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BILL ANALYSIS



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Senate Bill 660 (Substitute S-3 as reported)
Senate Bill 661 (Substitute S-1 as reported)
Sponsor: Senator Mark C. Jansen
Committee: Judiciary

CONTENT

Senate Bill 660 (S-3) would amend the Michigan Penal Code 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.

The bill would define "gang" as an ongoing organization, association, or group of at least five people that identifies itself by all of the following characteristics:

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

Senate Bill 661 (S-1) would amend the Code of Criminal Procedure to include the proposed felonies in the sentencing guidelines and revise the instructions for scoring points in the guidelines formula for a continuing pattern of criminal behavior.

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. 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 50 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). Under the bill, that scoring instruction would not apply to offenses that were gang-related or related to membership in an organized criminal group.

The OV 13 scoring instructions require the court to score 50 points only if the sentencing offense is first-degree criminal sexual conduct. Under the bill, 50 points also would have to be scored for a sentencing offense that was related to membership in a gang or a part or pattern of gang-related criminal activity, as defined Section 411u of the Michigan Penal Code (which Senate Bill 660 (S-3) proposes).

The bills are tie-barred and would take effect 90 days after they were enacted.

Proposed MCL 750.411u (S.B. 660)
MCL 777.16t & 777.43 (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 \$33,000. Additional penal fine revenue would benefit public libraries.

Date Completed: 2-13-08

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.