

SESSION OF 2013

SUPPLEMENTAL NOTE ON SENATE BILL NO. 16

As Recommended by Senate Committee on
Judiciary

Brief*

SB 16 would create the Kansas Racketeer Influenced and Corrupt Organization Act (Kansas RICO Act). The bill also would amend the criminal street gangs definitions' statute.

Kansas RICO Act

The Kansas RICO Act would make it a crime for any covered person:

- Who has with criminal intent received any proceeds from a pattern of racketeering activity or through the collection of an unlawful debt to use or invest such proceeds in acquiring any title, right, interest, or equity in real property or in the establishment or operation of any enterprise;
- Through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain any interest in or control of any enterprise or real property; or
- Who is employed by, or associated with, any enterprise to conduct or participate in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.

“Covered person” would be defined as any person who

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

is a criminal street gang member or associate, has engaged or is engaged in human trafficking or aggravated human trafficking, or has engaged in or is engaged in the unlawful manufacturing, cultivation, or distribution of controlled substances.

“Enterprise” would be defined as any individual, sole proprietorship, partnership, corporation, business trust, Kansas union, legal entity, unchartered union, association, group of individuals associated in fact although not a legal entity, governmental entity, or criminal street gang.

“Pattern of racketeering activity” would be defined as engaging in at least two incidents of racketeering activity that have the same or similar intents, results, accomplices, victims, or methods of commission, or that otherwise are interrelated by distinguishing characteristics and are no isolated incidents. At least one of such incidents would have to occur after the effective date of the Act, and the last such incident would have to occur within 5 years, excluding any period of imprisonment, of a prior incident of racketeering activity.

“Racketeering activity” would be defined as committing, attempting to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit certain crimes enumerated in the Act, or any conduct defined as “racketeering activity” in the federal RICO Act.

“Unlawful debt” would be defined as any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in Kansas because it was incurred or contracted in violation of various federal or Kansas racing, gambling, gaming, or usurious lending laws.

The Act also would define the terms “trustee,” “real property,” “documentary material,” and “beneficial interest.”

This crime created by this Act or conspiracy to commit this crime would be a severity level 2, person felony. The

court also could impose a fine of up to three times the gross value gained or three times the gross loss caused, whichever is greater, if the defendant gained pecuniary value or caused personal injury, property damage, or other loss. Bail for persons charged with this crime would be a minimum of \$50,000, unless certain conditions are met.

The Act would grant the district court the power to enjoin violations of the Act by divesting a defendant of any interest in any enterprise; imposing reasonable restrictions on activities or investments of the defendant; dissolving or reorganizing any enterprise; suspending or revoking a license, permit, or prior approval granted by a state agency; or ordering the forfeiture of a corporate charter or certificate, upon certain findings. All property used in the course of, intended for use in the course of, derived from, or realized through conduct violating the Act would be subject to civil forfeiture.

Prosecuting attorneys would be authorized to administer oaths or affirmations, subpoena witnesses or material, and collect evidence relating to activity violating the Act. They would also be allowed to apply *ex parte* to a district court for an order requiring a subpoenaed person or entity to not disclose the subpoena to anyone except the subpoenaed person's attorney for a period of 90 days. Such order could only be granted if the prosecutor showed: factual grounds reasonably indicating a violation of the Act, that the documents or testimony sought appear reasonably calculated to lead to the discovery of admissible evidence, and facts showing that disclosure of the subpoena would hamper or impede the investigation or cause a flight from prosecution. If a person or enterprise fails to obey a subpoena, the prosecuting attorney could apply to the district court for an order compelling compliance, and a person failing to obey any court order under the Act would be subject to being adjudged in contempt of court and punishment by fine and imprisonment.

Criminal Street Gangs

The bill would amend the criminal street gangs definitions' statute by adjusting the criteria required to identify a person as a "criminal street gang member." To meet the definition, a person must meet three or more criteria from a list set forth in the statute. Under current law, one of these criteria is that the person frequents a particular criminal street gang's area; and adopts such gang's style of dress, color, use of hand signs or tattoos; and associates with known criminal street gang members. The bill would separate the three parts of this single criteria into three separate criteria.

Background

The bill was introduced by the Senate Judiciary Committee. The Senate Committee heard testimony from the following proponents: Attorney General Derek Schmidt, Senator Mike Petersen, and representatives of the Wichita Police Department, the Wyandotte County District Attorney's Office, the Kansas Association of Chiefs of Police, the Kansas Peace Officers Association, the Kansas Sheriffs Association, and the Topeka Police Department. Written testimony supporting the bill was submitted by the Dodge City Chief of Police, the League of Kansas Municipalities, and the Unified Government of Wyandotte County

The fiscal note states the Office of Judicial Administration believes the bill could result in additional criminal charges being filed in district courts, but it is likely most of the additional charges would be filed within existing cases. The bill also could result in additional asset forfeiture case filings. An increase in cases would require time spent by judicial and non-judicial personnel. Additional revenue could be generated from docket fees and RICO fines. However, it is not possible to predict a precise fiscal effect at this time, and it would most likely be accommodated within the existing court schedule and would not require additional resources.

The Kansas Sentencing Commission estimates the bill would result in zero to three additional prison admissions each year from FY 2014 through FY 2023. No additional prison beds would be needed by FY 2014. By FY 2023, nine, 18, or 27 prison beds could be required, depending on three different scenarios. The bill would increase the workload of the Commission by one to three journal entries each year.

For all crimes, the Kansas Sentencing Commission estimates the total number of inmates will exceed available capacity by 325 beds by the end of FY 2014 and by 590 beds by the end of FY 2015. The Governor's budget includes \$2.0 million in FY 2014 and another \$1.0 million in FY 2015 for community corrections treatment and supervisions programs to reduce the number of probationers entering prison. These funds and policy changes are expected to make 135 beds available in FY 2014 and 853 beds available in FY 2015. However, it is likely that projected population increases will require new construction providing 512 beds at a construction cost of approximately \$24.5 million and operating costs of approximately \$8.4 million (\$45 per inmate per day).

Should passage of the bill require capacity beyond the scenario described above, additional costs for contract beds or facility expansion would be incurred in the near term.

Any fiscal effect associated with the bill is not reflected in *The FY 2014 Governor's Budget Report*.