



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bills 660 and 661 (as enrolled)
Sponsor: Senator Mark C. Jansen
Senate Committee: Judiciary
House Committee: Judiciary

Date Completed: 1-9-09

CONTENT

Senate Bill 660 would amend the Michigan Penal Code to do all of the following:

- **Make it a felony to cause, encourage, recruit, solicit, or coerce someone to join, participate in, or assist a gang in committing a felony.**
- **Make it a felony to communicate a threat with the intent either to deter someone from assisting a person to withdraw from a gang or to punish or retaliate against a person for withdrawing from a gang.**
- **Prescribe penalties for the proposed offenses.**
- **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 Bill 661 would amend the Code of Criminal Procedure to:

- **Include the proposed felonies in the sentencing guidelines.**
- **Revise the instructions for scoring points in the guidelines formula for a continuing pattern of criminal behavior.**

The bills are tie-barred and would take effect on April 1, 2009.

Senate Bill 660

The bill would prohibit a person from causing, encouraging, recruiting, soliciting,

or coercing another to join, participate in, or assist a gang in committing a felony. A violation would be a felony punishable by up to five years' imprisonment, a maximum fine of \$5,000, or both. (Senate Bill 661 would refer to this offense as gang recruitment.)

A person also could not communicate, directly or indirectly, to another person a threat of injury or damage to the person or his or her property, or to an associate or relative of that person, with the intent to do either of the following:

- Deter the other person from assisting a member or associate of a gang to withdraw from the gang.
- Punish or retaliate against the other person for having withdrawn from a gang.

A violation would be a felony punishable by up to 20 years' imprisonment, a maximum fine of \$20,000, or both. (Senate Bill 661 would refer to this offense as retaliation for withdrawal from a gang.)

A sentence imposed under Senate Bill 660 would be in addition to a sentence imposed for the conviction of another felony, or attempt to commit a felony, arising out of the same transaction and could be ordered to be served consecutively to and preceding a term of imprisonment imposed for the other felony or attempt.

"Gang" would mean an ongoing organization, association, or group of at least five people, other than a nonprofit organization, 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.

"Gang member" or "member of a gang" would mean a person who belongs to a gang.

Senate Bill 661

Under the bill, 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 sentence of 20 years' imprisonment.

Under the Code of Criminal Procedure, 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. 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, instead, would 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 the sentencing court is not to score conduct scored in OV 11 (criminal sexual penetration) or OV 12 (contemporaneous felonious criminal acts), except for offenses related to membership in an organized criminal group. Under the bill, that scoring instruction also would not apply to offenses that were gang-related or related to membership in an organized criminal group.

Proposed MCL 750.411v (S.B. 660)
MCL 777.16b et al. (S.B. 661)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of the proposed offenses related to gang membership, or how many offenders would score higher on offense variable 13. An offender convicted of the proposed Class B offense would receive a sentencing guidelines minimum sentence range of 0-18 months to 117-160 months. An offender convicted of the proposed Class E offense would receive a sentencing guidelines minimum sentence range of 0-3 months to 24-38 months. To the extent that the bills resulted in increased convictions or increased incarceration time, local governments would incur increased costs of incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an annual average cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$32,000. Additional penal fine revenue would benefit public libraries.

Fiscal Analyst: Lindsay Hollander

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.