

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 Criminal Justice Committee

BILL: SB 1846

INTRODUCER: Senator Evers

SUBJECT: Criminal Gang Prevention

DATE: January 23, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Pre-meeting
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

Senate Bill 1846 does the following to enhance criminal gang intervention and prevention:

- Increases the misdemeanor criminal penalties for specified trespassing offenses in school safety zones by a person convicted of gang-related offenses (becomes a first instead of a second degree misdemeanor);
- Increases the felony criminal penalties for intentionally causing, encouraging, soliciting, or recruiting a person under 13 years of age to become a gang member (becomes a second instead of a third degree felony, except if it is a second or subsequent recruiting conviction, it becomes a first degree felony);
- Authorizes a county or municipal detention facility to designate a person to be responsible for determining the gang status of inmates entering the facility as well as assessing inmates for gang activity or affiliation;
- Amends the criminal gang multiplier in s. 921.0024, F.S., so that the multiplier will be able to be applied with a finding by the judge (rather than the jury) that the defendant committed the offense for the purpose of benefitting, promoting, or furthering the interests of a criminal gang in instances where the lowest permissible sentence does not exceed the statutory maximum sentence for the offense; and
- Makes technical and conforming changes.

This bill substantially amends the following sections of the Florida Statutes: 810.0975, 874.05, 951.23, and 921.0024. Sections 435.04 and 921.0022 are amended to conform to changes made by the bill.

II. Present Situation:

School Safety Zones

A “school safety zone” is defined as being in, on, or within 500 feet of real property owned by or leased to any public or private elementary, middle, or high school or school board which is used for elementary, middle, or high school education.¹ Principals are required to notify law enforcement to prohibit persons who have no legitimate business or any other authorization from loitering in a school safety zone.²

Section 810.0975, F.S., criminalizes trespassing within a school safety zone or remaining there with no legitimate business between a certain time period as a misdemeanor offense. It is a second degree misdemeanor,³ during the school session and one hour before and after the school session, for a person to trespass within a school safety zone or to remain there when the person does not have legitimate business to conduct or any other authorization to be in the school safety zone.⁴

It is also a second degree misdemeanor for a person, with no legitimate business to conduct or having no other authorization within a school safety zone, to willfully fail to leave when requested to do so by the principal who has a reasonable belief that the person is going to commit a crime or intimidate or harass students within the school safety zone.⁵

Criminal Gang Enforcement and Prevention

Chapter 874, F.S., governs criminal gang enforcement and prevention, including in part, statutes that do the following: set forth definitions of criminal gangs, criminal gang-related activities, criminal gang member, and criminal gang associate; establish a statewide criminal gang database within the Florida Department of Law Enforcement (FDLE)⁶; provide enhanced penalties for gang-related offenses; and proscribe encouraging, soliciting, or recruiting criminal gang membership.⁷

Currently, it is a third degree felony⁸ for committing a first offense of intentionally causing, encouraging, soliciting, or recruiting another person to become a gang member if membership is dependent upon the commission or continued commission of any crime.⁹ This offense is ranked

¹ Section 810.0975(1), F.S.

² Section 810.0975(2)(a), F.S.

³ A second degree misdemeanor is punishable by potentially serving up to 60 days in county jail and paying up to \$500 in fines. Sections 775.082 and 775.083, F.S.

⁴ Section 810.0975(2)(b), F.S.

⁵ Section 810.0975(2)(c), F.S.

⁶ Pursuant to s. 874.09, F.S., the Florida Department of Law Enforcement manages a statewide criminal gang database where gang intelligence information is shared among all law enforcement agencies statewide. Information is entered into the database by local law enforcement agencies who, after carrying out any arrest of any individual whom they believe is a member or associate of a criminal gang, may create or update that individual’s electronic file within the database.

⁷ Sections 874.03, 874.09, 874.04, and 874.05, F.S.

⁸ A third degree felony is punishable by potentially serving up to five years in prison and paying up to \$5,000 in fines. Sections 775.082 and 775.083, F.S.

⁹ Section 874.05(1), F.S.

in Level 4 (22 sentencing points) of the offense severity ranking chart (ranking chart).¹⁰ However, the commission of this crime a second or subsequent time results in a second degree felony penalty,¹¹ ranked in Level 5 (28 sentencing points) of the ranking chart.

County and Municipal Detention Facilities

Section 951.23, F.S., includes the following as it relates to county and municipal detention facilities: definitions; authorization for an inmate commissary and welfare fund; prohibitions against violating jail rules; and model standards and requirements for sheriffs and chief correctional officers operating county and municipal detention facilities.¹² There is currently no statutory provision addressing gang prevention in a county or municipal detention facility.

Criminal Gang Offenses and the Sentencing Multiplier

Criminal offenses are ranked in the ranking chart from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense. A defendant's sentence is calculated based on points, which are assigned for factors such as: the offense for which the defendant is being sentenced; victim injury; the defendant's prior record and other aggravating factors. The points are added in order to determine the "lowest permissible sentence" for the offense. The Criminal Punishment Code worksheet, found in s. 921.0024, F.S., is used to compute a defendant's total sentence points.

The Criminal Punishment Code worksheet contains a variety of sentencing multipliers that act to multiply a defendant's sentencing points by a certain number, thereby increasing the defendant's lowest permissible sentence. The worksheet currently contains a criminal gang multiplier that multiplies a defendant's sentence points by 1.5 if the defendant committed the offense for the purpose of benefitting, promoting, or furthering the interests of a criminal gang as prohibited under s. 874.04, F.S.

Section 874.04, F.S., provides that upon a finding by the factfinder that a defendant committed the charged offense for the purpose of benefitting, promoting, or furthering the interests of a criminal gang, the penalty for such offense can be enhanced. The statute specifies the extent to which such enhancement can be made and mandates each of the findings required as a basis for such enhancement to be found beyond a reasonable doubt.

As noted above, the criminal gang multiplier in the worksheet multiplies a defendant's sentence points by 1.5 if the defendant committed the offense for the purpose of benefitting, promoting, or furthering the interests of a criminal gang *as prohibited under s. 874.04, F.S.* Section 874.04, F.S., requires the factfinder (i.e., the jury) to find that a defendant committed the offense for such

¹⁰ Criminal offenses are ranked in the "offense severity ranking chart" from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense. A defendant's sentence is calculated based on points, which are assigned for factors including: the offense for which the defendant is being sentenced; victim injury; the defendant's prior record and other aggravating factors. The points are added in order to determine the "lowest permissible sentence" for the offense. If the total sentence points equals or is less than 44 points, the lowest permissible sentence is a non-state prison sanction (i.e., jail). If the total sentence points exceed 44 points, a prison sentence is the lowest permissible sentence.

¹¹ Section 874.05(2), F.S. A second degree felony is punishable by potentially serving up to 15 years in prison and paying up to \$10,000 in fines. Sections 775.082 and 775.083, F.S.

¹² Section 951.23(1), (4), (9), (10), F.S.

purposes. This limits the instances in which the criminal gang multiplier can be used to those instances in which the jury has made the required finding. If the reference to s. 874.04, F.S., were removed from the multiplier, a *judge* could made the required finding so long as the lowest permissible sentence does not exceed the statutory maximum sentence for the charged offense.¹³

III. Effect of Proposed Changes:

School Safety Zones

The bill enhances criminal penalties from a second degree misdemeanor to a first degree misdemeanor¹⁴ if a person trespasses or remains with no legitimate business to conduct or willfully fails to leave when requested to do so by the principal within a school safety zone and such person has previously been convicted of a gang-related offense under s. 874, F.S.

Criminal Gang Enforcement and Prevention

The bill also enhances criminal penalties for intentionally causing, encouraging, soliciting, or recruiting a person younger than 13 years of age to become a gang member. The penalty goes from a third degree felony to a second degree felony,¹⁵ unless it is the second or subsequent violation. If it is a second or subsequent violation of recruiting a gang member, it becomes a first degree felony¹⁶ rather than a second degree felony under the bill.

County and Municipal Detention Facilities

The bill adds a subsection to s. 951.23, F.S., authorizing a county or municipal detention facility to designate a person to be responsible for determining the gang status of inmates entering the facility as well as assessing inmates for gang activity or affiliation. Gang status and assessment are to be conducted using the criteria found in s. 874.03, F.S., which defines a criminal gang member, a criminal gang associate, and criminal gang-related activity. The bill also provides that such designated person should at least once every two weeks reconcile information with the arresting law enforcement agency and the statewide criminal gang database within FDLE.

Criminal Gang-Related Offenses and Sentencing Multipliers

The bill amends the criminal gang multiplier in s. 921.0024, F.S., to specify that a defendant's sentence points are multiplied by 1.5 if the defendant committed the offense for the purpose of benefitting, promoting, or furthering the interests of a criminal gang *as defined in s. 874.03, F.S.* As a result, the multiplier will be able to be applied without a finding by *the jury* that the defendant committed the offense for the purposes of benefitting, promoting, or furthering the interests of a criminal gang so long as the lowest permissible sentence does not exceed the statutory maximum sentence for the offense.

¹³ See *Mathew v. State*, 837 So.2d 1167 (Fla. 4th DCA 2003); *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

¹⁴ A first degree misdemeanor is punishable by potentially serving up to one year in jail and paying up to \$1,000 in fines. Sections 775.082 and 775.083, F.S.

¹⁵ See *supra* note 11.

¹⁶ A first degree felony is punishable by potentially serving up to 30 years in prison and paying up to \$10,000 in fines. Sections 775.082 and 775.083, F.S.

Miscellaneous

The bill also makes some technical and conforming changes by revising the level 2 screening standards in s. 435.04, F.S., and the Criminal Punishment Code in s. 921.0975, F.S.

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:

Persons who trespass or remain with no legitimate business within a school safety zone and have a prior conviction for a gang-related offense are subject to a first degree misdemeanor penalty (serving up to potentially one year in jail and paying up to \$1,000 in fines).

Persons who intentionally recruit someone younger than 13 to become a gang member are subject to a second degree felony (serving up to potentially 15 years in prison and paying up to \$10,000 in fines), unless it is a second or subsequent offense. If it is a second or subsequent offense, it becomes a first degree felony, punishable by serving up to potentially 30 years in prison and paying up to \$10,000 in fines.

C. Government Sector Impact:

The Criminal Justice Impact Conference met on January 30, 2012 and found that this bill will have an insignificant impact on prison beds.

Enhancing the misdemeanor penalty from a second to a first degree misdemeanor may result in a fiscal impact upon local jails because of increased incarceration.

A local law enforcement agency choosing to designate a person within its county or municipal detention facility to monitor gang activity may incur some additional expenses, but the bill does not mandate this requirement on any agency.

VI. Technical Deficiencies:

It is unclear why there is a reference to s. 921.243, F.S., on line 103. This section of statute requires the court to indicate on the judgment that the victim of the offense is a minor.

The bill amends the criminal gang multiplier in s. 921.0024, F.S., to specify that a defendant's sentence points are multiplied by 1.5 if the defendant committed the offense for the purpose of benefitting, promoting, or furthering the interests of a criminal gang *as defined in s. 874.03, F.S.* As a result, the multiplier will be able to be applied with a finding by the judge (rather than the jury) that the defendant committed the offense for such purposes. However, a judge would not be permitted to make this finding if using the multiplier results in the lowest permissible sentence exceeding the statutory maximum sentence for the charged offense.¹⁷ This should be noted in the worksheet so that prosecutors are aware of the multiplier's limitations.

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.)

None.

B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁷ See *Mathew v. State*, 837 So.2d 1167 (Fla. 4th DCA 2003)(holding that pursuant to *Apprendi v. New Jersey*, 530 U.S. 466 (2000), a jury must find that the facts necessary to impose a domestic violence multiplier exist beyond a reasonable doubt when the multiplier results in a sentence that exceeds the statutory maximum for the charged offense).