



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 Bill 713 (as introduced 8-5-09)
Sponsor: Senator Roger Kahn, M.D.
Committee: Judiciary

Date Completed: 10-26-09

CONTENT

The bill would amend the Code of Criminal Procedure to include in the sentencing guidelines the felonies of gang recruitment and retaliation for withdrawal from a gang.

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.

MCL 777.16t

BACKGROUND

Public Act 563 of 2008 amended the Michigan Penal Code to prohibit and provide a felony penalty for a person causing, encouraging, recruiting, soliciting, or coercing another person to join participate in, or assist a gang in committing a felony.

Public Act 563 also made it a felony for a person to 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- Punish or retaliate against the other person for having withdrawn from a gang.

Public Act 562 of 2008 enacted sentencing guidelines designations for those offenses, referred to as gang recruitment and retaliation for withdrawal from a gang. These revisions took effect on April 1, 2009.

Also on that date, however, Public Acts 564 and 565 of 2008 took effect. Public Act 564 amended the Penal Code to establish felony penalties for a person who commits a felony for which his or her gang membership or association provides the motive, means, or opportunity. Public Act 565, which included a sentencing guidelines designation for that felony, amended the same section of the Code of Criminal Procedure as Public Act 562, but Public Act 565 did not include the sentencing guidelines designations enacted in Public Act 562. Consequently, the sentencing guidelines designations for gang recruitment and retaliation for withdrawal from a gang were deleted from the Code of Criminal Procedure immediately after they were enacted.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill 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 new offenses. An offender convicted of the Class E gang recruitment offense would receive a sentencing guidelines minimum sentence range of 0-3 months to 24-38 months, with a statutory maximum of five years. An offender convicted of the Class B retaliation for withdrawal from a gang offense would receive a sentencing guidelines minimum sentence range of 0-18 months to 117-160 months, with a statutory maximum of 20 years. Local governments would incur the 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 \$34,000. Any additional penal fine revenue collected under these classifications would benefit public libraries.

Fiscal Analyst: Matthew Grabowski

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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.