

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/SB 76

INTRODUCER: Criminal Justice Committee, Senator Atwater and others

SUBJECT: Criminal Activity/Criminal Gangs

DATE: March 4, 2008                      REVISED: 03/05/08 \_\_\_\_\_

|    | ANALYST          | STAFF DIRECTOR | REFERENCE | ACTION                 |
|----|------------------|----------------|-----------|------------------------|
| 1. | <u>Erickson</u>  | <u>Cannon</u>  | <u>CJ</u> | <u>Fav/CS</u>          |
| 2. | <u>Treadwell</u> | <u>Maclure</u> | <u>JU</u> | <u>Fav/1 amendment</u> |
| 3. | _____            | _____          | <u>JA</u> | _____                  |
| 4. | _____            | _____          | _____     | _____                  |
| 5. | _____            | _____          | _____     | _____                  |
| 6. | _____            | _____          | _____     | _____                  |

**Please see Section VIII. for Additional Information:**

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input checked="" type="checkbox"/> | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

This bill addresses the problem of criminal gang activity in Florida. Major features of the bill include the following:

- As part of convicted felon registration, requiring a felon to register information on any felony committed for the purpose of furthering a criminal gang, and creating a third degree felony for failure to register this information;
- Creating a first degree felony, punishable by imprisonment up to life and ranked in Level 7 of the offense severity ranking chart of the Criminal Punishment Code, for a person to own or possess a firearm, ammunition, or specified weapon or device if that person has been convicted of a felony and has previously qualified or currently qualifies for penalty enhancements under the gang chapter (ch. 874, F.S.);
- Creating a third degree felony for possession of a bulletproof vest by felons;
- Providing that places frequented by persons who are involved in criminal gangs are public nuisances that can be “abated” (i.e., a court may issue an injunction enjoining the operation or maintenance of the place or premise);
- Providing that “criminal gangs” include terrorist organizations and hate groups;

- Providing that a “criminal gang member” (defined in the bill as are additional terms) is not required to be a member of a “criminal gang” but must meet two or more specified criteria, including new criteria, providing that “criminal gang-related activity” can also include activity for a non-monetary benefit (such as status), and providing that a single act or factual transaction may satisfy multiple criteria;
- Providing that findings necessary for imposing the current enhanced penalty for criminal street gang activity must be found “beyond a reasonable doubt”;
- Amending provisions relating to the recovery of attorney’s fees and costs in a civil cause of action for treble damages under s. 874.06, F.S., for harm in violation of ch. 874, F.S., and providing that the state has a civil cause of action for damages (excluding punitive damages);
- Creating a first degree misdemeanor for knowingly violating a temporary or permanent order relating to abating or enjoining a public nuisance;
- Authorizing the Florida Department of Law Enforcement (FDLE) to compile and retain information regarding criminal gangs, and authorizing local law enforcement agencies to create or update the electronic file of a suspected gang member or associate within that database and to notify the prosecutor of that individual’s status;
- Creating a first degree felony, punishable by imprisonment up to life and ranked in Level 7, for a person to knowingly initiate, organize, plan, finance, direct, or supervise criminal gang-related activity (“gang kingpin” penalty);
- Creating a third degree felony for any person who, for the purpose of furthering the interests of a criminal gang, uses electronic communication (defined in the bill) 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;
- Creating a second degree felony for possessing or manufacturing any blank, forged, stolen, fictitious, fraudulent, counterfeit, or otherwise unlawfully issued identification document to further the interests of a criminal gang;
- Creating a first degree felony, punishable by imprisonment up to life and ranked in Level 7, for a person who qualifies as a habitual offender to thereafter commit an offense that was found to further the interests of a criminal gang;
- Providing for the suspension of the driver’s license of each person convicted or adjudicated delinquent of any offense contained in ch. 874, F.S., and of any person whose penalty has been enhanced under that chapter (if the person is incarcerated, the license suspension occurs upon the person’s release from incarceration);
- Providing that juvenile adjudications of delinquency may serve as predicate offenses for a racketeering charge, and adding additional predicate offenses, such as fleeing and eluding, burglaries, etc., which are offenses commonly committed by criminal gang members;
- Requiring courts during bail determinations to consider whether the funds used to post bail or procure an appearance bond are derived from criminal activity, and placing the burden on the defendant to establish noninvolvement in or nonderivation from such activity of such funds;
- Requiring courts during bail determination to consider whether the crime charged is a violation of ch. 874, F.S., or alleged to be subject to enhanced punishment under that

- chapter, and if such is the case, providing that the defendant is not eligible for release on bail or surety bond until the first appearance on the case;
- Creating new penalties for tampering or harassment affecting a criminal investigation or criminal proceeding so that the tampering or harassment is one misdemeanor or felony degree greater than the misdemeanor or felony degree of the crime being investigated or prosecuted;
  - Creating a third degree felony for tampering or harassment in which the tampering or harassment affects an official investigation or official proceeding of a crime in which the misdemeanor or felony degree is indeterminable or involves a noncriminal investigation or proceeding;
  - Authorizing the Florida Violent Crime and Drug Control Council to disburse grants for certain gang initiatives, amending criteria and other provisions relevant to grant disbursement, and creating the Drug Control Strategy and Criminal Gang Committee within the council to review and approve all requests for disbursement of funds;
  - Authorizing the court to order the posting of a surety bond to secure the appearance of a person on probation, community control, or any other court-ordered community supervision at any subsequent court proceeding; and
  - Providing as a condition of probation, community control, parole, or conditional release that persons found to have committed a crime for the purpose of furthering the interests of a criminal gang are prohibited 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 gang activity.

This bill amends the following sections of the Florida Statutes: 775.13, 790.23, 823.05, 874.01, 874.02, 874.03, 874.04, 874.05, 874.06, 874.08, 874.09, 893.138, 895.02, 903.046, 914.22, 921.0022, 921.0024, 921.141, 943.031, 943.325, 947.1405, 947.18, 948.03, 984.03, 985.03, 985.047, and 985.433. This bill also creates the following sections of the Florida Statutes: 790.231, 874.045, 874.10, 874.11, 874.12, 874.13, 874.14, and 948.033.

## II. Present Situation:

### **Findings and Recommendations of the 18th Statewide Grand Jury Relevant to Florida Law**

According to a 2007 statewide survey by the Florida Department of Law Enforcement (FDLE),<sup>1</sup> the approximate total number of gangs identified by just the law enforcement response component was 721 gangs, and 53.2 percent of these respondents indicated that the problem of criminal gangs was “getting worse.” Thirty-three percent of the prosecutors responding to the survey reported filing more than 50 cases in 2006 relating to criminal gang activity. Seventy-one percent of the law enforcement response component, 74 percent of school resource officers, and 83 percent of the corrections response component affirmed the presence of criminal gang activity in their area or facilities.

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<sup>1</sup> 2007 *Statewide Gang Survey Results*, Office of Statewide Intelligence, Florida Department of Law Enforcement (October 2007).

In response to this gang problem and at the request of Governor Charlie Crist, the Florida Supreme Court ordered the impaneling of the Eighteenth Statewide Grand Jury (“jury”) to examine the problem of gangs in Florida. On December 12, 2007, the jury submitted its first interim report<sup>2</sup> with findings and recommendations, some of which relate to funding and some of which relate to amending existing law or creating new law.

The jury’s findings relevant to changes to Florida law include the following:

- The “bulk” of criteria in the definition of “criminal street gang” do not “prove practical in court for various reasons such as witness intimidation and the bond of family members” and “need to be simplified.”
- Evidence of gang clothing, gang hand signs, and other gang markers used in a crime are insufficient to prove gang membership under s. 874.03(2)(d), F.S., which is a “criminal street gang member” criterion specifying that the person “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.” “Without evidence of where the man ‘resides’ or ‘frequents’ and without evidence that he associated with ‘known criminal street gang members’ who must also be documented through the same multi-step process, law enforcement will not be able to satisfy the requirements of the statute.”
- Section 874.03(2), F.S., “allows a person who is stopped in the company of other organized criminal gang members to meet one of the criteria which defines a gang member,” but does not “distinguish between voluntary and involuntary associations.” An inmate in a correctional institution may be assigned (outside of the inmate’s control) to the same cell as a gang member. “Florida needs a rule that properly identifies gang inmates when they are seen voluntarily holding a gang meeting in the prison yard.”
- Changes in 2001 to address constitutional concerns regarding ch. 874, F.S., by requiring a “connection between the criminal activity and gang membership,” “will continue to provide a safeguard against the ‘accidental’ gang member who is copying a hand sign or wearing a jersey,” but “once a person goes forward and commits a crime for which he is charged as a gang member, he has entered into an area of lawbreaking and should be punished accordingly.”
- “The key sentencing provision related to the enhancement of gang members’ crimes may now pose constitutional problems because of recent federal sentencing cases that have been decided by the United States Supreme Court in *Apprendi* and *Blakely*. *Apprendi v. New Jersey*, 530 U.S. 466 (2000); *Blakely v. Washington*, 542 U.S. 296 (2004). Those cases stand for the proposition that judges may not enhance a sentence based on facts that have not been determined by a jury. Based on these cases it appears that the State must prove Florida’s gang enhancement to a jury, or a judge during a bench trial, rather than to a judge at sentencing as it is presently structured.”

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<sup>2</sup> *Criminal Gangs and Gang Related Violence*, First Interim Report of the Statewide Grand Jury, Eighteenth Statewide Grand Jury, Case No. 07-1128, West Pam Beach, Florida (December 12, 2007).

- “[C]onfusion among law enforcement as to whether or not one piece of evidence may satisfy two criteria at one time. . . should be clarified in the affirmative and allow for one piece of evidence to establish multiple criteria.”
- Section 874.03(3), F.S., requires a “pattern of criminal street gang activity. . . .Presently, this statute requires that a defendant commit multiple felonies thereby affecting multiple victims before the sentencing court may enhance his sentence recognizing his gang motives. Whether a defendant has committed multiple felonies should really go more to the analysis of his criminal history than whether or not he is a gang member who committed a crime for his gang.” Penalty enhancements “should be based on present criminal gang activity,” not on prior record.
- Penalty enhancements based upon a finding “that the defendant committed the charged offense for the purpose of benefiting, promoting, or furthering the interests of a criminal street gang” should include non-financial benefits to the gang, not just financial benefits. “Actions that enhance a gang’s reputation are a benefit to the gang and thus actions taken for the purpose of enhancing a gang member’s or a gang’s reputation should qualify for an enhanced penalty.” Reputation “is often established by violence and fear.”
- “[G]ang members consistently commit crimes in a given area, harass and intimidate neighbors, try to recruit new members, and in general threaten the quality of life for the law-abiding neighbors. Under current law, injunctions may be sought to stop that illicit behavior and to restore order to the neighborhood. The problem with the current law, however, is that a violation of a judicially entered injunction results in no immediate sanction against the violator. With gang members this is particularly emboldening and only serves to enhance the reputation of their entire enterprise. As it stands now, proving such a civil violation requires another notice and hearing in civil court and may only result in a contempt sentence. Other areas of criminal law, notably domestic violence crimes, allow for an immediate criminal arrest if the officer witnesses a person in violation of the injunction. To give any real meaning to this powerful neighborhood protection tool, gang members must be subject to arrest for violation of injunctions.”
- “It is common for a gang to operate as an ‘enterprise’ and thus a gang could be charged under the RICO statute. However, the RICO statute was not originally designed with prosecution of street gangs in mind; accordingly, many crimes committed by gangs are not listed as predicate offenses. . . .RICO would be a much more powerful and useful tool in prosecuting gangs if additional predicate offenses were included within statute 895.02 to capture typical street gang activities.” Some of the additional predicate offenses identified by the jury are burglaries not covered as predicates, fleeing or eluding a law enforcement officer, “criminal mischief in relation to gang activity,” and “Internet-related crimes” (to address gangs’ use of the Internet “to boast about their activities and to recruit new members while insulting rival gangs”).
- “Law enforcement has stated that Internet recruiting [by gangs] needs to be prohibited.”

- “As it presently stands, the kingpin or leader of a gang does not receive any additional punishment for his role in the gang. Conventional wisdom would suggest that targeting the top tier of a gang will decrease the power of the gang and dismantle its activities. Both state and federal statutes commonly increase punishment for defendants who organize, direct, manage, or supervise criminal offenses.” Section 812.019(2), F.S., provides “that the leader, financier, or organizer of dealing in stolen property should receive increased penalties. There exists a need to apply language similar to statute 812.019(2) in drafting a statute to target gang kingpins.”
- Section 775.084, F.S., which punishes repeat criminal offenders, is insufficient to address repeat gang activity because of time and other limitations relating to qualifying offenses and the exclusion of some drug offenses. RICO also is insufficient to punish repeat gang activity, “[g]iven the fact that a RICO charge may include several years of activities and convictions within the charge itself, those crimes would not qualify. . . . A repeat gang offender statute would serve to punish those who continue to engage in criminal activities for the benefit of a gang. Longer sentences would serve to keep incarcerated those most active in a gang, deter them from continuing their criminal activity, and hopefully decrease the criminal gang activity overall.” Law enforcement indicates that “gangs are commonly using drug sales to fund their gang activity” and “[g]angs traffic in drugs and will fight to retain control over a drug territory. Therefore, drug possession or purchase should qualify under a repeat gang offender provision.”
- “Approximately 80% of law enforcement agencies in the FDLE survey indicated that firearms were involved in gang related crimes. . . . In addition, a national trend has indicated that gang members are joining military and law enforcement agencies in pursuit of advanced weapons and medical training,” and are “trying to infiltrate law enforcement by participating in law enforcement academies.” Gangs are also “associated with the rising violent crime rates in Florida.” While gun crimes are addressed under “10-20-Life,” the jury feels “a new statute or sentencing enhancement should be created which is specifically designed to punish gang members who illegally use guns.”
- “[T]here is no current automatic prohibition restricting gang members from associating with other gang members while out on bond. When a defendant who is released on bond continues to associate with known gang members, he can use the gang association or communication to encourage witness harassment, intimidation, or harm. Rule 3.131(b)(1)(C) [Florida Rules of Criminal Procedure] provides that a judge may place restrictions on ‘the travel, association, or place of abode of the defendant during the period of release’ at first appearance. The Rule then allows for a mandatory restriction prohibiting a defendant from associating with other known gang members while out on bond.”
- “Section 914.22 presently sets harassment of a witness as a first degree misdemeanor and if force, threats, or intimidation are used, then the crime is a third degree felony. For a gang member, the prospect of facing such a low level crime may be of little concern when compared to the original charges pending. The severity level for witness tampering or intimidation should be tied to the underlying crime for which the original defendant is

awaiting trial. The current witness tampering laws are no longer sufficient to handle the developing culture of witness intimidation.”

- FDLE “was assigned the responsibility of carrying out legislation designed to implement” a recommendation of the Tenth Statewide Grand Jury for a “statewide youth and gang computer database” with “mandatory reporting from all law enforcement agencies in the State of Florida.” InSite is that database. “However, law enforcement, DJJ, and DOC may each collect data in their own database using different standards. Agencies gathering information on gangs have invested money into their own database system that is separate from InSite. Putting data into InSite after it has been stored in an agency’s own database requires redundant and time consuming work.”

Testimony heard by the jury indicates “that sharing information would allow law enforcement to identify the presence of new gang members in their communities.” Additionally, “sharing gang information could also be useful if a gang member commits a crime in a county outside his local area. A gang member may travel because he is partnering up with another gang or because a criminal episode is being committed outside his normal area. . . .Information collected by DJJ, DOC, and all law enforcement agencies across the state should be stored in one centralized database. All agencies that collect data on gangs and gang members should be required to share the data collected with all agencies across the state since we heard testimony from law enforcement that some agencies have been reluctant to do so on their own.” Additionally, “there is no formal structure” for InSite “to serve as a manned clearinghouse.” Law enforcement indicates “that gangs continue to adapt over time and develop new techniques. In order to keep up with these changes, law enforcement has testified that there needs to be a statewide office established to coordinate law enforcement’s efforts. Some parts of the country have formalized this idea into what is called a ‘fusion center.’”

- “A convicted sex offender in Florida is required to register with state agencies to ensure his whereabouts are well documented and known. This is an aid to law enforcement and to the sex offender’s community. Gang members who have been adjudicated as such by the court should also have to be placed on a registry. Unlike the sex offender registry that is a very public proclamation, the gang registry should be a list only available to law enforcement because of the nature of gang life that gang members would strive to achieve the prestige of being listed on a state gang member registry. . . .Unlike a sex offender this need not be a lifetime listing, but should be listed for a period of time with a provision for an extension if appropriate.” Further, this registry information “should be listed on a driver’s license or state identification card so that any officer who approaches a person who is listed on the registry will immediately know the situation and can take appropriate precautions.”

Recommendations of the jury that are consistent with the previously described findings are as follows:

- “A ‘[c]riminal street gang member’ under statute 874.03(2) must be redrafted so that it is more clear and usable by prosecutors.” The redraft recommended by the jury is:

- (2) “Criminal street gang member” is a person who is a member of a criminal street gang as defined in subsection (1) and who meets two or more of the following criteria:
- (a) Admits to gang membership.
  - (b) Is identified as a criminal gang member by parent or guardian.
  - (c) Is identified as a criminal gang member by a documented reliable informant.
  - (d) Adopts the style of dress of known criminal gang members.
  - (e) Adopts use of hand signs of known criminal gang members.
  - (f) Wears tattoos of known criminal gang members.
  - (g) Associates with known criminal gang members.
  - (h) Is identified as a criminal gang member by physical evidence.
- “Under chapter 874.03(2), a paragraph should be written which states that it is the intent of the legislature to allow a single piece of evidence or a single incident to prove more than one criteria.”
  - “‘Pattern of gang activity’ is defined under statute 874.03(3) and is required under statute 874.03(1) in defining a ‘criminal street gang.’ Section 874.03(3) should be redrafted so that the definition of ‘pattern of gang activity’ is less limiting and is not based on a defendant’s prior convictions.”
  - “Section 874.04 allows for enhanced penalties upon a finding that the defendant committed the charged offense ‘for the purpose of benefiting, promoting, or furthering the interests of a criminal street gang...’ The legislature should clarify that proof of ‘benefiting, promoting, or furthering the interests of a criminal street gang’ includes non-monetary benefits including but not limited to gaining credibility, status, or reputation.”
  - “Section 874.04 allows for the enhanced penalty provisions to be enhanced upon a finding by the court at sentencing once proven by a preponderance of the evidence. This appears to be unconstitutional as it would enhance the potential penalty beyond the statutory maximum without having the issue determined by a jury. Therefore, statute 874.04 must be reworded to require a jury finding of the enhanced penalty using the beyond a reasonable doubt standard.”
  - “The legislature should create a provision under Ch. 874 which creates a criminal offense for Gang Injunction Violation.”
  - “The legislature should add a three year registry requirement for defendants who have been adjudicated as gang members under Ch. 874 and make failure to register by a convicted gang member a third degree felony. Registered gang members under this provision should not be published outside of law enforcement records. A convicted gang member under Ch. 874 will be required to have his or her driver’s license indicate that he is a registered gang offender.”

- “Convicted gang members who are in possession of a firearm should receive an additional enhancement under Ch. 874.”
- “Create additional qualifying predicate offenses under the RICO statute. . . .” The jury recommended these RICO predicate offenses:
  - Fleeing and Eluding
  - Criminal Mischief (including gang graffiti)
  - Burglary – all sections
  - Gang Injunction Violation
  - Failure to Register as ch. 874 Offender
  - Sexual Battery, ch. 794, F.S., and Lewd & Lascivious crimes, ch. 800, F.S., pursuant to gang initiation.
- “It should be clarified in statutes that juvenile adjudications of delinquency may serve as predicate offenses for a RICO charge.”
- “A gang kingpin provision should be created that mirrors the dealing in stolen property statute for anyone who ‘manages or directs’ gang activity.”
- “A defendant who commits a felony and qualifies under Ch. 874 who has three prior felonies on separate sentencing dates should be eligible to receive a more severe punishment as a repeat gang offender.”
- “Convicted felons who are prohibited from owning guns must also be prohibited from owning, possessing or using bullet proof vests.”
- “A gang member who is out on bond should be prohibited from contact with known gang members or witnesses. Prior to a gang member’s release on bond, the State should be given a mandatory opportunity to be heard at first appearance before the bond is set.”
- “Witness intimidation and tampering statutes must be strengthened in instances in which a defendant who is charged with an offense attempts to tamper with or intimidate a witness. The crime of witness intimidation or tampering should be the same felony offense level as the most serious underlying offense and one level higher on the severity ranking chart than the most serious underlying offense. The bond amount for witness intimidation or tampering should be higher than the bond amount for the underlying charge. A third party who is charged with witness tampering or intimidation should receive the bond amount, felony offense level, and severity ranking in the case against the original defendant in cases where the bond amount, felony offense level, and severity ranking would be higher if this step-up were used.”
- “Data collection and sharing must be improved across the State of Florida. A Gang Fusion Center should be created at an already existing law enforcement facility to gather, evaluate, and disseminate data to the law enforcement on the street, adult and

juvenile probation officers, and to prosecutors so that they may make real use of the information. The Center shall be staffed by state and federal agents from police, sheriffs, corrections, school resource officers, analysts and immigration agents. Data collection must be standardized and streamlined on a new FDLE Gang Form which is used by all law enforcement. InSite must be used and populated by all law enforcement. All departments seeking grant funding must be required to participate in the InSite data program. Registration information for a convicted gang member must be collected. A defendant will be required to pay the fee for registration.”

- “The legislature should adopt laws to severely punish gang offenders who commit gun crimes. Convicted felons who are gang members and commit any gun crime should face lengthy prison terms.”

### **Florida Statutes Relevant to the Bill**

The following sections of the Florida Statutes are significantly relevant or substantively amended by the bill (i.e., the amendments consist of more than cross-referencing, title changes, or conforming changes to terminology):

Currently, s. 775.0846, F.S., provides that it is a third degree felony for a person, acting alone or with one or more other persons and while possessing a firearm, to commit or attempt to commit certain crimes and, in the course of and in furtherance of such crimes, wear a bulletproof vest.<sup>3</sup> Florida law does not currently punish simple possession of a bulletproof vest.<sup>4</sup>

Section 775.13(2), F.S., provides that any person who has been convicted of a felony in any court of this state must, within 48 hours after entering any county in this state, register with the sheriff of that county, be fingerprinted and photographed, and list the crime for which convicted, place of conviction, sentence imposed, if any, name, aliases, if any, address, and occupation. In lieu of registering with the sheriff, the registration may be made with FDLE, and is subject to the same terms and conditions as required for registration with the sheriff. Failure of any such convicted felon to comply with this statute is a second degree misdemeanor. All laws and parts of laws in conflict with this statute are deemed repealed, provided that nothing in this statute

<sup>3</sup> “Bulletproof vest” is defined in 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.”

<sup>4</sup> Title 18 U.S.C. s. 931 prohibits a person from purchasing, owning, or possessing body armor, if that person has been convicted of a felony that is a crime of violence or an offense under state law that would constitute a crime of violence. The term “crime of violence” is defined in 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.

Title 18 U.S.C. s. 931 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.

shall be construed to affect any law of this state relating to registration of criminals where the penalties are in excess of those imposed by this section.

Section 790.23, F.S., provides that it is a second degree felony 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
- 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.

Section 823.01, F.S., provides that all 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 second degree misdemeanors, except for a violation of s. 823.10, F.S. (public nuisances where controlled substances are illegally kept, sold, or used).

Section 823.05, F.S., provides that persons are deemed to be “maintaining a nuisance” if they “erect, establish, continue, or maintain, own or lease any building, booth, tent or place which tends to annoy the community or injure the health of the community, or become manifestly injurious to the morals or manners of the people as described in s. 823.01, or shall be frequented by the class of persons mentioned in s. 856.02.”<sup>5</sup> These statutes provide that such places or persons shall be abated or enjoined as provided in ss. 60.05 and 60.06, F.S.

Chapter 874, F.S., addresses “criminal street gangs.” Legislative findings in s. 874.02, F.S., indicate 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. The Legislature intends to “eradicate the terror created by criminal street gangs and their members by providing enhanced penalties and by eliminating the patterns, profits, proceeds, instrumentalities, and property facilitating criminal street gang activity, including gang recruitment.”

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

- “Criminal street gang” is “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

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<sup>5</sup> Although s. 856.02, F.S., related to vagrants, is referenced, this section was repealed in 1972.

- 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”:
    - Admits to criminal street gang membership.
    - Is identified as a criminal street gang member by a parent or guardian.
    - Is identified as a criminal street gang member by a documented reliable informant.
    - 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.
    - Is identified as a criminal street gang member by an informant of previously untested reliability and such identification is corroborated by independent information.
    - 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.
    - Is identified as a criminal street gang member by physical evidence such as photographs or other documentation.
    - Has been stopped in the company of known criminal street gang members four or more times.
  - “Pattern of criminal street gang activity” is “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” is “a person who ... admits to criminal street gang association; or ... meets any single defining criterion for criminal street gang membership.”
  - “Gang-related incident” is “an incident that, upon investigation, meets any of the following conditions”:
    - 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;
    - A reliable informant identifies an incident as criminal street gang activity; or
    - An informant of previously untested reliability identifies an incident as criminal street gang activity and it is corroborated by independent information.

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

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

Section 874.06, F.S., 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 ch. 874, F.S., 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.

Section 874.09, F.S., authorizes FDLE to develop and manage a statewide criminal street gang database to facilitate exchange of information pursuant to the intent and purpose of ch. 874, F.S.

The "Florida RICO Act" is the short title for ss. 895.01-895.06, F.S.<sup>6</sup> Section 895.02, F.S., defines "racketeering activity" as committing, attempting to commit, aspiring to commit, or soliciting, coercing, or intimidating another person to commit any of a number of listed offenses. These offenses are often referred to as "RICO predicates." Chapter 895, F.S., punishes offenses involving racketeering and illegal debts.

Section 903.046(2)(f), F.S., provides that the source of funds used to post bail is one of the factors a court must consider in determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be.

Section 914.22, F.S., provides that it is a third degree felony 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 investigation or official proceeding;
- 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.

The statute also provides that it is a first degree misdemeanor to intentionally harass another person and thereby hinder, delay, prevent, or dissuade any person from:

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<sup>6</sup> "RICO" is the acronym for "Racketeer Influenced and Corrupt Organization."

- 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; 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.

The Florida Violent Crime and Drug Control Council (the council) was created by the Legislature in 1993 to meet critical statewide issues of violent crime in Florida.<sup>7</sup> Its duties were later expanded to address drug control and money laundering initiatives. The council is composed of 14 members, with both state and local representation, who advise the executive director of FDLE and make recommendations regarding the development and implementation of violent crime, drug control, and money laundering initiatives, including, but not limited to, providing grants to these criminal justice agencies for such initiatives from the Violent Crime Investigative Emergency and Drug Control Strategy Implementation Account within FDLE or other appropriations provided to FDLE by the Legislature in the General Appropriations Act.

Section 943.031, F.S., sets forth the council's membership, terms of membership, compensation (per diem and travel expenses), meeting requirements, duties, staffing, and annual reporting requirement (to the Legislature). This statute also creates a Victim and Witness Protection Review Committee within the council (including duties, use of funds, and meeting requirements), authorizes closed meetings when certain exempt or confidential and exempt records are discussed at the meeting, and provides that certain Council records pertaining to a closed meeting of the council are confidential and exempt.

Florida's Constitution provides that, unless a person is charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance is entitled to pretrial release on reasonable conditions.<sup>8</sup> If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.<sup>9</sup> In the case of persons who are alleged to have violated the terms of probation or community control, s. 903.0351, F.S., prohibits the release of certain violent felons before a violation hearing is held.

All persons detained for criminal offenses have a right to a first appearance hearing within 24 hours of arrest.<sup>10</sup> The primary function of the first appearance hearing is a determination regarding pretrial release.<sup>11</sup>

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<sup>7</sup> Section 943.031, F.S.

<sup>8</sup> Art. I, s. 14, Fla. Const.

<sup>9</sup> *Id.*

<sup>10</sup> Rule 3.130(a), Fla. R. Crim. Pro.

<sup>11</sup> Rules 3.130(d) and 3.131(b), Fla. R. Crim. Pro.

Bail is a set sum of money, paid to the sheriff prior to release, commonly used as a condition of pretrial release. A person released on bail becomes an absconder and forfeits the bail if he or she fails to appear before the court at the appointed time. As an alternative to posting bail, the person may employ the services of a bail bond agent. The bail bond agent does not pay the bail amount, but acts as a surety, promising to pay the bail amount should the defendant become an absconder. Bail bond agents are authorized to track, detain, and bring an absconder before the sheriff; a bail bond agent that returns an absconder may recover some or all of the bail. Florida licenses bail bond agents through the Department of Financial Services.

In addition to bail, courts impose any number of other conditions of pretrial release intended to ensure the defendant appears at trial and does no further harm in society. Those conditions may require the defendant to stay in, or stay away from, a particular location.

Relevant to the bill, Florida law does not currently provide as a condition of an order sentencing a defendant to probation, community control, or any other court-ordered community supervision, and subject to the ability to pay post-judgment obligations, the posting of a surety bond to secure the appearance of the defendant at any subsequent court proceeding.

### III. Effect of Proposed Changes:

The bill revises a number of existing statutory provisions and creates new ones designed to address criminal gang activity in this state. Some of the bill's provisions are consistent with the recommendations contained in the 2007 first interim report of a statewide grand jury charged with examining gang activity in this state.

Following is a section-by-section analysis of the bill:

**Section 1** amends s. 775.13, F.S., relating to registration of convicted felons. Under the bill, for purposes of such registration, if the felony conviction is for an offense that was found under s. 874.04, F.S., to have been committed for the purpose of benefiting, promoting, or furthering the interests of a criminal gang, the registrant shall identify himself or herself as such an offender. Further, FDLE, in consultation with appropriate local law enforcement agencies, is authorized to develop standardized practices for the inclusion of gang affiliation at the time of offender registration.

The bill deletes a provision of the statute that provides that, in lieu of registering with the sheriff, registration may be made with FDLE, and is subject to the same terms and conditions as required for registration with the sheriff.

The bill also creates a third degree felony for failure of a convicted felon to register if the convicted felon has been found, pursuant to s. 874.04, F.S., to have committed any offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.

Language relevant to the repeal of laws in conflict with s. 775.13, F.S., is deleted, and it is specified that the provisions of the statute cannot be construed to affect any law of this state

relating to registration of criminals where the penalties for registration, notification, or reporting obligations are in addition to, or in excess of, those imposed by this statute.

*This section of the bill appears to be consistent with the Eighteenth Statewide Grand Jury's recommendation regarding registration of gang members and providing a third degree felony penalty for failure to register.*

**Section 2** amends s. 790.23, F.S. Currently, it is a second degree felony for felons and certain delinquents to own or to have in their 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. The bill amends this provision to make the penalty for this offense a first degree felony if the offense has been committed by a person who has previously qualified or currently qualifies for the penalty enhancements provided for in s. 874.04, F.S.

*This section of the bill is consistent with the Eighteenth Statewide Grand Jury's recommendation that "[c]onvicted gang members who are in possession of a firearm should receive an additional enhancement under Ch. 874."*

**Section 3** creates s. 790.231, F.S., which provides that it is a third degree felony for a person to possess a bulletproof vest, as defined in s. 775.0846, F.S., if that person is:

- 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;
- 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;
- 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 1 year; or
- Found, pursuant to s. 874.04, F.S., to have committed any offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.

This new section does not apply to a person convicted of a felony whose civil rights and firearm authority have been restored or persons authorized to possess a bulletproof vest by law enforcement officials, prosecutorial authorities, or courts for the purpose of aiding in the investigation of criminal activity.

*This section of the bill is consistent with the Eighteenth Statewide Grand Jury's recommendation that "[c]onvicted felons who are prohibited from owning guns must also be prohibited from owning, possessing or using bullet proof vests."*

**Section 4** amends s. 823.05, F.S., relating to public nuisance abatement. The title of the statute is modified to include "groups engaged in criminal gang-related activity." Language relevant to an

obsolete reference and that reference are deleted. The bill indicates that specific terms, such as “criminal gang,” used in the statute have the same meanings as provided in s. 874.03, F.S.

The bill provides that a criminal gang, criminal gang member, or criminal gang associate who engages in the commission of criminal gang-related activity, or their use of a location on two or more occasions for engaging in such activity is a public nuisance, and such person(s) or such use shall be abated or enjoined as provided in ss. 60.05 and 60.06, F.S. The abating or enjoining of such public nuisance as authorized by the statute does not prevent a local governing body from adopting and enforcing laws consistent with ch. 823, F.S., relating to criminal gangs and gang violence. Where local laws duplicate or supplement ch. 823, F.S., this chapter must be construed as providing alternative remedies and not as preempting the field.

Further, the state, through the Department of Legal Affairs or any state attorney, or any of the state’s agencies, instrumentalities, subdivisions, or municipalities having jurisdiction over conduct in violation of a provision of this chapter may institute civil proceedings as provided in the statute. The circuit court is directed to proceed as soon as practicable to the hearing and determination. Pending final determination, the circuit court may at any time enter such injunctions, prohibitions, or restraining orders, or may take such actions, including the acceptance of satisfactory performance bonds, as the court may deem proper.

**Section 5** amends s. 874.01, F.S., which provides that ch. 874, F.S., may be cited by the short title “Criminal Street Gang Prevention Act of 1996.” The bill renames the act the “Criminal Gang Prevention Act.”

**Section 6** amends s. 874.02, F.S., the legislative findings and intent section of ch. 874, F.S. Current references to “criminal street gangs” are modified to read “criminal gangs.” Current findings and intent language are amended to indicate the application of these findings to street gangs, terrorist organizations, and hate groups and their evolution into “increasingly sophisticated and complex organized crime groups,” as well as to indicate the intent to address the “real and present danger” these group pose.

Findings are provided in support of legislative intent “to encourage state and local law enforcement agencies to facilitate the exchange of crime data information through the statewide criminal gang database as provided in s. 874.09.”

**Section 7** amends s. 874.03, F.S., the definitions section for ch. 874, F.S. The bill changes the currently defined term “criminal street gang” to “criminal gang” and eliminates the current requirement that such gangs “have two or more members who, individually or collectively, engage in or have engaged in a pattern of criminal street gang activity.” It also modifies the definition to the extent that it specifies that this term includes, but is not limited to, terrorist

organizations and hate groups.<sup>12</sup> The bill also defines other terms relevant to the definition of “criminal gang.”<sup>13</sup>

The bill defines the term “criminal gang associate” as a person who: “[a]dmits to criminal gang association”; or “[m]eets any single defining criterion for criminal gang membership described” in the definition of the term “criminal gang member.”

The bill modifies the currently defined term “criminal street gang member” to make this term “criminal gang member.” The definition of this term incorporates some of the definition of “criminal street gang member” but modifies this definition. Under current law, a “criminal street gang member” is a person who is a member of a criminal street gang and meets two or more specified criteria. Under the bill, a “criminal gang member” is not required to be a “member” of a “criminal gang” but must meet two or more specified criteria.

The bill modifies current criteria. One current criterion is that the person 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. This criterion is modified so that each act described is a separate criterion. The bill deletes the current criterion that the person 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. Another current criterion is that the person is identified as a criminal street gang member by physical evidence such as photographs or other documentation. Reference to photographs or other documentation is deleted.

Another current criterion is that the person has been “stopped” in the company of known criminal street gang members four or more times. Under the bill, this person must have been “observed” in the company of one or more known criminal gang members four or more times. Observation in a custodial setting requires a willful association. Further, legislative intent is provided to allow this criterion to be used to identify gang members who recruit and organize in jails, prisons, and other detention settings. Finally, a new criterion is added to encompass a person who has authored any communication indicating responsibility for the commission of any crime by the criminal gang.

Regarding these criteria for determining if a person is a criminal gang member, the bill provides that, where a single act or factual transaction satisfies the requirements of more than one of the criteria, each of those criteria has thereby been satisfied for the purposes of the statute.

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<sup>12</sup> A “hate group” is defined under the bill as “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.” A “terrorist organization” is defined under the bill as “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 under this chapter of individuals acting alone.”

<sup>13</sup> “‘Ongoing’ means that the organization was in existence during the time period charged in a petition, information, indictment, or action for civil injunctive relief.” “‘Primary activities’ means that a criminal gang spends a substantial amount of time engaged in such activity, although such activity need not be the only, or even the most important activity, in which the criminal gang engages.”

Consistent with the change of the term “criminal street gang member” to “criminal gang member,” the bill modifies other references in the definition to “criminal street gang member” and “criminal street gang members” to delete the word “street.”

The bill deletes the terms “gang related incident,” “pattern of criminal street gang activity,” and “criminal street gang associate.” “Criminal gang-related activity” is defined in the bill as:

- 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;
- 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;
- An activity that is identified as criminal gang activity by a documented reliable informant; or
- An activity that is identified as criminal gang activity by an informant of previously untested reliability and such identification is corroborated by independent information.

The bill defines the term “electronic communication” using the same definition provided in s. 934.02, F.S.,<sup>14</sup> and “includes, but is not limited to, photographs, video, telephone communications, text messages, facsimile, electronic mail messages as defined in s. 668.602,<sup>15</sup> and instant message real-time communications with other individuals through the Internet or other means.” This definition is relevant to Section 15 of the bill, which creates a crime relating to use of electronic communications to further the interests of a criminal gang.

*This section of the bill includes the recommendations of the Eighteenth Statewide Grand Jury to:*

- *Redraft criteria relevant to the definition of “criminal street gang member” (renamed “criminal gang member”);*
- *Allow a single piece of evidence or single incident to prove more than one criteria;*
- *Make the definition of “pattern of gang activity” (renamed “criminal gang-related activity”) less limiting and not based on a prior conviction; and*
- *Clarify that proof of “benefiting, promoting, or furthering the interests of a criminal street gang’ includes non-monetary benefits including but not limited to gaining credibility, status, or reputation.”*

<sup>14</sup> 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.”

<sup>15</sup> 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.”

**Section 8** amends s. 874.04, F.S., which provides for misdemeanor or felony reclassification of crimes committed for the purpose of benefiting, promoting, or furthering the interests of a criminal street gang. The bill requires that findings necessary to the reclassification be found “beyond a reasonable doubt.” Further, consistent with earlier sections of the bill, references to “street” as a modifier for the word “gang” are deleted.

*This section of the bill is consistent with the Eighteenth Statewide Grand Jury recommendations to allow “for enhanced penalties upon a finding that the defendant committed the charged offense ‘for the purpose of benefiting, promoting, or furthering the interests of a criminal street gang’” and to “require a jury finding of the enhanced penalty using the beyond a reasonable doubt standard.”*

**Section 9** creates s. 874.045, F.S. This new section provides that nothing in ch. 874, F.S., prohibits the arrest and prosecution of a criminal gang member under ch. 876, F.S. (crimes against public order), ch. 895, F.S. (racketeering and illegal debts), ch. 896, F.S. (offenses related to financial transactions), s. 893.20, F.S. (continuing criminal enterprises in connection with controlled substance offenses), or any other applicable provision of law except to the extent otherwise prohibited pursuant to a statutory or constitutional provision.

**Section 10** amends s. 874.05, F.S. Currently, under subsection (1) of this statute, it is a third degree felony to intentionally cause, encourage, solicit, or recruit another person to *join a criminal street gang* that requires as a condition of membership or continued membership the commission of any crime. The bill deletes the element involving joining a criminal street gang and replaces this element with the element of becoming a criminal gang member.

Currently, under subsection (2) of this statute, a person commits a second degree felony upon a second or subsequent offense. The bill clarifies that subsection (2) is an exception to subsection (1) and replaces the word “offense” in subsection (2) with the word “violation.” Further, consistent with earlier sections of the bill, reference in the statute’s title to “street” as a modifier for the word “gang” (that also appears in the title) is deleted.

**Section 11** amends s. 874.06, F.S., which provides that a person or organization establishing, by clear and convincing evidence, coercion, intimidation, threats, or other harm to the person or organization in violation of ch. 874, F.S., has a civil cause of action for treble damages, an injunction, or any other appropriate relief in law or equity. Under the current statute, the prevailing plaintiff may recover reasonable attorney’s fees and costs. The bill amends this provision to provide that the prevailing plaintiff may recover attorney’s fees in the trial and appellate courts and the costs of investigation and litigation that are reasonably incurred.

The bill provides that the state<sup>16</sup> also has a civil cause of action under s. 874.06, F.S. (as previously described) for injury by reason of violation of ch. 874, F.S. If the state prevails, it may recover attorney’s fees in the trial and appellate courts and the costs of investigation and

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<sup>16</sup> The bill defines the term “state” as including “any of the state’s agencies, instrumentalities, subdivisions, or municipalities, and includes, but is not limited to, state attorneys and the Office of Statewide Prosecution of the Department of Legal Affairs.”

litigation that are reasonably incurred.<sup>17</sup> However, the state is precluded from recovering 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. A prevailing plaintiff who is a person or organization has a right or claim that is superior to any right or claim that the state has in the same property or proceeds.

The bill also provides that it a first degree misdemeanor to knowingly violate a temporary or permanent order under s. 874.06, F.S., or s. 60.05, F.S.

*This criminal offense appears to be consistent with a recommendation of the Eighteenth Statewide Grand Jury that "the legislature should create a provision under Ch. 874 which creates a criminal offense for Gang Injunction Violation."*

**Section 12** amends s. 874.08, F.S., which relates to profits, proceeds, and instrumentalities of criminal streets gangs or criminal street gang recruitment. Consistent with previous sections of the bill, references to "criminal street gang" and "criminal street gangs" are modified to delete the word "street."

**Section 13** amends s. 874.09, F.S., which relates to crime data information collection on gangs. The bill provides that FDLE may:

- Notify all law enforcement agencies that reports of arrested criminal gang members or associates shall be entered into the database (InSite) as soon as the minimum level of data specified by FDLE 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; and
- 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 further provides that local law enforcement agencies may:

- After carrying out any arrest of any individual who they believe is a member or associate of a criminal gang, create or update that individual's electronic file within the database; and
- Notify the prosecutor of the accused individual's suspected criminal gang membership or associate status.

*This section of the bill appears to be consistent with the recommendation of the Eighteenth Statewide Grand Jury that "[d]ata collection and sharing must be improved across the State of*

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<sup>17</sup> This civil cause of action under s. 874.06, F.S., is in addition to any remedies provided for by ss. 60.05 and s. 823.05, F.S., which relate to actions for enjoining or abating public nuisances.

*Florida.” More specifically, “InSite must be used and populated by all law enforcement” and “[r]egistration information for a convicted gang member must be collected.”*

**Section 14** creates s. 874.10, F.S., which provides that it is a first degree felony punishable by imprisonment for a term of years not exceeding life to knowingly initiate, organize, plan, finance, direct, manage, or supervise criminal gang-related activity.

*This section of the bill is consistent with the Eighteenth Statewide Grand Jury’s recommendation to create a “gang kingpin provision.”*

**Section 15** creates s. 874.11, F.S., which provides that it is a third degree felony for any person who, for the purpose of benefiting, promoting, or furthering the interests of a criminal gang, uses 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 16** creates s. 874.12, F.S., which provides that it is a second degree felony 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 defines the term “identification document” as including, but not being limited to, “a social security card or number, a birth certificate, a driver’s license, an identification card pursuant to s. 322.051, 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.”<sup>18</sup>

**Section 17** creates s. 874.13, F.S., which provides that it a first degree felony, punishable by imprisonment up to life, for any person who qualifies as a habitual felony offender under s. 775.084, F.S., to thereafter commit 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.

*This section of the bill appears to be consistent with the Eighteenth Statewide Grand Jury’s recommendation regarding “severe punishment” for a “repeat gang offender.”*

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<sup>18</sup> “Publicly operated facility or an infrastructure facility covered under 18 U.S.C. s. 2332f” appears to include those places identified as “facilities,” whether publicly operated or an infrastructure facility under 18 U.S.C. s. 2332f, which punishes bombings against a place of public use, a state or government facility, a public transportation system, or an infrastructure facility. For example, “a place of public use” includes, but is not limited to, “parts of any building ... that are accessible or open to members of the public, whether continuously, periodically, or occasionally, and encompasses any commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational, or similar place that is so accessible or open to the public.” 18 U.S.C. 2332f(e)(6). A “state or government facility” “includes any permanent or temporary facility or conveyance that is used or occupied by representatives of a state or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.” 18 U.S.C. 2332f(e)(3). A “public transportation system” includes, but is not limited to, “all facilities ..., whether publicly or privately owned, that are used in or for publicly available services for the transportation of persons or cargo.” 18 U.S.C. 2332f(e)(7). “Infrastructure facility” “means any publicly or privately owned facility providing or distributing services for the benefit of the public, such as water, sewage, energy, fuel, or communications.” 18 U.S.C. 2332f(e)(5).

**Section 18** creates s. 874.14, F.S., which provides that, in addition to any other penalty provided by law, the court shall order the suspension of the driver's license of each person convicted<sup>19</sup> or adjudicated delinquent of any offense contained in ch. 874, F.S., and of any person who has been found to have committed an offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang pursuant to s. 874.04, F.S. Upon ordering the suspension of the driver's license, the court must forward the driver's license to the Department of Highway Safety and Motor Vehicles (DHSMV) in accordance with s. 322.25, F.S. The first suspension of a driver's license under this statute is for a period of six months, and a second or subsequent suspension of a driver's license under this statute is for one year. The bill provides that a person whose driver's license is suspended is eligible for issuance of a license for business or employment purposes only under s. 322.271, F.S., if the person is otherwise eligible for the driving privilege.

Additionally, a court that suspends a driver's license pursuant to the provisions noted must, if the person is sentenced to a term of incarceration, direct DHSMV to commence the suspension of the person's driver's license upon the person's release from incarceration.

**Section 19** amends s. 895.02, F.S., the definitions section of ch. 895, which deals with racketeering activity. The bill adds the word "petition" to the definition of "racketeering activity" so that this term also means to commit, attempt to commit, conspire to commit, or solicit, coerce, or intimidate another person to commit any crime that is chargeable by "petition" under any of the listed provisions of the Florida Statutes (qualifying or "predicate" offenses for purposes of the "racketeering activity" definition). This change means that juvenile adjudications of delinquency may serve as predicate offenses for a racketeering charge.

The bill also adds additional RICO predicate offenses:

- Section 316.1935, F.S., relating to fleeing or attempting to elude a law enforcement officer and aggravated fleeing or eluding.
- Section 775.13(5)(b), F.S., 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.
- Section 777.03, F.S., relating to commission of crimes by accessories after the fact.
- Chapter 794, F.S., 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.
- Criminal mischief (by amending the current reference to ch. 806, F.S., to indicate this offense is included).
- Chapter 810, F.S., relating to burglary and trespass (deleting reference to just burglary under s. 810.02(2)(c), F.S.).

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<sup>19</sup> The bill defines the term "convicted" as "a determination of guilt that is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld."

Consistent with previous sections of the bill, a reference to “criminal street gang” in the definition of the term “enterprise” is modified to delete the word “street.”

*This section of the bill is consistent with the Eighteenth Statewide Grand Jury’s recommendations to add the previously mentioned offenses as RICO predicate offenses and to provide that “juvenile adjudications of delinquency may serve as predicate offenses for a RICO charge.”*

**Section 20** amends s. 903.046, F.S., relating to the purpose of and criteria for bail determination. Currently, when determining whether to release a defendant on bail or other conditions and what the bail and other conditions may be, the court must consider the source of funds used to post bail. The bill provides that the court must consider the source of funds used to post bail or 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 burden of establishing the noninvolvement in or nonderivation 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.

The bill also provides that the court must consider whether the crime charged is a violation of ch. 874, F.S., or alleged to be subject to enhanced punishment under that chapter. 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, the defendant is not eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.

*This section of the bill appears to be consistent with the Eighteenth Statewide Grand Jury’s recommendation that “[p]rior to a gang member’s release on bond, the State should be given a mandatory opportunity to be heard at first appearance before the bond is set.”*

**Section 21** amends 914.22, F.S., relating to tampering with a witness, victim, or informant. This section of the bill completely revises the penalties for tampering and harassment. In an official investigation or official proceeding involving the investigation or prosecution of a crime, the misdemeanor or felony degree of tampering with this investigation or proceeding is one degree greater than the misdemeanor or felony degree of the crime being investigated or prosecuted. For example, if a person tampers with an official investigation involving the investigation of a first degree misdemeanor, the tampering offense is a third degree felony.

Penalties for the current harassment offense under s. 914.22, F.S., are also revised. In an official investigation or official proceeding involving the investigation or prosecution of a crime, the misdemeanor or felony degree of the harassment offense that affects this investigation or proceeding is one degree greater than the misdemeanor or felony degree of the crime being investigated or prosecuted. For example, if the harassment affects an official proceeding involving the prosecution of a third degree felony, the harassment offense is a second degree felony.

The bill also provides for a third degree felony for tampering or harassment in which the tampering or harassment affects a criminal investigation or official proceeding of a crime in which the misdemeanor or felony degree is indeterminable or involves a noncriminal investigation or proceeding.

*The Eighteenth Statewide Grand Jury did recommend greater penalties but its specific recommendation was that “[t]he crime of witness intimidation or tampering should be the same felony offense level as the most serious underlying offense.” Further, the jury did not mention underlying misdemeanors.*

**Section 22** amends s. 943.031, F.S., relating to the Florida Violent Crime and Drug Control Council. Specifically, provisions of that statute relating to findings and duties of the council are amended to allow for the council to disburse grant monies to law enforcement agencies for the purpose of criminal gang efforts. As it relates to those efforts, the bill requires that the council determine if those efforts represent “significant criminal gang investigative efforts.” It is specified that the innovations grant program can also be used to provide startup funding for new initiatives by local and state law enforcement agencies to implement criminal gang efforts or law enforcement task force efforts. Currently, the law provides a list of some initiatives. The bill amends this list to the extent that it indicates that initiatives may:

- Provide funding for multiagency or statewide criminal gang investigative efforts or task force efforts that cannot be reasonably funded completely by alternative sources and that represent significant criminal gang investigative efforts;
- Identify methods to enhance multiagency or statewide criminal gang efforts or task force efforts that represent significant criminal gang investigative efforts; and
- Enhance criminal justice training programs which address efforts to control and eliminate criminal gangs.

The bill makes a number of additional changes that affect the council’s duties relating to periodic reporting and disbursement of funds. Although these changes are relevant to and affect the council’s consideration of criminal gang initiatives, which the current statute does not specially mention, they are also relevant to violent crime, drug control, and illicit money laundering initiatives which the statute currently mentions. Presently, the council must receive certain periodic reports from regional violent crime investigation and statewide drug control strategy implementation coordinating teams. The bill specifies that the *full* council receives these reports and specifies that reporting of investigative needs or successes in the regions include discussions regarding the activity of significant criminal gangs in the region.

Presently, the council is required to maintain and utilize criteria for the disbursement of funds. The bill specifies that the *full* council must maintain and use these disbursement criteria and that these funds may be disbursed from any 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 FDLE by the Legislature in the General Appropriations Act.

Presently, the disbursement criteria allow for the advancement of funds as approved by the council. The bill amends this provision to provide that disbursement criteria allow for the

advancement of funds to reimburse agencies regarding violent crime investigations as approved by the *full* council and 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 (see discussion, *supra*). Regarding violent crime investigation reimbursement, an expedited approval procedure must be established for rapid disbursement of funds in violent crime emergency situations.

The bill provides that “significant criminal gang investigative efforts” eligible for proactive funding must involve as a minimum 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; and
- 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 provides that the council 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.

The bill creates the Drug Control Strategy and Criminal Gang Committee within the Florida Violent Crime and Drug Control Council, which consists of: the Attorney General or designate; the designate for the executive director of FDLE; the secretary of the Department of Corrections or designate; the director of the Office of Drug Control or designate; and the state attorney, two sheriffs, two chiefs of police, or designates for the state attorney, sheriffs, and chiefs of police. The committee assumes a duty that is currently a council duty: reviewing and approving 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 FDLE by the Legislature in the General Appropriations Act.

The bill provides that those receiving any proactive funding provided by the council through the committee must report the results of the investigations to the council once the investigation has been completed. The committee must also require ongoing status reports on ongoing investigations using such findings in its closed sessions.

**Section 23** amends s. 948.03, F.S., relating to terms and conditions of probation, to provide that, as a condition of an order sentencing a defendant to probation, community control, or any other court-ordered community supervision, and subject to the ability to pay post-judgment obligations, the court may order the posting of a surety bond to secure the appearance of the defendant at any subsequent court proceeding. The bill specifies how the bond is filed, how the person subject to the bond is produced and surrendered, and in what circumstance the bond is

estreated or forfeited (based on failure to appear). Where not inconsistent with this new provision, chs. 903 and 648, F.S., regulate the relationship between the parties to the bond.

**Section 24** creates s. 948.033, F.S., which requires a court to impose a probation or community control condition that prohibits a probationer or community controllee from knowingly associating with criminal gang members or associates if:

- The probationer's or community controllee's crime was committed on or after October 1, 2008; and
- The probationer or community controllee has been found to have committed the crime for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.

This condition is in addition to other conditions imposed by the court. An exception to this requirement is if this association with criminal gang members or associates is authorized by law enforcement officials, prosecutorial authorities, or the court, for the purpose of aiding in the investigation of criminal gang activity.

**Section 25** amends s. 947.18, F.S., relating to conditions of parole, to provide the same gang association prohibition described in Section 24 of the bill as a parole condition for a parolee whose conviction was for a crime that was found to have been committed for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.

**Section 26** amends s. 947.1405, F.S., relating to the conditional release program, to provide the same gang association prohibition described in Section 24 of the bill as a condition for conditional release for a conditional releasee whose conviction was for a crime that occurred on or after October 1, 2008, and that was found to have been committed for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.

**Section 27** amends s. 893.138, F.S., relating to abating specified public nuisances. Consistent with previous sections of the bill, references to "criminal street gang" are modified to delete the word "street" and the word "pattern" is deleted.

**Sections 28 and 29** amend, respectively, s. 921.0022, F.S., the offense severity ranking chart of the Criminal Punishment Code ("Code") and s. 921.0024, F.S., relating to the Code worksheet/scoresheet. Consistent with previous sections of the bill, references to "criminal street gang" are modified to delete the word "street." Regarding s. 921.0022, F.S., the bill adds the following offenses created by the bill to Level 7 of the Code offense severity ranking chart:

- Possession of a firearm by a person who qualifies for penalty enhancements provided for in s. 874.04, F.S. (s. 790.23, F.S.);
- Directing the activities of a criminal gang (s. 874.10, F.S.); and
- Commission of a gang-related offense by a habitual felony offender (s. 874.13, F.S.).

**Section 30** amends s. 921.141, F.S., relating to aggravating circumstances for imposing a death sentence. Consistent with previous sections of the bill, a reference to "criminal street gang" is modified to delete the word "street."

**Section 31** amends s. 943.325, F.S., relating to blood or other biological specimen testing for DNA analysis, to correct a cross-reference to s. 775.13, F.S., which is amended by the bill.

**Sections 32, 33, 34, and 35** amend, respectively, s. 984.03, F.S., the definitions section for ch. 984, F.S. (children and family in needs of services), s. 985.03, F.S., the definitions section for ch. 985, F.S. (juvenile justice), s. 985.047, F.S., relating to information systems, and s. 985.433, F.S., relating to disposition hearings in delinquency cases. Consistent with previous sections of the bill, references to “youth gang,” “youth gangs,” “youth and street gang,” and “street gang” are modified to read “criminal gang” or “criminal gangs,” as applicable.

**Section 36** directs the Division of Statutory Revision to redesignate the title of ch. 874, F.S., as “Criminal Gang Enforcement and Prevention.”

**Section 37** provides that this act shall take effect October 1, 2008.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Bail bondsmen will financially benefit from the provisions in the bill which authorize courts to post probation appearance bonds.

Individuals placed on probation will incur additional costs if the court requires the posting of an appearance bond. This cost will be incurred whether or not the probationer violates the conditions of probation and an additional appearance is necessary.

### C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) heard the bill on February 26, 2008, and concluded that the bill has a potentially large impact on prison beds. It is noted that:<sup>20</sup>

- The bill creates several first degree felonies, punishable by imprisonment up to life. Since these felonies are new crimes, there is no data on sentencing patterns.
- The bill creates new penalties for tampering or harassment affecting official proceedings or criminal investigations involving a crime. The felony degree for this tampering or harassment will depend on the degree of the crime being investigated or prosecuted. Prison bed impact will depend on how many cases of tampering or harassment are actually prosecuted to a conviction and how courts sentence tampering or harassment in light of the changes to penalties.
- According to the Office of Economic and Demographic Research (EDR) staff, while the gang sentencing point multiplier in the Criminal Punishment Code scoresheet “is hardly used at all (less than 20 times in FY 06-07), [Department of Correction’s] new commitments in FY 06-07 included 285 confirmed gang members and 293 suspected gang members.” EDR staff states that “[t]his suggests (as does the press and the grand jury report) that the pool of gang members is large and the new offenses (even though unranked) could result in additional new commitments.”
- Regarding the section of the bill that requires suspension of the driver’s license of a criminal gang member, EDR staff notes that EDR has “seen that judges definitely sentence individuals to prison” for driving with a suspend license as the primary offense.
- Regarding the section of the bill punishing gang members who possess a bulletproof vest, EDR staff notes that the volume of convicted felons sentenced to prison with a primary offense of possession of a firearm (in FY 06-07, 875 offenders were sentenced to prison) “suggests additional new commitments” for the bulletproof vest offense.
- EDR staff highlights that, although third degree felony offenses in the bill are unranked, these offenses “may result in a gang member, who is sentenced for another offense, receiving a longer sentence than they would have otherwise.”
- Regarding the section of the bill that requires a convicted felon to register information on any felony committed for the purpose of furthering a criminal gang and that creates a third degree felony for failure to register this information, EDR staff notes that “[i]n FY 06-07, about 43 offenders who had the career criminal registration offense as a primary or additional offense were sentenced and 10 of those were sentenced to prison (only 4 with it as a primary offense).” However, “[a]lso in FY 06-07, about 1,355 offenders who had the sex offender registration offense as a primary or additional offense were sentenced and 720 of those were sentenced to prison (664 with it as a primary offense; avg. sentence=33 months).” EDR staff states that it is not possible to know the prison bed impact of this third degree felony because EDR does not know “how large

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<sup>20</sup> Communication with staff of the Office of Economic and Demographic Research, March 3, 2008 (on file with Committee on Judiciary).

the gang member pool is” and does not know “how often the registration offense will be used.”

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Criminal Justice on February 20, 2008:**

- As part of convicted felon registration, requiring a felon to register information on any felony committed for the purpose of furthering a criminal gang, and creating a third degree felony for failure to register this information;
- Ranking in Level 7 of the offense severity ranking chart of the Criminal Punishment Code, a first degree felony created by the bill that applies to a person who owns or possesses a firearm, ammunition, or specified weapon or device if that person has been convicted of a felony and has previously qualified or currently qualifies for penalty enhancements under the gang chapter (ch. 874, F.S.);
- Providing that a “criminal gang member” (defined in the bill as are additional terms) is not required to be a member of a “criminal gang” but must meet two or more specified criteria, including new criteria, providing that “criminal gang-related activity” can also include activity for a non-monetary benefit (such as status), and providing that a single act or factual transaction may satisfy multiple criteria;
- Amending provisions relating to the recovery of attorney’s fees and costs by a defendant in a civil cause of action for treble damages under s. 864.06, F.S., for harm in violation of ch. 874, F.S.;
- Creating a first degree felony, punishable by imprisonment up to life and ranked in Level 7, for a person to knowingly initiate, organize, plan, finance, direct, or supervise criminal gang-related activity (“gang kingpin” penalty);
- Creating a first degree felony, punishable by imprisonment up to life and ranked in Level 7, for a person who qualifies as a habitual offender to thereafter commit an offense that was found to further the interests of a criminal gang;
- Providing that juvenile adjudications of delinquency may serve as predicate offenses for a racketeering charge, and adding additional predicate offenses, such as fleeing and eluding, burglaries, etc., which are offenses commonly committed by criminal gang members;
- Creating new penalties for tampering or harassment affecting a criminal investigation or criminal proceeding so that tampering or harassment is one misdemeanor or felony degree greater than the misdemeanor or felony degree of the crime being investigated or prosecuted;

- Creating a third degree felony for tampering or harassment in which the tampering or harassment affects an official investigation or official proceeding of a crime in which the misdemeanor or felony degree is indeterminable or involves a noncriminal investigation or proceeding; and
- Authorizing the court to order the posting of a surety bond to secure the appearance of a person on probation, community control, or any other court-ordered community supervision at any subsequent court proceeding.

B. Amendments:

**Barcode 976954 by Judiciary on March 5, 2008:**

Corrects a spelling error.