2010

Annual Report

William N. Shepherd
Statewide Prosecutor
2007-2011

FOREWORD

William Shepherd
Statewide Prosecutor

It is my pleasure to submit this Annual Report, and to take this opportunity to reflect on my four years as Statewide Prosecutor. It has been a privilege to serve our state, and to work with the outstanding public servants who have devoted their energies to the Office of Statewide Prosecution.

In the last four years we have fought the spread of gang violence; the increase of white collar crimes of all types including mortgage fraud, securities fraud, healthcare fraud and drug diversion; and the trafficking of narcotics and the increasing problem of pill mills. We have served as the Legal Advisors to two Statewide Grand Juries, and assisted in the crafting of resulting legislation that will improve Florida's overall public safety well beyond the direct impact of any individual case.

We have demonstrated the effective use of our resources through the Racketeering laws and taught its application in courses around the state. Our partnerships with the US Attorneys, State Attorneys, and state and federal law enforcement have never been stronger. We have been particularly fortunate to have a true partnership with the Florida Department of Law Enforcement. They have been unwavering in their support of our cases and critical in our strategic planning of broader initiatives.

All of these successes have been the result of the support of Attorney General Bill McCollum and the selfless teamwork of OSP. Our motto of *Eight – Fighting as One – For Florida* has been more than mere words, and it has made all the difference.

I am Bill Shepherd, Badge #96, and it has been an honor to serve.

Legislative Bills

HB 43 – Assisted in drafting and won passage of a bill that revised the racketeering statute and strengthened anti-gang laws with increased penalties for criminal gang activity and enhanced protections for witnesses.
Sponsors: Atwater/Snyder

HB 483 – Assisted in drafting and won passage of a bill that clarified the Office of Statewide Prosecution's jurisdiction on money laundering and securities fraud.
Sponsors: Richter/Grady

HB 173 –Assisted in drafting and won passage of a bill that strengthened penalties for marijuana grow houses.
Sponsors: Oelrich/Thompson

SB 2272- Drafted portions of legislation supported by the Governor's Office of Drug Control that strengthened medical/pharmacy standards in an area referred to as "pill mills."
Sponsors: Fasano/Llorente

Regularly offered support to Members and staff on other pending legislative issues. Worked with internal and external government affairs experts representing varied industry, professional, and interest groups.

A bill to be entitled

An act relating to criminal activity; amending s. 775.13, F.S.; requiring certain felons whose offenses related to criminal gangs to register; providing penalties; amending s. 790.23, F.S.; providing penalties for certain persons possessing a firearm; amending s. 775.0846, F.S.; providing that a person commits a third degree felony if he or she possesses a bulletproof vest while committing or attempting to commit specified crimes; amending s. 823.05, F.S.; revising provisions relating to the enjoining of public nuisances to include certain nuisances related to criminal gangs and criminal gang activities; providing for enjoining such nuisances; providing for local laws; amending s. 874.01, F.S.; revising a short title; amending s. 874.02, F.S.; revising legislative findings and intent; amending s. 874.03, F.S.; creating and revising definitions; redefining "criminal street gangs" as "criminal gangs"; amending s. 874.04, F.S.; conforming provisions; revising an evidentiary standard; creating s. 874.045, F.S.; providing that chapter 874, F.S., does not preclude arrest and prosecution under other specified provisions; amending s. 874.05, F.S.; revising provisions relating to soliciting or causing another to join a criminal gang; amending s. 874.06, F.S.; authorizing the state to bring civil actions for certain violations; providing that a plaintiff has a superior claim to property or proceeds; providing penalties for knowing violation of certain orders; amending s. 874.08, F.S.;

A bill to be entitled

An act relating to controlled substances; amending s. 893.02, F.S.; defining the term "cultivation" for specified purposes; amending s. 893.1351, F.S.; prohibiting a person from owning or actually or constructively possessing a place, structure, trailer, or other described place with knowledge that the place will be used to manufacture, sell, or traffic in a controlled substance; providing that possession of a specified number or more of cannabis plants constitutes prima facie evidence of intent to sell or distribute; providing criminal penalties; creating s. 893.1352, F.S.; defining terms; providing that a person with actual or constructive possession of a place, structure, trailer, or conveyance being used to manufacture a controlled substance for sale and distribution commits a felony of the first degree if a minor is present or resides in the place, structure, trailer, or conveyance; providing that a person who allows an infant or toddler to be in close proximity to a controlled substance commits a felony of the first degree; providing criminal penalties; amending s. 893.10, F.S.; providing that equipment used in the cultivation or manufacture of controlled substances may be photographed or video recorded and the photograph or video recording used as evidence for later use at trial; providing for the destruction of the equipment; amending s. 921.0022, F.S.; ranking specified offenses in the offense severity ranking chart of the Criminal Punishment Code; amending ss.

A bill to be entitled

An act relating to investor protection; amending s. 16.56, F.S.; expanding jurisdiction of the Office of Statewide Prosecution to investigate and prosecute certain additional offenses; amending s. 517.021, F.S.; revising definitions; amending s. 517.072, F.S.; exempting certain transactions in viatical settlement investments from certain registration requirements; specifying application of certain provisions; amending s. 517.12, F.S.; revising requirements for registration of dealers, associated persons, investment advisers, and branch offices, including fingerprinting requirements; amending s. 517.121, F.S.; authorizing the Office of Financial Regulation to suspend registration for registrant failure to provide certain records; providing for rescinding suspensions; amending ss. 517.1215 and 517.1217, F.S.; changing an agency reference; amending s. 517.131, F.S.; revising a Securities Guaranty Fund disbursement requirement; amending s. 517.141, F.S.; excluding postjudgment interest from payments from the fund; amending s. 517.161, F.S.; expanding the class of persons related to or associated with an applicant or registrant for which certain violations may result in adverse actions taken against registrations; authorizing the office to suspend a registration under certain circumstances; creating s. 517.1611, F.S.; requiring the Financial Services Commission to adopt rules for imposing registration sanctions for certain violations by

An act relating to controlled substances; amending s. 456.037, F.S.; providing that pain-management clinics that are required to be registered with the Department of Health are business establishments; amending s. 456.057, F.S.; providing that the Department of Health is not required to attempt to obtain authorization from a patient for the release of the patient's medical records under certain circumstances; authorizing the department to obtain patient records without authorization or subpoena if the department has probable cause to believe that certain violations have occurred or are occurring; repealing s. 458.309(4), (5), and (6), F.S., relating to pain-management clinics; creating s. 458.3265, F.S.; requiring all privately owned pain-management clinics, or offices that primarily engage in the treatment of pain by prescribing or dispensing controlled substance medications or by employing a physician who is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications, to register with the Department of Health; providing exceptions; requiring each location of a pain-management clinic to register separately; requiring a clinic to designate a physician who is responsible for complying with requirements related to registration and operation of the clinic; requiring the department to deny registration or revoke the registration of a pain-management clinic for certain

Sentencing Data 2010

Annual Report Data	2010
Total Number of Years in Prison	1,374
Total number of Days in Jail	12,224
Total Number of Years on Probation	1,687
Total Number of Years on Community Control	48
Total Number of Hours on Community Service	5,730
Total Number of Defendants Charged	487
Total Number of Cases Filed	215
Total Number of Citizen Victims	173
Total Number of Government Victims	12
Total Amount of Restitution Ordered	$28,162,007
Total Amount of Fines Ordered	$ 3,523,942
Total Amount of Court Costs Ordered	$ 124,762
Total Amount of Costs of Prosecution Ordered	$ 1,097,914
Total Amount of Costs of Investigation Ordered	$ 1,122,393
Total of All Monies Ordered	$34,031,018

OFFICE OF STATEWIDE PROSECUTION FUNDING SOURCES AND WORKLOAD STATISTICS

General Revenue – Salaries - $4,008,777
General Revenue Special Category – Expenses - $845,314
Operating Trust Funds – Salaries - $600,806
Operating Trust Funds Special Category – Expenses - $367,262
Federal Grant Trust Fund – Salaries - $257,588
Federal Grants Trust Fund Special Category – Expenses - $ 39,602
Statewide Grand Jury - $143,310

TOTAL ALL FUNDS $6,262,659

The Office has two attorney positions funded from federal grants. In Jacksonville, one attorney's salary is funded by the North Florida HIDTA (High Intensity Drug Trafficking Area). This agreement is funded year to year and has been in place since December 2006. In Tampa, one attorney's salary is funded through an interlocal agreement between Hillsborough County and the OSP. This grant is part of the FY 09 Recovery Act Edward Byrne Memorial Competitive Grant Program which began in December 2009 and is funded for two years.

2010 Workload Statistics:

Number of law enforcement agencies assisted: 75
Ratio of investigations to number of prosecutors: 845:29 or 29:1
Ratio of total filed cases to total number of prosecutors: 365:29 or 13:1
Number of active cases, excluding drug cases: 526
Number of drug related cases: 361
Conviction rate: 99%
Assessments in Criminal Cases $ 34,031,018
(Restitution, Fines, Costs)

JUDICIAL APPOINTMENTS

2007

Matthew Destry

2008

Lisa Porter

2009

George Richards

16.56 AWARDS

2007

Georgina Clinche
Jackie Perkins-McDaniel
Lisa Porter
John Roman

2008

Virginia Caswell
Lisa Cushman
Brian Fernandes
Amy Romero
Mike Schmid
Chene Thompson

2009

Delores “Yvonne” Funes
Barbara Goodson
Thomas Smith
Todd Weicholz

2010

Diane Croff
Stacey Ibarra
Shannon MacGillis
Jim Schneider
William N. Shepherd
Mike Williams

DAVIS PRODUCTIVITY AWARDS

The Office of Statewide Prosecution has been the recipient of seven Davis Productivity Awards since 2007.

2007

Direct Collections
Costs of Prosecution
Stopped Multi Million Dollar Fraud Scheme

2008

Mortgage Fraud Prosecutions
Grand Jury Task Force

2009

Stone Cold Task Force
Criminal Investigative Task Force to
Combat Mortgage Fraud

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."[1]

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.

[1] 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.[2] 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

[2] 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.[3] 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

[3] *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,[4] 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

[4] 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.[5] 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.[6] 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

[5] 2007 Statewide Gang Survey Results (discussed in Law Enforcement Component Analysis).
[6] *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.[7] 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.

[7] 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. [8]

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

[8] 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.[9] 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.

[9] *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.

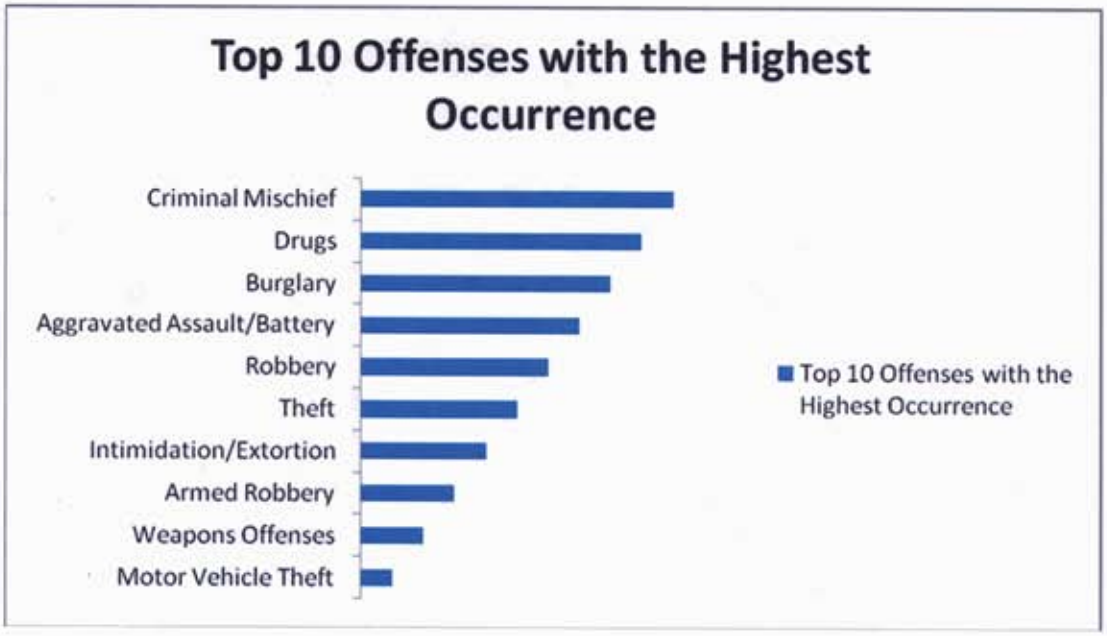
2. Racketeering statute fails to capture current activity

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.[10]

[10] 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.[11] 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.

[11] 2007 Statewide Gang Survey Results, page 26.

Fleeing to elude a law enforcement officer is another common offense committed by gang members.[12] 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.

[12] 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, financer, 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.[13]

Table 13 – Firearms Involvement

Frequency Firearm Used	% Respondents
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

[13] 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 6th 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 12th day of December, 2007.

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 12 day of December, 2007.

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 12 day of December, 2007.

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 12th day of December, 2007.

MICHAEL W. SCHMID
Assistant Statewide Prosecutor
Assistant Legal Adviser

THE FOREGOING Interim Report was returned before me in Open Court this 12 day of December, 2007, and is hereby sealed until further order of this Court, upon proper motion of the Statewide Prosecutor.

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).

EIGHTEENTH STATEWIDE GRAND JURY
Case No. SC 07-1128

SECOND INTERIM REPORT OF THE STATEWIDE GRAND JURY

CHECK CASHERS: A CALL FOR ENFORCEMENT

March 2008
West Palm Beach, Florida

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INTRODUCTION

We, the members of the Eighteenth Statewide Grand Jury have been called upon to examine, among other matters, allegations of money laundering and fraud within the money transmitter industry, in particular among check cashers. We have also reviewed the response of state officials charged with the duty of regulating this rapidly expanding industry. As a result of what we have learned, we make certain findings and recommendations.

As part of our investigation into these matters we have received testimony from investigators from the Florida Division of Insurance Fraud, the Florida Medicaid Fraud Control Unit, and state regulators that oversee licensed check cashing stores. We even heard from some of the individual check cashers and their customers accused or suspected of money laundering and fraud hoping to gain some insight into the activities we were being told about from their perspective. In addition, we had access to documents and reports from various state and federal agencies.

What we found, unfortunately, was that not much has changed for the better since the Statewide Grand Jury last studied this issue in 1994. Then the Grand Jury found that check cashers "...differ from traditional banking institutions in one significant way: they operate essentially free of meaningful federal and state regulation, oversight and enforcement. This key difference between banks and non-bank financial institutions has attracted con artists, money launderers and other criminals as customers for these check cashing businesses." The Grand Jury went on to say, "Thus, we saw clear examples of how check cashing stores can enable criminals to 'take the money and

run' without creating a paper trail, thereby making it extremely difficult for law enforcement to identify and apprehend those responsible for the fraud."

While the laws have changed since 1994, lax enforcement has meant that the reality has not. Many of the same issues dealt with by that Grand Jury still exist today.

At the time the Eleventh Statewide Grand Jury issued its report the industry was viewed as providing a benefit to those who were not able to acquire or maintain a bank account and found it difficult to cash their paychecks. The Grand Jury noted, "...check cashing businesses serve a widely recognized social and economic purpose for a significant number of people, many of whom are economically disadvantaged and cannot or do not maintain accounts with traditional financial institutions."

That is undoubtedly true for many check cashers who are running a legitimate business, but we have serious doubts whether a significant portion of the industry today exists to fulfill the function of serving the economically disadvantaged customers alluded to in the previous Grand Jury report in 1994. While many in the industry are reputable check cashers who have responsible internal controls that limit their loss exposure while serving to thwart money laundering, a seemingly large portion are involved in illicit activity.

What started as a way for individuals without access to traditional banking services to cash their payroll checks has been perverted by criminals into a shadow banking industry all too willing to turn a blind eye to the obvious laundering of money gained from criminal activity. In fact, in far too many cases, the check cashers themselves are not only involved in the

money laundering itself, but also becoming partners in the underlying criminal activity. We find it difficult to reconcile providing services to people who are unable to maintain bank accounts with cashing millions of dollars in corporate to corporate checks.

We have through lax enforcement inadvertently created a shadow banking industry, essentially free from most of the regulatory oversight that banks must comply with. Illegitimate check cashers today operate largely without fear of examination or oversight, let alone disciplinary action. We believe this lax enforcement has fueled the boom in the number of licensed check cashers in Florida which has doubled in the last five years to over 1400; *more than any other state*.

Money laundering in check cashing stores is an enormous problem in Florida and involves hundreds of millions of dollars in illicit profits being laundered annually. This laundering facilitates hundreds of millions of dollars in Medicaid and Medicare fraud, workers' compensation fraud, and many other types of criminal activity.

This fraud costs the government and the insurance industry millions, but also falls on the backs of honest businessmen, who can't keep up with competitors cheating on workers' compensation insurance; laborers who go without adequate insurance coverage; and finally on the poor and infirm in our society, struggling to maintain their grip on their healthcare while facing potential cuts in funding for government medical benefits as a result of fraudulent payouts.

The potential for illicit profit is enormous and has inevitably drawn an army of thieves and con men to these schemes, just as the Eleventh

Statewide Grand Jury found in 1994.

One of the biggest problems facing law enforcement in investigating these cases is their inability to identify who is cashing these checks at the check cashing stores.

Some of the blame lies with the weakness of the regulatory statutes themselves, and we agree with state regulators that legislation is needed in several areas to allow regulators the authority and flexibility to respond to the increasing criminal activity by some check cashers. The laws, however, are not wholly without teeth and we find that the regulators could do much, much more with the tools already at hand, as well as a change in strategy and point of view.

FINDINGS
History of Regulation

In 1994, partly in response to the Eleventh Statewide Grand Jury's report on check cashing stores ("Check Cashing Stores: A Call for Regulation"), the legislature created Chapter 560 to regulate the money transmitter industry. Prior to 1994 there was no regulation of check cashers at all.

Check cashers are defined as money transmitters under Florida law if they cash checks for compensation (s.560.103), and as such are required to register with the state unless their check cashing activities are incidental to the retail sales of goods and services and their compensation for check cashing does not exceed 5% of their gross income from sales (s. 560.303,304).

Pursuant to the Federal Bank Secrecy Act (BSA), check cashers also have to register with the federal government through the Financial Crimes Enforcement Network (FinCen) if they conduct more than $1,000 in business with one person in one or more transactions on the same day.

Check cashers are regulated by the Bureau of Money Transmitter Regulation (referred to as the Money Transmitter Regulatory Unit or "MTRU"), a part of the Office of Financial Regulation ("OFR"). OFR is under the Division of Finance which in turn is part of the Financial Services Commission overseen by the Florida Cabinet. While MTRU is charged with regulating and examining check cashers, the function of registering check cashers falls to the Bureau of Regulatory Review, a separate entity under the Division of Finance. Also within OFR is the Bureau of Financial Investigations(BFI). Though BFI sometimes works with, or shares information with MTRU, their role regarding check cashers is primarily the investigation of unlicensed activity.

MTRU was created in October of 2004 and took over the regulation of check cashers and other money transmitters from the Division of Banking and Finance.

MTRU currently has 15 full time employees. There are a total of nine examiner positions, three in Miami, two in Fort Lauderdale, two in Orlando, and one each in Tampa and Tallahassee. Currently only eight examiner positions are filled. The eight examiners report to one of two area offices in Miami and Orlando, each headed by an Area Financial Manager (AFM).

Size and Scope of the Problem

According to the DEA, Florida is a prime area for drug trafficking and money laundering groups. South Florida in particular has been designated as one of seven High Risk Money Laundering and Related Financial Crimes Area in the United States by FinCen. According to the Florida Senate Interim Project Report 2008-101, "Regulation of Money Services Businesses," FBI field offices consistently identify Money Services businesses, including check cashers, as the third most prevalent conduit for money laundering in the United States.

We also heard from criminal investigators from the Florida Division of Insurance Fraud (DIF) and the Florida Medicaid Fraud Control Unit (MFCU) that check cashing stores were the number one choice of criminals committing workers compensation premium fraud and Medicaid and Medicare fraud. According to these investigators many check cashers exist solely to provide money laundering services, and many are actively taking part in the underlying crimes.

Criminal Conduct

While corrupt check cashing stores are the money launderers of choice for many criminals, two categories of criminals in particular have been brought to our attention as relying heavily on check cashing stores to enable their criminal activity.

We find drug diverters defrauding Medicaid and employers cheating on their workers compensation coverage are two of the big customers of check cashers.

Laundering of Drug Diversion Money

Health care fraud in Florida is a multi-billion dollar a year problem. According to a recent federal report by the Inspector General of the Department of Health and Human Services, South Florida leads the nation in health care fraud, particularly in the area of drugs diverted from, and fraudulent billings directed to, government health care programs. For example, the report found that in 2005 Medicare providers in Miami-Dade, Broward and Palm Beach Counties billed Medicare $2.2 billion for infusion drugs for HIV/AIDS patients. The rest of the country, combined, billed just $100 million for the same drugs. Over $600 million was actually paid out to South Florida providers. The trend continued in the last half of 2006 when the Inspector General's Office found that these 3 South Florida counties accounted for 79% of the amount submitted to Medicare nationally for drugs involving HIV/AIDS patients despite the fact that only 8% of the HIV/AIDS patients covered by Medicare lived in those counties.

Florida's Medicaid program is budgeted at over $16 billion per year and is targeted by many of the same con men that target Medicare. While there is a wide range of scams plaguing Medicaid, one of the more profitable ones is drug diversion.

Drug diversion is the practice of diverting pharmaceutical drugs from legitimate sources and reselling them on the black market. This practice was the subject of a report of the Seventeenth Statewide Grand Jury in 2003. There the Grand Jury found drug wholesalers in Florida, some licensed, some not, buying and selling diverted drugs, a large amount of which were paid for by Florida's Medicaid program. These drug wholesalers were paying Medicaid recipients, mostly HIV or AIDS patients, pennies on the dollar to

sell their expensive medications which were paid for by Medicaid. The drugs were then consolidated with those of many other Medicaid recipients and sold and resold numerous times in the secondary drug market with either no paperwork, or forged paperwork to hide the true source of the drugs, before finding their way back into the legitimate stream of commerce. Then, as now, the Grand Jury could not determine the exact amount of money this fraud was costing the program and thus the Florida taxpayers, who were footing the bill. The Grand Jury did, however, note that in 2002, the Florida Medicaid program paid $1.8 billion for pharmaceuticals--a figure sure to have grown steadily over the last few years. That is a large and tempting pot of money for criminals. If the staggering numbers in the recent federal report on Medicare fraud is any indication, a significant part of that $1.8 billion spent is likely to be a result of fraud. However measured or calculated, it is beyond doubt that hundreds of millions of dollars are pouring into Florida's underground economy from this pharmaceutical scam alone, and all of it has to be laundered. Increasingly, investigators pursuing this type of fraud find themselves led to the check casher's door as the Medicaid (and Medicare) scammers often cash these large reimbursement checks rather than depositing them into a corporate bank account.

All too often what investigators find there is a dead end. Customer files maintained by specific check cashers favored by these criminals contain minimal paperwork and what little paperwork they do contain is usually fraudulent. The drivers' licenses of the corporate owners or representatives are either phony or are in the name of an identity theft victim, the corporations are merely shells, and the corporate addresses turn out to be either non-existent or come back to other unrelated businesses or

residences. There are no references or any other information in the files that would provide leads to the investigators trying to identify the principals of the companies cashing checks.

The Workers Compensation Fraud Scheme

When it comes to workers compensation premium fraud, check cashers are not content with passively laundering others' profits. They instead opt to be a part of the fraudulent scheme itself.

Workers compensation premium fraud has been a problem in Florida for many years. Unfortunately, many employers find it easier and more profitable to cheat than compete fairly. Most of the fraud occurs in the construction trades where the premiums are highest. DIF has been fighting against this fraud in all its various forms for years. Over the last few years these insurance cheats have concocted a new scheme with the help of check cashers to avoid paying their fair share of insurance premiums.

Chapter 440 of the Florida Statutes requires most employers and virtually all construction companies to provide workers compensation insurance for their employees. Premiums are calculated by a formula that takes into account the amount of payroll paid by the employer and the classification of employees on that payroll. The more dangerous the job the higher the rate for that classification. Thus, insurance rates for roofers are much higher than those for clerical workers. The calculation is also influenced somewhat by the employer's safety record, referred to as the modifier. Once these numbers are put into the formula, the estimated premium for the year is calculated by the insurer. In the construction industry, the amount of payroll will fluctuate during the year depending on the number

of projects undertaken, so the actual premium owed at the end of the year may differ from the original estimate. Some insurers require monthly updates from their insured; most, however, rely on year-end audits to determine whether more premium is owed or a refund is due.

The primary way for a contractor to cheat is to simply under-report the amount of payroll. The simplest way to do this is to buy a bare minimum insurance policy claiming almost no payroll and then claim that all the workers on the job site are actually employees of a subcontractor. In reality, there is no subcontractor, and the workers are, in fact, the cheating contractor's own employees.

This poses two problems for the contractor. In order to get contracts and pass site inspections by DIF, the contractor must have a certificate of insurance showing that the employees are covered by the mythical subcontractor's insurance. Secondly, the contractor must still be able to pay his labor force without creating a paper trail leading back to him and revealing that the "subcontractor's" employees are really his own.

This is where some check cashers join in the fraud. First a "shell" company is formed in the name of a nominee owner, often a temporary resident of the U.S. This company has no real operations or employees. This shell company will then buy a bare minimum insurance policy so as to procure the all important certificate of insurance that the contractor needs to show. Certificates of Insurance do not show the amount of coverage so a certificate covering $10,000,000 of payroll looks the same as a certificate covering $10,000 of payroll. The contractor then writes checks to this shell company playing the part of the phony subcontractor. One recently indicted Miami check casher went so far as to create mobile check cashing units that

would come straight to the contractor's construction site. In reality, the contractor is actually cashing the check he's just written to the phony company and taking the cash back to pay his employees under the table. On paper, however, it appears he's paying another company for their work on the project. The only people aware of the scheme are the contractor and the check casher. These checks are almost always over the $10,000 limit and must be reported on a Currency Transaction Report (CTR) to the federal government. Here again the check casher does his part by either falsifying the CTR, claiming to have paid the money out to the phony subcontractor, or, in some cases, dispensing with the CTR altogether. Both of these actions are 3rd degree felonies. For their trouble and risk the check cashers will get 7% of the value of the check or more for cashing the checks, over the legal limit check cashers are allowed to charge and closer to what traditional money launderers receive for their services.

The contractor has now hidden his payroll and procured the necessary certificate of insurance without purchasing any insurance for his workers. At the end of the year the insurance company will attempt to audit the shell company only to learn it has closed its doors and the nominee owner is nowhere to be found, having usually gone back to his home country. While it appears that the insurance company is left holding the bag, in fact, the insurance rates simply go up to offset the fraud and contractors who don't cheat pay ever higher rates for their coverage.

When investigators move in and try to identify the people behind these workers compensation schemes, they run into the same problems as other investigators: skimpy customer files, fraudulent paperwork, and a dead end.

Some check cashers are not content with passively waiting for

contractors to figure out this scheme and come to them. They take a more proactive approach by creating these shell companies themselves, securing the certificates of insurance and aggressively seeking out contractors for their business. We have seen examples of this aggressive approach by corrupt check cashers in Southeast and Southwest Florida.

The impact of this workers compensation fraud scheme is not just felt by insurers. This scheme works by hiding payroll and paying workers cash off the books. That means no federal taxes paid, no money going into the social security fund, no money to Medicare, and no money into the unemployment fund. This scheme also impacts legitimate businesses that don't cheat. An honest businessman can't win bids on contracts against contractors who are saving hundreds of thousands of dollars on taxes and insurance by cheating. Worse, even as they lose contracts, honest businessmen will be paying higher premiums to make up the shortfall caused by the cheaters; and injured workers that aren't insured will still wind up at county hospitals, their bills being footed by the taxpayers.

The problem is bigger than many people think and frankly much larger than we had imagined. In one single investigation by DIF, ten construction companies funneled one billion dollars through check cashing stores in the last 3 years. We don't believe there is any legitimate excuse for all that money being cashed at check stores. We believe, based on all the evidence we've heard, that this billion dollars represents money flowing into the underground economy and, unfortunately, probably represents only a part of what's being lost to society.

An indepth inquiry of illicit practices in the construction industry in Florida is beyond the scope of this grand jury, but we have heard enough

evidence to raise questions that might be answered by a future grand jury. In the short term, it may be prudent for the legislature to inquire of the industry, when considering this Grand Jury's recommendations, why they have apparently decided over the last few years to move increasingly to an all cash payroll.

We have heard enough to know that paying workers in cash certainly facilitates not only the hiring of undocumented workers, but also the evasion of insurance and payroll taxes.

Criminal Investigations

The conduct described above has been discovered through long and diligent investigations by South Florida law enforcement. Unfortunately, their investigations into the individuals behind much of the fraud and money laundering are hampered by the complicity of many check cashers in the money laundering. This complicity most often takes the form of poor record keeping in order to shield the identities of the criminal clientele of the check cashers.

The most critical part of the record keeping is the Currency Transaction Report or CTR. CTRs are required by both state and federal law. A CTR must be filled out and filed by a financial institution for every transaction that exceeds $10,000 in cash. CTRs are then filed with FinCen and such records are available to law enforcement around the country. Failure to fill out and file a CTR when required is a felony under state and federal law.

Financial institutions, including check cashers, are required to make necessary inquiry to make sure of the identity of their customer. Verification of customer identification is a critical component of the required Anti-Money

Laundering Program. Legitimate check cashers generally require appropriate documentation from their commercial customers; some even demand more than what the law may require of them, including references and site visits. Unfortunately for them they wind up at a competitive disadvantage with the many check cashers at the other end of the spectrum who entirely disregard due diligence. What law enforcement routinely finds at these corrupt check cashing operations are customer files with little or no identifying information, phony driver licenses and phony corporate paperwork. One investigator told of finding what purported to be an official corporate document from the Florida Division of Corporations with the title "Articles of Incorporation" misspelled on the document; another file contained a drivers license that was an obvious forgery.

Often investigators find multiple documents in the same file bearing the same customer name but with all the signatures different from one another.

All corporate documents bear a unique Federal Employer Identification Number (FEIN). A quick check of these documents in check cashers' customer files show them to be routinely fraudulent or belonging to other unrelated corporations.

Some corporate customers of check cashing stores were found to be cashing checks months before the documents on file showed them to be incorporated, others months after the corporation was dissolved. Many corporate addresses of companies, cashing millions of dollars, were actually single family homes or even apartments.

Some CTRs were made out to an individual whose name was nowhere in the customer file as cashing corporate checks.

In some instances check cashers made CTRs out in the name of an

individual who was documented to be out of the country at the time of the transactions.

It is obvious to us that these illegitimate check cashers don't want to know their customers too well. They know if they inquire too closely they will lose the customer and the fat profits that come with cashing millions of dollars worth of checks.

Not all of these failings would be readily apparent, but most were, even to an untrained eye. If we as Statewide Grand Jurors from various backgrounds can quickly and easily spot these obvious examples of fraud so can the check cashers, and so can MTRU. Yet none of these licensed check cashers had been shut down or otherwise disciplined. We find it highly suspicious, at the least, that some check cashers are allowing millions of dollars to leave their stores with as little security as is provided by the flimsy paperwork we find in their customer files, most of which turns out to be phony under even cursory examination. Logic and reason dictate that these check cashers must know a lot more about who they are dealing with than they are willing to document in the customer file.

Our belief is that these check cashers know exactly who their customers are and that they know the customers are hiding behind phony documents, straw men placed on the paperwork, and runners paid to bring in and cash the checks. The only ones kept in the dark about the true identity of these customers are regulators and law enforcement. By not requiring stringent ID checks, these check cashers believe they have plausible deniability when they claim they were hoodwinked by the runners presenting phony identification and thereby frustrating law enforcement's ability to detect and prosecute money launderers. Of course we don't find

these excuses to be plausible and we don't understand why MTRU does. Any exam that reveals hundreds of thousands or even millions going to individuals with little or no legitimate paperwork on file should be ample grounds for revoking the check casher's license.

Some illegitimate check cashers' behavior stood out more than others. For example, we have heard testimony from criminal investigators that at one check casher, an individual cashed over $16 million worth of checks under six company names in a three year period. Based on the CTR filings those checks averaged out to over $92,000 each. The corporate addresses all came back to single family homes or duplexes in an economically depressed area of Miami. The evidence showed the companies were all shells and had no activity or assets, yet the individual's activity was never questioned by the check casher.

Another person cashed over $7 million in checks during the same period of time, much of it after he was indicted *and convicted* by the federal government for his part in a drug diversion scheme.

A third customer using a phony drivers license cashed almost $5 million during the same period under two company names, despite the fact that one of the companies on file had a phony FEIN. This customer was later indicted in July of 2003 for his role in an organized scheme to defraud involving pharmaceutical drugs.

It's easy to understand why this check casher might want to turn a blind eye to all these red flags. The top ten customers of this check casher, all identified by law enforcement as companies engaged in some sort of fraud, generated just under $2 million in fees in a three year period.

Though the violations of the code were ample and obvious, MTRU has

yet to take action against this licensee, a situation that underscores the need for both a legislative change and a more aggressive stance by MTRU.

First, it was readily apparent to the examiners that this entity had committed major violations of the code over an extended period of time and was continuing to do so unabated. MTRU, however, has no emergency authority to immediately suspend the license on the spot. MTRU's only recourse at that time, had they wanted to, would have been to begin a months long administrative process to suspend or revoke the license.

Secondly, even without such emergency authority, MTRU has had since the middle of 2005 to begin proceedings against this entity and has failed to do so to this day. While the reasons we were given for this failure to act were several and varied, we did not find any of them to be credible. Unfortunately, this is not an isolated incident. We took testimony from another witness, now cooperating with law enforcement, who testified how his check cashing store was still licensed despite an examination by MTRU in April of 2007 that found numerous violations, and despite his subsequent arrest on May 31st on charges of racketeering. As of February 2008, MTRU had still not closed out the exam and still had not taken any action against this licensee.

Lack of Statutory Authority

While the creation of Chapter 560 was a huge leap forward in the regulation of check cashers and other money transmitters, not all of the recommendations of the Eleventh Statewide Grand Jury made it into law. Some of the key provisions recommended but not enacted by the legislature were: the retention of records by licensees for a minimum of 5 years (current

law requires only 3 years); authority to conduct unannounced site inspections (currently MTRU can only do so when it suspects the registrant may be engaged in criminal conduct or engaged in unsafe or unsound practices); and, perhaps most importantly, the requirement that check cashers file suspicious activity reports (SARs), as banks are required to do, when they believe their customers are engaging in suspicious behavior.

Since that time circumstances have shown the need for additional authority or clarification of existing authority. For example, MTRU currently has no authority to immediately suspend the license of a check casher that has either no records or is missing some records needed to conduct an examination. Many check cashers have records in paper format kept in boxes. MTRU believes it does not have the authority to require check cashers to gather and report information in electronic format no matter what their volume of business is. Failure to maintain records on a searchable database not only greatly slows down the examination process, it makes it almost impossible for any medium-to-large size check casher to detect structuring of transactions by customers trying to avoid state and federal reporting requirements.

LACK OF ENFORCEMENT
Lack of resources and manpower

MTRU has only nine examiner positions, one of which is currently vacant. These examiners have to cover the entire state. While Florida ranks fourth in population, its total of over 1400 check cashers ranks first in the

nation, and while examining check cashers consumes the bulk of the resources of MTRU, it is also responsible for regulating money transmitters, pay day lenders, and currency exchangers. Each examiner can conduct approximately 25-30 exams per year. Simple math tells us that licensees will go years without being examined by which time untold economic damage could have occurred. As an example, one licensee was examined pursuant to a complaint approximately 18 months after being registered and about 17 ½ months after ceasing operations. Yet in the brief time it was open the check casher had facilitated the laundering of over one million dollars, most of it stolen from Medicare. According to MTRU, it is not unusual for check cashers to not have their initial, routine exam for 5, 6 or even 7 years after they are first licensed.

Excessive time between examinations is not the only problem resulting from lack of resources. We were surprised to learn that OFR does not require an applicant to be examined before registering. Furthermore, a key requirement imposed on check cashers, that they have an effective, written anti-money laundering program, also mandated by the federal Bank Secrecy Act, is not required until at least 60 days after the check casher begins operations. MTRU's position is that the statute doesn't clearly say it's required before operating. As a result, the decision was made within MTRU to follow the federal requirement so as to avoid costs to the industry by having to comply with different time frames.

Part of the problem may lie in the fact that one part of OFR (MTRU) is responsible for examinations while another one is responsible for registration in the first place (Bureau of Finance Regulation). However this situation came about, we find it to be mind boggling. Given the reality that exams are

not conducted for months, perhaps years, after licensing, there is no way of knowing whether many of our licensed check cashers have an anti-money laundering program in place or, if they do, whether it's effective. OFR is apparently seeking a statutory change this year to require an AML program in place and reviewed before a license is issued. While we prefer that OFR not wait, and instead make this change by rule, in the alternative we strongly support the concept of requiring check cashers to have an AML program in place before starting operations.

Clearly the staffing is far short of where it needs to be. Moreover, we also learned that MTRU was, at least for some period of time, out of travel money during this fiscal year, meaning its examiners were not allowed to travel more than 50 miles from their office. Given the large amount of territory examiners are required to cover, large areas of the state were essentially abandoned for part of the fiscal year.

Some states allow the licensing or regulatory agency to bill the licensee (or registrant in Florida) for the actual costs of exams. This idea was endorsed and recommended by the Florida Comptrollers Money Transmitter Task Force back in 1994. We have learned that other Florida state agencies either have or have had similar authority. Such a plan would go a long way to ensure that the industry pays its own way for the costs associated with regulating it.

We have heard from MTRU examiners that some registrants maintain much better records than others, easing the work load for examiners and ensuring a speedy and efficient examination. In fact, we were surprised to learn that many multi-million dollar check cashing businesses still had no computer records of their operations.

If Florida were to adopt other states' practice of charging by the hour, that would go a long way to encourage registrants to keep their books and records in order. The benefits to the registrant is less time (and cost) being examined while the state would benefit from being able to conduct more exams with the same amount of resources. Charging by the hour would also ensure that smaller entities with fewer transactions would not have to pay the same amount as bigger businesses with far more transactions to examine.

Poor Use of Existing Resources

While MTRU has not been given sufficient resources to do its job properly, we believe it has not made the best use of available resources. For example, the examiners' manual lists a number of items that examiners must download from a variety of databases to have before they even begin their exam. It appears to us that much of that information has already been collected by MTRU in Tallahassee and should have been made available to examiners when they were assigned their licensees to examine. Some of the items, such as quarterly reports, would have necessarily been in the hands of management in Tallahassee in order to determine the exam schedule in the first place. The rest is work that logically should be done by clerks or other support staff.

Here we have to mention that we were surprised to learn that MTRU employs no support staff whatsoever. All typing, filing, collating, tabbing, indexing, copying and all other support functions have to be done by examiners and supervisors. It appears to us to be penny wise and pound foolish to have examiners earning between $33,000 and $50,000 a year doing what can be done more quickly and efficiently by a support staff earning far less. Examiners should be spending time in the field doing what

they were hired to do and leaving the rest to clerks and typists.

We also learned that examiners are not the only ones wasting time and money below their pay grade. We understand that Area Financial Managers, who supervise the examiners, spend a good deal of their time checking virtually every single document turned in or created by the examiners. This appears to be an extremely wasteful duplication of effort for which we did not receive a satisfactory answer, especially as our inquiry showed that the examiners appeared as a whole to be well educated, well trained and experienced.

Micro-management aside, this practice may explain why it takes months for supervisors to approve the exams they receive. Delays of 6 months or more between the time a report is submitted and the time a decision is made by an AFM is common, and we have seen delays as long as 18 months. We note that the "Performance Contract With the Financial Services Commission" promulgated by OFR sets a goal of 45 days from the end of on-site examinations to send the examination reports to banks, and 30 days to send examination reports to credit unions. There are no such goals set for MTRU examination reports to be completed.

One way MTRU could maximize its resources is to concentrate its exams on licensees meriting the most scrutiny. Pursuant to a recommendation by the Auditor General's Office in January of 2007, MTRU decided to determine its examination schedule by utilizing a risk based assessment. Though MTRU believes it will take until 2009 to fully implement this new program, it has, since March of 2007, used a limited version to create a list of licensees from highest risk to lowest risk based on a point system. Some of the factors used in determining the points include the

length of time since the last exam, percentage of change in dollar volume, and average size of check. We agree such a risk based assessment is a positive step. We were dismayed, however, that after spending so much time and effort in collecting data and creating an ordered list of licensees, MTRU does not require its AFMs to actually follow the list when setting its examination schedule for the upcoming fiscal year. AFMs are given carte blanche to pick and choose from this list without regard to where licensees appear on the list. Furthermore there does not appear to be a written policy in place to guide AFMs in choosing licensees from the list. A review of the examination schedule for 2007-2008 left us wondering just what criteria *was* used to set the schedule.

For example, in the first quarter of 2007 MTRU set 59 licensees for examination. The ninth licensee on the list scored only 18 points on his risk rating. MTRU's "risk weight report" showed that 1,035 licensees had more points than this licensee. The highest points for a licensee was 68, that licensee was 38th on the examination list. We saw numerous licensees scoring between 15-20 points set for examination in the first quarter, while at the same time many licensees scoring at the other end of the scale were set for examination in the fourth quarter of fiscal 2007-2008. One of those licensees scored 44 points, which put it at 63rd on the "risk weight report."

Given MTRU's lack of resources, it would seem prudent that the 246 examinations MTRU scheduled for fiscal year 2007-2008 would be the top 246 licensees on the "risk weight report" (passing over licensees that have been recently examined of course,) especially since it has put so much time and effort to create the list in the first place. It makes no sense to us to delay scheduling licensees with higher risk ratings in favor of scheduling

licensees ranking in the bottom third. MTRU's failure to follow its own policy for setting examinations is another example of its poor use of resources.

Failure to Consider Alternative Resources

While we agree with MTRU that it is woefully understaffed for the task it has been charged with, we also believe it has done a poor job of utilizing the tools it has available to it to lessen the burden.

Failure to Recover costs

First and foremost MTRU has failed to avail itself of the authority granted to the OFR in s. 560.109(5) to recover part of the costs of investigations. These costs may be assessed against licensees when they are found to be operating in violation of the code. The testimony we heard was that virtually every check casher examined was found to be in violation of the code, yet costs have rarely been imposed on licensees. (We draw a distinction between fines, which are designed to penalize and deter violations, and recovering costs. Both should be imposed when appropriate). Probably the worst example is of licensees that don't bother to have complete records (or in some cases, no records) ready for examiners despite its requirement under the code and the 15 day advance notice provided by MTRU. This failure causes MTRU to expend additional time and resources and disrupts an already strained examination schedule. Failure to have these records is a violation of the code, yet according to MTRU, they have only collected costs in "1-2" cases over the last 3 years.

Use of 3rd party examiners

MTRU could also dramatically increase the number of exams completed every year and allow MTRU to reach, and hopefully surpass, its goal of examining every registrant at least once every 3-4 years by relying on its statutory authority under s. 560.118(1)(c) to have examinations done by an approved independent 3rd party. Under the statute, the costs of such examinations are borne 100% by the licensee. We believe this would be an efficient way to increase the number of yearly exams and decrease the time between exams to a reasonable period without cost to the state.

Unfortunately, MTRU has never arranged for a 3rd party exam. It believes that the statute is flawed and may be challenged, a belief supported by only, as far as we can tell, alleged threats of court action by the check cashing industry.

MTRU also believes it would need additional authority from the legislature above and beyond the plain language of current law to do so, yet it has never asked for such authority.

Finally, MTRU believes it can do these exams more cheaply than 3rd party contractors, but by that it means more cheaply for the industry. We of course are more interested in what would be cheaper for taxpayers, as well as what would create an opportunity for a more realistic exam schedule.

We see no good reason why MTRU cannot avail itself of the authority granted to it by the legislature years ago. We do not believe it wise to hold to a process that leaves check cashers to operate for years without any meaningful oversight and passes up an opportunity to improve services while reducing the burden on taxpayers.

As we stated before, we believe check cashers should be examined

before they are allowed to register and operate. Frankly, that appears to us to be just plain common sense. That examination should include inspection of facilities, review of the anti-money laundering program, and background checks of the purported registrants and any others that are actually controlling the operation of the check cashers. Examinations should occur at least once a year afterwards. We believe that by taking advantage of 3rd party examiners these minimal goals can be easily met

Lack of Disciplinary Action

While it seems to us that the examinations that are conducted are by and large done so professionally and as efficiently as possible under the circumstances, we find there are virtually no meaningful consequences to check cashers who either cannot or will not comply with the law. An examination where there is no consequence for failure is an exercise in futility. We wonder why we bother with the examinations at all as it appears to us, as presently structured, to be a waste of taxpayer's money. It would probably be more efficient to move to an honor system and hope for the best rather than to continue with this charade of enforcement.

The better alternative it seems to us is to continue with the examinations and regulatory scheme in place and use the enforcement tools at the disposal of the department.

Failure to Impose Significant Penalties

Since fiscal year 2004-2005 MTRU has conducted 275 examinations of FT3 licensees (which include check cashers). During that time there were 118 final orders and 125 guidance letters issued. Only two examinations

were closed without a finding of a violation. Seven examinations were closed as a result of licenses being voluntarily surrendered. Additionally, we received testimony that within the 118 final orders there were 3-4 license revocations. Unfortunately, license revocations are not independently tracked by MTRU, so we must rely on the MTRU's best estimate of that figure.

If we have understood the figures correctly, 268 of 275 examinations over the last 3 years showed one or more violations of the code, but less than half of the licensees found in violation were disciplined at all, and only 11-12 lost their licenses.

Fines

Of the examinations that did result in a measure of discipline imposed, the discipline consisted of fines that were negotiated with the licensee. Part of the justification given for such negotiation was to come up with a fine that was affordable to the licensee.

We did not have the time or resources to review all of the examinations conducted by MTRU and compare the examiner's findings to the discipline imposed. What we were able to review we found to be disturbing. A great deal of these examinations found licensees had failed to fill out and remit CTRs, sometimes dozens, even hundreds, as required by law. We note, as MTRU should have, that in addition to being violations of the code, these failures to file CTRs if willful, are felonies in and of themselves, aside from what they show about the licensees' likely involvement in money laundering. Instead of revoking their license and referring the matter for further investigation by law enforcement as might have been done, these cases

generally resulted in the impositions of fines, often trivial ones at that. In some instances MTRU was accommodating enough to allow the licensee to pay the fines on installment despite their authority under s.560.114(1)(s) to revoke the license of any entity that fails to pay any fee, fine, or charge in a timely fashion.

Overall, fines imposed have plummeted since MTRU began regulation of check cashers in 2004. According to the statistics provided to us by MTRU, in fiscal year 2002-2003 there were over $500,000 in fines on check cashers. In fiscal year 2004-2005 fines decreased to $128,000 imposed as a result of 53 final orders, an average fine of $2415.

Last fiscal year, the numbers seemed to improve somewhat, but of the $174,000 in fines imposed, $100,000 was imposed on a single licensee. Adjusting for that fine, the remaining licensees were fined a nominal $1655 each. We saw no evidence that compliance increased during this time to explain the drop in fines, nor do we believe that these types of fines are likely to prod licensees into compliance.

Guidance Letters

In over half of the examinations where a violation was documented in the last three years MTRU's response was to send out what it refers to as a Guidance Letter. Neither the term nor the concept is found in Chapter 560. There is no written policy for the issuance of Guidance letters; they are left to the discretion of AFMs. MTRU's legal basis for issuing these Guidance Letters is the fact that it is not required under Chapter 560 to take any action at all when it finds a violation. The Guidance Letter is in fact an

acknowledgement that MTRU has found a violation but has chosen not to take any action. The letter then reminds the licensee to comply with the law. We are bothered not only by the concept of the guidance letter itself but by the meek language employed.

It is our belief that any licensee receiving such a letter would not only dismiss it out of hand but would conclude that the violations noted were trivial or inconsequential. MTRU believes such letters will foster higher rates of compliance, and if it doesn't, then the letters will serve as documentation of a prior violation at some potential future examination or hearing. We believe the opposite is more likely to occur. Sending out Guidance Letters will only serve to undermine respect for the law and actually drive down compliance rates. Furthermore given MTRU's own admission that its exam schedule currently calls for exams to occur every eight to ten years, and our findings that follow-up examinations rarely if ever occur, and the fact that both licensee and OFR are only required to maintain records for 3 years, we believe these letters will have little relevance at any future hearing.

If the use of Guidance Letters were limited to the most minor of violations, we might not be so concerned. We learned, however, that there are no violations that automatically rule out the use of such Guidance Letters. In fact, as we stated above, over half of the licensees determined to be in violation over the last three years received Guidance Letters. We discovered that in the last year, of the 70 Guidance Letters issued, 10 involved operating in an unsafe and unsound manner, usually due to an ineffective anti-money laundering program, 11 involved failure to file CTRs, and 35 involved failure to produce complete records. These are major infractions! Most of the

Guidance Letters concerned multiple violations.

This flies in the face of MTRU's stated policy that these letters are reserved for minor violations or where violations are few in number or for first offenses. It is hard to take the last one seriously as all of these offenses are first offenses given that MTRU has only examined about half of the licensees and will take several more years to examine the other half. At this rate it may take 8-10 years for a licensee to be caught with a second offense and face appropriate sanctions.

The explanation we have from MTRU is that some of the conduct documented in the examination reports is inadvertent and is the result of a lack of experience, training or knowledge on the part of the licensee. We don't buy that, at least not where licensees have failed to file proper CTRs. Even if it were true, we believe that any licensee that is so incompetent as to commit dozens or hundreds of felonies without even trying, has no business being licensed in Florida.

License Revocations

In the last 3 years MTRU reports it has only sought to revoke 3-4 licenses out of 268 licensees found to be in violation. None of those license revocations were challenged by the licensee. MTRU believes it needs "overwhelming proof" in order to prevail at an administrative hearing to revoke a license, though we have not been apprised of any such standard under the law. MTRU is also concerned that failure to prevail could leave the agency on the hook for millions of dollars in legal fees. We heard no evidence that would justify such unfounded fears. Failure to prevail is always

a possibility whenever action is taken, but that is not an excuse to take no action. Finally MTRU believes its overriding mandate is to bring licensees into compliance not to revoke licenses, but it fails to appreciate how appropriate disciplinary measures can help to bring about compliance.

The authority granted to OFR by the legislature to suspend or revoke licenses for violations of the code is not mere filler material. The power was granted for a reason, to protect the public from entities unfit to hold a license. MTRU needs to use this valuable tool when appropriate. So that we are not misunderstood, we want to make it clear that we are not advocating a scorched earth policy, or demanding zero tolerance of small businessmen trying to do things right. We are asking that MTRU's management open its eyes and see what the criminal investigators see, what their own examiners see, and what we as lay people see, and take strict and swift action against those that are engaged in open and obvious misconduct--including revocation of licenses.

We noted during our inquiry that examiners do not have any input into what, if any, penalties should be imposed on licensees as a result of the examiner's findings. While they are not forbidden to do so there is no formal mechanism in place for providing input, nor is input asked for or encouraged by management. We believe it may benefit managers, as they decide what penalty to impose, to have the benefit of input from the examiners that had direct contact with the licensee.

Lack of Referrals

Whatever the rationale for lack of enforcement we see no reason why MTRU could not at least make criminal referrals to the appropriate law enforcement agencies. The numbers given by MTRU (5 referrals in the last four fiscal years) are both in dispute and unclear, in large measure because MTRU does not make these referrals in writing. By our count we believe there was only one referral over that period of time. But even if we accept the numbers given by MTRU, they are woefully short of where it appears they should be.

Since fiscal year 2004-2005 MTRU has conducted 275 examinations of check cashers. The examinations closed during that time resulted in 118 Final Orders and 125 Guidance Letters issued. In all those instances there was a finding that the check casher was in violation of at least one provision of Chapter 560. From our review of the records it appears that in many of those cases there was evidence of felonious criminal conduct. By failing to make an appropriate referral, MTRU has, in essence, turned a blind eye to criminal conduct. No state agency should fail to turn over information they have that tends to show a crime was committed.

Though ultimately it may be that the evidence is lacking, or that the violation is minor, or that for whatever reason investigators or prosecutors may decline to pursue the case, that is a call to be made by the those charged with the enforcement of the criminal laws.

Recently, apparently in response to inquiry by Senate staff members, MTRU has claimed to have changed its policy on referrals. In a memo dated February 5th, 2008, MTRU states it will make routine referrals of suspicious

activities relating to potential workers compensation fraud to DIF. We hope MTRU will follow this up by deciding to refer all suspicious activity to appropriate investigative agencies.

Check Casher Store Security

In reviewing the activity of check cashing stores we became aware of another issue separate and apart from any fraud or money laundering occurring within the check cashing stores and that is their increasing attraction to armed robbers. The spike in robberies of check cashing stores speaks not only to the volume of money handled by these storefronts but also to their lack of security.

Because of the very nature of their business, check cashers usually have large amounts of currency on hand. Many of these check cashers are physically located within neighborhood grocery stores or small walk-up storefronts. Few have the physical security of a bank or even a convenience store. During one search warrant of a check casher in February of 2006, for example, there was found on hand in a small warehouse, with no physical security, nearly $1 million in cash.

It hasn't taken criminals long to figure out that these are lucrative targets for robberies. Since last year a group of investigators in South Florida has been investigating as many as 80 armed robberies of check cashers. These robberies occurred between March of 2007 to the present. Other federal and state investigators are looking into other similar patterns of robberies of check cashers.

Very few check cashers bother to have even basic security like video

surveillance cameras. We suspect that failure to do so has little to do with cost and everything to do with keeping their check cashing transactions under wraps.

This lack of security, particularly video surveillance, has seriously hampered law enforcement's ability to identify and apprehend robbers.

In the early 1990s Florida was faced with a spate of armed robberies of convenience stores. These stores were vulnerable because they lacked meaningful security, were open to the public and usually had enough cash on hand to attract armed robbers. Armed robberies are inherently dangerous and pose grave threats to the intended victims, law enforcement, and innocent bystanders alike. Recognizing this, the legislature enacted the Convenience Store Security Act in 1992, mandating minimum security measures for all convenience stores. Among these measures were drop safes, limits in the amount of cash on hand, lighting requirements, and, most notably, "A security camera system capable of recording and retrieving an image to assist in offender identification and apprehension," s. 812.173(1)(a).

Today check cashing stores stand in the same position as convenience stores did in the past, with one critical difference--they have far more cash than any convenience store ever did. With as much as, or more money than banks, and virtually no security, it's no surprise to see the increasing numbers of robberies at these stores, a trend we can expect to continue unless changes are made.

We believe the legislature should consider extending the requirements of this act to check cashers.

CONCLUSIONS

Money laundering by illicit check cashers is a significant and growing problem in Florida. Numerous studies have shown what state and local law enforcement has known for years: Florida is awash in dirty money generated from a multitude of criminal activity. This money, totaling hundreds of millions if not billions per year, must be washed somehow. As state and federal regulators have increased their demands on banks and other financial institutions to scrutinize their customers and transactions more closely, criminals have gravitated to check cashers due to less stringent identity verification and regulation in that industry. Some criminals have gone so far as to open their own check cashing stores to launder for themselves as well as others.

Two of the significant areas of criminality that have made increased use of check cashers are government healthcare fraud, particularly drug diversion, and workers' compensation fraud. Some check cashers have facilitated the fraud by deliberately failing to follow statutes and regulations concerning documentation of customers and transactions. These frauds are costing Florida taxpayers hundreds of millions, directly as when paying out dollars in Medicaid, or indirectly in the loss of tax revenue. Legitimate businesses and Medicaid recipients also pay the price in the form of lost business revenue, increased insurance and tax payments and potentially decreased coverage in Medicaid.

Law enforcement's ability to track these criminals is stymied by the lack of documentation by corrupt check cashers, despite the findings and recommendations of the 1994 Statewide Grand Jury to regulate check

cashers with an eye on identification of check cashers' customers. This failure to require sufficient proof of identity is the key element in the spread of money laundering among criminally corrupt check cashers.

We conclude that the agency most responsible for insuring compliance by check cashers has failed to aggressively root out fraud and money laundering from the check cashing industry. MTRU has itself stated it cannot deter money laundering and its actions and their results seem to back that up, at least with their current effort.

The lack of meaningful disciplinary action, including failure to revoke licenses, has allowed money laundering within the check cashing industry to flourish while hampering criminal investigator's ability to pursue those responsible for the money laundering and the underlying frauds. MTRU's almost total failure to refer suspicions of criminal activity to law enforcement, and its failure to document and track referrals when they do occur, has only served to worsen the problem.

We find MTRU to have bogged itself down by unnecessary paperwork and routine, to be burdened by self-imposed standards of proof, and to act far too solicitously toward the industry. As a result, we conclude that Chapter 560 as written and envisioned by the legislature is not being enforced.

Many check cashers fail to file CTRs properly or at all, fail to take necessary steps to identify their commercial customers, often fail to have effective anti-money laundering programs as required by law, and routinely fail to have complete records for examinations. Despite these widespread failings in the industry, MTRU has neglected to take aggressive and effective action against violators. Its overuse of so called guidance letters we feel

serves only to trivialize violations and undercut efforts to secure compliance. By not taking more aggressive action against the corrupt element within the check cashing industry, MTRU also negatively impacts the honest and legitimate check cashers who are forced to compete with licensees that don't do due diligence, don't keep good records, and don't invest time, money, or effort into detecting and avoiding suspicious transactions and customers.

Though MTRU claims its examinations and examiners cannot effectively detect money laundering, it has failed to seek out training opportunities for its examiners to equip them with the skills necessary to do so. Neither has it created rules to require more due diligence by check cashers in regards to their commercial customers, or bothered to amend the examiners manual to require review of customer files, one of the most obvious places to look for evidence of money laundering.

While we agree with MTRU that it is in fact understaffed for its task and that some legislative changes are in order, not all the blame can be placed on lack of resources, particularly when MTRU has steadfastly refused to consider alternative resources such as recovering costs from licensees, taking advantage of training opportunities offered by law enforcement agencies, or using 3rd party examiners to reduce the backlog of exams.

We also believe MTRU can do a better job of using its existing resources, such as reducing the duplication of effort by its managers which unnecessarily slows down the approval process, and reducing unnecessary paperwork and routine by its examiners. Also, we believe it would be more cost effective to hire some support staff and free up examiners to do more field work and less clerical work.

We do not share MTRU's assessment that it is on the right track, and we most certainly reject the notion put forth by MTRU that we should wait 5-6 more years before passing judgement on whether its policies and procedures are working. Based on all we have found, we determine they are not.

We also conclude that some licensees keep much better records than others. Failure to keep complete records and have them ready for examination leads to return trips by MTRU, delays, disrupted schedules and added costs. Moving to a fee system for exams based on the amount of hours needed will save money for licensees that maintain complete, well-organized records while passing the costs on to those that do not.

Given the enormous potential for abuse in the check cashing industry regarding money laundering and fraud, we believe the legislature should either limit check cashers to cashing checks made out to individuals; or cap the dollar amount of commercial transactions at a reasonable level. We find the justification offered by check cashers that some contractors need to cash checks immediately to meet payroll is a stretch at best. We believe our report reveals the real reasons for the construction industry's sudden infatuation with check cashers. Other businesses, particularly those receiving government reimbursement checks, such as Medicaid and Medicare checks, have even less justification to use check cashers.

We also conclude that certificates of insurance, which play such a key role in worker's compensation insurance, should be required to state the amount of payroll covered so that regulators and contractors can verify the validity of the certificates on the spot.

Finally, we conclude that the proliferation of check cashers in Florida,

which has doubled in the last 5 years, and the enormous amounts of money they handle has created a significant public danger. Many check cashers invest little in the way of security and those that are engaged in criminal activity avoid the even basic security of taping transactions to deter robberies. We believe the danger to be as great as that facing Florida in the past when the legislature took the step of passing the Convenience Store Security Act in 1992.

RECOMMENDATIONS

To the Florida Legislature

1. Authorize new examiner positions or support personnel or both for MTRU
2. Grant MTRU whatever additional authority it requires to utilize 3rd party examiners under 560.118(c)
3. Authorize MTRU to utilize existing trust funds for increased training for examiners, particularly for forensic training and detection of criminal activity
4. Cap commercial transactions at a reasonable level
5. Require photographs of customer, identification and check at time of transaction for all transactions over $5,000
6. Prohibit in any case the cashing of Medicaid or Medicare checks payable to providers
7. Require check cashers to establish bank account dedicated solely for check cashing functions so as to ease audit process
8. Require all checks cashed by check cashers to be deposited into their

own bank account

9. Require licensees to submit Suspicious Activity Reports (SARs)
10. Require licensees to pay actual costs for MTRU exams
11. Require records to be retained by both MTRU and licensees for 5 years
12. Amend Chapter 560 to grant MTRU authority to immediately suspend any licensee that fails to have sufficient records at the time of the exam until that licensee provides such records to MTRU
13. Require registrations to be renewed yearly
14. Require MTRU to refer possible or suspected criminal activity to appropriate law enforcement agencies **in writing**
15. Make such criminal referrals confidential and exempt from the public records law
16. Require MTRU examiners to independently report suspicious activity directly to law enforcement in writing
17. Require appropriate security measures for check cashers akin to those found in Florida's Convenience Store Security Act including, at a minimum, security cameras to deter and help solve robberies
18. Direct DHSMV to undertake a feasibility study of creating an online system for verifying validity of Florida's drivers licenses as is done with credit cards

To MTRU

1. Enforce the provisions Chapter 560 fully
2. Require licensees to implement approved software programs for check cashing functions to streamline and standardize audit process
3. Require licensees with multiple locations to network their databases to detect attempts at structuring by their customers and to facilitate MTRU exams
4. Solicit input from examiners on potential resolutions/penalties including amending exam report to have a section for such input
5. Utilize 3rd party contractors for examinations as provided for in 560.118(c)
6. Hire clerical support to free up examiners to do more field examinations.
7. Provide funds for continuing examiner education especially for forensic examinations and the detection of criminal activity. For the latter, take advantage of training opportunities provided by other state agencies such as Division of Insurance Fraud, Medicaid Fraud Control and Department of Law Enforcement
8. Promulgate rules detailing additional due diligence required by check cashers to verify identities of their corporate customers commensurate with their check cashing volume including:

    Copies of articles of incorporation

    Verifying incorporation online and updating quarterly

    Verifying FEIN

    Requiring at least two forms of ID, including one government

issued photo ID

Business or banking references

Site visit or some other verification of customers corporate existence

9. Create a standard table of fines for all violations of code
10. Require check cashers to establish bank account dedicated solely for check cashing functions
11. Require check cashers to deposit checks in their bank account within 1 business day
12. Require applicants to have an Anti-Money Laundering program and Bank Secrecy Act manual in place and approved by the agency before issuing a license
13. Examine all new licensees between 3-6 months after issuance of license
14. Send 15 day advance notice of exam by certified mail. If the legislature grants authority, include warning that failure to have complete records may result in immediate suspension of license
15. Schedule follow-up exams for specified infractions of the code between 3 to 6 months after initial examination
16. Guidance letters should not be issued without a written policy in place. That policy should emphasize that Guidance Letters should only be issued for the most minor violations and should never be used where violations concerning CTRs, failure to maintain adequate records, or failure to have an effective AML program in place is found
17. Examinations should be completed **and approved** in a more timely

fashion

18. Reduce the amount of time AFMs spend duplicating examiners efforts and require AFMs to approve examination reports in a more timely fashion
19. Examinations should be tracked from beginning to end and goals for completion should be set for both examiners and Area Financial Managers
20. Make criminal referrals **in writing**, and track such referrals for annual reporting

To Division of Insurance Fraud

1. Require Certificates of Insurance to be issued by insurance companies only, not agents
2. Require certificates of insurance to indicate on its face in some manner the amount of coverage purchased
3. Require contractors relying on certificates of insurance provided by subcontractors to verify validity and coverage amounts with the carrier

CERTIFICATION OF REPORT

THIS REPORT IS RESPECTFULLY SUBMITTED to the Honorable Kathleen J. Kroll, Presiding Judge of the Eighteenth Statewide Grand Jury, this 12 day of March, 2008.

Foreperson, Juror #110
Eighteenth Statewide Grand Jury of Florida

I, OSCAR GELPI, Special Counsel and Assistant Legal Advisor, 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 12 day of March, 2008.

Oscar Gelpi
Special Counsel
Assistant Legal Advisor
Eighteenth Statewide Grand Jury of Florida

THE FOREGOING Interim Report was returned before me this 12 day of March, 2008, and is hereby sealed until further order of this Court, upon proper motion of the Statewide Prosecutor.

Honorable Kathleen J. Kroll
Presiding Judge
Eighteenth Statewide Grand Jury of Florida

FINANCIAL SERVICES COMMISSION

CHARLIE CRIST
GOVERNOR

BILL MCCOLLUM
ATTORNEY GENERAL

ALEX SINK
CHIEF FINANCIAL OFFICER

CHARLES BRONSON
COMMISSIONER OF AGRICULTURE

OFFICE OF FINANCIAL REGULATION

DON B. SAXON
COMMISSIONER

Letter of Guidance

Date

Contact Name
Company
Address
City, State, Zip

Exam Number:

Dear Mr/Ms.:

We have conducted an examination of your company's business records pursuant to Chapter 560 Florida Statutes. The examination was conducted on DATE and contained findings in violation of Chapter 560 Florida Statutes, and the Administrative Rules contained therein.

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This Office is now issuing you a **letter of guidance** to remind you to comply with the aforementioned requirements of Chapter 560 Florida Statutes and Administrative Rules.

At this time this Office is closing your examination with no further action. As you are aware this Office may conduct a follow-up examination to determine whether you are in compliance with this and other statutory requirements. If you have questions, please contact ?????, AFM of this Office at (XXX) XXX-XXXX.

Thank you for the cooperation extended to our examiner(s) during this examination.

Sincerely,

AFM Name
Area Financial Manager
Money Transmitter Regulatory Unit

Office of Financial Regulation
Chapter 560, F.S. - Money Transmitters
Statistics for Fiscal Years 2002-2007

Number of Licensed Check Cashers and Money Transmitters:						
		2002-03	2003-04	2004-05	2005-06	2006-07
Firms		690	825	1,007	1,220	1,435
Branches		1,307	1,643	1,427	1,660	2,131
Vendors		27,071	26,929	30,449	32,190	34,488
Total		**29,068**	**29,397**	**32,883**	**35,070**	**38,054**

Number of MTRU Examinations by License Type:						
		2002-03	2003-04	2004-05	2005-06	2006-07
FT2		25	55	11	10	2
FT3		45	124	51	89	135
Total		**70**	**179**	**62**	**99**	**137**

Disposition of Examinations Conducted by Money Transmitter Regulatory Unit						
		2002-03	2003-04	2004-05	2005-06	2006-07
FT2						
	Closed Final Order	1	6	15	10	5
	Closed Guidance Letter	13	3	18	13	
	Closed No Action	5	0	3	3	2
	Closed No Violation	5	9	1	1	
	Closed No Business	0	4		1	1
	Closed License Terminated	1	1		1	
	Closed	0	0		1	
	Total	**25**	**23**	**37**	**30**	**8**
FT3						
	Closed Final Order	4	11	53	20	45
	Closed Guidance Letter	29	19	59	19	47
	Closed No Action	3	4	2	10	6
	Closed No Violation	5	7		2	
	Closed No Business	2	5		4	2
	Closed License Terminated	0	1	1	2	4
	Closed	2	5		1	2
	Total	**45**	**52**	**115**	**58**	**106**

Bureau of Financial Investigations		2002-03	2003-04	2004-05	2005-06	2006-07
Investigations Completed						
FT2	Investigations Closed With Action	6	3	2	3	1
	Investigations Closed No Action Required	17	15	17	4	3
FT3	Investigations Closed With Action	3	13	7	9	6
	Investigations Closed No Action Required	21	21	20	19	23
	Total	**47**	**52**	**46**	**35**	**33**
Enforcement Action Resulting From Investigations						
FT2	Administrative Action	4	2	2	2	1
	Criminal Action		1		1	
FT3	Administrative Action	6	11	6	10	6
	Civil & Administrative Action		2			
	Criminal & Administrative Action				1	
	Total	**10**	**16**	**8**	**14**	**7**

Fines Collected from Money Transmitters Entities		2002-03	2003-04	2004-05	2005-06	2006-07
Fines Collected (MTRU)						
FT2						$113,500
FT3						$174,500
		$ 505,350	$ 228,950	$ 128,000	$ 157,050	$288,000
Fines, Cost & Restitution (Investigations)						
FT2						$ 5,000
FT3						$ 63,000
	Total	$ 88,500	$ 62,234	$ 26,600	$ 92,200	$ 68,000

FT2	Funds Transmitter and/or Payment Instrument Issuer
FT3	Check Casher and/or Foreign Currency Exchanger

EIGHTEENTH STATEWIDE GRAND JURY
Case No. SC 07-1128

THIRD INTERIM REPORT
OF THE STATEWIDE GRAND JURY

PREVENTION, INTERVENTION, AND REHABILITATION RESPONSE TO CRIMINAL GANGS

July 2008
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 must be addressed with prevention, intervention, and rehabilitation measures along with enforcement of the laws, punishment, and incarceration. While incarceration is appropriate when a gang member has taken criminal action, the State will be better served in the long term by preventing youth from entering gangs, providing intervention for those who have affiliated themselves with gangs, and rehabilitating gang members once they are criminally prosecuted and have completed their sentences.

It is evident to this Grand Jury that Florida must start today if it is to slow gang activity in the years ahead. The goal is to stop gang violence and growth and put the proper prevention, intervention, and rehabilitation programs in place. Only with a unified and forward looking approach can we protect Floridians from a plague of gang violence by ensuring the proper programs are in place in the every community throughout the State. Florida must take the lead or its communities will soon be overwhelmed with gangs and gang violence as has already happened in other communities across the country.

In addition to receiving testimony for this Third Interim Report, we received testimony that provided the basis for us to return four True Bills charging Racketeering, Conspiracy to Commit Racketeering, and numerous other charges against dozens of defendants who are members of different gangs operating throughout the State of Florida. The testimony we received about the gang members we indicted has strengthened our position that enforcement of the laws and incarceration alone, while crucial to the immediate protection of society, will not slow down the ever increasing population of gangs or the associated violence. Only through a

combined effort of enforcement, prevention, intervention, and rehabilitation will we be able to stem the swelling tide of gang membership and violence.

➢ INTRODUCTION

Having now reached the conclusion of its initial term, this Grand Jury issues its last report on gangs and gang violence in Florida. An Interim Report on this subject was issued in December of 2007 and focused on enforcement issues. This final report focuses on prevention, intervention, and rehabilitation. For the purposes of this report, rehabilitation includes re-entry into society after release from incarceration. After listening to testimony for almost one year about gangs in Florida, it is apparent to this Grand Jury that gangs are a serious issue in our state that can no longer be ignored or minimized. The State of Florida must act now or find itself overwhelmed by gangs and related crime.

The State cannot build enough prisons to house all of the gang members who commit crimes; therefore, we must focus our immediate attention on prevention. At the same time, we should intervene on behalf of those gang members who have not yet become hardened criminals. Finally, we must rehabilitate those gang members who have become hardened criminals and teach them how to be productive citizens.

I. 2008 Gang Bill

On June 30, 2008, The Governor signed the 2008 Gang Bill, Florida Laws, Chapter No. 2008-238. We applaud the passage of the 2008 Gang Bill and want to commend the Florida Legislature and the sponsors of the bill. We are pleased to see many of the recommendations from our First Interim Report drafted into laws that provide law enforcement and prosecutors with the additional tools to investigate and prosecute gangs.

To be fully effective however, these new laws, which will take effect on October 1, 2008, require education and training for prosecutors and law enforcement. With the revisions to Chapter 874, prosecutors will be able to seek enhancements of gang offenders more successfully

if they are trained in how to use the newly enacted gang offender enhancement. In addition to Chapter 874, there were changes to the Racketeering (RICO) statute and other statutes designed to be tougher on criminals who commit crime as part of a gang related offense. Unless these changes are taught to law enforcement and prosecutors, we are concerned they will be under-utilized. Therefore, we find that the Office of Statewide Prosecution, Florida Department of Law Enforcement, Florida Gang Investigator's Association, Florida Sheriff's Association, Florida Police Chief's Association, and State Attorney's Offices should take the lead in ensuring classes are taught across the State to explain the new gang law provisions and how they can be used.

II. A Unified Approach

We heard one consistent message from law enforcement and civilians over the past year: the State of Florida must develop a unified approach to address the problem of gangs. Repeatedly, we have heard that law enforcement cannot arrest its way out of the gang problem. A unified approach combining enforcement and suppression with prevention, intervention, and rehabilitation must be implemented *at the same time*. While the Legislature has taken an important step forward in our efforts to deter gangs by passing the 2008 Gang Bill, the next step requires prevention, intervention, and rehabilitation.

A unified approach will require funding from the Legislature even in times of economic hardship. It is evident that we must fund prevention, intervention, and rehabilitation if we are to stem the tide of the rising gang growth in the State of Florida. While state and federal funding is critical, cities, counties, school districts, private citizens, and businesses also must play a role. A unified approach means we all must do our part to fund local programs, speak out, volunteer, and educate. In addition, a unified approach involves changing societal perceptions about gangs and

gang culture so that joining a gang is seen as an unacceptable choice rather than the hip thing to do.

III. Long-term Goals

Gangs have a long history in our society and it may be unrealistic to believe that we can completely eliminate gangs from our communities. At the same time, it has been alarming to discover how rapidly gangs spread across our cities, counties, and state, putting a stranglehold on communities and overpowering law enforcement efforts. While there are many concerns vying for our attention today, we feel strongly that combating gangs should continue to be a top priority of the State of Florida. We must be vigilant in keeping the gang issue at the forefront even when communities, citizens, and the media may tire of hearing about it.

Vigilance is required because our gang problem will not be changed overnight. This effort will take an understanding and long-term commitment from cities, counties and the State. It will take time to establish an anti-gang policy in every region in the State of Florida. It will take time to put funding in place to establish and maintain effective programs and measures in every community. It will take time to evaluate the programs and determine whether or not they are working. The fight against gangs must take a long-term approach, fully funded and analyzed, or else it will be nothing more than a temporary fix at best. It must be a whole-hearted commitment to secure the future and well being of our communities and citizens from being at the mercy of the lawless.

➢ FINDINGS

The recommendations of this Statewide Grand Jury for prevention, intervention, and rehabilitation strategies are based on the findings discussed in this section.

"Prevention" as used in this Report refers to programs, actions, and measures that attempt to prevent youth from joining gangs as well as efforts to interrupt gang formation.[i] "Intervention" refers to programs, actions, and measures designed to reduce the criminal activities of gangs by coaxing away youth from gangs and reducing criminality among gang members.[ii] "Rehabilitation" refers to programs, actions, and measures designed to take a former gang member and help restore that person back into society through education and therapy.[iii] "Re-entry," which is the process of placing a formerly incarcerated person back into society, is included in our discussion of rehabilitation.

Other reports and strategies in use include "suppression" as part of prevention and intervention. The term "suppression" indicates a combination of police, prosecution, and incarceration to deter the criminal activities of an entire gang, dissolve them, and remove individual gang members from them by means of prosecution and incarceration.[iv] Please refer to our Interim Report for our recommendations and findings regarding "suppression" measures, which are a critical component in the unified approach to combating gangs.

While we will refer to a single gang member as "he" for ease of this report, we realize females are joining gangs at an increasing rate and the goals of prevention, intervention, and rehabilitation are the same for males and females. It is also necessary to clarify the terms "parents" and "schools." "Parents" as used throughout this Report will include guardians, care givers, and family members. "Schools" as used throughout this Report refers to public and private schools.

I. PREVENTION

A. Understanding the Problem and Creating Awareness

Prevention must begin with education and understanding of the local gang problem. A prevention strategy cannot be successfully undertaken until the citizens of this State understand the dangers we are facing with our growing gang epidemic. Whether it is the community, elected officials, parents, teachers, or youth, a gang strategy will not be successfully developed until an understanding of the criminal gang problem occurs and awareness is created throughout the entire community. While it is obvious that parents are crucial in preventing children from joining gangs, parents alone cannot be responsible for prevention. We have heard that even with the increased attention given to the gang epidemic by the media, many people still do not understand the dangers of the gangster lifestyle and deny that a gang problem exists in their community or schools. We have heard that teachers, parents, and society do not speak with our youth about the dangers of joining a gang because they fail to understand the problem themselves. We as a society must become educated about the dangers of youth joining gangs because without the support of parents, teachers, and the community, children will continue to be vulnerable to the gangster lifestyle.

We have heard numerous reasons for why our youth join gangs, including the following: fulfilling needs caused by a dysfunctional family, finding social acceptance, lack of supervision by parents, lack of education, undeveloped job skills, need for protection, and desire to make money. Whether a child is raised by one parent, both parents, grandparent(s), relative(s), guardian(s), or family sibling, the caregiver shares in the responsibility for keeping a child out of the streets and away from gangs. For ease of terminology, we will refer to the caregiver as the "parents," but realize many children are not raised by their biological parents. One of the more

difficult problems to solve is that children from dysfunctional families are more likely to become gang members. In a special report of the National Gang Crime Research Center,[v] a study of family dysfunction and its impact on gang members concluded that the gang member who was seeking a better family life used the gang as an alternative to his family.[vi] Furthermore, the report suggested that as a gang member's family environment becomes increasingly more dysfunctional, a gang member's threat of violence, commitment to gang life, and security risk inside the correctional climate also increases.[vii] This increase can be explained because a child from a highly dysfunctional family is left with a void of normal human needs of attention, recognition, appreciation, and a sense of belonging, making the child more likely to seek to fulfill those needs by becoming a gang member. A gang member who gets his social and human needs fulfilled through a gang may exclude all other possible influences that could fulfill that person's social and human needs such as family, church, or community.[viii] Thus, parents may be able to help prevent their child from joining a gang by providing attention, recognition, appreciation, and a sense of belonging to their child.

We find that both federal and state governments also have a role in creating awareness. Well-funded, aggressive ad campaigns have been run to prevent drug use, smoking, drinking and driving, domestic violence, and child abuse, to name a few. However, neither the federal government nor the State of Florida has an aggressive ad campaign against preventing youth from joining a gang.

We have heard about ways in which communities, schools, and law enforcement can create awareness by educating the public about the dangers of joining a gang. Communities are raising awareness by holding town hall meetings, going door to door, or creating coalitions and partnerships with law enforcement, schools, and churches. Law enforcement is creating

awareness by starting campaigns to educate the public and creating brochures about the dangers of gang life and the signs indicating a child may be involved in a gang. The Hialeah Police Department gang unit conducts gang awareness presentations in order to help at-risk youth and their parents learn the dangers of gang involvement.[ix]

Law enforcement can also raise awareness among youth by speaking at schools and using programs such as G.R.E.A.T. to educate youth on the dangers of becoming involved in a gang. The G.R.E.A.T. program focuses on prevention of gang membership, youth violence, and delinquency by having trained law enforcement officers teach life skills to elementary and middle school students. Another program we have heard about is the Phoenix Gang Intervention and Prevention program. This program is designed to prevent and intervene in a youth's life by helping them identify and avoid the factors which lead to gang involvement.[x] Schools can provide educational opportunities about gangs not only for students, but also for their teachers, administrators, and school resource officers. Training must include recognizing the signs of a student who may be involved in a gang. One city facing a gang problem decided to raise awareness by holding education and awareness workshops within the school districts to create a safe environment for learning.[xi] We have also heard about programs in which clergy visit homes of families and help raise awareness.[xii] It is the responsibility of the entire community to raise awareness, and it takes many different partners to get the message out.

B. Quality Early Education and Success in School

Efforts to prevent children from joining gangs cannot begin too early. It is estimated that over 13 million children under the age of six are in the care of someone other than their parents during the workday.[xiii] Young children need quality child care that helps them develop their intellect and their ability to get along with others, learn to control impulsive behavior, have

compassion for others, and succeed in school.[xiv] A child who is better able to learn, cope, and succeed will have less of a reason to join a gang. Thus, quality early childhood education and child care is a key component in our fight against gangs.

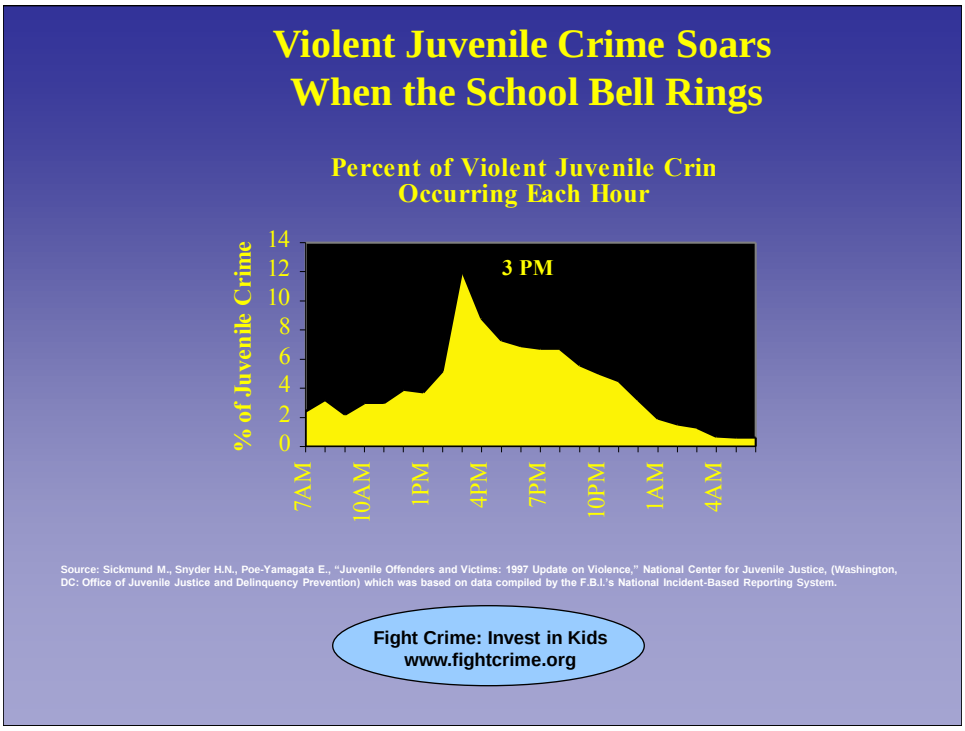
Quality early education can provide the foundation for continued success in school. Two major factors in youth joining gangs are lack of education and lack of employment. A youth who finds success in school is more likely to graduate high school and find employment or continue on to higher education. A youth who struggles in school may also face temporary or permanent expulsion. We have heard testimony that some school districts have eliminated schools specifically created for troubled youth (alternative schools) and often a youth who is expelled has nowhere to go other than the streets. Communities and schools have a vested interest in seeing that youth remain and succeed in school. Reducing drop-out, expulsion, and suspension rates is critical to our success in fighting gangs.

C. Keeping Youth Active and Supervised

It is estimated that one in four children in America is growing up in a single parent household and that half of all children will be in a single parent household for several years during their childhood.[xv] In today's society, even if the child is living with both parents, it is more common than in the past for both parents to work one or more jobs. Living in a single parent household or a household where both parents work one or more jobs decreases the amount of time a parent can spend with his or her child and decreases the likelihood of adequate parental supervision. It is estimated that over 10 million children and teens, including 7 million children between five and fourteen years old, are unsupervised after school on a regular basis.[xvi] It is common for a child to come home to an empty house with no parental supervision. Parents who are not at home are unable to supervise who their child is "hanging out" with and may not be

aware that their child is becoming involved in a gang. Limited time, ability, or finances are some of the reasons parents are unable to supervise their child.

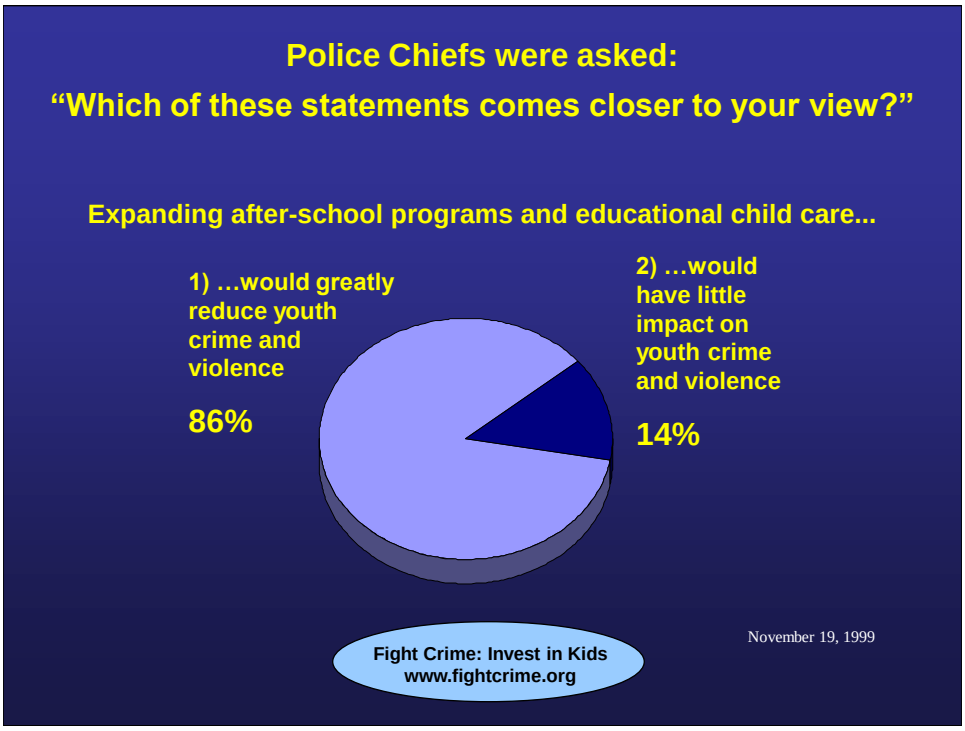
Afterschool programs or extracurricular activities must be provided for children who are unsupervised after school. Juvenile crime peaks between the hours of 3 to 6 p.m., the time period between when the school day ends and supervision returns. These are also the peak hours for violent juvenile crime (as depicted in the graph below), innocent kids to become victims of crime, 16-17 year olds to be involved in motor vehicle accidents, and kids to smoke, drink, or use drugs.[xvii]



We cannot stress enough the importance of our finding that children need supervision after school, whether it is through afterschool programs, extracurricular activities, or by arranging time in the parent's schedule.

We have heard that it is vital to keep children active and in school in order to prevent them from joining gangs. Youth who are active in extracurricular activities such as sports are

less likely to have the time or need to be involved in a gang. As the following graph represents, a survey of police chiefs shows that almost 9 out of 10 police chiefs believe that expanding afterschool and child care programs would greatly reduce youth crime and violence.[xviii]



Schools are receiving less funding, which will lead to fewer schools offering free afterschool programs. Parents who do not want their child left unattended after school will have to pay for an afterschool program if one is even available in their community. According to one study, afterschool programs may cost $2,500 to $4,000 a year, which is an insurmountable cost for many families, especially those living in high-crime areas where it is most critical to keep children supervised and active.[xix] Communities, schools, the state, and the federal government must work together to find creative ways to fund afterschool programs in order to prevent children from joining gangs.

We have also heard that curfews may be beneficial in the struggle to prevent youth from joining gangs. Juveniles who are more likely to violate the curfew ordinances are more likely to

be involved in a gang.[xx] Cities and parents can help keep youth off the streets by imposing a curfew or enforcing the local curfews which may be in place.

D. Change in Perception and Behavior

During testimony, we were shown numerous examples of how today's society and culture complicates our fight to keep children out of gangs. We have seen shoes with a hidden compartment for drugs or weapons. We have been told about clothing sold at large retailers that contain hidden gang signs. We have seen apparel that appears to be specifically marketed to a gang. For example, we have seen a hat that appeared to have the New York Yankee logo changed from their original colors of blue and white to yellow and black which are the colors of the Latin Kings. While some clothing has been or appears to have been specifically marketed to gang members, other clothing that was not designed to be marketed to gangs has been adopted by gang members. For example, a Chicago Bulls jersey with a specific number may be worn, not because the person likes the sports team or athlete associated with that number, but because the colors and the numbers represent a gang. We have seen examples of all sorts of apparel, especially sports apparel, where the colors, logos, or numbers have been adopted to represent a gang. Unless parents, teachers, law enforcement, or someone who could intervene has been educated on what to look for, they may not even realize a child is in a gang because the signs are difficult to decipher.

We have reviewed publications from the Federal Communications Commission (FCC) stating that one of the most powerful influences on our children is television.[xxi] According to a report by Kaiser Family Foundation, "American children and adolescents spend 22 to 28 hours per week viewing television, more than any other activity except sleeping."[xxii] While children and adolescents are watching all of this television they are being exposed to high amounts of

violence. Even twelve years ago findings indicated that 57 percent of programs on television contained violence.[xxiii] The National Television Violence Study links aggressive behavior to television shows which glamorize violence and desensitize viewers to brutality. Congress made specific findings about parental choice in television programming in Section 551 of the Telecommunications Act of 1996. Congress found that "[t]elevision influences children's perception of the values and behavior that are common and acceptable in society," and that "[s]tudies have shown that children exposed to violent video programming at a young age have a higher tendency for violent and aggressive behavior later in life than children not so exposed, and that children exposed to violent video programming are prone to assume that acts of violence are acceptable behavior."[xxiv] As part of the 1996 Telecommunications Act, Congress also created the V-Chip statute. The purpose behind the V-Chip was to allow parents the ability to screen what their children were able to watch on television. Congress required the V-Chip to be contained in all new television sets which would allow the user to program the television to block certain programming. The V-Chip can only be used if a television is equipped with the chip, the user elects to program the television, and the programs have a rating system encoded into them. While television programmers agreed to voluntarily rate their programs, the V-Chip has not been considered very useful in preventing children from violent television since 88 percent of parents in one survey stated they did not use a V-Chip or a cable blocking device.[xxv]

Major medical associations have also released statements concluding that children who are exposed to violence in general, not just television, will suffer emotional desensitization towards violence in real life and will have a higher tendency for violent behavior in real life.[xxvi] We find the following statement by FCC Commissioner Gloria Tristanti on point:

> "I challenge parents to take an interest in the programs their children are watching and talk about the content of the programs and commercials with their children.

> Parents should also contact their local stations. Let them know what you like and don't like about their programming. I also challenge those in the entertainment industry – substantially reduce the violent content in programs that children watch and voluntarily include in violent programming the real consequences of violent acts and punishment for the perpetrator. Finally, I challenge each of us to speak out publicly and say that violence in programs that children watch will no longer be tolerated."[xxvii]

While we understand that violence in the media and television does not mean that it is always depicting gang violence, we find that violence still breeds violence. Prevention measures should include ways to address violence in the media and on television if parents, the community, or society wants to help limit the number of youth who join a gang and commit violent crimes.

Not only have we considered the violence on television, we have also seen and heard about games, movies, magazines, videos, and music filled with gangster violence and hype. Sometimes it is obvious even to an untrained eye that the content of the media represents gangster violence and hype. Often, however, the signs, pictures, or lyrics may be hidden from the average person. Thus, even parents who are trying to keep their child away from gangster violence and hype may not know that what their child is watching or listening to is actually gang related. With all of the mass media available today, it is a challenge for parents to supervise what their children are viewing and listening to on a daily basis. Far too often, parents simply cannot monitor their child's choices when it comes to television, magazines, movies, games, and music. It is even more difficult to keep tabs on what a child is accessing online.

While the gangster lifestyle is ubiquitous in the mass media, what happens at home is also a major factor in youth turning to gangs. Some parents lack the ability to handle daily tasks themselves, whether it is paying bills, balancing a checkbook, making appointments, or completing other daily tasks. Some parents may not be able to perform these functions because

of a drug or alcohol problem. Struggling to function in society, these parents are not able to help their children learn how to handle the typical demands of daily living.

We have also heard that children who join a gang are often "born into" the gang. It is not uncommon for children who are in a gang to have one or more parents, relatives, or siblings involved in a gang. We have seen numerous photos such as the one depicted below where a child is dressed up in the parent's gang attire. A child who grows up in such an environment will face challenges in his life growing beyond the horrible example of this "parent."

As mentioned earlier, children turn to gangs because they are lacking something in their home life. For this reason, a successful gang reduction strategy must involve efforts by the community and by parents to provide children with caring and responsible home environments from birth. We have heard that abuse and neglect lead to an increase in crime and that being abused as a child nearly doubles the rate of arrest for a violent crime by the age of 18.[xxviii] It is estimated that 2.4 million children are abused and/or neglected each year.[xxix] Parents who abuse and neglect their children are responsible for raising children who are more likely to commit

crime. Communities have an important role in providing support and education to parents in order to create households free of neglect and abuse.

II. INTERVENTION AND REHABILITATION

A. Outreach

Intervention is often the necessary step after prevention has failed and before rehabilitation can begin. It is the responsibility of the entire community to help parents identify and intervene when a child has started associating with a gang. A youth involved in a gang can be identified by a trained teacher, school resource officer, law enforcement officer, counselor, parent, or neighbor. Once a child has been identified as being involved in a gang, the goal is to intervene and pull the child away from the gang, which we have learned is often a difficult task due to the stranglehold the gang may have on the child. We have become acquainted with a variety of ways to accomplish this goal, including outreach programs designed to perform this function.

For example, we received testimony from a school resource officer who said that once he identifies students involved with a gang, he will go to the home of the student and speak with the parents. The purpose of the visit is to help the parents understand their child is in a gang and to give them information about rehabilitation services. According to the school resource officer's testimony, it is common for parents to deny that their child is in a gang until after the school resource officer has taken the parents through the child's room and shown the parents all of the signs that their child is involved with a gang. Most parents are shocked they did not recognize the signs, while other parents continue to deny their child is a gang member even after confronted with the evidence. In situations of ongoing denial, intervention may be needed not only for the youth but also for the parent.

Another scenario we heard about is when a parent wants intervention but does not know where to turn for help. We learned of outreach programs offered through community centers, counselors, churches, law enforcement, and government agencies designed to address intervention needs. While some parents and youth will seek out intervention, other parents and youth need intervention to come to them. Successful intervention efforts must be easily accessible and proactive in reaching out to find those who are not seeking help for themselves.

Gang experts who testified emphasized the need for local community centers to provide families, youth, and gang members with information on a wide range of issues they may be confronting. In most communities, someone in need must travel all over the county to find assistance with drug and alcohol treatment, anger management, parenting classes, and life skills. Furthermore, specialized intervention and rehabilitation assistance for gang members is not available in most communities. Currently, intervention and rehabilitation may require not only the desire for help but the dedication and means to travel to obtain it.

We received testimony that establishing prevention and intervention measures without rehabilitation leaves behind gang members embedded in the gangster lifestyle who cannot turn their lives around. While intervention can pull away those who have not become too deeply involved in gangs, rehabilitation is needed for gang members who have become hardened criminals. Effective rehabilitation for a gang member involves getting the gang member to commit to leaving the gang and gang lifestyle. Unless a gang member is fully committed, rehabilitation efforts will be a waste of time. It is likely gang members will require rehabilitation in more than one area of counseling since they have taken to a life of crime, violence, and drugs. According to testimony we heard, rehabilitation of a former gang member requires specialized counseling that includes but extends beyond anger management, life and job skills, and often

drug rehabilitation. Gang members have issues that other criminals may not face when trying to rehabilitate. Gang members may face threats, beatings, or shootings upon trying to leave the gang. They may have to reprogram the way they handle conflict, anger, hostility, or confrontation. They also need to remove all associations and identification such as tattoos. They may have to move from the neighborhood where the gang is located. Outreach programs must take a comprehensive approach to rehabilitation in order to be successful in helping former gang members fully shed their past lives and develop productive new ones.

We heard testimony that the Department of Juvenile Justice (DJJ) requires that juveniles identified as gang members attend family therapy classes. Parents are encouraged to attend these sessions in which a counselor works with the child and family on specific issues that have been identified. Not surprisingly, we have heard parents often fail to attend these family sessions held by DJJ. Another outreach program DJJ is trying to utilize is the Phoenix program which we mentioned earlier. We have heard that DJJ is presently studying pilot versions of the Phoenix program and hopes to fund this program throughout all DJJ facilities in the future.

We understand that rehabilitation is a difficult process and will take time, patience, understanding, commitment, resources, and much effort; however, we have also heard of the long-term benefits rehabilitation can provide by turning gang members who were previously a drain on society into productive citizens who are assets to the community. Outreach programs have found that significant change in the gang member's lifestyle and/or the lifestyle that surrounds the gang member may be the only way to rehabilitate the gang member. We have heard that a rehabilitation program must first help the gang member identify the factors that pushed him or her into joining a gang. Outreach programs that take this step have a greater probability of success. Communities must determine how to provide intervention and

rehabilitation outreach in partnership with schools, parents, law enforcement, counselors, civic agencies, and clergy. Immediate and comprehensive action must take place or the gang problem will continue to proliferate.

B. Employment, Housing, and Services

We have received testimony about the challenges gang offenders face when they are released from prison and re-enter society. The primary difficulties are finding employment, housing, and services. Rehabilitation for a convicted felon who also happens to be a gang member is especially difficult. According to the Florida Department of Corrections (DOC), 35,377 prisoners were released from prison in fiscal year 2006-2007. The recommitment rate for a convicted felon is 33 percent within three years. Therefore, we can estimate that over 11,000 of those released in FY 2006-2007 will be recommitted to prison. Even more alarming is the recommitment rate for gang offenders, which is 42 percent within three years from release. Offenders placed on probation also have a high recidivism rate: 21 percent of offenders on probation are sentenced to prison within four years of being placed on probation. Equally concerning is the fact that, according to the DOC, the average gang member in prison has a seventh grade education level and almost 65 percent need substance abuse treatment. Rehabilitation of a gang member presents unique and difficult challenges that require specialized treatment and re-entry programs. The stakes are high: for every gang member who is not rehabilitated, the community and the State of Florida faces greater costs in future crime and incarceration.

It is well known that convicted felons already face an uphill battle finding gainful employment. We heard that this is especially true for gang members re-entering society because they often need more rehabilitation than other convicted felons. Gang members may have

visible gang tattoos, lack an understanding of appropriate behavior, exhibit anger control issues, come from dysfunctional families, have drug and alcohol problems, lack job skills, and have dropped out of school at an early age. In addition, gang members may be facing the reality that a legitimate job will earn them far less money than they were making on the streets selling drugs or committing crime.

According to testimony, employers cite the following reasons for not hiring convicted gang members: potential liability issues, lack of job skills and lack of education. In addition, employers are less likely to hire gang members because they often have a history of committing violent acts. We also heard that employers would be more willing to hire gang members if they were given some sort of incentive.

While the DOC testified about job skill programs offered in prison, namely PRIDE, we heard that these programs are available to only a very small percentage of the prisoners. Corrections Industries (PRIDE) is a program that allows inmates to receive job training and sell products to state agencies. PRIDE is the only program that allows an inmate to earn income while in prison. According to testimony, the benefits of earning an income include increasing self-esteem, developing job skills, and earning money that can be applied to paying off restitution, room and board, and for future re-entry or education expenses. Because PRIDE has already established business relationships, it has a high job placement rate for prisoners in the program upon release. While PRIDE is fully self-funded, we heard that the difficulty with expanding PRIDE is that it sells exclusively to state agencies. A similar federal PRIDE program exists but it allows goods manufactured by prisoners to be sold across state lines and thus expands the market beyond Florida state agencies. We heard this federal program has been successful in South Carolina but currently serves only 200 inmates in Florida. Other job skills

programs offered by DOC include vocational training in plumbing, carpentry, and cosmetology; however, just over one percent of the prison population receives any vocational opportunity at all.

Another challenge to employing gang offenders upon release is their low educational level. Prisoners could benefit from additional education while in prison, however, the average educational level of a prisoner is seventh grade. Only six percent of the prison population is eligible to enter an education program, because to qualify for a GED program, a person must have a ninth grade education level. This gap leaves many unable to enter the program even if openings are available. Therefore, most prisoners leave prison with the same minimal amount of education they brought with them.

Finding housing upon release is yet another challenge for prisoners, especially gang offenders. Many gang offenders cannot find affordable housing. When a gang offender lacks housing, he often takes to the streets and ends up turning to the gang to provide him with protection, money, and a place to stay. Gang offenders who return to their neighborhood most likely return to the same gang life they left behind when they went to prison. We heard that a gang offender is more likely to succeed if he relocates to avoid returning to his neighborhood where he faces not only his own gang but also his rival gangs.

We also heard that rehabilitation and re-entry has a greater chance if a gang offender is provided with services needed upon release from incarceration. A prisoner has many needs upon release besides employment and housing, including a driver's license, medications, clothing, substance abuse and mental health counseling, job training, social security benefits, and Medicaid benefits. Many of these services can be received upon release from incarceration if the prisoner has applied for the services, benefits, or privileges prior to release. We heard that

prisoners who do not acquire these services soon after release have a much harder time functioning in society because their long-term or daily needs are not being met.

Presently, DOC provides prisoners with a 100-hour transition training program. However, we heard this transition training program has not been updated due to funding issues. DOC offers re-entry seminars every month for prisoners who are to be released within the next six to twelve months. At these seminars, DOC officials go over the services available to prisoners upon release. However, because of lack of funding, DOC is unable to provide the direct assistance a prisoner needs to actually obtain the services upon release.

For example, a prisoner with a physical or mental condition needs medication upon his release. DOC provides a prisoner with enough medication for 30 days upon release. If the system functioned properly, a prisoner would typically qualify and receive Medicaid within thirty days of his release. Because a prisoner's Medicaid and other benefits are terminated upon conviction, a released prisoner must apply to begin receiving benefits again. However, in order to qualify for Medicaid, the prisoner is not allowed to apply earlier than six months prior to release. According to testimony, only 33 percent of DOC prisoners are approved for Medicaid when they first apply. The majority of applicants must apply for Medicaid benefits more than one time. This process is lengthy and requires assistance from DOC staff. A transition assistance specialist helps an inmate fill out such forms and apply for a driver's license, ensuring that the inmate has the services he or she needs upon release. While DOC has had transition assistance specialists who help inmates with their applications for benefits, these positions have been cut due to budgeting constraints.

Another service DOC provides prisoners upon release is a resource directory listing housing and other services in the area. However, we have heard the resource directory is not

updated often enough and does not specify who actually qualifies for the services and housing listed. DOC also provides virtual case managers to answer questions after an individual is released. However, we heard that the phone number is not a toll free number and since it is not a direct line, a person may be routed through several people before reaching a case manager.

DOC offers post-release programs that provide re-entry services, mentoring, or employment opportunities. According to testimony, some of these programs such as Operation New Hope have been successful. However, even the successful programs face funding problems, and Operation New Hope is set to be terminated within the next few years despite recommendations to expand the program. Federal re-entry programs, such as 2nd Chance Act, also exist; however, we heard that DOC has not yet qualified to receive this federal funding due to the requirements of the federal program.

Through testimony we received, it is evident that job training and re-entry services are severely lacking in the State of Florida. Without such services, gang offenders are essentially on their own to find employment and housing upon release. Prior to May of 2007, the DOC mission statement only included providing proper care and supervision of offenders under its jurisdiction. However, in May of 2007, DOC changed its mission statement to include assisting with re-entry into society. While DOC is striving to provide proper care and supervision of offenders under its jurisdiction, DOC cannot do more with less. We heard that since 2001, funding to DOC has been reduced in the areas of construction, supervision, and programs. From the testimony, it is apparent that DOC is attempting to make progress in the areas of providing re-entry services and programs; however, they will continue to fall short in these areas without adequate funding.

C. Tattoo Removal

In providing testimony, gang experts explained that tattoos are commonly used by gang members to show that they represent a gang. Tattoos, therefore, become an important avenue for intervention and rehabilitation of a child or young adult involved in a gang.

Some parents may first realize they need to intervene after learning their child has a gang affiliated tattoo. Other parents may already know their child is in a gang before they identify a gang tattoo. We have even heard the frightening reality that some parents have gang related tattoos themselves.

During testimony, we learned that there are gang members who want to have tattoos removed only to find the cost of tattoo removal prohibitively expensive. However, there are programs created to provide free tattoo removal for gang members. Such successful free tattoo removal programs have been established in other states with the assistance of state, local, and private funding. While Florida has managed to create a few tattoo removal programs, the programs are not widely available across the state. We learned of free tattoo removal programs that require gang members to sign a commitment to remain out of a gang and crime free for a certain period of time. Once the gang member has successfully completed the term, the gang member has his or her tattoo removed at no charge by a person trained in tattoo removal, usually a doctor or nurse.

We heard that in order for tattoo removal programs to be successful, they must be readily available throughout the state, have minimal requirements for the gang member, and allow trained professionals beyond just doctors and nurses to perform the tattoo removal. Programs with strict qualifications such as a long period of time until a tattoo can be removed have been under-utilized since few gang members can qualify. Tattoo removal programs also face the

problem of underfunding. Successful tattoo removal programs have received funding from the state, the community, or the doctors, nurses, or cosmetology schools that perform the tattoo removal.

A gang tattoo makes it difficult for a gang member to disassociate from the gang, avoid threats from rival gang members, and find employment. Tattoo removal programs represent a concrete step that can be taken in the rehabilitation process with a positive and lasting effect on the gang member attempting to change his or her life.

D. Graffiti Abatement

We have all seen the ugly signs of gang graffiti splattered across walls, buildings, homes, signs, and property across the State of Florida. The Interim Report discussed the need to address graffiti. Here we will discuss rehabilitation programs that serve not only to rid the community of graffiti but also to rehabilitate the gang offender who may be responsible for the graffiti.

Manatee County partnered with Amer-I-Can in a graffiti abatement program designed to rehabilitate a gang member while he or she serves probation. The Amer-I-Can program provides numerous services including training for law enforcement, youth programs designed at improving life skills, and pilot programs in schools.[xxx] The graffiti abatement program requires gang members to paint over graffiti as part of their community service while on probation. If possible, the gang members are required to paint over graffiti in the very neighborhoods where they reside or placed graffiti in the first place. Often a gang member will have to paint over the very same graffiti that he painted. We have heard that requiring youth to paint over graffiti helps them develop an understanding of the impact graffiti has on the neighborhoods.

➢ CONCLUSION

While recognizing that family lifestyle is perhaps the most important factor in prevention, we urge cities, counties, schools, law enforcement, local communities, and society as a whole to pull together with assistance from the state and the federal government to address the growing gang problem. We heard that the most effective way to initially address the gang problem is to start at the community level. In order to determine how a community should address its gang problem, the community must first assess the reasons for their gang problem. Since no two communities are alike, each must determine what suppression, prevention, intervention, or rehabilitation programs will work best in their own community.

The good news for communities in Florida is that federal and state government offices have studied the gang crisis and formed recommendations to reduce gang-related crime and violence. The federal government recently released through the Office of the Juvenile Justice and Delinquency Programs (OJJDP) a "comprehensive gang model" designed to help communities develop an anti-gang strategy specific to their community.[xxxi] The State of Florida also recently released through the Office of the Attorney General the "Florida Gang Reduction Strategy 2008-2012."[xxxii] The development of the Florida Gang Reduction Strategy was a collaborative effort led by the Office of the Attorney General in partnership with numerous state agencies. The Florida Gang Reduction Strategy directs communities to draw on resources from law enforcement, education, and intervention/prevention programs. We believe that cities, counties, and communities can pull from these resources in order to begin the process of developing and implementing a prevention, intervention, and rehabilitation strategy.

Research has shown that funding spent on prevention programs actually saves money for cities, counties, and the state by reducing crime and the cost associated with crime, prosecution,

and punishment.[xxxiii] For example, we heard testimony about the Youth Violence Prevention Project in Palm Beach County, which is funded by the Palm Beach County Board of Commissioners. The project set up youth empowerment centers designed to provide both preventative and rehabilitative programs. The Florida State University College of Criminology conducted a funded evaluation process of this effort. Their evaluation concluded that although it cost Palm Beach County $2 million to fund the program, the County saved over $14 million during the first year of the program. The evaluation found that approximately 73 percent of a random sample of those who had entered the program had no new offenses and the crime rate in the area where the empowerment center is located decreased by 30 percent.

It is clear to this Grand Jury that by investing in prevention, intervention, and rehabilitation programs and measures, cities, counties, and the State of Florida will save money and the citizens will benefit with a decrease in crime. The challenge is to garner widespread support to make creating and funding these programs a top priority for communities. State and local elected officials must understand that an enforcement-only approach costs far more than adding funding for prevention, intervention, and rehabilitation measures.

However, it is not enough to just fund local programs. There must be an understanding of the gang problem, dedicated counselors and outreach professionals, and a commitment by the community to solve the gang problem over time. We heard that some programs are initially funded but then never evaluated because while the programs seemed like a good idea, the community lacked the will to see them through to success. Communities must invest not only funding but also support, interest, and time to make sure that programs are fully implemented and evaluated. There are successful prevention, intervention, and rehabilitation programs that serve as models, and communities must educate themselves and determine what programs are

most appropriate for their specific needs and concerns. One approach for finding a model program is through the OJJDP comprehensive gang model. In addition, in accord with the Florida Gang Reduction Strategy, it is anticipated that regional task forces will take place across Florida whereby communities will be able to learn how to address their gang problem and begin developing their own comprehensive plans. While we have studied gangs and gang violence since September of 2007, this Grand Jury Report can only provide a partial analysis on how to address the massive problems our State faces in the escalation of gangs and gang violence. Whether a gang problem is being addressed by the community, state, or federal government, we conclude that it must be a unified approach with long-term goals which include enforcement, prevention, intervention, and rehabilitation. No matter how well intentioned a report, study, or plan is, words alone will not deter the growing gang problem; action must be taken now!

➢ RECOMMENDATIONS

"Parents" as used throughout the recommendations includes guardians, caregivers, and family members.

"Schools" as used throughout the recommendations refers to public and private schools.

I. Community and Society

- **In order for prevention, intervention, and rehabilitation of gangs and gang members to make progress, communities and citizens should:**

  - Commit to an ad campaign regarding gang awareness;
  - Develop resource centers within each community so that a person or family may receive assistance through multiple programs at one location;
  - Let retailers know (by letter, boycotts, and peaceful demonstrations) that the selling of items that promote the gang lifestyle and violence is not acceptable;
  - Encourage the news media by sending letters, e-mails, and making phone calls to limit the violence and its glamorization in the news;
  - Have ex-gang members address young adults at schools, prisons, juvenile facilities, and churches about the dangers of joining a gang;
  - Demand that designated gang rehabilitation and re-entry programs be funded by the Legislature, counties, cities, and communities of the State of Florida;
  - Promote a local community telephone number to report graffiti and gang related activity;
  - Have key stakeholders, such as community leaders, prevention/intervention organizations, community program directors, the business community, law enforcement, and religious leaders participate in the regional task force meetings being held across the State as mentioned in the Florida Gang Reduction Strategy;
  - Enlist community support by establishing a fundraising board in every community to raise monies toward these efforts;
  - Establish community work and training programs to mentor and train youth in viable work skills.

II. State of Florida

- **We recommend that the State Legislature implement gang reduction policies and measures to:**

    - Adopt the Attorney General's Florida Gang Reduction Strategy with a long-term goal of gang reduction, create a timeline for its implementation, and provide an analysis of the success of the programs within the strategy;

    - Explore the feasibility of tax incentives to private businesses who hire convicted felons;

    - Develop and fund a tattoo removal program which would allow youth and adults to have their gang affiliated tattoos removed for free;

    - Start an aggressive media ad campaign to discourage gang violence by our youth, educate the community about the dangers of gang membership, and encourage the community to get involved in taking action against gangs;

    - Utilize social networking sites such as MySpace or Facebook, in addition to other traditional media, to also promote the ad campaign to discourage gang violence;

    - Promote InSite for the collection and storage of data by law enforcement throughout the state, rather than the myriad of programs currently in use;

    - Increase funding for re-entry programs run through the Department of Corrections that help with job placement and other necessary tasks an inmate should accomplish before being released;

    - Provide renewed funding for Transition Assistance Specialists with the DOC;

    - Ensure every inmate who qualifies for Medicaid actually receives Medicaid upon release and replace the policy of termination of benefits with a policy that allows inmates to suspend their benefits while incarcerated;

    - Provide funding to expand prison programs that teach job skills such as P.R.I.D.E;

    - Adopt and help fund the recommendations of the Florida Gang Reduction Strategy;

- Study the feasibility of having a full time director of gang control in the State of Florida;

- Fund the Phoenix program throughout the State through the appropriate agencies;

- Fund school readiness programs which provide educational child care and parental coaching;

- Provide adequate funding so that schools can offer afterschool programs, extracurricular activities, and alternative schools;

- Emphasize that the Florida Gang Reduction Strategy is a long-term commitment and that the capital it takes to start a program will be repaid to the State through lower crime rates and prison statistics.

▪ **The Office of the Attorney General must provide leadership in developing prevention, intervention, and rehabilitation strategies. It should:**

- Ensure that the recently released Florida Gang Reduction Strategy is implemented, that the seven regional task forces are held, and that every task force develop a plan of action to accomplish their regional gang reduction strategy;

- Establish a fundraising board in every region;

- Initiate an anti-gang campaign program that can be taught in the schools similar to the cyber-crime program led by the Attorney General.

III. Counties and Cities

▪ **The role of cities and counties in prevention, intervention, and rehabilitation of gang members should include goals to:**

- Develop an educational program on gangs that reaches the entire community (not only affected neighborhoods);

- Develop a comprehensive plan for local gang reduction based on input from citizens as well as offices and agencies already working on gang reduction strategies;

- Develop a timeline for implementation of a local gang reduction plan and create a review process to measure the success of the programs;

- Create long-term goals for a local gang reduction plan which includes long-range funding;

- Make a coordinated effort with law enforcement and school districts to obtain grants that address gang-related issues from different federal and state agencies as well as private foundations (such as 21st Century Community Learning Centers from the U.S. Department of Education);

- Participate in the regional gang task forces to be held across the State, as well as any periodic gang summits;

- Promote a local phone number and internet site to report graffiti and gang activity that is monitored by law enforcement and community leaders to help keep everyone informed about the status of gang activity in the community.

IV. Schools and Education

- **Schools and education have the potential to make a tremendous difference in preventing our youth from joining gangs. Schools should:**

  - Offer afterschool programs and activities as well as summer camps at all schools (K-12) in order to encourage children to remain involved in school activities and away from gangs;

  - Develop a wide range of extracurricular activities and programs so that children are able to find a program or activity that suits their individual interests;

  - Develop K-12 training programs and require teachers and school resource officers to receive training in gang recognition, prevention, and intervention;

  - Offer parents an orientation at school or online about the warning signs that their child might be associating with a gang;

  - Offer information, support, and programs for parents of youth who are identified as gang members at the elementary, middle, and high schools;

  - Provide brochures to youth and parents that describe local community programs that serve students (K-12);

  - Consider creative ways to provide financial support, such as fundraisers and private business sponsorship, for afterschool programs, summer camps, extracurricular activities, and electives;

  - Seek alternatives to expulsion and out of school suspension such as alternative schools in order to prevent disciplined students from spending

time unsupervised during the day, making them more susceptible to joining a gang;

- Lead districtwide and schoolwide anti-violence campaigns, including pledges for parents and students to keep out of gangs;

- See that programs are taught in schools that help youth with conflict resolution and life skills, such as G.R.E.A.T., the Phoenix program, or other similar programs;

- Include a course of study in gangs and prevention at colleges and consider whether a degree could be offered in the study of gangs, similar to St. Petersburg College's "Gang-related Investigations Specialty Track, Criminal Justice Technology, Associate in Science Degree;"

- Have the Department of Education, along with local school administrators and school board members, participate in the regional task forces which are being held across the State and offer continuing education credits;

- Enforce a school dress code at the elementary, middle, and high school levels that prohibits students from wearing apparel with gang symbols or gang associations.

V. Parents and Families

- **Parents have a critical role in preventing their child from entering a gang and can help reduce the likelihood their child will enter a gang. Parents should:**

  - Spend as much time as possible with their child and become involved in his or her daily life;

  - Instill positive values and morals in their child and lead by example;

  - Talk to their child about the long-term effects of joining a gang and discourage their child from gang affiliation;

  - Supervise who their child is associating with to ensure that their child is not becoming involved with a gang;

  - Familiarize themselves with and become active in local community programs;

  - Seek help when needed and consider enrollment in classes or programs for self-improvement and support in areas such as parenting, anger

management, drug and alcohol abuse, and life skills (including enrollment in classes and programs for their child as appropriate);

- Make sure their child attends school, attend parent-teacher meetings, volunteer at school, and encourage their child to be involved in extracurricular school activities;

- Ensure their child is involved with an afterschool activity, whether through the school or through a community center, so that their child is not hanging out with a gang;

- Request that schools provide a diverse range of electives and extracurricular activities to interest students;

- Monitor what their child is viewing on television and on the internet and establish time frames for how long a child is allowed to do those activities;

- Discourage their child from watching or using media that depicts or glamorizes gang violence, including movies, television, music, and video games that show gang violence or glamorize the gangster lifestyle;

- Hold and attend town hall meetings that address community and gang related issues;

- Be aware that news coverage may glamorize violence for their child and as such, a child's exposure to television news and print media should be limited;

- Ensure their child receives quality child care that helps him or her grow intellectually and teaches the child how to act appropriately in society;

- Establish and carry out a consistent discipline plan for their child with clear expectations and consequences;

- Identify as soon as possible and seek help early if their child has a learning disability, which may make life at school and at home more challenging for both the child and parent.

▪ **Parents must educate themselves about the warning signs of gang membership and be able to recognize when their child has begun affiliating with a gang. Once parents realize their child is involved in a gang, parents must intervene and begin the process of rehabilitation. We recommend that parents:**

- Take an active role in their child's life, seek help in the community, and find programs that serve themselves and their child;

- Learn to recognize signs of gang affiliation, such as gang tattoos, which may be identified by asking the child, photographing and asking the police, or searching on the internet;

- Discourage gang affiliated tattoos, encourage their child to remove any gang affiliated tattoos from his or her body, and remove any gang tattoos the parent may have;

- Attend all family therapy sessions offered by Department of Juvenile Justice (DJJ) if their child is a juvenile offender.

VI. Law Enforcement

- **While enforcement of laws against gangs and gang members will be essential in the fight against gangs, law enforcement must also work on prevention and intervention. Law enforcement must:**

  - Develop and receive training that uses a multi-faceted approach to curb gang violence that extends beyond gang identification and arrests;

  - Participate in the sharing of information with the community on suppression, prevention, intervention, and rehabilitation programs;

  - Participate in the regional task forces being held across the State of Florida;

  - Support FDLE in the creation of a statewide databank to house all of the prevention, intervention, and rehabilitation programs throughout the State of Florida;

  - Require FDLE to use one database within its own agency for the collection and storage of information.

- **The Florida Department of Corrections can provide intervention and rehabilitation measures for gang members. We recommend that DOC:**

  - Continue to develop and expand rehabilitation and re-entry programs which are specifically designed for incarcerated gang offenders or those on supervised probation;

  - Develop a tattoo removal program that allows gang offenders who are incarcerated or on supervision the opportunity to have a gang-related tattoo removed for free;

- Expand the federal re-entry grant programs that are presently in existence to serve more gang offenders in more locations;

- Utilize successful programs such as Operation New Hope and expand similar programs;

- Collaborate with other community resources to establish community work programs for youth;

- Establish Transition Assistance Specialists at every facility and restore funding for any Transition Assistance Specialists positions that have been eliminated;

- Develop and implement more job skills programs such as the P.R.I.D.E. program so that more prisoners have a chance to learn job skills prior to release;

- Offer prisoners educational programs so they may qualify for GED programs which are readily available to inmates while incarcerated.

▪ **The Florida Department of Juvenile Justice can provide additional intervention and rehabilitation measures to Florida's troubled youth involved in gangs. We recommend that DJJ:**

- Establish residential programs that specifically address rehabilitation of gang members back into society;

- Require all youth identified with a gang to enter a local graffiti abatement program while on probation, and to the extent available, require youth to complete community service in the neighborhoods where the criminal acts took place;

- Provide juveniles and their parents with a written list of all local programs that address prevention, intervention, and rehabilitation of gang members, including the name, location, and phone number of each program, as well as contact information for the resource center available in the community;

- Implement a rehabilitation program such as the Phoenix program throughout the State in residential programs for gang members;

- Establish relations with re-entry programs such as the Panzou Project which help juveniles develop the skills necessary to re-enter society;

- Develop a tattoo removal program that allows DJJ to provide juveniles and their parents information about doctors who are available to remove any gang tattoos without charge;

- Designate and train gang intervention specialists and gang intervention teams that focus on keeping youth active and out of gangs;

- Mandate parents' participation in family therapy for first-time offenders of a gang-related offense.

VII. Federal Responsibility

- **The U.S. Congress can also contribute to the prevention, intervention and rehabilitation of gang members. Congress must:**

  - Develop and pursue an international policy on combating gangs and assist foreign countries with their gang problems so that they do not spread into the United States;

  - Provide long-term funding to federal grants for gang prevention, intervention, and rehabilitation programs;

  - Evaluate and implement ways to boost job opportunities for convicted felons upon release, such as tax incentives or deductions for businesses that provide jobs to convicted felons;

  - Take the lead to create a national ad campaign to discourage gang violence and gang membership;

  - Address the lack of gang-related data sharing throughout the United States and establish a national database through which city, county, state, and federal agencies input and share information;

  - Designate a person within the Office of Drug Control or other appropriate agency who would be responsible for gathering information regarding gang control strategies, programs, and available funding to report to the legislative and executive branches;

  - Increase funding for educational grants, such as Head Start and other successful youth and community based programs;

  - Provide funding for new or previously existing federal block grants for juvenile justice programs.

VIII. Private Businesses

- **Private businesses can aid in the prevention, intervention, and rehabilitation of gang members. We recommend that businesses:**

  - Make efforts to hire juvenile and adult criminal gang offenders when appropriate;

  - Have doctors, medical schools, and cosmetology schools volunteer to remove tattoos for free from individuals who enter into an agreement to disassociate from a gang;

  - Provide funding for local afterschool programs and electives;

  - Collaborate with communities affected by gangs and gang violence, attend community meetings, and volunteer with local programs that work to combat gang membership and gang violence;

  - Ensure graffiti is removed immediately from their property;

  - Refuse to hire known gang members to promote items sold by their businesses;

  - Raise money and participate in the regional fundraising boards that support efforts to reduce gangs and gang violence.

[i] Adopted from *Youth Gang Programs and Strategies*, James Howell, National Youth Gang Center, pg. 5, August 2000.
[ii] *Id.* at 14.
[iii] Adopted from *The American Heritage Dictionary*, Second College Edition.
[iv] *Youth Gang Programs and Strategies*, at 21.
[v] *THE FACTS ABOUT GANG LIFE IN AMERICA TODAY: A NATIONAL STUDY OF OVER 4,000 GANG MEMBERS*, a special report of the National Gang Crime research Center, 1997.
[vi] *Id.*
[vii] *Id.* at Chapter 8, Summary and Conclusion.
[viii] *Id.*
[ix] *BEST PRACTICES of COMMUNITY POLICING IN: GANG INTERVENTION & GANG VIOLENCE PREVENTION 2006*, The United States Conference of Mayors: Best Practices Center, pg. 45.
[x] See also *Florida Gang Reduction Strategy 2008*-2012, Office of the Attorney General, released June 2008, for further description of the G.R.E.A.T., Phoenix, and other programs available, beginning on pg 41.
[xi] *BEST PRACTICES of COMMUNITY POLICING IN: GANG INTERVENTION & GANG VIOLENCE PREVENTION 2006*, at pg. 6.
[xii] *Id.* at pg. 21.
[xiii] *Fight Crime: Invest in Kids*, PowerPoint materials from website.
[xiv] *Id.*
[xv] *Id.*
[xvi] *Id.*
[xvii] *Id.*
[xviii] *Id.*
[xix] *Id.*
[xx] *BEST PRACTICES of COMMUNITY POLICING IN: GANG INTERVENTION & GANG VIOLENCE PREVENTION 2006*, at pg. 5.
[xxi] *Remarks of Commissioner Susan Ness Before the Oklahoma Broadcasters Association*, February 16, 1996.
[xxii] Quoted from *Remarks of FCC Commissioner Deborah Taylor Tate to National Religious Broadcasters Annual Convention*, March 10, 2008.
[xxiii] *See Remarks of Commissioner Susan Ness.*
[xxiv] Communications Act of 1934 as amended by The Telecommunications Act of 1996, Section 551.
[xxv] *Statement of Chairman Kevin J. Martin*, RE: In the Matter of Violent Television Programming and Its Impact On Children, MB Docket No. 04-261, quoting a Zogby poll.
[xxvi] *Id*, quoting a statement from the American Academy of Pediatrics, The American Medical Association, and the American Psychiatric Association, July 2000.
[xxvii] Speech by FCC Commissioner Gloria Tristani to the Puerto Rican Congress on Television Violence, February 11, 2998, and reprinted in a FCC news release *Commissioner Tristani Challenges Parents, Industry, Society to Protect Children from Harmful TV Violence.*
[xxviii] Widom, C.S., *Avoidance of Criminality in Abused and Neglected Children*, Psychiatry, v. 54, 1991; See Also *Fight Crime: Invest in Kids*, PowerPoint materials from website.
[xxix] *Fight Crime: Invest in Kids*, PowerPoint materials from website.
[xxx] For more information visit www.amer-i-can.org; see also *Florida Gang Reduction Strategy*, pg 46.
[xxxi] *Best Practices To Address Community Gang Problems*, Department of Justice, Office of Juvenile Justice and Delinquency Prevention, released 2008. *See Appendix A.*
[xxxii] *Florida Gang Reduction Strategy*.
[xxxiii] *See Fight Crime: Invest in Kids*, PowerPoint materials and other information from website.

➢ 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 17 day of July, 2008.

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 17 day of July, 2008.

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 17 day of July, 2008.

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 17th day of July, 2008.

MICHAEL W. SCHMID
Assistant Statewide Prosecutor
Assistant Legal Adviser

THE FOREGOING Interim Report was returned before me in Open Court this 17th day of July, 2008, and is hereby sealed until further order of this Court, upon proper motion of the Statewide Prosecutor.

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

➢ APPENDIX A

BEST PRACTICES TO ADDRESS COMMUNITY GANG PROBLEMS: OJJDP'S COMPREHENSIVE GANG MODEL

EXCERPTS TO INCLUDE: *PURPOSE AND ORGANIZATION OF THE REPORT*, AND *DEVELOPMENT OF OJJDP'S COMPREHENSIVE GANG MODEL*

To view or download the entire version of the OJJDP's Comprehensive Gang Model go to: http://www.ojjdp.ncjrs.gov

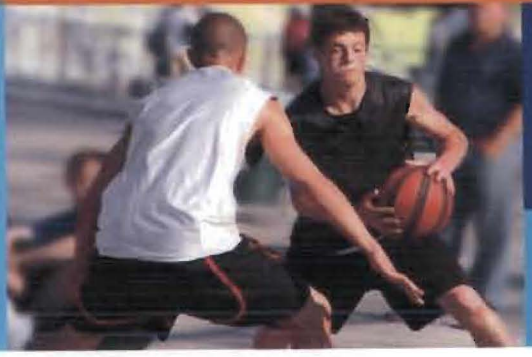
U.S. Department of Justice
Office of Justice Programs
Office of Juvenile Justice and Delinquency Prevention

Best Practices
To Address Community Gang Problems

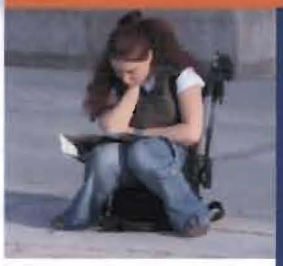
OJJDP's Comprehensive Gang Model

OJJDP Office of Juvenile Justice and Delinquency Prevention

Innovation • Partnerships
Safer Neighborhoods



Purpose and Organization of the Report



This Report provides guidance for communities that are considering how best to address a youth gang problem that already exists or threatens to become a reality. The guidance is based on the implementation of the Comprehensive Gang Model (Model) developed through the Office of Juvenile Justice and Delinquency Prevention (OJJDP), U.S. Department of Justice (DOJ), and most recently tested in OJJDP's Gang Reduction Program.

The Report describes the research that produced the Model, notes essential findings from evaluations of several programs demonstrating the Model in a variety of environments, and outlines "best practices" obtained from practitioners with years of experience in planning, implementing, and overseeing variations of the Model in their communities.

The Model and best practices contain critical elements that distinguish it from typical program approaches to gangs. The Model's key distinguishing feature is a strategic planning process that empowers communities to assess their own gang problems and fashion a complement of anti-gang strategies and program activities. Community leaders considering this Model will be able to call on a strategic planning tool developed by OJJDP and available at no cost. OJJDP's Socioeconomic Mapping and Resource Topography (SMART) system is available online through the OJJDP Web site (go to http://www.ojp.usdoj.gov/ojjdp, and select "Tools").

The main section of the report presents best practices for the Comprehensive Gang Model and highlights results of a National Youth Gang Center survey and a meeting of practitioners regarding their experiences in implementing the Model. This section contains specific practices that work best in a step-by-step planning and implementation process for communities using the Comprehensive Gang Model framework and tools.

Section 1:

Development of OJJDP's Comprehensive Gang Model

Research Foundation of the Comprehensive Gang Model

The Comprehensive Gang Model is the product of a national gang research and development program that OJJDP initiated in the mid-1980s. A national assessment of gang problems and programs provided the research foundation for the Model, and its key components mirror the best features of existing and evaluated programs across the country.

National Assessment of Gang Problems and Programs

In 1987, OJJDP launched a Juvenile Gang Suppression and Intervention Research and Development Program that Dr. Irving Spergel of the University of Chicago directed. In the initial phase, the researchers conducted the first comprehensive national assessment of organized agency and community group responses to gang problems in the United States (Spergel, 1990, 1991; Spergel and Curry, 1993). It remains the only national assessment of efforts to combat gangs. In the second phase, Spergel and his colleagues developed a composite youth gang program based on findings from the national assessment.

In the research phase of the project (phase one), Spergel's research team attempted to identify every promising community gang program in the United States based on a national survey. At the outset, this study focused on 101 cities in which the presence of gangs was suspected. The team found promising gang programs in a broad range of communities across the Nation. Once programs and sites were identified, the team collected information on the magnitude and nature of local gang problems from representatives of each agency or organization that other participants identified as being affiliated with or being a partner in each local program. Spergel and his team of researchers interviewed program developers and reviewed all available program documentation.

The more demanding project goal was to identify the contents of each program and self-reported measures of success. The team made an effort to identify the "most promising" programs. In each of the most promising community programs, the research team identified the agencies that were essential to the success of the program. Finally, Spergel and his team made site visits to selected community programs and agencies.

Spergel and Curry (1993, pp. 371–72) used agency representatives' responses to five survey questions[1] to determine the strategies that communities across the country employed in dealing with gang problems. From respondents' answers to these questions, the research team identified five strategies—community mobilization, social intervention, provision of opportunities, organizational change and development, and suppression (see "Five Strategies in OJJDP's Comprehensive Gang Model" on page 2).[2]

Development of the Comprehensive Community-Wide Gang Program Model

Spergel and his colleagues (Spergel, 1995; Spergel et al., 1992; Spergel and Curry, 1993) developed the Comprehensive Community-Wide Gang Program Model as the final product of the gang research and development program that OJJDP funded. From the information gathered through its multimethod study in phase one (Spergel, Curry, et al., 1994), the Spergel team developed technical assistance manuals for each of the 12 types of agencies that should be part of a successful local community response to gangs, including organizations that range from grassroots child-serving agencies to law enforcement, courts, and prosecutors' offices (Spergel, Chance, et al., 1994).

Spergel and his colleagues also offered the general community design of an ideal Comprehensive Community-Wide Gang Program Model. An ideal program should undertake several action steps (Spergel, Chance, et al., 1994, pp. 2–5):

- **Addressing the problem.** A community must recognize the presence of a gang problem before it can do anything meaningful to address the problem.
- **Organization and policy development.** Communities must organize effectively to combat the youth gang problem.
- **Management of the collaborative process.** In a typical community, the mobilization process evolves through several stages before fruition.
- **Development of goals and objectives.** These must include short-term suppression and outreach services for targeted youth, and longer term services, such as remedial education, training, and job placement.
- **Relevant programming.** The community must systematically articulate and implement rationales for services, tactics, or procedures.
- **Coordination and community participation.** A mobilized community is the most promising way to deal with the gang problem.
- **Youth accountability.** While youth gang members must be held accountable for their criminal acts, they must at the same time be provided an opportunity to change or control their behavior.
- **Staffing.** Youth gang intervention and control efforts require a thorough understanding of the complexity of gang activity in the context of local community life.
- **Staff training.** Training should include prevention, intervention, and suppression in gang problem localities.

Five Strategies in OJJDP's Comprehensive Gang Model

Community Mobilization: Involvement of local citizens, including former gang-involved youth, community groups, agencies, and coordination of programs and staff functions within and across agencies.

Opportunities Provision: Development of a variety of specific education, training, and employment programs targeting gang-involved youth.

Social Intervention: Involving youth-serving agencies, schools, grassroots groups, faith-based organizations, police, and other juvenile/criminal justice organizations in "reaching out" to gang-involved youth and their families, and linking them with the conventional world and needed services.

Suppression: Formal and informal social control procedures, including close supervision and monitoring of gang-involved youth by agencies of the juvenile/criminal justice system and also by community-based agencies, schools, and grassroots groups.

Organizational Change and Development: Development and implementation of policies and procedures that result in the most effective use of available and potential resources, within and across agencies, to better address the gang problem.

Source: Spergel, 1995, pp. 171–296.

- **Research and evaluation.** Determining what is most effective, and why, is a daunting challenge.
- **Establishment of funding priorities.** Based on available research, theory, and experience, community mobilization strategies and programs should be accorded the highest funding priority.

In 1993, Spergel began to implement this model in a neighborhood in Chicago. Soon thereafter, OJJDP renamed the model the Comprehensive Gang Prevention and Intervention Model (Spergel, Chance, et al., 1994, p. iii).

OJJDP's Comprehensive Gang Model

The 1992 amendments to the Juvenile Justice and Delinquency Prevention Act authorized OJJDP to carry out additional activities to address youth gang problems. An OJJDP Gang Task Force outlined plans for integrated officewide efforts to provide national leadership in the areas of gang-related program development, research, statistics, evaluation, training, technical assistance, and information dissemination (Howell, 1994; Tatem-Kelley, 1994).

This background work led to the establishment of OJJDP's Comprehensive Response to America's Youth Gang Problem. The Comprehensive Response was a five-component initiative that included establishment of the National Youth Gang Center, demonstration and testing of OJJDP's Comprehensive Gang Model, training and technical assistance to communities implementing this Model, evaluation of the demonstration sites implementing the Model, and information dissemination through the Juvenile Justice Clearinghouse. Implementation and testing of the Comprehensive Gang Model were the centerpiece of the initiative. OJJDP prepared two publications specifically to support demonstration and testing of the Model: *Gang Suppression and Intervention: Problem and Response* (Spergel, Curry, et al., 1994), and *Gang Suppression and Intervention: Community Models* (Spergel, Chance, et al., 1994).

Communities that use the Comprehensive Gang Model will benefit from the simplified implementation process that OJJDP has created. OJJDP synthesized the elements of the Comprehensive Gang Model into five steps:

1. The community and its leaders acknowledge the youth gang problem.
2. The community conducts an assessment of the nature and scope of the youth gang problem, leading to the identification of a target community or communities and population(s).
3. Through a steering committee, the community and its leaders set goals and objectives to address the identified problem(s).
4. The steering committee makes available relevant programs, strategies, services, tactics, and procedures consistent with the Model's five core strategies.
5. The steering committee evaluates the effectiveness of the response to the gang problem, reassesses the problem, and modifies approaches, as needed.

These steps have been tested in several settings. Information on those initiatives is provided in appendix A.

The Comprehensive Gang Model in Action—OJJDP's Gang Reduction Program

Over the years, OJJDP has tested and refined the Comprehensive Gang Model to meet new challenges and address gang problems in new locations. Most recently, OJJDP developed and funded the Gang Reduction Program.

Gangs are often the result of system failures or community dysfunction. So, to address youth gang violence, the OJJDP Administrator decided to test whether the Model could be used to initiate community change in certain cities. In 2003, OJJDP identified four demonstration sites: Los Angeles, CA; Richmond, VA; Milwaukee, WI; and North Miami Beach, FL. Each test site faced a different gang problem.

Once sites had been identified, OJJDP held meetings with senior political and law enforcement officials and made an offer: OJJDP would provide resources to support a test of the Comprehensive Gang Model if the city agreed to change how they currently addressed youth gang problems. Each city would now focus on balancing gang prevention with enforcement and commit to using community organizations and faith-based groups to ultimately sustain the work. Additionally, each site would have a full-time coordinator, funded by OJJDP, with direct access to senior political and police leadership. This coordinator would be free from substantive program responsibilities and would ensure that each participating agency or organization met its obligations. He or she would also ensure and that the data and information generated by the effort would be collected and shared. Each participating agency remained independent, but was under the oversight of the gang coordinator, who had the ability to obtain support or intervention from OJJDP leadership and local authorities (e.g., mayor, police chief, or governor).

In addition to reducing gang violence, the goal of GRP was to determine the necessary practices to create a community environment that helps reduce youth gang crime and violence in targeted neighborhoods. Because of this, GRP focused on two goals: to learn the key ingredients for success and to reduce youth gang delinquency, crime, and violence. GRP accomplishes these goals by helping communities take an integrated approach when targeting gangs:

- **Primary prevention** targets the entire population in high-crime and high-risk communities. The key component is a One-Stop Resource Center that makes services accessible and visible to members of the community. Services include prenatal and infant care, afterschool activities, truancy and dropout prevention, and job programs.
- **Secondary prevention** identifies young children (ages 7–14) at high risk and—drawing on the resources of schools, community-based organizations, and faith-based groups—intervenes with appropriate services before early problem behaviors turn into serious delinquency and gang involvement.
- **Intervention** targets active gang members and close associates, and involves aggressive outreach and recruitment activity. Support services for gang-involved youth and their families help youth make positive choices.
- **Suppression** focuses on identifying the most dangerous and influential gang members and removing them from the community.
- **Reentry** targets serious offenders who are returning to the community after confinement and provides appropriate services and monitoring. Of particular interest are displaced gang members who may cause conflict by attempting to reassert their former gang roles.

The program has several key concepts:

- Identify needs at the individual, family, and community levels, and address those needs in a coordinated and comprehensive response.
- Conduct an inventory of human and financial resources in the community, and create plans to fill gaps and leverage existing resources to support effective gang-reduction strategies.
- Apply the best research-based programs across appropriate age ranges, risk categories, and agency boundaries.
- Encourage coordination and integration in two directions: vertically (local, State, and Federal agencies) and horizontally (across communities and program types).

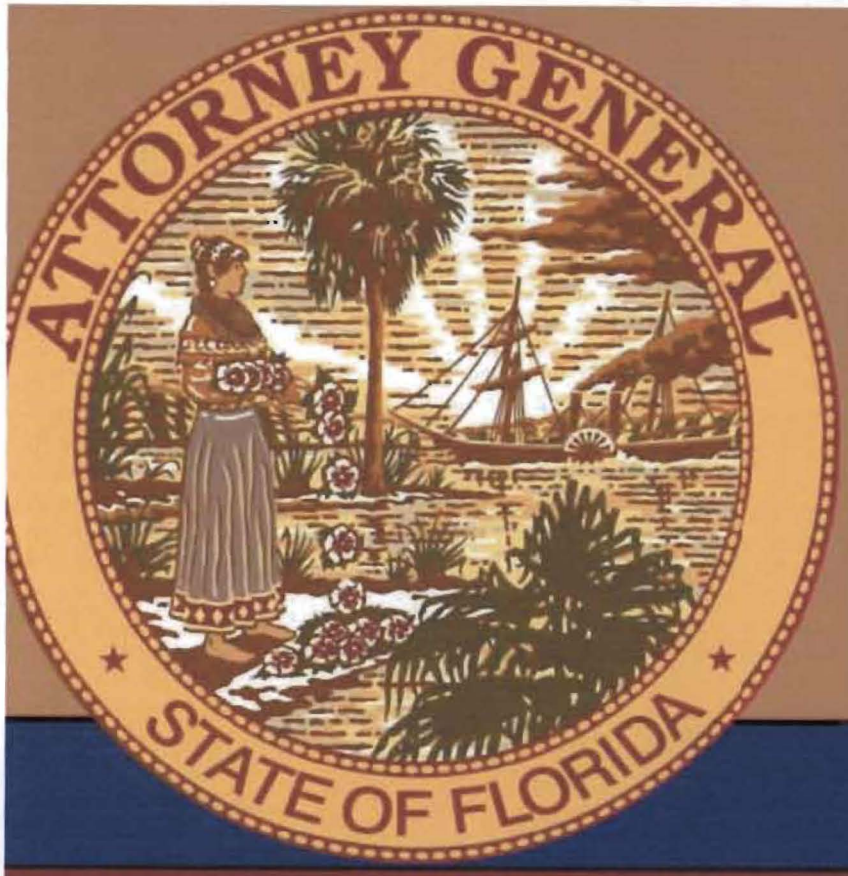
Highlights of activities from each of the Gang Reduction Program sites—Richmond, VA; Los Angeles, CA; North Miami Beach, FL; and Milwaukee, WI—are presented in the next section.

➢ APPENDIX B

FLORIDA GAND REDUCTION STRATEGY
2008-2012

EXCERPTS TO INCLUDE: *EXECUTIVE SUMMARY*
AND *MEASURING SUCCESS*

To view or download the entire version of the Florida Gang Reduction Strategy go to:
http://www.safeflorida.net/safestreets



Florida Gang Reduction Strategy 2008 - 2012

Office of the Attorney General
Bill McCollum

Executive Summary

Introduction and Executive Summary

Criminal gangs steal and destroy property, sell drugs to our children and commit acts of violence and brutality that threaten the safety and security of our citizens. The number of gangs and gang members has been growing steadily in Florida for years. For far too long efforts to address gang problems in Florida have been left to local law enforcement and community leaders with minimal federal and state support and no statewide strategy.

In the summer of 2007, at the request of the Attorney General, the heads of affected state agencies and law enforcement associations gathered to address this issue and formulate a statewide strategy to combat gangs. Those participating in this executive group were:

The Attorney General; Secretary of the Florida Department of Corrections; Executive Director of the Florida Department of Law Enforcement; Secretary of the Florida Department of Juvenile Justice; Secretary of the Florida Department of Children and Families; Commissioner of the Florida Department of Education; Director of the Florida Office of Drug Control; Director of the Florida Highway Patrol; President of the Florida Sheriffs Association; President of the Florida Police Chiefs Association; and President of the Florida Prosecuting Attorneys Association.

In December 2007, at the suggestion of this executive group, the Office of the Attorney General convened a summit of interested community leaders from around the state to help develop a statewide strategy. This document is the product of the efforts of the executive group and the participants in this summit.

The mission of the Florida Gang Reduction Strategy is to increase the safety of the citizens of Florida by empowering Florida's youth to reject criminal gangs as a viable option and by substantially reducing gang-related crime and violence in Florida.

The goals to accomplish this mission are:

1. Stop the growth of criminal gangs in Florida
2. Reduce the number of gangs and gang members
3. Render gangs ineffectual

To meet these goals and accomplish the mission the strategy is built on three pillars:

- Prevention/Intervention
- Law Enforcement
- Rehabilitation and Re-entry

The key to the success of the strategy is coordination and cooperation among federal, state and local governments, law enforcement, elected officials, community leaders and the business community. In order to empower Florida's youth to reject criminal gangs as a viable option a coordinated and cooperative effort of all parties must be focused on the same basic objectives.

Prevention/Intervention Objectives:

Objective 1: Expose Florida's gangs and their activities for their violent and destructive reality.

Objective 2: Educate youth, parents and other mentoring adults to help Florida's youth reject gang involvement.

Objective 3: Mobilize communities to repel gang appeal to Florida's youth.

Objective 4: Provide effective prevention/intervention programs for those youth who are the most likely targets of gang recruitment and identified young gang members.

Objective 5: Encourage and assist the creation of positive extracurricular activities and workforce development programs for Florida's at-risk youth.

Objective 6: Support existing and new community groups/coalitions that take a stand against criminal gangs.

The strategy recommends that in addition to local gang prevention/intervention coalitions there be the formation of regional gang prevention/intervention and suppression task forces to share information and coordinate efforts at both the prevention/intervention and law enforcement level. Members of these regional gang task forces should include representatives of federal, state and local law enforcement, prosecutors, public defenders, the judiciary, juvenile justice, schools, area prevention/intervention programs, local government, and religious and community leaders.

Law Enforcement Objectives:

Objective 1: Compile a statewide priority list and target every major criminal gang in Florida for dismantling by arresting and prosecuting gang leaders and key gang members.

Objective 2: Identify and target for arrest and prosecution all gang kingpins in Florida and seek life imprisonment sentences.

Objective 3: Prioritize the prosecution of gun crimes related to gangs and gang members and target for prosecution those who provide guns to juvenile gang members ineligible to own or possess a gun.

Objective 4: In areas of intense gang activity, build community policing, remove firearms from low to mid-level gang members and use injunctive powers to prohibit gang members from gathering.

Objective 5: Improve intelligence gathering and information sharing on gangs and gang members and their activities among and between federal, state and local law enforcement, prosecuting authorities, schools and Juvenile Justice, Corrections, and Children and Families officials.

Objective 6: Strengthen gang law enforcement and prosecution with more uniform, specialized training and designate one Assistant State Attorney in each judicial circuit whose sole, full-time responsibility is to prosecute and manage the prosecution of gangs, gang members and gang related crimes.

Objective 7: Coordinate federal, state and local law enforcement/prosecution efforts toward the common objective of combating gang activity in Florida including setting priorities and targeting certain gangs, gang activities and gang related prosecutions all over Florida.

Rehabilitation and Re-entry Objectives:

Objective 1: Expand opportunities for criminal gang members in state or county correctional systems to participate in prison industry programs, educational programs, faith and character-based programs, drug treatment/rehabilitation programs and all other programs designed to rehabilitate offenders or assist offenders in preparing for re-entry into society upon completion of their sentences.

Objective 2: Develop and implement specialized, individualized counseling and mentoring focused on motivating criminal gang members in state or county correctional systems to gain educational, vocational or job training, social skills, and lifestyle interests and habits that will turn offenders away from gang membership/participation and toward becoming productive members of society when released.

Objective 3: Provide job placement for criminal gang members in state or county correctional systems upon release and provide a counselor/mentor for each such released offender to give guidance, assist with acquiring and keeping a job, educational advancement, and building positive relationships outside of gangs for a period of five years after release.

Objective 4: Require all identified criminal gang members in state or county correctional systems, upon release, to register with an identified state office and keep their address, contact information and job status current for ten years after release and require such released offender to report in person for counseling to a counselor/mentor at least quarterly for the first five years after release.

Objective 5: Train and qualify the necessary number of counselors/mentors/teachers to accomplish the individualized goals of gang member rehabilitation and re-entry from state or county correctional systems.

The Florida Gang Reduction Strategy requires the collection and regular maintenance of solid data on gangs, gang members, prevention/intervention programs and monitoring and coordination of activities and initiatives designed to implement and effectuate the mission, goals and objectives of the strategy. The Florida Department of Law Enforcement (FDLE), The Florida Department of Corrections, The Florida Department of Education, The Florida Department of Children and Families, Florida Department of Juvenile Justice, and many sheriffs' offices and police departments collect some data on gangs, gang members and gang activities. Unfortunately, this data is incomplete and to date there has been no comprehensive collation of data from these various sources into a usable form. There is a need to formulate a method whereby the data collected by these various agencies can be pooled to facilitate the objectives of this strategy. Similarly, the development of a statewide repository of resources with respect to prevention/intervention programs for at-risk youth or community/non-profit programs targeted at youth likely to be recruited into gangs would be beneficial to the furtherance of the strategy.

The 2007 FDLE survey of law enforcement and school resource officers shows that there are at least 1,500 gangs and over 65,000 gang members in Florida. According to Department of Corrections' officials, an analysis of inmate population indicates that all 67 Florida counties have gang

member representation in the prison system. Therefore the need for a statewide comprehensive database is critical to the success of the strategy. The current "FDLE Gang Database" program was established following an earlier recommendation of a statewide grand jury and is designed to capture information voluntarily submitted by local law enforcement on gangs and gang members. However, based upon reports from local agency officials, the majority of Florida's law enforcement agencies are not using the state system for various reasons. The most common reason stated is the lack of interfaces that would allow this data to be electronically uploaded from their Records Management Systems (RMS) to the FDLE system, thus eliminating the need for duplicate entries into two systems. Chiefs and Sheriffs clearly indicate that they do not have the time, staff or desire to enter the data twice.

To implement the Florida Gang Reduction Strategy it will be necessary to create and maintain a group or body with a centralized office in the state to collect and collate data from all sources. This group will also coordinate and direct, where appropriate, federal, state and local actions for all three pillars of the strategy and measure success. For this purpose it was recommended that there be created a Coordinating Council on Gang Reduction Strategies to be chaired by the Attorney General and comprised of the heads of the following agencies: Commissioner of the Florida Department of Education, Executive Director of the Florida Department of Law Enforcement, Secretary of the Florida Department of Corrections, Secretary of the Florida Department of Juvenile Justice, Secretary of the Florida Department of Children and Families, Director of the Florida Office of Drug Control, Director of the Florida Highway Patrol, President of the Florida Sheriffs Association, President of the Florida Police Chiefs Association and President of the Florida Association of Prosecuting Attorneys.

Under this plan the Office of the Attorney General and the Coordinating Council would be responsible for coordinating, implementing, and measuring the progress of the Florida Gang Reduction Strategy. The Office of the Attorney General and the Coordinating Council would seek the steadfast synchronization of gang reduction efforts throughout the state, building task forces, creating coalitions and assuring the flow of shared information and intelligence on gangs, gang members and progress on prevention/intervention and prisoner re-entry programs. It is anticipated that from time to time the Attorney General and the Coordinating Council will make recommendations to the Legislature and the Governor to further efforts in implementing the Gang Reduction Strategy. It is also anticipated that there would be periodic summits in the various areas of the state to bring together community leaders to counsel on ways the strategy can be improved or the implementation furthered. These summits would be arranged and directed by the Attorney General and the Coordinating Council.

Measuring Success

The mission of the Gang Reduction Strategy is to increase the safety of Florida citizens by empowering Florida's youth to reject criminal gangs as a viable option and by substantially reducing gang-related crime and violence in Florida. The goals to accomplish the mission are stopping the growth of criminal gangs in Florida, reducing the number of gangs and gang members and rendering gangs ineffectual. To accomplish this mission and these goals, there must be a standard set of data collected annually to measure progress and success.

Gang Data

The number of criminal gangs and gang members in Florida is unclear. The Florida Department of Law Enforcement (FDLE) announced in October 2007 the results of their first gang survey since 1995. It appears from this survey there are at least 1,500 gangs and well over 65,000 gang members in Florida. Unfortunately, the 2007 survey is incomplete and may have duplications in it. The survey was directed to Florida's sheriffs, police chiefs, and school resource officers. A very sizeable number of them failed to respond. Inasmuch as there is overlap among the jurisdictions of police, sheriffs, and school resource officers, it is difficult to analyze and sort out areas where duplication in counting may have occurred.

The InSite Intelligence Database is a statewide database maintained by FDLE which is designed for the sharing of gang intelligence among all law enforcement agencies statewide. The system is contributed to on a voluntary basis. Many law enforcement agencies utilize their own database for storage of intelligence information and may or may not contribute to the FDLE statewide gang database. One of the reasons this occurs is the diversity of database products among local and state agencies. These agencies must duplicate their efforts if they are to share their intelligence statewide. Sheriffs and police chiefs have been unable or unwilling to assign staff for duplicate entries; therefore, the statewide database rarely gets updated with the information that is stored in local databases.

It is the recommendation of this strategy that FDLE research all technological solutions available to find a way to allow local and other state systems to electronically upload their gang intelligence information into the statewide system in order to eliminate the need for duplication and to facilitate a complete statewide database that all law enforcement and criminal justice agencies can readily access and retrieve pertinent information on a timely basis.

The Department of Corrections maintains a Security Threat Group (STG) management initiative that catalogs gangs and gang members in state prisons. From the data available, it appears that there is at least one gang member from each of Florida's 67 counties serving in state prison. While this initiative appears very thorough with respect to those who are inmates and have been identified as potential threats to prison security, it is unclear whether it captures all criminal gang members serving time in state prison or whether some of those who are cataloged as gang members for prison purposes might not be members of a criminal gang in a local community prior to entering prison.

As a consequence of the incomplete and loosely connected data on criminal gangs and gang members currently available, the coordinating council, together with regional task forces, must develop a simplified statewide system for the annual reporting of data on gangs and gang members. For the purpose of this strategy, the only data that needs to be collected annually is the name and geographical location of every identified criminal gang in a region, the number of members in each gang, and the nature and amount of criminal activity attrib-

uted to each gang during the preceding year (number of arrests and convictions of gang members).

Each regional task force should designate a single member to be responsible for collecting the data from the region each year and submitting it to the Office of the Attorney General. It is suggested that the easiest way to accomplish this collection task would be for each sheriff to take responsibility for collecting the data from his or her county using the resources of the office and information solicited from each police department in the county, the county jail, and the school resource officers of all the middle schools and high schools in the county. The designated regional task force member should work with each sheriff and his or her designee to screen the data collected from the various sources within the county for accuracy and to make sure there are no duplications.

The measuring period to be used in the collection of this gang data will be the fiscal year ending June 30 of each year. It will be the responsibility of each regional task force to collect the data from its region, organize it and submit it to the Attorney General no later than September 30 of each year.

It is recognized that for this strategy to meet its long-term objectives, law enforcement and prevention organizations will need more detailed data on gangs and gang membership than is outlined in this strategy. This is the data needed for metrics. It is the basic, fundamental data necessary to measure progress and success. Along the way, the members of the regional task forces and the coordinating council need to work with FDLE to improve and make more effective and efficient its periodic longer survey of gangs and gang membership. One of the first things each regional task force should do is to critique the current FDLE survey and make suggestions for improvement in the questions and data requested and help FDLE come up with a way to assure a more timely and complete response from those surveyed and a way to assure more accuracy and less duplication of data reported.

The regional task forces and the coordinating council should also work with FDLE on improvements to InSite. Intelligence sharing is crucial to law enforcement and a more complete and workable database for intelligence sharing purposes to fight gangs would be invaluable. But the immediate goal is to gather the simple, basic data necessary for measuring progress and success.

Prevention/Intervention Data

Unfortunately, Florida has no state database identifying existing prevention/intervention programs directed toward at-risk youth, nor any criteria for grading or measuring the success of existing programs. There is no repository of information as to which, if any, existing prevention programs in Florida specifically target children at risk of being recruited into gangs or their effectiveness. The very fact that gang membership appears to have steadily grown in Florida for a number of years suggests existing programs are not working, or at best, have had a limited impact on gang recruitment and growth.

The coordinating council or a designated state agency must gather a comprehensive list/database on all at-risk youth prevention programs operating in Florida. Included in this database should be an indication which, if any, of these programs specifically target children at risk of being recruited into gangs and how these programs operate.

As the regional task forces are formed and organized, they will be asked by the coordinating council to compile a list within their region of all prevention/intervention programs directed toward at-risk youth and designate which, if any, of these programs specifically target children at risk of being recruited into gangs. For those that target youth being recruited into gangs, the task force should determine the model and/or methodology being used by the program to address this targeted group and provide this information to the coordinating council. The list should be comprehensive and include both faith-based and non faith-based organizations and programs. Where identifiable, mentoring programs should

be included. In developing the list, the task forces should consider including local Boys and Girls Clubs; Urban League programs; YMCA programs; Police Athletic Leagues programs; United Way supported organizational programs; and any other after-school or community based programs or initiatives the task forces can identify.

As with the collection of gang data, the regional task forces should also collect and revise the prevention/intervention program data on an annual basis for the previous 12 months of a fiscal year concluding on June 30 and report the data to the Office of the Attorney General by September 30 each year. It is suggested that each task force identify a member to be in charge of the collection of this data and that a member of the task force from each county be designated to work with this person to collect the data and sort through it. All members of the regional task force should be called upon to contribute information and provide assistance in this effort.

The collection of this prevention/intervention program data in each region is not only important for statewide measurement of progress and success, it is also essential for the regional task forces to have this data in order to succeed in their prevention/intervention objectives. The collection of the base data should be the first priority of each task force.

A longer term goal of the coordinating council and the task forces should be the development of a methodology to measure the quality of success for prevention/intervention programs directed specifically at youth likely to be recruited into gangs. There appears to be a lot of literature on various prevention/intervention programs directed at these youth, but no known gauge exists for measuring the success or comparative success of these programs.

Workforce Development/Training Programs

A sub-set of the prevention/intervention programs for youth at risk of being recruited into gangs are those specifically designed to engage these youth in workforce development and/or training. As with most youth who engage in criminal activity and end up in state prisons, few gang members have developed marketable skills or held a job. Each task force should collect a list of all existing workforce development/training programs in the region. Most likely, these will be associated with area high schools, but there may be some prevention/intervention programs or community organizations with a workforce development component that exists separate and apart from the schools.

While existing organizations that are trying to address youth vulnerable to gang membership may already have a workforce development component, the likelihood is that the task force will have to foster, develop or coordinate this component in their regions. It may be that the task forces will have to develop such programs specifically for the targeted youth. Only with a good database of existing programs and available resources will this be possible.

Drug Rehabilitation/Treatment Program Data

Studies indicate that drugs are intertwined with criminal gangs and gang members. It is believed that criminal gangs in Florida are the primary retail outlet for the sale of most types of illicit drugs. Many young gang members are drug users and may be addicted to one or more narcotics.

The Gang Reduction Strategy contemplates a coordinated effort between the regional task forces and drug prevention/rehabilitation/treatment programs in the local communities. Task forces should collect a list of all such programs in their region and involve them in their effort as appropriate. This data should be readily accessible. Task force leaders should seek the assistance of the Florida Office of Drug Control to access this data and help with the coordination of all drug related issues.

Inmate Re-entry Data

Working with the Department of Corrections, and the coordinating council, each regional task force needs to collect a list of faith-based and non faith-based programs in the region which provide assistance to inmates leaving state prisons. The development of organized efforts in the state by non-profit organizations to provide assistance to offenders in acquiring jobs is gaining support in several parts of the state. The programs of these organizations need to be identified and assessed as to the number of released inmates who are able to be placed in jobs each year and how successful they may be in terms of keeping these individuals employed once they have acquired employment.

This data will be invaluable to both the task forces and the Department of Corrections in future efforts to divert gang members who leave prison from returning to a gang lifestyle. There are a few programs that exist in Florida that are specifically targeted to gang members who are re-entering society, and task forces should consider working with the existing programs. Task forces should work with the Department of Corrections in developing job opportunities for gang members re-entering society and methods of mentoring and following them for a substantial period of time after release from prison.

Community Involvement

While the Department of Corrections will play the leading role in re-entry initiatives, community leaders and local law enforcement must also play an active role and partner in these efforts. Without local law enforcement officials and community leaders supporting community re-entry programs and addressing re-entry issues at a local level, the chances for sustainable success will be limited. Examples of quality partnerships exist all around the state. They include Jacksonville's Re-entry Center (Jacksonville Sheriff's Office), Broward County's Re-entry Coalition, and the Pinellas County Ex-Offender Re-entry Coalition. Coalitions and organizations such as these represent examples where state and local partnerships can work together toward executing a successful gang reduction strategy. Replicating these partnerships with local knowledge, combined with state resources, will provide continuity and effective re-entry programs for offenders who are members of criminal gangs both in state correctional systems and for those offenders on community supervision.

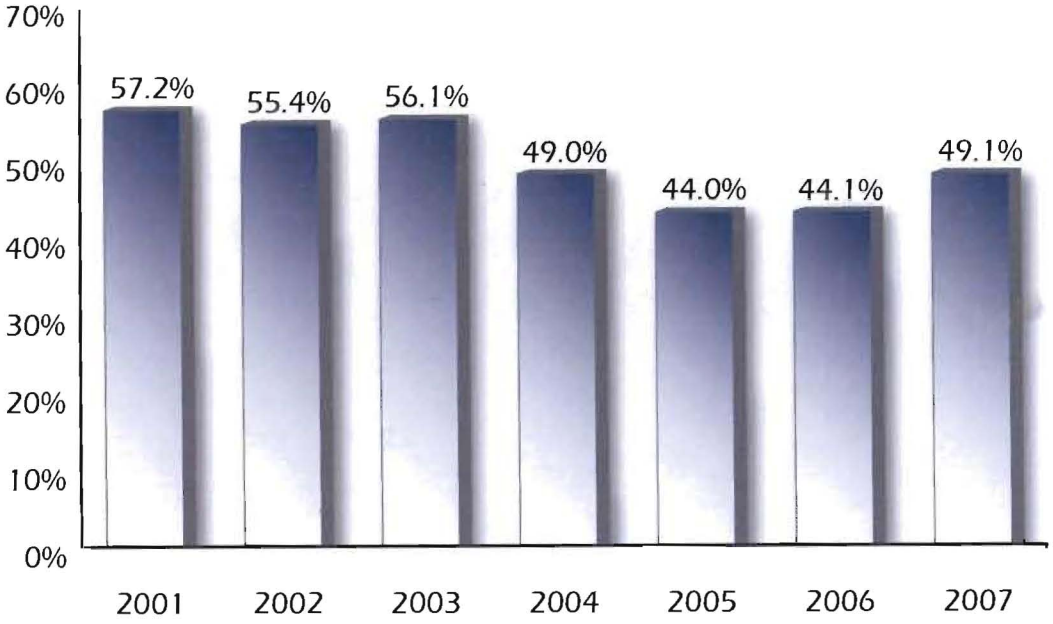
Both community leaders and the Department of Corrections will call upon members of the coordinating council for any assistance they may be able to give in developing or carrying out this plan for re-entering ex-offenders.

Importance of Metrics

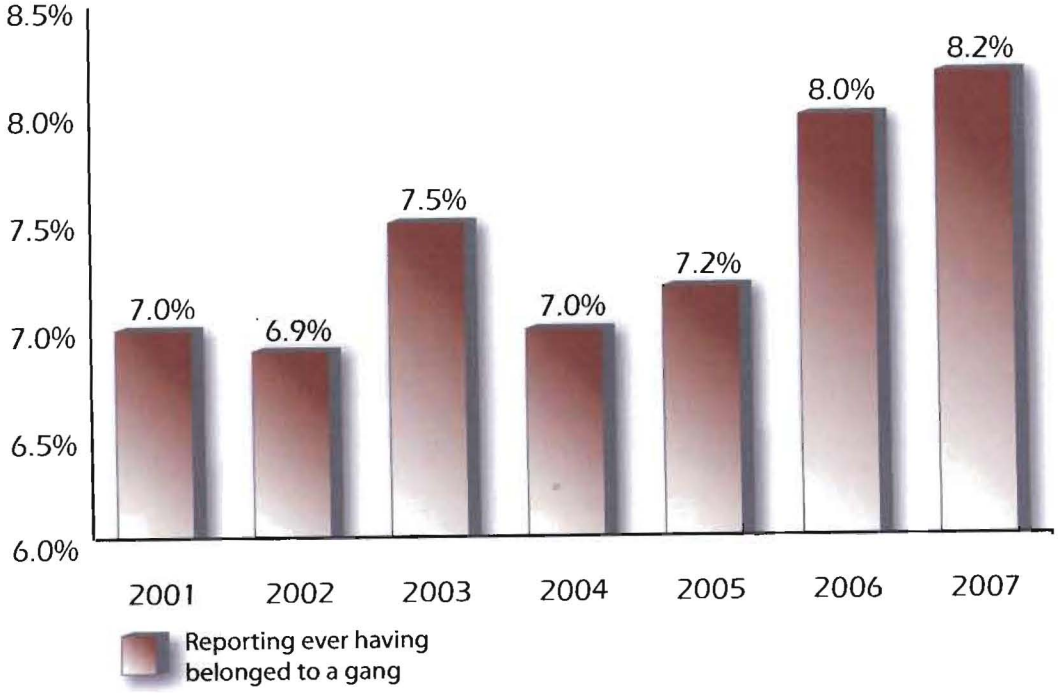
Metrics are essential to the carrying out of the objectives of this strategy. Each regional task force should not only develop a plan for carrying out its objectives, but also devise its own system to measure progress and success. The data to be gathered as described here will be necessary not only as information needed by the regional task force to develop its plans and carry them out, but also for the measurement of success and progress. In the same way, the coordinating council needs this data in order to measure statewide success and be able to determine what adjustments need to be made in the strategy.

Gang Data From the Florida Youth Substance Abuse Survey (2001-2007)

Percent of High School Gang Members That Joined Before Age 14



Gang Membership Among Florida's Middle and High School Students



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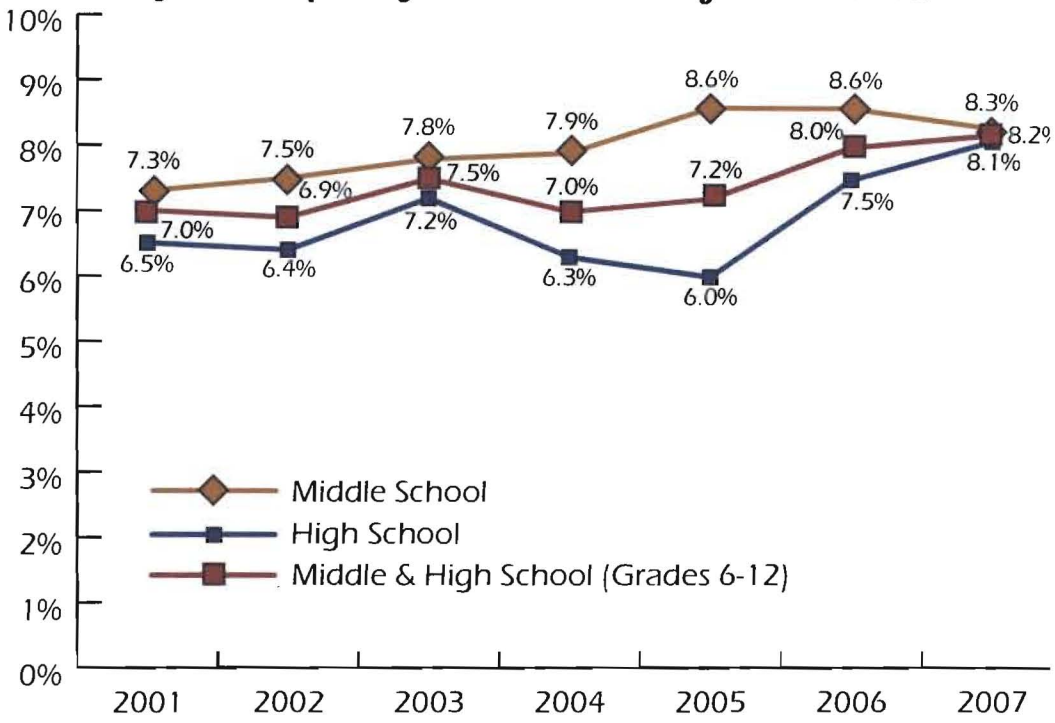
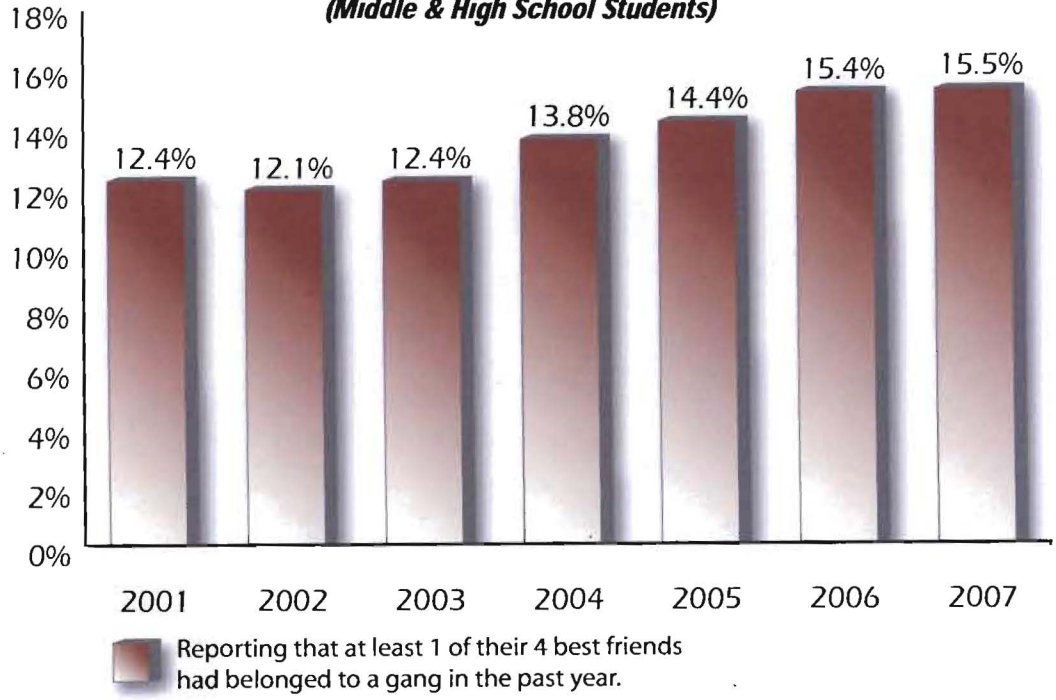


In the Past Year, How Many of Your Four Best Friends Had Been Members of a Gang? (Middle & High School Students)



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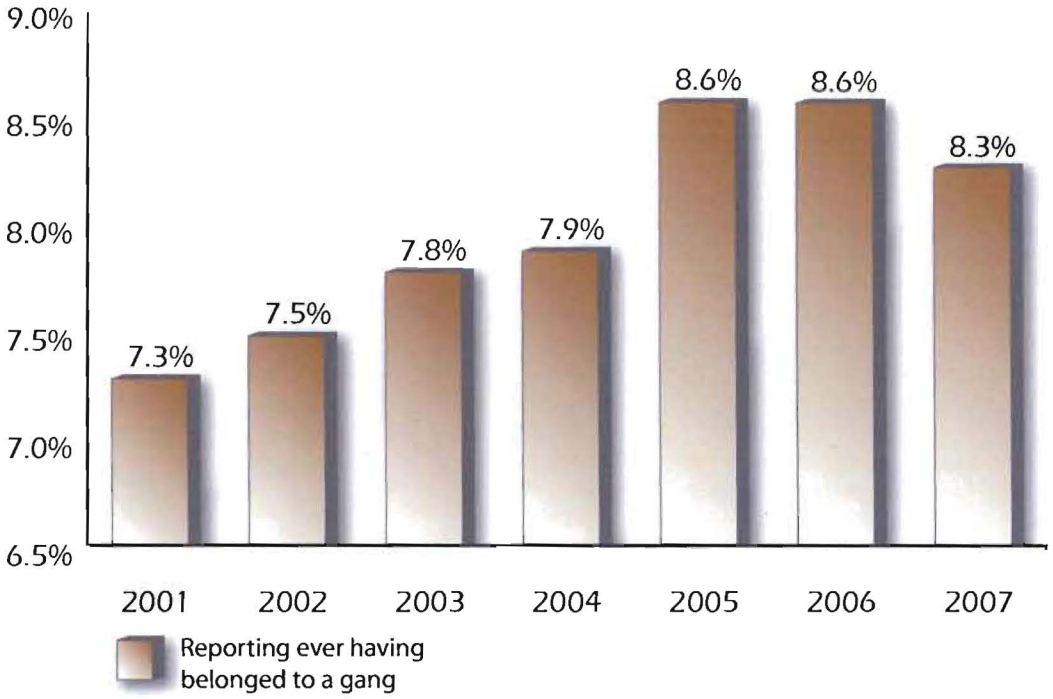
Gang Membership Among Florida's Middle School Students



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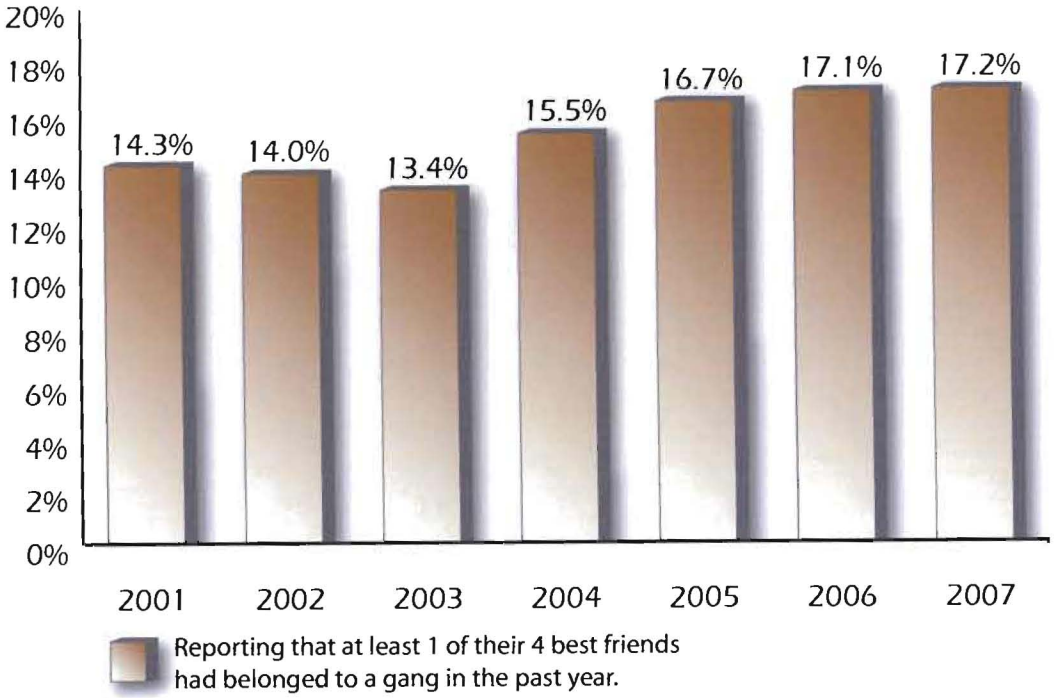
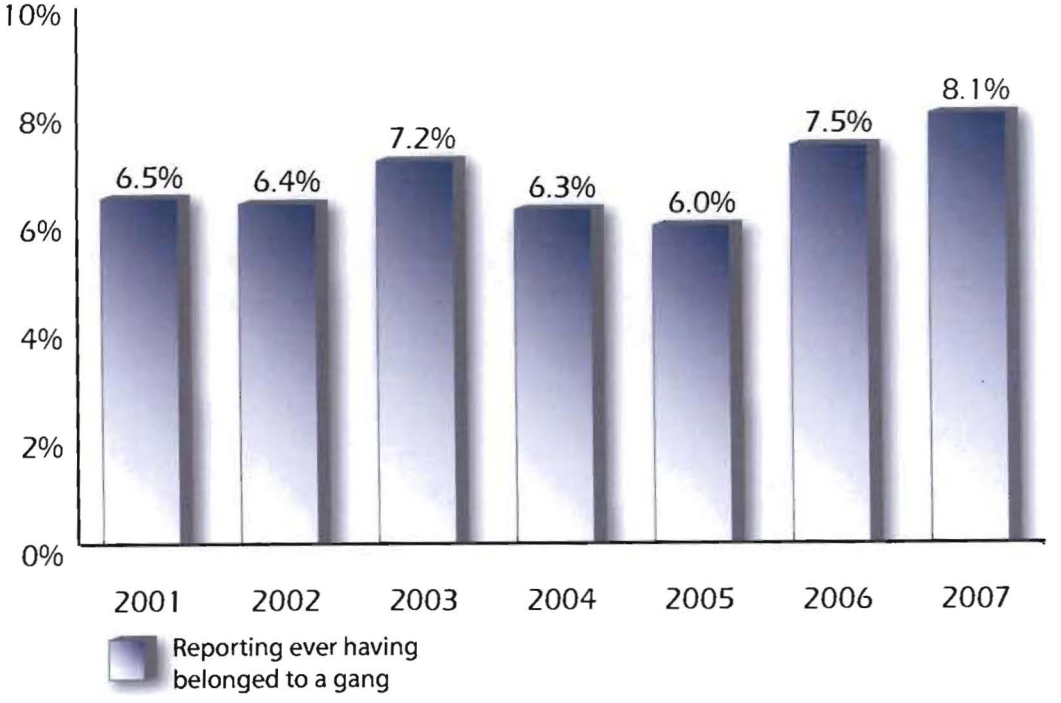
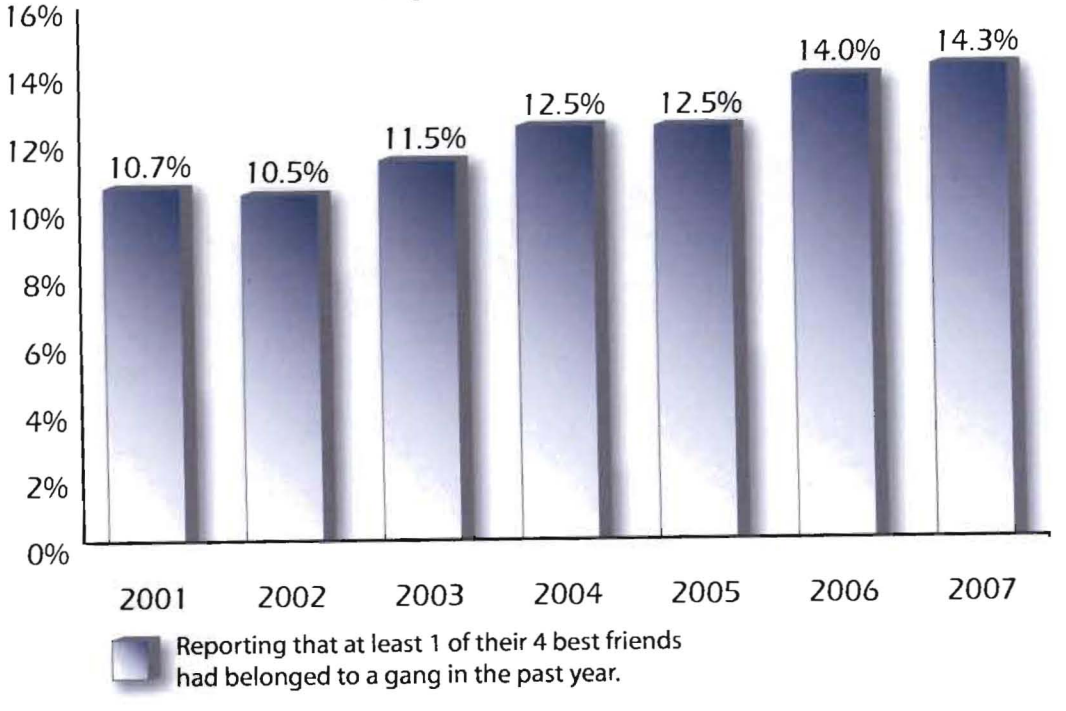


Gang Data From the Florida Youth Substance Abuse Survey (2001-2007)

Gang Membership Among Florida's High School Students



In the Past Year, How Many of Your Four Best Friends Had Been Members of a Gang? (High School Students)



STATE OF FLORIDA
Case No. SC 09-1910

NINETEENTH STATEWIDE GRAND JURY

First Interim Report

A STUDY OF PUBLIC CORRUPTION IN FLORIDA AND RECOMMENDED SOLUTIONS

December 17, 2010

Ft. Lauderdale, Florida

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We, the members of the Nineteenth Statewide Grand Jury, find that public corruption continues to be an issue of great importance in all aspects of government, politics, and business throughout the State. We have been asked to address an enormous issue which is broad in scope and long in history. We take on this challenge with sincere appreciation for the gravity of the undertaking. We hope our words are heard and our recommendations are followed. Better efforts to prevent and penalize corruption are necessary in order to stop fraud, waste, and abuse of our State resources. Given the serious fiscal limitations at all levels of government, anti-corruption efforts must stop the theft and mismanagement of vital public funds. This mismanagement and theft penalizes taxpayers by driving up the cost of all government services. Therefore, we call for an immediate repeal of what can only be referred to as *Florida's Corruption Tax*.

The cadets at our nation's military academies swear an oath to neither lie, cheat, steal, nor tolerate those who do. There is no reason we should hold our public officials to a lesser standard.

Introduction

Public corruption is a vast topic that can be expounded upon in tomes or taught to children in the form of the Golden Rule. The work of government becomes more complex as society grows and needs become greater, but fundamentally government must be based on a shared trust and integrity.

After receiving testimony from witnesses over the last ten months, we find that these recommendations are still as valid today as they were a decade ago. We recommend these ideas be considered in the upcoming legislative session, and continuing sessions, until they are passed.

In seeking to reduce public corruption, we must determine on behalf of the citizens of the State of Florida how to define and punish public officials who transcend the bounds of what is considered to be ethical conduct. What is considered to be ethical may depend on the person asked. There are those who feel transparency should prevail regardless of the impact on the elected official's individual privacy, others acknowledge that some private life must be allowed to exist in order to attract outstanding and willing candidates. A balance must be struck between the citizens' right to honest government and the right of public officials to serve those they are elected to represent without fear of prosecution for unintentional hyper-technical violations.

We first sought to understand what corruption is - what it looks like and what behaviors and activities we hope to deter. We considered the type of individual we expect in public service: an honorable and ethical person. "Honor" is an elusive term. "Honor is the good opinion of the people who matter to us, and who matter because we regard them as a society of equals who have the power to judge our behavior."[i] "A willingness to subordinate one's

individual inclinations to the greater good, will naturally be regarded as honorable; disloyalty and selfishness will be correspondingly dishonorable."[ii] Honor is seen as a "virtue" because it connotes this ideal. [iii]

It is important to distinguish between honor and ethics. For example, honoring one's duty to an employer may dictate remaining mute about unscrupulous behavior; however, good ethics dictates becoming a whistleblower.

Traditionally the virtue of honor was seen as a fusion of honor and ethics. A person needed to recognize and strive towards a universal standard of virtue, rather than just a local or temporal standard.[iv] While the use of the term "honor" has faded in our culture, the term "ethics" has risen in prominence. It has been said that "ethics" involves thinking systematically about conduct; whereas, making "moral" choices is about determining right and wrong. Ethics draws on standards that have evolved over time but persist and therefore help identify what is right and proper in the current environment or society. Ethics can refer to principles of action that implement or promote more timeless moral values. "Moral character" is an internal mechanism developed to make decisions with honesty and fidelity. In the end, a person's character is what allows him to act (or not) on the determinations he makes between right and wrong.[v]

The Convening of the Nineteenth Statewide Grand Jury

This Grand Jury was impaneled in February of 2010 upon the petition of Governor Charlie Crist to the Supreme Court of Florida. Specifically, Governor Crist stated in his petition that the following should be addressed statewide:

1. Examine criminal activity of public officials who have abused their powers via their public office;

2. Consider whether Florida's prosecutors have sufficient resources to effectively combat corruption;

3. Address the effectiveness of Florida's current statutes in fighting public corruption;

4. Identify any deficiencies in current laws, punishments or enforcement efforts and make detailed recommendations to improve our anti-corruption initiatives;

5. Investigate crimes, return indictments, and make presentments; and

6. Examine public policy issues regarding public corruption and develop specific recommendations regarding improving current laws.

Politics and History

It has been said that the history of corruption is really the history of reform following corrupt actions. This can be seen in the motives of the Revolutionary generation in establishing our country. One of their greatest tasks was creating a nation unlike the British system which they viewed as corrupt and full of patronage, bribery, and graft. Thus, the 1787 Constitution of the United States created a government with a strong system of checks and balances. Despite the checks and balances, our system has not fully prevented corruption, and our history is riddled with examples of public service immoralities.

The present Florida Constitution was last revised and adopted in 1968 and has subsequently been amended. Under the Florida Constitution, Florida's State government is divided into Legislative, Executive, and Judicial branches. Following the idea of separation of powers, Florida's Constitution states that "No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein."[vi] While the Governor is vested with the supreme executive power, Florida has a uniquely collegial form

of State government in which the Governor shares responsibility with the Cabinet for administration through various boards.[vii]

Florida ranks as the fourth largest state in the union with over eighteen and a half million residents and may soon overtake the third largest state - New York.[viii] This massive population and significant growth means the Governor and Cabinet are unable to directly manage the executive branch due to Florida's increasingly larger and more complex government which has blurred the lines of executive responsibilities. During a four-year term, the Governor will make approximately 6,000 appointments of special officers to boards, commissions, water management districts, and various other agencies and organizations. Some of the Governor's board appointments include the professional and occupational boards which have statewide responsibilities, while others include local and regional boards.[ix]

Florida's governmental structure is anything but clear or easy to understand. It is no wonder why the citizens of Florida are often confused as to who is responsible when it comes to holding our government officials accountable.

History of the Florida's Code of Ethics

If democracy is sustained by public trust, it is understandable why we need rules addressing ethics, conflicts of interest, and disclosure of personal finances. The increase in laws and regulations in these areas appears to be a result of diminishing public trust in government. We have learned that public confidence began a decline in the early 1960s and continued to decline until the Watergate scandal led to an all time low in public trust of government. Following Watergate, ethics became a major issue in national politics.[x] However, attention to

ethics is usually scandal-driven and short-lived.[xi] In order to increase public trust, public servants must improve their ethical behavior and reputation since public confidence is likely related to the public perception of ethical practice.[xii]

Ethics is action you can defend publicly and comfortably. The burden of ethics is that there is no checklist or computer program that can teach you every ethical decision; personal judgment and responsibility are necessary. In recognizing this, we turn to Florida's attempt to regulate ethical conduct. Florida has a Constitutional requirement for a code of ethics which was established under Chapter 112, part III, F.S.

Prior to 1967, Florida relied on "common law" cases to address governmental ethics. In 1967 the Legislature enacted the beginning of what eventually would be called the "Code of Ethics for Public Officers and Employees" (hereinafter "the Code"). That same year the Florida Constitution Article III, Section 18 was amended to provide that "A code of ethics for all state employees and non-judicial officers prohibiting conflict between public duty and private interest shall be prescribed by law." In 1998, the voters passed a constitutional amendment proposed by the Constitutional Revision Commission which moved the constitutional requirement for a code of ethics under Article II, section 8(g).

Initially the Code applied only to state officers and employees. In 1969, public officers and employees of all counties, cities, and other political subdivisions were added to the Code. In 1970, the Legislature enacted criminal sanctions into the Code, making violations misdemeanors punishable by a fine not to exceed $1,000 or imprisonment for up to one year. Following the Watergate crisis in 1974, the Legislature responded by requiring public disclosure of various financial interests, creating tighter restrictions on conflicts of interests, and establishing a Commission on Ethics to provide a means of administrative enforcement of the

Code. Witnesses testified that with administrative penalties in place, the Legislature no longer felt the need for criminal penalties.

In 1975, the Commission on Ethics was prescribed the authority to investigate, and civil fines were enacted for violations. In 1976, Governor Askew organized the first citizen initiative constitutional amendment petition in order to enact into law what he felt the Legislature failed to do. Thus, the "Sunshine Amendment" was passed and is now part of the State Constitution under Article II, section 8. Section 8 titled "Ethics in government" states that "A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse." To secure this right, Section 8 requires:

- Full and public disclosure of financial interests be disclosed by any elected constitutional officer or any candidate for such office.
- All public officers and candidates for any public office to file full and public disclosure of their campaign finances.
- Any public officer or employee who breaches the public trust for private gain and any person or entity inducing such breach shall be liable to the state for all financial benefits obtained by actions.
- Any public officer or employee who is convicted of a felony involving a breach of public trust shall be subject to forfeiture of their retirement benefits and pension.
- A two year prohibition for members of the legislature or statewide elected officers from representing another person or entity for compensation before the same governmental body or agency of which the individual was a member or officer. Members of the legislature have this same prohibition during their term of office and it is expanded to include appearing before judicial tribunals for these reasons.
- An independent commission (Florida Commission on Ethics) to conduct investigations and issue reports on all complaints concerning breach of public trust by public officers and employees.
- A code of ethics be created for all state employees and nonjudicial officers which prohibits conflicts of interest between public duty and private interests.

Since this constitutional revision, the Code of Ethics has undergone additional revisions usually as a response to some form of scandal and public outcry. We will discuss additional reforms to the Code of Ethics as they relate to our recommendations.

Previous Reports Addressing Anti-Corruption Reform in Florida

In determining how to address anti-corruption efforts in the State of Florida, it is important to understand the history and development of Florida's state, county, and local government and previous anti-corruption efforts.

We heard testimony regarding the 1999-2000 Public Corruption Study Commission which was tasked by Governor Jeb Bush to complete a comprehensive review of current laws, policies, and procedures and to make recommendations on how Florida might better prevent and respond to acts of public corruption. We have reviewed the Study Commission's recommendations regarding government corruption laws and learned that many of those recommendations have been adopted by the Legislature, although slowly and many not until years later.

Unfortunately, there were several crucial recommendations of the Public Corruption Study Commission that were not adopted by the Legislature. Some of the proposals that were not accepted are as follows:

- Make it a second degree felony to "refrain from performing a mandatory constitutional or statutory duty or cause another person to refrain from performing such duty," with corrupt intent to obtain a benefit for any person, or to cause harm to another person;

- Make it a second degree felony to criminally misuse one's official position with the following language:

(1) It is unlawful for any public servant to corruptly use, or attempt to use, his or her official position or any public property or public resource which may be within his or her trust, to:
(a) Establish any business relationship between the public servant's own agency and any business entity in which the public servant receives or has an expectation of receiving a benefit; or
(b) Perform his or her official duties to secure for himself or herself a benefit that is not generally available to the public.;

- Expand the jurisdiction of the Statewide Prosecutor to include any violation of Ch. 838, F.S., which concerns the offenses by public servants;

- Require elected officials to be educated in ethics laws, the public records law, the "Sunshine Law," and the criminal laws regarding government corruption;

- Give the Commission the authority to initiate investigations based upon receipt of sufficient evidence, as judged by an extraordinary majority of the Commission;

- Allow the Commission to investigate situations when referred directly to the Commission by the Governor, the Comptroller (now, CFO), the State Attorneys; and others (law enforcement or regulatory agencies such as the Florida Bar, DBPR, Elections Commission, etc.).

The Public Corruption Study Commission is not the only body who has studied public corruption in recent years. As recently as this past year, Palm Beach County convened a Grand Jury to investigate matters of public corruption. While a majority of the Palm Beach County Grand Jury's work focused on local issues specific to Palm Beach County, they also addressed issues that can be applied to the State or local governments outside of Palm Beach County.

One of the strongest recommendations the Palm Beach Grand Jury proposed was for the Legislature to create a sentencing enhancement for crimes committed "under the color of law". This is a solid recommendation and will be discussed in much greater detail later in this report.

Present Day Corruption in Florida

In order for government to function, the people must have faith in their elected officials. Unfortunately, one only needs to read the newspaper headlines across the State of Florida to realize that public corruption is pervasive at all levels of government. Recent public opinion polls show that a record number of Americans believe public officials are untrustworthy. Anti-corruption reform is critical to restoring that trust. Reform is essential to remedy the perception that those in leadership roles fail to set a noble example of service and are instead assumed to be egotistical and corrupt. When the legislature fails to act after its own members flagrantly abuse their positions, the citizens lose respect, faith, and interest in the government. Vigorously attacking public corruption will begin to repair this breach of trust. The best and brightest will not be discouraged from government or civil service, and more ethical and moral citizens will be interested in running for office. We believe the citizens of Florida deserve public servants who will take action for the good of the whole even if it does not benefit them individually. While there are many good officials in Florida, our government buildings and elected bodies should be overflowing with leaders who are not afraid to set a higher standard for their conduct and serve as role models for the public.

In order to reduce corruption and increase ethical behavior in the public sphere, we must also define "public service." Public service is more than just government service alone and includes quasi-governmental agencies and many non-profit organizations funded in part by public dollars. Therefore, any organization and its employees or agents can be defined as public servants when the mission leans towards the public rather than private side of service.

Those in public service must understand the power they hold is for the benefit of the people. This raises the question of whether or not ethics laws and legislation go far enough to encompass public service performed by entities beyond strictly official governmental agencies.

Broadly defined, "Public Corruption" is the "abuse of public roles or resources or the use of illegitimate forms of political influence by public or private parties."[xiii] Others have stated that political corruption is the betrayal of an office or duty for some consideration.[xiv] Public corruption is a catchall for many abuses including bribery, graft, extortion, nepotism, kickbacks and outright theft. The definitions in use vary among local, state and federal authorities, further complicating matters. The federal government has defined public corruption crimes as those which involve abuses of the public trust by government officials.[xv]

Much of the way our federal and state government is structured today is in response to massive public corruption scandals and accompanying public outrage in the past. For example, the civil service system was created so that public jobs would be filled based on merit and not on a system of patronage. Codes of ethics for Congress were created in 1964 after a probe into the dealings of the Secretary of State. Limitations on campaign contributions by individuals and corporations were established in 1971 and were further tightened following the revelation that President Nixon received massive amounts of illegal corporate and personal contributions during his presidential campaign. The Foreign Corrupt Practices Act was passed in 1977 to prohibit gifts or payments to foreign officials by American companies after it was discovered U.S. multinational companies hid vast sums of their balance sheet to have available to bribe foreign governments. In 1978, the Ethics in Government Act required financial disclosure requirements on federal officeholders and allowed independent counsel to investigate allegations of corruption against them. Since the 1970's federal laws have been used to prosecute state as well as local

officials. The same checks and balances that are the hallmark of our system of government have resulted to some degree in the frustration of prosecution of public corruption as the U.S. Supreme Court has ruled certain campaign finance laws and federal mail-fraud statutes to be unconstitutional.[xvi]

The timing of this Report is intentional. We recommend the 2011 Legislative Session address our concerns with urgency, so this report focuses primarily on recommendations to changes in laws of the State of Florida. Certainly, there are many factors to be considered in developing new legislation. We cannot ignore the reality that it is often hard to impose more severe restrictions on one's own interests. We believe that the time for action is now, and we urge the Florida Legislature and other governmental bodies to address anti-corruption efforts using our findings and recommendations as a starting point.

We are not the first state, country, or society to address public corruption, and it is unrealistic to believe we will be able to eliminate the problem. However, we have determined that there are certain measures which would reduce the capacity of those who would use a Florida public office for malfeasance. The best anti-corruption approach involves not only deterrence through oversight and punishment, but also prevention through education. With this in mind, we turn to our recommendations which are followed by supporting facts and findings from testimony and evidence we received.

We have reviewed the current anti-corruption laws in the State of Florida, and according to testimony and statistics, we find that they are not being utilized to their full potential. We have determined that public officials are often not being punished under the public corruption laws in Florida for four main reasons:

1. The act is not criminalized;

2. The cases are too difficult to prove due to their definitions and extra elements of proof;

3. The punishments imposed too lenient and do not fit the crime; or

4. The prosecutor decides to charge another crime or accept a plea in order to allow a defendant to avoid the negative publicity of public corruption charges.

RECOMMENDATIONS

"***Where a man assumes a public trust, he should consider himself a public property.***"[xvii]

Thomas Jefferson

We have heard testimony and received evidence about Florida and federal anti-corruption criminal laws. Our Report will look at the more significant anti-corruption crimes in Florida[xviii] and what steps the Florida Legislature should take to improve these laws and punish those public officials and servants who willfully violate them.

1. **"Public servant"**
2. **"Corruptly" or "with corrupt intent"**

I. CRIMINAL REVISIONS

Our first group of recommendations addresses Chapter 838 which is titled "Bribery; Misuse of Public Office."

A. Amendments to Chapter 838 Terminology

1. **We recommend the Legislature redefine the term "public servant" under F.S. 838.014(6).**

   a. **Amend F.S. 838.014(6)(a) to read:**

   "Any officer or employee of a governmental entity."

   b. **Create F.S. 838.014(6)(e) to state:**

   "Any officer, director, partner, manager, representative, or employee of a nongovernmental entity, private corporation, quasi-public corporation, quasi-public entity or anyone

covered under chapter 119 that is authorized by law or contract to perform a governmental function or provide a governmental service on behalf of the state, county, municipal, or special district agency or entity to the extent that the individual's conduct relates to the performance of the governmental function or provision of the governmental service."

" 'Governmental function' or 'governmental service' for purposes of Chapter 838 means performing a function or serving a governmental purpose which could properly be performed or served by an appropriate governmental unit or which is demonstrated to perform a function or serve a purpose which would otherwise be a valid subject for the allocation of public funds."

" 'Governmental entity' as defined under F.S. 11.45(1)(d)

We have heard testimony that the impediments to prosecuting criminal violations under Chapter 838 are due in large part to the current definition of "public servant" provided for under F.S. 838.014(6):

> (6) "Public servant" means:
> (a) Any officer or employee of a state, county, municipal, or special district agency or entity;
> (b) Any legislative or judicial officer or employee;
> (c) Any person, except a witness, who acts as a general or special magistrate, receiver, auditor, arbitrator, umpire, referee, consultant, or hearing officer while performing a governmental function; or
> (d) A candidate for election or appointment to any of the positions listed in this subsection, or an individual who has been elected to, but has yet to officially assume the responsibilities of, public office.

After hearing testimony of witnesses, we conclude that this definition presents a major obstacle to charging and prosecuting crimes under Chapter 838. This narrow definition of "public servant" prevents numerous prosecutions of corrupt individuals who are serving a governmental function or service but are not within reach of the law as written. This Grand Jury was convened to address our criminal anti-corruption laws among other concerns. Our first and most critical recommendation is to amend the definition of "public servant." Many of our

governmental duties have been shifted to private or semi-private entities and actors who do not fall within the existing narrow definition and thus escape prosecution under anti-corruption laws.

It is important to understand how the present definition of "public servant" came to be defined. In 2003, the "Paul Mendelson Citizens' Right to Honest Government" bill was passed. This bill was mostly successful at addressing numerous problems with Chapter 838 including increasing the level and severity of bribery and unlawful compensation. According to a witness who prosecutes public corruption offenses, increasing the criminal penalties has helped achieve cooperation from targets of investigations and increased the prosecutor's bargaining power. While the "Paul Mendelson" bill strengthened several provisions of our public corruption laws, it also greatly weakened the definition of "public servant" and thus drastically reduced the overall effectiveness of our public corruption laws.

Prior to this bill, "public servant" was defined as follows:

> "Public servant" means any public officer, *agent*, or employee of government, whether elected or appointed, including, but not limited to, any executive, legislative, or judicial officer; any person who holds an office or position in a political party or political party committee, whether elected or appointed; and any person participating as a special master, receiver, auditor, juror, arbitrator, umpire, referee, consultant, administrative law judge, hearing officer, or hearing examiner, or *person acting on behalf of any of these*, in performing a governmental function; but the term does not include witnesses. Such term shall include a candidate for election or appointment to any such office, including any individual who seeks or intends to occupy any such office. It shall include any person appointed to any of the foregoing offices or employments before and after he or she qualifies.

The original bill proposed amending the term "public servant" to state:

> (6) "Public servant" means:
> (a) Any officer or employee of a state, county, municipal, or special district agency or entity;
> (b) Any legislative or judicial officer or employee;
> (c) Any officer, director, partner, manager, representative, or employee of a *nongovernmental entity* that is authorized by law or contract to perform a governmental function or provide a governmental service on behalf of a state, county, municipal, or special district agency or entity to the extent that the individual's conduct relates to the performance of the

> governmental function or provision of the governmental service;
> (d) Any person, except a witness, who acts as a master, receiver, auditor, juror, arbitrator, umpire, referee, consultant, or hearing officer while performing a governmental function; or
> (e) A candidate for election or appointment to any of the positions listed in this subsection, or an individual who has been elected to, but has yet to officially assume the responsibilities of, public office.

However, due to an amendment, the definition to "public servant" was changed to its present state. The present definition not only omitted within the definition of "public servant" any reference to an agent of government or a person acting on behalf of an agent or employee of government as had previously been included, but this amendment also struck out language which would have included nongovernmental entities who perform a governmental function or service. Thus, it managed to omit anyone who is not directly an "officer or employee of a state, county, municipal, or special district agency or entity." We find the Legislature must address the definition of "public servant" and we request that consideration be given to the language we have recommended.

Specific Examples of a Failed Definition

To underscore the problem with the definition of "public servant," we will provide some examples. We heard from witnesses and FDLE investigators who provided us with background of a complaint concerning the mismanagement of funds by a for-profit corporation (hereafter "Company") who was contracted to perform services for a non-profit organization (hereafter "Agency"). The Agency was formerly a department of state government which received funds from the federal government to perform the governmental function of aiding citizens. Due to privatization, the divisions within the department were allowed to operate with almost no agency oversight. The Company was paid with government funds, performed a government service, but their excesses were immune to prosecution because they are not public servants. This

investigation started after an anonymous letter was provided to law enforcement detailing numerous specific complaints involving allegations of bid rigging, kickbacks, and bribery. After a lengthy investigation, it was determined that contracts awarded had appearances of impropriety due to personal relationships, nepotism, and the way in which they were awarded. The Company then spent money on what appeared to be excessive program costs including clothes, laptops, field trips, and elaborate graduation ceremonies with champagne toasts. Even if probable cause could be established for criminal charges in this instance for bribery, kickback, or bid tampering, the employees or recipients of this government funded contract could not have been charged under Chapter 838 as they are not "public servants." They are, in fact, a non-profit organization receiving funding of federal money which flowed through the State and County. All of this is frustrating and absurd. It is clear that any entity which contracts to perform services for the state must be held accountable for any violation of criminal laws just as any governmental employee.

Another example showed criminal investigations into payoffs of community service hours which were never performed but were signed for completion. Community service hours are frequently ordered to be completed while a defendant is placed on probation. Community service hours can be completed at pre-approved locations as determined by the Department of Corrections. When a probationer completes community service hours, he or she is required to have the completed hours signed as verification prior to submitting the form to his or her probation officer for credit. During one investigation, it was revealed that a suspect who was signing for completed hours was being paid cash to falsify the hours completed. The State Attorney's Office considered charges including bribery and unlawful compensation, both under Chapter 838. Ultimately, the State Attorney's Office determined it could not file charges in part due to the definition of "public servant" because the suspect was employed by a private non-

profit corporation and not an agency or governmental unit. It is clear that this suspect was receiving a bribe to falsify a potential public record and should fall under some prosecution for bribery. If it was determined that this person does not fall under the definition of "public servant," then the State should have the option of considering another viable charge such as commercial bribery which is presently unconstitutional as we will discuss later. Ultimately, no one was criminally prosecuted.

In a third investigation, a non-governmental organization contracted with the county to provide alternatives to incarceration and social services. Part of the services the organization provided were pre-trial release services to arrested criminal adult defendants. During an undercover investigation, law enforcement paid cash to two individuals who supervised defendants in the pre-trial release program. In exchange for the cash payments, the pre-trial release employees allowed the undercover officers to avoid reporting and other requirements of the pre-trial release program. The State Attorney's Office concluded the two employees failed to meet the definition of "public servant" and thus any charges under Chapter 838 for bribery, official misconduct, or unlawful compensation could not be charged. The pre-trial release program was determined to receive funding from the county to perform what would otherwise be a governmental function or service; however, because the program was being contracted to a private non-governmental organization, the employees did not fall under the definition of "public servant."[xix] Commercial bribery was not an option here either as it has been held unconstitutional. Ultimately, no one was criminally prosecuted.

Privatization of home inspections by private social service providers is another topic we investigated. This revealed home inspectors, paid by taxpayer dollars, were falsifying records about conducting home visits. These individuals are paid for travel and they must submit a

voucher stating that they traveled to a certain home and conducted a visit. This travel is approved by a supervisor. In addition, when a home inspector arrives at the home he or she is visiting, a visitation log and affidavit are also signed by the home owner. The investigation revealed travel vouchers submitted for travel which never occurred and forged homeowners' signatures. In one instance an agency client was not even placed at the home the inspector alleged visiting. The State Attorney's Office declined prosecuting any violation of Chapter 838 as the definition of "public servant" did not cover a home inspector who was contracted by a state agency to perform these visits. The only applicable law that could be charged was falsifying official documents which is a second degree misdemeanor offense. The crime for falsifying official documents has since been increased to a third degree felony. However, this does not address why someone receiving public funds to perform a governmental function is not treated the same as a governmental employee whose position has not been privatized.

Privatization is not only occurring with probation and pre-trial release services; our prisons have been and will likely continue to be privatized. Witnesses have testified that they are concerned with private prison guards who accept bribes, but cannot be prosecuted in the same way as a prison guard who works in a state run prison.

These are just a few examples of situations in which the term "public servant" has prohibited criminal prosecution of individuals receiving public funds to perform governmental services or functions. The time has come for the Legislature to close this appalling loophole. If policymakers are inclined to increase privatization, they must make sure this corruption issue is addressed so that hidden unpunished corruption costs are not added on top of the state's bill.

2. **We recommend removing the definition and the element of "corruptly" or "with corrupt intent" from Chapter 838 and all criminal violations therein and be replaced with "knowingly" or "intentionally."**

Before proceeding into our justification for this recommendation, we must provide a little background. Chapter 838 and the Code of Ethics (Chapter 112, Part III) frequently overlap in the actions they seek to prohibit. A major difference between Chapter 838 and the Code of Ethics is that Chapter 838 is criminal, while the Code of Ethics usually provides for only civil penalties.[xx] Criminal penalties typically require an intentional act while civil may not. We have heard that Chapter 838 punishes both the public servant as well as the person who participated in the criminal offense; whereas, the Code of Ethics typically only punishes public officials or employees. Civil violations under the Code of Ethics require a lesser standard of proof than any criminal violations under Chapter 838. In addition, because of different procedural rules, evidence which is admissible in a civil case may not be admissible in a criminal case.

From testimony we have heard and in reviewing the statutes, we have learned that F.S. 112.313(2) (soliciting or accepting gifts) and 112.313(4) (unauthorized compensation) align closely with F.S. 838.015 (bribery) and 838.016 (unlawful compensation for official behavior). Therefore, the Legislature has shown the ability to criminalize portions of the Code of Ethics under Chapter 838.

While the prohibited conduct may overlap between Chapter 838 and the Code of Ethics, there are distinctions where the two Chapters seek to punish similar action. We have heard testimony that the Legislature used the words "corruptly" or "with corrupt intent" throughout Chapter 838 in order to differentiate criminal and civil penalties for the similar action. The Legislature wanted to provide an additional hurdle for prosecuting conduct which might also be a

violation under the Code of Ethics. We find this distinction unnecessary as the criminal statutes already requires criminal intent and a higher burden of proof; therefore, we recommend the additional language of "corruptly" or "with corrupt intent" be removed from Chapter 838.

We have repeatedly heard from law enforcement and prosecutors that the use of the word "corruptly" or "with corrupt intent" makes charging violations under Chapters 838 more difficult than other criminal statutes and may require additional evidence such as testimony from one of the actors involved. Under F.S. 838.014(4), "corruptly" or "with corrupt intent" means "acting knowingly and dishonestly for a wrongful purpose." We find the additional element of "corruptly" or "with corrupt intent" should be removed from bribery, unlawful compensation, official misconduct, and bid tampering.

Bribery is criminalized under F.S. 838.015 and states:

> (1) "Bribery" means *corruptly* to give, offer, or promise to any public servant, or, if a public servant, corruptly to request, solicit, accept, or agree to accept for himself or herself or another, any pecuniary or other benefit not authorized by law with an intent or purpose to influence the performance of any act or omission which the person believes to be, or the public servant represents as being, within the official discretion of a public servant, in violation of a public duty, or in performance of a public duty.
> (2) Prosecution under this section shall not require any allegation or proof that the public servant ultimately sought to be unlawfully influenced was qualified to act in the desired way, that the public servant had assumed office, that the matter was properly pending before him or her or might by law properly be brought before him or her, that the public servant possessed jurisdiction over the matter, or that his or her official action was necessary to achieve the person's purpose.
> (3) Any person who commits bribery commits a felony of the second degree...

Unlawful compensation or reward for official behavior under F.S. 838.016 states:

> (1) It is unlawful for any person *corruptly* to give, offer, or promise to any public servant, or, if a public servant, *corruptly* to request, solicit, accept, or agree to accept, any pecuniary or other benefit not authorized by law, for the past, present, or future performance, nonperformance, or violation of any act or omission which the person believes to have been, or the public servant represents as having been, either within the official discretion of the public servant, in violation of a public duty, or in performance of a public duty. Nothing herein shall be construed to preclude a public servant from accepting rewards for services performed in apprehending any criminal.
> (2) It is unlawful for any person *corruptly* to give, offer, or promise to any public servant, or, if a public servant, *corruptly* to request, solicit, accept, or agree to accept, any pecuniary or other benefit not authorized by law for the past, present, or future exertion of any influence upon or with

any other public servant regarding any act or omission which the person believes to have been, or which is represented to him or her as having been, either within the official discretion of the other public servant, in violation of a public duty, or in performance of a public duty.
(3) Prosecution under this section shall not require that the exercise of influence or official discretion, or violation of a public duty or performance of a public duty, for which a pecuniary or other benefit was given, offered, promised, requested, or solicited was accomplished or was within the influence, official discretion, or public duty of the public servant whose action or omission was sought to be rewarded or compensated.
(4) Whoever violates the provisions of this section commits a felony of the second degree...

Official misconduct is criminalized under F.S. 838.022 which presently states:

(1) It is unlawful for a public servant, *with corrupt intent* to obtain a benefit for any person or to cause harm to another, to:
(a) Falsify, or cause another person to falsify, any official record or official document;
(b) Conceal, cover up, destroy, mutilate, or alter any official record or official document or cause another person to perform such an act; or
(c) Obstruct, delay, or prevent the communication of information relating to the commission of a felony that directly involves or affects the public agency or public entity served by the public servant.
(2) For the purposes of this section:
(a) The term "public servant" does not include a candidate who does not otherwise qualify as a public servant.
(b) An official record or official document includes only public records.
(3) Any person who violates this section commits a felony of the third degree...

We have heard testimony that the language and definition of "corruptly" or "with corrupt intent" has limited the effectiveness of Florida's criminal anti-corruption laws by placing an extra burden beyond the requirement of criminal intent that is standard in criminal offenses. We acknowledge there are cases in which corrupt intent has been found; however, this additional burden requiring a public servant's intent to be "corrupt" is not necessary. [xxi] We find that the standard criminal burden of "intentionally" or "knowingly" is sufficient to establish a public servant has acted with scienter (guilty knowledge) as to separate these offenses from an unintentional violation which may be civil.

We also find that in certain circumstances it is entirely appropriate to punish similar actions both civilly and criminally. Under F.S. 112.311 the Legislature has determined that the law should protect against any conflict of interest and establish standards for the conduct of

elected officials and government employees as a declaration that the integrity of government is essential. Public officials and those bound by the Code of Ethics are rightfully held to a higher standard. In accordance with testimony, we are only aware of two similar violations between the two Chapters, but as we will discuss later under section II, we are recommending more. We find that due to the extra burden of proof, public officers and those subject to Chapter 112, Part III, need not worry about criminal prosecution unless their action was intentional and can be proven beyond a reasonable doubt, in which case they should be punished criminally and civilly for certain violations.

Bid tampering, F.S. 838.22, also requires "with corrupt intent" as referred to in the preceding recommendation. We heard one reason bid tampering is hard to prove is because procurement laws, in some instances quite properly, do not necessarily require that the lowest bid be accepted, allowing the selection of a most qualified bid. The awarding of contracts involves subjective decisions which make it difficult to prove criminal intent without some form of illicit payment or insider knowledge. The additional burden of "corrupt intent" seems an unnecessary hurdle in bid tampering or bid rigging schemes.

Numerous states specify that violations of the state's ethics law are also violations of criminal law.[xxii] Other states, like Florida, have criminal statutes in addition to ethics laws. We find if the Legislature does not want to criminalize the Code of Ethics, then it must make stronger criminal statutes to prohibit certain intentional unethical acts by public officers and employees. We find the Legislature should remove the words "corruptly" or "with corrupt intent" throughout Chapter 838.

B. <u>We recommend the Legislature strengthen bid tampering under F.S. 838.22.</u>

a. Make a new subsection which addresses the situation in which a public servant knowingly fails to use the competitive bidding process for the procurement of commodities or services when required to do so by law, ordinance or other rule or regulation to include federal rules or regulations for grants.

b. Prohibiting a public servant from intentionally splitting bids in order to avoid the competitive bidding process.

c. Rename the statute "Bid tampering or bid rigging."

Currently, under F.S. 838.22, bid tampering is criminalized as follows:

> (1) It is unlawful for a public servant, with *corrupt intent* to influence or attempt to influence the competitive bidding process undertaken by any state, county, municipal, or special district agency, or any other public entity, for the procurement of commodities or services, to:
> (a) Disclose material information concerning a bid or other aspects of the competitive bidding process when such information is not publicly disclosed.
> (b) Alter or amend a submitted bid, documents or other materials supporting a submitted bid, or bid results for the purpose of intentionally providing a competitive advantage to any person who submits a bid.
> (2) It is unlawful for a public servant, with *corrupt intent* to obtain a benefit for any person or to cause unlawful harm to another, to circumvent a competitive bidding process required by law or rule by using a sole-source contract for commodities or services.
> (3) It is unlawful for any person to knowingly agree, conspire, combine, or confederate, directly or indirectly, with a public servant to violate subsection (1) or subsection (2).
> (4) It is unlawful for any person to knowingly enter into a contract for commodities or services which was secured by a public servant acting in violation of subsection (1) or subsection (2).
> (5) Any person who violates this section commits a felony of the second degree...

The laws regulating the government procurement process are vulnerable to corruption. According to testimony from a veteran prosecutor who has worked public corruption cases, his office receives many complaints alleging corruption of the bidding or procurement process. Unfortunately, his office rarely prosecutes these crimes because Florida's bid tampering law is too restrictive in the criminal actions it prohibits. By comparison, we have heard federal laws are

better at prohibiting criminal bidding schemes. According to the U.S. Department of Justice, bid rigging is one of the most common violations prosecuted by the Antitrust Division.[xxiii]

The Federal Sherman Antitrust Act prohibits agreements among competitors to fix prices, rig bids, or engage in other anti-competitive activity. The Antitrust Division of the Department of Justice is responsible for prosecution of violations of the Sherman Antitrust Act. Violations of the act include a felony conviction and a fine up to $1 million for individuals and up to $100 million for corporations. In addition, victims may seek civil damages of up to three times the amount of the damages suffered.[xxiv]

Bid rigging is a fraud on the bidding process whereby an agreement is made among competitors or potential bidders as to who will win a potential contract. Bid rigging can also occur when a purchaser solicits bids to purchase goods or services outside of the proscribed process.[xxv] The bidders agree in advance who will submit the winning bid. Due to this bidding scheme, the purchaser receives bids which are inflated. According to Department of Justice,[xxvi] there are four basic bid rigging schemes as follows:

> ***Bid Suppression:*** In this type of scheme, one or more competitors agree not to bid, or withdraw a previously submitted bid, so that a designated bidder will win. In return, the non-bidder may receive a subcontract or payoff.
>
> ***Complementary Bidding:*** In this scheme, coconspirators submit token bids which are intentionally high or which intentionally fail to meet all of the bid requirements in order to lose a contract. "Comp bids" are designed to give the appearance of competition.
>
> ***Bid Rotation:*** In bid rotation, all co-conspirators submit bids, but by agreement, take turns being the low bidder on a series of contracts.
>
> ***Customer or Market Allocation:*** In this scheme, co-conspirators agree to divide up customers or geographic areas. The result is that the coconspirators will not bid or will submit only complementary bids when a solicitation for bids is made by a customer or in an area not assigned to them. This scheme is most commonly found in the service sector and may involve quoted prices for services as opposed to bids.

We have heard testimony that Florida's bid tampering law is narrower in scope than the federal bid rigging statute. Florida's bid tampering law is confined to situations whereby a public servant, co-conspirator, or contractor engage in: 1) tampering with the bidding process by disclosing material information concerning a bid; 2) altering or amending a submitted bid; or 3) circumventing the competitive bidding process using a *sole-source contract* with the corrupt intent to provide another person a benefit or to harm another person.

According to our review, a definition of sole-source contract is not provided in Chapter 838 or anywhere else in the Florida statutes. However, based on a State of Florida Attorney General opinion, it appears that an example of sole-source contract is one when one vendor is provided a contract and this vendor contracts other vendors to perform some function which should have been bid out.[xxvii] The term does not appear to be defined in Florida Administrative Code, but it is found in Rule 57-60.004 to prohibit Space Florida (an independent special district to promote the space industry) from entering sole-source contracts with prospective vendors unless specific conditions are authorized. These conditions require the contract be preapproved with justification. A justifiable reason would include when only a specific vendor is capable of providing the goods or services. We are unaware of any case law to help us interpret Florida's bid tampering statute. We find that by limiting bid tampering to sole-source contracts under F.S. 838.22(2), our bid-tampering statute would allow numerous other bid rigging schemes whereby bids are submitted in order to circumvent the lawful bidding process.

Bid Splitting

We have received testimony that one way the bidding process is circumvented may involve a public servant splitting the proposal so that an entire contract is not competitively bid out; rather, the bid goes out in smaller contracts. This is called bid splitting. Bid splitting is a

common scheme whereby request for proposals or bids are separated out into individual projects in order to avoid reaching monetary threshold caps which may require a more strict bidding process. What would be a serious criminal violation, in the context of structuring transactions designed to avoid reporting dollar thresholds, turns into a common government practice that avoids oversight and public bid through structured procurement payments. According to testimony, bid splitting is not presently a criminal violation under Florida law, but may be under federal law. Clearly, the State of Florida should have a criminal statute to prohibit bid splitting.

We heard testimony about a public servant who was able to circumvent the bidding process by bid splitting, bid tampering, and bid rigging. This public servant was ultimately charged with bid tampering. Due to Florida's limited criminal law on bid tampering, he was able to avoid other criminal charges for schemes we find should have been illegal. We heard testimony about an investigation and prosecution of this public servant and others who were former employees of the Florida Fish and Wildlife Conservation Commission (FWC). In addition, we heard about a private contractor who was charged, as well as other contractors who apparently were involved in bidding schemes, but who have not yet been charged.

Investigators and two witnesses explained a massive criminal enterprise which spanned more than five years. This case is being prosecuted by the Office of the Statewide Prosecution in the Tampa Bureau which charged the defendants with racketeering and conspiracy to commit racketeering with sixty-six predicate offenses including official misconduct, theft, organized scheme to defraud, and bid tampering. This case also provides insight into numerous problems with our State's present efforts to prevent corruption even within its own agencies.

We heard testimony from witnesses about their illegal activities while working as supervisors at FWC. According to the first witness he often split out a building contract in order

to avoid having to go through certain state procurement rules. He explained that he would bid out different parts of the building process (such as roof, drywall, or electrical) as it allowed him to avoid bidding out the entire contract to one general contractor. In essence, he was acting as a general contractor in order to avoid procurement regulations and get the work done quicker. However, according to an investigator, by acting as the general contractor he appeared to have been paying too much for the jobs he was bidding out either because he didn't understand what he was doing or because he was intentionally overpaying these contractors. While the first witness claimed he was saving money for the State in the long-run, the State lost the proper oversight of the job and overpaid certain contractors for the services they provided. This witness was not specifically charged for this bid splitting scheme.

In addition, we heard about bid rigging schemes between the first witness and numerous contractors. We also learned of kickbacks the second witness received from a vendor. From testimony we received, these two public servants and contractors appear to have engaged in numerous bid rigging schemes including bid suppression, complementary bidding, and bid rotation. We learned that the long-standing relationship between the two witnesses and a particular vendor eventually developed into a massive bid-rigging scheme that completely subverted any protection the State guidelines would have given. These two witnesses consistently offered projects to a particular vendor, who would then submit bids using the names and information belonging to his friends' companies. The bids would be manipulated to ensure that a particular company or vendor would win. In most cases, the vendor would actually perform the work, and the payment issued to the bid-winning vendor would be re-directed with some payment being made for the use of the company name in the bid-rigging scheme. In some instances, the work actually performed was different than what was described when bids for the

project were officially solicited and different than what invoices described. In at least one case, we heard that no work was intended or performed, and the relationship between the vendor and the first witness coupled with the unmonitored bidding process allowed for blatant fraud. These two witnesses also received benefits in the form of goods and services in exchange for the continued promise of contracts being awarded by way of the manipulated bid process. Testimony was that these two witnesses appeared to have confidence in the work quality of the particular vendor, and they participated in the scheme to get work done faster and at cheaper prices from a reliable vendor. In light of the fact that there is no true record of what work was actually done by whom, there is no way to know for sure how much the State may have lost based on this fraud over several years. In at least one instance, money was paid for a bogus project and costs were inflated to cover the use of "middlemen." As we will discuss later in our Report, procedures must be implemented to ensure the benefit of a true competitive bidding process and that there must be an effective audit process to avoid the manipulation of the system.

The Legislature must make sure any bid tampering statute applies to private entities receiving public funds to perform a governmental function or service, even when that private entity is receiving federal grant funds through the State or county. During the previously mentioned testimony on the state agency paying the company for training and champagne toasts, there was an appearance of impropriety in the bidding process of certain contracts. In some instances, state programs are federally funded. Any amendments to the state's procurement standards should clearly provide that it is a criminal violation to circumvent the federal procurement rules when operating under a federal grant while performing a state governmental function. We find when a nongovernmental entity is being paid to perform a state or local governmental function or service, even with federal grant money, the employees of the

nongovernmental entity should be held to the same standards as a state or local governmental employee.

In considering bid splitting language, we refer the Legislature to F.S. 287.057(9) which states: "[a]n agency shall not divide the solicitation of commodities or contractual services so as to avoid the requirements of subsections (1)-(3)." We find that the Legislature should incorporate this idea into a criminal violation, expanding it beyond state agencies to include avoiding the procurement requirements under state, county, or municipal statute or ordinance, as well as any federal procurement requirements received by a nongovernmental entity in relation to a grant.

As it presently stands, the scope of the bid tampering statute is too narrow and therefore the statute's use is limited. For this reason we find the Federal Sherman Antitrust Act should be considered when addressing our bid tampering statute and expanding our laws to prohibit bid rigging schemes. In order to clarify the activities we believe should be prohibited, the title of the statute should be changed to clearly reflect the intent to prohibit bid tampering as well as bid rigging.

C. <u>We recommend the Legislature address commercial bribe receiving and commercial bribery under F.S. 838.15 and 838.16 by striking "common-law duty" and defining "statutory duty."</u>

Commercial bribe receiving is under F.S. 838.15 and states:

> (1) A person commits the crime of commercial bribe receiving if the person solicits, accepts, or agrees to accept a benefit with intent to violate a statutory or common-law duty to which that person is subject as:
> (a) An agent or employee of another;
> (b) A trustee, guardian, or other fiduciary;
> (c) A lawyer, physician, accountant, appraiser, or other professional adviser;
> (d) An officer, director, partner, manager, or other participant in the direction of the affairs of an organization; or
> (e) An arbitrator or other purportedly disinterested adjudicator or referee.
> (2) Commercial bribe receiving is a third degree felony.....

Commercial bribery is stated under F.S. 838.16 as follows:

> (1) A person commits the crime of commercial bribery if, knowing that another is subject to a duty described in s. 838.15(1) and with intent to influence the other person to violate that duty, the person confers, offers to confer, or agrees to confer a benefit on the other.
> (2) Commercial bribery is a third degree felony...

In Roque v. State, the Florida Supreme Court held that Florida's commercial bribe receiving law under F.S. 838.15 was unconstitutionally vague.[xxviii] Since commercial bribery under F.S. 838.16 refers to F.S. 838.15, it is most certainly unconstitutionally vague as well. Since the Florida Supreme Court's 1995 decision in Roque, the Florida legislature has failed to address this statute and instead has left a void in our criminal statutes.

In order to understand why this law was held unconstitutional and what the Legislature can do to remedy this law, we must first discuss the concepts of due process and vagueness. In order to be constitutional, criminal statutes must give a reasonable person sufficient notice of what conduct is likely to be proscribed.[xxix] Without being on notice of exactly what conduct violates the law, reasonable people cannot be expected to act in accordance with the law. Furthermore, the laws should be clear to prohibit arbitrary and discriminatory enforcement.

In order to make this statute constitutional, the legislature needs to amend the statutes so that it addresses the concerns of the Florida Supreme Court. The Court felt that F.S. 838.15 was too open-ended to limit prosecutorial discretion in a reasonable manner and also felt that it was too broad in that it proscribed every violation of an employee's statutory or common law duty, no matter how trivial or obscure, regardless of whether it resulted in harm or not.[xxx] As suggested almost fifteen years ago, "if the legislature could find statutes from other states which contain more specific language than found in sections 838.15 and 838.16, these would be more likely to be upheld."[xxxi] This Grand Jury does not view this task as insurmountable as we have

heard the federal government and numerous states have enacted commercial bribery statutes that have survived judicial scrutiny.

The need for this statute in Florida is illustrated by a mortgage fraud prosecution in Polk County, Florida, by the Office of Statewide Prosecution in two separate cases. We have been presented with arrest affidavits that detail illicit payments to and from mortgage brokers, mortgage lender sales associates, and mortgage lender executives in the subprime mortgage industry, all for the purposes of improperly influencing the approval of bad loans. These loans totaled millions of dollars and the illicit payments and kickbacks topped hundreds of thousands.

Were the legislature to fix these useful and necessary commercial bribery statutes, they would be additional tools for prosecutors to use to fight overall corruption. Of course, within that area there should be distinctions made in the statutes for different levels and gradations of bribes based on the dollar amount paid.[xxxii]

Additionally, it is our recommendation that the drafters include the newly drafted statute as a predicate crime for use in racketeering prosecutions under Chapter 895. It would appear that this is a recommended method for addressing crimes such as the one involving mortgage fraud.

We also find that the Legislature should consider whether commercial bribery needs to fall under Chapter 838. As was stated by the 1999 Florida Public Corruption Study Commission, "[s]hould the Legislature craft a revision of the language of s. 838.15 that it believes is constitutional, the provision does not relate to public servants, and should be placed elsewhere in the Florida Statutes."[xxxiii]

This Grand Jury is concerned that the reason this statute has not been addressed is because it could very well target the private commercial interests that lobby our Florida Legislature. This *commercial bribery tax*, passed on to each consumer, raises the costs of goods

and services throughout the market place. As it stands now, commercial bribery is not unlawful under Florida law and it will remain this way until the Legislature is forced to address these statutory flaws. In our opinion, it would take little effort and have no budgetary impact to re-draft these statutes so that they address the constitutional concerns outlined by the courts.

Honest Services Fraud and federal laws

We have heard testimony from numerous witnesses about the federal statute commonly referred to as "honest services fraud." Under 18 USC §1341, it is a criminal act to further "any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises." Section 1346 defines the §1341 term "scheme or artifice to defraud" to include "a scheme or artifice to deprive another of the intangible right of honest services." In a recent U.S. Supreme Court case, Skilling v. U.S., the Court overturned a conviction for honest services fraud and held that "[i]n proscribing fraudulent deprivations of 'the intangible right of honest services,' §1346, Congress intended at least to reach schemes to defraud involving bribes and kickbacks."[xxxiv] In that case, the defendant was convicted in the lower court of "honest services" wire fraud among other things. The alleged misconduct did not entail a bribe or a kickback and was thus held to fall outside the covered crimes of honest services fraud.

We have heard testimony from state and federal prosecutors about the effectiveness of the honest services fraud statute. Some state prosecutors have testified that a law similar to the federal honest services fraud would be beneficial to the state. It is our belief, however, that specific modifications to existing state criminal statutes are a better alternative than attempting to craft a new structure based on a federal model. While the Legislature was right to hold off any action while the U.S. Supreme Court was reviewing the cases mentioned above, the Legislature

now must decide if the U.S. Supreme Court has given enough guidance to craft a constitutional statute. Since certainty is of great value in criminal law, we think the better course is to modify the existing statutes which we outline in our Report.

This discussion raises the other issue of the effectiveness of corruption prosecutions in the state system versus the federal system. While not the focus of this Report, it does bear comment. There are two distinct advantages to law enforcement in the federal system – superior resources and secrecy. The government's resources allow them to develop corruption cases over years and particularly in this area, that makes a big difference. While it seems odd to discuss secrecy in a report on transparency, we must acknowledge that without secrecy, witnesses are reluctant to come forward against powerful political figures. The Florida Sunshine law and open criminal discovery system are good tools of open government, but they make investigating and successfully prosecuting these types of cases more difficult.

Chapter 838 is the crux of Florida's anti-corruption strategy. Improved statutory language to capture illicit conduct is an achievable goal that will aid law enforcement as well as the citizens of Florida.

D. "Under the Color of Law"

We recommend that a statute be enacted which enhances the level and degree of any crime committed by a public official while acting within his or her official duties, other than crimes of public corruption including Chapters 104, 112, 838, and 839.

We heard testimony about the 2010 "under the color of law" bills which failed to make it out of committee in the Legislature. These bills followed a recommendation of the Palm Beach Grand Jury. This enhancement would mean that criminal offenses committed by one who is acting or purporting to act in the performance of his or her official duties would be

increased by one degree of classification and one level of severity, unless acting or purporting to act in the performance of official duties is a necessary element of the underlying crime.[xxxv] For example, the crimes of official misconduct, bid tampering, and bribery would require the following: the offense occurs by a "public servant"; the offense occurs in the performance of the official's public duties; and the offense does not subject the official to a higher offense reclassification. These changes would be more in line with the federal laws on the subject.

Several similar bills were proposed during the 2010 Legislative session; however, they all died in committee or were withdrawn and none were addressed by the Legislature as a body. Senate Bill (SB) 1546 and its companion House Bill (HB) 347 sought to add the "under color of law" reclassification by enacting Florida Statute (F.S.) 775.0862. SB 734 and HB 489 are similar and both provided the enhancement by enacting F.S. 775.0876. We support the concept of a reclassification of certain criminal offenses for "under the color of law."

Underscoring our recommendation is testimony that officials or public servants charged with a public corruption crime often desire to plea to another crime in order to avoid the stigma of a public corruption offense. The "color of law" enhancement would prevent the public official or servant from benefiting from this type of plea bargain and would secure a conviction to a crime involving public corruption. If a prosecutor needs to charge another crime such as theft or scheme to defraud, the public still has the satisfaction of knowing the misconduct has been identified as public corruption due to the fact the actor committed the crime "under the color of law." We find that the Legislature in its entirety

should fully consider and debate this "under color of law" recommendation during the 2011 session.

Penalties under the Code of Ethics

In our study of Florida's civil and criminal public corruption laws, we determined our laws fail to criminalize several necessary wrongs that the Code of Ethics punishes civilly. In 1975, the Commission on Ethics was given the authority to administer the enforcement of the Code of Ethics, and civil penalties replaced criminal penalties for violations of the Code of Ethics. There has been an increasing debate about whether or not violations of the Code of Ethics should carry criminal penalties. During the 2010 Legislative session SB 1546 and its companion HB 347 proposed to add the following language to certain sections of the Code of Ethics: "In addition to being subject to penalties under s. 112.317, a person who violates this subsection commits a misdemeanor of the first degree..." These bills would have criminalized ethical violations of soliciting or accepting a gift, unauthorized compensation, or misuse of public position. The Palm Beach County Grand Jury also recommended that the "Legislature likewise amend Section 112, Part III, Florida Statutes to include a criminal sanction for knowing violations of state ethics laws." While we are not fully adopting these ideas as proposed, we find the concept that certain provisions of the Code of Ethics need to be criminalized is absolute. Our findings and recommendations should lead the Legislature in a unified direction. We find the Legislature should hear the citizens of this state and the grand juries who have now twice called for criminalization of certain violations of the Code of Ethics.

We looked at legislation from the 2010 legislative session and reviewed prior legislation changing the public corruption laws. We heard from former legislators who explained the

politics behind the making of our civil and criminal anti-corruption laws. We understand that passing legislation to address public corruption is not an easy task due to politics as well as legitimate differences of opinions on how to regulate a person's ethics. While Florida has taken bold action in the past, the State presently ignores the reality that current laws do not go far enough to punish and deter those who are intentionally violating the law. Our first recommendation in this section is to criminalize certain actions which are presently civil penalties under Chapter 112, Part III. (Code of Ethics). We will leave to the Legislature to determine the best way to criminalize intentional violations of specific provisions of Chapter 112, Part III. This recommendation is quite large in scope and is one of our most important.

E. Conflicts of Interest

We heard two examples in the Code of Ethics which already have a criminal counterpart. First, F.S. 112.313(2) prohibits a public officer, employee of an agency, local government attorney, or candidate for nomination or election from soliciting or accepting gifts or anything of value based on an understanding that it was provided to influence a vote or official action. Second, F.S. 112.313(4) prohibits a public officer, employee of an agency, or local government attorney or his or her spouse from receiving unlawful compensation or anything of value when such person knew or should have known with the exercise of reasonable care that it was given to influence a vote or official action. These two violations under Chapter 112, Part III, have similar criminal prohibitions under F.S. 838.015 and 838.016, dealing with bribery and unlawful compensation for official behavior. Even though these criminal violations may not fully capture all of the actions prohibited by F.S. 112.313(2) and 112.313(4), we find they sufficiently criminalize the behavior we want to punish under these sections.

We have also heard that numerous parts of the Code of Ethics are not criminal but should be considered for criminal punishment. We find that the Code of Ethics already has defined and interpreted language for several actions we are seeking to criminalize; therefore, we recommend the Legislature consider either criminalizing portions of the Code of Ethics or use language from the Code of Ethics to create criminal provisions under Chapter 838. While we favor criminalizing certain willful prohibitions of the Code of Ethics under Chapter 838 rather than Chapter 112, we recognize the difficulties this may impose and therefore leave it to the Legislature to address. According to a witness, criminalizing the Code of Ethics involves more than merely making it a criminal violation if done willfully or with knowledge. Many of the violations under the Code of Ethics are vague, and in one witness's opinion, criminalizing the Code of Ethics would provide harsh penalties for vague prohibitions. However, we are only recommending portions of the Code of Ethics be criminalized and find that action must be taken under Chapter 112 or Chapter 838. If additional criminal penalties were provided for under the Code of Ethics, the Legislature must consider whether or not the provisions being criminalized are too vague to fairly provide adequate notice to a public official or potential violator.

The penalties under the Code of Ethics can be found in F.S. 112.317, as well as at the end of other sections within Chapter 112, Part III. We will include a portion of F.S. 112.317 concerning penalties for public officials which states:

> (1) Violation of any provision of this part, including, but not limited to, any failure to file any disclosures required by this part or violation of any standard of conduct imposed by this part, or violation of any provision of s. 8, Art. II of the State Constitution, in addition to any criminal penalty or other civil penalty involved, shall, under applicable constitutional and statutory procedures, constitute grounds for, and may be punished by, one or more of the following:
>
> (a) In the case of a public officer:
> 1. Impeachment.
> 2. Removal from office.
> 3. Suspension from office.

4. Public censure and reprimand.
5. Forfeiture of no more than one-third salary per month for no more than 12 months.
6. A civil penalty not to exceed $10,000.
7. Restitution of any pecuniary benefits received because of the violation committed. The commission may recommend that the restitution penalty be paid to the agency of which the public officer was a member or to the General Revenue Fund.

It is our recommendation that if sections of the Code of Ethics were criminalized under Chapter 112, then F.S. 112.317(1) should be amended to include language such as: **"anyone who violates 112.313(3), (6), (7) or 112.3143(2), (3), (4) 'willfully' or 'intentionally' commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084."** We find these sections of Chapter 112, Part III need to be criminalized and this is one possible way to accomplish this without having to write new criminal laws under Chapter 838.

These provisions of the Code of Ethics already address the evils that we feel should be criminally punished when done intentionally. We anticipate great resistance to this recommendation as it potentially holds the legislators who would pass these laws to criminal liability for what previously was only a civil violation. We hope this will not dissuade the Legislature from acting and urge legislators to work in the interest of the public first and foremost. One way this can be accomplished is through tougher criminal laws since we have often heard our civil laws have no teeth. We recognize that there are many ethical legislators and public officers who take pride in their conduct and urge them to be leaders in implementing our recommendations. Only those who intentionally violate these provisions relating to their public office should fear criminal punishment. The public is tired of officials who abuse their position or ignore conflicts of interest.

Criminalize conflicts of interest of the Code of Ethics.

a. We recommend criminalizing voting conflicts of interest under F.S. 112.3143(2), (3) and (4).

112.3143 Voting Conflicts.

(2) Concerning state public officers

(3) Concerning county, municipal, or other local public officers

(4) Concerning appointed public officers

We also find voting conflicts of interest should be criminally punished. In Florida, voting conflicts of interest for state public officers; county, municipal, or other local public officers; and appointed public officers are governed under F.S. 112.3143. In essence, the law tells public officials that they have a fiduciary duty to the public and that they must separate themselves from anything given to them while serving in this fiduciary duty. When a public official has a conflict, he or she should step aside and disclose the conflict. The only benefit the public official should receive is for the public, not for the public official or anyone else. The State provides a floor and public officials can choose to set higher prohibitions. While Florida has not criminalized voting conflict of interest, other states have. As used in this section the term "public officer" includes any person elected or appointed to hold office in any agency, including any person serving on an advisory body. The term "relative" means any father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law.

Voting conflicts of interest for state public officers are covered under F.S. 112.3143 which states:

(2) No state public officer is prohibited from voting in an official capacity on

any matter. However, any state public officer voting in an official capacity upon any measure which would inure to the officer's special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom the officer is retained or to the parent organization or subsidiary of a corporate principal by which the officer is retained; or which the officer knows would inure to the special private gain or loss of a relative or business associate of the public officer shall, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

Voting conflicts of interest for county, municipal, or other local public offices are covered under F.S. 112.3143 which states:

(3)(a) No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

(b) However, a commissioner of a community redevelopment agency created or designated pursuant to s. 163.356 or s. 163.357, or an officer of an independent special tax district elected on a one-acre, one-vote basis, is not prohibited from voting, when voting in said capacity.

Voting conflicts of interest for appointed public officers are covered under F.S. 112.3143 which states:

(4) No appointed public officer shall participate in any matter which would inure to the officer's special private gain or loss; which the officer knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained; or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer, without first disclosing the nature of his or her interest in the matter.

(a) Such disclosure, indicating the nature of the conflict, shall be made in a written memorandum filed with the person responsible for recording the minutes of the meeting, prior to the meeting in which consideration of the matter will take place, and shall be incorporated into the minutes. Any such memorandum shall become a public record upon filing, shall immediately be provided to the other members of the agency, and shall be read publicly at the next meeting held

subsequent to the filing of this written memorandum.

(b) In the event that disclosure has not been made prior to the meeting or that any conflict is unknown prior to the meeting, the disclosure shall be made orally at the meeting when it becomes known that a conflict exists. A written memorandum disclosing the nature of the conflict shall then be filed within 15 days after the oral disclosure with the person responsible for recording the minutes of the meeting and shall be incorporated into the minutes of the meeting at which the oral disclosure was made. Any such memorandum shall become a public record upon filing, shall immediately be provided to the other members of the agency, and shall be read publicly at the next meeting held subsequent to the filing of this written memorandum.

(c) For purposes of this subsection, the term "participate" means any attempt to influence the decision by oral or written communication, whether made by the officer or at the officer's direction.

In order to look for potential conflicts of interests, the Center for Public Integrity analyzed disclosure forms filed in 2002 by the 147 Florida legislators for the year 2001 and determined:

- 36.1% sat on a legislative committee with authority over a professional or business interest,
- 38.1% had financial ties to businesses or organizations that lobby state government, and
- 15% received income from a government agency other than the state legislature.[xxxvi]

We do not believe that conflicts of interest are unusual and view them as inevitable. Not all conflicts are necessarily bad. For example, a city council member voting on an issue that is emotionally important to him or her should not declare he or she has an emotional conflict and not vote. We heard testimony that conflicts which should be regulated are the ones in which the integrity of the official action could be questioned and public trust undermined. A public officer starts off in an ethically neutral position until that officer uses or abuses the office and decides on issues for personal interest or gain rather than for the public good. We find the Legislature should criminalize certain voting conflicts of interest. We understand this is a difficult recommendation for the legislature as it has the potential to change the way Legislators and

public officers act when considering a vote. However, that is the impact we are seeking. We do not desire more criminal laws in order to burden an already overwhelmed criminal justice system. We hope and expect that these additional laws will scarcely be used because they have the desired effect of making public officers stop and think about whether they have a conflict of interest to disclose prior to voting and whether the conflict requires the officer to recuse him or herself from voting.

We heard that legislators have created different voting standards for themselves due to the large volume of votes they undertake. According to testimony, legislators do not always know if the vote would lead to a special private gain or loss. While taking this under consideration, we find this to be an insufficient reason. Other states have criminalized voting conflicts of interest; surely Florida can take a step forward and do the same. We understand the Legislature votes on many issues and do not seek to criminally punish a mere incidental benefit such as a road being built that make's a legislator's commute more enjoyable. We find these concerns have already been addressed in our voting conflict of interest laws and for that reason find these concerns are unlikely justified. Because the laws we are recommending have been interpreted, they are a good starting place to look when trying to criminalize voting conflicts. Therefore, we leave it to the Legislature to consider whether it is best to criminalize voting conflicts of interest under Chapter 112 or under Chapter 838; or whether new approaches are needed to address these shortcomings in our anti-corruption laws.

Should the Legislature deem our present voting conflict of interest laws ill suited for criminal penalties due to vagueness or other concerns, we find the Legislature should look to other states' statutes.[xxxvii] We received Kentucky's voting conflict of interest law (which only

addresses their legislature), which provides a useful model for creating a criminal voting conflict of interest provision. Kentucky's statute KRS 6.761 states:

> (1) A legislature shall not intentionally participate in the discussion of a question in committee or on the floor of the General Assembly, vote, or make a decision in his or her official capacity on any matter:
>
> (a) In which the legislator, or any relative, or the legislator's business associate will derive a direct monetary gain or suffer a direct monetary loss as a result of the legislator's vote or decision; or
>
> (b) Which relates specifically to a business in which the legislator owns or controls an interest of ten thousand dollars ($10,000.00) or more, or an interest of more than five percent (5%).
>
> The term "relative" shall be defined in accordance with 112.3135(1)(d).
>
> (2) A legislator who has a personal or private interest in a bill proposed or pending before the General Assembly shall also be subject to the Senate or House Rule which governs the procedures for conflict of interest and recusal.
>
> (3) A legislator may vote on legislation affecting his of her salary, expenses, benefits, and allowances, as provided by law. A legislator may participate in the discussion of the question in committee and on the floor of the General Assembly, vote, or make a decision on a matter if any benefit or detriment which accrues to the member of the General Assembly, as a member of a business, profession, occupation, or other group, or to a relative of the legislator or a business interest specified in subsection (1)(b) of this section is of no greater extent than the benefit or detriment which accrues generally to other members of the business, profession, occupation, or other group.
>
> (4) The right of legislators to represent their constituencies is of such major importance that legislators should be barred from voting on matters of direct personal interest only in clear cases and if the matter is particularly personal.
>
> (5) Any person who violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

b. We recommend criminalizing self-dealing conflicts of interest under F.S. 112.313 (3) and (7).

Specifically, we seek to have the following provisions of the Code of Ethics criminalized either under Chapter 112, Part III, when the offender "willfully" or "intentionally" violates the laws or under Chapter 838:

a. 112.313 Standards of conduct for public officers, employees of agencies, and local government attorneys.

(3) DOING BUSINESS WITH ONE'S AGENCY

(7) CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP

F.S. 112.313 provides for the standards of conduct for public officers, employees of agencies, and local government attorneys. The covered standards of conduct include solicitation or acceptance of a gift, doing business with one's agency, unauthorized compensation, salary and expenses, misuse of public position, conflicting employment or contractual relationship, disclosure or use of certain information, restriction on postemployment, standards and conduct for legislatures and legislative employees, employees holding office, professional and occupational licensing board members, lobbying by former local officers, board of governors, and board of trustees. Under F.S. 112.313, "the term 'public officer' includes any person elected or appointed to hold office in any agency, including any person serving on an advisory board." The term "agency" is defined under F.S. 112.312(2) to mean "any state, regional, county, local, or municipal government entity of this state, whether executive, judicial, or legislative; any department, subdivision, bureau, commission, authority, or political subdivision of this state therein; or any public school, community college, or state university." A "local government attorney" is defined under F.S. 112.313(16) to mean "any individual who routinely serves as the attorney for a unit of local government."

We will discuss each of the provisions of Chapter 112 which we are recommending criminalizing. Under F.S. 112.313(3) it states:

> **(3) Doing business with one's agency.--**No employee of an agency acting in his or her official capacity as a purchasing agent, or public officer acting in his or her official capacity, shall either directly or indirectly purchase, rent, or lease any realty, goods, or services for his or her own agency from any business entity of which the officer or employee or the officer's or employee's spouse or child is an officer, partner, director, or proprietor or in which such officer or employee or the officer's or employee's spouse or child, or any combination of them, has a material interest. Nor shall a public officer or employee, acting in a private capacity, rent, lease, or sell any realty, goods, or services to the officer's or employee's own agency, if he or she is a state officer or employee, or to any

> political subdivision or any agency thereof, if he or she is serving as an officer or employee of that political subdivision. The foregoing shall not apply to district offices maintained by legislators when such offices are located in the legislator's place of business or when such offices are on property wholly or partially owned by the legislator. This subsection shall not affect or be construed to prohibit contracts entered into prior to:
> (a) October 1, 1975.
> (b) Qualification for elective office.
> (c) Appointment to public office.
> (d) Beginning public employment.

We heard testimony about the need to prevent conflicts of interest between public officials and their sources of employment. We were presented with the 1999 Florida Public Corruption Study Commission report which recommended "[a] new s. 838.20 is proposed that will make it unlawful for a public servant to corruptly establish any business relationship between the public servant's own agency or any business entity. The penalty for a violation of the new section is felony of the second degree."[xxxviii] We heard examples whereby county commissioners conceal or fail to disclose the nature of their conflict of interest in a business which is awarded a contract by a governmental entity. We are aware that other states have criminalized similar conflicts of interest.[xxxix] For example, Indiana conflict of interest law IC 35-44-1-3 prohibits (with exceptions omitted):

> Sec. 3. (a) A public servant who knowingly or intentionally:
> (1) has a pecuniary interest in; or
> (2) derives a profit from;
> a contract or purchase connected with an action by the governmental entity served by the public servant commits conflict of interest, a Class D felony.

We find that an employee of an agency who intentionally does business with his or her own agency has a potential conflict of interest which should be criminalized under certain circumstances. We find the Legislature should criminalize the relevant portions of this section under the Code of Ethics or under Chapter 838. We further find the Legislature should consider the recommendation of the Florida Public Corruption Study Commission to create a new F.S. 838.20 in accordance with their suggested language.

The Code of Ethics also prohibits a public officer or employee of an agency from conflicting employment or contractual relationship under F.S. 112.313(7) which states:

> **(7) Conflicting employment or contractual relationship.**
>
> (a) No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he or she is an officer or employee, excluding those organizations and their officers who, when acting in their official capacity, enter into or negotiate a collective bargaining contract with the state or any municipality, county, or other political subdivision of the state; nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.
>
> 1. When the agency referred to is that certain kind of special tax district created by general or special law and is limited specifically to constructing, maintaining, managing, and financing improvements in the land area over which the agency has jurisdiction, or when the agency has been organized pursuant to chapter 298, then employment with, or entering into a contractual relationship with, such business entity by a public officer or employee of such agency shall not be prohibited by this subsection or be deemed a conflict per se. However, conduct by such officer or employee that is prohibited by, or otherwise frustrates the intent of, this section shall be deemed a conflict of interest in violation of the standards of conduct set forth by this section.
>
> 2. When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict.
>
> (b) This subsection shall not prohibit a public officer or employee from practicing in a particular profession or occupation when such practice by persons holding such public office or employment is required or permitted by law or ordinance.

Here again the Legislature has recognized a conflict of interest for certain public officials or employees. We find a conflicting employment or contractual relationship should be criminalized when it rises to a certain level. While we have not received testimony how this should be criminalized, we recognize other states have criminalized similar conflicts of interest.[xl]

F. Misuse of Public Position

We recommend criminalizing misuse of public position under F.S. 112.313 (6).

Misuse of public position is addressed under F.S. 112.313(6) which states:

> **(6) Misuse of public position.**--No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others. This section shall not be construed to conflict with s. 104.31.

Currently, misuse of public position is only a violation under the code of ethics. Based on testimony, we make recommendations to revise this section and make it applicable both civilly under the Code of Ethics and criminally under Chapter 838. The term "corruptly" should be removed from misuse of public position as a civil ethical violation under Chapter 112. We find it odd that this term is used when it does not appear to be used in other sections of the Code of Ethics and fits more in line with the Legislature's use of that the term in the criminal Chapter 838. The wrongful acts of an official using his or her public position to secure a benefit should be a civil violation, whether done "corruptly" or not. We find concerns that by removing "corruptly" it will punish a public officer who receives a token of gratitude for doing his or her job to be without merit since misuse of public position requires the act be done "to secure a special privilege…" We heard testimony about a legislator who wanted to secure parking for a football game in a full lot. When the legislator was told he would not be let in, he tried to use his public position of authority to gain access to the parking lot. We find no reason that actions such as this should require a corrupt element to be a civil violation of the Code of Ethics. According to a witness, Palm Beach County has removed the "corrupt" element from their newly adopted Code of Ethics. We applaud this and find our Legislature should follow suit.

In addition, we find misuse of public position should be criminalized in some manner. One option would be to place the crime under the criminal offense of official misconduct, F.S. 838.22. Presently official misconduct is limited in what it prohibits and does not appear to be a criminal counterpart to misuse of public position. We find the Legislature could add a subsection under official misconduct using similar language found in misuse of public position. If the Legislature decides to criminalize misuse of public position under Chapter 838, we find something more than intent may be needed in order to distinguish it from a civil violation. We recommend that the Legislature consider looking at other states to determine at what level an official's actions rise to become criminal misuse of public position.[xli] An additional element of criminal responsibility beyond criminal intent (mens rea) may not be necessary as other states do not appear to require additional elements beyond criminal intent for misuse of public position. Kentucky's Ethics Code 6.731(3) criminalizes "[a] legislator, by himself or through others, shall not *intentionally*"..."[u]se or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in direct contravention of the public interest at large." It appears other states have criminalized similar misuse of public position violations while Florida only makes this an ethical violation.

Another way criminal misuse of public position could be distinguished from a violation under the Code of Ethics is by requiring the criminal action to reach a certain monetary threshold, such as $300 (which is the amount for felony grand theft). If a monetary amount were required to be met before the action became criminal, then we find the Legislature should track F.S. 812.014 in order to determine the "value" of a special privilege, benefit, or exemption received. We find that the Legislature should criminalize misuse of public position either under Chapter 838 or Chapter 112.

Conclusion

Under numerous provisions of Florida's criminal laws, the criminal action is enhanced depending upon the monetary amount taken. We recommend the Legislature include monetary amount thresholds in any provisions that are criminalized. Therefore, those who intentionally receive a greater benefit are more severely punished.

We find public officers and specified others should be criminally accountable when they intentionally misuse their public position or when they violate certain conflicts of interest. The Legislature should criminalize F.S. 112.313(3), (6), and (7) along with F.S. 112.3143 (2), (3), and (4) either under Chapter 112 or under Chapter 838.

II. REGULATORY ENFORCEMENT

A. Offices of Inspector General

We have received testimony detailing the vital role inspectors general offices play in the fight against public corruption. We must ensure offices of inspectors general are able to perform their vital role if we are truly going to go after those who seek to steal, waste, and abuse our taxpayer money. The purpose of an office of inspector's general is to:

> foster and promote public accountability and integrity in the general areas of the prevention, examination, investigation, audit, detection, elimination and prosecution of fraud, waste and abuse through policy research and analysis; standardization of practices, policies, and ethics, encouragement of professional development by providing and sponsoring educational programs, and the establishment of professional qualifications, certification, and licensing.[xlii]

We have been informed that effective offices of inspectors general "hold government officials accountable for efficient, cost-effective government operations and to prevent, detect, identify, expose and eliminate fraud, waste, corruption, illegal acts and abuse."[xliii] If government holds these ideals to be as significant as we do, it will make sure offices of inspectors general are created in the most effective way, funded so they can do their job and structured so they can execute their duty.

1. **<u>Create an independent "Office of State Inspector General" whose role shall be to oversee the inspections and investigations performed by all other state agency inspectors general.</u>**

2. **<u>F.S. 20.055 needs to be rewritten so that state agency inspectors general have more independence.</u>**

    a. **The Inspector General of each agency should be appointed by a State Inspector General with written consent of the agency head.**

    b. **An agency inspector general should only be allowed to be removed upon "good cause shown." In addition, we recommend that both the**

State Inspector General and the agency head be required to agree in writing on the removal of an agency inspector general.

c. An agency inspector general should be given twenty one (21) days notice prior to removal.

We heard from witnesses who served for and worked with offices of inspectors general (OIG). We understand the important role they play in ensuring government at all levels fosters and promotes accountability and integrity. The citizens are best served when OIG's are established in such a way as to insure they function independently and honestly. F.S. 20.055 establishes agency inspectors general in each state agency "to provide a central point for coordination of and responsibility for activities that promote accountability, integrity, and efficiency in government." Each agency inspector general is provided specific duties which it must perform for the agency in which it is established.

The inspector general for each agency is appointed by the agency head and *reports to* and is *under the general supervision* of the agency head. An agency inspector general may be *removed from office by the agency head*. Any agency head under the Governor and Cabinet shall notify the Governor and Cabinet seven days prior to any removal of an inspector general. The agency head or agency staff should not prevent an inspector general from carrying out any audit or investigation. Agency inspectors general must have certain educational and employment experience to ensure that they understand how to perform the important function of conducting audits. After any final audit report is concluded, the agency inspector general must submit the report to the agency head.

In addition to its auditing functions, agency inspectors general are to "initiate, conduct, supervise, and coordinate investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses in state government." Agency inspectors

general are required to receive complaints about and implement the Florida Whistle-blower's Act. Investigations are to be carried out "free of actual or perceived impairment to the independence of the inspector general or the inspector general's office." At the conclusion of any certain investigations which are not confidential, the inspector general must submit findings to the subject of the investigation and allow the individual or entity twenty days to respond in writing prior to issuing a final report. The agency inspector general must submit a final report with specific findings to the agency head along with all written complaints the agency inspector general received concerning the investigation.

Under the Office of the Governor, a chief inspector general is created. For offices under the Governor, the chief inspector general and the Governor must be notified seven days prior to any agency head taking action to hire or fire an inspector general. For agencies under the Governor, the inspector general must provide a copy of any complaint to the chief inspector general.

After receiving lengthy testimony on this issue we have determined that agency inspectors general are not as independent from their agency head as they should be. We were made aware of situations where an inspector general was pressured by an agency head or removed for conducting investigations or audits which made an agency head look bad. While we believe there are numerous safeguards which are intended to prevent pressure from an agency head and promote independence, the threat of termination will always be an unspoken pressure. We find that allowing an agency head the power to hire and fire is simply too great for an agency inspector general to be truly independent of that agency head. We therefore find the need to establish a Office of State Inspector General who will be responsible for hiring, firing, and supervising the agency inspectors general.

In order to ensure agency inspectors general are not always operating under the fear they could be terminated, F.S. 20.055 must state that agency inspectors general can only be terminated "upon good cause shown with the approval of both the agency head and the State Inspector General." The present structure where an inspector general can be fired and hired by an agency head contradicts the purpose of an agency inspector general to function independently from an agency head. An investigator with an agency inspector's general office described an internal investigation he conducted into the abuse of P-cards, theft, and mismanagement rampant within the agency. In order to avoid the appearance that the investigation was not being conducted independently, the agency inspector general requested FDLE's assistance with conducting the investigation. This contradiction can be solved by following our recommendations. We applaud this decision, but have heard that not all inspectors general have made the same decision. In addition, even though fraud was rampant within this agency, those who supervised the employees who committed the fraud are still employed and some were even promoted. Based on the testimony we received it is evident that action should have been taken by the agency based on the fact those who supervised the employees who stole should have known about the theft but did nothing to prevent it. In fact, according to one witness, supervisors even sought out the employee to help circumvent the procedural requirements for purchasing. We find this lack of action to terminate those in charge may have had different results if an inspector general was truly independent of the agency head and did not fear repercussions for saying what needs to be said to the agency head about terminating employees high up within the agency.

Testimony was presented about a proposed bill which would have increased the termination of inspector general's notification period from seven to twenty-one days. We find

the additional time would allow the public and the inspector general additional time to investigate the motives for the termination and voice any objections if it were being done out of fear of investigation or auditing, or out retribution.

3. <u>Provide additional resources to offices of inspector general.</u>

a. Investigations by any offices of inspector general should be exempt under Chapter 119 public records laws similar to law enforcement investigations.

b. Inspectors general offices at any governmental agency or entity should be allowed to conduct investigations without having to notify the agency head, executive director, or any other person outside of the IGO of an ongoing investigation.

In creating OIG's, certain powers must be given to inspectors in order to carry out their investigations effectively. One of these powers is the ability to conduct an investigation free from the public records law until the investigation is concluded. The public records law under Chapter 119 presently allow citizens to obtain information from public offices in order to promote transparency. It is recognized however that certain instances exist in which the need for secrecy trumps the need for transparency. One such instance where secrecy should rule is when there is an active investigation. Presently certain law enforcement investigations are exempt from public records until an investigation is complete. This allows the investigations to be conducted without the alleged violator knowing about the investigation. We can think of numerous reasons why investigations need to remain secret, such as destruction of evidence and tampering with witnesses. However, some investigations are not exempt from the public records laws when conducted by OIG's. We find that investigations by OIG's should be exempt from public records laws in order to promote the ability to conduct an investigation without a suspect impeding the investigation.

While F.S. 20.055 states that an agency head cannot prevent investigations by an OIG, it also states the OIG must report to the agency head. In some circumstances, this has led to IG's notifying the agency heads when an investigation is being conducted. An IG and the investigators serve at the will of the agency head and thus an agency head can put up road blocks to an investigation without preventing or prohibiting an investigation. Examples were demonstrated where agency heads notified others of the investigation or applied subtle pressures to the IGO without technically preventing the investigation to be carried out, this should be prevented by allowing the IG to report investigations to the agency head after the investigation has been concluded. In addition, IGO's often conduct investigations into law enforcement officers. The law requires IG's to inform law enforcement of a pending investigation. This could lead to impediments during the investigation. We find IG's should be able to conduct investigations into law enforcement officers and maintain the discretion as to when law enforcement is notified.

In addition, under F.S. 20.055, the target of the investigation is required to receive notice of the investigations and is allowed twenty days to respond. We find this too should be discretionary until the investigation is complete. Although it may sometimes be helpful to notify the person or entity of the investigation, this should not be required until an investigation is complete.

4. **A tip line and website should be created for any Inspector General's Office so that the public or an employee knows where to complain.**

5. **Inspector General's Offices should have designated sworn law enforcement officers within their office.**

6. **Inspector General's Offices should be required to be certified by the Association of the Inspector General (AIG) to ensure they have established consistent standards and procedures for audits and investigations.**

Additional suggestions were conveyed to us regarding better execution of the IGO's oversight and investigative functions. In addition to needing the proper environment and encouragement to report fraud, waste, and abuse, employees must know where to report.

Also, the ability for IGO's to investigate is greatly improved if investigators are sworn law enforcement officers with the power to arrest. One investigator indicated to us that his office only employs sworn law enforcement. Sworn law enforcement have not only received additional training, but they have certain authority that non-sworn officers do not have such as the ability to run background checks and the ability to access law enforcement sensitive databases which may be a useful investigative tool to gather information and the potential criminal history of those inside or outside your agency doing business with the agency.

Another way OIG investigators can gain knowledge is through a certification process. The Association of Inspectors General provides a certification process which requires passing a written test. We have heard testimony that this testing is a valid, valuable process.

OIG's are a powerful and useful tool at detecting and preventing fraud, waste, and abuse. They must be created, funded, and executed in a way to ensure they achieve their maximum potential.

Florida's Whistle-blower's Act

Under Florida statute, state agency inspectors general are responsible for investigating violations of Florida's Whistle-blower's Act

7. **Create a reward program similar to the federal government for any person who provides information which leads to the firing or conviction of any employee who is committing fraud or abuse related to their government employment.**

8. <u>Ensure the Whistle-blower's Act applies to any employee who utilizes the Act to file a complaint on any entity, business, corporation, or non-profit organization which receives government funding to perform a governmental function or service.</u>

F.S. 112.3187 is titled the "Whistle-blower's Act." The stated intent of this statute is to:

> "prevent agencies and independent contractors from taking retaliatory action against an employee who reports to an appropriate agency violations of the law on the part of a public employee or independent contractor that create a substantial and significant danger to the public's health, safety, or welfare. It is further the intent of the Legislature to prevent agencies or independent contractors from taking retaliatory action against any person who discloses information to an appropriate agency alleging improper use of governmental office, gross waste of funds, or any other abuse or gross neglect of duty on the part of an agency, public officer, or employee."

We heard testimony that the Whistle-blower's Act is ineffective in part because people do not trust the protections afforded under the act and fear retaliation. People inside or outside of government may believe it is easier to pay a bribe to a bad actor than it is to blow the whistle. The Legislature should consider whether the incentives under the Act could be improved. Incentives could be established similar to the reward program in place at the federal level whereby a reward is given to any person who provides information which leads to the firing or conviction of any employee who is committing fraud or abuse related to government employment. We heard testimony as previously mentioned about massive fraud and abuse within the Florida Fish and Wildlife Commission. In this case, numerous employees had knowledge of and participated in the fraud and abuse. The fraud and abuse was so prevalent that it had to be common knowledge within and outside the agency. It is unsettling that it took five years for an auditor to find these fraudulent P-card submissions. This case is a clear example of the failure of the Whistle-blower's Act to provide an incentive to report by those within an

agency or outside. Rather than reporting the fraud, others approached those who were committing the fraud and requested help in bypassing the internal controls to continue the abuse. We find that this case confirms that the Whistle-blower's Act is either unknown by the general public or lacks any real incentive for an individual to report fraud or abuse.

To improve the effectiveness of the Act, awareness and education are needed. We heard that employees may not understand the Act and how they are protected from suffering any retribution or firing. As for independent contractors who feel they must pay a bribe to get a contract, the Act must protect them from losing contracts in the future and must provide a better incentive for the contractor to report the crime rather than pay the bribe. Any efforts should be supported by tougher criminal laws. Knowing that those who commit crimes face harsh penalties should encourage reporting the crime rather than participating in it. This carrot and stick approach is the only way the Act will become more effective.

Finally, we emphasize that the public corruption laws of Florida must take into consideration private actors paid by government funds to provide a governmental function or service. One concern is the term "independent contractor" within the Act. We are not sure this language clearly applies to an employee of a private organization which is paid to perform a government function or service. We believe the Legislature should consider language in the Act to specifically apply to any entity, organization, corporation, or individual who receives government or public funds to perform a governmental service or act.

Independent Private Sector Inspector's General (IPSIG)

We have reviewed material which describes the implementation of IPSIG's by the United States Department of Justice in civil and criminal settings. An IPSIG is an independent firm with expertise in legal, auditing, investigative, management, and loss prevention skills. They

have been used in the private sector to ensure compliance with relevant laws and regulations and recently as monitors of "deferred prosecution agreements" by the U.S. Department of Justice in addressing corporate fraud. Independence from interference by the government, as well as the entity being monitored, is critically important and accomplished by a strict set of ethical guidelines. The IPSIG's distinct code of ethical guidelines encompass their individual professional codes of ethics and ensures their allegiance to the public as a whole is both perception and reality.

IPSIG programs have proven effective in reducing waste, inefficiency, abuse and fraud; thus providing greater value to the corporate investors. It is reasonable to conclude that this approach would also offer the citizens of Florida great benefit in cases investigated at the state level. Therefore, we find that there are instances where this type of "independent monitor" may be an effective weapon against public sector corruption.

B. Auditors and Clerks of Court

The check and balance system established by our founders at the national level is applied in various methods at Florida's state and county level as well. The Auditor General is a state constitutional officer who has fiscal auditing duties for state government. Likewise, each county has a clerk who is responsible for the disbursement of proper expenditures. It is this constitutional check on spending that serves our counties' citizens as a fiscal watchdog.

While we see the value and importance of inspector's general, the first constitutional check on local spending comes from our state's clerks. Their efforts may be supplemented and assisted by inspector's general, sheriffs, local police and other fraud-fighting components of

government, but their role is fundamental, and because of this, their liability is personal. This is an important area of government that should be more fully utilized in some areas of our state.

If we hope to slow the theft and mismanagement of government resources, audits must be conducted in a meaningful way. Over the last ten months we have learned corruption by theft and mismanagement will not be slowed until the procedures and systems are in place to dissuade those who would choose to violate the law.

The Florida Auditor General is created in Article III of the Florida Constitution and is implemented under Chapter 11, F.S. The Auditor General is appointed by a majority vote of the Legislative Auditing Committee and is subject to confirmation both the House and the Senate. The Auditor General is to perform his or her duties independently, but under the general policies of the Legislative Auditing Committee. The Auditor General serves at the pleasure of the Legislature. An Auditor General is required to be a licensed CPA with at least ten years of experience.

The Auditor General is provided with the authority to audit any governmental entity and certain nonprofit entities. Some audits are required to be done by Florida Statutes and typically are required on an annual period of time. Audits may also be performed at the direction of the Legislative Auditing Committee or at the discretion of the Auditor General. The auditor general performs five types of audits including: financial statement audits, operational audits, information technology audits, Florida Educational Finance Program (FEFP) attestation engagements, and quality assessment reviews of state agency inspectors general.

An annual financial audit is done by the Auditor General's Office on the State of Florida, most of the district school boards, state universities, and others. Operational audits focus on an

agency's legal compliance, internal controls, and reliability of records and reports. These audits are usually focused on a high risk topic area such as insurance or banking regulation. In addition, the Auditor General audits state agency inspectors general at least every three years to review the quality of audits the IGO is conducting. The Auditor publishes approximately 200 reports a year with around 1200 findings and recommendations. The vast majority of these findings are related to deficiencies in internal controls. Internal controls are important as they ensure that information is being reported accurately, fraud and losses are being detected, and efficient and effective functions are in place. Often, problems with internal controls are computer system related.

1. **Strict criteria must be in place for the use of P-cards.**

2. **Auditors who monitor P-card usage should regularly request spot check samples of P-card detailed purchases and purchase orders so that they may perform occasional forensic audits to confirm actual purchase of goods.**

We heard testimony referred to earlier about the lack of oversight at FWC. One glaring problem at that this agency's southwest Florida location was that P-cards and purchase orders were used for personal expenses and false receipts were submitted to cover the tracks of these illicit purchases. Over the years these expenses from one facility totaled over four hundred thousand dollars on P-cards alone – approximately 50% of which were determined to be supported by fraudulent receipts. The problem was so severe that homes were illicitly furnished with thousands of dollars in new furniture, kitchens were redone, and personal items such as lingerie were all purchased using taxpayer money. Had a forensic audit been conducted earlier on, instead of a mere accounting audit to confirm that these payments matched the forged receipts, the problem could have been caught earlier and the taxpayers could have been saved from the theft that occurred.

C. Codes of Ethics and Ethical Standards

"The ultimate answer to ethical problems in government is honest people in a good ethical environment."[xliv]

John F. Kennedy

We heard and been well informed about Florida's Code of Ethics (Chapter 112, Part III), the Florida Commission on Ethics, and locally created codes of ethics and commissions on ethics. While we have outlined areas of 112 that need to be criminalized, we fully realize that there are other areas where minor transgressions or lapses do not require criminal enforcement. We do not want to make the fear of the risk of an ethical lapse in a technical area keep good people from public service. Criminal enforcement needs to be reserved for the most serious of misconduct. There are other areas, however, where a civil remedy is sufficient. However, even in that existing arena, there are some modifications we find are warranted.

1. Increase the maximum civil penalty from $10,000 to $100,000.

The maximum fines that can be imposed by the Commission on Ethics is presently set at $10,000. We learned the Elections Commission has the ability to issue higher fines and has done so in the past. We also received testimony that the public feels the cap of $10,000 is too small and the Legislature has considered raising the cap to $100,000 per fine. Increasing the cap does not mean that all violators will get such a serious fine, but by increasing the cap a broader range of civil penalties can be imposed separating the minor violations from the more egregious. We find the Legislature should increase the cap to $100,000 as it would be more of a deterrent and more justly set apart the violations based on severity. We point out that the Commission on Ethics has no enforcement authority and that it goes to the Governor to be enforced.

2. **Amend F.S. 112.3143 by replacing the language "special private gain or loss" with "any gain or loss."**

3. **Prohibit any public officer who knowingly has a conflict of interest from attempting to influence the outcome of any vote, decision, recommendation, finding, or report relating to the public officer's office.**

4. **Change voting conflict of interest standard for appointed State officials to mirror the standard for local officials.**

5. **Amend F.S. 112.3143(3)(a) to prohibit staff members of conflicted county, municipal or other local public officials from attempting to influence other members of the board or commission.**

6. **Create a "blind trust" provision under the Code of Ethics and require certain public officers to place private financial interests into a "blind trust."**

We have already discussed the need for criminalizing conflicts of interest, but we will now discuss what other changes should be made to the Code of Ethics concerning civil and administrative conflicts of interest issues.

We heard testimony that an area of great confusion surrounds the phrase "special private gain" under the Code of Ethics F.S. 112.3143 which governs voting conflicts of interest. The Commission on Ethics gets a substantial volume of complaints regarding county or city commissioners who vote after the attorney for the county or city commission told the commissioner it was proper to vote based on the attorney's understanding of "special private gain." Often the Commission of Ethics has later determined the attorney's interpretation of "special private gain" was wrong. The Commission has taken the position that the commissioner or attorney should have gotten an opinion from the Commission on Ethics. All of this could be avoided, according to a witness, if the phrase was amended to "any gain." While this is a lesser standard, it is clearer. As long as the person voting discloses the conflict and is then permitted to vote, then that person need not worry about a violation.

In addition, the Florida House and Senate have rules requiring disclosure of potential conflicts of interest and abstention from voting.[xlv] House and Senate rules can be stricter than the Florida statutes. Both Senate and House rules regarding conflict of interest use the term "special private gain". Senate Rule 1.20 requires every Senator, unless excused, to be present and vote on each question in Chamber or committee. "However, a Senator *may* abstain from voting if, in the Senator's judgment, a vote on a question would constitute a conflict of interest as defined in section 112.312(8), *Florida Statutes*." Senate Rule 1.39 requires a Senator who has a conflict of interest to disclose "any personal, private, or professional interests in a bill that would inure to that Senator's *special private gain* or special gain of any principal to whom the Senator is obligated." However, "[a] Senator is *not* disqualified from voting on a measure when, in the Senator's judgment, a conflict of interest is present." The disclosure shall be filed immediately *after* the vote and may explain the logic of voting or for deciding to disqualify him or herself from the vote. In addition, if a vote was not cast, the Senator must follow F.S. 112.3143(2). In order to be in line with the Code of Ethics, we find that the Senate and House rules will need to change "special private gain" to "any gain".

We heard that voting is permitted by the House rules when a representative's close family members or employer could make a "special private gain," but a disclosure must still be submitted. Allowing a legislator to disclose the conflict after the vote should be changed. An argument has been made that a legislator should be allowed to disclose a conflict after he or she votes because of the large volume of votes; the legislator may not realize the potential conflict on every bill before voting. However, this concern has been greatly exaggerated and legislators are able to check conflicts prior to votes and to disclose such conflicts in advance. We find the

Florida Legislature should amend their own rules to require conflicts to be disclosed *prior to* any permitted vote.

We heard about numerous complaints, prosecutions, and headlines regarding public officials who continue to participate or attempt to influence an agency decision or vote even though the public official has a conflict of interest. We find the laws regarding voting conflicts of interest need to ensure there are no loopholes by which officials can try to influence an agency's decision making process when the official has a conflict. In addition, we have heard testimony that the current law may allow a public official who has a conflict in the matter and cannot participate in the vote to then use his or her staff in an attempt to influence a vote or decision. We find this is clearly something that should be prohibited and it should be an easy fix to the voting conflict of interest law under F.S. 112.3143. We further find that the laws should prohibit a public official from attempting to influence staff about any matter in which the public official has a conflict that requires the official to abstain from voting. We likewise find this is an easy fix under F.S. 112.3143.

We also heard that appointed State officials are treated differently from elected State officials in that appointed State officials are not presently prohibited from voting on matters in which they have a conflict of interest. We find this too is an easy fix and is something the Legislature should amend under F.S. 112.3143.

We have received testimony about the need to require a "blind trust" under Florida law. A "blind trust" provision has been created in other states and the federal government in order to allow a public official to place private financial interests into such a trust. The idea is that certain public officials' ability to access potential financial conflicts of interest should be limited by setting these assets into a trust. This helps prevent an appearance of impropriety when a

public official is making policy decisions that may affect his or her financial interest. The Commission on Ethics has recommended the following when establishing a "blind trust" provision:

- Require the Governor, Lieutenant Governor, and each Cabinet member to use a "blind trust;"
- The legislature as well as county and municipal governments should consider whether other public officers should be included;
- The newly created provision should provide that the public official's economic interests in the blind trust will not give rise to either a prohibited conflict of interest or a voting conflict of interest under the Code of Ethics, thereby protecting the public officer or official from unwarranted accusations;
- The official should be prohibited from exercising any control over the trust, except for general directions regarding investment goals, requests for distributions;
- Officials would be prohibited from learning about the trust's investments, except to the limited extent necessary for personal tax returns;
- The interests in a blind trust should be reported on the official's financial disclosure statements;
- Limit who can serve as a trustee; prohibit the trustee from investing trust assets in businesses which the trustee knows are regulated by or doing significant business with the official's public agency;
- Provide for full disclosure if the blind trust is terminated; and finally,
- Require that the blind trust must be approved by the Commission on Ethics.

We find that the need for a "blind trust" is evident and should not require much Legislative effort to enact such a provision. Florida needs to catch up with the numerous other states and federal government which have already enacted the idea of a "blind trust".

We find that conflicts of interest provisions need to provide as much guidance as possible in order for a public official to understand what is required to be disclosed and when he or she needs to abstain from voting.

7. **Create a state electronic portal and program which allows all required financial and gift disclosure forms as well as all other filings with the Commission on Ethics to be filed electronically.**

8. **Require that public officials who file "Memorandum of Voting Conflict" forms 8A and 8B check *all* disclosures of the officer's interest.**

9. **Make it a misdemeanor criminal offense for any public official who fails to file a required disclosure form within ninety (90) days after the required date of filing.**

10. **Mandate that a gift disclosure form be filed even if the person subject to disclosure has not received any gifts, thus affirmatively stating he has received no gifts.**

11. **Require the person receiving a gift under F.S. 112.3148(5)(b) be subject to the reporting requirements.**

12. **Make the gift reporting amounts based on an annual dollar figure rather than on an individual gift basis.**

13. **More clearly define "procurement employee" for purposes of the gift law under F.S. 112.3148(2)(e).**

14. **Clarify that contributions to federal campaigns are excluded from the definition of "gift" under F.S. 112.312.**

15. **Require that the financial disclosure law cover board members of local community redevelopment agencies and local government finance directors.**

In 1990, a special session was convened and a comprehensive revision was enacted regarding the state's laws on gifts and honoraria in response to a series of media articles about lavish trips and gifts legislators were receiving and not reporting. In 1999, as discussed earlier, the Public Corruption Study Commission completed its review and many of the recommendations were enacted including amendments to the gift laws. In 2005, the Legislature

in another special session enacted the "expenditure ban" which prohibits State legislative and executive branch lobbyists and principals from providing certain officials and employees with expenditures (gifts) which have a lobbying purpose. We have heard that gifts were normal practice at all level of governments in the past, but the wisdom of allowing gifts is being questioned more and more as time goes on. In 2011, the Legislature should again make needed revisions to the laws on gifts and financial disclosure.

In 1999 and 2006 surveys done by The Center for Public Integrity, Florida received a "D" grade and ranked 25th among the states in disclosure laws.[xlvi] The ranking is based on a 43-question survey that measures public access to information on legislators' employment, investments, personal finances, property holdings, or other activities outside the legislature. State statutes and disclosure forms were analyzed and state ethics officers were interviewed by the Center for Public Integrity.

According to witnesses, the process for filing certain forms with the Commission on Ethics, such as voting conflict and financial disclosure forms, should be improved. Forms 8(a) and 8(b) concern public officials disclosing when they have a conflict of interest in voting. We heard that this form presently has a section for disclosing the public official's conflict by checking boxes which detail the reason for the conflict. The form does not require the public official to check off all of the conflicts that may apply; therefore, the public official may fail to disclose all of the potential conflicts. We find that it is in the best interest of the public as well as the public official to require an official to check off all conflicts that apply under these forms.

In addition, we heard the process for filing forms with the Commission on Ethics would be greatly improved if submitted electronically. Electronic filing could require the filer to check all that apply and acknowledge that the filer had done so. There have been problems with filers

completing the forms accurately and completely. By requiring the forms to be filed electronically, the filer would not be able to advance to the next screen unless the filer had completely filled out everything required on that screen. In one witness's independent and unofficial study of financial disclosure forms (Form 6), the forms were usually filled out incorrectly, even by judges. Often the filer fails to fill out everything required. Electronic submission would eliminate the problems of incomplete forms and ensure the intended disclosure to the public.

We received testimony there is presently a loophole of sorts with the filing of required disclosure forms. The problem is that someone who files a required disclosure and falsifies information may be charged with an ethics violation as well as criminal charges; however, filing no paperwork at all is not a crime as it is only a civil ethics violation. This is a clear shortfall in the law. For example, if a public official or servant who is required to disclose the receiving of a gift fails to file a gift disclosure form, the official or servant cannot be criminally punished, but may face a civil ethics violation. If that same official or servant does file a false gift disclosure form, the official or servant could be charged with an ethics and a criminal violation. This is because official misconduct under the Code of Ethics is civil and there is no parallel criminal violation as there is for other ethics violations. A public official may determine it is better to not file and face civil penalties then risk disclosing a false statement which could subject the official to criminal penalties. According to testimony, a survey conducted by the *Sun-Sentinel* found that out of approximately 30,000 disclosure reports which should have been filed, only 600 were filed. It is evident that the strategy in politics is that it is better to simply not file and pay a fine if caught. We find there should be a criminal offense for failing to file a required form. If official misconduct were criminalized in accordance with our earlier recommendation, this may address

this concern. We have heard a suggestion that the Legislature should give a limited time period to allow for accidental delays in the filing. We further find that any criminal violation should be a sufficient enough deterrent to encourage filing so that the citizens have the transparency that was intended in the Code of Ethics.

We were informed by a witness that the Commission on Ethics receives numerous questions about why certain individuals are required to file financial disclosure forms while other individuals are not. Two groups of individuals who are not presently covered by the financial disclosure laws are board members of local community redevelopment agencies and local government finance directors. According to testimony we received, these groups should be required to file a financial disclosure form.

We also heard testimony about the complicated rules regarding when a gift has to be disclosed depending on the individual receiving or giving the gift and the amount of the gift. The gift laws are found under F.S. 112.3145 and 112.3148. We have heard that for reporting individuals (those required to file financial disclosures) and procurement employees, the law prohibits solicitation or acceptance of any gifts in excess of $100 or more from lobbyist; partner, firm, or employer of lobbyist; or the principal of a lobbyist. Under F.S. 112.3148(8), the law allows a reporting individual to take gifts in excess of $100, but requires the receiver to fill out a gift disclosure form (Form 9) if the gift is from anyone other than a "relative." We have heard that this gift disclosure form is required to be filed quarterly. We have heard that many reporting individuals or procurement employees are not familiar with this rule and are surprised when they learn they may be required to fill out a gift disclosure form because they accepted lodging at a friend's house over a weekend. Additionally, and more concerning, we have heard that lobbyists are not reporting under F.S.112.3148(5) which requires a lobbyist to file all gift they provided to

anyone subject to the gift reporting laws if the gift was between $25 to $100. We have heard testimony that lobbyist not reporting gifts they provide is a big problem that needs to be addressed. We find that the Legislature should consider the testimony we received that this law is ineffective and consider how it could be enforced. Presently a violation for a lobbyist not reporting the gift is a civil violation. Tougher sanctions could be considered, but the tougher issue is catching those who violate this rule. The Legislature should require the receiver of a gift from a lobbyist to also report any gifts between $25 to $100. This would ensure the lobbyist would report as they would know the gift is likely to be reported by the one receiving the gift. Another consideration is willful violators or repeated violators subject to an additional penalty of suspension from lobbying for a period of time or barred from giving any gifts. This would be a lobbyist gift debarment or suspension list.

In addition, we heard that a lobbyist in theory could give a gift of $100 to a reporting individual every day and the reporting individual would not have to report the gift. If the lobbyist also did not report this, it may never be discovered. Even if the lobbyist did report the gift, it seems that a lobbyist giving a reporting individual $100 a day would be playing the system. If we seek to prevent some threshold amount whereby we determine any more is buying influence, than we should consider the amount on an annual basis. We have heard testimony that other states have tougher restrictions on gift bans than Florida. Many states have an annual restriction on the amount allowed. We find the Legislature should consider limiting the amount of gifts based on an annual basis as other states have done.

We have heard that all of this is overly complicated and some administrations, like Governor Chiles, have had a policy of no gifts. We have heard those argue that gifts are always given for some reason, even if never spoken. We understand that the Legislature has a complete

gift ban and we find this idea has merit in certain situations and should also be considered. However, we have heard from public officials and even board volunteers who find that a complete gift ban could be problematic. We have heard that a complete gift ban would create difficult situations such as not being allowed to accept a ride, a pen, a glass of water, or any food whatsoever, even during a long meeting a board member or commissioner may be serving as a volunteer. A complete gift ban may be taking it too far in some circumstances, but be a good idea in others. We have heard one solution is to prohibit lobbyist from any gifts over $25. We find this may be one potential solution the Legislature should consider.

We also find the Legislature should consider whether allowing an elected official to receive a gift of more than $100 from anyone other than a lobbyist as long as it is reported should be prohibited. We have heard other states do not allow for gifts to elected officials unless from a relative or family member, even if they are reported.

We heard the term "procurement employee" under the gift law, F.S. 112.3148(2)(e), covers a wide range of State employees that are identifiable based on their employment related activities. We have heard that there have been some questions about whether an individual qualifies as a "procurement employee." We find that this term should be clearly defined in order to aid agencies and employees to determine who is covered under this term.

The definition of "gift" under F.S. 112.312 presently allows for "contributions or expenditures reported pursuant to chapter 106…" We have heard since this definition refers to Florida's campaign finance laws and not the federal laws, that it has lead to a complaint being filed with the Commission on Ethics that a candidate who received a campaign contribution under federal law was receiving a gift. While the complaint was dismissed, we find the

Legislature should amend the definition of "gift" to clarify that contributions to federal campaigns are also not considered gifts.

Many public officials are hard working individuals who sacrifice their time and possibly financial interests to perform public service; however, this is a choice that a public official has made and as a public official, the official is representing the public and not the individual's personal benefit. We find public officials have often forgotten why they choose to serve and instead think that they are deserving of certain benefits due to who they are as a person, rather than who they represent. We have heard testimony from a county commissioner who stated he has a no gift policy as he personally does not feel it is right. In rare circumstances where public duty justifies, such as ribbon cuttings and honorarium, the witness stated he may make an exception. Public officials must understand that gifts are not an entitlement to office and public officials should choose a policy prohibiting all gifts.

We heard that campaign donations are not considered gifts; so while we are trying to reduce the appearance of gifts improperly influencing a public official, lobbyists and others can still contribute to a candidate's campaign and provide other services which may still influence a public official's patronage. We find gift laws are only a small step at limiting the perception that public officials are being influenced by gifts, money, or benefits bestowed upon them from those outside their office.

We received testimony about how procurement contracts could be awarded to a bidder who may then contribute to an elected official's charity of choice. We heard this is in fact common and that it has been upheld in litigation. A contractor or vendor who has been awarded a contract may be prohibited from donating directly to an official's campaign; so in order to circumvent this, a donation is made to the public official's charity. This makes public officials

look desirable to boards as they have ability to raise large amounts of money. Since it is unlikely that there was ever anything stated between the contractor and the public official, proving any unlawful quid pro quo would be difficult. Rather, the problem is that there is an appearance of impropriety and this appearance needs to be addressed. We find that public officials should be careful to disclose any situation whereby they are voting on a contract and then receiving a contribution to a charity they are associated with. The onus must be for full disclosure by the public official. While we want charitable contributions, we don't want them to be made for dirty reasons. We find the Legislature should consider how to address contributions to charities by contractors or others in which a public official has ties to and how this should be disclosed by a public official once the official becomes aware of the donation.

Florida's gift and disclosure laws are a step in the right direction; however, they should be revised from time to time as needed. We find the financial disclosure law serves an important role in informing the public about a public official's financial interest and allows the public to ensure a public official is serving the public's interest and not his or her own financial interest. We find gift laws serve the role of ensuring that the decisions made by our public officials are not being improperly influenced by outside influences. These ethical laws serve as an important and necessary reminder to public officials that they serve the public.

Commission on Ethics

We heard from numerous witnesses about the Commission on Ethics. The Commission on Ethics is a non-paid and appointed body consisting of nine members. "The Commission serves as the guardian of the standards of conduct for officers and employees of the state and of a county, city, and other political subdivisions of the state."[xlvii] Complaints received by the Commission must be made under oath on the form prescribed by the Commission and a copy

must be sent by the Commission to the respondent (accused violator) within 5 days. Unless the alleged violator requests in writing that the records and proceedings are made public, the complaints will be confidential up to the point at which either the complaint is dismissed by the Commission or the Commission finds "probable cause."

If the Commission finds a complaint insufficient to indicate a possible violation of the ethics laws, the complaint is dismissed without investigation, but with an order explaining reasoning. The Commission or the Executive Director can order an investigation of a complaint. An investigator will prepare a written report at the conclusion of the investigation and the report will be provided to the respondent, who is given time to reply. The Commission "advocate" (prosecutor) prepares a written probable cause recommendation, which also is provided to the respondent, who can provide a written reply. A "probable cause" hearing before the Commission allows oral argument by the respondent and advocate (no evidence taken) and allows the complainant to observe. If probable cause is found, the Commission can order a hearing or allow the respondent 14 days to request a public hearing. If it is determined that there was a violation, either the respondent and advocate negotiate a stipulated settlement agreement, or the case is set for a hearing before an administrative law judge (ALJ) with the Division of Administrative Hearings (DOAH). Any recommended order made by an ALJ is reviewed by Commission for a final determination. Clear and convincing evidence standard applies to complaint proceedings. Penalties are imposed by disciplinary officials (typically the Governor), not by the Commission, which can only recommend penalties. If a legislator is found to have violated the Code of Ethics, the matter is referred to the State Senate or House to impose a penalty. According to a witness, this is because separation of powers in the Florida constitution provides that no person belonging to one branch may exercise any powers provided to another branch and the

Constitution specifically stipulates that the legislative branch be the sole judge of members' qualifications, elections, and returns.[xlviii] The Commission's final order is subject to appeal to the District Court of Appeal.

We also heard testimony about the Commission's oversight of financial disclosure and executive branch lobbying. The Commission manages financial disclosure requirements for approximately 37,000 public officers and employees statewide. This is handled primarily through four employees and through the Commission's website. Fines for financial disclosure violations are $25 a day for late annual filings with a cap of $1,500. The Commission is also responsible for managing the Executive Branch lobbyist registration and reporting system (legislative branch lobbyists are subject to the Legislature's program, which is virtually identical). To lobby in front of the executive branch for policy or procurement, a person must register prior to lobbying. Lobbying firms must report the compensation they receive from their clients on a quarterly basis. The fines for violating the executive branch lobbying registration requirements are $50 a day for late filings with a cap of $5,000. We heard that witnesses have suggested to the Commission that the financial disclosure and other forms be submitted electronically. Requiring forms to be submitted electronically would ensure the filer completed all of the questions before proceeding to the next screen. In addition, the form could require the filer to acknowledge that he or she read and understood the document and responses being filed. We find the benefits of electronic filing outweigh the costs and the Legislature should fund electronic filing immediately.

According to testimony we received, the Commission has received approximately 6,000 complaints and rendered about 2,500 formal binding opinions since 1975. From 1999 through February of 2010, the Commission received 2,421 complaints. During this time period, about

50% of the complaints were investigated and of those complaints, approximately 65% had no probable cause and only 35% of the time probable cause was found. Once probable cause was found, about 94% ended up with probable cause being found by the Commission. The important points to ascertain are that about half of the complaints do not even make it to an investigation stage and of those that do, the majority result in a finding of no probable cause. Most of the complaints received concern actions of public officials from medium and small counties and cities rather than actions by Legislators. Based on this information, we conclude that the procedures used by the Commission on Ethics have sufficient safeguards to protect alleged violators from accusations which cannot be proven. In addition, the Code of Ethics F.S. 112.317(7) provides that anyone who files a complaint with malicious intent to injure, false allegations, or reckless disregard shall be liable for costs plus attorney's fees.

In 2009, the Commission consisted of 28 employees and had an appropriation of $2,455,796, which was a cut of $528,000 from 2007's appropriation. We find the work of the Commission on Ethics to be a vital tool to ensure the citizens of Florida have a watchdog over our government officials and employees. We are concerned that the Commission is beholden to the Legislature to appropriate their budget. The Legislature regulates its own body, so in theory, the Commission is free to do its work without concern or pressure from its sole funding source. Of course, it is conceivable that legislators may have constituents, friends, family members, or campaign contributors with matters before the Commission, which could create a potential conflict of interest when it comes to determining funding for the Commission. The Legislature should consider ways to protect the Commission and its budget so that the Commission can perform its important watchdog role independently without concern for whom it may upset.

We heard testimony concerning the Miami-Dade Commission on Ethics and Public Trust that is relevant to our concerns above. The Miami-Dade Commission on Ethics is funded by the County Commission. We heard that over the last couple of years its budget has been reduced, making it difficult for the Miami-Dade Ethics Commission to do its job. According to a witness, the Mayor (strong mayor system) directed the County Commission to cut the Miami-Dade Ethics Commission's budget and the County Commission complied. The Mayor also directed all Miami-Dade agencies to cut their budgets by 5% and accused the Ethics Commission of not making the cuts to employee salaries. The Ethics Commission took the position that they are an independent agency and can determine how to make the cuts. According to testimony, this struggle occurred while the Miami-Dade Ethics Commission investigated the Mayor's former chief of staff and one county commissioner. According to a witness, a county commissioner noted the appearance of vindictive actions being taken against the Miami-Dade Ethics Commission. This political scenario took place even though the Miami-Dade Commission on Ethics is structured to function as an independent agency. Likewise, the Florida Commission on Ethics is structured to be a separate independent agency yet depends on another body for funding. We heard testimony that the local commissions of ethics require their funding to be approved by the voters with a ceiling.

16. <u>Give the Commission on Ethics limited authority to self-initiate investigations based on a super-majority vote of the Commissioners.</u>

We heard from experts who shared extensive knowledge about the Commission on Ethics and how it can be improved. Much debated is the idea of giving the Commission the authority to self-initiate investigations. Some public officials fear this would give too much authority to the Commission on Ethics. According to testimony, one role of the Commission is to clear public

officials of invalid complaints, which happen frequently. Public officials who are acting ethically should welcome an investigation as it will clear them from public allegations which could harm their reputation. The idea of allowing the Commission on Ethics to self-initiate complaints dates back to a 1999 Public Corruption Study Commission, which recommended that the Legislature "give the Commission the authority to initiate investigations based upon receipt of sufficient evidence, as judged by an extraordinary majority of the Commission." Witnesses we heard, including attorneys who present before the Commission, support this idea. The real question is how self-initiated complaints should originate. One group has sided with the Study Commission idea requiring a super-majority of Commissioners voting to initiate an independent complaint. The other side has argued that the Chairman of the Commission on Ethics should determine whether or not to self-initiate complaints. Some say that giving this role to the Chairman puts too much power in one person's hands like a "Star chamber." Those in favor of the Chairman having this authority told us that these concerns were overblown as the Commission and Chairman have shown they can act in a fair and nonpartisan way. In agreement with the 1999 Study Commission, we find that the Commission on Ethics should be given the authority to initiate complaints on its own. While determining how complaints are initiated is not our primary concern, we find the majority of witnesses preferred that complaints be initiated by a vote of the super-majority of the Commission.

17. <u>Rewrite the Code of Ethics so that it clearly applies to any persons, entities, or non-profit organizations who are receiving public funds to perform a government function or service.</u>

In 1977, the Commission on Ethics ruled that the Code "does not apply to a person whose relationship with a governmental entity is as an 'independent contractor,' rather than as a public

officer or employee."[xlix] Over the years, the Commission has dismissed complaints when the relationship proved to be one of contractor rather than employee. In 2009, the SB 252, Chapter 2009-126, was enacted relating to local government and creating s. 112.3136, F.S. This new provision of the Code of Ethics applies the conduct, financial disclosure, gift, and honoraria provisions to employees, directors, and officers of private entities serving as the chief administrative officer, executive officer, or employee of a political subdivision by making them public officers and employees who are subject to penalties as prescribed under F.S. 112.317(e). Under F.S. 1.01(8), a "political subdivision" includes "counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state." This makes the private contractors and employees who are working for a political subdivision subject to certain Code of Ethics requirements. By including private employees who serve as employees of a political subdivision in the definition of a public officer and employee, F.S. 112.3136 is expanding the reach of the Code so that it encompasses entities and its officers, directors, and employees of a political subdivision, whether privately hired or not. Lobbying firms and lobbyist are however excluded. While this loophole has been in existence for years, certainly the need to apply the Code to private entities and employees who receive public funds to complete jobs has risen over time as governmental agencies have turned more and more to privatization and outsourcing. As we have discussed, this loophole also exists in criminal statutes under the term "public servant." Clearly the definition of "public officer and employee" under the Code of Ethics should be addressed by the Legislature. While F.S. 112.3136 does attempt to reign in those private contractors and employees while employed by a political subdivision, it is limited and may not be the best approach for all of the Code of Ethics. We find the Code of Ethics should include language similar to what was done under F.S. 112.3136 or

otherwise clarify that the Code of Ethics applies to all individuals and entities who are paid to perform a government function or service as discussed throughout this Report.

We are troubled by the numerous cases we heard in which an individual escapes punishment under the Code because he or she is not considered to be a public officer or employee of an agency according to the definitions in the law. While we applaud the fact the Legislature closed a loophole for political subdivision employees in 2009, more must be done to capture all entities and employees who are serving as an employee of any governmental entity or performing the functions and duties of a public officer or employee. We find that if a private entity or employee is being paid by public funds to perform a government function or service, that person should be considered a public officer or employee under the Code.

18. **Make the definitions under the Code of Ethics uniform and located in one place if possible under F.S. 112.312 rather than beginning sections with additional definitions for that particular section.**

19. **Consolidate the definitions for "public officer" under the Code of Ethics.**

20. **Remove the word "corruptly" from F.S. 112.313(6) misuse of public position.**

21. **Clarify that the Commission on Ethics has the authority to interpret any criminal section of the Code in order to impose civil penalties.**

In addressing our state laws concerning public corruption, we learned that terminology used by the Legislature determines whether or not a person is covered under the statute. As we studied Chapters 112 and 838 in detail, we learned that uniform terms are not used. Chapter 112 uses terms such as "public officer", "employee of an agency", or "public officer or employee." Chapter 838 covers "public servants." This assortment of terms makes the statutes all the more unwieldy. It is our understanding that part of this confusion is due to the terms provided for within the State Constitution, in which case those terms must be defined. One definition is used

in F.S. 112.3173 in order to define the term "public officer or employee" as used in Article II, Section 8, of the Florida Constitution. Another definition for "public officer" is provided under 112.313(1) and 112.3143(1)(a). The statue is further complicated by the fact that the term "employee of an agency" is used rather than "public employee." The Legislature needs to find a uniform definition for "public officer or employee" that can be used throughout Chapter 112, Part III, and which takes into consideration that many governmental offices and employee jobs are now in the hands of private companies who are being paid state tax dollars to perform governmental services. If one uniform definition cannot be created, then we recommend the following changes be made to present definitions in order to ensure that private officers and employees performing governmental services are included within the Code of Ethics.

- Change the definition of "public officer or employee" under F.S. 112.3173(2)(c) to include the definition of "public servant" so that it encompasses privatized individuals and institutions performing a government function. We recommend the definition read as follows:
  "'Public officer or employee' means an officer or employee of any public body, political subdivision, or public instrumentality within the state, and includes anyone who is a 'public servant' in accordance with s. 838.014(6)."

- In order to address other sections which use the term "public officer" and "employee of an agency," the term "government entity" which is presently used within the definition of "Agency" under F.S. 112.312(2) needs to be defined. The definition for "governmental entity" is presently defined under F.S. 11.45(1)(d); however, it should be expanded for purposes of Chapter 112, Part III to state as follows:

  "'Government entity' means a state agency, a county agency, or any other entity, however styled, that independently exercises any type of state or local governmental function. This term includes any non governmental entity, private corporation, quasi-public corporation, or quasi-public entity that is authorized by law or contract to perform a governmental function or provide a governmental service on behalf of a government entity to the extent that it relates to the performance of the governmental function or provision of the governmental service."

> " 'Governmental function' or 'governmental service' for purposes of this chapter means performing a function or serving a governmental purpose which could properly be performed or served by an appropriate governmental unit or which is demonstrated to perform a function or serve a purpose which would otherwise be a valid subject for the allocation of public funds."

We find the Legislature should develop common terminology in defining and labeling whom is covered under the statutes.

We reiterate here an earlier recommendation to remove the word "corruptly" in the violation of misuse of public office under F.S. 112.313(6).

We heard testimony that the Commission on Ethics has determined it does not have authority to construe provisions under the Code of Ethics which include criminal penalties. Specifically, we heard testimony that the Legislature should clarify F.S. 112.3217 relating to the prohibition against contingency fees which provides for criminal penalties. The Commission on Ethics has taken the position that it does not have the authority to determine what a contingency fee contract is and that this is a matter for a state attorney's office because it involves a criminal penalty. We heard testimony that any provisions of the Code of Ethics which are criminalized in the future need to clearly allow the Commission on Ethics the authority to interpret and provide that any violation may also result in civil penalties as provided for in the Code of Ethics.

As to F.S. 112.3217, the Legislature should also consider whether this particular section should remain a criminally punishable offense rather than one subject to civil sanctions under Chapter 112, Part III. According to testimony, the Legislature should consider that this section was criminalized to address a pari-mutuel lobby which may no longer be a concern and that the Commission on Ethics can better regulate this law than can the State Attorney's Offices which lack the time and resources to prosecute these misdemeanor offenses.

We believe these recommendations will clarify and improve the Code of Ethics. The Code needs to be uniform and clear as to whom it covers. If the provisions are to be meaningful, the Commission on Ethics must have the authority and resources to use them.

22. <u>We recommend metropolitan counties establish a code of ethics and a commission on ethics and public trust similar to the Miami-Dade Commission on Ethics and Public Trust.</u>

The Code of Ethics allows for a county or municipality to create a "Commission on Ethics and Public Trust." The Code provides that local governments may impose on its own officers and employees additional or more stringent standards of conduct and disclosure requirements than what is specified in the Code (so long as the requirements do not conflict with the Code). We heard testimony on the creation and effectiveness of local commissions on ethics and find that there is a need for them particularly in larger local governments. We heard testimony that local commissions on ethics exist in Miami-Dade County, Palm Beach County, Jacksonville, and Broward County. There are major differences in how these commissions were established and the resulting abilities and powers given to them.

We heard testimony about the establishment of the Miami-Dade Commission on Ethics and Public Trust in 1996. The Miami-Dade Commission has investigators who can look into ethical violations of the county code. The Miami-Dade Code of Ethics applies to every public servant in Miami-Dade and includes all county and municipal government employees and officials. Similar to the State Code of Ethics, the Miami-Dade Code of Ethics regulates conflicts of interest, gifts, lobbying, and non-criminal violations which can be handled before the Miami-Dade Commission on Ethics. While the Miami-Dade Code of Ethics also created criminal misdemeanor violations for certain offenses, we heard that these criminal misdemeanor violations are rarely prosecuted by the local state attorney's office because the state laws are

preferred. Miami-Dade ethics commissioners are appointed with the county commissioners' approval. The County Commission also selects the Director of the Miami-Dade Commission on Ethics from names referred by a committee. The Miami-Dade Commission on Ethics was modeled on the idea that investigators and commissioners must be free from political influence and above corruption.

Following a Palm Beach Grand Jury Report, Palm Beach County established a Code of Ethics along with a Commission on Ethics which was largely based on the Miami-Dade model. We heard that not all local commissions on ethics have been established in the same manner. For example, we heard Jacksonville's commission on ethics lacks any real enforcement power and is not at all like the Miami-Dade model. According to testimony, when Broward County initiated its Commission on Ethics, many on the Broward County Commission opposed giving the ethics commission the authority needed to investigate and enforce the local code of ethics. We find that local codes of ethics and local commissions of ethics and public trust help to ensure that local government officials and servants behave ethically; therefore, we strongly encourage other counties to enact codes of ethics and commissions on ethics similar to Miami-Dade and Palm Beach.

We find that counties with established commissions which are not presently similar to the Miami-Dade Commission should revise their structure and authority to be in line with the Miami-Dade model. Local ethics commissions should be given the authority to investigate independently by a super majority vote or based upon a sworn complaint. Violations must carry sufficient consequences to deter and punish public officials. County commissions should not try to limit the authority of a commission on ethics or inadequately fund the commission.

Local governments should ensure that their codes of ethics provide clear conflict of interest regulations. Specifically, we heard testimony that counties, municipalities, special districts, school districts, and the like need to keep the staff independent of those who are voting on matters. Commissioners or decision makers should not be allowed to sit on committees which will make recommendations to the commission or decision making body. Like the State Commission on Ethics, local ethics commissions presently have a public records exemption for a complaint or any records relating to the complaint or to any preliminary investigation. In addition, a complaint and the preliminary proceedings are exempt from public meetings requirements. During the 2010 Legislative session, a bill was introduced and passed which extends the public record and public meeting exemptions to any county or municipality that has established a local investigatory process to enforce more stringent standards of conduct and disclosure requirements than provided for by state statute.[1] After hearing testimony, we conclude that the exemptions are necessary and should continue to be reenacted by the Legislature. These reenactments require legislative action every five years. This renewal requirement concerns us because it is conceivable the Legislature would decide it no longer wanted these investigations to be exempt, especially if a legislator who fears investigation or has been the object of one works against the exemptions.

D. Election Laws, Campaign Financing, and the Elections Commission

Chapters 97 through 106 are collectively known as the Florida Elections Code. Chapter 104 governs election laws and provides for criminal violations. Chapter 106 covers campaign financing, the Division of Elections, the Elections Commission and civil penalties for violations. Under F.S. 106.22 the duties of the Division of Elections includes prescribing required filing forms, preparing and publishing manuals and brochures about the requirements of the election

laws, preserving filings, preparing and publishing reports, making certain audits and field investigations, and reporting to the Elections Commission the failure of any candidate to file a required report or information. The Division of Elections has power to conduct investigations and can compel records thru subpoena. The Division of Elections also provides advisory opinions to supervisors of elections, candidates, political committees, committees of continuing existence, political parties and others regarding elections laws.

Election and campaign finance

1. Expand prohibition in F.S. 106.15(3) to include any "public servant."

F.S. 106.15(3) states that "[a] candidate may not, in the furtherance of his or her candidacy for nomination or election to public office in any election, use the services of any state, county, municipal, or district officer or employee during working hours. We have previously discussed our concerns throughout this Report that privatization and outsourcing have lead to more individuals performing functions previously performed by state government. We are concerned that the present list of excluded individuals is not broad enough to include individuals who are not government employees, but are paid with public funds to perform a governmental function or service. We find we need to include "public servants" in accordance with our earlier definition, or that this section prohibit candidates from using the services of publicly funded individuals who perform a governmental service or function.

2. Mandate that filing officers (Division of Elections, county supervisors of elections, and city clerks) report to the Elections Commission any potential violation of election or campaign finance laws.

We heard from a witness with the Department of State, Division of Elections regarding the need to require filing officers to report potential election or campaign finance law violations. Certain filings are required to be filed with either the Division of Elections, county supervisor of

elections, or city clerk, depending upon the office the candidate is seeking or serves. Currently, a filing officer or employee of an elections office who receives a filed document and who observes a potential violation of election or campaign laws is not required to report any such suspected violation. It is up to the receiving filing officer to determine if the matter should be investigated further and reported. We heard that filing officers may have knowledge that a candidate has improperly filed his or her campaign finance report. Typical investigations for election law and campaign finance law violations are due to candidates underreporting amounts of donations they collect or due to candidates falsifying treasury reports. If it is not reported, we must hope a citizen will find the violation and file a complaint. We find it would be in the interests of fairness and honesty that filing officers be required to report all violations that come to their attention to the Elections Commission within a prescribed period.

3. <u>Amend F.S. 106.15(4) so that a candidate cannot solicit or knowingly accept any political contribution in a building owned *or leased* by a governmental entity.</u>

According to F.S. 106.15(4) a candidate cannot solicit or knowingly accept any political contribution in a building owned by a governmental entity. We heard the practice of soliciting political contributions in government office buildings technically is allowed to take place if the property is leased rather than owned by a governmental entity. We heard that this apparent loophole in the law could be easily fixed by adding the word "leased" within the section.

4. <u>We recommend the Legislature strike the two year statute of limitations under F.S. 106.28. Amend F.S. 106.06(3) to conform with any new statute of limitations period.</u>

Under F.S. 775.15, the general statute of limitations for offenses provides that the prosecution for a first degree felony must commence within four years after it is committed and for all other lesser felony offense within three years. Prosecution for a first degree misdemeanor

must commence within two years after the date of the offense and a second degree felony or a noncriminal offense must commence within one year. With the exception of continuing criminal offenses, a crime is committed and the statute of limitations begins to run when every element of the crime has occurred. However, there are exceptions provided for within this general rule and throughout the statutes. F.S. 775.15(12)(b) provides that "[a]ny offense based upon misconduct in office by a public officer or employee at any time when the defendant is in public office or employment, *within 2 years from the time he or she leaves public office or employment*, or during any time permitted by any other part of this section, whichever time is greater."

Another of the exceptions to the general statute of limitations rule is found under F.S. 106.28 which states, "[a]ctions for violation of this chapter must be commenced before 2 years have elapsed from the date of the violation." We heard testimony from law enforcement and attorneys that this statute of limitations for campaign finance violations under Chapter 106 has lead to an inability to prosecute some violations under Chapter 106. For example, we heard about an elected mayor who appeared to have underreported his contributions which could have been a violation of F.S. 106.07(5). An investigation into the alleged activities of the mayor did not begin until four years later. Under F.S. 775.15(12)(b) the investigation could have proceeded because the mayor was in office or would not have been out of office for more than two years. However, due to the two year limitation from the date of violation imposed under F.S. 106.28, the mayor could not be prosecuted for any violation of Chapter 106.

Other sections of the Florida Elections Code do not have this statute of limitations provision. We find that the limitations period should be extended. We heard that one possible reason for the shorter limitations period under Chapter 106 is because candidates want to prepare for the next election campaign without worrying about attacks into past filings of reports under

Chapter 106. We do not find this to be a sufficient reason to make an exception under Chapter 106. By deleting this limitations restriction, candidates would be subject to the same limitations period as the rest of the Elections Code as provided under F.S. 775.15(5). In addition, the requirement that candidates' records be kept by the campaign treasurer under F.S. 106.06(3) would need to be amended in conformity with any new statute of limitations period.

5. <u>Create a separate civil violation for a candidate or official who is a *repeat* late filer under F.S. 106.07.</u>

Florida requires candidates to file certain information such as campaign contributions on a scheduled basis. Under F.S. 106.07, someone who is late faces a civil penalty. We have heard that federal laws have a provision for candidates who repeatedly files late. We find the Legislature should create escalating fines for repeat late filers, and follow federal laws on penalties for repeated late filers.

Without a penalty for repeated late filings, the Elections Code lacks any deterrent present in the campaign finance law with respect to candidates and committees who repeatedly fail to file financial reports within the prescribed timeframe. Currently, these violations are simply addressed by a penalty structure which imposes a standard fine for late filings. It has been observed that some candidates and/or committees routinely fail to file timely reports knowing the penalty is much lighter than the potential benefit. It is suspected that these reports are being withheld in order to deceive or otherwise confound the opposition as to the true fundraising ability of the late filer. Thus the late filer is garnering an unfair advantage.

The method for determining what constitutes a *Repeat Late Filer* should be established by the Division of Elections based on federal laws.

6. Eliminate "3-pack" advertising under F.S. 106.021(3)(d).

F.S. 106.021(3)(d) allows expenditures by a political party or committee to advertise jointly for three or more candidates without it being considered a contribution to any candidate. F.S. 106.08 limits campaign contributions to a candidate at $500. A candidate wishing to run an advertisement supporting his or her campaign would be required to pay for any such advertisement. "3-pack" advertising was created for the purpose of allowing an advertisement to be paid by a political party or committee which directly supports three or more and does not require any of the candidates to count the ad as a campaign contribution. We have heard this exception to what would otherwise be prohibited is being abused. Part of the problem is the rule does not specify how much time must be allocated to each candidate within the message. We heard this has lead to advertisements which promote one candidate while two other candidates are hidden within the ads. Often these are television messages and this requirement is satisfied by including the names on the written "sponsored by" segment at the tail-end of the ad. We find that this means of advertising is deceptive and is simply a means to skirt the contribution limits. We find the "3-pack" advertising exception should be eliminated.

7. The Legislature should define the term "residency" to require a candidate actually live in the district at the time the candidate is running for or elected to serve any office.

Along with the Florida Constitution, Chapters 97-106 are titled the "Florida Election Code." Chapter 97, Part I, provides for the qualifications and registration of elected officials and candidates. Under the Florida Constitution Article III, Section 15(c), each legislator shall be "an elector and resident of the district from which elected and shall have resided in the state for a period of two years prior to election." Article IV, Section 5(b) provides that the governor, lieutenant governor, and any cabinet member "must be an elector ...who has resided in the

state..." Under Article V, section 8, "No person shall be eligible for office of justice or judge of any court unless the person is an elector of the state and resides in the territorial jurisdiction of the court." Under Article VIII, Section 1(e), county commissioners shall elect "One commissioner residing in each district..." The Florida Constitution also requires residency for homestead, public defenders, state attorneys, and State Supreme Court justices. Under Article VI, Section 2, an "elector" is considered to be in the county where registered if he or she is a citizen of the United States who is eighteen years or older and "who is a permanent resident of the state." The Constitution provides no more specific definition for residency. Residency requirements may be prescribed for county and municipal offices in accordance with the Florida Constitution.

There is no statutory definition for residency. F.S. 97.021 provides for definitions related to the Florida Election Code. However, neither Chapter 97 nor any other statute defines the terms "resides," "resided," or "resident." The Department of State is provided the authority to handle complaints under the election code through an informal dispute resolution process. However, we were told by a witness that the Department of State does not handle residency complaints. We were also told that the Elections Commission does not handle residency complaints as they lack the specific authority to handle qualifications issues.

We heard from FDLE that they will frequently receive complaints alleging that a candidate is not qualified to run for office as the candidate does not reside in that district. FDLE has investigated these complaints for criminal violations and where appropriate, brought the case to a state attorney's office for prosecution. However, investigators have told us that prosecutors repeatedly turn down prosecutions of residency violations because there is no constitutional or

statutory definition for "resident" or "residency" and case law interpretations of the term are too vague to allow for prosecution of residency violations.

We heard that cities and counties have had an easier time dealing with this issue by enacting special residency requirements that clarify what it means to live in one's district. The City of Deerfield Beach requires candidates sign an affidavit affirming they have lived in the city limits within the last twelve months. Because this affidavit is more specific than the affidavit required by state officials running for office, an individual in violation of Deerfield's ordinance was charged with filing a false affidavit or official document.

However, an elected State Representative who used another's address and paid $200 a month rent was considered a resident under the current case law definition. We heard testimony of a candidate who moored his boat in the district to gain residency. Case law has defined the term "resident" to mean one's legal residence equates to permanent residence, domicile, or permanent abode.

We heard that defining residency for the Governor, Lieutenant Governor, Cabinet and Legislature, may present an additional problem as most of them reside in places other than where there office is in Tallahassee. In addition, constitutional officers, such as judges, whose qualifications are defined in the Florida Constitution would require a constitutional definition of "resident." Another area for consideration is the residency requirements of those who are appointed to office. We find residency should be defined and that the Elections Commission should be given specific authority to investigate residency violations.

We recommend the Legislature provide for a grandfather clause to prevent presently seated public officials from being held in violation of the statute.

A candidate who violates the residency requirement in the future should be removed immediately from their illegally obtained seat and should be subject to civil penalties.

Elections Commission

Under F.S. 106.24 the Florida Elections Commission is created within the Department of Legal Affairs, Office of the Attorney General. The Elections Commission is a separate budget entity and agency head. The Elections Commission is composed of the Governor and nine members who are appointed from both political parties and confirmed by the Senate. Commissioners serve for four year terms and the Chair is appointed by the Governor. Lobbyists are prohibited from serving on the Commission and commissioners are barred from lobbying. Commissioners can serve two terms and are paid travel and per diem only. No more than five members may be from one political party at any given time. In addition, commissioners cannot be politically active or hold or run for public office. An executive director serves at the pleasure of the Commission and employs a staff to carry out the duties of the Commission. A trust fund is established to help pay for the Commission's activities and to pay rewards for information leading to fraud convictions related to voting. The Commission budget is submitted to the Legislature via the Governor.

The Commission investigates all violations of Chapters 104 and 106, but "only after having received a sworn complaint or information reported to it under this subsection by the Division of Elections. Such sworn complaint must be based upon personal information or information other than hearsay"…"The commission shall investigate only those alleged violations specifically contained within the sworn complaint." The Commission must determine whether or not there is probable cause based on the facts alleged in the sworn complaint. At this stage, the alleged violator is provided with a copy of the investigator's report and may respond to

the Commission prior to a determination of probable cause. If probable cause is found, the Commission should attempt to enter into a "consent agreement" regarding the disposition of the complaint. In addition, once probable cause is found, the Commission should consider whether to refer the matter to a state attorney's office for criminal prosecution. A person who knowingly files a false or meritorious complaint commits a misdemeanor offense.

According to testimony the largest number of cases where complaints were found legally sufficient by the Elections Commission within past 3 years is as follows:

- 110 cases relating to violations of F.S. 106.143 (disclaimers/ads)
- 106 cases relating to violations of F.S. 106.07 (reports)
- 66 cases relating to violations of F.S. 106.19 (excessive contributions, false reports, fail to report)
- 20 cases relating to violations of F.S. 106.11 (expenditures)
- 13 cases relating to violations of F.S. 106.08 (contributions)

We recommend the Elections Commission be improved by implanting the following changes.

8. **Change the way the Elections Commission is allowed to initiate investigations under 106.25(1), by striking the sentence "[s]uch sworn complaints must be based upon personal information or information other than hearsay."**

9. **Provide Elections Commission and staff independent authority to investigate based on a super majority vote by the Commission to be initiated.**

10. **Amend the Commission's jurisdiction under 106.25(3) to include "willful" criminal violations and "willful and non-willful" civil violations.**

11. **Have the Elections Commission follow the Administrative Procedure Act as does the Commission on Ethics and provide the Elections Commission with final order authority rather than DOAH.**

Several witnesses with vast knowledge about the Elections Commission provided their expert opinions and knowledge about how the Commission could be improved. We see a need

to change the way complaints are allowed to be filed with the Elections Commission. As discussed earlier regarding the Commission on Ethics, a sworn complaint identifies who is making the complaint and the basis for the complaint, and anyone who intentionally files a false and malicious complaint is subject to sanctions. Presently the Elections Commission cannot initiate complaints based only on a sworn complaint. We heard the Legislature did not believe all of the safeguards provided for a complaint received by the Commission on Ethics were sufficient for complaints to the Elections Commission. In 2007, the Legislature passed legislation requiring an elections complaint to be based on personal information which was not based on hearsay. While recent case law has softened the definition of "hearsay" in the context of complaints before the Elections Commission, witnesses still opine that this requirement is too strict. We understand the argument, but feel that the proper solution is to allow the Commission to start its own investigations based on a supermajority. This avenue of investigation will allow commencement of meritorious actions but still provide the safeguards of the current filing restrictions.

We also heard the Florida Elections Commission was modeled after the Federal Elections Commission (FEC). The FEC has an enforcement program. The FEC has exclusive jurisdiction over civil enforcement.[li] Cases are generated through complaints filed by the public, referrals from other state and federal agencies, and the FEC's own monitoring procedures.[lii] The FEC reviews every report filed by a political committee and if a report is determined to be incomplete or inaccurate, it can audit a committee "for cause."[liii] Unlike the Federal Elections Commission, the Florida Election Commission does not review every political committee filing and does not have the ability to initiate its own investigation or audit. The Florida Elections Commission is also able to initiate an investigation referred to it from the Division of Elections. Under F.S.

106.22 the Division of Elections shall report any failure to file a report or information which is required to be filed or any apparent violation. However, the Division of Elections does not review every report filed, rather this statute requires random audits and investigations be done from time to time. We have not heard whether or not the Florida Elections Commission actually receives many referrals from the Division of Elections. However, we find the Florida Elections Commission needs to have authority to conduct its own investigations if they receive information which leads them to develop "probable cause." Similar to our proposal regarding the Commission on Ethics having the ability to self-initiate investigations, we find the Elections Commission should likewise be able to self-initiate investigations after a vote by a super-majority of the Commissioners.

We also heard testimony that final order authority for the Elections Commission lies with DOAH rather than with the Elections Commission. If final order authority resided with the Elections Commission, as it does with the Commission on Ethics, then general administrative law would be followed whereby DOAH would make a recommended order, but the matter would return to the Elections Commission for final order. This allows the parties to file written exceptions to the DOAH order for the Elections Commission to consider. We have heard that the reason the Elections Commission was stripped of its ability to issue final orders was because many were concerned about the fairness of the Elections Commission. Historically, the Elections Commission has been known to on occasion not follow a DOAH recommended order of not guilty and instead impose penalties. The party would often accept the final order by the Elections Commission rather than appeal. However, a witness testified that this period was isolated and is unlikely to return again due to the structure and fairness of the current operating

Elections Commission. We find that the Legislature should consider returning the final order authority to the Elections Commission.

12. <u>Give the Elections Commission both the authority and the ability to investigate residency violations by candidates.</u>

As discussed earlier, the term "resident" is not statutorily or constitutionally defined. While one witness recommended the definition of "resident" be defined under Chapter 97, another witness explained that the Elections Commission does not have the authority to investigate qualification issues under Chapter 97. Even if the Legislature were to define residency violations, the Legislature would need to give the Elections Commission some process for determining possible violations prior to an election. A similar provision as allowed for under F.S. 104.271(2) would need to be included to allow for "expedited hearings of complaints filed under this subsection." We find the Legislature should give the Elections Commission the authority to investigate residency violations as a qualifications issue. Also needed is a process whereby this volunteer commission which presently meets four times a year could investigate and conclude residency violations prior to an election.

E. Convicted and Suspended Vendor Lists

1. <u>Create a "temporary suspended list" for any vendor who is charged or indicted for a "public entity crime."</u>

2. <u>Department of Management Services (DMS) must proactively debar vendors based on state court record reviews instead of waiting or relying on self reporting.</u>

3. <u>A single debarment list should be maintained which encompasses all contractors who have been barred by the State or any county or city.</u>

4. <u>The Florida Legislature should amend F.S. 287.133(2)(a) and other subsequent subsections to give DMS more discretion in length of suspension.</u>

5. **Any vendor or person convicted of a felony or a crime of dishonesty (excluding worthless checks) should be barred from entering into any procurement contracts for 5 years from the date of conviction or 5 years from the individual's release from a prison sentence, probation, community control, control release, conditional release, parole, or court ordered or lawfully imposed supervision or other sentence that is imposed as a result of the conviction, whichever is later.**

6. **Any vendor or person convicted of a crime involving theft or procurement related crime *with the State of Florida* should be barred from entering into any contracts with the State of Florida for life.**

We received testimony from witnesses about denial, revocation, and suspension of vendors' rights to transact business with public entities. Under F.S. 287.133 a "convicted vendor list" is established to be kept by Department of Management Services (DMS). A convicted vendor list provides the names and addresses of those who have been disqualified from the public purchasing and contracting process. This list is published and updated quarterly. "Upon receiving reasonable information from any source that a person has been convicted, the department shall investigate and determine whether good cause exists to place that person or an affiliate of that person on the convicted vendor list." A person may request a hearing prior to being placed on this list and be heard by an administrative law judge.

In addition, DMS keeps a "suspended vendor list" which it publishes and updates. A vendor can be placed on a suspended vendor list if an agency notifies DMS that a vendor has failed to perform on their contract or has violated the terms of a contract. A vendor remains on the suspended vendor list until the vendor satisfies the terms of the contract and the agency request that the vendor's name is removed. We heard from witnesses that state agencies often fail to report vendors to DMS who breach a contract because they find other ways to handle the breach. We heard some reasons for this include: long term relationships with the vendor, the vendor may have other contracts pending with the agency, or the agency decides the process for

having a vendor placed on the list is too burdensome for the agency given the rights provided for the vendor. It is supposed to be a privilege and not a right to contract with the state. However, due the statute providing vendors a right to a hearing that requires an administrative law judge to weigh certain factors, we heard agencies decide not to notify DMS of a vendor who fails to perform on a contract and commits fraud under the contract.

We find that these lists have the potential to be beneficial in notifying state agencies and local agencies which also use these vendors, that a vendor should not be used; however, we heard the number of vendors on these lists is minimal as the lists are under-reported.

As for the convicted vendor list, we were told another reason this list is not being utilized is because DMS does not receive notification of the convictions from the clerks. The current system relies on vendors to self-report and this is not happening. If a vendor does not report, we heard that DMS may not ever learn of the convicted vendor. In addition, the clerks of court are not required to notify DMS when a vendor is convicted. We heard that when public officials are convicted of a specified offense, clerks of court are required to notify DMS so forfeiture of pension proceedings can begin. We find that clerks of court should be required to notify DMS of any public entity crime conviction and then that DMS should have the responsibility to immediately check those reported convictions against any approved vendor list. Relying on self-reporting by convicted fraudsters is perhaps not the best way to safeguard taxpayer dollars.

We have also heard the idea of creating a "temporary suspended vendor list." We have learned that a vendor may continue to be awarded contracts with the State even though the vendor has been arrested for a public entity crime. A temporary suspended list would allow DMS to place vendors who have been arrested but are not yet convicted on a list so that they cannot continue to enter contracts during the often lengthy criminal process. The vendor shall be

removed from the temporary suspended list upon any charge being dismissed, nolle prosequi, or for any conviction other than one involving a public entity crime. Law enforcement and prosecuting agencies need to report arrests and prosecutions in order to ensure DMS is aware of a vendor being charged with a public entity crime.

The process under F.S. 287.133 for how DMS receives the names of vendors who have been convicted of a "public entity crime" must be rewritten to ensure that DMS receives the information of a vendor's public entity crime conviction. The present system of self-reporting is not sufficient. Unless DMS is given the personnel and ability to police the entire vendor list (maybe within the Inspector General's Office), the Florida Legislature needs to find another way to ensure a vendor's conviction is reported. Therefore, we recommend that clerks of the court be required to report within thirty (30) days to DMS State Purchasing whenever a vendor is convicted of a public entity crime or DMS be given additional resources to monitor the state vendor list. This could be modeled after the requirement under F.S. 112.3173(4) whereby the clerk of a court is required to notify the Commission on Ethics who notifies the appropriate retirement system with the assistance of DMS whenever a public officer or employee is convicted of a specified offense.

This would prevent contractors who have been debarred from one city to practice in another. In addition, counties and municipalities who presently do not have a debarment list should create one.

The Grand Jury recommends the bottom and the ceiling for how long a person or affiliate can be placed on a convicted vendor list be left up to DMS. Therefore, the more egregious violators could be permanently suspended and the minor violators or vendors who have sought to

remedy the wrong could be shorter than the current three year requirement which in some cases may not be warranted.

III. EDUCATION, TRAINING AND CULTURE

A. Ethics

1. <u>Require elected or appointed officials subject to the Code of Ethics to:</u>

a. Undergo ethics training prior to or within sixty (60) days of holding office.

b. Undergo yearly updates on new legislation.

2. <u>Recommend that local agencies designate a chief ethics officer who is responsible for ensuring the officers and employees of the agency are trained and educated. State agencies should also designate a chief ethics officer.</u>

We heard that the Code of Ethics does not require public officials, officers, or employees receive training. It is up to each governmental agency to address ethics training and to ensure any required training by that agency is completed. We heard from witnesses who conduct ethics training for agencies and elected officials, their work is of vital importance to elected officials and governmental employees.

We find whether training needs to be mandatory or not depends upon whether the training is for public officials, officers, or employees. Specifically, we heard that training is severely lacking in Florida for elected public officials who comprise most of the referrals to the Commission. According to testimony, public officials are more likely to get into trouble than employees because they encounter more situations where the Code of Ethics applies to them. We heard the Commission frequently is told by public officials that they did not understand the definition of a "special private gain" after a complaint has been filed against them for a voting conflict violation. This ambiguous term provides just one example of many public officials who

have told the Commission they failed to understand the Code. We hope our recommendations to revise this and other vague terms and phrases in the statutes will be enacted, so training can focus on conducting government business ethically rather than studying terms and definitions in the statutes. We find training for public officials should be required under the Code of Ethics. A public official should complete this training within sixty (60) days of taking office

In the past, staff for the Commission on Ethics traveled across the state and trained hundreds of people at a time. However, due to budget cuts, the Commission on Ethics no longer travels to conduct training as it once did. We heard that the Commission on Ethics is best suited to train public officials, officers, or employees. We find that training should be done by the Commission on Ethics who will need to be adequately funded in order to provide this training. We find the idea of an education section for Commission on Ethics a good idea.

Regarding the online ethics program available, witnesses stated that when individuals take these online programs, they do not pay attention to the program and instead text, e-mail, or do other things. According to testimony, if online training is to work, it would need to be a closed environment with a quiz at the end. An objection to the use of quizzes is that it creates yet more regulations.

While the State Commission on Ethics provides advice on the state Code of Ethics, we have heard that local officials, officers, and employees who are subject to a local code of ethics must be informed where they can seek guidance on ethical questions as it pertains to their local code of ethics. We find that local and state agencies that are subject to a local code of ethics should designate a specially trained individual to be in charge of answering any questions regarding ethics. We heard numerous examples of commissioners who rely on the advice of an attorney only to later find out they were misinformed. An ethics expert at the local level and

within each local agency would help to prevent misinterpretations of applicable code of ethics. When a public official does violate an ethics law, the damage could be reduced if that person realizes or acknowledges the misdeed and quickly consults an ethics officer for guidance on immediate actions that can be taken to rectify the situation. Ethics officers could provide advice for a local public official, officer, or employee who violates an ethics law. The ethics expert would need to make public officials and employees aware of the services he or she provides. We also find that state agencies should designate a chief ethics officer to ensure officers and employees of the agency are compliant and understand the Code of Ethics, public records laws, and the open government requirements.

Some of these ideas have been implemented by the Office of the Governor. In 2007, the Governor issued Executive Order 07-01 adopting a "Code of Ethics by the Office of the Governor." The Code of Ethics by the Office of the Governor applies to all employees within the Office of the Governor and imposes standards that often go beyond the state Code of Ethics. A "Code of Personal Responsibility" was also ordered to apply to all employees of the Office of the Governor. In addition, each agency secretary is required to designate a chief ethics officer. Each agency secretary is also required to undergo mandatory training and then arrange similar training for employees on an annual basis. The Order also created an Office of Open Government within the Office of the Governor. This office was ordered to provide guidance to the Office of the Governor and agencies under the Office of the Governor with guidance on integrity and transparency. A public records person is to be specially designated within each agency. Finally, we will mention this Order created an Office of Citizen Services in part to address what could be done to improve citizens' ability to access government services and monitor results. We find this Executive Order provides a model example of what state, as well

as local agencies should consider when addressing how ethics, training, transparency, and access can be improved within their agency.

We heard the ethical conduct of employees is largely dependent on the example set by supervisors and officers. Witness testimony regarding Florida Fish and Wildlife provides a clear example that this is accurate. We heard that supervisors engaged in practices to circumvent P-cards, bidding, and other authorized spending procedures. We even heard that while this was common knowledge within the Agency, nothing was done to stop this fraud and abuse of the system from occurring. We heard testimony that because management and supervisors were abusing the procedures of the Agency, other employees also started acting unethically. For example, we were told employees would steal items such as flat screen televisions from the office. Depending upon the position of the employee, the supervisor often took no action. Due to the unethical conduct at the supervisory level, a systemic acceptance of corruption was born.

We find training will only go so far unless management leads by example. In addition, we find employees and management must be reminded frequently about the importance of ethical conduct. We find possible ways to accomplish ethical conduct reminders would be to post code of ethics prominently throughout the office. In addition, Florida should begin an advertising campaign to encourage ethical behavior and to report those who are acting unethically.

We find education, training, and oversight are all needed in order to ensure public officials, officers, and employees are acting responsibly and ethically.

We also heard about the educational training done by the Commission on Ethics and how the Commission uses its funding for trainings held across the state. We find educating public officials and servants on the Code of Ethics should be specifically funded by the Legislature.

According to a witness who has both served on and appeared before the Commission on Ethics, it is one of the best run and most professional government entities in the State of Florida.

We have heard that often public officials are unclear whether they have a conflict and need guidance. We have heard testimony that when in doubt, it is always better to disclose. Taking the highest ethical ground is the best way to avoid trouble. However, as public officials also have a duty to vote, they need to be able to receive guidance. In addition, public officials may be called to vote immediately or soon after a potential conflict reveals itself. Clearly, public officials need a place to turn to find answers on conflicts of interest. At the federal level, the Office of Government Ethics (OGE) has jurisdiction over noncriminal conduct by executive branch personnel and provides guidance on the federal conflict of interest statutes. The Florida Commission on Ethics appears to be the State's counterpart. We heard that public officials can call the Commission on Ethics to receive an opinion about conflicts of interest. A public official should seek advice rather than violate the law and claim ignorance.

Ethics violations are a national concern that extends beyond our State. One only has to read the paper to see headlines at the state and national levels involving public officials being accused of acting unethically. In a recent news article we read how congressional staffers who are privy to inside information have used this information to buy stocks prior to the information being released to the public. While this may look like insider trading and may be an act the public would want to prohibit, previous legislation to prohibit this action fell upon deaf ears. While the federal executive branch may be ethically prohibited from such dealings under federal laws, the U.S. Congress and aides don't have restrictions on their stock holdings and ownership interests in companies they oversee.[liv] Unfortunately some of our national leaders who serve the public fail to understand that they should not benefit financially from their public positions. The

failure of the federal government to set higher standards does not excuse our State from taking action. Our State should be a leader when it comes to ethical accountability for our public servants and officials.

Ethics should allow a public official an independent place to stand. We have heard time and time again, ethics laws have allowed public officials to tell others they cannot perform the requested action. Ethics laws are there to not only guide the public official, they help the official point to a rule of law for why the official cannot perform certain requests they will certainly face. Conflicts of interest laws exist to protect the public and the public official from situations that inevitably will occur for all public officials. We find while well intentioned, conflict of interest laws will not prevent an intentional failure to disclose. In certain circumstances, conflicts of interest need to reach a criminal threshold. However, according to testimony, most conflicts of interest violations before the Commission on Ethics are for a lack of understanding the laws. For this reason, training on conflicts of interest is especially important.

It is our understanding that the purpose of the public record exemption is to allow an investigation to be undertaken without the violator's knowledge. If an alleged violator can request in writing that the records and proceedings be made public, then the public record exemption is useless. A citizen or alleged violator could make such a request simply to determine whether or not there is an investigation against him or her. Furthermore, the exemption allows two or more investigators to meet privately without notice, and allowing such a written request would, in fact, allow the alleged violator to be present whenever two or more investigators wanted to discuss the case. We find the public's interest to a fair and honest investigation should overcome an alleged violator's need to know about his or her investigation

proceedings before they become public. Investigations conducted in public are less effective and more burdensome on the investigators.

B. Election and Campaign Finance

Enact stronger requirements for candidates for state, county, and municipal office to receive education and training regarding election and campaign finance laws.

This Grand Jury heard testimony from a county commissioner about the importance of education and training for candidates. According to this witness, public officials must be educated that the role of a public official is to serve the citizens and not to benefit their personal ego or wallet. According to this commissioner, politicians must be educated prior to or soon after taking office about the role of a public servant, campaign finance laws, and elections laws. We have heard from witnesses about the complicated campaign finance laws. The state has useful resources online through the Department of State. The Department of State currently trains the supervisors of elections and staff so they can train candidates. We heard one possibility for improving election and campaign finance education is by requiring online training paid for by the candidate. A candidate must acknowledge they have read and understand the election and campaign finance laws. We have heard though that some candidates do not actually read the laws and others just do not understand them. If we want candidates to understand the laws, we must ensure they are educated on them.

We heard from a commissioner in his experience as both a public official and previously as a lobbyist he has come face-to-face with the very disturbing practices of fellow public officials. Some of these acts were done with nefarious motives, but most were simply a result of a lack of knowledge and understanding of the current regulations. Election and campaign laws constitute an intricate blanket of laws which can lead an honest and sincere public official or

candidate to run afoul even with the best efforts to comply. We must promote education and training at the state, county, and municipal level.

C. Law Enforcement and Prosecution

Law enforcement and prosecutors should receive funding in order to pursue public corruption cases.

Testimony was conveyed from law enforcement investigators and prosecutors regarding the difficulties of investigating and prosecuting public corruption cases. Public corruption cases need specially designated investigators and prosecutors who only handle these types of cases. We heard about Florida Department of Law Enforcement's (FDLE) Office of Executive Investigations which investigates criminal referrals from state agencies such as inspector general's offices and from citizen's complaints. In addition, we heard how FDLE recently started a public integrity section in Tampa. We also heard how some sheriff's offices and police departments have dedicated public corruption investigators. For example, the Miami-Dade Police Department (which covers the entire county) has around twenty-five investigators in its public corruption unit. In addition, the City of Miami Police Department has a small staff of public corruption investigators. The Miami-Dade State Attorney's Office has staffed investigators in their public corruption unit which has specially designated prosecutors.

We received testimony that law enforcement is receiving more referrals involving public corruption crimes. Unfortunately, we also heard that public corruption units have been reduced in size due to reduced budgets despite the increasing referrals. One agency we heard testimony about is FDLE, whose jurisdiction is the entire state of Florida. FDLE has continually undergone budget cuts and presently has only ten investigators in the Office of Executive Investigations and even fewer in the public integrity section in Tampa. FDLE regional offices

investigate public integrity at the municipal level and below while the Tallahassee office investigates officials at the county level and above. Although any agent with FDLE can investigate public corruption, we find that specially designated public corruption investigators within each regional office are preferable.

While we heard about designated public corruption units, they are not the norm at most agencies. We heard that only Miami-Dade, Broward, and West Palm Beach State Attorney's Offices have been able to afford dedicated resources for a public corruption prosecutor or unit. The fact that other state attorney's offices do not have a dedicated public corruption unit may be due to resources, political will, size of the office, or perceived size of the problem. While some state attorney's offices may designate one prosecutor to handle public corruption cases, this prosecutor often splits time with other duties.

Miami-Dade has also created a countywide Office of Inspector General with investigators who have specialized knowledge in handling corruption investigations. This office provides funding for dedicated prosecutors to handle its cases.

Specially trained investigators and prosecutors are needed to handle public corruption cases throughout Florida. Public corruption often involves a high ranking public official; with this comes media attention and pressure. In addition, these cases present difficult legal issues surrounding wiretaps, search warrants, and tracking devices. These cases need to be handled with sensitivity to prevent a public official from being unfairly investigated for another's political advantage. We heard that the FDLE Office of Executive Investigations looks for law enforcement officers with ten to fifteen years of experience who are promoted from within the agency. Miami-Dade State Attorney's public corruption unit includes prosecutors who have been screened for political conflict, have a minimum of three years of experience, and are trained

in prosecuting public corruption cases. The laws concerning public corruption are often more complex, and it is important to ensure the investigators and prosecutors handling potential criminal cases have a clear understanding of what is required to prove violations of misuse of public office, elections, and campaigning and the ability to distinguish when a violation may rise to a breach of ethics.

According to an FDLE investigator, it is typical for public integrity investigations to result in a higher percentage of cases that are unfounded. While some public integrity crimes may be unfounded due to the difficulties in investigating them, a lot of the complaints come from political opponents and are not based on anything more than hearsay. We also heard that sometimes in lieu of prosecution, it is better to allow a public official to resign or be removed by the Governor as prosecutions can be lengthy and costly. We heard that it is preferable for the community to have the official removed as quickly as possible and get restitution than it is to go through a lengthy prosecution which distracts the government and delays the community from moving forward. According to statistics provided by FDLE, approximately 20% of its major public integrity cases lead to arrests over the last decade. When FDLE has served in an assist role to another agency such as law enforcement or an administrative agency, approximately 4% of those public integrity cases led to arrests over the last decade. We find these statistics telling: many public corruption or integrity cases are resolved short of prosecution. Public officials who have not done anything wrong should not fear tougher laws and investigations. Tougher laws and more experienced investigators and prosecutors will lead to catching those who are truly corrupt. We find that law enforcement and prosecutors should have designated public corruption units, especially in larger metropolitan areas. The Legislature should provide funding for these public corruption units in order to protect the citizens and the politicians who serve them.

We also heard that reporting of public corruption by employees often does not occur because employees may not trust that anything will be done to the public servant or official. Public corruption units, according to a prosecutor, have generated trust that corruption is being taken seriously and have led to an increase in public confidence in reporting corruption. We also heard about the important role the media plays in exposing public corruption and find the media can be a useful ally in fighting public corruption.

We heard testimony about how federal public corruption laws are investigated and prosecuted. We received testimony from an Assistant United States Attorney and from other witnesses about the federal system. We were also presented with information about the United States Department of Justice Public Integrity Section Criminal Division which is responsible for the prosecution of public corruption cases. In 2009, the Public Integrity Section Criminal Division prosecuted cases involving all three branches of the federal government, federal elections crimes, and state and local governments.[lv] "The Public Integrity Section was created in 1976 in order to consolidate the Department's oversight responsibilities for the prosecution of criminal abuses of the public trust by government officials into one unit of the Criminal Division. Section attorneys prosecute selected cases involving federal, state, or local officials, and also provide advice and assistance to prosecutors and agents in the field regarding the handling of public corruption cases." [lvi] In 2009, the Public Integrity Section was comprised of approximately 29 attorneys, including experts in extortion, bribery, election crimes, and criminal conflicts of interest.

Public Integrity Section cases generally are either recusals by U.S. Attorney's Offices, sensitive cases, multi-district cases, referrals from federal agencies, or shared cases with the U.S. Attorney's Offices. While the majority of federal corruption cases are handled by the local U.S.

Attorney's Offices, at times there may be a conflict with the U.S. Attorney's Office due to an actual or perceived conflict of interest which could lead to allegations that the U.S. Attorney's Office did not act fairly and impartially. For example, cases involving the judicial branch often present a conflict of interest because it is also the court in which the local U.S. Attorney's Office has to appear. Other examples of conflicts are when the target of the investigation is a federal prosecutor, investigator, or employee who may closely work with the local U.S. Attorney's Office. Such cases are handled by the Public Integrity Section.

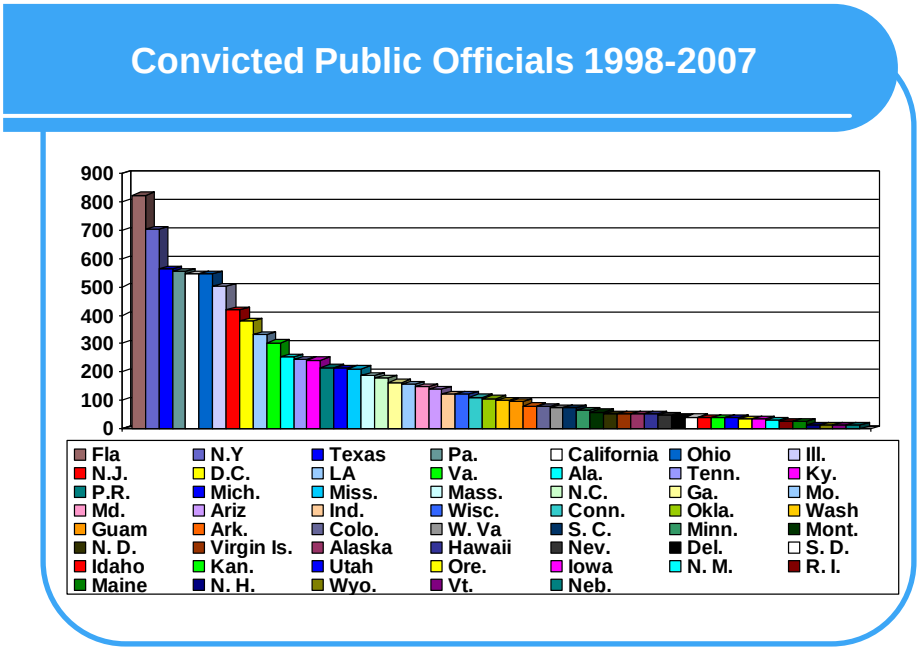
The Public Integrity Section also handles the prosecutions of public corruption crimes involving sensitive information such as prosecution of a highly political case, a case with classified information, or a case requiring substantial coordination among different agencies. Multi-district cases are handled by the Public Integrity Section when the allegations cross judicial district lines and fall under the jurisdiction of two or more U.S. Attorney's Offices. The Public Integrity Section also works closely with Offices of Inspector General (OIG) of the executive branch and frequently receives referrals of possible employee wrongdoing.

Within the Public Integrity Section is an Election Crimes Branch which oversees all of the federal election crime violations handled by the Department of Justice. Federal election crime cases can be broken down into voter fraud, campaign financing crimes, and patronage crimes. The Election Crime Branch can provide assistance to prosecutors in applying the complex elections laws. Having heard testimony from witnesses on both state and federal elections laws, the Grand Jury concludes that prosecution of election law violations often take a specialized investigator or prosecutor to handle. It appears the federal government has established a mechanism through the Election Crimes Branch to address this concern; however, we are not aware of any such agency within the state which is designed to aid investigators or

prosecutors in understanding how to apply the state election or campaign finance laws. The federal government has created the District Election Officer (DEO) Program, a branch within the Public Integrity Section, which is designed to install a trained prosecutor in every U.S. Attorney's Office to handle the prosecution of election law violations. The Assistant U.S. Attorney in each office is appointed to a two year term and receives periodic training in election laws. We are unaware of any such agency in Florida which trains prosecutors on handling elections laws violations, and we have not heard of any state attorney's offices which have a designated and specially trained prosecutor who handles election laws violations. We find it would be beneficial to have specially trained prosecutors in public corruption, election laws, and campaign financing laws at a statewide level in addition to specially trained prosecutors within the state attorney's offices.

The Statewide Grand Jury has heard about the difficulties in gathering statistics on public corruption cases. For example, when a public official negotiates a plea deal to charges which do not involve an element of public corruption, that case disappears from the statistical record. Another example is the federal indictment against a public official who was involved in a fraudulent scheme involving political fundraising and lobbying. His charges were for mail and wire fraud, aiding and abetting mail and wire fraud, and making false statements to federal agents. On their face, these charges do not reflect crimes involving political corruption, but the public official allegedly used political organizations to disguise payments for consulting services which were rendered by an intermediary. He also transferred contributions between entities and to himself or for his benefit.[lvii] The following statistics most likely fail to accurately capture the true numbers of corruption cases by public officials and servants, but we will provide what has been presented as a starting point for discussion.

In 2009 alone, 1,082 individuals were charged nationwide with public corruption related prosecutions by the United States Attorneys' Offices. State and local officials made up 363 of those charged. In 2009, 1,061 individuals were convicted nationwide for public corruption related prosecutions by the United States Attorneys' Offices.[lviii] Since 2000, Florida's three federal United States Attorney's Office districts had more public corruption convictions than any other state's combined district totals.[lix] According to one witness who provided us the following diagram, Florida led the nation in the number of federally convicted public officials from 1998 through 2007.[lx] According to this testimony, Florida leads the next closest state, New York, by over an 8% margin.[lxi]



We also heard from a witness from FDLE who presented State of Florida public corruption arrests and convictions statistics since 2000 gathered by the Florida Statistical

Analysis Center. These statistics were gathered from information reported to FDLE by contributing agencies and gathered in Florida's Computer Criminal History (CCH). CCH is only as accurate as those who report to it and it only gathers information on individuals who were arrested and fingerprinted. Therefore, individuals who were served a notice to appear (typical for misdemeanor offenses), or where the case was direct filed by the state attorney's office without an arrest, were not fingerprinted and reported. It is unknown how many more cases may have been captured if a better statewide database existed to capture this information and if all relevant agencies reported to it. This data included public corruption offenses found under Chapters 838, 839, and specific subsections of 104. The problem we were told with gathering this information is that the arrest data may have multiple charges and the convictions may not have been accurately reported. This is in part because clerks of the court are no longer required to enter the disposition of charges into FCIC which is the main database used for gathering criminal statistics statewide.[lxii] Also, as stated previously, often those charged with a public corruption offense plea out to other charges which are not necessarily public corruption crimes such as theft under Chapter 812. Finally, the database allows the reporting agency the option of whether or not to provide the statute involved in an arrest; thus, approximately twenty-four percent of all entries do not include a statute number. With these limitations in mind, 692 arrest charges were made under state public corruption laws and 139 public corruption convictions occurred. Since 2000, 8,241 arrest charges were made under state public corruption laws and 1,126 public corruption convictions occurred.[lxiii]

In addition, we heard that rather than being charged criminally, often public officials only face administrative penalties, Chapter 112 civil violations, or violations of the Sunshine Law. The current methods for gathering accurate statistics are problematic, and we fail to comprehend

why reporting information to a central database continues to be such a problem in the State of Florida. We have no firm idea of how many arrests and convictions are occurring statewide, yet it is evident to us that sufficient resources are not being dedicated for public corruption law enforcement, prosecutors, and data management.

[i] *Honor, A History*, James Bowman, Encounter Books 2006. pg. 4.
[ii] *Id.*
[iii] *Id. at 7-10.*
[iv] *Id. at 3-6.*
[v] T*he Ethics Challenge in Public Service*, Carol Lewis and Stuart Gilman, 2005 Jossey-Bass, pg. 6.
[vi] Florida Constitution, Article II, Section 3
[vii] *The Florida Handbook 2009-2010,* Allen Morris, page 2.
[viii] See US Census Bureau, www.census.gov, *Resident Population - July 2009*.
[ix] *The Florida Handbook*, pg. 3.
[x] *The Ethics Challenge in Public Service*, at 23.
[xi] *The Ethics Challenge in Public Service*, at 23
[xii] *The Ethics Challenge in Public Service*, at 25.
[xiii] *Corruption and the Global Economy*, Kimberly Ann Elliott, Editor, Institute for International Economics, 1997.
[xiv] *The Reader's Companion to American History*, Eric Forner and John A. Garraty, Editors, Houghton Mifflin Company, 1991, pg. 237.
[xv] *Report to Congress on the Activities and Operations of the Public Integrity Section for 2009*, Public Integrity Section, Criminal Division, United States Department of Justice, pg. 1.
[xvi] *The Reader's Companion to American History*, Eric Forner and John A. Garraty, Editors, Houghton Mifflin Company, 1991, pg. 237-240.
[xvii] *The Ethics Challenge in Public Service*, at 27.
[xviii] We have classified public corruption crimes to include, but are not limited to:

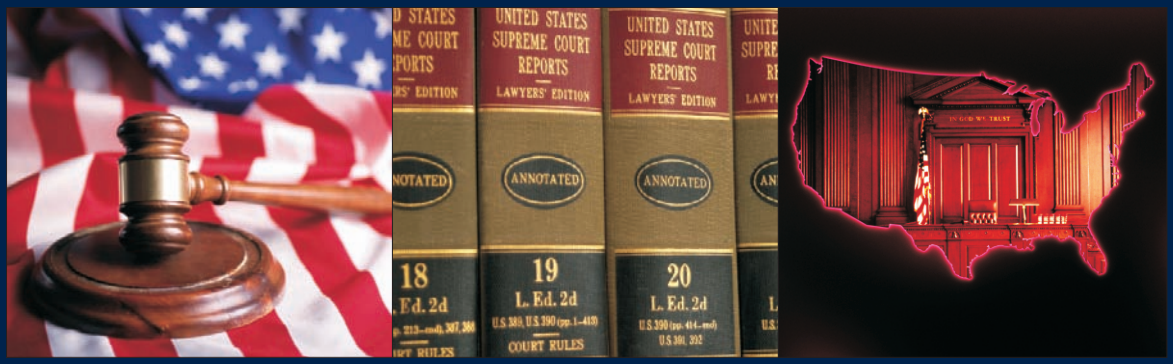
- Bribery offenses, 838.015, 838.15 and 838.16 (held unconstitutional);
- Unlawful compensation or reward for official behavior, 838.016;
- Corruption by threat against public servant, 838.021;
- Official Misconduct, 838.022;
- Bid tampering, 838.22;
- Speculation by county or municipal officers, 838.04, 838.05;
- Extortion by officers of the state, 838.11;
- Falsifying records, 838.13;
- Officer or judicial officer withholding records, 838.14, 838.15;
- Misappropriation of moneys by commissioners to make sales, 838.17;
- Officer assuming to act before qualification, 839.18;
- Failure to perform duty required by officer, 839.24;
- Misuse of confidential information, 839.26;
- Willfully refusing or neglecting to perform duties of an official, 104.051(2);
- Fraudulently or corruptly performing duties of an official, 104.051(3);
- Attempting to influence or interfere with voting elector by election employee, 104.051(4);
- Remuneration by candidate for services, support, etc., 104.071;
- Aiding, abetting, advising, or conspiring to violate elections code, 104.091;
- False or malicious charges against, or false statements about, opposing candidate, 104.271;
- Prohibited political activities of state, county, and municipal employees, 104.31;
- Violations of campaign contribution limitations, 106.08; and
- Falsifying a material fact; making false, fictitious, or fraudulent statement; or making or using false documentation within the jurisdiction of the Department of the State.

[xix] We also note that F.S. 907.044 directs OPPAGA to annually evaluate Florida's pre-trial release programs. However, according to a report we received, OPPAGA had not evaluated this pre-trial release program in the twenty plus years it had been in existence. We also note that under Chapter 907 which deals with pre-trial release services, there are no criminal penalty provisions. This may be something the Legislature should consider.
[xx] We note that a few provisions include misdemeanor violations such as F.S. 112.3217 for giving or receiving contingency fees or F.S. 112.3188(2)(c)4 relating to confidential information provided to an Inspector General.
[xxi] State v. Castillo, 877 So.2d 690 (Fla. 2004). In this case the Florida Supreme Court stated "the evidence of the officer's words and actions demonstrated his understanding that A.S. was violating the law when he stopped her, and his releasing A.S. without legal consequence after having sex with her demonstrates his corrupt intent in soliciting an unlawful quid pro quo."
[xxii] National Conference of State Legislatures, Ethics: Criminal Penalties for Public Corruption/Violations of State Ethics Laws (April 2007), available at http://www/ncsl.org/default.aspx?tabid=15319.
[xxiii] United States Department of Justice, Antitrust Division, Preventing and Detecting Bid Rigging, PriceFixing, and Market Allocation in Post-Disaster Rebuilding Projects 3, available at http://www.justice.gov/atr/public/guidelines/disaster_primer.htm
[xxiv] *Id.* at 2.
[xxv] *Id.* at 3.
[xxvi] *Id.* at 3.
[xxvii] Fla. AGO 2009-49, 2009 WL 3302033 (Fla.A.G. 2009).
[xxviii] Roque v. State, 664 So.2d 928 (Fla. 1995).
[xxix] Criminal Law: 1996 Survey of Criminal Law. Mark Dobson, 21 Nova. L. Rev. 101 (Fall 1996).
[xxx] See Roque, 664 So.2d at 929-930.
[xxxi] *Id.* at 135.
[xxxii] We note that under grand theft statute, F.S. 812.014, the thresholds are $300 for a third degree felony, $20,000 for a second degree felony, and $100,000 for a first degree felony.
[xxxiii] The Florida Public Corruption Study Commission, 8 (2000), available at http://www.fdle.state.fl.us/publications/corruption_study/corruption_report.htm
[xxxiv] Skilling v. U.S., 130 S.Ct. 2896 (2010).
[xxxv] *See The Florida Senate Bill Analysis and Fiscal Impact Statement CS/SB 734*, April 19, 2010.
[xxxvi] Our Private Legislatures, The Center for Public Integrity, In Your State - Florida, Center Identifies Potential for Conflict in State Legislature (2004), available at http://www.publicintegrity.org
[xxxvii] *See* National Conference of State Legislatures, Voting Recusal Provisions (Oct. 2009), available at http://www/ncsl.org/?TabId=15357; National Conference of State Legislatures, To Vote or Not to Vote: State Provisions on Conflicts of Interest and Voting (Nov. 2009), available at http://www/ncsl.org/default.aspx?tabid=15269; National Conference of State Legislatures, Conflict of Interest Definitions (Nov. 2009), available at http://www/ncsl.org/?tabid=19024.
[xxxviii] Florida Public Study Commission, *supra* note xliv, at 8.
[xxxix] *See* National Conference of State Legislatures, *supra*, note xxxiv.
[xl] *See* National Conference of State Legislatures, *supra*, note xxxiv.
[xli] Other states appear to have criminalized similar provisions. *See* National Conference of State Legislatures, *supra*, note xxxiv.
[xlii] Association of Inspectors General, Principles and Standards for Offices of Inspector's General, 1 (May 2004), *available at* http://data.memberclicks.com/site/aig/IGStandards.pdf.
[xliii] *Id.* at 3.
[xliv] *See The Ethics Challenge in Public Service*, at 43, citing John F. Kennedy's message to Congross on April 27, 1961.
[xlv] *See* Florida Senate Rules 1.20 and 1.39; Florida House Rule 3.1.
[xlvi] 50 States Project, The Center for Public Integrity, Our Private Legislatures Public Service, Personal Gain, Appendix: Nationwide Financial Disclosure Rankings 102 (2000), citing The Center for Public Integrity, Hidden Agendas: An Analysis of Conflicts of Interest in State Legislatures (1999); See also The Center for Public Integrity, States of Disclosure - Rankings (2006), available at http://www.publicintegrity.org.
[xlvii] *See House of Represntatives Staff Analysis CS/HB 551*, April 7, 2010.
[xlviii] Florida Constitution, Article II, Section 3, and Article III, Section 2.

[xlix] *See The Florida Senate Bill Analysis and Fiscal Impact Statement for SB 252*, Prepared by The Professional Staff of the Ethics and Elections Commission, March 5, 2009.
[l] *CS/HB 551*, Approved by Governor May 27, 2010.
[li] The Federal Elections Commission, Thirty Year Reoprt 12 (Sept. 2005), available at http://www.fec.gov/info/publications/30year.pdf
[lii] *Id.*
[liii] *Id.*
[liv] *Congress Staffers Gain From Trading Stocks*, Wall Street Journal, October 12, 2010, pg. 1.
[lv] *Report to Congress on the Activities and Operations of the Public Integrity Section for 2009*, supra. The information about the Public Integrity Section in this Report was taken from this *Report to Congress*.
[lvi] *Id* at i..
[lvii] *Id.* at 38.
[lviii] *Id.* Table I at 51.
[lix] *Id.* Table III at 54-58.
[lx] We are unable to cite where this information was obtained by the witness.
[lxi] According to testimony, Florida ranked first with 824 convicted public officials and New York ranked second with 704. We point out that according to this testimony, Nebraska ranked last in this survey. We find this interesting in that Nebraska has a unicameral legislature, but have not received any testimony that these two things are related.
[lxii] We find the Legislature should address the need for reporting the disposition of criminal charges to a central database such as FCIC.
[lxiii] Information presented by Data prepared by the Florida Statistical Analysis Center as of July 26, 2010.

STATEWIDE PROSECUTION

2007 ANNUAL REPORT



Statewide Prosecutor's Foreword

William Shepherd

I am proud to present this Annual Report that provides an overview of our achievements in 2007. With the help and support of Attorney General Bill McCollum, 2007 has been an excellent year. Last year marked the twentieth year of Statewide Prosecution's efforts to serve Florida by aggressively attacking organized, multi-circuit, criminal activity. That work has continued to focus on white collar crime in the areas of health care fraud, securities fraud, identity theft, and insurance fraud. But we have also redoubled our efforts to address the growing problem of mortgage fraud that has impacted our state's housing market and economy. Of course, the war on drugs has remained a priority as we have investigated and prosecuted traffickers who profit on misery from Jacksonville to Miami. And we have been, and will remain, vigilant in our efforts to protect Florida's children from online predators who travel our country in search of victims.

As we strive to continue the work from years past, this year's accomplishments have been bolstered by the impanelment of the Eighteenth Statewide Grand Jury to confront the rapidly growing problem of gangs in Florida. Our partnership with the State Attorneys has been critical to this effort, and it is work that will undoubtedly be a focus of the Office in the years ahead.

As we reflect on the accomplishments of the Office for the twentieth anniversary year, it is truly a remarkable continuum of effort that has driven the Office from its inception to today. The Office is nothing more than its people - those drawn from our communities who seek to serve. The high caliber professionals who make up the Office of Statewide Prosecution are driven by their shared desire to serve our state with the highest standards, to aggressively pursue the guilty, and to always seek justice. Our success is our teamwork, and it's represented by our insignia and our maxim: *Eight - Fighting as One - for Florida!*

TWENTY YEARS OF STATEWIDE PROSECUTION

John Hogan

John Hogan was Florida's first Statewide Prosecutor and began the tradition of aggressively pursuing multi-circuit organized criminal activity. He left the Office to join newly appointed United States Attorney General Janet Reno in numerous senior Justice Department positions including Counselor to the Attorney General and Chief of Staff. After his time in Washington, DC, he returned to Florida and went into private practice. John is a partner at Holland & Knight and serves as Chair of the firm's South Florida Litigation Practice Group.

In 1988, Pete Antonacci was appointed Florida's Statewide Prosecutor. Over the next three years, he focused the Office on complex white collar crimes including securities fraud, ponzi schemes, insurance fraud and pyramid marketing schemes. Under Pete's leadership, Florida was the only state to successfully extradite Columbian Nationals to face drug smuggling charges in a state court. At the end of his first term, Pete took on additional responsibilities as Deputy Attorney General for General Butterworth and is now in private practice with the Gray Robinson firm where he concentrates on white collar defense, governmental lobbying, civil litigation, and administrative law.

Pete Antonacci

Melanie Hines

Melanie Hines is Florida's longest serving Statewide Prosecutor and led the expansion and growth of the Office during her twelve year tenure. She continued the focus on narcotics investigations and white collar crime, with emphasis on government contract fraud, and developed strategies to combat computer crimes. She made regular use of the Statewide Grand Jury for both Indictments and Presentments and regularly offered testimony before the State Legislature. She also developed an organizational structure, practices, and procedures that helped systemize and automate the Office for years to come. Melanie practices white collar criminal defense, administrative law, and complex civil litigation with the law firm of Berger Singerman.

Pete Williams served as Statewide Prosecutor under Attorney General Charlie Crist. Pete brought his business and prosecution background to the position and fostered strong relationships with our State Attorney partners throughout the State. Pete led the Seventeenth Statewide Grand Jury, and their report was instrumental in helping Florida take the lead in attacking prescription drug diverters and enacting laws requiring prescription pedigree papers. Pete focused the Office on health care fraud, the developing area of child sexual predators moving to the internet, and he played an important role in the development of the anti-murder legislation targeting career offenders.

Pete Williams

Mission of the Office

The mission of the Office is to investigate and prosecute multi-circuit organized crime and to assist other law enforcement officials in their efforts against organized criminal activity. The Office was created by the Voters of Florida through a Constitutional Amendment passed in 1986. That 1986 amendment was a response to the increasing evidence that those who are in the business of organized criminal activity do not respect the geographic boundaries imposed by judicial circuit lines. The Office utilizes a team approach with the state's elected State Attorneys, Florida's federal prosecutors, the Florida Department of Law Enforcement and other state law enforcement agencies, Florida's Sheriff's Offices, our Chiefs of Police and various other state and federal agencies in law enforcement to attack multi-offender, multi-offense, and multi-jurisdictional crime.

Under Section 16.56, Florida Statutes, the Office's jurisdiction to investigate and prosecute cases is limited to certain enumerated crimes as well as racketeering (RICO) offenses, and is also limited to crimes committed in more than one judicial circuit. The Office may also proceed where the enumerated crimes are committed within one judicial circuit by members of an organized conspiracy affecting more than one judicial circuit, in furtherance of their common scheme or plan.

The Statewide Prosecutor also serves as legal advisor to the Statewide Grand Jury as provided for in Section 905.31, et seq., Florida Statutes. The Statewide Grand Jury is charged with detecting and eliminating organized criminal activity in matters which transpire or have significance in more than one circuit. The Statewide Grand Jury is likewise limited to an enumerated list of criminal offenses contained in Section 905.34, Florida Statutes.

Pursuant to Section 16.56 (2), Florida Statutes, this report is hereby respectfully submitted to the Governor Charlie Crist and Attorney General Bill McCollum . Special thanks to Denise Hair, Office Automation Specialist, for her work in designing and producing this report.

Partnership with Law Enforcement Agencies

The Office of Statewide Prosecution's jurisdiction is limited by statute into specific subject matter areas. Our key priorities are: (1) criminal gangs and violent crime, (2) narcotics trafficking, (3) fraud, and (4) sexual predators. Each area is important for the Office of Statewide Prosecution and although each Assistant may have a concentration of cases in one specific area, we have no organizational impediment to allowing Assistants to have a diverse caseload in their legal practice.

Law Enforcement Agencies

Agency for Health Care Administration
Alachua County Sheriff's Office
Albany County District Attorney's Office (NY)
Altamonte Springs Police Department
Atlantic Beach Police Department
Baker County Sheriff's Office
Bal Harbour Police Department
Bay County Sheriff's Office
Boca Raton Police Department
Boynton Beach Police Department
Bradford County Sheriff's Office
Brevard County Sheriff's Office
Broward County Sheriff's Office
Bureau of Alcohol Tobacco and Firearms
Cape Coral Police Department
Casselberry Police Department
Central Florida Internet Crimes Against Children Task Force
Charlotte County Sheriff's Office
Child Predator Cybercrime Unit
City County Investigative Bureau
Citrus County Sheriff's Office
City of Homestead Police Department
City of Miami Police Department
Clay County Sheriff's Office
Clearwater Police Department
Cleveland Police Department (OH)
Cocoa Beach Police Department
Collier County Sheriff's Office
Columbia County Sheriff's Office
Commission on Elections
Commission on Ethics
Coral Gables Police Department
Coral Springs Police Department
Daytona Beach Police Department
Deland Police Department
Delray Beach Police Department
Desoto County Sheriff's Office
Division of Insurance Fraud
Doral Police Department
Edgewater Police Department
Eustis Police Department
Federal Bureau of Investigation
Financial Institutions Security Association (FISA)
Flagler County Sheriff's Office
Florida Atlantic University Police Department
Florida Attorney General's Medicaid Fraud Control Unit
Florida Department of Agriculture and Consumer Services
Florida Department of Business and Professional Regulation
Florida Department of Children and Families
Florida Department of Corrections (VOP/VOCC)
Florida Department of Education
Florida Department of Environmental Protection
Florida Department of Financial Services
Florida Department of Health
Florida Department of Highway Safety and Motor Vehicles
Florida Department of Juvenile Justice
Florida Department of Labor
Florida Department of Law Enforcement
Florida Department of Lottery
Florida Department of Management Services
Florida Department of Revenue
Florida Department of Transportation
Florida Fish and Wildlife
Florida Gang Investigators Association (FGIA)
Florida Highway Patrol
Florida Office of Financial Regulation
Florida Office of Insurance Regulation
Florida Office of the Solicitor General
Florida Real Estate Commission
Florida's State Attorneys
Florida State Fire Marshal
Florida State University Police Department
Ft. Lauderdale Police Department
Ft. Myers Police Department
Gadsden County Sheriff's Office
Gainesville Police Department
Glades County Sheriff's Office
Haines City Police Department
Hallandale Police Department
Harris County Sheriff's Office (Houston, Texas)
Hendry County Sheriff's Office
Hernando County Sheriff's Office
Hialeah Gardens Police Department
Hialeah Police Department
High Intensity Drug Trafficking Areas (HIDTA)
Highlands County Sheriff's Office
Hillsborough County Consumer Protection Agency
Hillsborough County Sheriff's Office
Holly Hill Police Department
Hollywood Police Department
Houston Police Department (TX)
Indian River County Sheriff's Office
Internal Revenue Service
Interpol
Jacksonville Sheriff's Office
Jupiter Police Department
Key Biscayne Police Department
Key West Police Department
Kissimmee Police Department

Law Enforcement Agencies

Lake City Police Department
Lake County Sheriff's Office
Lake Mary Police Department
Lake Wales Police Department
Lake Worth Police Department
Lakeland Police Department
Largo Police Department
Lee County Sheriff's Office
Leesburg Police Department
Leon County Sheriff's Office
Levy County Sheriff's Office
Lighthouse Point Police Department
Los Angeles Police Department (CA)
Madison County Sheriff's Office
Manatee County Sheriff's Office
Marco Island Police Department
Marion County Sheriff's Office
Martin County Sheriff's Office
Melbourne Police Department
Metropolitan Bureau of Investigation
Miami Beach Police Department
Miami-Dade Community College Police Department
Miami-Dade County Office of the Inspector General
Miami-Dade County Public Schools Police Department
Miami-Dade Police Department
Miramar Police Department
Monroe County Sheriff's Office
Multi-Agency Gang Task Force
Naples Police Department
Nassau County Sheriff's Office
National Insurance Crimes Bureau
New York City Police Department
New York Department of Health/Bureau of Drug Enforcement
New York Medicaid Fraud Control Unit
North Bay Village Police Department
North Florida Internet Crimes Against Children Task Force
North Miami Beach Police Department
North Port Police Department
Oakland Police Department
Ocala Police Department
Ocean Ridge Police Department
Ocoee Police Department
Okeechobee County Sheriff's Office
Orange County Sheriff's Office
Orlando Police Department
Osceola County Investigative Bureau
Osceola County Sheriff's Office
Palatka Police Department
Palm Beach County Sheriff's Office
Palm Beach Gardens Police Department
Palm Beach Police Department
Palm Springs Police Department
Palmetto Police Department
Panama City Police Department
Pasco County Sheriff's Office
Pembroke Pines Police Department
Perry Police Department
Pinecrest Police Department
Pinellas County Sheriff's Office
Pinellas Park Police Department
Pittsburgh Police Department (PA)
Plant City Police Department
Plantation Police Department
Polk County Sheriff's Office
Port St. Lucie Police Department
Punta Gorda Police Department
Putnam County Sheriff's Office
Rockledge Police Department
Sanford Police Department
Sarasota County Sheriff's Office
Seminole Police Department
South Florida HIDTA
South Florida Money Laundering Strike Force
South Florida Violent Crimes Task Force
South Florida Water Management District
South Miami Police Department
St. Johns County Sheriff's Office
St. Lucie County Sheriff's Office
St. Petersburg Police Department
Stuart Police Department
Sumter County Sheriff's Office
Sunny Isles Police Department
Tallahassee Police Department
Tampa Police Department
Tarpon Springs Police Department
Taylor County Drug Task Force
Taylor County Sheriff's Office
Tequesta Police Department
Texas Attorney General's Office
Texas Bureau of Health Services
Titusville Police Department
Transportation and Safety Administration
Union County Sheriff's Office
University of Florida Police Department
University of Miami Police Department
US Air Force
US Attorney's Office Eastern District of California
US Attorney's Office Eastern District of Tennessee
US Attorney's Office Middle District of Florida
US Attorney's Office Northern District of Alabama
US Attorney's Office Northern District of Florida

Law Enforcement Agencies

US Attorney's Office Northern District of New York
US Attorney's Office Southern District of Florida
US Attorney's Office Southern District of Texas
US Attorney's Office Western District of Missouri
US Coast Guard
US Commodity Futures Trading Commission
US Department of Education
US Department of Health and Human Services
US Department of Homeland Security Bureau of Immigration and Customs Enforcement
US Department of Housing and Urban Development
US Department of Justice
US Drug Enforcement Administration
US Food and Drug Administration
US General Services Administration
US Marshal's Service
US Postal Inspection Service
US Secret Service
US Social Security Administration Office of the Inspector General
Venice Police Department
Volusia Bureau of Investigation
Volusia County Sheriff's Office
West Melbourne Police Department
Winter Park Police Department

Criminal Gangs and Violent Crime

In the last several years, Florida has seen an increase in the effects of gang violence. Criminal street gangs have been identified in every judicial circuit in Florida and their dangerous impact is seen on Florida's front-pages every day. Because of that escalation, the Office of Statewide Prosecution turned its focus to gangs. In 2007, the Office of Statewide Prosecution partnered with Florida's Sheriffs and State Attorneys to investigate and prosecute gangs under the Racketeering Influenced Corrupt Organization Act (RICO).

Using the tools provided by the RICO statute, the Office of Statewide Prosecution is able to investigate gangs as a complete enterprise and attack them as a group. Instead of reactively charging individual gang members in a piecemeal fashion, we have charged entire organizations arresting ten to fifteen gang members in a single sweep.

A major advantage to our RICO strategy is that it allows the Office of Statewide Prosecution to use previous convictions to demonstrate that the individual defendant is a member of the RICO enterprise. The reason this is so significant in gang cases is because it protects witnesses from threats and violence. The justice system, and the fundamental rule of law, is challenged every time a witness is intimidated. Unfortunately, this is an all too common tactic for violent gangs and it significantly hampers efforts to confront gangs. RICO allows prosecutors to couple prior criminal acts with current criminal activity to give a jury the complete picture of a defendant's role in a criminal enterprise. This approach lessens the risk to witnesses because it supplements their testimony with indisputable, proven fact that cannot be intimidated. We will continue to aggressively pursue live witness cases, with irrefutable evidence of past convictions.

The gang initiative began out of our Tampa Bureau. This was a natural consequence of the large influx of gang activity on Florida's West Coast and a good match with the Office of Statewide Prosecution personnel.

The first gang RICO we filed in 2007 was in Manatee County against members of the Brown Pride Locos. This group had been involved in regular narcotics trade at the street level and numerous firearm crimes. Nine members of the gang were arrested with the cooperation of Sheriff Stuebe's gang unit at the Manatee County Sheriff's Office.

This case resulted in 9 convictions and 97.47 years in prison. The other main component in our gang strategy is that each defendant must provide law enforcement with truthful testimony about his own criminal activities and those of the rest of his gang. This cooperation component is key because it undermines the gang and makes it collapse upon itself. The members can no longer trust each other and their gang's ineffectiveness is then public.

The second gang RICO of the initiative was also in Manatee County and that was filed against 14 members of SUR-13 operating in Manatee. Like their Brown Pride rivals, they were also involved in the narcotics trade and violent firearm cases. Their most heinous predicate acts involve homicide and assaults.

This Brown Pride Locos case led to the first defendant who sought to contest the charges at trial. Chief Assistant Thomas Smith, and Assistant Diane Croff were very ably assisted by Virginia Caswell in a trial before the Honorable Janet Dunnigan. After four days of testimony from witnesses, including an expert witness on gangs, the jury returned a guilty verdict on the charges of RICO and Conspiracy to Commit RICO. Immediately following the verdict, the defendant was sentenced to serve 30 years, each count concurrent, in a Florida State Prison.

The third RICO charge filed against a gang in 2007 was filed against a gang that calls themseleves the Black MOB operating in Plant City in Central Florida. That group is also very active in the drug trade and has a remarkably violent history with gun crimes. This operation was a joint effort between

the Florida Department of Law Enforcement and the Plant City Police Department. This case is still pending.

The last RICO case filed against a gang in 2007 was filed in Palm Beach County against the SUR-13 gang operating in Broward and Palm Beach. This gang virtually controlled the Westgate neighborhood just west of the City of West Palm Beach. SUR-13 was involved in the drug trade and purchase and use of illegal firearms. They were also involved as a gang in a number of convenience store robberies with masks and firearms.

SUR-13 showed another common trait of criminal street gangs - witness intimidation. Through their mannerisms, threats, and graffiti, they passively showed their dominance of the neighborhood and their threats to those who would challenge their control. But through house arsons and individual beatings, they showed that they were not going to behave by any societal norm. The fully loaded Tec-9 assault weapon seized on the morning of the arrest at the home of one of the defendants shows that not only do they pose a serious threat to law abiding citizens, but they also had the means to carry out great levels of violence.

Grand Jury

Because of the escalating gang violence outlined above, the Office of Statewide Prosecution worked with Governor Charlie Crist to petition the Florida Supreme Court to convene the 18th Statewide Grand Jury. In August of 2007, selection began in Palm Beach County for 18 jurors to serve one year to study the problem of gang violence. The individual cases discussed above are an important effort to stop and reverse the trend of gang growth in Florida, but the real solution requires a thoughtful analysis and review of gang reduction efforts.

Grand Jury Report Released

In December 2007, the Statewide Grand Jury completed its work on the First Interim Report on Gangs and Gang Violence. The Report, incorporated by reference here, outlines key areas for systemic improvement through legislative action and through policy and procedure improvements. The Report focuses on improved education and information sharing as well as a strengthening of existing

gang statutes under §874 as well as a new provision creating a gang kingpin penalty, better witness protection statutes, and enhanced career offender and firearm punishments for gang offenders.

The Statewide Grand Jury has already issued one Indictment (SUR-13 Palm Beach) and will be presented with testimony for possible other indictments on gangs operating throughout Florida.

The Statewide Grand Jury project has been a significant undertaking for the Office of Statewide Prosecution. Since there had not been a call for a Statewide Grand Jury in nearly four years, it has been an excellent experience for the lawyers in the Office who did not have any prior grand jury experience. In addition to the regular functioning of the Office, this has been a significant workload for the Office of Statewide Prosecution staff and attorneys. It would not be possible to operate without the help of our partners in the Fifteenth Judicial Circuit who serve as hosts for its operation. This includes the work of Chief Judge Kathleen Kroll and Clerk and Comptroller Sharon Bock.

The work of the Statewide Grand Jury continues and will be a prominent feature of the Office of Statewide Prosecution practice in the coming year.

Narcotics Trafficking

The drug trade continues to operate throughout Florida. Because of the multi-circuit nature of the Office of Statewide prosecution practice, we are most usually involved in the wholesale end of the business instead of the street level retail side of narcotics sales. Although the bulk of our narcotics investigations and prosecutions center on cocaine, we are also very involved in the break up of marijuana grow house operations run throughout our state and the illegal prescription trade - both on the drug trafficking side and the drug diversion side.

As mentioned above, wiretaps continue to be an important proactive investigative tool and that is nowhere more true than in combating drug traffickers. In 2007, the Office sought and utilized twenty-four judicially authorized wire taps on criminal organizations throughout Florida. We also had trials in both North Florida and Central Florida that involved wiretap evidence used in trial.

In Jacksonville, we closed down the Bodoy trafficking operation that was responsible for importing approximately 100 kilos of cocaine into the Jacksonville area every month. That investigation, which was a joint effort with the Drug Enforcement Administration and North Florida HIDTA, led to the seizure of sixteen kilos with a street value of $1.4 million.

In Central Florida, the Office of Statewide Prosecution regularly works with the Metropolitan Bureau of Investigation and the Drug Enforcement Agency. We see those efforts continuing through 2008 and increasing, particularly in South Florida.

White Collar Crime

Mortgage Fraud

The housing boom and the availability of capital in the mortgage market drew a number of fraudsters into that arena. Mortgage fraud continues to escalate beyond an individual mortgage applicant who exaggerates income to purchase his own home and instead into an area of organized criminal behavior. Identity theft became a common tool in the mortgage fraud area when criminals took over the identity of home owners to apply for limited documentation equity loans on properties they did not even own.

In another recurring pattern, we have seen groups recruit straw purchasers for schemes. These operations team with corrupt appraisers and title companies to inflate home values for loan purposes. Often times multiple HUD-1's are produced and the "buyer" walks away from the closing table with a check and a loan for more than the house is worth.

No case is more a mark of the complex and corrupt nature of these schemes than Operation Florida Beautiful. In this case being prosecuted by Assistant Statewide Prosecutor Michael Williams from the Tampa Bureau, a sub-prime lender was used by its Tampa executives to steal millions for loans made to people. The scheme involved a corrupted construction loan process to people who were desperate for storm repairs but did not have the financial wherewithal for such work. Incomes were falsified, values overstated, and payoffs made to complicit employees in the New York home office. In what was the first case against a sub-prime lender, executives in Tampa were charged with RICO for these criminal schemes. The charges have already resulted in a number of guilty pleas and prison sentences.

As the housing and lending market continues its adjustment, we will see the extent of the impact that fraud had on the problem. Our South Florida Bureaus are set to attack the brunt of this problem in 2008 as the criminal cases continue, and we will also work with our civil law counterparts in the Office of the Attorney General to monitor consumer concerns from fraudsters.

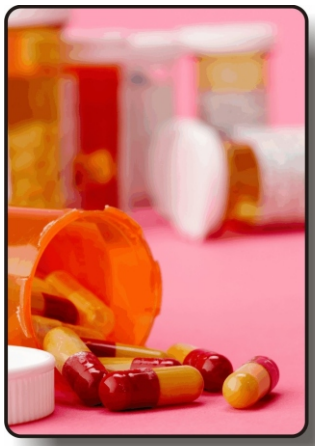
Health Care Fraud

As the state's Medicaid budget grows in dollar and percentage of overall budget, no type of fraud could be more important in its overall impact for all Floridians than that generated through health care fraud. Criminal organizations continue to operate through bogus clinics that are enabled by licensed doctors who ignore not only their Hippocratic duties, but also their fiduciary responsibilities as the gate keeper against fraud in the state and federal health benefit programs.

The Office of the Inspector General of Health and Human Services issued a report on HIV infusion fraud that was startling but emblematic of Florida's problem. In 2005 Dade, Broward, and Palm Beach Counties represented 72% of all claims for HIV infusible treatments even though those counties are home to only 8% of HIV beneficiaries. The vast majority of that billing was all fraudulent - theft from all taxpayers.

Statewide Prosecution has played an important role supporting our federal partners in their efforts to attack the problem. We filed and prosecuted two RICO cases in South Florida addressing this problem and will continue to attack this problem whenever and wherever that is possible.

Health care fraud also continues in the PIP context for those criminals who stage false traffic accidents to bilk insurance companies for fraudulent treatments. Although the bulk of these crimes are single circuit and therefore fall outside of the jurisdiction of Statewide Prosecution, when there are rings that cross circuit lines, the Office does get involved. In two separate PIP fraud trials last year, the Broward and Miami Bureaus tried cases to guilty verdicts. In one case tried by Special Counsel Oscar Gelpi, organized groups were charged and convicted of posing as a media outlet to buy accident reports to solicit drivers for their fraudulent schemes. In another case, Chief Assistant Lisa Porter and Assistant Statewide Prosecutor Laude McDonald convicted a player in a staged accident ring. This dangerous fraud has become such a problem in South Florida that it played a significant role in the Florida Legislature's debate this year on the reauthorization of PIP insurance in Florida. Statewide Prosecution will work with our State Attorney partners to prosecute these crimes when



detected so that we can take the financial incentive away.

An aspect of health care fraud that is not directly related to patient care comes in prescription drug diversion. Statewide Prosecution has been involved in fighting drug diversion and drug counterfeiting for a number of years and formally since the Seventeenth Statewide Grand Jury. Drug diverters purchase prescription drugs from "patients" off the street and repackage and resell those into the wholesale market. The would-be patients are selling their medications strictly for profit and often times are working with corrupt pharmacies or doctors to acquire Medicare or Medicaid funded medicines that are not even medically necessary. The other side of that same coin involves criminal groups who do not buy medicines from the street, but "manufacture" their own medicines for resale. Often times these may involve some of the legitmate active ingredient, but they are almost entirely outside the supervision of the Food and Drug Administration. These criminals put their own illicit profits ahead of a community's health. Because of the dangers they pose, these groups are prosecuted aggresively and are the target of a Task Force run out of Statewide's Ft. Lauderdale Bureau.

2007 also marked another solid year of work with our internal partners in the Medicaid Fraud Control Unit of the Attorney General's Office. We have worked to handle their operations whenever Statewide Prosecution lawyers are needed and also continued to cross-swear Medicaid Fraud Control Unit prosecutors when that meets our shared goals. That partnership is a valuable one and will certainly remain strong in the years ahead. As the state looks at lower budget forecasts, it will be more important than ever to fight fraud in our health care system.

Securities Fraud

Protecting Florida investors continues to be an important component of our white collar crime efforts. Because of the large investment pool in Florida, particularly of our senior retirees, it is important to work with our regulatory and law enforcement partners at DFS. Together with the work of the Securities and Exchange Commission, and our state partners, we work to investigate securities frauds of all kind.

In years past, Statewide Prosecution has handled cases against hedge fund operators and fraudulent operations selling fictitious certificates of deposit. This year's cases and trials have focused on schemes that sought to defraud would-be investors in foreign currencies. In reality, these unlicensed salesmen were selling fictitious currency notes to unsophisticated investors. In what turned into an operation that more truly represented a Ponzi scheme, investor money went to the criminal operation and to pay off earlier investors in the form of phony profits.

Statewide Prosecution lawyers and analysts worked with detectives to gather key documents and prospectus papers that were sent to victims around the state and around the country. Assistant Statewide Prosecutor Marjo Lexa, who was later assisted in trial by Deputy Chief Jim Cobb, pursued the case for years and tried it over a periord of several weeks before a Broward County Jury that returned a verdict of guilty.

In Operation Offshore Financial prosecuted by Assistant Statewide Prosecutor Kathy George, defendants engaged in a scheme to defraud victims who were called and asked to invest $5,000.00 to 10,000.00 in the purchase of foreign currency options. Over fifty victims filed complaints amounting to over $1,000,000.00 in losses. One Defendant recently pled "Guilty" to all charges and is awaiting sentencing.

Fraud against the State

Although our jurisdiction restrictions limit the number of state fraud cases that meet the multi - circuit requirements, there are occasions in which government contracting fraud cases impact multiple circuits. This year saw the trial of one defendant who was involved in fraud against the Department of Transportation in Orlando and a second case against another defendant who had defrauded DOT in Tampa and Tallahassee.

As is typical of cases that fall into this category, government contractors submitted false affidavits for work that was never performed. These cases are very labor intensive for investigators and analysts, but once the records are culled and the witnesses are able to piece the history together for the jury, the picture becomes clear.

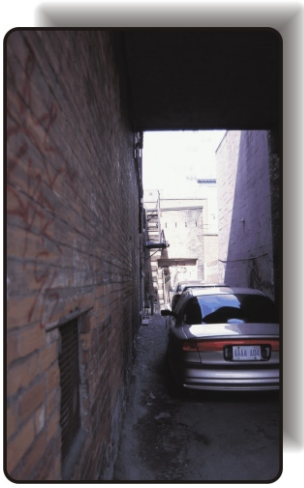
Chief Assistant Statewide Prosecutor Thomas Smith and John Roman were ably assisted by federal and state investigators and by Yvonne Funes a Certified Criminal Analyst with the Office of Statewide Prosecution. They were able to show an Orlando jury that over a course of years defendants bid on road work that they were not certified to perform. The Defendants used other individuals' certifications and even forged certifications. One Defendant pled to the charges and the other was found guilty in a jury trial.

In the Tallahassee case, the Department of Transportation and the Office of the Inspector General worked with Chief Assistant Ron Lee and Assistant Statewide Prosecutor Ed Iturralde to investigate fraud related to a contract in Tampa. That case was aided by the invaluable assistance of Steve Yoakum who used technology to make a complex series of financial transactions very straight forward. The visuals and chronology he prepared simplified the complexities and played a key part in Statewide Prosecution's ability to prevail.

Theft Rings

Statewide continues to focus on groups throughout the state who make large illicit profits through organized theft and dealing in stolen property. They are all opportunists who would rather take from someone else than work to earn something of their own. The level of sophistication has grown over the years, but many of the basics remain the same.

Auto Theft still remains a tremendous national problem costing the US more than $7 Billion a year according to the National Insurance Crime Bureau. Statewide is well suited to target professional rings that steal high dollar vehicles, renumber them and then sell the cars to willing buyers or even to unwitting buyers. Operation Road Runner which began in Miami in 2005 and continued with convictions through 2006 is winding down with only one defendant remaining set for trial in Stuart. That group was responsible for the theft of several hundred vehicles. The main defendants are all now serving lengthy prison sentences.



Cars are not the only target of these types of thieves. The Lee County Sheriff's Office was recently recognized by the Florida Auto Theft Intelligence Unit for a case being handled by the Ft. Myers Bureau and Assistant Statewide Prosecutor Chene Thompson. That case has targeted a motorcycle theft ring in Southwest Florida. The case resulted in the recovery of bikes from around the state and in the conviction and prison sentence of the group's leaders.

Florida's trucking industry is often the target of cargo theft. The vast network of highways that makes commerce flow through our state so freely is a great temptation to those who would steal their cargo loads. The Florida Highway Patrol and the Department of Transportation work with Florida's Sheriffs to apprehend those who would make off with valuable cargo. In addition to the loss of cargo, another cost of this crime is the loss of a driver's truck. Many independent truckers operate as small business owners and the loss of their truck can have a dramatic impact on their ability to stay in business. Although 2007 was not a year with a number of cargo theft cases filed, we are partnering on a number of investigations that may fall into Statewide's multi-circuit jurisdiction. Whether or not we are the ultimate prosecuting authority, we will certainly continue to offer our assistance to target cargo theft rings.

Internet Child Predators

Those people who stalk our children on the internet are some of the most dangerous criminals we target. Their crimes are horrific in their nature and cowardly in their commission. These predators will always be dealt with in an appropriate and aggressive manner when we are asked for assistance in the prosecution of these cases. In the last year, Statewide has had a number of these cases in our docket and there is no indication that the numbers will slow in the year ahead.

Attorney General McCollum's Child Predator Cybercrime Unit is a regular partner in investigations and prosecutions. When Statewide's jurisdiction is the proper forum, we work with the Unit's lawyers and investigators to handle specific cases. We also cooperate with one another through the cross swearing of lawyers from the Child Predator Cybercrime Unit when that is appropriate. As that Unit continues to expand to address the growing demand for trained investigators, we will provide whatever assistance we can to further the goal of stopping these predators.

We have also had a particularly strong partnership with Sheriff Judd in his efforts in Polk County and Statewide has cooperated with his agency in several decoy house operations that have led to the arrest of would-be predators who are stopped before they can get to a child. We have also worked with FDLE and Sheriff Campbell in Leon County in similar operations.

When these child predator cases go to trial, the efforts of the Office require the whole team to contribute. Assistant Statewide Prosecutors Dan Mosley and Lawrence Collins tried a case to a successful guilty verdict as did Chief Assistant Lisa Porter and Deputy Chief Jim Cobb. Assistant Statewide Prosecutor Brian Fernandes also tried one of these cases as a cross-sworn Assistant State Attorney in Palm Beach.

Legislative Affairs

Because of Statewide's subject matter expertise in given areas, we are sometimes called upon to offer legislative suggestions or support on matters relating to criminal justice. This year prosecutors from Statewide Prosecution have worked with Attorney General McCollum, Legislators, and Staff to respond to the gang problem and the increasing problem of marijuana grow houses.

The hard work of the Statewide Grand Jurors, as represented by the First Interim Report of the Eighteenth Statewide Grand Jury on Gangs and Gang Violence, has provided Recommendations that have been incorporated into the Gang Bill (SB 76/HB 437) that is currently pending before the Legislature. The bill streamlines the existing gang law, enhances witness protection, and provides additional tools for law enforcement in their efforts against gang violence.

The Marijuana Grow House Eradication Act (SB 390/HB 173) is also supported by the Office and addresses the for profit growers who are currently exploiting Florida's marijuana laws. This bill will lower the second degree felony threshold level to 25 plants to make growing unprofitable, and it will protect children by increasing penalties for those who seek to raise small children in the middle of a drug harvesting operation that is not only hazardous because of the conditions, but also dangerous because of the risk of armed home invasion from drug rivals.

When called upon to do so, Statewide will continue to assist in the legislative process. We are truly fortunate to have the experience and support of General Counsel Jim Schneider in all of these efforts.

In addition to the work represented in the individual cases of each Assistant in the Office, our lawyers are very involved in a number of associations for the betterment of the legal profession and the advancement of capabilities and professionalism in the law enforcement community. The lawyers within the Office were members of the following criminal justice associations in 2007:

- American Bar Association
- The Florida Bar
- Florida Prosecuting Attorneys Association
- National District Attorneys Association
- National Association of Attorneys General
- League of Prosecutors
- Florida Intelligence Unit

Gangs and Violence

- Florida Gang Investigators Association
- Florida Violent Crime Drug Control Council
- Multi-Agency Gang Task Force
- South Florida Human Trafficking Task Force

Narcotics Investigations

- Central Florida High Intensity Drug Trafficking Area
- North Florida High Intensity Drug Trafficking Area
- Metropolitan Bureau of Investigation (Orlando)
- Multi-jurisdictional Counterdrug Task Force (Fl National Guard)
- Prescription Drug Diversion Response Team
- Prescription Drug Task Force
- South Florida High Intensity Drug Trafficking Area

Fraud and White Collar Crime

- Association of Certified Fraud Examiners
- Big Bend Fraud Task Force
- Central Florida Fraud & Forgery Unit
- Division of Insurance Fraud/Special Investigation Unit
- Fraud Net - Florida Bankers' Association
- INFRAGARD
- National White Collar Crime Center
- South Florida Mortgage Fraud Working Group

Computer Crimes

- FBI Cyber Crime Task Force
- Florida Association of Computer Crime Investigators
- Miami Electronic Crimes Task Force
- North Florida ICAC (Internet Crimes Against Children)
- Secret Service High Technology Task Force

Appendix

Below is a list of the Assistant Statewide Prosecutors assigned to each Office as of December 31, 2007. All Office Chiefs report directly to the Statewide Prosecutor.

Tallahassee	Jacksonville	Orlando	Tampa	Ft. Myers	Ft. Lauderdale	Miami	West Palm Beach
Ron Lee Office Chief	Luis Bustamante Office Chief	John Roman Office Chief	Thomas Smith Office Chief	George Richards Office Chief	Lisa Porter Office Chief	Carlos Guzman Office Chief	Todd Weicholz Office Chief
Edward Iturralde	Jason Lewis	Lawrence Collins	Harold Bennett	Owen Kohler	Jim Cobb Assistant Chief	Kelly Eckley	Brian Fernandes
	Shannon MacGillis	Robert Finkbeiner	Diane Croff	Chene Thompson	Oscar Gelpi Special Counsel	Jonathan Granoff	Stacey Ibarra
	John Wethington	David Gillespie	Cathy McKyton		Kathleen George	Laudelina McDonald	Luis Martinez
		HeatherLee	Michael Schmid		Julie Hogan		
		Anne Wedge-McMillen	Thomas Smith		Stephen ImMasche		
		Dan Mosley	Michael Williams		Margery Lexa		
		Jim Schneider General Counsel			Ed Pyers		

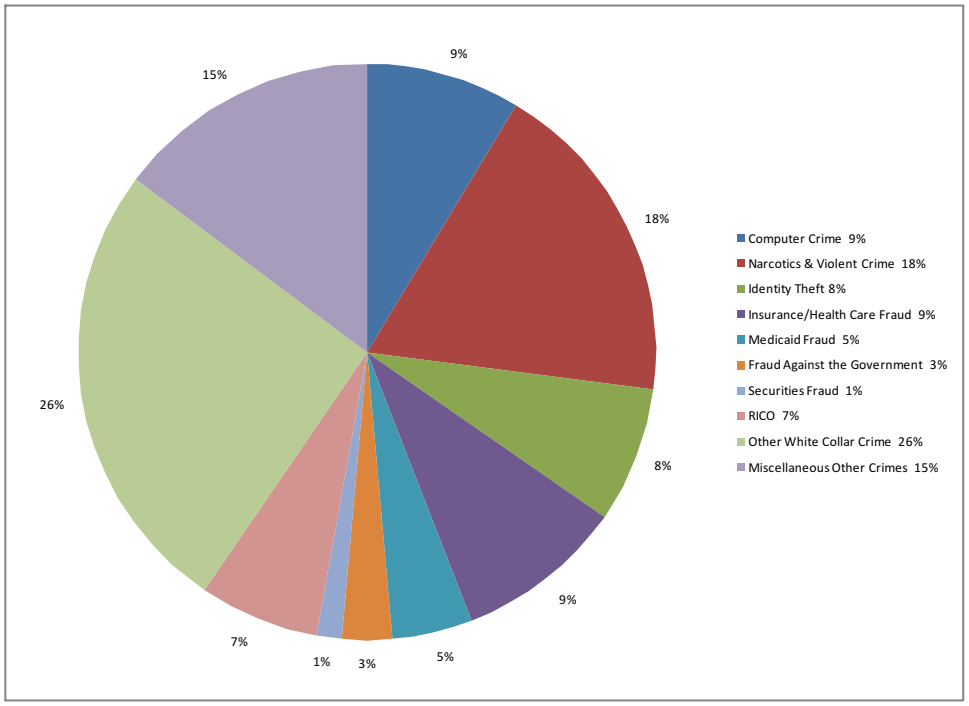
Below is a list of support staff assigned to each Office as of December 31, 2007.

Tallahassee	Jacksonville	Orlando	Tampa	Ft. Myers	Ft. Lauderdale	Miami	West Palm Beach
Jacqueline Perkins-McDaniel, Executive Director	Christopher Floyd, Criminal Financial Analyst	Sherrie Cheeks, Criminal Financial Analyst	Delores Funes, Criminal Financial Analyst	Rebecca Tyrrell, Criminal Financial Analyst	Barbara Goodson, Criminal Financial Analyst	Georgina Clinche, Sr. Executive Secretary	Lisa Cushman, Sr. Executive Secretary
Tammy Peterson, Criminal Financial Specialist	Connie Bland, Sr. Executive Secretary	Theresa Ronnebaum, Victim Advocate	Virginia Caswell, Administrative Assistant	Dawn Andrews, Executive Secretary	Thelma Alvarado, Research Associate	Barbara Rodriguez, OPS Secretary	Shena Matter, Executive Secretary
Lula Weston, Sr. Executive Secretary		Amy Romero, Administrartive Assistant	Debra Kersting, Executive Secretary		Noemi Hernandez, Administrative Assistant		
		Shirley Moton, Executive Secretary	Omayra Kohler, Executive Secretary		Denise Greene, Executive Secretary		
		Jessica Watkins, Executive Secretary	Michele Stano, Executive Secretary		Rimma Romashova, Executive Secretary		
		Myrlande Guillaume, OPS Secretary	Nataya Birdsong, OPS Secretary		Omarelis Jimenez, Executive Secretary		
		Christine Samuels, OPS Secretary					

Sentencing Data 2007

Total Number of Years in Prison	1,156
Total Number of Life Sentences	2
Total number of Days in Jail	12,189
Total Number of Years on Probation	1,377
Total Number of Years on Community Control	50
Total Number of Hours on Community Service	7,505
Total Number of Defendants Charged	456
Total Number of Cases Filed	241
Total Number of Citizen Victims	822
Total Number of Government Victims	24
Total Amount of Restitution Ordered	$33,155,270
Total Amount of Fines Ordered	$4,707,395
Total Amount of Court Costs Ordered	$118,374
Total Amount of Costs of Prosecution Ordered	$1,223,842
Total Amount of Costs of Investigation Ordered	$1,467,574
Total of All Monies Ordered	$40,715,482

2007 Caseload Statistics



Office of the Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399-1050
(850) 414-3300

2008

ANNUAL REPORT

William N. Shepherd
Statewide Prosecutor

Foreword

William Shepherd
Statewide Prosecutor

I am proud to present this Annual Report that highlights my second year as Florida's Statewide Prosecutor and provides an overview of our office's achievements in 2008. With the help and support of Attorney General Bill McCollum, this past year has been an excellent one. Despite resource challenges brought on by current economic conditions, we have not slowed our drive or our performance. Our achievements have been the result of excellent staff work, key partnerships with law enforcement, and continued dedication by the Assistant Statewide Prosecutors who serve our state. We were privileged to successfully prosecute the complex cases that served as the basis for five investigators to be awarded Investigator of the Year for 2008 by their respective statewide associations or statewide agencies:

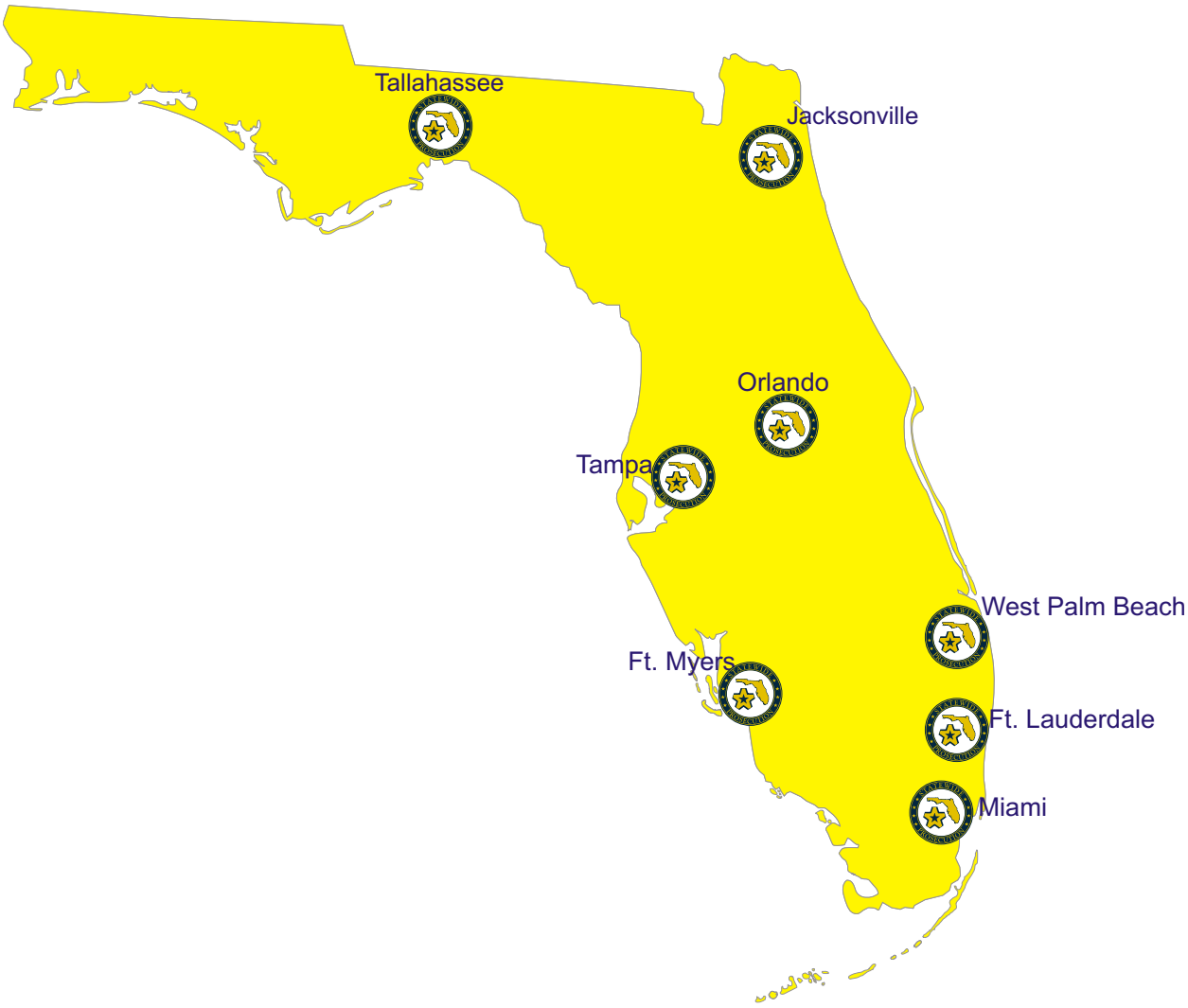
- Gang Investigator of the Year
- Auto Theft Investigator of the Year
- Narcotics Investigator of the Year
- Department of Financial Services Investigator of the Year, and
- Florida Department of Law Enforcement Special Agent of the Year

We were honored to work with those dedicated officers and agents. The successful results they achieved affirm the proactive police-prosecutor strategy that continues as our hallmark.

The Office of Statewide Prosecution is a dynamic organization with a broad geographic scope but a finely targeted mission. We have been called to "mount an effective and sustained effort against major criminal activity." Governor Bob Graham, the Florida Legislature, and Florida's voters created Statewide Prosecution in 1986 to add to the capabilities of the state's law enforcement efforts. Each day we try to live up to the charge of Floridians and to those who had the vision to create this office. While globalization and a "flattened earth" are current watch words that seek to capture the rapid change that travel and technology are bringing to our lives, Statewide Prosecution has been guarding a "flattened Florida", no longer defined by judicial districts.

Our tight structure allows us to react quickly to new threats. In the last two years we have turned our focus to gangs and the devastating economic impact of mortgage fraud. We continue to build on successes of years past, to attract top flight people to our ranks, and to look for new ways to complete our mission of protecting Florida. I am humbled to have the opportunity to serve our state alongside such a great team.

Statewide Prosecution Offices



Protecting Florida's Neighborhoods

Florida has had the fastest growing gang problem of any state in America in the last several years. Gangs are the primary retail outlet for drugs and rely on violence to support their regional monopolies. Although much of their violence is related to drug rivalries, a significant amount is based on an incomprehensible effort to earn "respect" on the streets.

Although the gang problem is most often categorized as an issue for urban areas, rural areas are not immune. Florida's Department of Corrections reports that it has received new gang member inmates from every judicial circuit in Florida. We are seeing gang movement from urban areas to more rural areas where members believe there is less of a law enforcement presence. In a recent trip to North Central Florida, a gang detective reported that within the last month he had arrested gang members on fugitive felony warrants from Miami, Tampa, and Jacksonville. The ease with which commerce moves through our state allows gangs that same access for their own interests.

The violence that accompanies gangs is senseless and tragic. All deaths are a horrible loss to a family, but none was more emblematic of the problem of gang violence than the death of Stacey Williams, III. Stacey was nine years old when he rode his bicycle into the crosshairs of gang violence on his way to visit his grandmother. His murder, by a convicted SUR-13 gang member, became a symbol for the gang problem.

Throughout 2008, Statewide Prosecution worked to address the gang problem on three fronts: (1) the 18th Statewide Grand Jury was empanelled to assess our state's strategy and legal framework established for fighting gangs, (2) we partnered with Florida's State Attorneys and prosecuted gangs using Florida's Racketeering laws, and (3) we worked with Attorney General McCollum and the Regional Gang Reduction Task Forces he established throughout the state to address issues of prevention, intervention, and prisoner reentry to stop the growth of gangs and give gang members real alternatives.

Representative Snyder, Senator Atwater, and Attorney General Bill McCollum at gang press conference

Gang Prosecutions

Governor Charlie Crist petitioned the Florida Supreme Court to call a statewide grand jury to address the increasing gang problem in Florida. Throughout the year, Assistant Statewide Prosecutors presented evidence to the Statewide Grand Jury to seek indictments and to produce a formal report called a presentment. For eighteen months, including all of 2008, the Statewide Grand Jury met in Palm Beach County. The output of the Statewide Grand Jury was impressive. They returned four racketeering indictments against **three** gangs in Florida: **SUR-13, Top 6, and the 773 Boyz**. Those indictments have resulted in dozens of convictions and a "day in court" for those hard-working Floridians whose neighborhoods were terrorized by these gangs.

" I don't know who to thank, but whoever it is, please pass along my thanks to them."

— Floridian who approached a uniformed patrol car in a former gang hot spot.

The prosecution strategy calls for a unified attack against the gang as an entity. This approach is labor-intensive in the investigative phase for police and prosecutors, but it produces a complete picture of the gang's activity when the case is presented to the court and the jury. It allows for minimized risk of witness intimidation by coupling historic convictions with new criminal activity. Once the arrests are made, the neighborhood is "returned" to the neighbors overnight. As the prosecutions progress through the court system, gang members seek to testify against one another and that process of betrayal among former gang members is just as critical to the implosion of the enterprise as the prison sentences themselves.

Throughout the last year, we prosecuted gang racketeering cases around the state. Below is a list of the eight gang cases in litigation in 2008:

Gang Initiative Since 2008 - Filed Cases

Gang	*# of Defendants*	*Operating Area*
Sur-13 JAD	13	S. Florida
Sur-13 Gang Investigator of the Year	14	S.W. Florida
Black MOB	9	C. Florida
TOP 6	12	S. Florida
Bloods	13	N.E. Florida
773 Boyz	7	N. Florida
Brown Pride Locos	9	S. W. Florida
Third Shift	12	S. W. Florida

The prosecutions are working and are improving the quality of life in Florida communities. Crime statistics are the result of a number of factors that collide at the time of the statistical analysis, but Statewide Prosecution's efforts are a significant factor in the statistics below that are taken from the time our prosecutions began through the end of 2008:

- Manatee County: Murders down 33% from 15 to 10 and violent crime down 14% overall
- Plant City: Robberies down 36% and violent crime down 20% overall
- Palm Beach County: Calls for Service to Westgate (former Sur-13 area), down 16%

These results are important because they are more than numbers, they are real people who live in those communities and who have been saved from robberies, violent crime, or even murder. These statistics are rewarding as well, because it means that by working with law enforcement and the local State Attorney, we have targeted the key people who have been wreaking the most havoc in their communities.

Legislative Partnership

Florida's Grand Juries have a unique role in the legislative process. They are empowered to use their subpoena power to take testimony for the purpose of drafting formal reports with suggestions for the legislature. Governor Charlie Crist called for a Statewide Grand Jury, and the 18th Statewide Grand Jury spent months working on a report that detailed a number of areas in which Florida's laws could be strengthened. The goal was to give law enforcement the better tools to address the unique criminal problems posed by gangs.

We were fortunate to have the early support of two members of the Florida Legislature who committed their energy into crafting a comprehensive piece of legislation that recognized the problems Florida faces. Senator Jeff Atwater and Representative Will Snyder drafted a bill that took into account many of the statewide grand jury recommendations and put action and impact into the grand jury's analysis (HB 43/SB 76).

"We will not give up one street corner to gangs. We will not give up on the youth of this community."

— Senate President Jeff Atwater

Key provisions in the Atwater-Snyder legislation were changes to the definitions of gang members to make for a streamlined process that allows evidence to be presented in court. The bill enhanced the racketeering law by adding new predicates that reflect gang enterprise activity. It also created a gang kingpin statute, enhanced witness protection laws, and allows law enforcement to follow gang members as they migrate to the internet.

Governor Charlie Crist signed the bill into law on June 30, 2008.

Governor Crist along with gang bill sponsors Representative Snyder, Senator Atwater

Attorney General McCollum's Executive Leadership

Arrests and prosecutions are not the only answer to Florida's gang problem. The Statewide Grand Jury realized this and issued a second presentment on issues related to gang prevention and prisoner reentry. Attorney General McCollum worked with Senator Atwater and Representative Snyder to include in the legislation a Coordinating Council comprised of the chief executives of all state agencies with jurisdiction over children's issues. Specifically, the Council includes the Department of Education and the Department of Children and Family Services, as well as law enforcement agencies such as the Florida Department of Law Enforcement, the Department of Juvenile Justice, and the Department of Corrections. This group developed a statewide gang reduction strategy that calls for the stop in the growth of gangs, the reduction in the number of gang members, and the rendering of criminal gangs ineffectual. To accomplish this challenging but critical goal, seven regional gang reduction task forces were established to bring together children's programs, faith-based groups, charities, and sports programs, and to partner them with local educators, elected officials, business executives, and law enforcement. All of these groups have the shared goal of finding solutions that are specific to their region.

Attorney General Bill McCollum speaking at gang task force meeting

Over the last year, the Attorney General has led all seven regional meetings. Hundreds of community leaders have attended each meeting. It will be their intervention with teens, their prevention programs for youth that have already begun to get involved in gang activities, and their programs for gang members who are finishing prison sentences and preparing to reenter our communities, that will determine the ultimate success of our long term efforts. The prosecution of the worst offenders is a key component, but this complementary effort is just as critical to Florida.

Statewide Training

Through a grant secured from the federal government, the Florida Department of Law Enforcement and the Office of Statewide Prosecution have been traveling the state to conduct training exercises for prosecutors and investigators. We have taught over twenty seminars in the last year in eight different locations. The goal of the training has been to foster the investigator/prosecutor team approach and to allow for a statewide knowledge base. These training sessions foster good academic work and relationship building.

Fighting Narcotics in Florida

Our mission and focus naturally lend our expertise to the efforts against drug trafficking organizations. While we continue to see significant quantities of narcotics in the traditional corridors of South Florida and the Caribbean, Statewide Prosecution has seen an uptick over the last several years in North Florida and Central Florida. We are actively involved in supporting the work of the federal High Intensity Drug Trafficking Area (HIDTA) organizations and serve on the Board of Directors of the North Florida HIDTA. Assistant Statewide Prosecutor Shannon MacGillis is specially designated as a HIDTA Initiative Commander and takes the lead for Statewide Prosecution on a number of narcotics related matters and matters of high-tech electronic surveillance.

While our efforts against cocaine, methamphetamines, and heroin continue, we also focused attention on the increasing problem of domestic, hydroponic marijuana. Marijuana growers have taken to the suburbs and turned three bedroom homes into indoor marijuana nurseries. They have moved into the house "two doors down" and remodeled the home to add new air conditioners, high powered lights, and reflective walls to maximize the growing power. The result is an illicit crop worth hundreds of thousands of dollars per house, per year and a much more potent and dangerous drug. Our attack on the problem is two-fold. First, we have worked a number of large scale investigations and prosecutions against growers who operated multiple grow houses throughout the state. Operation Two Doors Down, prosecuted by Assistant Statewide Prosecutor Luis Martinez, was an excellent case that has resulted in the arrest of a man who ran over twenty-five grow houses. The case ties in mortgage fraud to procure the homes, weapons to protect the valuable illicit crop, and money laundering. It was such an excellent case, that it was not only awarded the Investigation of the Year by the Florida Narcotics Officers Association, but it was also recognized at a White House ceremony for one of the top ten HIDTA cases in the country.

We partnered with the Florida Legislature to address the changing environment in narcotics. Existing marijuana laws never contemplated the potency of the hydroponic plant nor did the laws envision "narcotics manufacturing facilities" throughout residential areas. These grow houses are often the target of armed home invasions that take place when one drug dealer takes the crop of a rival just before harvest. Not only is this dangerous for those in the drug trade, but also for families brought in to live in the house for the appearance of normalcy. Senator Steve Oelrich and Representative Nick Thompson, sponsored and passed the "Marijuana Grow House Eradication Act" to target the profit grower by lowering the number of required plants to trigger prison time. As Representative Thompson said during debate on the floor, "If you've got twenty-five plants, it's a business not a party."

Representative Nick Thompson holds up a poster photo of a marijuana growhouse

Senator Oelrich announces the filing of the Marijuana Grow House Eradication Act.

Pharmaceutical Narcotics

Florida has seen a proliferation of pain clinics in recent years. These clinics are designed to help those suffering from chronic pain, but too often they are either victims of doctor shopping or serve as a front for those who would misuse their medical license. A glaring example of a medical clinic gone awry was found near Jacksonville. In that case, undercover agents entered the clinic, paid cash, and received whatever narcotic prescriptions they sought. When one of the undercover agents brought in a birthday card for an office professional who was writing his "medically necessary prescription", she scolded her coworkers for forgetting her birthday, but praised the "pillhead" who brought her a card. The medical profession as a whole is committed to weeding out those who misuse their medical license or pharmacy license. These examples of malfeasance show the need for continued cooperation between the medical and legal professions.

Protecting Our State's Economy

Director Swecker's remarks from 2004 were an ominous forecast for the end of 2008. Now that the impact from U.S. markets has spread, the global economic situation presents challenges for stability. The new Director for National Intelligence identifies those economic concerns as an even greater risk than those posed by direct terrorist threats. Economic crimes have reached critical mass.

> "The potential impact of mortgage fraud on financial institutions and the stock market is clear. If fraudulent practices become systemic within the mortgage industry and mortgage fraud is allowed to become unrestrained, it will ultimately place financial institutions at risk and have adverse effects on the stock market."
>
> – Chris Swecker, former FBI Assistant Director, Criminal Investigative Division, Introductory Statement: House Financial Services Subcommittee on Housing and Community Opportunity, October 7, 2004

White collar crimes continue to make headlines and demand attention from America's prosecutors. Fighting fraud is an integral part of the Statewide Prosecution mission and mandate. We target three specific areas: (1) mortgage fraud, (2) health care fraud, and (3) securities fraud.

Mortgage Fraud

Florida is at the front line of the mortgage fraud problem. According to the Mortgage Asset Research Institute, Florida ranked first in single family home loan fraud in 2006 and 2007. Those bank defaults, many from subprime lenders who gave out millions in loans with little or no document support, are now making their way to law enforcement referrals. We are strategically targeting large-scale, multi-circuit fraud and those involved from the lender or the mortgage broker side of the transaction.

> "The primary near-term security concern of the United States is the global economic crisis and its geopolitical implications."
>
> – Dennis C. Blair, Director of National Intelligence, Introductory Statement: Senate Intelligence Committee, February 12, 2009

Two cases deserve particular notice in this report: Operation Florida Beautiful and Operation Life is Good. Both investigations targeted a number of defendants who served as the lender or the brokers in multimillion dollar schemes.

Operation Florida Beautiful was investigated and prosecuted by Assistant Statewide Prosecutor Michael Williams from the Tampa Bureau and resulted in the conviction of Orson Benn, a former Vice President for Argent Mortgage headquartered in New York. Mr. Benn cultivated relationships with mortgage brokers in the Tampa area who generated a large volume of loan applications for him to approve. He then bundled and securitized them through his channels at

the bank. Volume was more important to Mr. Benn than the credit worthiness of borrowers. The Florida mortgage brokers who assisted Mr. Benn were rewarded by commissions on loans that never should have been approved. Mr. Benn was rewarded by commissions at the bank and by cash kickbacks sent in overnight delivery from the Florida brokers. His fraud resulted in millions of dollars in losses to elderly victims throughout the Tampa area who faced foreclosure. His fraud also resulted in a guilty verdict for racketeering and an eighteen year sentence in a Florida State Prison.

The Life is Good case is an investigation led by the Miami-Dade Police Department and Mayor Carlos Alvarez's Mortgage Fraud Task Force. In that case, a Miami brokerage recruited straw purchasers who used false documents to qualify for loans. Not only did they get the bad loans, but they also got cash out of the closing. Their plan was to make a payment or two, and then resell the house as the market continued to rise. When the market corrected and the houses were valued at less than the amount borrowed, they walked away from the mortgage and left a crime scene.

These are just two cases that highlight the problem the frenetic mortgage industry has created in the last few years. We are now seeing the results as the fraud becomes clear. This will be a significant workload issue for the Office in the year ahead and will also provide an opportunity to step back from the caseload and look for solutions. Regulation enhancement is not the answer because regulations and laws already exist that outlaw this fraudulent behavior. The tremendous increase in mortgage fraud is the result of a meltdown in ethics spurred by greed. While federal regulators address the broader issues of failed enforcement in the securitization of these fraudulent mortgage deals from around the country, state law enforcement will continue to focus on the underlying cases that fed the process.

Health Care Fraud

Statewide Prosecution focuses on health care fraud in two key areas, overbilling or up coding of services not performed for patients and attacks on the safety of our pharmaceutical chain through illicit drug diversion.

The last year saw a continued effort to fight the overwhelming level of fraud against government programs in the area of HIV infusions. We continued prosecutions against multimillion dollar fraudsters who billed for expensive HIV drugs that were unnecessary and never given to patients. These fraudulent infusion clinics exploded in Miami-Dade and Broward before additional checks were added to the system that made the fraud more difficult to perpetrate. The cases are time consuming for investigators and resource intensive to prove the

negative, but they are important and will continue to be a focus for Statewide Prosecution.

While program fraud will continue to be a priority, Statewide Prosecution is also focused on drug diversion as a component of health care fraud. When government beneficiaries get drugs they do not take and instead regularly sell those on the street to bundlers who repackage them for sale, we are all at risk. Not only is the government program being defrauded by cheaters, but the patient and his doctor are also defrauded when those drugs resurface in the pharmaceutical chain.

One of the best successes the office had in this arena last year was the prosecution of an infusion clinic and a drug diverter. A "patient broker" (a person who recruits government program beneficiaries to go to corrupt clinics for pay) at an HIV clinic was also involved with drug diverters. As part of the HIV fraud investigation, we were able to arrange an undercover sale of thousands of pharmaceutical pills to the target and make an immediate arrest. That led to a search warrant which produced millions of dollars worth of counterfeit prescription bottle labels that were all part of his illegal wholesale operation. The defendant was arrested, convicted, and sentenced to twenty years in a Florida State Prison.

Counterfeit prescription drugs

This case was an important one for our efforts in South Florida and had a positive impact for the country as a whole. Unfortunately, South Florida seems to be a hub for this sort of activity– from the corrupt beneficiary side of the equation to the illicit wholesaler. We will continue our efforts to pursue these organizations because they put all of our health at risk.

"...I want to thank you for the privilege of supporting your efforts to protect some of our society's most vulnerable patients. Your dedication to ensuring that those creatures who would prey on the most vulnerable are put away really makes you a hero."

Witness statement

Securities Fraud

Statewide Prosecution has a role to play in the area of securities fraud. Although we are not the primary enforcement component for the protection of Florida investors, we often handle cases involving boiler rooms, unregistered agents selling unregistered securities, and foreign currency schemes. When cases do not rise to the level of federal enforcement thresholds, we work with law enforcement investigators to try to make sure that these fraudsters do not go unpunished. A recent case was that of David Luger, a foreign currency trader who defrauded Floridians. He used a flashy radio program to lure investors to his investment program. Instead of using the money and investing as he proclaimed, he used the money for his own purposes and left nothing for investors. He is now serving a lengthy prison term.

A notable case that Statewide Prosecution completed in 2008 was the case of Offshore Financial. Daniel Fasciana and his codefendants engaged in a foreign currency scheme to defraud victims. Victims lost more than $1 million that they had entrusted to the defendants who never purchased a single option they claimed to have in their portfolio. Instead, the money was laundered through foreign banks and used to pay personal expenses. The defendants were convicted and sentenced to prison.

Organized Theft

Shoplifting is no longer just a teenage prank: it is big business and it is organized. Thieves work in groups of "boosters" to acquire stolen goods and rebrand them and sell them through the internet or through their own newly created wholesale companies. These crimes cost billions of dollars a year around the nation.

Operation Beauty Stop was lead by Assistant Statewide Prosecutor Cathy McKyton and is an excellent example of our efforts in this area. A statewide vendor of health and beauty products was being regularly victimized by organized boosters. The investigation showed that these groups were working in concert and at the direction of a leader of this group. McKyton worked with industry and the Polk County Sheriff's Office to investigate, arrest, and prosecute the group. The case resulted in significant prison time for those involved. It garnered national attention and was featured on *Dateline*.

Money Laundering as a Key Component to Crime

Every successful organized criminal group must deal with the problem of how to hide, disguise, and move its money. There are different types of money laundering, but they all try to perform the same function. Many of those in healthcare fraud and workers compensation fraud hide their involvement in financial

transactions by taking their checking business outside the normal banking system and into check cashing stores.

The Eighteenth Statewide Grand Jury took sworn testimony and issued a presentment on the critical role of the corrupt check casher in common fraud schemes. While some in the industry serve the purpose of negotiating checks for the "unbanked" population, the grand jury found evidence of many bad actors. The grand jury pointed out that checks totaling hundreds of thousands of dollars are regularly cashed by fraudsters. That money leaves the check cashing store untraceable. The report cited the testimony of a check cashing store owner who described how he routinely took money that he suspected was from the proceeds of health care fraud and from construction companies hiding payroll to defraud their worker's compensation carriers.

The Grand Jury report was often cited by those involved in a restructuring of the oversight and penalty structure for regulatory violations. A new mechanism is under way to regulate check cashing stores more aggressively and to give regulators the tools to quickly and effectively punish the industry's bad actors.

Internet Child Predators

Child predators have invaded the internet at alarming rates and Attorney General Bill McCollum is committed to tackling the problem on all fronts. His approach not only calls for aggressive prosecutions of offenders, but also calls for widespread teaching of cybersafety to Florida's children. Statewide Prosecution is active on both fronts. In the last year a number of people on our team have made presentations to Florida schools on the dangers of internet predators. Using specially developed training tools by the Child Protection Cyber Crime Unit, we have participated in a number of those trainings around the state. The other aspect of our work in this field is through prosecution of those who trade in child pornography and those who travel to meet children after soliciting them over the internet. Our jurisdiction is geared towards those who travel multi-circuit distances for such meetings. While we will never form the base prosecution unit for these cases, we will always assist when needed because Florida's children are so important.

OSP Outside the Courtroom

The accomplishments that Statewide Prosecution has had inside the courtroom in the last year are augmented by the work that OSP lawyers and staff do outside their jobs. This year Assistant Statewide Prosecutor Harold Bennett was elected to the position of President of the Polk County Chapter of the Virgil Hawkins Bar Association. Assistant Statewide Prosecutor Diane Croff was promoted to the rank of Lt.

Commander with the United States Coast Guard where she serves as an officer in the Coast Guard Reserves. Bureau Chief Todd Weicholz is an Auxiliary Trooper with the Florida Highway Patrol and volunteered over one hundred hours serving in the Patrol.

This year, many in the office were recognized for their excellence and high level of professionalism. Todd Weicholz, Chief Assistant Statewide Prosecutor in West Palm Beach, and Jason Lewis, Assistant Statewide Prosecutor in Jacksonville, were recognized by the Florida Bar and awarded Board Certification in Criminal Trial law joining a number of other lawyers in the office who have achieved the highest rank recognized by the Bar. Becky Tyrrell graduated from the rigorous Florida Department of Law Enforcement Analyst Academy and received her Analyst Certification.

In addition to the work represented in the individual cases of each Assistant in the Office, our lawyers are very involved in a number of associations for the betterment of the legal profession and the advancement of capabilities and professionalism in the law enforcement community. The lawyers within the Office were members of the following criminal justice associations in 2007:

- American Bar Association
- The Florida Bar
- Florida Prosecuting Attorneys Association
- National District Attorneys Association
- National Association of Attorneys General
- League of Prosecutors
- Florida Intelligence Unit

Gangs and Violence

- Florida Gang Investigators Association
- Florida Violent Crime Drug Control Council
- Multi-Agency Gang Task Force
- South Florida Human Trafficking Task Force

Narcotics Investigations

- Central Florida High Intensity Drug Trafficking Area
- North Florida High Intensity Drug Trafficking Area
- Metropolitan Bureau of Investigation (Orlando)
- Multi-jurisdictional Counterdrug Task Force (Fl National Guard)
- Prescription Drug Diversion Response Team
- Prescription Drug Task Force
- South Florida High Intensity Drug Trafficking Area

Fraud and White Collar Crime

- Association of Certified Fraud Examiners
- Big Bend Fraud Task Force
- Central Florida Fraud & Forgery Unit
- Division of Insurance Fraud/Special Investigation Unit
- Fraud Net - Florida Bankers' Association
- INFRAGARD

- National White Collar Crime Center
- South Florida Mortgage Fraud Working Group

Computer Crimes

- FBI Cyber Crime Task Force
- Florida Association of Computer Crime Investigators
- Miami Electronic Crimes Task Force
- North Florida ICAC (Internet Crimes Against Children)
- Secret Service High Technology Task Force

2008 Year In Photos

ASP Diane Croff Promoted
to Lt. Commander in Coast Guard Reserves

ASP Harold Bennett, third from the left,
President of the Polk County
Chapter of the Virgil Hawkins Bar Association

Prosection team in the Florida Beautiful case
ASP Cathy McKyton, ASP Mike Williams,
Investigator Ellen Wilcox,
FDLE & ASP Mike Schnid

CASP Todd Weicholz, Auxiliary Officer with the
Florida Highway Patrol

Auto Theft Case of the Year
Detective J.P. Kinsey, Detective John Lathrop,
Lieutenant Todd Garrison, ASP Chene Thompson,
and Detective Brian Gregory

Appendix

Below is a list of the Assistant Statewide Prosecutors assigned to each Office as of December 31. 2008. All Office Chiefs report directly to the Statewide Prosecutor.

Tallahassee	Jacksonville	Orlando	Tampa	Ft. Myers	Ft. Lauderdale	Miami	West Palm Beach
Ronald Lee Office Chief	Luis Bustamante Office Chief	John Roman Office Chief	Thomas Smith Office Chief	George Richards Office Chief	Julie Hogan Office Chief	Carlos Guzman Office Chief	Todd Weicholz Office Chief
Edward Iturralde	Jason Lewis	Lawrence Collins	Harold Bennett	Owen Kohler	Oscar Gelpi Special Counsel	Laudelina McDonald	Brian Fernandes
	Kelly Eckley	Robert Finkbeiner	Diane Croff	Chene Thompson	Jim Cobb	Stephen ImMasche	Stacey Ibarra
	Shannon MacGillis	David Gillespie	Cathy McKyton		Kathleen George		Luis Martinez
	John Wethington	Heather Lee	Michael Schmid		Margery Lexa		
		Anne Wedge-McMillen	Daniel Weisman		Priscilla Prado		
		Dan Mosley	Michael Williams		Edward Pyers		
		Jim Schneider General Counsel					

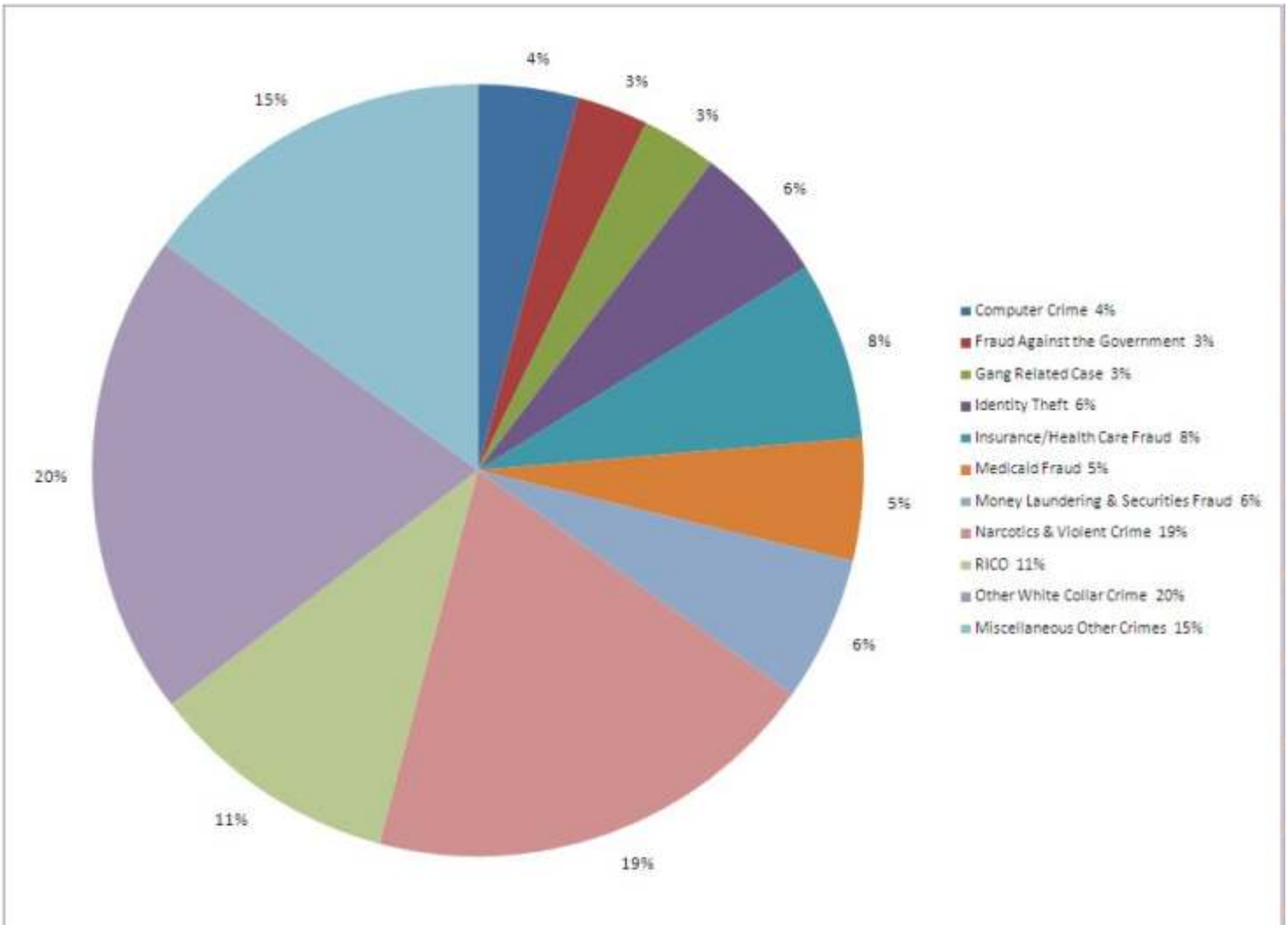
Below is a list of support staff assigned to each Office as of December 31, 2008.

Tallahassee	Jacksonville	Orlando	Tampa	Ft. Myers	Ft. Lauderdale	Miami	West Palm Beach
Jacqueline Perkins-McDaniel, Executive Director	Christopher Floyd, Criminal Financial Analyst	Sherrie Cheeks, Criminal Financial Analyst	Delores Funes, Criminal Financial Analyst	Rebecca Tyrrell, Criminal Financial Analyst	Barbara Goodson, Criminal Financial Analyst	Georgina Clinche, Sr. Executive Secretary	Lisa Cushman, Sr. Executive Assistant
Tammy Peterson, Criminal Financial Specialist	Connie Bland, Sr. Executive Secretary	Amy Romero, Administrartive Assistant	Virginia Caswell, Administrative Assistant	Dawn Andrews, Executive Secretary	Thelma Alvarado, Research Associate	Barbara Rodriguez, Secretary	Jessica Wolfkill, Executive Secretary
Lula Weston, Sr. Executive Secretary		Jessica Watkins, Executive Secretary	Debra Kersting, Executive Secretary		Noemi Hernandez, Administrative Assistant		Kathleen Little, Secretary
		Shirley Moton, Executive Secretary	Michele Stano, Executive Secretary		Denise Greene Executive Secretary		
		Christine Samuels, Secretary			Rimma Romashova, Executive Secretary		
					Omarelis Jimenez, Executive Secretary		

Sentencing Data 2008

Annual Report Data	2008
Total Number of Years in Prison	1,365
Total Number of Life Sentences	1
Total number of Days in Jail	21,460
Total Number of Years on Probation	1,786
Total Number of Years on Community Control	61
Total Number of Hours on Community Service	6,965
Total Number of Defendants Charged	571
Total Number of Cases Filed	255
Total Number of Citizen Victims	370
Total Number of Government Victims	12
Total Amount of Restitution Ordered	$ 16,378,499
Total Amount of Fines Ordered	$ 5,134,146
Total Amount of Court Costs Ordered	$ 152,954
Total Amount of Costs of Prosecution Ordered	$ 1,763,775
Total Amount of Costs of Investigation Ordered	$ 2,809,105
Total of All Monies Ordered	$ 26,238,479

2008 Caseload Statistics



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Tallahassee, Florida 32399-1050
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ANNUAL REPORT

2009

STATEWIDE PROSECUTION

William N. Shepherd
Statewide Prosecutor

FOREWORD

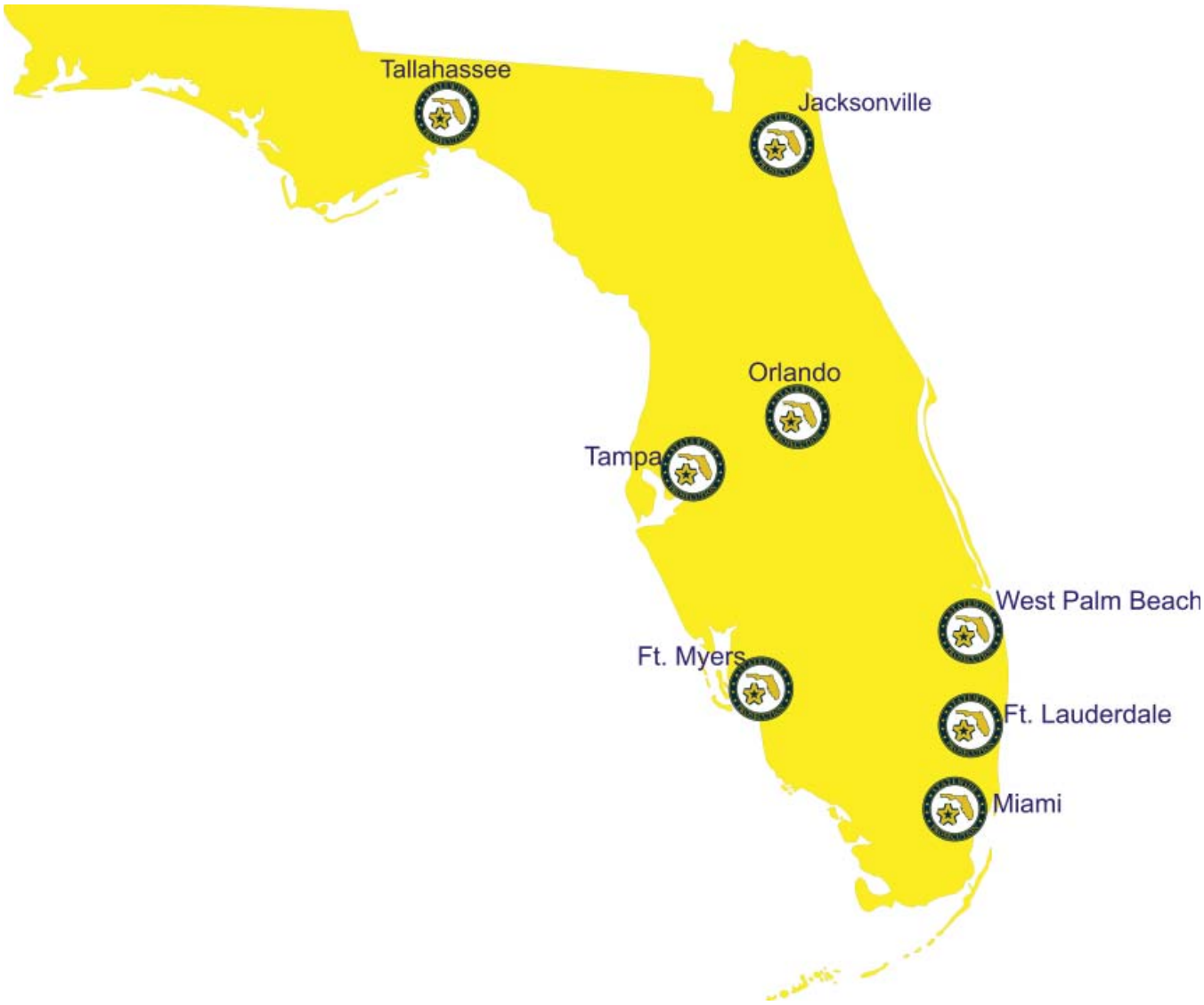
William Shepherd
Statewide Prosecutor

I am proud to present this Annual Report that highlights my third year as Florida's Statewide Prosecutor and provides an overview of our office's achievements in 2009. With the help and support of Attorney General Bill McCollum, this past year has been an outstanding one for the office. The slowing economy and associated cuts to the budget and staff have not slowed our drive or the performance of our trial teams. Each guilty jury verdict has been the work of excellent staff, true partnerships with law enforcement, and the continued dedication of the men and women who serve our state as Assistant Statewide Prosecutors.

Statewide Prosecution's mission is to investigate and prosecute multi-circuit crime. We believe in taking an approach that puts us in investigations from first hunch through verdict. That was the strategy at the inception of our office over twenty years ago, it is the practice today, and it is the bedrock of every success.

In 2009 we finished the term of the Eighteenth Statewide Grand Jury focused on Gangs and Gang Violence and received the Order from Florida's Supreme Court to convene the Nineteenth Statewide Grand Jury focusing on Public Corruption. While the term of one grand jury has ended and another just begun, the work of the office continues to focus on prosecuting gangs, mortgage fraud, drug traffickers and those who seek to defraud our state or our citizens. This was an excellent year for the office, and we have an important mission for the year ahead.

Statewide Prosecution Offices



FIGHTING GANGS

The number one priority for the office in the last year remained our efforts against criminal gangs operating throughout our state. Using the new gang statutes enacted by the Legislature and signed into law by the Governor, we have enhanced prosecutions of gangs. Realizing that our own office alone would never be able to handle the volume of cases, we have worked with the Florida Department of Law Enforcement (FDLE) to offer over thirty classes to investigators and prosecutors around Florida to teach them the techniques we are using and the application of the new statute. This collaboration has allowed for a real exchange of ideas and local best practices. With each class and each newly filed case or jury verdict there are lessons learned to apply to the next case.

The lessons we have learned from enforcement and prosecution aid us in the prevention and intervention work of the state's anti-gang strategy. The Attorney General's Coordinating Council has worked with Sheriffs around the state to focus attention on what we can do together as communities to help young people find opportunities instead of gangs. The partnerships with nonprofit service providers vary around the state, but each program focuses on helping people become successful instead of a statistic in one of our future Annual Reports.

In the three years since we started our gang initiative, we have seen our efforts progress in phases. At the start up phase, we spent significant time working with officers to review files, meet with witnesses, and develop charging strategies to lead up to arrest. We have now charged 13 gang Racketeering (RICO) cases around the state (totaling almost 160 defendants) and convicted every defendant who has chosen to take his case to trial. The office is learning from each case and developing systems for working with agents to identify the next case and move it into our system for investigation, prosecution, and conviction. Our own learning curve has been matched by the increased investigative ability that FDLE and our state's Sheriffs

have brought to the fight.

While law enforcement success is often quantified in arrests and convictions, it is just as accurately measured by improved quality of life in our neighborhoods. From small towns in North Florida like Sawdust to urban areas of South Florida like Lake Worth, we have seen neighborhoods change overnight after the arrest of an entire gang. The 773 Boyz, from Sawdust, were charged with RICO for their criminal activities that spread from Orlando to Gadsden County. Those convictions freed a small town from an ongoing crime spree. The revival in Lake Worth has been a combined effort with the US Attorney and the State Attorney and has resulted in a significant change for the better. That change in Lake Worth was highlighted by the History Channel in its national program Gangland that focused on our RICO case against a gang called Top 6 - identified by the Palm Beach County Sheriff's Office as the most violent gang in the county's history. The efforts of the Palm Beach County Sheriff's Office, and the partnership with the Statewide Grand Jury, are being used as a model by the Department of Justice in their forthcoming best practices manual for communities tackling gang problems. Our combined efforts in Ft. Pierce have resulted in the arrest of Zoe Pound members on RICO charges and the virtual elimination of their gang from that region of Florida.

As a united team, our partnership has made our community a better place. -Sheriff Brad Steube Manatee County Sheriff

Our efforts against gangs span the state and include major initiatives in Tampa, Orlando, and Jacksonville. Prosecutors in the Tampa Bureau have tried RICO gang cases against defendants in Manatee and Hillsborough counties. The Manatee RICO cases have shut down three major gangs in the last year and have been a real proving ground for our work. The early partnership and support we received from the Manatee Sheriff and his office have been an integral part of our success. Our Orlando trials have been lengthy matters that resulted in convictions and addressed major drug and violence-based gangs operating in Orlando and in North Florida. The 773 Boyz defendants were the first gang indicted by the Statewide Grand Jury indictment to go to trial. The Jacksonville RICO cases have not yet gone to trial, but have already resulted in a number of guilty pleas with remaining defendants set for trial shortly.

Although the term of the Eighteenth Statewide Grand Jury has expired, the focus on gang RICO cases will continue as long as there is a need. We have new cases under review around the State and resources are our only limit to increased prosecutions. Each case is a tremendous commitment for our office. It requires hundreds of man hours to prepare for trial, usually lasts two to three weeks, and requires an "all hands" approach from legal support staff and members from other Bureaus. Each win is a win for the entire office, but the lawyers who are really leading this charge for us around the state and who deserve special recognition are Tom Smith, Todd Weicholz, Jim Schneider, Dianne Croff, Dan Weisman, Mike Schmid, Anne Wedge McMillen, Stacey Ibarra, and Brian Fernandes. Their efforts have been tireless and a great sacrifice to themselves and their families – I am grateful and appreciative. The work of this group was formally recognized by the awarding of a 2009 Davis Award unit commendation for the work of the office and the Eighteenth Statewide Grand Jury in our effort to fight gangs.

FIGHTING FRAUD

White collar crime prosecution has long been a focus of Statewide Prosecution and as the headlines of recent days indicate, this will continue. In the last year, our efforts have focused primarily on mortgage fraud, but we have also continued to pursue cases against health care fraud, securities fraud, and large theft enterprises.

Mortgage Fraud

Florida's economy has been significantly impacted by the housing crisis and the resulting foreclosures. As our court system sees record foreclosure filings around the state, lenders are uncovering fraud as the root cause of many of the bad loans. Mortgage fraud cases are very "paper intensive" and require an experienced investigator who knows the lending process. We have found the best partners in investigators who have been assigned to work these cases exclusively so that they can develop that expertise and have the time to devote to these long term investigations.

The majority of our cases have focused on loan brokers or mortgage lenders who used straw purchasers to buy houses. These schemes have also sometimes involved appraisers, title agents, and attorneys. Brokers typically submitted false information to support the loan and then the borrower made a few payments, hoping to flip the home in an escalating market, only to find themselves unable to sell the property and unable to afford the loan. In Miami-Dade, Carlos Guzman, Laude McDonald, and Steve ImMasche have worked with the Miami-Dade Mortgage Fraud Task Force on cases that have led to the successful arrest of a number of members of these conspiracies. In Palm Beach, we have worked with the Department of Financial Services which has investigated these cases. One case was charged as RICO and went to trial in Stuart, Florida. The Defendant, a convicted felon who ran his mortgage fraud enterprise from his "church," was convicted at trial and sentenced to twenty years in prison.

Because mortgage fraud has impacted our whole state, our Central Florida and North Florida Bureaus also have mortgage fraud cases in their dockets. Central Florida cases involving mortgage fraud have resulted in guilty verdicts and convictions, and North Florida cases being handled by John Wethington and Ed Iturralde are awaiting trial or have resulted in guilty pleas.

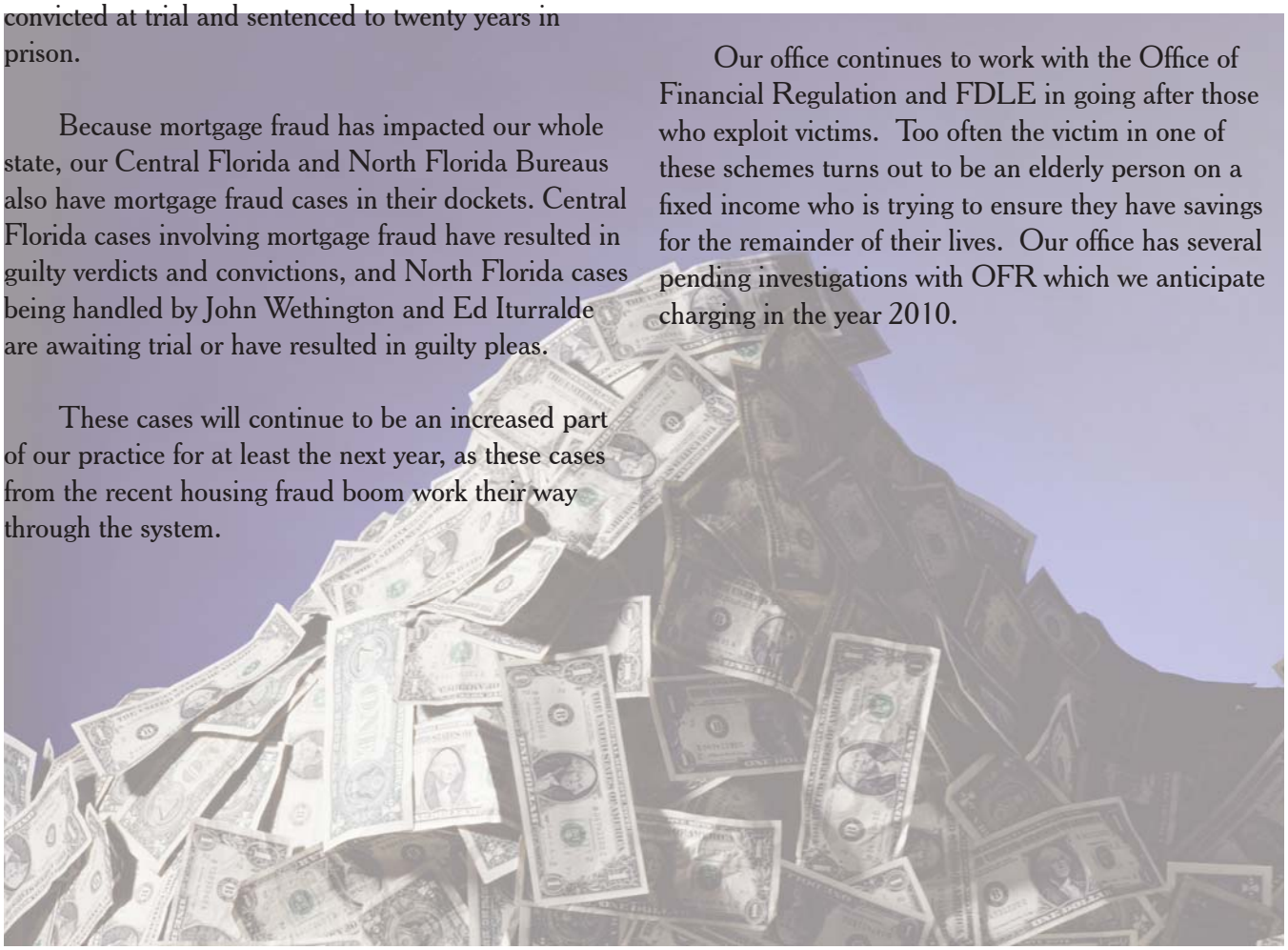
These cases will continue to be an increased part of our practice for at least the next year, as these cases from the recent housing fraud boom work their way through the system.

Securities Fraud

Securities fraud is not just the mega million dollar losses that take up today's headlines. It is also a story we have seen around Florida on a smaller scale but no less devastating to its victims. This year we tried and convicted a man who swindled seven million dollars from victim investors who put their money in a company whose purported business plan was renting luxury touring buses. They received no legitimate return, the money instead going to the conman.

Another securities fraud case resulted in prison this year when a broker sold would-be investors a "sure thing." He made off with millions of dollars, and they ended up with triplexes in foreclosure. As a result of our work, these defendants ended their scheme in a Florida State Prison.

Our office continues to work with the Office of Financial Regulation and FDLE in going after those who exploit victims. Too often the victim in one of these schemes turns out to be an elderly person on a fixed income who is trying to ensure they have savings for the remainder of their lives. Our office has several pending investigations with OFR which we anticipate charging in the year 2010.



Health Care Fraud

Statewide continues to work closely with the Medicaid Fraud Control Unit lawyers who investigate those who steal from our Medicaid program. In addition to traditional cases involving fraud for services not rendered, Statewide Prosecution continues to lead the charge against prescription drug diverters. This type of health care fraud is a threat because not only do the drug diverters often get the pharmaceutical product at government expense from beneficiaries, they also turn around and sell the pills to pharmacies that then sell the same drugs back to government programs. This crime is a financial drain on the system and a risk to public health. Drug diverters pay no heed to the safety and storage of their stolen goods while unloading the drugs back into the health care pharmaceutical market. The Stone Cold Task Force led by Oscar Gelpi, Julie Hogan, and Steve ImMasche is a national leader in fighting these organizations.

Insurance Fraud

In the last year, we have seen a drop in new cases brought to Statewide Prosecution for property insurance fraud and an increase of work from the Division of Insurance Fraud that has involved worker's compensation. These cases are labor intensive in the investigative phase and are handled by those investigators who are trained in the intricacies of this area of law. As an outgrowth of the work of the Eighteenth Statewide Grand Jury's review of illicit check cashing stores, our focus is on the financial aspect of the cases where payroll is hidden through cashing checks by complicit check cashers who then support the payroll payment in cash. Of particular note is the work that Marjo Lexa has done on these cases over the year. Her work is recognized by the office and by investigators around the state who assist her on these cases. She was awarded the Worker's Compensation Fraud Prosecutor of the Year Award for 2009, and it is well deserved.

Margery Lexa, Assistant Statewide Prosector and Geoff Branch, Chief, Bureau of Workers' Compensation Fraud

Special Agent Gary Venema, Bill Shepherd and Special Agent In Charge Amos Rojas announce the arrest of Miami drug diverters.

Theft Rings

> I just wanted to let you know that you and the staff at the Statewide Prosecutor's Office are among our greatest blessings in 2009. [We] have our company back because of you and our employees have their jobs because of you. Granted, we're struggling right now, but we have a fighting chance because of you, and I'm quite certain our company wouldn't still be around without your efforts.
> - Thanksgiving Day message to ASP Dan Mosely from victim of embezzlement

Organized theft rings stealing merchandise and gift cards, or counterfeiting checks continue to be a problem for retailers around the country. This year we prosecuted several of these rings to guilty verdicts and conviction. We have focused on the point of loss and on the point of resale of the stolen goods. Our cases have taken us beyond the borders of our state as the web of these groups extends. They are difficult cases

to put together because of the layers of organization, but we have had some success over the last few years, particularly with the assistance of some of our largest retail victims. We will continue to work on these cases when our assistance can be helpful, because organized retail theft is a crime that hurts every consumer.

Tampa Assistant Statewide Prosecutor Cathy McKyton received a Sheriff's commendation for her RICO prosecution of a multi-million dollar retail theft ring which stole high end health and cosmetic merchandise throughout Central Florida. The case was featured on MSNBC and won an award from the National Retail Federation.

Retail theft is not the only type of organized theft that draws our attention. Kathy George, an Assistant Statewide Prosecutor in Ft. Lauderdale, has done a number of cases against home burglary rings, and this year was no exception. She tried and convicted a burglar who had returned to his craft after his release from prison. This new conviction and his lengthy sentence should end his burglary career. Some thieves still go straight to the source. In a low tech, but effective scheme, one group used backhoes to steal ATM machines around the state. Stacey Ibarra, from our West Palm Beach Bureau, has worked with FDLE to put together the pieces of those thefts and is preparing for trial in the coming year.

FIGHTING DRUG TRAFFICKERS

We continue to work long term cases with Sheriffs' offices and federal agencies involved in narcotics investigations. Our institutional expertise in these types of investigations and our knowledge base in electronic surveillance makes us an integral part in these operations. We continue to work effectively with Florida's High Intensity Drug Trafficking Area (HIDTA) teams on wire intercept cases and prosecutions. Many of our cases from last year continued to spin off new leads into this year's efforts, particularly in the area of marijuana grow houses. The

cases in that area continue, but we have had good success in arresting and eliminating entire grower organizations. On the cocaine trafficking front, we have made a number of large scale arrests and seizures. North Florida has seen a number of lengthy wire tap trials that have resulted in convictions and mandatory sentences. Shannon MacGillis, an Assistant Statewide Prosecutor detailed to North Florida HIDTA, serves as a statewide leader on many of these cases and Kelley Eckley, another Assistant Statewide Prosecutor, has handled a number of these trials in the last year. In Southwest Florida, our Ft. Myers Bureau has been particularly active and Owen Kohler has tried a number of trafficking cases to guilty verdicts. Although cocaine continues to be prevalent, our office docket has seen an increase in the number of heroin cases and investigations. Heroin will undoubtedly be an area of focus in the coming year.

In addition to the trafficking in illegal narcotics, we still see a rise in the trafficking of illegal pharmaceutical narcotics. With an increased effort by law enforcement on pill mills that have proliferated South Florida, it is likely that in cases where multi-circuit jurisdiction exists, we will see an increase in these cases at Statewide Prosecution. There is no question that these drugs pose a serious problem for all of Florida and we stand ready to assist in this concerted effort.

FIGHTING CHILD PORNOGRAPHY

Online child predators and child pornographers continue to pose a serious threat to the safety and well being of our children. That is why Statewide Prosecution continues to aggressively pursue these cases in coordination with the Attorney General's Child Predator CyberCrime Unit. In the last year, Statewide has handled a number of "traveler" cases that fit into our multi-circuit jurisdiction. In these cases, predators meet children online, solicit them for sex, and then travel to meet them in person. Instead of an innocent child victim, they meet detectives who make the arrest. In addition to working these individual cases, John Roman, Orlando Bureau Chief, is active in the Central Florida ICAC and is a regular presenter on internet crime legal issues.

FIGHTING PUBLIC CORRUPTION

As 2009 drew to a close, the Supreme Court granted the Governor's Petition to empanel the Nineteenth Statewide Grand Jury. The focus of this new project will be public corruption investigations and prosecutions. As we did with the Eighteenth Statewide Grand Jury, we will focus on specific cases but also look at systemic changes that can be made to address shortcomings. It is more than a "perceived" culture of corruption in public life when over 30 Florida officials have been removed from office with a number of them currently incarcerated.

Because good government is important at every level and in every aspect of public service, Statewide Prosecution looks forward to working with Florida's US Attorneys and State Attorneys to serve as a force multiplier in this important effort. Because of our multi-circuit jurisdictional limitation, there will undoubtedly be many instances of local corruption that do not fall within our grasp, but our effort in public corruption will be a key focus of the coming year.

A town hall on public corruption featured a Federal Judge, former US Attorney, FBI's Special Agent In Charge, two State Attorneys and two Sheriffs along with the Statewide Prosecutor.

In addition to the work represented in the individual cases of each Assistant in the Office, our lawyers are very involved in a number of associations for the betterment of the legal profession. The lawyers within the Office were members of the following criminal justice associations in 2009:

- American Bar Association
- The Florida Bar
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- National District Attorneys Association
- National Association of Attorneys General
- League of Prosecutors
- Florida Intelligence Unit

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- Florida Gang Investigators Association
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- Multi-Agency Gang Task Force
- South Florida Human Trafficking Task Force

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- Central Florida Fraud & Forgery Unit
- Division of Insurance Fraud/Special Investigation Unit
- Fraud Net - Florida Bankers' Association
- INFRAGARD
- National White Collar Crime Center
- Miami-Dade Mortgage Fraud Task Force

Computer Crimes

- FBI Cyber Crime Task Force
- Florida Association of Computer Crime

Investigators

- Miami Electronic Crimes Task Force
- North Florida ICAC (Internet Crimes Against Children)
- Secret Service High Technology Task Force

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	Jason Lewis	Robert Finkbeiner	Diane Croff		Oscar Gelpi Special Counsel	Laudelina McDonald	Stacey Ibarra
	Shannon MacGillis	David Gillespie	Cathy McKyton		Kathleen George		
		Anne Wedge-McMillen	Michael Schmid		Margery Lexa		
		Dan Mosley	Daniel Weisman		Priscilla Prado		
		Jim Schneider General Counsel	Michael Williams		Ed Pyers		

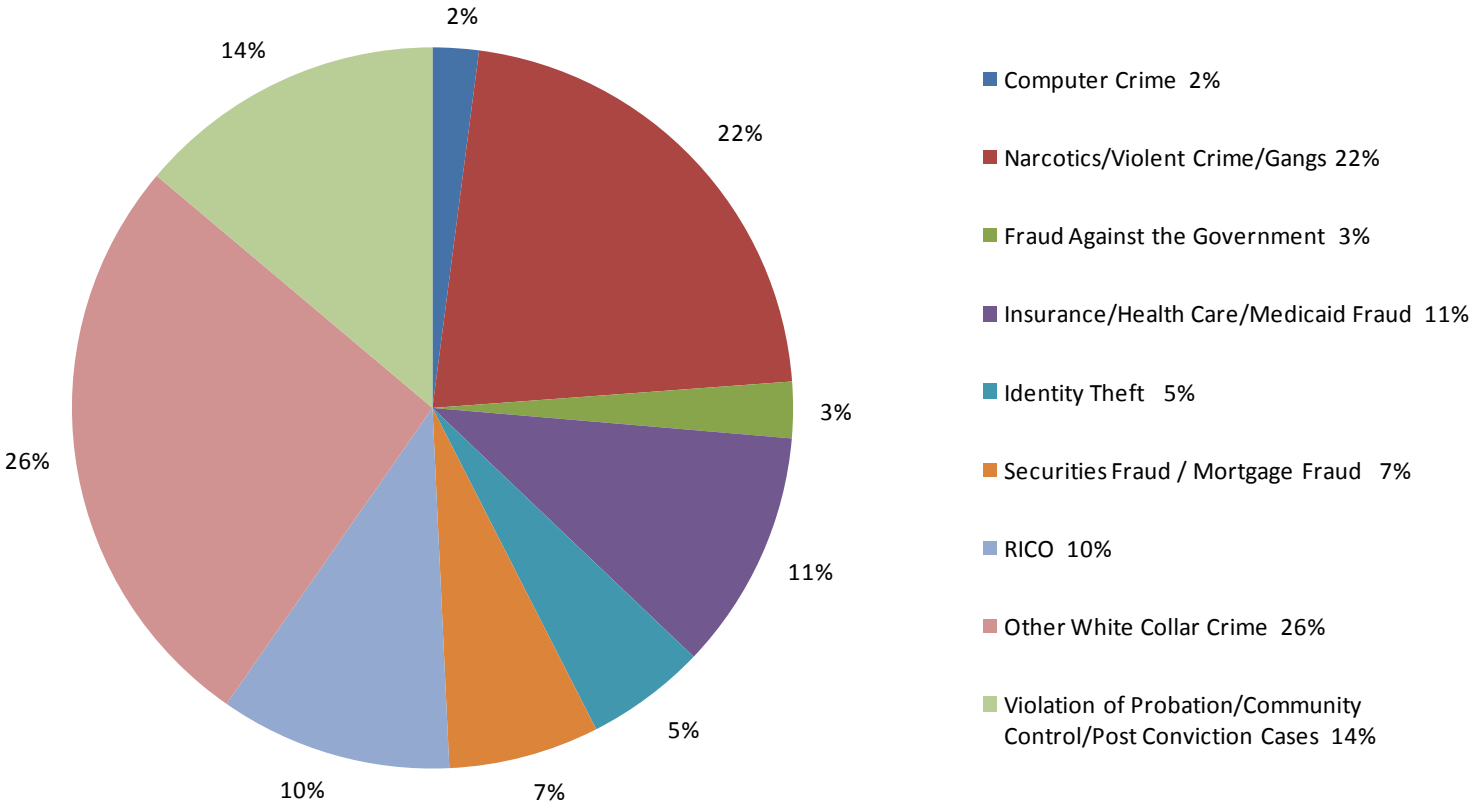
Below is a list of support staff assigned to each Office as of December 31, 2009.

Tallahassee	Jacksonville	Orlando	Tampa	Ft. Myers	Ft. Lauderdale	Miami	West Palm Beach
Jacqueline Perkins-McDaniel Executive Director	Christopher Floyd Criminal Financial Analyst	Sherrie Cheeks Criminal Financial Specialist	Delores Funes Criminal Financial Analyst	Rebecca Tyrrell Criminal Financial Analyst	Barbara Goodson Criminal Financial Analyst	Georgina Clinche Sr. Executive Secretary	Lisa Cushman Sr. Executive Assistant
Tammy Peterson Criminal Financial Specialist	Connie Bland Sr. Executive Secretary	Amy Romero Admin Assistant	Virginia Caswell Admin. Assistant	Dawn Andrews Executive Secretary	Thelma Alvarado Research Associate	Barbara Rodriguez OPS Secretary	Kavita Braun Executive Secretary
		Shirley Moton Executive Secretary	Debra Kersting Executive Secretary		Noemi Hernandez Admin. Assistant		
		Jessica Watkins Executive Secretary	Michele Stano Executive Secretary		Denise Greene Executive Secretary		
					Omarelis Jimenez Executive Secretary		

Sentencing Data 2009

Annual Report Data	2009
Total Number of Years in Prison	1,684
Total number of Days in Jail	14,161
Total Number of Years on Probation	1,775
Total Number of Years on Community Control	50
Total Number of Hours on Community Service	1,982
Total Number of Defendants Charged	281
Total Number of Cases Filed	120
Total Number of Citizen Victims	285
Total Number of Government Victims	13
Total Amount of Restitution Ordered	$17,336,905
Total Amount of Fines Ordered	$ 4,041,379
Total Amount of Court Costs Ordered	$ 138,083
Total Amount of Costs of Prosecution Ordered	$ 1,383,100
Total Amount of Costs of Investigation Ordered	$ 2,058,098
Total of All Monies Ordered	$24,957,565

Active Cases



Office of the Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399-1050
(850) 414-3300

Below is a list of the Assistant Statewide Prosecutors assigned to each Office as of December 31, 2010. All Office Chiefs report directly to the Statewide Prosecutor.

Tallahassee	**Jacksonville**	**Orlando**	**Tampa**	**Ft. Myers**	**Ft. Lauderdale**	**Miami**	**West Palm Beach**
John Maceluch **Office Chief**	John Wethington **Office Chief**	John Roman **Office Chief**	Thomas Smith **Office Chief**	Brian Fernandes **Office Chief**	Julie Hogan **Office Chief**	Carlos Guzman **Office Chief**	Todd Weicholz **Office Chief**
Edward Iturralde	Kelly Eckley	Lawrence Collins	Diane Croff		Jim Cobb,	Stephen ImMasche	Stacey Ibarra
	Shannon MacGillis	Robert Finkbeiner	Cathy McKyton		Oscar Gelpi, **Special Counsel**	Laudelina McDonald	
		David Gillespie	Michael Schmid		Kathleen George		
		Anne Wedge-McMillen	Daniel Weisman		Margery Lexa		
		Jim Schneider, **General Counsel**	Michael Williams		Priscilla Prado		
					Ed Pyers		

Below is a list of support staff assigned to each Office as of December 31, 2010.

Tallahassee	**Jacksonville**	**Orlando**	**Tampa**	**Ft. Myers**	**Ft. Lauderdale**	**Miami**	**West Palm Beach**
Jacqueline Perkins-McDaniel, Executive Director	Christopher Floyd, Criminal Financial Analyst	Sherrie Cheeks, Criminal Financial Specialist	Delores Funes, Criminal Financial Analyst	Dawn Andrews, Executive Secretary	Barbara Goodson, Criminal Financial Analyst	Georgina Clinche, Sr. Executive Secretary	Lisa Cushman, Admin Assistant
	Connie Bland, Sr. Executive Secretary	Amy Romero, Admin Assistant	Virginia Caswell, Admin. Assistant	Tammy Peterson, Criminal Financial Specialist	Thelma Alvarado, Research Associate		Kavita Braun, Sr. Mtg Analyst
		Shirley Moton, Executive Secretary	Debra Kersting, Executive Secretary		Noemi Hernandez, Admin. Assistant		
		Jessica Watkins, Executive Secretary	Michele Stano, Executive Secretary		Rhonda Greene, Executive Secretary		
			Sharon Shaw, OPS Criminal Financial Analyst		Omarelis Jimenez, Executive Secretary		