

HOUSE BILL No. 2908

By Representatives Brunk, DeCastro, Dillmore, Faust-Goudeau, Flaherty, Garcia, Goico, Grange, M. Holmes, Huebert, Huy, E. Johnson, Kelley, Kelsey, Landwehr, Loganbill, Mast, McCreary, McLeland, O'Neal, Pauls, Pottorff, Powers, Sawyer, Swenson, Thull, Treaster, Ward and Watkins

2-14

13 AN ACT concerning criminal street gangs; relating to criminal activity;
14 amending K.S.A. 2005 Supp. 22-3901 and repealing the existing
15 section.

16
17 WHEREAS, The legislature finds that it has the substantial govern-
18 mental interest in protecting every person, regardless of race, color, re-
19 ligious, national origin, sex, age, ancestry, or disability, from fear, intimi-
20 dation and physical harm caused by the activities of criminal street gangs
21 and their members. It is not the intent of this act to interfere with the
22 exercise of the constitutionally protected rights of freedom of expression
23 and association; and

24 WHEREAS, The legislature recognizes the constitutional right of
25 every citizen to hold and express beliefs on any lawful subject whatsoever,
26 to lawfully associate with others who share similar beliefs, to petition
27 lawfully constituted authority for a redress of perceived grievances, and
28 to participate in the electoral process; and

29 WHEREAS, The legislature finds, however, that the state is facing a
30 mounting crisis caused by criminal street gangs whose members threaten
31 and terrorize peaceful citizens and commit a multitude of crimes. These
32 criminal street gang activities, both individually and collectively, present
33 a clear and present danger; and

34 WHEREAS, The state of Kansas has a compelling interest in pre-
35 venting criminal street gang activity, and the legislature finds that the
36 provisions of this act are necessary to maintain the public order and
37 safety: Now, therefore,

38 *Be it enacted by the Legislature of the State of Kansas:*

39 New Section 1. This act shall be known and may be cited as the
40 criminal street gang prevention act.

41 New Sec. 2. As used in this act:

42 (a) "Criminal street gang" means any organization, association or
43 group, whether formal or informal:

- 1 (1) Consisting of three or more persons;
- 2 (2) having as one of its primary activities the commission of one or
3 more person felonies, person misdemeanors, felony violations of the uni-
4 form controlled substances act, K.S.A. 65-4101 *et seq.*, and amendments
5 thereto, or the comparable juvenile offenses, which if committed by an
6 adult would constitute the commission of such felonies or misdemeanors;
- 7 (3) which has a common name or common identifying sign or symbol;
- 8 and
- 9 (4) whose members, individually or collectively, engage in or have
10 engaged in the commission, attempted commission, conspiracy to commit
11 or solicitation of two or more person felonies, person misdemeanors, fel-
12 ony violations of the uniform controlled substances act, K.S.A. 65-4101
13 *et seq.*, and amendments thereto, the comparable juvenile offenses, which
14 if committed by an adult would constitute the commission of such felonies
15 or misdemeanors or any substantially similar offense from another
16 jurisdiction.
- 17 (b) "Criminal street gang member" is a person who meets two or
18 more of the following criteria:
 - 19 (1) Admits to criminal street gang membership.
 - 20 (2) Is identified as a criminal street gang member by a parent or
21 guardian.
 - 22 (3) Is identified as a criminal street gang member by a state, county
23 or city law enforcement officer or correctional officer or documented
24 reliable informant.
 - 25 (4) Is identified as a criminal street gang member by an informant of
26 previously untested reliability and such identification is corroborated by
27 independent information.
 - 28 (5) Resides in or frequents a particular criminal street gang's area and
29 adopts such gang's style of dress, color, use of hand signs or tattoos, and
30 associates with known criminal street gang members.
 - 31 (6) Has been arrested more than once in the company of identified
32 criminal street gang members for offenses which are consistent with usual
33 criminal street gang activity.
 - 34 (7) Is identified as a criminal street gang member by physical evi-
35 dence including, but not limited to, photographs or other documentation.
 - 36 (8) Has been stopped in the company of known criminal street gang
37 members two or more times.
 - 38 (9) Has participated in or undergone activities self-identified or iden-
39 tified by a reliable informant as a criminal street gang initiation ritual.
- 40 (c) "Criminal street gang activity" means the commission or at-
41 tempted commission of, or solicitation or conspiracy to commit, one or
42 more person felonies, person misdemeanors, felony violations of the uni-
43 form controlled substances act, K.S.A. 65-4101, *et seq.*, and amendments

1 thereto, or the comparable juvenile offenses, which if committed by an
2 adult would constitute the commission of such felonies or misdemeanors
3 on separate occasions.

4 (d) “Criminal street gang associate” means a person who:

5 (1) Admits to criminal street gang association; or

6 (2) meets any single defining criterion for criminal street gang mem-
7 bership described in subsection (b).

8 (e) For purposes of law enforcement identification and tracking only
9 “gang-related incident” means an incident that, upon investigation, meets
10 any of the following conditions:

11 (1) The participants are identified as criminal street gang members
12 or criminal street gang associates, acting, individually or collectively, to
13 further any criminal purpose of the gang;

14 (2) a state, county or city law enforcement officer or correctional of-
15 ficer or reliable informant identifies an incident as criminal street gang
16 activity; or

17 (3) an informant of previously untested reliability identifies an inci-
18 dent as criminal street gang activity and it is corroborated by independent
19 information.

20 New Sec. 3. (a) Recruiting criminal street gang membership is caus-
21 ing, encouraging, soliciting or recruiting another person to join a criminal
22 street gang that requires, as a condition of membership or continued
23 membership, the commission of any crime or membership initiation by
24 submission to a sexual or physical assault that is criminal in nature, or
25 would be criminal absent consent by the initiated.

26 (b) Recruiting criminal street gang membership is a severity level 6,
27 person felony.

28 New Sec. 4. (a) Criminal street gang intimidation is the communi-
29 cation, directly or indirectly with another, any threat of personal injury to
30 another or damage to property of another with the intent to:

31 (1) Deter such person from assisting a criminal street gang member
32 or associate to withdraw from such criminal street gang; or

33 (2) Punish or retaliate against such person for having withdrawn from
34 a criminal street gang.

35 (b) Criminal street gang intimidation is a severity level 5, person
36 felony.

37 New Sec. 5. When a defendant is charged with a second or subse-
38 quent violation of either section 3 or 4, and amendments thereto, or both,
39 and the underlying offense upon which the defendant is charged is a
40 person felony, bail shall be at least \$50,000 cash or surety, unless the
41 court determines on the record that the defendant is not likely to reof-
42 fend, an appropriate intensive pre-trial supervision program is available
43 and the defendant agrees to comply with the mandate of such pre-trial

1 supervision.

2 New Sec. 6. Sections 1 through 5, and amendments thereto, shall be
3 a part of and supplemental to the Kansas criminal code.

4 Sec. 7. K.S.A. 2005 Supp. 22-3901 is hereby amended to read as
5 follows: 22-3901. The following unlawful activities and the use of real or
6 personal property in maintaining and carrying on such activities are
7 hereby declared to be common nuisances:

8 (a) Commercial gambling;

9 (b) dealing in gambling devices;

10 (c) possession of gambling devices;

11 (d) promoting obscenity;

12 (e) promoting prostitution;

13 (f) habitually promoting prostitution;

14 (g) violations of any law regulating controlled substances;

15 (h) habitual violations of any law regulating the sale or exchange of
16 alcoholic liquor or cereal malt beverages, by any person not licensed pur-
17 suant to chapter 41 of the Kansas Statutes Annotated;

18 (i) habitual violations of any law regulating the sale or exchange of
19 cigarettes or tobacco products, by any person not licensed pursuant to
20 article 33 of chapter 79 of the Kansas Statutes Annotated;

21 (j) any felony committed for the benefit of, at the direction of, or in
22 association with any criminal street gang, with the specific intent to pro-
23 mote, further or assist in any criminal conduct by gang members. As used
24 in this subsection, "criminal street gang" means any organization, asso-
25 ciation or group ~~of three or more persons~~, whether formal or informal:

26 (1) *Consisting of three or more persons;*

27 (2) having as one of its primary activities the commission of one or
28 more person felonies ~~or~~, *person misdemeanors*, felony violations of the
29 uniform controlled substances act, K.S.A. 65-4101 *et seq.*, and amend-
30 ments thereto, *or the comparable juvenile offenses, which if committed*
31 *by an adult would constitute the commission of such felonies or*
32 *misdemeanors;*

33 (3) which has a common name or common identifying sign or sym-
34 bol; *and*

35 (4) whose members, individually or collectively engage in or have
36 engaged in the commission, attempted commission, conspiracy to commit
37 or solicitation of two or more person felonies ~~or~~, *person misdemeanors*,
38 felony violations of the uniform controlled substances act, K.S.A. 65-4101
39 *et seq.*, and amendments thereto, *or the comparable juvenile offenses,*
40 *which if committed by an adult would constitute the commission of such*
41 *felonies or misdemeanors*, or any substantially similar offense from an-
42 other jurisdiction; or

43 (k) use of pyrotechnics, pyrotechnic devices or pyrotechnic materials

1 in violation of K.S.A. 2005 Supp. 31-170, and amendments thereto.

2 Any real property used as a place where any such activities are carried
3 on or permitted to be carried on and any effects, equipment, parapher-
4 nalia, fixtures, appliances, musical instruments or other personal property
5 designed for and used on such premises in connection with such unlawful
6 activities are subject to the provisions of K.S.A. 22-3902, 22-3903 and 22-
7 3904, and amendments thereto.

8 New Sec. 8. If any provision of this act or the application thereof to
9 any person or circumstances is held invalid, such invalidity shall not affect
10 other provisions or applications of the act which can be given effect with-
11 out the invalid provision or application, and to this end the provisions of
12 this act are declared to be severable.

13 Sec. 9. K.S.A. 2005 Supp. 22-3901 is hereby repealed.

14 Sec. 10. This act shall take effect and be in force from and after its
15 publication in the statute book.