



# 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.*

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<b>Bill Number:</b>	S. 0076	Introduced on January 14, 2025
<b>Subject:</b>	Criminal Gang and Anti-Racketeering	
<b>Requestor:</b>	Senate Judiciary	
<b>RFA Analyst(s):</b>	Gardner	
<b>Impact Date:</b>	February 13, 2025	

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### Fiscal Impact Summary

This bill restructures provisions related to criminal gang activity by revising related offenses and the associated penalty schedule. It also creates the Anti-Racketeering Act, which creates new felony offenses and establishes associated penalties.

This bill may result in an increase in the number of cases heard in circuit court, the number of cases handled by the Attorney General's Office, and potentially the number of incarcerations. This may increase the workload of the court system and the Attorney General's Office, the Department of Juvenile Justice (DJJ), the Commission of Indigent Defense, the Commission on Prosecution Coordination, the Department of Corrections (Corrections), and Probation, Parole and Pardon Services (PPP). The potential increase in expenses for each agency will depend upon the increase in the number of cases and number of incarcerations. Most of these agencies indicate that if this bill results in a significant increase in the workload, then an increase in General Fund appropriations may be requested; however, DJJ anticipates any additional increase in caseload due to this bill can be managed within existing appropriations. For information, according to Corrections, in FY 2023-24, the annual total cost per inmate was \$40,429, of which \$36,553 was state funded.

This bill may result in a change in the fines and fees collected in court. Court fines and fees are distributed to the General Fund, Other Funds, and local funds. Therefore, the Revenue and Fiscal Affairs Office (RFA) anticipates this bill may result in a change to General Fund, Other Funds, and local funds revenue due to any change in fines and fees collections in court.

### Explanation of Fiscal Impact

#### Introduced on January 14, 2025

#### State Expenditure

This bill restructures provisions related to criminal gang activity and creates the Anti-Racketeering Act.

#### Criminal Gang Activity

Newly added acts that qualify as criminal gang activity include but are not limited to: common law extortion, computer crimes, retail theft, common law obstruction of justice, criminal trespass or criminal property damage, and offenses carrying a potential penalty of at least five years of

imprisonment. The definition of criminal gang has been revised to lower the number of persons comprising the group from five to three and no longer includes the requirement that members knowingly and actively participate in the criminal activity.

The bill also specifies that the use or threat of physical violence against another person with the intent to coerce him into actively participating in criminal gang activity is unlawful and restructures the associated penalty schedule. The bill breaks down this general offense into more specific criminal gang activity offenses and provides for a revised penalty schedule as follows:

<b>Current: §16-8-240(A)</b>		<b>Revised Offenses: §16-8-240</b>
<i>Use of threat to use physical violence against another to coerce participation in criminal gang activity or prevent withdrawal from such activity</i>		(A) Unlawful for person associated with criminal gang to conduct or participate in criminal gang activity
First offense, misdemeanor	Fine of ≤\$1,000, imprisonment for ≤2 years, or both	(B) Unlawful to cause, encourage, solicit, recruit, or coerce another to become a member or associate of a criminal gang or participate in criminal gang activity
Second or subsequent offense, felony	Fine of ≤\$5,000, imprisonment for ≤5 years, or both	(C) Unlawful to convey threat of injury or damage to person or his property, or any associate or relative thereof, with intent to deter person from withdrawing from criminal gang
<b>Current: §16-8-240(B)</b>		(D) Unlawful to convey threat of injury or damage to person or his property, or any associate or relative thereof, with intent to punish or retaliate against person for withdrawing from criminal gang
<i>Use of a firearm or deadly weapon to commit an act under § 16-8-240(A)</i>		(E) Unlawful to convey threat of injury or damage to person or his property, or any associate or relative thereof, with intent to punish or retaliate against person for refusing to become member of criminal gang
Enhanced penalty	Additional fine of ≤\$10,000, imprisonment for ≤10 years, or both	(F) Unlawful to convey threat of injury or damage to person or his property, or any associate or relative thereof, with intent to punish or retaliate against person for providing testimony against criminal gang or its members
<b>Current: §16-8-240(C)</b>		(G) Unlawful to convey threat of injury or damage to person or his property, or any associate or relative thereof, with intent to punish or retaliate against person for providing testimony against criminal gang or its members to law enforcement or those involved with judicial system

<i>Commission of an act under § 16-8-240(A) and/or (B) where the person coerced is under the age of 18</i>		<b>Revised Penalty Schedule: §16-8-240(H)(1), Felony Offense</b>	
Additional term of imprisonment	Expanded prison sentence of an additional 3 years	Offenses (A)-(B)	Imprisonment for $\geq 5$ years but $\leq 20$ years, to be served consecutively to any other sentence imposed
<b>Current: §16-8-240(D)</b>		<b>Revised Penalty Schedule: §16-8-240(H)(2), Felony Offense</b>	
<i>Commission of an act under § 16-8-240(A), (B), and/or (C) creates a civil cause of action by an affected person against a criminal gang or criminal gang member</i>		Offenses (C)-(G)	Fine of $\geq \$10,000$ but $\leq \$15,000$ , imprisonment for $\geq 5$ years but $\leq 20$ years, or both, plus restitution
		<b>Enhanced Penalty: §16-8-240(H)(3)</b>	
		Offenses (A)-(G), where solicitation or coercion was of person under 18 years of age	Expanded prison sentence of an additional 3 years, served consecutively to any other sentence imposed

Racketeering

In addition, the bill creates the Anti-Racketeering Act, which makes conforming changes to relevant sections of law with regard to illegal activity conducted for monetary gain. The bill also makes it unlawful for a person to conspire or engage in the affairs of an enterprise through racketeering or to invest income derived from such activities and establishes the following penalty schedule:

<b>New Felony Offense: §16-8-540, Unlawful Racketeering</b>	
First Offense	Fine not to exceed the greater of \$25,000 or 3 times amount of any pecuniary value gained from violation, imprisonment for $\geq 5$ years but $\leq 20$ years—no part of which may be suspended nor probation granted—or both
Second or Subsequent Offense	Fine not to exceed the greater of \$25,000 or 3 times amount of any pecuniary value gained from violation, imprisonment for $\geq 10$ years but $\leq 20$ years—no part of which may be suspended nor probation granted—or both

The circuit court, which must determine the amount of the fine assessed for an act of unlawful racketeering, may enjoin violations, require a defendant to divest himself of any interest in unlawfully seized property, restrict a defendant's future activities or investments, order dissolution or reorganization of any enterprise, or suspend or revoke any license, permit, or prior approval granted to any enterprise by any agency or subdivision of the state. The bill provides that an aggrieved person may institute a civil action to request injunctive relief from threatened loss or damage and allows for the issuance of a temporary restraining order and a preliminary injunction before a final determination is made as to the merits of the civil action. Persons affected by unlawful racketeering are provided with a cause of action for three times the actual damages sustained and awarding of punitive damages under certain circumstances and may request a jury trial.

The bill also provides that, for purposes of a criminal proceeding, racketeering will be considered to have occurred in the county in which the offense was committed or where an interest or control of an enterprise or real or personal property is acquired or maintained.

This bill may result in an increase in the number of cases heard in circuit court, the number of cases handled by the Attorney General's Office, and potentially the number of incarcerations. This may increase the workload of the court system and the Attorney General's Office, DJJ, the Commission of Indigent Defense, the Commission on Prosecution Coordination, Corrections, and PPP. The potential increase in expenses for each agency will depend upon the increase in the number of cases and number of incarcerations. Most of these agencies indicate that if this bill results in a significant increase in the workload, then an increase in General Fund appropriations may be requested; however, DJJ anticipates any additional increase in caseload due to this bill can be managed within existing appropriations. For information, according to Corrections, in FY 2023-24, the annual total cost per inmate was \$40,429, of which \$36,553 was state funded.

### **State Revenue**

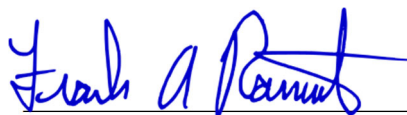
This bill may result in a change in the fines and fees collected in court. Court fines and fees are distributed to the General Fund, Other Funds, and local funds. Therefore, RFA anticipates this bill may result in a change to General Fund and Other Funds revenue due to any change in fines and fees collections in court.

### **Local Expenditure**

N/A

### **Local Revenue**

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Frank A. Rainwater, Executive Director