



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



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

Senate Bills 660 and 661 (as introduced 7-26-07)  
Sponsor: Senator Mark C. Jansen  
Committee: Judiciary

Date Completed: 2-8-08

### **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.**
- **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.**
- **Specify that, in a prosecution for a violation of the bill, it would not be necessary to prove that a group of people shared certain common characteristics, but evidence reasonably tending to show such an association would be admissible.**

**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.**

Senate Bill 661 is tie-barred to Senate Bill 660.

### **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. 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- Punish or retaliate against the other person for having withdrawn from a gang.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.

In a prosecution for a violation of the bill, it would not be necessary to prove that a particular conspiracy, combination, or conjoining of people possessed, acknowledged, or was known by a common name, belief, structure, leadership or command structure, method of operation or criminal enterprise, concentration or specialty, membership, age, or other qualifications, initiation rites, geographical or territorial sites or boundary or location, or other unifying mark, manner, protocol, or method of expressing or indicating membership with the conspiracy's existence. Evidence reasonably tending to show or demonstrate, or probative of, the existence of or membership in such a conspiracy, confederation, or other association would be admissible in an action or proceeding brought under the bill.

The bill would define "gang" as a combination, confederation, alliance, network, conspiracy, understanding, or other similar conjoining of three or more people with an established hierarchy that, through its membership or through the agency of a member, engages in a course or pattern of criminal activity. "Gang member or member of a gang" would mean one or more of the following:

- A person who belongs to a gang.
- A person who knowingly acts in the capacity of an agent for or accessory to, is legally accountable for, or voluntarily associates himself or herself with a course or pattern of gang-related criminal activity, whether in a preparatory, executory, or cover-up phase of an activity.
- A person who knowingly performs, aids, or abets a gang-related activity.

"Gang-related" would mean a criminal activity, enterprise, pursuit, or undertaking directed, ordered, authorized or requested by, consented or agreed to, acquiesced in, or ratified by a gang leader, officer, or governing or policy-making person or authority, or by an agent, representative, or deputy of such an officer, person, or authority, with the intent to do one or more of the following:

- Increase the gang's size, membership, prestige, dominance, or control of a geographical area.
- Involve the gang in criminal activity.
- Exact revenge or retribution for the gang or a member of the gang.
- Obstruct justice or intimidate or eliminate a witness against the gang or a member of the gang.
- Otherwise directly or indirectly cause a benefit, aggrandizement, gain, profit, or other advantage to or for the gang or its reputation, influence, or membership.

"Course or pattern of criminal activity" would mean two or more gang-related criminal offenses committed in whole or in part within this State to which both of the following apply:

- One or more gang-related criminal offenses were committed after the bill's effective date.
- Two gang-related criminal offenses were committed within a five-year period.

## **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 50 points to be scored if the offense were gang-related or part of a pattern of felonious criminal activity directly related to membership in an organized criminal group.

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 also require that the court 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 an organized criminal group or a part or pattern of gang-related criminal activity, as defined Section 411u of the Michigan Penal Code (which Senate Bill 660 proposes).

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.

Fiscal Analyst: Lindsay Hollander

S0708\660sa

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.