

CS/SB 536 – Criminal Gang Members (Similar CS/HB 429)

This bill amends s. 874.03, F.S., expanding the definition of a “criminal gang member” in multiple ways that creates additional witnesses and social media evidence, as well as reducing the number of times the person has to be observed in the company of one or more known criminal gang members from four or more to two or more. This would impact the multiple felonies listed under Chapter 874, including penalty enhancements for certain crimes as a criminal gang member under s. 874.04, F.S. (1st degree misdemeanor to 3rd degree felony, 3rd degree felony to 2nd degree felony, etc.). Furthermore, it would impact the Level 7, 1st degree felony (punishable by life) for someone possessing a weapon who qualifies for these penalty enhancements (s. 790.23(4), F.S.) and the Level 1, 3rd degree felony for registration of convicted felons (s. 775.13(4)(b), F.S.). This expansion in the definition could increase the pool of future offenders charged with these felonies. Finally, this expanded pool could impact the aggravating factor where a criminal gang member committed a capital felony, and thus increase the number of death sentences that might currently be life sentences.

Per FDLE, there were no arrests or convictions/adjudications withheld under s. 874.04, F.S. in FY 24-25. Per DOC, in FY 24-25, there were no new commitments under s. 874.04, F.S. The lack of data is likely due to the statute enhancing other offenses, so the number of offenders is not known. Per FDLE, for the remaining felonies under Chapter 874, in FY 24-25, there were 15 arrests and no convictions/adjudications withheld. Per DOC, there was one new commitment in FY 24-25. Furthermore, there were 6 new commitments for possessing a weapon as a convicted felon (s. 790.23(4), F.S.) and one for registration of a convicted felon (s. 775.13(4)(b), F.S.).

Per DOC, 5 inmates were admitted to the prison system in FY 24-25 with a death sentence and 469 inmates were admitted with a life sentence. For those admitted with a death sentence, one was listed as a gang member, and for those admitted with life sentences, 67 were listed as gang members and 25 were listed as associates. It is not known how many of these life sentences were given instead of a death sentence. Furthermore, those inmates executed in FY 24-25 averaged 27 years in prison, with the shortest time between initial incarceration and execution being 22 years. Assuming that future inmates on death row would have similar time in prison, any impact on prison beds should not be felt for at least a decade, and would have no impact within the forecast window.

Although, few offenders are currently arriving as new commitments for most felonies impacted by this bill, it is not known how many are impacted by the penalty enhancements under s. 874.04, F.S. Therefore, the magnitude of the impact cannot be quantified.

CONFERENCE ADOPTED ESTIMATE: Positive Indeterminate

Requested by: Senate