



SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE
STATEMENT OF ESTIMATED FISCAL IMPACT
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This fiscal impact statement is produced in compliance with the South Carolina Code of Laws and House and Senate rules. The focus of the analysis is on governmental expenditure and revenue impacts and may not provide a comprehensive summary of the legislation.

Bill Number: S. 0154 Introduced on January 10, 2023
Author: Young
Subject: South Carolina Street Gang and Criminal Enterprise Prevention and Anti-Racketeering Act
Requestor: Senate Judiciary
RFA Analyst(s): Gardner
Impact Date: February 7, 2024

Fiscal Impact Summary

This bill creates the South Carolina Street Gang and Criminal Enterprise Prevention and Anti-Racketeering Act. This bill, among other things, expands the list of crimes that are related to criminal gang activity and increases the related penalties and provides for sentence enhancements. This bill also authorizes the Attorney General or a circuit court solicitor to order the abatement of property used for conducting criminal gang activity. Further, it adds anti-racketeering provisions that enable persons aggrieved by such violations to be compensated and creates three new offenses involving racketeering activity and establishes an associated penalty schedule.

Judicial reports that implementation of the bill may result in an increase in general sessions court caseloads, which can be managed using existing staff and appropriations. Therefore, the bill will result in no expenditure impact for Judicial. Also, the Commission on Indigent Defense anticipates being able to manage an increase in workload with existing staff and within existing appropriations. However, if this bill results in a significant increase in the workload, the agency will request an increase in General Fund appropriations.

The Commission on Prosecution Coordination, State Law Enforcement Division (SLED), and the Department of Administration report this bill requires the agencies to perform activities that will be conducted in the normal course of agency business. As a result, this bill does not have an expenditure impact on the agencies.

This bill may result in an increase in the number of inmates housed by the Department of Corrections. However, no data are available to estimate the increase in the number of inmates that may be housed by Corrections. According to Corrections, in FY 2022-23, the annual total cost per inmate was \$37,758, of which \$34,570 was state funded. However, as the potential increase in incarcerations is unknown, any expenditure impact for Corrections is undetermined. Corrections indicates that if this bill results in a significant increase in the inmate population, the agency will request an increase in General Fund appropriations.

As this bill creates new offenses, the Revenue and Fiscal Affairs Office (RFA) anticipates it may generate additional General Fund, Other Funds, and local fine revenue. However, as the number

of such offenses that may occur in a given year and the resulting fines and fees that may be assessed are unknown, the revenue impact is undetermined.

The fiscal impact of this bill for the Office of the Attorney General is pending, contingent upon a response from the agency.

Explanation of Fiscal Impact

Introduced on January 10, 2023

State Expenditure

This bill creates the South Carolina Street Gang and Criminal Enterprise Prevention and Anti-Racketeering Act to enhance penalties related to criminal street gang offenses and to eliminate profits and proceeds acquired, accumulated, or used by criminal street gangs. The bill creates a new definition for criminal gang activity, which is a modified version of the existing definition for pattern of criminal gang activity, and expands that definition to include the following offenses:

Offenses Included in the Definition of Criminal Gang Activity
Common law extortion
Any offense relating to financial identity fraud or theft or identity fraud or theft
Retail theft
A violation of the Computer Crime Act
Common law obstruction of justice
Any offense carrying a potential penalty of five years or more imprisonment
Any offense relating to escape and other offenses related to confinement
Any offense relating to the security of state or county correctional facilities
Any offense of criminal trespass or criminal damage to property resulting from any act of gang related painting on, tagging, marking on, writing on, or creating any form of graffiti on the property of another
Any criminal offense committed in violation of the laws of the U.S. or its territories, dominions, or possessions, any of the several states, or any foreign nation which, if committed in this State, would be considered criminal gang activity
Any criminal offense in this state, any other state, or the U.S. that involves violence, possession of a weapon, or use of a weapon, whether designated as a felony or not, and regardless of the maximum sentence that could be imposed or actually was imposed

The bill also modifies the offenses related to the use of threats or physical violence by criminal gang members and the associated penalties as follows:

Current Offense Under Section 16-8-240

(A) Using or threatening use of physical violence against another with intent to coerce into participating in criminal gang activity or to prevent from withdrawing from leaving a criminal gang

<i>Offense Level</i>	<i>Punishment</i>
1st Offense - Misdemeanor	Fine of ≤\$1,000, imprisonment for ≤2 years, or both
2nd or Subsequent Offense - Felony	Fine of ≤\$5,000, imprisonment for ≤5 years, or both

Enhancement to Penalties Under Current Section 16-8-240

<i>Condition</i>	<i>Penalty Enhancement</i>
Use of firearm or other deadly weapon against another with intent to coerce into participating in criminal gang activity or to prevent from withdrawing from leaving a criminal gang	Additional fine of ≤\$10,000, imprisonment for ≤10 years, or both
Commission of Offense (A) when the person solicited, threatened, coerced, or threatened is <18 years of age	Imprisonment for an additional 3 years, which must be served consecutively to the punishment originally prescribed for the offense

New Offenses Under Section 16-8-240

(A) While being employed by or associated with a criminal street gang, conducting or participating in a criminal gang activity offense

(B) Committing a criminal gang activity offense with intent to obtain or earn membership or maintain or increase status or position in a criminal street gang

(C) Acquiring or maintaining, directly or indirectly, through criminal gang activity or proceeds derived thereof, interest in or control of real or personal property, including money

(D) Direct or indirect engagement in, or conspiracy to engage in, criminal gang activity by a person occupying a position of organizer, supervisor, or other position of management or leadership with regard to a criminal street gang

(E) Causing another to become a member or associate of a criminal street gang, participating in a criminal street gang, or conducting or participating in criminal gang activity

(F) Direct or indirect communication with another concerning any threat of injury or damage to the person or his property or that of any his associates or relatives with the intent to deter the person from assisting a member or associate of a criminal street gang to withdraw from said gang

(G) Direct or indirect communication of a threat of injury or damage to a person or his property with the intent to punish or retaliate against a person for withdrawing from a criminal street gang

(H) Direct or indirect communication with another the threat of injury or damage to the person or his property or property of his associate or relative with the intent to punish or retaliate against the person for refusing to or encouraging another to refuse to become or obtain the status of a member or associate of a criminal street gang

(I) Direct or indirect communication with another the threat of injury or damage to the person or his property or property of his associate or relative with the intent to punish or retaliate against the person for providing statements or testimony against criminal street gangs or any such member or associate	
(J) Direct or indirect communication with another the threat of injury or damage to the person or his property or property of his associate or relative with the intent to intimidate, deter, or prevent the person from communicating to a law enforcement or corrections officer, prosecuting attorney, or judge information relating to criminal street gangs or their members or associates, or criminal gang activity	
<i>Offense</i>	<i>Punishment</i>
Offenses (A)-(C), Felony	In addition to any other penalty provided by law, a fine of \$10,000 ≤ \$15,000, imprisonment for 5 years ≤ 20 years, or both, as well as restitution
Offense (D), Felony	In addition to any other penalty provided by law, imprisonment for 5 years ≤ 20 years served consecutively to any other sentence imposed, as well as restitution
Offenses (E)-(J), Felony	In addition to any other penalty provided by law, imprisonment for 5 years ≤ 20 years, as well as restitution
Enhancement to Penalties Under New Section 16-8-240	
<i>Condition</i>	<i>Penalty Enhancement</i>
Offenses (A)-(J), when the person solicits, recruits, coerces, or threatens a person under the age of 18 years	Imprisonment for an additional 3 years, which must be served consecutively to the punishment originally prescribed for the offense
<i>Addition to Above Penalties, Special Condition</i>	
The convicted person must not knowingly have contact with a member or associate of a criminal street gang, participate in any criminal gang activity, and, in cases involving a victim, not knowingly have contact of any kind or character with any such victim or a member of his family or household	

The bill also provides that any criminal gang activity offenses must be considered as separate offenses and requires that when two or more defendants are jointly charged with such offenses, they must be tried jointly unless the court orders separate trials or specific circumstances exist. Additionally, when any real property is erected, established, maintained, owned, leased, or used by a criminal street gang for the purpose of conducting criminal gang activity, it is considered a public nuisance and may be abated. Such actions may be brought by the Attorney General or a circuit court solicitor. The bill authorizes the State, a political subdivision, or any person aggrieved by a criminal street gang or criminal gang activity to bring an action to enjoin a violation of the provisions of the bill.

This bill also adds anti-racketeering provisions that enable persons aggrieved by such violations to be compensated. In addition, the bill creates a new definition of racketeering activity, to commit, attempt to commit, or to solicit, coerce, or intimidate another person to commit a crime related to the following:

Offenses Included in New “Racketeering Activity Definition”
Narcotics and controlled substances
Marijuana
Homicide
Assault and battery by mob
Dueling
Assault and criminal sexual conduct
Sexual performance by children
Kidnapping
Threatening the life of others
Use or employment of others under the age of 18 to commit certain crimes
Death or injury of a child in utero due to the commission of a violent crime
Harassment and stalking
Trafficking in persons
Arson and other fire-related offenses
Burglary and similar offenses
Bootleg and counterfeit recordings
Forgery
Petit and grand larceny
Theft of bonds
Shoplifting and retail theft
Theft of vessels and equipment
Entering a house or vessel without breaking with the intent to steal or commit another crime
Receiving stolen goods, chattels, or other property
Embezzlement of public funds
Breach of trust with fraudulent intent
Obtaining a signature or property by false pretense
Obtaining property under false tokens or letters
Securing property by fraudulent impersonation of an officer
Swindling
Altering, tampering with, or bypassing electric, gas, or water meters
Avoiding or attempting to avoid payment of telecommunications services
Fraudulent acquisition of or use of food stamps

False identification documents
Prostitution
Offenses related to obscenity, material harmful to minors, child exploitation, and child prostitution
Bribery, the corruption of jurors, and the like
Influencing court officials, jurors, or witnesses
Unlawful entry into the U.S. and furthering illegal entry by or avoidance of detection of an undocumented alien
Perjury
Gambling and lotteries
Unlawful manufacture, possession, and sales of alcohol
Offenses involving weapons
Violations of the S.C. Uniform Securities Act of 2005
Violations of the Financial Transaction Card Crime Act
Violations of the Motor Vehicle Chop Shop, Stolen, and Altered Property Act
Violations of the Computer Crime Act
Conduct defined as racketeering activity
Violations related to records and reports of currency transactions
Presenting false insurance claims for payment
Violations of the Omnibus Insurance Fraud and Reporting Immunity Act
Violations in relations to loan brokers
Violations of the S.C. High Cost and Consumer Home Loans Act
Violations related to ethics, government accountability, and campaign reform
Violations of the S.C. Anti Money Laundering Act
Violations related to lobbyists and lobbying

Racketeering activity also includes an act or threat involving murder, kidnapping, gambling, and other such actions that is chargeable under the laws of the U.S. or any of the states and is punishable by imprisonment for more than one year. Additionally, racketeering activity includes any conduct defined as racketeering activity under federal law.

The bill also deems the following actions unlawful and establishes an associated penalty schedule:

New Offenses Under Section 16-8-530
(A) Directly or indirectly acquiring or maintaining, through a pattern of racketeering activity or proceeds derived therefrom, any interest in or control of any enterprise, real property, or personal property of any nature, including money
(B) Directly or indirectly conducting or participating in an enterprise through a pattern of racketeering activity when employed by or associated with the enterprise

(C) Conspiring or endeavoring to violate any of the provisions of this section	
<i>Offense Level</i>	<i>Punishment</i>
1st Offense - Felony	Fine not exceeding the greater of \$25,000 or three times the pecuniary value gained from the violation*; imprisonment for ≥ 5 nor ≤ 20 years, no part of which may be suspended nor probation granted; or both
2nd or Subsequent Offense - Felony	Fine not exceeding the greater of \$25,000 or three times the pecuniary value gained from the violation*; imprisonment for ≥ 10 nor ≤ 20 years, no part of which may be suspended nor probation granted; or both

**The court shall hold a hearing to determine the amount of the fine*

The bill also allows an aggrieved person or the State to institute a civil action to petition relief in the circuit court.

Judicial. Judicial reports that implementation of the bill may result in an increase in general sessions court and common pleas caseloads, which can be managed using existing staff and appropriations. Therefore, the bill will result in no expenditure impact for Judicial.

Commission on Prosecution Coordination. This bill requires the Commission to perform activities that will be conducted in the normal course of agency business. As a result, this bill does not have an expenditure impact on the agency.

Commission on Indigent Defense. This bill requires the Commission to perform activities that will be conducted in the normal course of agency business. However, if this bill results in a significant increase in the workload, the agency will request an increase in General Fund appropriations.

Department of Corrections. This bill may result in an increase in the number of inmates housed by the Department of Corrections. However, no data are available to estimate the increase in the number of inmates that may be housed by Corrections. According to Corrections, in FY 2022-23, the annual total cost per inmate was \$37,758, of which \$34,570 was state funded. However, as the potential increase in incarcerations is unknown, any expenditure impact for Corrections is undetermined. Corrections indicates that if this bill results in a significant increase in the inmate population, the agency will request an increase in General Fund appropriations.

State Law Enforcement Division. The bill requires the department to perform activities that will be conducted within the normal course of agency business. As such, it will have no expenditure impact for SLED.

Department of Administration. This bill requires the Department of Administration to perform activities that will be conducted in the normal course of agency business. As a result, this bill does not have an expenditure impact on the agency.

Office of the Attorney General. The expenditure impact of this bill on the Office of the Attorney General is pending, contingent upon a response.

State Revenue

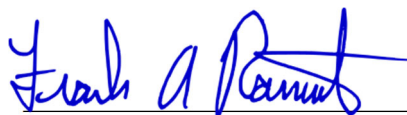
This bill may result in an increase in fines and fees collected by the court. Court fines and fees are distributed to the General Fund, Other Funds, and local funds. RFA anticipates this bill may result in an undetermined increase in General Fund and Other Funds revenue if there is an increase in the collection of fines and fees by the court.

Local Expenditure

N/A

Local Revenue

This bill may result in an increase in the fines and fees collected by the court. Court fines and fees are distributed to the General Fund, Other Funds, and local funds. RFA anticipates this bill may result in an undetermined increase in local revenue if there is an increase in the collection of fines and fees by the court.



Frank A. Rainwater, Executive Director