

SESSION OF 2006

SUPPLEMENTAL NOTE ON SENATE BILL NO. 366

As Amended by House Committee of the Whole

Brief*

SB 366 would deal with three major topics that include sentencing guidelines, use of deadly force, and criminal street gangs.

Sentencing Guidelines

The bill would amend the Kansas sentencing guidelines law dealing with upward departures to add a new aggravating factor when the crime involved two or more participants and the defendant played a major role in the crime as an organizer, leader, recruiter, manager or supervisor.

Use of Deadly Force

Further, the bill would authorize a person who is not engaged in an unlawful activity and who is attacked in a place where the person has the right to be, to stand his or her ground and fight back with no duty to retreat.

The bill would amend the statutes on use of force in defense of a person, dwelling, and property other than a dwelling, by explicitly adding the authority for a person to use deadly force against another, if the person reasonably believes death or great bodily harm to the person or a third person is imminent.

A person would be presumed to have a reasonable fear that death or great bodily harm to the person or a third person is imminent if:

- The person against whom deadly force is used had or was unlawfully and forcibly entering a dwelling or occupied vehicle;
- The person against whom deadly force is used had removed or was attempting to remove a person against his or her will from

*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>

a dwelling or occupied vehicle; and

- The person who used deadly force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible removal was occurring or had occurred.

The above provisions would not apply if:

- The person against whom deadly force is used has the right to be in the dwelling or vehicle, or is a resident or owner of the dwelling or vehicle, and there is not a court order restraining the person from contact with a person occupying the dwelling or vehicle;
- The person sought to be removed is a child, grandchild, or is in the lawful custody of the person against whom deadly force is used, and there is not a court order restraining the person against whom such force is used from contact with the child;
- The person who uses deadly force is engaged in an unlawful activity or is using the dwelling or occupied vehicle to further an unlawful activity; or
- The person against whom deadly force is used is a law enforcement officer who enters or attempts to enter a dwelling or vehicle while performing official duties, and the officer identified himself or herself in accordance with the law, or the person using deadly force knew or reasonably should have known that the person was an officer.

The bill would immunize a person from criminal prosecution and civil action for the use of force. If, however, the force is used against a law enforcement officer, the person using the force would not be immune from criminal prosecution and civil action. The law enforcement officer would have to be in the act of performing his or her official duties and the officer would have to identify himself or herself in accordance with the law, or the person using force knew or reasonably should have known the person was an officer.

A law enforcement agency would be permitted to use standard procedures to investigate the use of force. However, the agency would not be permitted to arrest a person for using force unless it determines there is probable cause to arrest. A court would be

required to award reasonable attorney fees, court costs, and all expenditures incurred by the defendant in the defense of a civil action, if the court finds the defendant is immune from prosecution.

Criminal Street Gangs

The bill also would establish the Criminal Street Gang Prevention Act. The bill would define a criminal street gang and street gang activities, membership, and association. The bill would further define recruiting criminal street gang membership as causing, encouraging, soliciting, or recruiting another person to join a criminal street gang. Recruiting members would be considered a severity level 6, person felony.

In addition, the bill would define criminal street gang intimidation as communicating, directly or indirectly, with another, any threat of person injury to another; or damage to property with the intent to deter a person from withdrawing from the gang or retaliation against an individual from having withdrawn from a criminal street gang. Criminal street gang intimidation would be a severity level, person felony.

Background

The bill was supported by Senator Mike Petersen, the Kansas Attorney General's Office and the Kansas Securities Commissioner.

The bill was viewed as a means to deal with gang activity and other organized criminal activity.

The Senate Committee amendment was clarifying.

The House Committee inserted the term participants for the term offenders.

The House Committee of the Whole amended the bill as follows:

- Inserted the provisions regarding deadly force. These were taken from HB 2577.
- Inserted the provisions regarding criminal street gangs. These were taken from SB 458.

The fiscal note stated no estimate of the cost of the bill, if any, could be made.