

[As Amended by Senate Committee of the Whole]

As Amended by Senate Committee

Session of 2006

SENATE BILL No. 458

By Senators Schodorf and Petersen, Betts, Bruce, Donovan, McGinn,
Wagle and Wysong

1-26

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 safety:

37 Now, therefore, *Be it enacted by the Legislature of the State of Kansas:*

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

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

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

43 (1) Consisting of three or more persons;

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

1 form controlled substances act, K.S.A. 65-4101, *et seq.*, and amendments
2 thereto, or the comparable juvenile offenses, which if committed by an
3 adult would constitute the commission of such felonies or misdemeanors
4 on separate occasions.

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

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

7 (2) meets ~~any single defining criterion~~ **two or more defining crite-**
8 **ria** for criminal street gang membership described in subsection (b)(2).

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

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

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

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

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

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

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

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

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

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

39 New Sec. 5. When a ~~defendant is charged with a second or subse-~~
40 ~~quent violation of either section 3 or 4, and amendments thereto, or both,~~
41 ~~and the underlying offense upon which the defendant is charged is crim-~~
42 ~~inal street gang member, as defined in section 2, and amendments~~
43 ~~thereto, is arrested for~~ a person felony, bail shall be at least \$50,000

1 cash or surety, unless the court determines on the record that the de-
2 fendant is not likely to reoffend, an appropriate intensive pre-trial super-
3 vision program is available and the defendant agrees to comply with the
4 mandate of such pre-trial supervision.

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

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

- 11 (a) Commercial gambling;
- 12 (b) dealing in gambling devices;
- 13 (c) possession of gambling devices;
- 14 (d) promoting obscenity;
- 15 (e) promoting prostitution;
- 16 (f) habitually promoting prostitution;
- 17 (g) violations of any law regulating controlled substances;
- 18 (h) habitual violations of any law regulating the sale or exchange of
19 alcoholic liquor or cereal malt beverages, by any person not licensed pur-
20 suant to chapter 41 of the Kansas Statutes Annotated;
- 21 (i) habitual violations of any law regulating the sale or exchange of
22 cigarettes or tobacco products, by any person not licensed pursuant to
23 article 33 of chapter 79 of the Kansas Statutes Annotated;
- 24 (j) any felony committed for the benefit of, at the direction of, or in
25 association with any criminal street gang, with the specific intent to pro-
26 mote, further or assist in any criminal conduct by gang members. As used
27 in this subsection, “criminal street gang” means any organization, asso-
28 ciation or group ~~of three or more persons~~, whether formal or informal:
 - 29 (1) *Consisting of three or more persons;*
 - 30 (2) having as one of its primary activities the commission of one or
31 more person felonies ~~or~~, *person misdemeanors*, felony violations of the
32 uniform controlled substances act, K.S.A. 65-4101 *et seq.*, and amend-
33 ments thereto, *or the comparable juvenile offenses, which if committed*
34 *by an adult would constitute the commission of such felonies or*
35 *misdemeanors;*
 - 36 (3) which has a common name or common identifying sign or sym-
37 bol; *and*
 - 38 (4) whose members, individually or collectively engage in or have
39 engaged in the commission, attempted commission, conspiracy to commit
40 or solicitation of two or more person felonies ~~or~~, *person misdemeanors*,
41 felony violations of the uniform controlled substances act, K.S.A. 65-4101
42 *et seq.*, and amendments thereto, *or the comparable juvenile offenses,*
43 *which if committed by an adult would constitute the commission of such*

1 *felonies or misdemeanors*, or any substantially similar offense from an-
2 other jurisdiction; or

3 (k) use of pyrotechnics, pyrotechnic devices or pyrotechnic materials
4 in violation of K.S.A. 2005 Supp. 31-170, and amendments thereto.

5 Any real property used as a place where any such activities are carried
6 on or permitted to be carried on and any effects, equipment, parapher-
7 nalia, fixtures, appliances, musical instruments or other personal property
8 designed for and used on such premises in connection with such unlawful
9 activities are subject to the provisions of K.S.A. 22-3902, 22-3903 and 22-
10 3904, and amendments thereto.

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

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

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