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PRESENTED TO THE
UNITED STATES SENTENCING COMMISSION

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Chairman Hinojosa, I would like to thank you and the Members of the Commission for the opportunity to address you this morning and would like to applaud your work throughout the years to strengthen and adapt the guidelines as we face new challenges. Today I will address the issues of gang violence in the State of Florida and the response of Attorney General Bill McCollum and my Office of Statewide Prosecution.

I am William N. Shepherd, Florida's Statewide Prosecutor. I lead thirty-five prosecutors stationed in our eight Bureaus throughout the state where we focus exclusively on multi-circuit organized criminal activity. The Office was created in 1986 by the voters of Florida through a Constitutional Amendment to the state constitution. That Amendment and the enabling statutes outline our jurisdiction and our mission. We are housed in the Office of the Attorney General and serve as the prosecutorial arm of his office.

When Attorney General McCollum first appointed me in 2007, he expressed his desire to confront the growing gang problem and render gangs ineffectual. At his direction and with his support, we have embarked on an aggressive agenda to investigate and prosecute gangs using Florida's Racketeering laws.

Scope of the Gang Problem

Florida has over 1,000 gangs and 65,000 gang members scattered throughout our state. They are the primary outlet for street level drug sales and are involved in a number of other criminal activities which include prostitution and smuggling.

Although the 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 to me that within the last month he had arrested gang members on fugitive felony warrants from Miami, Tampa, and Jacksonville. The ease with which we move commerce through our state allows gangs to access that free flow for their own organizational interests.

In the areas that are the hardest hit by gangs we see an escalation of gun violence. Search warrants routinely uncover firearms that include handguns and semi-automatic pistols and rifles. Evidence displays often resemble small armories. Street violence used to enforce geographic crack cocaine drug monopolies is augmented by violence associated with rivalries over respect and "colors". Violence inspired by a traditional profit motive is supplemented by wanton violence for no apparent reason other than violence itself.

Gang members generally come from challenging socioeconomic backgrounds and range in age. A large percentage of gang members are juveniles, but their age does not diminish their potential for violence or their commitment to the gang lifestyle. Unfortunately, we also see that gang activity is not simply "outgrown" as offenders mature. Many gang members are "born into" the gang because their father was in the gang or their older brother is a gang member. The other surprising development is that female gang members are no longer merely there as the

gang member's girlfriend, but are now active members of gangs themselves. A recent interview with a young woman south of Tampa revealed that she went along on drive-bys and gladly carried out the "Blast on Sight" order of her gang superiors.

Law Enforcement Response

Florida law enforcement has been aware of the overall problem of gangs for decades, but with the upswing in gang activity, we have refocused our efforts to attack the problem head on. The Florida Department of Law Enforcement, Police Departments, and Sheriff Offices around the state are starting specific gang units and regional groups are working cases together using the task force model.

To complement the police efforts, Florida's prosecutors are also working together to build cases that use the best resources put forth by law enforcement. The chart below illustrates our work over the last eighteen months.

Gang Initiative Since 2008 - Filed Cases

<i>Gang</i>	<i># of Defendants</i>	<i>Operating Area</i>
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	8	N. Florida
Brown Pride Locos	9	S. W. Florida
Third Shift	12	S. W. Florida

Our prosecution strategy calls for attacking the gang as a unit by using Florida's Racketeering statutes. This allows us to work with local and state law enforcement to build a

case against the entire enterprise and then execute arrest warrants and search warrants in a coordinated manner. Overnight, this returns the neighborhood to the hardworking people who live and work in that area. Anecdotal success comes in remarks like the one by a South Florida neighborhood pastor who approached a uniformed officer to pass along his thanks and the thanks of his congregation to “whoever made that happen” and made it possible for him to walk nearby streets without fear. As the chart below demonstrates, we are beginning to see statistical evidence that supports such anecdotal reports.

2008 Gang Initiative – Early Statistical Results

- Manatee County – Violent Crime ↓ 14%
- Palm Beach County – Westgate Calls for Service ↓16%
- Flagler County – Gang Sgt. Reports Only 2 Incidents Since December
- Gadsden County – Narcotics Lt. – Drug Sales Cut in Half
- Hillsborough County – Plant City, V. C. ↓ 20 % - Robbery ↓ 36%

State Sentencing Tools

The State of Florida has a formalized sentencing structure established by the Florida Legislature that is known as the Criminal Punishment Code. This Code has gone through various forms since its inception as the Florida Sentencing Guidelines in 1983. What at one time offered a minimum and maximum sentence within the legislated range now only sets a minimum legal sentence and allows the statutory maximum to serve its legislated function. Like other sentencing models, the Criminal Punishment Code assigns individual numeric values for

criminal violations. The Code gives the highest point value to the crime to be sentenced and then offers a reduced value for crimes that comprise the defendant's criminal history. Once the primary offense value is calculated and prior record points are added, a subtotal sentence value is established.

In a gang case, there is an additional step in calculation after the subtotal is established. The Code allows for an enhancement by a multiplier of 1.5 if the offense is a criminal gang offense as defined by statute and the code. This multiplier increases the lowest permissible sentence but has no impact on the statutory maximum exposure the defendant faces (Exhibit 1).

The 2008 anti-gang law also provided for another type of enhancement in gang cases (Exhibit 2). During deliberations, the fact finder may find that the criminal activity is a gang crime pursuant to enumerated criteria in the statute. If the fact finder makes that determination, it increases the defendant's crime one felony level – making, for example, a third degree felony a second degree felony. This decision by the fact finder increases the statutory maximum for the defendant's criminal conduct and provides the court with additional sentencing options while not impacting the lowest permissible prison sentence.

Another factor in analyzing gang sentencing options is the application of Florida's various career offender statutes. In addition to the 10-20-Life statute for specific firearm offenses and the Prison Releasee Re-offender Act which requires maximum sentence upon meeting various criteria on primary offense and release status, Florida has statutes for Habitual Felony Offenders, Habitual Violent Felony Offenders, Three-time Violent Felony Offenders, and various other specialized career offender sentences. Given the nature of the criminal gang life, it is not uncommon for special sentencing career criminal statutes to apply.

Solutions Beyond Sentencing

Upon Petition by Florida's Governor Charlie Crist and order of the Florida Supreme Court, I convened a Statewide Grand Jury empanelled in Palm Beach County for a period of eighteen months. That Statewide Grand Jury issued indictments and formal suggestions to the public and the Florida Legislature in documents called Presentments. This Presentment power allows the Statewide Grandjurors the opportunity to examine a specific issue using their subpoena power and then make very specific detailed recommendations for improvement.

The Eighteenth Statewide Grand Jury issued two Presentments related to Florida's gang problem. The first, entitled *First Interim Report of the Statewide Grand Jury: Criminal Gangs and Gang Related Violence* (Exhibit 3), was issued in December of 2007 and focused on ways existing statutes could be strengthened to give law enforcement better tools to address the problems of gangs in Florida. The second, entitled *Third Interim Report of the Statewide Grand Jury: Prevention, Intervention, and Rehabilitation Response to Criminal Gangs* (Exhibit 4), was issued in July of 2008 and focused on the solutions to gang violence that cannot be found through law enforcement alone.¹

Attorney General Bill McCollum simultaneously took the lead at the executive level. He formed a work group of the agency heads of state government who have any jurisdiction for issues dealing with children. The group was comprised of the Department of Children's and Family Services, the Department of Juvenile Justice, the Department of Corrections, the Department of Law Enforcement, the Department of Education, the Office of Drug Control Policy, the Highway Patrol, the Florida Sheriffs Association, the Florida Police Chiefs Association, and the Florida Prosecuting Attorney's Association.

¹ The Statewide Grand Jury was also called upon to look at the problem of money laundering in the check cashing industry in Florida and that was the subject of the Second Interim Report.

The strategy developed by the executive work group calls for stopping the growth of gangs in Florida, reducing the number of gangs and gang members, and rendering gangs ineffectual (Exhibit 5). The strategy is carried out through seven regional coordinating councils created in statute that bring together a broad spectrum of interested parties including educators, faith based groups, and law enforcement groups to share information so that effective programs can be targeted at the key areas. The Attorney General has personally lead six of these regional workshops already and is holding the final day long organizational meeting in the South Florida region tomorrow.

All of us in law enforcement realize that we will not be able to arrest and sentence our way out of the problem of growing gang violence. However, we also realize that without strong laws and sentencing structures in place we will not be able to protect neighborhoods from the worst offenders and give the hard working people of our state the chance to live, work, and raise a family without the threat of gang violence. I appreciate the opportunity to speak to the Commission today, complement you on your outreach to study state problems and the solutions being developed at the state level, and congratulate the Commission on its twenty-five years of service.