related activity
- Provided that any person who qualifies as a habitual felony offender and who thereafter commits an offense that was found, pursuant to s. 874.04, F.S., to have been committed for the purpose of benefitting, promoting, or furthering the interests of a criminal gang commits a 1st degree felony punishable by a term of years not exceeding life, or as provided in ss. 775.082, 775.083, and 775.084.
- Amends the definition of "racketeering activity" within Florida's RICO Act.
- Added items to the list of things a court must consider when determining whether to release a defendant on bail or other conditions.
- Amended the penalties for tampering and harassing witnesses.

This analysis is drafted to the council substitute.