

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Maintain Public Security – This bill authorizes the Department of Law Enforcement to compile and retain additional information regarding organized crime groups for law enforcement purposes, requires the Department of Law Enforcement to administer a grants program to assist local efforts to prevent, detect, and prosecute criminal activity committed by organized criminal street gangs, and authorizes local law enforcement agencies to compile organized crime group information and to notify prosecutors of an arrested individual's suspected organized crime group membership status.

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

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

B. EFFECT OF PROPOSED CHANGES:

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

Legislative Intent

Chapter 874, F.S., establishes the “Criminal Street Gang Prevention Act of 1996” (Act). The Act was enacted on the basis of a legislative finding that the state is facing a mounting crisis caused by criminal street gangs, and that criminal street gang activities present a clear and present danger that the state has a compelling interest in preventing.¹ The legislature further specified that the intent of the Act was to eradicate the terror created by criminal street gangs by providing enhanced penalties and by eliminating the patterns, profits, proceeds, instrumentalities, and property facilitating criminal street gang activity, including gang recruitment.²

Effect of the Bill

The bill renames the Act the “Organized Crime Group Prevention Act of 2007” and replaces the term “criminal street gang” with “organized crime group” throughout chapter 874, F.S. The bill adds that the state has a compelling interest in halting the danger posed by the proliferation of organized crime groups and the graduation from more primitive forms of criminal organizations to highly sophisticated criminal organizations. The bill specifies that the legislature has found that street gangs, in particular, have evolved into increasingly sophisticated and complex organized crime groups, and adds that it is the intent of the legislature to outlaw certain conduct associated with the existence and proliferation of organized crime activity.

Definitions

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

- “Criminal street gang” means a formal or informal ongoing organization, association, or group that has as one of its primary activities the commission of criminal or delinquent acts, and that consists of three or more persons who have a common name or common

¹ s. 874.02, F.S.

² *Id.*

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

Effect of the Bill

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

The bill adds "organized criminal syndicates," "street gangs," and "terrorist organizations" to the definition of "organized crime group" (i.e. the former definition of "criminal street gang"). The bill redefines the term "organized crime member" (i.e. the former definition of "criminal street gang member") as follows:

- "Organized crime group member" is a person who meets two or more of the following criteria:
 - o Admits to organized crime group membership.
 - o Is identified as an organized crime group member by a parent or guardian.
 - o Is identified as an organized crime group member by a documented reliable informant.
 - o Resides in or frequents a particular organized crime group's area and adopts their style of dress, their use of hand signs, or their tattoos, and associates with known organized crime group members.
 - o Is identified as an organized crime group 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 organized crime group members for offenses that are consistent with usual organized crime group activity.
- Is identified as an organized crime group member by physical evidence such as photographs or other documentation.
- Has been stopped in the company of known organized crime group members four or more times.
- Has authored any communication indicating responsibility for the commission of any crime by the organized crime group.

The bill also creates the following definitions:

- "Electronic communication" has the same meaning as provided in s. 934.02³ and includes, but is not limited to, photographs, video, telephone communications, text messages, facsimile, electronic mail messages as defined in s. 668.602⁴, and instant message real-time communications with other individuals through the Internet or other means.
- "Street gangs" are formal or informal ongoing organizations, entities, associations, or groups consisting of three or more persons with a common name or common identifying signs, colors, or symbols and two or more members who, individually or collectively, have as one of their primary activities the commission of criminal or delinquent acts and engage in or have engaged in a pattern of organized criminal activity.
- "Terrorist organization" means any organized crime group engaged in or organized for the purpose of engaging in terrorism as defined in s. 775.30. This definition shall not be construed to prevent prosecution of individuals acting alone under this chapter.

Penalty Enhancements

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

Effect of the Bill

The bill replaces the term "criminal street gang" with "organized crime group" and rewrites the statute to permit enhanced penalties if it is found that the defendant committed the charged offense for the purpose of benefiting, promoting, or furthering the interests of an organized crime group. The bill requires that such finding be made beyond a reasonable doubt.

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

Section 874.05, F.S., makes it third-degree felony⁵ to intentionally cause, encourage, solicit, or recruit a person to join a criminal street gang that requires as a condition of membership or continued membership the commission of any crime. Such offense is a second-degree felony⁶ if it is a second or subsequent offense.

Effect of the Bill

The bill replaces the term "criminal street gang" and "gang" with "organized crime group."

³ 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.

⁴ 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.

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

⁶ A second-degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

Forfeiture

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

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

Effect of the Bill

The bill replaces the term “criminal street gang” and “gang” with “organized crime group.”

FDLE's Gang Database

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

Effect of the Bill

The bill replaces the term “criminal street gang” with “organized crime group.”

The bill authorizes FDLE to:

- Notify all law enforcement agencies that reports of arrested organized crime group members or associates shall be entered into the database as soon as the minimum level of data specified by the department is available to the reporting agency and no waiting period for the entry of that data exists.
- Compile and retain information regarding organized crime groups and their members and associates in a manner that allows the information to be used by law enforcement and other agencies deemed appropriate for investigative purposes.
- Compile and maintain a history data repository relating to organized crime groups 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 organized crime groups.

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

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

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

HB 1363 adds the following new sections of statute to chapter 874, F.S.:

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

HB 1363 specifies that nothing in chapter 874, F.S., shall prohibit the arrest and prosecution of an organized crime group member under chapter 876⁷, chapter 895⁸, chapter 896⁹, s. 893.20¹⁰, or any other applicable provision of law except to the extent otherwise prohibited pursuant to a statutory or constitutional provision.

⁷ Criminal Anarchy, Treason, and Other Crimes Against Public Order.

⁸ Offenses Concerning Racketeering and Illegal Debts.

⁹ Offenses Related to Financial Transactions.

¹⁰ Continuing criminal enterprise.

Section 874.10, F.S. – Electronic Communication

HB 1363 makes it a third degree felony for any person to, for the purpose of benefiting, promoting, or furthering the interests of an organized crime group, use electronic communication to intimidate or harass other persons, or to advertise his or her presence in the community, including, but not limited to, such activities as distributing, selling, transmitting, or posting on the Internet any audio, video, or still image of criminal activity.

Section 874.11, F.S. – Identification Documents; Unlawful Possession or Creation

HB 1363 makes it a second degree felony for any person to possess or manufacture any blank, forged, stolen, fictitious, fraudulent, counterfeit, or otherwise unlawfully issued identification document for the purpose of benefiting, promoting, or furthering the interests of an organized crime group.

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

Section 874.12, F.S. – Grants

HB 1363 requires FDLE to administer a grants program to assist local efforts to prevent, detect, and prosecute criminal activity committed by organized criminal street gangs. The bill requires that the grants be awarded to local consortia which must include the State Attorney, local law enforcement and local crime prevention organizations. Local crime prevention organizations may include but are not limited to, the local juvenile justice boards, local non-profit community service organizations, and local school boards. Each consortium must identify a single organization to serve as the primary point of contact between the department and the local consortium. Proposals must include the three components of enhanced law enforcement, prosecution, and prevention in order to be eligible for a grant award. Grants will be awarded on a competitive basis and will be subject to a 50 percent local match which may be provided in the form of in-kind services. Proposals will be evaluated based on the following:

- The extent to which the three components of law enforcement, prosecution, and prevention are appropriately balanced and coordinated to reduce gang-related activity;
- The amount of local match;
- The extent to which resources are targeted to neighborhoods or areas which are most at risk of gang-related crime.

Section 874.13, F.S. – Suspension of Driver's Licenses

HB 1363 requires courts to order the suspension of the driver's license of persons convicted or adjudicated delinquent of any offense contained in ch. 874, F.S., and of persons whose penalty has been enhanced pursuant to s. 874.04, F.S. The first suspension of a driver's license under this section must be for a period of 6 months, while second or subsequent suspensions must be for 1 year. The bill also specifies that if the person whose license is being suspended is sentenced to a term of incarceration, the court must direct the Department of Highway Safety and Motor Vehicles to commence the suspension of the person's driver's license upon the person's release from incarceration.

Terms and Conditions of Community Supervision

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

Effect of the Bill

HB 1363 creates s. 948.033, F.S., and amends ss. 947.18, and 947.1405, F.S. to require courts, as a condition of supervision, to prohibit offenders who have been found by a court to have committed their crime for the purpose of benefiting, promoting, or furthering the interests of an organized crime group, from knowingly associating with other organized crime group members or associates, except as authorized by law enforcement officials, prosecutorial authorities, or the court, for the purpose of aiding in the investigation of organized criminal activity.

C. SECTION DIRECTORY:

Section 1. Amends s. 874.01, F.S., renaming chapter 874, F.S., the “Organized Crime Group Prevention Act of 2007.”

Section 2. Amends s. 874.02, F.S., relating to legislative findings and intent.

Section 3. Amends s. 874.03, F.S., relating to definitions.

Section 4. Amends s. 874.04, F.S., relating to organized crime group activity; enhanced penalties.

Section 5. Creates s. 874.045, F.S., relating to arrest and prosecution under other provisions.

Section 6. Amends s. 874.05, F.S., relating to causing, encouraging, soliciting, or recruiting organized crime group membership.

Section 7. Amends s. 874.08, F.S., relating to organized crime group activity and recruitment; forfeiture.

Section 8. Amends s. 874.09, F.S., relating to crime data information.

Section 9. Creates s. 874.10, F.S., relating to electronic communication.

Section 10. Creates s. 874.11, F.S., relating to identification documents; unlawful possession or creation.

Section 11. Creates s. 874.12, F.S., relating to grants.

Section 12. Creates s. 874.13, F.S., relating to suspension of driver’s license.

Section 13. Creates s. 948.033, F.S., relating to condition of probation or community control; organized crime group.

Section 14. Amends s. 947.18, F.S., relating to conditions of parole.

Section 15. Amends s. 947.1405, F.S., relating to conditional release program.

Sections 16 – 25. Amend ss. 435.04, 893.138, 895.02, 921.0022, 921.0024, 921.141, 984.03, 985.03, 985.047, and 985.433, F.S., to correct cross-references and conform terminology.

Section 26. Providing a directive to the Division of Statutory Revision.

Section 27. This bill takes effect July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

On March 27, 2007, the Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact.

FDLE provided the following fiscal analysis:

FDLE will incur a recurring fiscal impact of \$90,075 for the next three years (for two Grant Specialist IV FTE positions) and \$9,452 in non-recurring costs.

Other than the management positions, Office of Criminal Justice Grants positions are funded from management and administrative funds from federal grant programs administered. Time spent on the management of this program would have to be charged against either general revenue or funds appropriated for organized crime prevention and enforcement grants.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Local governments may be eligible for grant funds.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private sector entities may be eligible for grant funds.

D. FISCAL COMMENTS:

The Safety & Security Council chair's proposed budget does not include an appropriation for the costs FDLE estimates it will incur.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted by the sponsor of the original bill.

The chair of the council chose not to submit a statement.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 28, 2007, the Safety & Security Council adopted one amendment to the bill and reported the bill favorably as a council substitute. The amendment:

- Makes technical changes
- Requires that there be a finding, beyond a reasonable doubt, that the defendant committed the charged offense for the purpose of benefiting, promoting, or furthering the interests of an organized crime group in order to enhance penalties.
- Makes it a crime for any person to use electronic communication to intimidate or harass other persons, or to advertise his or her presence in the community, for the purpose of benefiting, promoting, or furthering the interests of an organized crime group
- Makes it a crime for any person to possess or manufacture any blank, forged, stolen, fictitious, fraudulent, counterfeit, or otherwise unlawfully issued identification document for the purpose of benefiting, promoting, or furthering the interests of an organized crime group.
- Requires courts, as a condition of supervision, to prohibit certain offenders from knowingly associating with other organized crime group members or associates, except as authorized by law enforcement officials, prosecutorial authorities, or the court, for the purpose of aiding in the investigation of organized crime group activity.
- Requires courts to order the suspension of the driver's license of persons convicted or adjudicated delinquent of any organized crime group-related offense.
- Requires FDLE to administer a grants program to assist local efforts to prevent, detect, and prosecute criminal activity committed by organized criminal street gangs. The grants must be awarded to local consortia which must include the State Attorney, local law enforcement and local crime prevention organizations.

This analysis is drafted to the council substitute.