



**EIGHTEENTH STATEWIDE GRAND JURY**  
**Case No. SC 07-1128**

**FIRST INTERIM REPORT**  
**OF THE STATEWIDE GRAND JURY**

**CRIMINAL GANGS AND**  
**GANG RELATED VIOLENCE**

**December 2007**  
**West Palm Beach, Florida**

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## ➤ **GRAND JURY SUMMARY**

We, the members of the Eighteenth Statewide Grand Jury, find that gangs and gang violence are on the rise in Florida, as in many parts of the country. We see the increase not only in the rising number of gangs and their membership, but also in the number of violent crimes committed by gangs.

We also find that though some progress has been made, Florida's overall efforts have fallen short. This shortcoming is particularly striking in the lack of resources dedicated to law enforcement and prosecutors fighting gangs. In addition, we find that Florida's criminal laws must be revised and re-written to ensure the intent of the legislature can be carried out to "eradicate the terror created by criminal street gangs and their members."<sup>1</sup>

As a result of our findings, we make several recommendations to address the most immediate issues: 1) strengthen our criminal statutes and eliminate loopholes, 2) make modest yet critical increases in funding to law enforcement investigators and prosecutors, and 3) increase communication and the sharing of information within the law enforcement community.

In addition to receiving testimony for this Interim Report, we received testimony that provided the basis for us to return a True Bill for Racketeering and Conspiracy to Commit Racketeering against eleven defendants who are members of a gang based in Palm Beach County. The testimony about their gang reinforced the testimony we had previously received about the gang problem in Florida.

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<sup>1</sup> Section 874.02(3), Florida Statutes.

## ➤ **BACKGROUND**

The Eighteenth Statewide Grand Jury was called for by Governor Charlie Crist and ordered into existence by the Florida Supreme Court on June 20, 2007, to investigate, among other issues, the growing problem of gang violence in Florida. The Grand Jury was also authorized to return Indictments with regards to listed enumerated offenses including racketeering. The Honorable Kathleen Kroll, Chief Judge of the Fifteenth Judicial Circuit of Florida, was designated to preside over the Statewide Grand Jury composed of jurors selected from four judicial circuits: the Fifteenth, Seventeenth, Nineteenth, and Twentieth. Jury selection was completed on August 6, 2007, and we the jurors were sworn in to serve as Statewide Grand Jurors, seated in West Palm Beach, Florida, with Clerk and Comptroller Sharon Bock and her Deputies selected to serve as clerks.

During our investigation so far, we have called many witnesses from a number of areas including law enforcement officers, prosecutors, victims, parents, community activists, and corrections officers. We have even received evidence from gang members themselves. The problem is complex and we believe our own work must be handled in steps; however, ultimate success will require all of the recommendations we make be fully implemented in unison.

A Dade County Grand Jury examined the problem of gangs in Dade County and issued the first official Florida gang study in May 1985. The Tenth Statewide Grand Jury examined the state of gangs in Florida in 1992. Yet the problem has continued to grow exponentially over the years and now deserves a total commitment from Floridians at all levels. Our goal is to play a part in developing a statewide strategy to combat gangs in Florida through a

coordinated approach using law enforcement, prosecutors, legislators, state and local agencies, community programs, and the citizens of the State of Florida.

As a result of our inquiry we make certain findings and recommendations, though we point out that we are just beginning our work. Because of the urgency of this matter, and the obvious continuing danger to the public, we are issuing our first Interim Report as expeditiously as possible to allow the legislature time to assess the report and our recommendations in time for the upcoming legislative session. The first subject we tackle is Florida's effort to fight gangs through arrests and prosecution. In subsequent reports we hope to address other strategies such as: intervention with community involvement, parent-teacher groups, public education, and issues of rehabilitation and prisoner reentry. Therefore, this Interim Report focuses on recommendations to our legislature to address statutory changes and funding in areas we perceive need to be strengthened. It is only with enhanced enforcement tools that our state can put a halt to the growing gang problem.

## ➤ **INTRODUCTION**

### **A. PREVALENCE AND GROWTH OF GANGS**

One benchmark for studying the gang problem is to analyze available statistics from research tools that have already tried to quantify gang activity. Although every Floridian is moved by the compelling tragic stories of innocent children killed in the crossfire of criminal gun violence, we want our analysis to be supported by evidence and to help lead Florida into the area of criminal intelligence-driven legislation, investigations, and prosecutions.

We have reviewed research studies on gangs by two different organizations. The National Youth Gang Center (NYGC), funded by the United States Department of Justice (DOJ), has conducted a National Youth Gang Survey annually since 1996.<sup>2</sup> We have reviewed their survey results. The Florida Department of Law Enforcement's Office of Statewide Intelligence (OSI) conducted a 2007 Statewide Gang Survey. In addition to reviewing the survey results, we received testimony on the survey from the Florida Department of Law Enforcement (FDLE).

The NYGC surveys relied on a nationally representative sample including law enforcement in both large and small cities and in suburban and rural counties. According to the NYGC, the 2005 National Youth Gang Survey reveals increases in gang problems within every type of jurisdiction. Rural and suburban counties reported the greatest percentage of increases in gang prevalence rates. Rural counties reported a 68% increase, while suburban counties reported a 32% increase. Gangs are even more established and active in larger cities. The survey reported an 8% increase in large cities, while smaller cities reported an

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<sup>2</sup> The NYGC is funded by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) which is a part of the U.S. DOJ.

18% increase. Approximately half of reporting agencies in 2005 said their youth gang problem was “getting worse” when compared with the previous survey year.

The FDLE survey came up with similar results. Their survey was compiled from data gathered through questionnaires sent to police chiefs, sheriff’s offices, school resource officers, the Department of Corrections, and Florida’s State Attorneys. Prior to the 2007 Statewide Gang Survey, there has not been a statewide gang survey since FDLE conducted one in 1995. We hope that FDLE receives the funding to expand on this 2007 survey in the years ahead.

Although future studies may have a larger amount of data, we hope they will not be as startling. The FDLE report shows that 71% of law enforcement agencies, 75% of school resource officers, and nearly 83% of all state corrections departments who responded had gangs involved in criminal activities in their area. Gangs have been documented in all twenty judicial circuits in Florida. Both rural and urban areas in Florida responded to the survey with documented gang activity. Additionally, it is important to recognize that female gang involvement has increased 33% according to the FDLE survey. Gang activity does not appear to be slowing down; the majority of law enforcement agencies who responded indicated that gang activity has increased over the past 12 months.

## **B. TYPICAL GANG ACTIVITY**

Criminal gang activity exists to further the overall interest of the gang. The interest of gangs is simple: money and reputation or “street cred.” Gangs amass money from illicit drug sales, robberies, burglaries, and thefts. Lately they have even begun to include white collar crimes such as identity theft and fraud. The gang’s reputation can be enhanced through fear and intimidation. Increasing a gang’s violent reputation gives the gang additional stature in

its members' warped sense of values. We heard testimony that criminal mischief through graffiti is a common way to mark territory and communicate threats. We also heard that clothing and self-produced music are another way gangs try to show their presence or dominance in an area. Gangs are even increasingly taking to the Internet to spread their reputation. Gang members wear jerseys with their own gang's name emblazoned upon them. Gang members have been arrested with their own CD recordings that tout their gang's violent history and threaten their rivals. Like sexual predators, gang members have taken to the Internet. They recruit and promote their gang using the Internet. Because even this Interim Report could be used by particular gangs to enhance their reputation by being named within it, we will refer to specific gangs only in general terms except when mentioned in the True Bill.

Witnesses explained that graffiti, style of dress, tattoos, Internet sites, and music are all passive ways to spread a gang's reputation; whereas, drive-by shootings and other senseless and reckless acts of violence are a more deadly and active form of increasing gang stature. Florida currently ranks second in the number of drive-by shootings according to a recent study by the Violence Policy Center released in July 2007.<sup>3</sup> Florida cannot allow this senseless violence to continue.

### **C. LIMITATIONS OF CURRENT LAWS**

Gangs are already being fought by police and prosecutors with the laws that are currently on the books. We have been impressed by the presentation of the law enforcement officers and prosecutors who have testified before us. Criminal gangs are investigated in one of two ways: either as individual gang members charged with individual crimes or as an entire

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<sup>3</sup> *Drive-By America*, The Violence Policy Center, July, 2007, this study was based on media reports of drive-by shootings across America and was not conducted by law enforcement.

organization. Because of the specific investigative decisions in any given scenario, one strategy may be better for a given criminal case than another.

In the case of an individual crime, if a gang member is charged for a single crime of robbery, for example, he may be charged under that statute alone, or an enhancement may be sought under Chapter 874, Florida Statute, the “Criminal Street Gang Prevention Act of 1996.” (*See Appendix A*). The gang member who receives an enhancement under statute 874 faces a stiffer punishment. Although statute 874 was intended to be a useful enhancement tool for police and prosecutors, it requires modifications to maximize its effectiveness.

Gangs may also be investigated and prosecuted by targeting the entire gang and prosecuting the members as a group. This is usually done under Chapter 895, Florida Statute, the “Florida RICO (Racketeer Influenced and Corrupt Organization) Act.” (*See Appendix B*). Although Florida’s RICO act was originally enacted in the 1970’s to counter the efforts of organized crime to infiltrate legitimate businesses, it has been specifically redrafted to allow for prosecuting a criminal street gang. Under Florida’s RICO law, investigators must first prove that the criminals acted together in an “enterprise” and that they committed a number of criminal acts in support and furtherance of their enterprise. Those underlying criminal acts must be on a list of qualifying RICO offenses known as “predicate incidents” that were written into the statutes thirty years ago. We will discuss this statute and its limitations later in greater detail.

We have seen evidence that gangs continue to grow, thrive, and commit crimes at an increasingly alarming rate here in the Sunshine State. While gang membership is not a new phenomenon, it is one which must be addressed and halted. Federal, state, and local agencies across the United States have considered various ways of reducing gang membership and its

associated violence. In addition to testimony and other forms of evidence, we have received evidence in the form of numerous publications and opinions on the topic. We are convinced that gangs cannot be handled effectively unless a more aggressive approach is taken with coordinated action by the legislature, law enforcement, and the community.

## ➤ **FINDINGS**

The Statewide Grand Jury makes specific findings and recommendations about the current state of the law and law enforcement strategies. It is critical to understand our findings in order to comprehend the importance and significance of our recommendations. We have grouped our findings into specific subject matter areas: (A) resource shortages, (B) statutory shortcomings, (C) witness protection needs, (D) law enforcement information sharing, and (E) public education and training.

### **A. LAW ENFORCEMENT AND PROSECUTORS NEED ADDITIONAL RESOURCES AND TRAINING**

#### **1. Need for designated gang prosecutors and training**

While all twenty judicial circuits in Florida have identified gang activity,<sup>4</sup> no judicial circuit has a state legislatively funded prosecutor designated to exclusively prosecute gang crimes. Rather, State Attorneys that do have a designated gang prosecutor rely on federally funded grants. These grants have limited funding and are not available unless certain requirements are met. While several State Attorneys have successfully sought and received federal grants to acquire funding for a designated gang prosecutor, there is still a need for state funded positions to supplement the federal grant positions and to serve as the primary source of funding in circuits where a federal grant has not been secured.

State Attorneys have some flexibility in their staffing choices, but without funding to hire new prosecutors, gang prosecutors are only taken away from ongoing caseloads resulting in a negative impact anywhere a shift takes place. We took testimony from prosecutors and investigators about the good results and benefits that can be achieved by having a fully funded prosecutor position created to handle gang cases. We heard about the strong working

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<sup>4</sup> Information provided by the Office of Statewide Intelligence.

relationship between gang prosecutors and investigators in Miami-Dade, Hillsborough, and Pinellas Counties where the State Attorneys have designated gang prosecutors. We also heard about staffing shifts in Palm Beach County to assign a full time prosecutor for gang cases. Although each office has taken a different organizational tack that works best for its own structure, the benefits of a designated prosecutor seem apparent. The very complex nature of the cases and the proof required to tie the whole gang together demand a team approach by investigators and prosecutors. We also heard how important it is that the dedicated prosecutor learn and develop advanced investigative techniques. This brings an additional level of support and capability to the investigation.

According to the FDLE survey, the majority of gangs have twenty one or more identified gang members. A RICO case against that whole enterprise may take several years to investigate and prosecute and may easily include the need to prosecute over ten defendants in order to dismantle the gang. To be most effective, a RICO case needs one designated prosecutor to see the case from investigation through verdict. The unfortunate reality we have heard is that Assistant State Attorneys generally rotate through assignments and are very unlikely to see a long-term RICO case through from beginning to end. We heard from Assistant State Attorneys who described typical large case loads that grow on a daily basis and do not allow for the time needed to put together large gang cases. Although the vast majority of criminal cases can be handled by a prosecutor who is assigned a typical case load, gang cases are different. Gang-designated Assistant State Attorneys who testified before us uniformly spoke of the benefits of prosecuting a smaller number of cases with greater levels of complexity and of being able to remain on a case from beginning to end.

The reason this continuity makes a difference is clear to the Grand Jury. When we studied the criminal histories of some of the gang members prosecuted by designated gang units, it was clear that when a specialized prosecutor had time to focus on the gang member and his criminal conduct, the results were more appropriate for the crimes charged. Having the ability to follow up on missing witnesses and run down additional leads strengthened cases and put them in a much better position for a trial or guilty plea. This continuity will send a strong message to the gang defendant that no matter what tack he takes in defense of his case (whether a lawful defense tactic or illegal witness tampering), the dedicated prosecutor is going to follow his every move and vigorously pursue the case.

The other apparent benefit we heard from prosecutors and law enforcement is the value of institutional knowledge developed over time about a gang and its members. The availability of the same prosecutor throughout an investigation is a significant help to an investigator. The ability to recognize the significance of activities such as one gang member meeting with a new member or branching out into a new geographic region comes only from knowledge developed over time.

We heard testimony that institutional knowledge also becomes critical when a charged gang member wants to negotiate a plea. The guilty plea may require an interview with law enforcement and cooperation against fellow and rival gang members. If the prosecutor conducting the interview is not versed in this gang's history or activities, then the prosecutor will not be in the position to effectively question the proffering defendant. It is unlikely that a proffering defendant will divulge information unless the prosecutor specifically confronts the defendant with questions about the illegal activity, and an opportunity to obtain valuable

information will be lost. Thus, the future prosecution of other gang members will suffer because a prosecutor lacks knowledge about the criminal gang.

We also heard about the need for Assistant State Attorneys to negotiate with convicted gang members after they were sentenced. For example, a gang member may not initially cooperate, but only decide to cooperate after he has been sentenced. Another example can be seen where a defendant provides information which may not have been relevant earlier. This could occur when a new gang investigation begins and a convicted gang member comes forward with information. Under Rule 3.800, Florida Criminal Rules of Procedure, the court may only resentence a defendant within sixty days from the imposition of the sentence. This limitation eliminates the incentive for a defendant to benefit from a reduced sentence for his cooperation at a later date. We have heard that Federal Rule 35(b) allows for mitigated sentences beyond sixty days. Gang prosecution could be more effective if Florida created a similar rule.

## **2. Need for designated gang investigative units and training**

Prosecutors are not the only ones who need to be given the resources to focus specifically on gangs and gang violence. Targeting and eliminating an entire gang instead of taking a piecemeal approach is complex work and requires law enforcement to have the necessary resources. These resources should include specialized and trained gang investigators, gang units, gang-savvy school resource officers, and gang analysts. While the need for increased funding for additional law enforcement resources to combat gang activities has been well documented, almost 60% of law enforcement agencies in Florida reported no full-time sworn officers assigned to gang investigations. We also learned that only a little over 10% of law enforcement agencies in Florida reported just one sworn officer dedicated to gang

investigations.<sup>5</sup> In order for law enforcement to identify, arrest, and deter gang members and membership, they need trained gang officers. We have heard from specialized gang detectives who admitted that until they received special training in gang investigation, they routinely came in contact with gang members and gang crime yet never made the connection. Without the proper training, police may not recognize an individual as a gang member or a crime's connection to gang activity. Like prosecutors, the detectives who are immersed in this work develop a special ability to pick up nuances in evidence and build a rapport with the gang members themselves.

We find that some law enforcement agencies have been slow to develop gang units and many agencies still deny the need for such specialized units. The agencies with a dedicated unit to handle gang enforcement are in the minority, and even then the average number of officers in existing units is two.<sup>6</sup> Developing gang investigations can take long hours and extra manpower. If an agency wants to investigate a gang as a criminal enterprise, a gang unit is needed to make a case. A law enforcement officer with regular patrol duties lacks the time and knowledge to pursue a gang as an enterprise. Just as agencies have dedicated units for sex crimes, homicides, and white collar crimes, to name a few, agencies need dedicated gang units. Without fully manned gang units working together as a team, gangs will continue to thrive and put our communities at dire risk.

We have heard that some agencies in the state have shifted resources or sought federal grants, but again this is not a long-term solution. Multi-agency gang task forces, usually federally funded, do exist in some parts of the state. These task forces often combine state and federal law enforcement with state and federal prosecutors to address a specifically

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<sup>5</sup> 2007 Statewide Gang Survey Results (discussed in Law Enforcement Component Analysis).

<sup>6</sup> *Id.* (See Law Enforcement Component Analysis).

identified issue such as gun and gang violence. Task forces can be very beneficial at bringing agencies together to share information and ideas and merit additional funding considerations from the state. While law enforcement can apply for federal funding, we believe law enforcement is fundamentally a state function. Because gang violence transcends Florida's geographic boundaries and a reputation for gang violence will negatively impact the entire state's economic development, resources should be made available from the state. The individual efforts made by some Police Chiefs and Sheriffs are to be applauded, but they need additional support from the state in their efforts.

We believe a successful gang unit requires more than just dedicated investigators; the investigators need to have the support of analysts assigned to the unit. In order to prove that a person belongs to a gang or that a gang is acting as an enterprise, a prosecutor must have proof of an individual's ties to the gang. A trained analyst can help link a defendant, through analysis of complex data, to a gang or gang related criminal activities. The difficulties of proving violations of Chapter 874 and Chapter 895 lie in the fact that dozens of witnesses may be needed to prove a single element of the enhancement or the crime. Only a few departments in the State of Florida have the resources to employ gang analysts. A gang analyst can enter the information or compile data needed for gang investigators to link up a defendant to the elements of the enhancement or crime charged. Without an analyst, such data entry and analysis likely will not occur, and valuable information gathered by law enforcement is wasted because it is not shared with other law enforcement agencies. Our country has seen the cost of such a failure to share information and it can be terribly heavy. Let us not see that failure repeated over and over and foisted upon the gangs' victims to teach us a lesson we should have already learned.

Another essential key for law enforcement is school resource officers who are trained as gang investigators. School resource officers come into contact with youth entering gangs or showing warning signs of possible gang involvement. If the officers are properly trained, they are able to identify which youth are in a gang or likely to join a gang and alert gang investigators who can place the information into a database such as InSite. However, if a school resource officer has not been trained, he may miss all the signs that could be shared not only with law enforcement but with psychologists, social workers, guidance counselors and parents.

### **3. Need for juvenile probation officers at schools**

According to the FDLE survey, almost 60% of law enforcement respondents indicated that gang-related incidents were occurring on school grounds and almost 50% reported an increase of gang activity on school grounds.<sup>7</sup> We heard testimony from a school resource officer who has received training as a gang investigator. A school that has a trained school resource officer receives a tremendous benefit because gang activity can be stopped before it develops into a major problem. Keeping gang activity out of the classrooms is vital if Florida wants a safe and productive educational environment.

While a trained school resource officer is helpful, more can be done. Juvenile probation officers should be present on school campuses. We heard that juvenile probation officers assist school resource officers by identifying which youth are involved in gang activity and on probation. This information can be used by the school resource officer to address parents of gang members. A juvenile probation officer may also help arrest those who have violated their probation and deter gang activity in the school.

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<sup>7</sup> 2007 Statewide Gang Survey Results, page 29.

#### **4. Need for greater assistance to handle illegal immigration**

We would be remiss in talking about the importance of state resources that should be targeted on this problem if we did not also address the alarming information we have heard from witnesses relating to the problems of illegal immigration and gang violence in Florida. Although gang violence is often “home-grown,” there is no doubt in our minds that much of our gang problem has been imported through illegal immigration. We heard testimony from one gang member who said that he sneaked into the United States, was intercepted by Border Patrol, and was then sent by Border Patrol to rejoin his parents in Florida who had illegally immigrated years earlier. Had he been deported immediately upon interception, he would not have joined a gang in Palm Beach County, Florida, and would not have created the victims that were the result of his Florida crimes. This is but one example of the overall problem that is driving the national debate over immigration. Local law enforcement needs greater assistance from federal authorities to address gang violence problems created by illegal immigration issues in Florida and other states.

### **B. ENHANCEMENT AND ENFORCEMENT STATUTES ARE NOT FULLY EFFECTIVE**

#### **1. Florida’s gang statute, Chapter 874, must be improved**

In 1990 the Florida Legislature realized that gang violence was a growing problem and needed a statutory remedy. With that in mind, the Florida Legislature enacted the Street Terrorism Act and created Chapter 874. Florida has been a leader in the area and to this day is one of the few states to statutorily define gangs and gang membership.

**a. Definitions under 874**

The crux of the law is the complex section that defines gangs and gang membership. Under 874.03(2), eight criteria are used to define a “criminal street gang member.” In order to meet the definition of a gang member, the State must prove the individual was a member of a “criminal street gang” and that the individual meets two of the eight criteria as defined in the statute. The eight criteria are presently listed as follows:

- (a) Admits to criminal street gang membership.*
- (b) Is identified as a criminal street gang member by a parent or guardian.*
- (c) Is identified as a criminal street gang member by a documented reliable informant.*
- (d) 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.*
- (e) Is identified as a criminal street gang member by an informant of previously untested reliability and such identification is corroborated by independent information.*
- (f) 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.*
- (g) Is identified as a criminal street gang member by physical evidence such as photographs or other documentation.*
- (h) Has been stopped in the company of known criminal street gang members four or more times. (See Appendix A)*

We have heard from police investigators that although they may have documented a number of gang members and gang associates in their work on the streets, they have rarely if ever successfully seen individuals prosecuted under the gang enhancement in court proceedings. The bulk of the criteria on the statutory list requires live testimony of informants or the defendant’s parents or guardians. While these criteria may be reliable and appropriate in an investigative setting, these criteria do not prove practical in court for

various reasons such as witness intimidation and the bond of family members. A mother who desperately calls police for help with a gang member son does not usually continue to assist law enforcement once the immediate problem has been addressed that night. She is highly unlikely to testify against her own child and identify him as a gang member before the court.

Witnesses told us the criteria related to “being stopped in the presence of fellow gang members” forces witness upon witness to come to court to prove the gang membership of each person in a group even if only one passenger is targeted for prosecution. One part of the statute even requires that the defendant be stopped four or more times with other gang members, quadrupling the proof required for each stop. We heard from one prosecutor who planned to call nine separate witnesses to meet his burden of proof that a defendant was an actual gang member. This needs to be simplified.

An excellent example of this problem was presented to us from a thwarted robbery at a bank a few months ago. In this real life example, a would-be robber was dressed in a jersey with the name of his gang written on it, was tattooed with gang markings, had eyebrow shavings indicating his affiliation with a gang, and “threw a gang hand sign” directly to the security camera. In our view, that should be sufficient proof that the man is a gang member. Under current law it is not sufficient.

According to witnesses, the man attempted to commit a robbery he planned with two other men who were in the bank lobby. Those men also wore gang jerseys and had shavings or tattoos indicating their gang affiliation. One stood by the door while the other milled about the lobby scribbling on a bank form as if he was actually filling out bank paperwork. A plain clothes detective was in the bank during his lunch break conducting personal banking

business and called for back-up when he saw these three men in gang jerseys go into the bank with a fourth man remaining inside a vehicle parked in front of the bank. Remarkably, even all of this evidence of gang affiliation is not sufficient under current law to prove the man in the photo was a gang member, since all of this evidence only partially meets criteria (d) above. 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. Certainly the legislature meant to capture the would-be robber below in the definition of gang member. The fact that the current law does not is simply ridiculous.<sup>8</sup>



Shown below are two close-up photos of the man in the surveillance picture above. One photo is of the right and the other of the left eyebrow where the shavings of one dash on one side and three dashes on the other indicated he was affiliated with a specific gang. While this type of shaving may appear subtle, it is very well known to gang investigators and gang members what this means. Over time, gangs change the ways they identify themselves and

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<sup>8</sup> After this person was arrested, federal immigration authorities deported him based on his immigration status.

statutes and the courts need to have the flexibility to adapt to the changes in gang culture over the years. These eyebrow shavings were not common when the statute was first written, but now are well documented.



We recognize and agree with the caution that has been applied to identifying gang members so as to avoid erroneously identifying a person simply wearing a specific hat or jersey, but that caution has been taken to the extreme.

We also heard testimony about another example that serves to demonstrate the shortcomings of the current statute. We heard testimony about a woman who attended a trial in August in West Palm Beach, Florida. She wore a heavy blue and white jacket. The witness suggested to us that this woman did not wear the heavy jacket because she was cold, but wore it inside and outside the courthouse on a hot August day because the gang colors on the jacket were a sign of solidarity to the gang member involved in the court proceeding. Under the current framework of 874.03(2)(d) this evidence of gang clothing in support of the gang would not even meet a single criterion. Under its current restrictions, she would also have to reside in a particular place, have tattoos, flash hand signs, and prove that she associates with known gang members. That is an unrealistic trial standard in order to meet a single criterion in 874.03(2)(d). Common sense must play a role in this determination instead of a formulaic approach driven by the current state of the law that creates unintended

loopholes for gang members who commit crimes. Wearing the jacket was not a crime, but let a jury decide if that gang gear was enough to meet one of the two required criteria should she be charged with a criminal act in furtherance of her gang. Remember, we do not ever mean to suggest that wearing the jacket in and of itself is her crime; however, if she robs a bank, allow law enforcement and prosecutors to produce that evidence to the jury and let the jury decide if that evidence meets a prong to satisfy sentencing enhancement for her gang membership.

#### **b. Application of 874 in prison settings**

We have also heard testimony about the difficulty associated with defining inmate gang members under Chapter 874. Presently one of the criteria under 874.03(2) 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. Corrections officers who have hundreds of gang members within their institutions have testified that they do not use Chapter 874 because of judicial concerns about the propriety of using it against someone who may be assigned to the same cell as a gang member. We have heard testimony that this criterion needs to distinguish between voluntary and involuntary associations. A general rule that might apply to inmates involuntarily assigned to share a cell is not the answer. Florida needs a rule that properly identifies gang inmates when they are seen voluntarily holding a gang meeting in the prison yard.

#### **c. Constitutional issues**

We are aware that the first enactment of Chapter 874 was challenged in the courts and found to be unconstitutional because it criminalized membership in gangs without requiring a

connection between criminal activity and gang membership.<sup>9</sup> In 2001 changes to Chapter 874 were made to require a connection between the criminal activity and gang membership. We think that was a good change and will continue to provide a safeguard against the “accidental” gang member who is copying a hand sign or wearing a jersey. However, 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.

We have also been advised that 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.

#### **d. Requirements are excessive**

Furthermore, we have heard testimony that there is some confusion among law enforcement as to whether or not one piece of evidence may satisfy two criteria at one time. That confusion should be clarified in the affirmative and allow for one piece of evidence to establish multiple criteria.

Another criterion in the current statute that seems to have been erroneously applied is statute 874.03(3) that 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.

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<sup>9</sup> *State v. O.C.*, 748 So.2d 945 (Fla. 1999).

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. Why should gang members get “free” crimes before they may be classified as gang members? Prosecutors should not have to explain to a gang member’s second and third victims that although it was obvious their attacker had been involved in criminal gang activity before, he was not punished as such because he did not have enough victims yet, but now their victimization has helped meet the required criterion of “pattern.” Florida statute 874 should not be an enhancement based on a person’s prior record; rather, this enhancement should be based on present criminal gang activity.

**e. Benefit need not be financial**

Statute 874.04 provides for an enhanced penalty 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...” Prosecutors and police from around the state have found some resistance from the courts in accepting that a gang member may be “benefiting, promoting, or furthering the interests of a criminal street gang” through non-monetary means. 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. Gang investigators have told us that a reputation is vital in securing territory and in allowing a gang to continue its criminal enterprise without other gangs interfering or honest citizens trying to mobilize to take back their neighborhood.

We heard that reputation is often established by violence and fear. A gang will establish fear in rival gangs and in its own members. Gang members are often required to be “jumped-in;” that is, a new gang member is severely punched and kicked by other gang members as an

initiation. Female gang members have been initiated into the gang by being forced to have sex with multiple members of the gang, the horrific practice that gangs refer to as being “sexed in.” A new member may also be required to commit a crime to be a part of the gang. These crimes often involve violence towards another individual or gang. All of these are non-monetary acts. Non-monetary acts can enhance a gang member’s reputation in the gang and will enhance the gang’s general criminal reputation in the community. If a defendant injures or kills another gang member in his own gang in order to achieve a higher status within the gang and the community, this criminal act should meet the enhancement requirements since it benefited the gang member’s and the gang’s reputation. Financial benefit should not be the sole consideration.

#### **f. Injunctions**

The final component of Chapter 874 that we studied involves the civil law tool of injunctions as it has been adapted to various areas of criminal law. We heard from an Assistant City Attorney in Florida whose city is using civil injunctions in an attempt to protect neighborhoods and business owners who have been constantly harassed by gang activity in a specific area. These gang 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.

## **2. Racketeering statute fails to capture current activity**

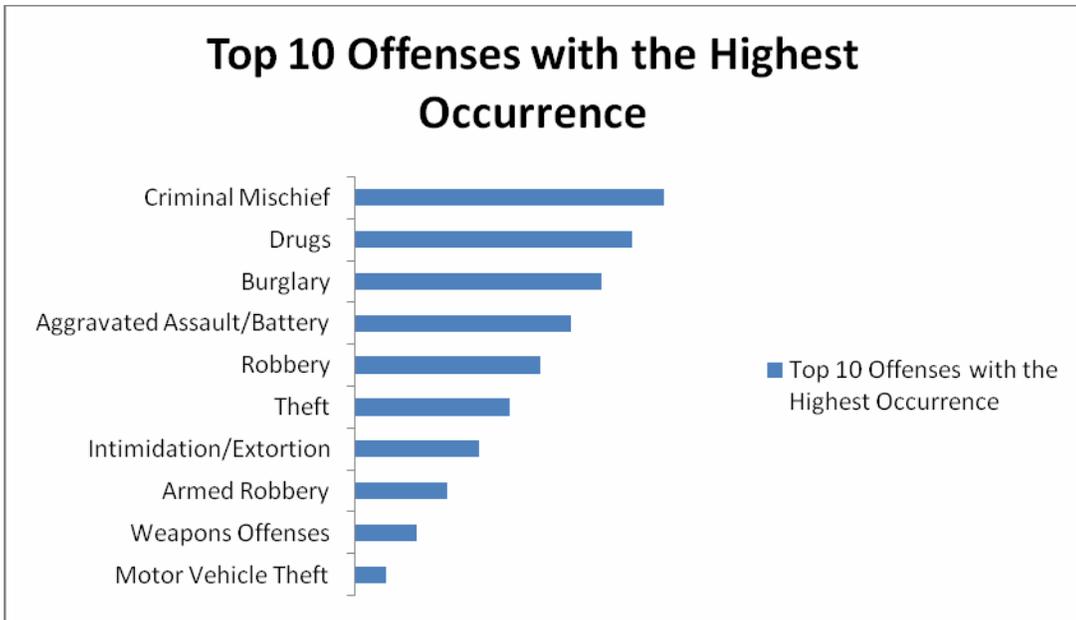
Gangs are becoming far more sophisticated and are developing new ways to recruit and commit crime. We have received testimony that a gang today may include a complex level of management and rules of operation. It is common for a gang to operate as an “enterprise” and thus a gang could be charged under 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.

Florida’s RICO Chapter 895 is a vehicle to prosecute individuals committing crimes together in an organized fashion. RICO relies on the commission of multiple predicate offenses in order to establish a pattern of criminal activity. 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.

In addition we have heard that there has been some confusion as to whether a juvenile’s prior adjudication of delinquency can be used in proving a predicate offense. RICO’s usefulness in the gang context would be enhanced by creating statutory language to clarify the authority for using adjudications of delinquency to serve as predicate offenses. This is particularly true since the majority of gang members in Florida are juveniles.<sup>10</sup>

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<sup>10</sup> 2007 Statewide Gang Survey Results, page 22.



The chart above is based on information from the FDLE survey and demonstrates the most common gang crimes.<sup>11</sup> Burglary (except in limited circumstances), fleeing or eluding a law enforcement officer, and criminal mischief in relation to gang activity are not currently predicates under 895.02. Presently the only burglary predicate incident which qualifies is burglary of a dwelling or structure which involves the use of a motor vehicle as an instrumentality to assist in committing the crime, other than as a getaway vehicle, and damages the dwelling or structure, or if damage is caused to the dwelling or structure in excess of \$1,000. Burglaries are among the most common crimes committed by members of a gang and all burglaries, not just the current enumerated burglaries, need to be included as predicates. Proceeds from all such burglaries help to sustain a gang’s criminal enterprise. Gangs have been known to establish an organizational structure for burglary offenses, including someone who directs what goods should be stolen, thieves who then steal the goods, and others who fence the goods.

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<sup>11</sup> 2007 Statewide Gang Survey Results, page 26.

Fleeing to elude a law enforcement officer is another common offense committed by gang members.<sup>12</sup> These high speed car chases are dangerous to law enforcement officers and the citizens of the community who might be injured or killed during the flight of the defendant. Gang members are notorious for being anti-law enforcement. It is common for gang members to disobey the law, and a gang member whom police are attempting to stop is likely to flee in order to increase his reputation as a gangster who disobeys the law.

Graffiti is more than just an annoying eyesore to the community; according to testimony, it is one of the most common ways for gangs to mark their territory. When a gang indicates its presence in a community by committing acts of criminal mischief and defacing property, it causes a loss of value to the property. It also leads to increased tensions among rival gangs and to intimidation of law abiding citizens in the affected area. We received testimony that in the following series of photos, graffiti is also a form of communication used to insult rival gangs by crossing out the rival gang signs. The following is a series of photos taken over a single weekend. Below is the first photo claiming control by one gang of a specific area in Polk County, Florida.



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<sup>12</sup> Although we heard that fleeing to elude is a common crime among gang members, it was omitted as a choice from the FDLE survey and is therefore not represented in the graph.

The next photo documents the same wall a short period of time later, in which a rival gang has defaced the first act of criminal mischief and created a new act of criminal mischief to demonstrate its own power in the same community. The graffiti by the rival gang soon leads to yet more criminal mischief when the first street gang reclaims its territory by marking out the rival gang.



This last photo from the same series shows the continuing pattern of criminal mischief that often leads to violence among the battling groups. Here a third rival gang has appeared and defaced the graffiti of the first and second gangs.



Graffiti, often called the “newspaper of the street,” is more than mere vandalism. It marks territory, intimidates law abiding citizens in the neighborhood, and, according to a number of witnesses who have testified before us, leads to feuds and killings. Another example of why criminal mischief needs to be added to Chapter 895, Florida Statutes, can be seen in the following photo. We received testimony that this graffiti occurred in Palm Beach County between rival gangs. The first gang painted their name on the fence using blue spray paint to represent their presence in the area. At the same time, they disrespected a rival gang using white spray paint. The rival gang’s leader sent a member on a “mission” to paint over the original graffiti. The gang member was caught in the act and arrested. The expert testified that the “187” which was painted over the rival gang’s name refers to the California penal code for homicide. Thus, the “187” over the name of the rival gang is an indication that one gang intended to kill the other gang.



Today, gangs have moved beyond the warehouse wall in spreading their graffiti. We have heard that given the advance of computers and technology, recruiting and territorial conflicts are also seeing a rise over the Internet. “MySpace” and other social networking sites have been used by gangs to boast about their activities and to recruit new members

while insulting rival gangs. Law enforcement has stated that Internet recruiting needs to be prohibited. We also heard testimony that additional Internet related crimes need to be made predicate offenses for a RICO charge.

### **3. Gang kingpin or leader**

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. State statute 812.019(2) is an example whereby the legislature decided 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.

### **4. Repeat gang offender statute**

Under Florida Statute 775.084, a defendant faces greater penalties if he meets certain repeat felony offender criteria. However, not all repeat felony offenders will qualify for a potential increase in sentencing range. The provisions under statute 775.084 require the last offense to have been committed within five years from the date of the current offense or for the offender to have been released from custody or supervision within that period of time. In addition, drug purchase and possession does not always qualify as a prior felony. An older gang member may have been committing crimes over his entire life but may not qualify as a repeat offender if he has not been sentenced or released from custody or supervision within the last five years from the date of his new offense. Given the fact that a RICO charge may include several years of activities and convictions within the charge itself, those crimes

would not qualify. In addition, we heard that gangs are commonly using drug sales to fund their gang activity. Gangs 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. 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.

**5. Gangs and illegal guns**

Gang members who choose to arm themselves and commit gun crimes should be sought out and punished using the most aggressive tactics as they are the most dangerous enemy plaguing our neighborhoods. We received evidence which shows that Florida is experiencing a rise in violent crime. When firearms are used by violent street gangs, the potential for deadly acts escalates. Approximately 80% of law enforcement agencies in the FDLE survey indicated that firearms were involved in gang related crimes.<sup>13</sup>

*Table 13 – Firearms Involvement*

<b>Frequency Firearm Used</b>	<b>% Respondents</b>
Often	24.1%
Sometimes	32.9%
Very little	24.1%
Not at all	19.0%

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. We have heard

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<sup>13</sup> 2007 Statewide Gang Survey Results, page 28.

from witnesses who testified that the military is actively guarding against this encroachment into their ranks. The military provides training in combat and firearm use that can be used against law enforcement which may have less firepower than the gang members. Military issued weapons, explosives, and body armor has been discovered by law enforcement during the arrest of gang members. Gangs are also trying to infiltrate law enforcement by participating in law enforcement academies.

According to evidence presented, gangs are associated with the rising violent crime rates in Florida. Gang members who use a firearm during the commission of a gang-related felony offense should be severely punished. While Florida already has tough laws to address gun crimes such as 10-20-Life, we feel a new statute or sentencing enhancement should be created which is specifically designed to punish gang members who illegally use guns.

### **C. WITNESS PROTECTION STATUTES NEED TO BE IMPROVED**

Witness protection is a multi-faceted issue that begins before the time of arrest and continues through trial and even beyond appeal. It involves not just the witness but also that person's family. Since gang violence and neighborhood intimidation run hand in hand, witness intimidation is a critical issue for this Statewide Grand Jury to investigate. We have heard from investigators who routinely arrive at homicide scenes thronged with onlookers only to find that no one in the crowd witnessed anything. That wall of silence is not erected by a specific act but by the general concern that people put themselves in jeopardy to come forward and identify a criminal. We have been told that a person's constitutional right to confront the witnesses against him as provided for under the 6<sup>th</sup> Amendment of the United States Constitution has been extended in Florida when it comes to providing "discovery." "Discovery" generally requires that a prosecutor provide advance disclosure of witnesses'

names and addresses, along with any reports or statements that may exist. In addition, witnesses may be required to give sworn depositions that take place months prior to trial and the defendant will have the opportunity to review the statements when they are transcribed. Witnesses who understand the potential for threats, harm, and the realities of the criminal justice system are reluctant to come forward and identify a gang member.

In a perfect world, those extra steps would not pose an additional problem for witnesses, but the reality is very different. Dealing with the problems of witness intimidation is a regular part of gang prosecutions. Prosecutors from around the state have told us about instances of witnesses being intimidated or even killed. This danger is a fundamental attack not just on the witnesses who courageously come forward but on our judicial system as a whole. The legislature, law enforcement, and the courts must acknowledge this problem and confront it.

Because the risk runs throughout the process, we will address the issue in a chronological manner over the course of a typical judicial proceeding and discuss various areas that impact witness security.

### **1. Witness protection after arrest and bail**

The first time that a defendant truly knows that he has been identified as the perpetrator is when he is arrested by the police and accused of a crime. After his arrest, he is booked into a detention facility and, pursuant to the Florida Constitution Article I, Section 14, Florida State Statute 903, and Florida Rules of Criminal Procedure 3.131, most defendants are entitled to post bail. In order to deal with routine cases and address jail overcrowding issues, we have been told that most counties have established a “standard” bond for particular crimes. In such cases, the defendant is permitted to post the standard bond prior to any hearing and prior

to any opportunity for the prosecutor to address the judge and to provide additional information that might be relevant to the court's determination of appropriate bond amount or bond conditions. The absence of an automatic mechanism throughout the state to provide for a defendant to be held for bond hearing is truly a missed opportunity for an initial step at witness protection. The judicial system needs to balance the right to bond along with the safety of witnesses so that when a gang member is released on bond he does not immediately track down and harm potential witnesses.

Another startling issue we have investigated is the fact that there 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) 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.

When a gang defendant is released or even when he is in custody awaiting trial, he must decide his approach on witness intimidation. Will he rely on the reputation of his gang for violence to quiet any would-be witnesses or will he have to take a more aggressive tack? When he decides he must take a more direct approach and intimidate the witnesses against him through direct or third-party contact, he has decided to threaten dutiful citizens who have come forward out of civic responsibility, and he has determined that the downside of getting caught, arrested and prosecuted for that crime of tampering is worth the risk.

The current state of the law and the risk-reward incentives built into the sentencing structure in some ways seem to encourage witness intimidation or tampering. Florida State Statute 914.22 is titled "Tampering with a witness, victim, or informant." Law enforcement will continue to have problems finding cooperating witnesses as long as gang members are allowed to threaten anyone who testifies against them. 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.

## **2. Witness protection pending trial**

Once a witness has been tampered with, he is eligible for relocation and limited state protective services. Florida State Statute 914.25 is titled "Protective services for certain victims and witnesses." This statute allows a law enforcement agency to "provide protective services, including temporary relocation services to a victim or witness at risk of harm." Law enforcement may provide protective services for a maximum of four years if the witness is certified and recertified annually as a victim or witness who is at risk of harm. To be certified, the witness must be deemed critical by the prosecutor. The law enforcement agency may then provide the protective services but must do so at its own expense. Reimbursement for the protective services must then be applied for through the Victim and Witness Protection Review Committee, pursuant to statute 943.031. Law enforcement has

no guarantee that they will receive reimbursement. Furthermore, we have heard that some small law enforcement agencies may not have the money to fund witness relocation up front. In order for gang prosecution to be effective, the State must assure witnesses that significant steps are being taken to prevent harm against them. Witness relocation may be the only avenue to provide the necessary protection. Prosecutors and police have told us that witness protection funding must be available through a more effective process so that they can take immediate action in these very critical situations.

Another source of concern for some prosecutors familiar with the program is that there is no organized mechanism to follow up with program participants to assure their appearance at trial. There were reports that once a witness has been moved out of the threat area, they start a new life and have no interest in returning to the danger of the life in their old neighborhood as a known witness. Although that is understandable, it fails to meet the overarching state interest of securing convictions for violent offenders.

#### **D. VALUABLE DATA MUST BE COLLECTED AND SHARED**

##### **1. No standard statewide collection practices for data**

According to the Tenth Statewide Grand Jury, "it is evident that a statewide youth and gang computer database needs to be established with mandatory reporting from all law enforcement agencies in the State of Florida." As a result of this recommendation by the Tenth Statewide Grand Jury, FDLE was assigned the responsibility of carrying out legislation designed to implement this recommendation. "InSite" was chosen as the statewide database. Law enforcement has told us the need for a centralized database is now stronger than ever. 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. Because InSite needs detailed information about the activities of a gang member or gang, an investigator or an analyst will spend additional time inputting data rather than attending to his or her other responsibilities. Some agencies have been reluctant to input data into InSite because they already use their own database and InSite would require additional responsibilities for a law enforcement officer who is already short on time. While InSite could provide a standard statewide collection practice, figuring out how it can be implemented throughout every law enforcement agency presents a challenge.

## **2. No current requirement to share data once collected**

Florida has seen an immigration of national gangs from all over the United States. Florida also has a large number of local gangs that are unique to one particular city or area. As gang members move and relocate around Florida, it is necessary that agencies share information with one another. If DOC is aware a gang member is being released and moving to Hillsborough, then the Hillsborough County Sheriff's Office should be notified and information about the gang member shared. Likewise, if the gang member then moves to West Palm, the Palm Beach Sheriff's Office should be notified and data about this gang member should be shared. We have heard testimony that sharing information would allow law enforcement to identify the presence of new gang members in their communities.

From what we have heard, 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. Since drug trafficking requires a lot of movement, gangs

often travel across different jurisdictions. Today, more and more gangs are joining forces to accomplish their needs. There are instances in which gangs who were traditionally enemies join forces for the mutual benefit of a larger purpose such as drug trafficking.

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.

### **3. No formal coordinated structure to facilitate the sharing of this data once collected**

Although FDLE's InSite program is an excellent database that has been demonstrated to us, we note that there is no formal structure to serve as a manned clearinghouse. We have heard 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." We heard testimony about "fusion centers" located in a few cities around the U.S. that partner both state and federal investigators from a number of disciplines including corrections and law enforcement to maximize response to gang activity. Witnesses told us this would be a tremendous help to their investigations and to prosecutions.

### **4. No mandatory registry requirement for adjudicated gang members**

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.

Registration and re-registration requirements upon relocating will allow law enforcement the ability to know the whereabouts of a gang member for a relevant period of time. 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. This registry information should be accessible in a law enforcement database, but also 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. We heard testimony that this information would be invaluable and particularly life saving if it is linked to license plate registration data.

#### **E. PUBLIC EDUCATION AND TRAINING**

We were amazed at the testimony of some officers that they had been directed not to use the term "gang" because their local elected officials did not want to admit the presence of gangs in their cities. While that specific situation has now changed, it speaks to a larger problem that affects all of Florida. We are in the midst of a battle for our streets and for the future of our children. If we are to stop the violence and gang recruiting, we must first acknowledge that we have let our guard down and allowed gang culture and gang violence to grow over the years. We have spent months learning about this problem and now see it for the domestic terrorism threat that it poses. Without greater education on the issue, decision

makers and casual observers alike will see occasional headlines without recognizing the pervasive problem gangs have become.

We recognize and applaud the efforts of those in the community and law enforcement arena who are already taking steps to better educate themselves. This is particularly true of the leadership shown by the Florida Gang Investigators Association. This type of effort needs to be extended to all community schools, law enforcement, local and state government, and the judicial system within our state. However, no strategy to combat gangs and gang activity would be complete without also educating the public on the importance of deterring gang activity and training the public on what they can do to stop the present trend. We have watched video clips and seen other evidence that many in our society endorse and even embrace the gangster lifestyle. The views of society must change if we are to stop the youth from joining gangs. Clearly we are glamorizing the gangster lifestyle when a self-professed gangster can be seen endorsing not only his music, but also high end merchandise such as luxury vehicles. The public must become educated on the dangers of promoting this lifestyle.

Punishment will only go so far. We must work together as a society to deter gang membership and rehabilitate those who have already joined. We intend to address public education and training in more detail in our next report. With that in mind, we turn to our recommendations.

## ➤ **RECOMMENDATIONS**

- I. Funding and commitments must be made for law enforcement and State Attorneys that allow for experienced and trained gang investigators and prosecutors who implement an investigator-prosecutor approach within dedicated gang units. Gang prosecutors, investigators, school resource officers, on-site school juvenile probation officers, and analysts must be funded in every circuit. Additionally, training and funding should be allocated to support the creation of specialized judicial divisions to focus on gang prosecutions much like specialized divisions have been created for domestic violence, juvenile and career criminals.**
  
- II. Florida Statute Chapter 874 must be redrafted and modified in order for Prosecutors to enhance a defendant's sentence.**
  - i. A “[c]riminal street gang member” under statute 874.03(2) must be redrafted so that it is more clear and usable by prosecutors. It is recommended that the statute be redrafted to state as follows:**
    - (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.
  
  - ii. 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.**
  
  - iii. “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.**
  
  - iv. 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.**

**v. 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.**

**III. The legislature should create a provision under Ch. 874 which creates a criminal offense for Gang Injunction Violation.**

**IV. 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.**

**V. Convicted gang members who are in possession of a firearm should receive an additional enhancement under Ch. 874.**

**VI. Create additional qualifying predicate offenses under the RICO statute c. 895. Additional predicates should include:**

- i. Fleeing and Eluding**
- ii. Criminal Mischief (including gang graffiti)**
- iii. Burglary – all sections**
- iv. Gang Injunction Violation**
- v. Failure to Register as Ch. 874 Offender**
- vi. Sexual Battery, Ch. 794, and Lewd & Lascivious crimes, Ch. 800, pursuant to gang initiation.**

**VII. It should be clarified in statutes that juvenile adjudications of delinquency may serve as predicate offenses for a RICO charge.**

**VIII. A gang kingpin provision should be created that mirrors the dealing in stolen property statute for anyone who “manages or directs” gang activity.**

**IX. 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.**

**X. Convicted felons who are prohibited from owning guns must also be prohibited from owning, possessing or using bullet proof vests.**

**XI. The legislature should recommend that the Florida Bar Rules Committee and the Supreme Court consider the creation of a Rule of Criminal Procedure similar to Federal Rule 35(b) to allow for mitigated sentences beyond sixty days for gang members who cooperate with law enforcement against their fellow gang members.**

**XII. Witness protection must be improved by creating a new bond structure for gang defendants. If a judicial circuit has a standard bond schedule, the standard bond should be doubled for any offense committed by a gang member. 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.**

**XIII. Witness protection programs must be made more useful. Funding should be made available for witness protection in a manner that will encourage its use. A program through FDLE or State Attorney's Offices should be created that supports relocated witnesses with housing, jobs, and counseling. A victim/witness program should be created which allows a person to establish a new identity under special circumstances. Law enforcement must be made aware of all witness protection programs.**

**XIV. 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.**

**XV. 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 InSite data program. Registration information for a convicted gang member must be collected. A defendant will be required to pay the fee for registration.**

**XVI. 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.**

➤ **CERTIFICATION OF REPORT**

THIS REPORT IS RESPECTFULLY SUBMITTED in Open Court to the Honorable Kathleen Kroll, Presiding Judge of the Eighteenth Statewide Grand Jury, this \_\_\_\_\_ day of December, 2007.

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Juror #110  
Foreperson  
Eighteenth Statewide Grand Jury of Florida

I, WILLIAM N. SHEPHERD, Statewide Prosecutor and Legal Adviser, Eighteenth Statewide Grand Jury of Florida, hereby certify that I, as authorized and required by law, have advised the Grand Jury which returned this report on this \_\_\_\_\_ day of December, 2007.

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WILLIAM N. SHEPHERD  
Statewide Prosecutor  
Legal Adviser

I, OSCAR GELPI, Special Counsel and Assistant Legal Adviser, Eighteenth Statewide Grand Jury of Florida, hereby certify that I, as authorized and required by law, have advised the Grand Jury which returned this report on this \_\_\_\_\_ day of December, 2007.

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OSCAR GELPI  
Special Counsel  
Assistant Legal Adviser

I, MICHAEL W. SCHMID, Assistant Statewide Prosecutor and Assistant Legal Adviser, Eighteenth Statewide Grand Jury of Florida, hereby certify that I, as authorized and required by law, have advised the Grand Jury which returned this report on this \_\_\_\_\_ day of December, 2007.

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MICHAEL W. SCHMID  
Assistant Statewide Prosecutor  
Assistant Legal Adviser

THE FOREGOING Interim Report was returned before me in Open Court this \_\_\_\_ day of December, 2007, and is hereby sealed until further order of this Court, upon proper motion of the Statewide Prosecutor.

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HONORABLE KATHLEEN KROLL  
Chief Judge of the Fifteenth Judicial Circuit  
Presiding Judge  
Eighteenth Statewide Grand Jury of Florida

## ➤ **APPENDIX A**

### **FLORIDA'S CRIMINAL STREET GANG ACT**

#### **§ 874.01. Short title**

This chapter may be cited as the "Criminal Street Gang Prevention Act of 1996."

#### **§ 874.02. Legislative findings and intent**

(1) The Legislature finds that it is the right of every person, regardless of race, color, creed, religion, national origin, sex, age, sexual orientation, or handicap, to be secure and protected from fear, intimidation, and physical harm caused by the activities of criminal street gangs and their members. It is not the intent of this chapter to interfere with the exercise of the constitutionally protected rights of freedom of expression and association. The Legislature recognizes the constitutional right of every citizen to harbor and express beliefs on any lawful subject whatsoever, to lawfully associate with others who share similar beliefs, to petition lawfully constituted authority for a redress of perceived grievances, and to participate in the electoral process.

(2) The Legislature finds, however, that the state is facing a mounting crisis caused by criminal street gangs whose members threaten and terrorize peaceful citizens and commit a multitude of crimes. These criminal street gang activities, both individually and collectively, present a clear and present danger. The state has a compelling interest in preventing criminal street gang activity, and the Legislature finds that the provisions of this act are necessary to maintain the public order and safety.

(3) It is the intent of the Legislature 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 criminal street gang recruitment.

#### **§ 874.03. Definitions**

As used in this chapter:

(1) "Criminal street gang" means a formal or informal ongoing organization, association, or group that has as one of its primary activities the commission of criminal or delinquent acts, and that consists of three or more persons who have a common name or common identifying signs, colors, or symbols and have two or more members who, individually or collectively, engage in or have engaged in a pattern of criminal street gang activity.

(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 criminal street gang membership.

(b) Is identified as a criminal street gang member by a parent or guardian.

(c) Is identified as a criminal street gang member by a documented reliable informant.

(d) 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.

(e) Is identified as a criminal street gang member by an informant of previously untested reliability and such identification is corroborated by independent information.

(f) 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.

(g) Is identified as a criminal street gang member by physical evidence such as photographs or other documentation.

(h) Has been stopped in the company of known criminal street gang members four or more times.

(3) "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.

(4) For purposes of law enforcement identification and tracking only:

(a) "Criminal street gang associate" means a person who:

1. Admits to criminal street gang association; or

2. Meets any single defining criterion for criminal street gang membership described in subsection (2).

(b) "Gang-related incident" means an incident that, upon investigation, meets any of the following conditions:

1. 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;

2. A reliable informant identifies an incident as criminal street gang activity; or

3. An informant of previously untested reliability identifies an incident as criminal street gang activity and it is corroborated by independent information.

#### **§ 874.04. Criminal street gang activity; enhanced penalties**

Upon a finding by the court at sentencing that the defendant committed the charged offense for the purpose of benefiting, promoting, or furthering the interests of a criminal street gang, the penalty for any felony or misdemeanor, or any delinquent act or violation of law which would be a felony or misdemeanor if committed by an adult, may be enhanced. Each of the findings required as a basis for such sentence shall be found by a preponderance of the evidence. The enhancement will be as follows:

(1) (a) A misdemeanor of the second degree may be punished as if it were a misdemeanor of the first degree.

(b) A misdemeanor of the first degree may be punished as if it were a felony of the third degree. For purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, such offense is ranked in level 1 of the offense severity ranking chart. The criminal street gang multiplier in [s. 921.0024](#) does not apply to misdemeanors enhanced under this paragraph.

(2) (a) A felony of the third degree may be punished as if it were a felony of the second degree.

(b) A felony of the second degree may be punished as if it were a felony of the first degree.

(c) A felony of the first degree may be punished as if it were a life felony.

For purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, such felony offense is ranked as provided in [s. 921.0022](#) or [s. 921.0023](#), and without regard to the penalty enhancement in this subsection. For purposes of this section, penalty enhancement affects the applicable statutory maximum penalty only.

#### **§ 874.05. Causing, encouraging, soliciting, or recruiting criminal street gang membership**

(1) A person who intentionally causes, encourages, solicits, or recruits another person to join a criminal street gang that requires as a condition of membership or continued membership the commission of any crime commits a felony of the third degree, punishable as provided in [s. 775.082](#), [s. 775.083](#), or [s. 775.084](#).

(2) Upon a second or subsequent offense, the person commits a felony of the second degree, punishable as provided in [s. 775.082](#), [s. 775.083](#), or [s. 775.084](#).

#### **§ 874.06. Civil cause of action**

A person or organization establishing, by clear and convincing evidence, coercion, intimidation, threats, or other harm to that person or organization in violation of this chapter

has 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.

**§ 874.08. Profits, proceeds, and instrumentalities of criminal street gangs or criminal street gang recruitment; forfeiture**

All profits, proceeds, and instrumentalities of criminal street gang activity and 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 profits, proceeds, and instrumentalities of criminal street gang recruitment and all property used or intended or attempted to be used to facilitate criminal street gang recruitment are subject to seizure and forfeiture under the Florida Contraband Forfeiture Act, [s. 932.704](#).

**§ 874.09. Crime data information**

The Department of Law Enforcement may develop and manage a statewide criminal street gang database to facilitate the exchange of information pursuant to the intent and purpose of this chapter.

## ➤ **APPENDIX B**

### **FLORIDA'S RICO STATUTE**

#### **§ 895.01. Short title**

Sections 895.01-895.06 shall be known as the "Florida RICO (Racketeer Influenced and Corrupt Organization) Act."

#### **§ 895.02. Definitions**

As used in ss. 895.01-895.08, the term:

(1) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any crime that is chargeable by indictment or information under the following provisions of the Florida Statutes:

1. Section 210.18, relating to evasion of payment of cigarette taxes.
2. Section 403.727(3)(b), relating to environmental control.
3. Section 409.920 or s. 409.9201, relating to Medicaid fraud.
4. Section 414.39, relating to public assistance fraud.
5. Section 440.105 or s. 440.106, relating to workers' compensation.
6. Section 443.071(4), relating to creation of a fictitious employer scheme to commit unemployment compensation fraud.
7. Section 465.0161, relating to distribution of medicinal drugs without a permit as an Internet pharmacy.
8. Sections 499.0051, 499.0052, 499.00535, 499.00545, and 499.0691, relating to crimes involving contraband and adulterated drugs.
9. Part IV of chapter 501, relating to telemarketing.
10. Chapter 517, relating to sale of securities and investor protection.
11. Section 550.235, s. 550.3551, or s. 550.3605, relating to dog racing and horseracing.
12. Chapter 550, relating to jai alai frontons.

13. Section 551.109, relating to slot machine gaming.
14. Chapter 552, relating to the manufacture, distribution, and use of explosives.
15. Chapter 560, relating to money transmitters, if the violation is punishable as a felony.
16. Chapter 562, relating to beverage law enforcement.
17. Section 624.401, relating to transacting insurance without a certificate of authority, s. 624.437(4)(c)1., relating to operating an unauthorized multiple-employer welfare arrangement, or s. 626.902(1)(b), relating to representing or aiding an unauthorized insurer.
18. Section 655.50, relating to reports of currency transactions, when such violation is punishable as a felony.
19. Chapter 687, relating to interest and usurious practices.
20. Section 721.08, s. 721.09, or s. 721.13, relating to real estate timeshare plans.
21. Chapter 782, relating to homicide.
22. Chapter 784, relating to assault and battery.
23. Chapter 787, relating to kidnapping or human trafficking.
24. Chapter 790, relating to weapons and firearms.
25. Section 796.03, s. 796.035, s. 796.04, s. 796.045, s. 796.05, or s. 796.07, relating to prostitution and sex trafficking.
26. Chapter 806, relating to arson.
27. Section 810.02(2)(c), relating to specified burglary of a dwelling or structure.
28. Chapter 812, relating to theft, robbery, and related crimes.
29. Chapter 815, relating to computer-related crimes.
30. Chapter 817, relating to fraudulent practices, false pretenses, fraud generally, and credit card crimes.
31. Chapter 825, relating to abuse, neglect, or exploitation of an elderly person or disabled adult.
32. Section 827.071, relating to commercial sexual exploitation of children.

33. Chapter 831, relating to forgery and counterfeiting.
34. Chapter 832, relating to issuance of worthless checks and drafts.
35. Section 836.05, relating to extortion.
36. Chapter 837, relating to perjury.
37. Chapter 838, relating to bribery and misuse of public office.
38. Chapter 843, relating to obstruction of justice.
39. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or s. 847.07, relating to obscene literature and profanity.
40. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s. 849.25, relating to gambling.
41. Chapter 874, relating to criminal street gangs.
42. Chapter 893, relating to drug abuse prevention and control.
43. Chapter 896, relating to offenses related to financial transactions.
44. Sections 914.22 and 914.23, relating to tampering with a witness, victim, or informant, and retaliation against a witness, victim, or informant.
45. Sections 918.12 and 918.13, relating to tampering with jurors and evidence.

(b) Any conduct defined as "racketeering activity" under 18 U.S.C. s. 1961(1).

(2) "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in this state in whole or in part because the debt was incurred or contracted:

(a) In violation of any one of the following provisions of law:

1. Section 550.235, s. 550.3551, or s. 550.3605, relating to dog racing and horseracing.
2. Chapter 550, relating to jai alai frontons.
3. Section 551.109, relating to slot machine gaming.
4. Chapter 687, relating to interest and usury.
5. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s. 849.25, relating to gambling.

(b) In gambling activity in violation of federal law or in the business of lending money at a rate usurious under state or federal law.

(3) "Enterprise" means any individual, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact although not a legal entity; and it includes illicit as well as licit enterprises and governmental, as well as other, entities. A criminal street gang, as defined in s. 874.03, constitutes an enterprise.

(4) "Pattern of racketeering activity" means engaging in at least two incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims, or methods of commission or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one of such incidents occurred after the effective date of this act and that the last of such incidents occurred within 5 years after a prior incident of racketeering conduct.

(5) "Documentary material" means any book, paper, document, writing, drawing, graph, chart, photograph, phonorecord, magnetic tape, computer printout, other data compilation from which information can be obtained or from which information can be translated into usable form, or other tangible item.

(6) "RICO lien notice" means the notice described in s. 895.05(12) or in s. 895.07.

(7) "Investigative agency" means the Department of Legal Affairs, the Office of Statewide Prosecution, or the office of a state attorney.

(8) "Beneficial interest" means any of the following:

(a) The interest of a person as a beneficiary under a trust established pursuant to s. 689.07 or s. 689.071 in which the trustee for the trust holds legal or record title to real property;

(b) The interest of a person as a beneficiary under any other trust arrangement pursuant to which a trustee holds legal or record title to real property for the benefit of such person; or

(c) The interest of a person under any other form of express fiduciary arrangement pursuant to which any other person holds legal or record title to real property for the benefit of such person.

The term "beneficial interest" does not include the interest of a stockholder in a corporation or the interest of a partner in either a general partnership or a limited partnership. A beneficial interest shall be deemed to be located where the real property owned by the trustee is located.

(9) "Real property" means any real property or any interest in such real property, including, but not limited to, any lease of or mortgage upon such real property.

(10) "Trustee" means any of the following:

(a) Any person acting as trustee pursuant to a trust established under s. 689.07 or s. 689.071 in which the trustee holds legal or record title to real property.

(b) Any person who holds legal or record title to real property in which any other person has a beneficial interest.

(c) Any successor trustee or trustees to any or all of the foregoing persons.

However, the term "trustee" does not include any person appointed or acting as a personal representative as defined in s. 731.201(27) or appointed or acting as a trustee of any testamentary trust or as a trustee of any indenture of trust under which any bonds have been or are to be issued.

(11) "Criminal proceeding" means any criminal proceeding commenced by an investigative agency under s. 895.03 or any other provision of the Florida RICO Act.

(12) "Civil proceeding" means any civil proceeding commenced by an investigative agency under s. 895.05 or any other provision of the Florida RICO Act.

### **§ 895.03. Prohibited activities and defense**

(1) It is unlawful for any person who has with criminal intent received any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.

(2) It is unlawful for any person, through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.

(3) It is unlawful for any person employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.

(4) It is unlawful for any person to conspire or endeavor to violate any of the provisions of subsection (1), subsection (2), or subsection (3).