

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 122  
 SPONSOR: Senator Burt  
 SUBJECT: Criminal Street Gangs/Sentencing  
 DATE: January 16, 2001      REVISED: 2/06/01 \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	_____	_____	<u>APJ</u>	_____
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

Senate Bill 122 provides for enhanced penalties if the court finds at sentencing that the defendant committed the charged offense for the purpose of benefiting, promoting, or furthering the interests of a criminal street gang activity. The bill also makes conforming changes applicable to the sentencing scoring of this enhancement.

This bill substantially amends the following sections of the Florida Statutes: 874.04 and 921.0024.

**II. Present Situation:**

**Criminal Street Gang Penalty Enhancement**

Section 874.04, F.S., provides for enhanced penalties if the court finds at sentencing that the defendant who committed the charged offense was a member of a criminal street gang at the time of the commission of the offense. In *State v. O.C.*, 748 So.2d 945 (Fla. 1999), the Florida Supreme Court held that this section “violates a defendant’s substantive due process rights because it subjects the defendant to conviction for a higher degree crime than originally charged, resulting in an increased penalty range, based solely upon a defendant’s ‘simple association’ with others, who may or may not be criminals.” The Court found that s. 874.04, F.S., did not require any nexus between the particular criminal act and the gang membership. The section “lacked a rational relationship to the legislative goal of reducing gang violence or activity. . . .” *Id.*

In reaching its holding the Florida Supreme Court noted that the Fifth District Court of Appeal had made this distinction between the California’s gang enhancement statute, which was upheld by the California Supreme Court, and s. 874.04, F.S. The California statute provided that a defendant’s sentence could be enhanced if the crime “was committed for the gang’s benefit and

with the specific intent to assist in criminal conduct by gang members,” while s. 874.04, F.S., imposed an enhanced penalty for gang membership. *Id.*

Section 921.0024, F.S., which relates to the Criminal Punishment Code worksheet computations and scoresheets, provides for the multiplication of subtotal sentence points by 1.5 if the offender is convicted of the primary offense and is found to have been a member of a criminal street gang at the time of the commission of the primary offense pursuant to s. 874.04, F.S.

### III. Effect of Proposed Changes:

Senate Bill 122 amends s. 874.04, F.S., which provides for enhanced penalties for felonies and misdemeanors, or any delinquent act or violation of a law which would be a felony or misdemeanor if committed by an adult, if the court finds at sentencing that the defendant is a member of a criminal street gang. The bill provides that the court at sentencing must find that the defendant “*committed the charged offense for the purpose of benefiting, promoting, or furthering the interests . . . of a criminal street gang. . . .*” This amendment is intended to overcome the constitutional problem identified by the Florida Supreme Court in *State v. O.C.*, *supra*, by making the penalty enhancement contingent upon there being a criminal act committed for the benefit, promotion, or furtherance of the interests of a criminal street gang.

Conforming changes are made to s. 921.0024, F.S., as it relates to the Criminal Punishment Code scoresheet and that part of the worksheet key explaining the 1.5 sentence multiplier applied to the offender who has been convicted of the primary offense and is found to have been a member of a criminal street gang at the time of the commission of the primary offense pursuant to s. 874.04, F.S.

The act takes effect July 1, 2001.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

### V. Economic Impact and Fiscal Note:

#### A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Insignificant.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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