

Legislative Analysis



PENALTIES FOR GANG-RELATED FELONIES

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Senate Bill 291 (Substitute H-1)
Senate Bill 292 (Substitute H-1)
Sponsor: Sen. Roger Kahn, M.D.

Senate Bill 660 (Substitute H-1)
Senate Bill 661 (Substitute H-1)
Sponsor: Sen. Mark C. Jansen

House Committee: Judiciary
Senate Committee: Judiciary

Complete to 12-18-08

A SUMMARY OF SENATE BILLS 291-292 AND 660-661 AS REPORTED BY THE HOUSE JUDICIARY COMMITTEE 12-9-08

Senate Bill 291 would create a harsher penalty for a felony connected to gang involvement. Senate Bill 660 would create a penalty for recruiting a person into a gang or deterring a person from leaving a gang. Senate Bills 291 and 661 would amend corresponding sections of the sentencing guidelines.

Under Senate Bills 291 and 660, "gang" would mean an ongoing organization, association, or group of at least five people that identifies itself by all of the following:

- A unifying mark, manner, protocol, or method of expressing membership, including a common name, sign or symbol, means of recognition, geographical or territorial sites, or boundary or location.
- An established leadership or command structure.
- Defined membership criteria.

Senate Bill 292 is tie-barred to Senate Bill 291 and Senate Bills 660 and 661 are tie-barred to each other. The bills would take effect April 1, 2009. A description of each bill follows.

Senate Bill 291

The bill would add a new section to the Michigan Penal Code (MCL 750.411u) to establish a felony penalty for a person who committed or attempted to commit a felony for which gang membership or association provided the motive, means, or opportunity. "Gang member" or "member of a gang" would mean a person who belongs to a gang.

If a person who was an associate or a member of a gang committed or attempted to commit a felony, and his or her association or membership in the gang provided the motive, means, or opportunity to commit the felony, the individual would be guilty of a

felony punishable by imprisonment for up to 20 years. A sentence imposed under the bill would be in addition to the sentence imposed for the conviction of the underlying felony, or the attempt to commit the underlying felony, and could be ordered to be served consecutively to and preceding any term of imprisonment imposed for the underlying felony or attempt.

Senate Bill 660

The bill would add a new section to the Michigan Penal Code (MCL 750.411v) to do all of the following:

- Make it a felony punishable by up to five years' imprisonment and/or a maximum fine of \$5,000, for a person to cause, encourage, recruit, solicit, or coerce someone to join, participate in, or assist a gang in committing a felony.
- Make it a felony punishable by up to 20 years' imprisonment and/or a maximum fine of \$20,000, for a person to communicate a threat with the intent either to deter someone from assisting another person to withdraw from a gang or to punish or retaliate against another person for withdrawing from a gang.
- Provide that a sentence for a violation of the bill would be in addition to a penalty for another felony arising from the same criminal transaction, and the sentences could be ordered to be served consecutively.

Senate Bills 292 and 661

The bills would amend the Code of Criminal Procedure to include the proposed offenses in the sentencing guidelines. Senate Bill 292 would amend the code (MCL 777.16t) to specify that committing a gang membership felony would be a Class B felony against public order with a statutory maximum sentence of 20 years' imprisonment. The bill is tie-barred to Senate Bill 291.

Senate Bill 661 would amend the code (MCL 777.16b, 777.16t, and 777.43) to include the felonies proposed by Senate Bills 291 and 660 in the sentencing guidelines and revise the instructions for scoring points in the guidelines formula for a continuing pattern of criminal behavior.

Committing a gang membership felony would be a Class B felony against public order with a statutory maximum sentence of 20 years' imprisonment. Gang recruitment would be a Class E felony against a person, with a statutory maximum sentence of five years' imprisonment. Retaliation for withdrawal from a gang would be a Class B felony against a person, with a statutory maximum term of 20 years.

Under the Code, points for certain offense variables and prior record variables are scored for a person convicted of a felony to determine a minimum range recommendation for his or her sentence. Offense variable (OV) 13 is "continuing pattern of criminal behavior" and is scored according to which of several factors apply and the number of points that must be assigned.

Currently, ten points are scored for OV 13 if the offense is part of a pattern of felonious criminal activity directly related to membership in an organized criminal group. The bill would delete this provision and instead require 25 points to be scored if the offense were part of a pattern of felonious criminal activity directly related to causing, encouraging, recruiting, soliciting, or coercing membership in a gang or communicating a threat with intent to deter, punish, or retaliate against another for withdrawing from a gang.

The code's scoring instructions for OV 13 specify that, except for offenses related to membership in an organized criminal group, the sentencing court is not to score conduct in OV 11 (criminal sexual penetration) or OV 12 (contemporaneous felonious criminal acts). The bill would instead specify that, except for offenses related to membership in an organized criminal group or that are gang related, the sentencing court is not to score conduct in OV 11 or OV 12.

FISCAL IMPACT:

The bills' fiscal impact on the state and local units of government would depend on how they affected numbers of felony convictions and severity of sentences. There are no data to indicate how many offenders might be convicted and sentenced under the bills, or how many might be affected by changes in scoring sentencing guidelines offense variable 13. Depending on the number of offenders affected, consecutive sentencing provisions carry the possibility of significantly increasing total incarceration costs. To the extent that more offenders were sentenced to state prison or felony probation supervision, or received longer sentences, the state could incur increased costs. Costs of incarceration in a state prison average about \$32,000 per prisoner per year, a figure that includes various fixed operational and administrative costs. Cost of parole and probation supervision averages about \$2,100 per supervised offender per year, exclusive of electronic tether costs. Any increases in the numbers or severity of jail sentences could increase costs for affected counties; those costs vary by county. Any increases in penal fine collections could benefit local libraries, which are the constitutionally-designated recipients of those revenues.

BACKGROUND INFORMATION:

According to proponents of the legislation, the bills are needed to address the ever increasing number of crimes related to gang membership. Reportedly, almost 60 percent of homicides are gang related. Gang membership is not difficult to establish as many members post their gang affiliation on Internet sites such as Youtube and MySpace and many arrestees readily admit to it, for instance, as a means to request they not be placed in a cell with or near to members of rival gangs.

The legislation wouldn't criminalize membership in a "gang," but would provide stiff penalties for crimes motivated by the membership or association with a gang, as well as create a criminal penalty for certain conduct recruiting a person into a gang or blocking a person's withdrawal from a gang. Proponents testified that similar legislation in other states did not appear to increase the number of gang-related convictions, but provided a

tool to law enforcement that led to more convictions of other serious crimes. The important point was that similar laws in other states accomplished the overall goal of removing violent offenders from the streets.

The concerns of opponents center primarily on whether the language of the bills could inadvertently “capture” groups such as biker clubs, military organizations, and other similar organizations in which membership is encouraged, uniforms or certain styles of attire or logos are associated with membership, and so forth. The testimony from opponents was that many law-abiding groups could fit within the definition of “gang” contained in the bills and that the legislation could be used to enhance that member’s sentence if he or she committed a felony of any type . Some people have expressed concerns that the bills could also be applied to children, as the penalties were not restricted to adults, and could even apply to protesters, such as those protesting at abortion clinics.

POSITIONS:

A representative of the Michigan Judges Association testified in support of the bills. (12-9-08)

Representatives of the City of Saginaw police department testified in support of Senate Bills 291 and 292. (12-9-08)

The Department of Corrections is neutral on the bills. (12-9-08)

A representative of ABATE of Michigan testified in opposition to the bills. (12-9-08)

A representative of the Michigan Confederation of Clubs testified in opposition to the bills. (12-9-08)

A representative of the American Legion, Post 238, indicated opposition to Senate Bills 660 and 661.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.