

# SENATE BILL REPORT

## SB 5158

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As Reported By Senate Committee On:  
Judiciary, March 3, 1999

**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:** Senators Honeyford, Kline, T. Sheldon, Johnson, Winsley and Oke.

**Brief History:**

**Committee Activity:** Judiciary: 2/3/99, 3/3/99 [DPS, DNPS].

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** That Substitute Senate Bill No. 5158 be substituted therefor, and the substitute bill do pass.

Signed by Senators Costa, Goings, Hargrove, Haugen, Johnson, Long, McCaslin, Roach and Zarelli.

**Minority Report:** Do not pass substitute.

Signed by Senators Heavey, Chair; Kline, Vice Chair; and Thibaudeau.

**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.

A special drug nuisance law was enacted in 1988, partly out of concern about the coverage of the existing moral nuisance law. 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 Substitute Bill:** A criminal activity nuisance law is enacted with provisions substantially the same as those found in the drug nuisance law.

Buildings where criminal activity occurs are declared to be nuisances. A criminal activity is defined as a pattern of criminal activity including felonies and misdemeanors.

Any individual with legal standing and who resides, works in, or owns property in the same multifamily 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 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. In pleading the adverse impacts, a record of arrests must be shown. The complaint must also show that efforts have been made to give the owner of the building a chance to stop the nuisance.

Notice must be sent to the owner or the owner's agent by registered mail before the complaint is filed, when the complaint is filed and if a temporary restraining order is entered.

A building determined to be a nuisance must 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. In a multiunit building only the offending unit may be abated.

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.

**Substitute Bill Compared to Original Bill:** All references to gangs and gang activity are removed and replaced with criminal activity. Criminal activity is defined. Limits to the offending unit what may be abated in a multiunit building. Requires notice be sent to the owner or the owner's agent, by registered mail, before the complaint is filed, when the complaint is filed and if a temporary restraining order is ordered. The showing of some arrests when pleading the adverse neighborhood impacts is required.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** Local jurisdictions need this tool to deal with gangs. When a gang moves in, the neighbors are terrified to take actions against them. Gangs have turned otherwise quiet neighborhoods upside-down with drive-by shootings and dead bodies. Unlawful detainer actions do not work. This is similar to the drug abatement law and that has worked effectively. Landowners are not being responsible to the neighborhoods. Communities as diverse as Yakima and Everett have had neighborhoods taken over by gangs.

**Testimony Against:** The definition of gangs is vague. A number of new procedures are created that will require additional definition. The provision creating a priority for these cases is unwarranted. The notice provisions do not provide adequate due process. The term gang can be used to target certain segments of our population. Police need to work within the community to solve the problems rather than just labeling people as gangs.

**Testified:** PRO: John Puccinilli, Mayor, City of Yakima; Tom McBride, WAPA; Mike Patrick, WACOPS; John Lineberry, Sgt. Everett Police Dept.; CON: Martha Harden, Superior Court Judges Association; Rev. Harriet Walden, Mothers for Police Accountability.