

SENATE BILL REPORT

HB 1648

As Reported By Senate Committee On:
Law & Justice, February 26, 1998

Title: An act relating to declaring buildings used for criminal street gang activity to be a nuisance.

Brief Description: Declaring buildings used for criminal street gang activity to be a nuisance.

Sponsors: Representatives Honeyford, Sheahan, Skinner, Clements, H. Sommers, Boldt, Delvin and Sullivan.

Brief History:

Committee Activity: Law & Justice: 3/26/97; 2/20/98, 2/26/98 [DPA].

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

Signed by Senators Roach, Chair; Johnson, Vice Chair; Fairley, Hargrove, Kline, Long, Stevens, Thibaudeau and Zarelli.

Staff: Harry Steinmetz (786-7421)

Background: A variety of public and private nuisance actions are possible to stop activity that is illegal, dangerous, or disruptive to neighboring property owners or to the public generally.

A place in which any one of a variety of activities is conducted is statutorily declared to be a moral nuisance.— These activities include prostitution, exhibition of lewd films or publications, illegal gambling, fighting, drunkenness, and breach of the peace. A place in which such activity is carried on may be subject to a legal proceeding brought by the prosecutor.

A prosecutor may proceed against a person who maintains a moral nuisance in two ways. First, a prosecutor may file a civil lawsuit against the operator of a moral nuisance or against the owner of the property where the nuisance is maintained. An owner or operator who has knowingly maintained a moral nuisance may be fined up to \$25,000. Second, a prosecutor may initiate abatement procedures against the owner or operator of a moral nuisance. Abatement procedures allow for immediate shutdown of the alleged nuisance pending determination that a moral nuisance actually exists.

In 1988, in part out of concern about the coverage of the existing moral nuisance law, a special drug nuisance law was enacted. That law allows for private or public prosecution of an abatement action against a drug related nuisance.

Recently, gang activity has caused concern in many neighborhoods over the ability of neighbors to control or eliminate such activity.

Summary of Amended Bill: A criminal street gang nuisance law is enacted with provisions substantially the same as those found in the drug nuisance law.

Buildings where criminal street gang activity occurs are declared to be nuisances. A criminal street gang is defined as an ongoing group of three or more people, that has identifiable leadership or a identifiable name, sign or symbol and who on an ongoing basis, regularly conspire and act in concert mainly for criminal purposes. Street gang activity means any activity that occurs within the gang or advances a gang purpose.

Any individual, with legal standing, and who resides, works in or owns property in the same multi-family building, apartment complex or within a one block radius may bring an action in the superior court. To commence the action, the individual must file the complaint with the local law enforcement agency. That agency must conduct an investigation to determine if probable cause is found for a violation of this chapter. The complaint and the results of the investigation are filed in the superior court to the county.

A complaint that a building used for conducting criminal street gang activity is a nuisance must be accompanied by a description of the building's adverse impact on the neighborhood. Evidence of adverse impact may consist of such things as: a search warrant has been served on the building resulting in the seizure of evidence of a crime; persons who frequent the property have been arrested; there is increased traffic associated with the property; and complaints about the building have been made to law enforcement agencies. The complaint must also show that efforts have been made to give the owner of the building a chance to stop the nuisance.

A building determined to be a nuisance is to be placed in the custody of the court and is to remain closed for a period of one year unless released sooner by the court.

When a complaint of a nuisance has been filed with the court, a court hearing must be granted within three days. Procedures are set forth for a court to determine if a building is a nuisance, and to issue an order of abatement.

Prior to a court hearing, a temporary restraining order or preliminary injunction may be granted if the person seeking the order gives a bond or other security of not less than \$1,000 to pay damages to a person wrongfully restrained.

An order of abatement may not be entered if the owner had no knowledge of the nuisance or has made reasonable efforts to abate the nuisance, has not been guilty of any contempt of court, and will prevent the building from being a nuisance for a period of one year.

An intentional or willful violation of an abatement order is punishable by a fine of not more than \$10,000 and imprisonment for not more than one year, or both.

Amended Bill Compared to Original Bill: The amended bill changes the definition of gangs; narrows who can bring an action by requiring the action be brought by an individual with legal standing, residing, working or owning property in the same multi-family unit, apartment complex or within a one block radius; requires that the complaints be filed with law enforcement rather than the court.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This bill is similar to the drug abatement law that has worked very well in this state. This bill protects the property rights and property value of neighbors. The bill addresses gang activity, not just gang membership. This bill will give neighbors a tool to protect themselves from criminal street gangs.

Testimony Against: None.

Testified: PRO: Representative Jim Honeyford, prime sponsor.