

SENATE BILL REPORT

E2SHB 2712

As Reported By Senate Committee On:
Judiciary, February 29, 2008
Ways & Means, March 03, 2008

Title: An act relating to criminal street gangs.

Brief Description: Concerning criminal street gangs.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Hurst, Ross, Dickerson, Newhouse, Conway, Morrell, Roach, Kelley and Ormsby).

Brief History: Passed House: 2/18/08, 94-1.

Committee Activity: Judiciary: 2/27/08, 2/29/08 [DPA-WM].

Ways & Means: 3/03/08 [DPA].

- Requires the Washington Association of Sheriffs and Police Chiefs (WASPC) to establish a grant program to assist local law enforcement to target gang crime.
- Requires the WASPC to establish a grant program to assist local law enforcement in support of graffiti and tagging abatement programs in local communities.
- Requires the WASPC to work with the Washington State Patrol (WSP) to coordinate, designate, and recommend the use of a statewide database accessible by law enforcement that utilizes existing resources to assess and address problems associated with criminal street gangs.
- Authorizes application for and issuance of civil injunctions to prevent criminal street gang-related offenses upon a sufficient showing of certain elements in court.
- Increases penalties when an adult involves a minor in a criminal street gang-related felony.
- Expands the list of aggravating factors in the Sentencing Reform Act to include any crime committed to benefit a gang.
- Requires a court to impose community custody if a criminal street gang associate or member is found guilty of unlawful possession of a firearm.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

- Authorizes certain penalties and costs that may be recovered by the property owner from a person committing criminal street gang tagging and graffiti.
- Requires the Department of Community, Trade and Economic Development (DCTED) to establish a temporary assistance grant program for witnesses of felony gang-related offenses.
- Requires the Department of Corrections (DOC) to study best practices to reduce gang involvement and recruitment among its incarcerated offenders.

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Kline, Chair; Tom, Vice Chair; McCaslin, Ranking Minority Member; Carrell, Hargrove, McDermott, Roach and Weinstein.

Staff: Dawn Noel (786-7472)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Pridemore, Vice Chair, Operating Budget; Zarelli, Ranking Minority Member; Brandland, Carrell, Fairley, Hobbs, Honeyford, Keiser, Kohl-Welles, Oemig, Parlette, Rasmussen, Regala, Roach, Rockefeller, Schoesler and Tom.

Staff: Richard Ramsey (786-7412)

Background: In 2007 the Legislature passed legislation (SSB 5987) that required the Washington Association of Sheriffs and Police Chiefs (WASPC) to establish a work group to evaluate the problem of gang-related crime in Washington. The work group was charged with evaluating and making recommendations regarding additional legislative measures to combat gang-related crime, the creation of a statewide gang information database, possible reforms to the juvenile justice system for gang-related juvenile offenses, best practices for prevention and intervention of youth gang membership, and the adoption of legislation authorizing civil anti-gang injunctions.

Sentencing. Aggravating Factors. The standard sentencing range is presumed to be appropriate for the typical felony case. However, the law provides that in exceptional cases, a court has the discretion to depart from the standard range and may impose an exceptional sentence below the standard range (with a mitigating circumstance) or above the range (with an aggravating circumstance). The Sentencing Reform Act (SRA) provides a list of factors that a court may consider in deciding whether to impose an exceptional sentence outside of the standard range.

Community Custody. The term "community custody" refers to the period following release from total confinement in which an offender is supervised by the Department of Corrections

(DOC). Community custody is that portion of an offender's sentence served in the community, subject to conditions imposed by the sentencing court and the DOC. An offender may be sanctioned administratively by the DOC for violating his or her conditions of release.

Malicious Mischief. A person is guilty of malicious mischief in the third degree if that person writes, paints, or draws any inscription, figure or mark of any type on any public or private building or other structure or any real or personal property owned by any other person unless the person has obtained express permission. It is a gross misdemeanor offense if the damage to the property exceeds \$50. It is a misdemeanor offense if the damage to the property is less than \$50. Generally, cases involving graffiti or tagging are charged as misdemeanor malicious mischief in the third degree offenses.

When a defendant is prosecuted in a criminal action for a misdemeanor offense, for which the person injured by the act constituting the offense has a remedy by a civil action, the offense may be compromised in certain specified instances. In these cases, if the party injured appears in court, at any time before the final judgment, and acknowledges in writing that he or she has received satisfaction for the injury, the court may order all proceedings to be discontinued and the defendant to be discharged.

Summary of Bill (Recommended Amendments): Sentencing. Penalties are increased when an adult convicted of a criminal street gang-related felony, that the person compensated, threatened, or solicited a minor to involve the minor in the felony. The adult offender's standard sentencing range is determined by multiplying the standard sentencing range for the completed offense by 125 percent. The prosecutor must file a special allegation that the felony involved the compensation, threatening, or solicitation of a juvenile in the commission of the felony.

Aggravating Factors. The list of aggravating factors in the Sentencing Reform Act is expanded to include any crime that is intentionally committed directly or indirectly for the benefit, aggrandizement, gain, profit, advantage, reputation, membership, or influence of a gang.

Community Custody. If a criminal street gang associate or member is found guilty of unlawful possession of a firearm, the court must sentence the offender to a term of community custody. In a criminal case in which there has been a special allegation, the state must prove by a preponderance of evidence that the accused is a criminal street gang member or associate and has committed the crime of unlawful possession of a firearm.

Malicious Mischief. A new crime called "Criminal Street Gang Tagging and Graffiti" is created. A person is guilty of Criminal Street Gang Tagging and Graffiti if that person has multiple current convictions for malicious mischief in the third degree for writing, painting, or drawing on any real or personal property without permission; or a prior such conviction and the current offense(s) is a criminal street gang-related offense. When a defendant is prosecuted in a criminal action for this offense, the offense may not be compromised.

Civil Penalties. In addition to actual damages, penalties and costs may be recovered by the property owner from the person committing criminal street gang tagging and graffiti by causing damage to the property. The additional penalties and costs include the value of the damage property not to exceed \$1,000, plus an additional penalty of at least \$100 but not more

than \$200, plus all reasonable attorneys' fees and court costs. A conviction for criminal street gang tagging and graffiti is not a condition precedent to maintaining a civil action under this section.

Definitions. Criminal street gang, criminal street gang associate or member, criminal street gang-related offense, and pattern of criminal street gang activity are defined.

WASPC's Grant Program Targeting Gang Crime. When funded, the WASPC must establish a grant program to assist local law enforcement to target gang crime. Grant applicants must meet certain criteria.

Graffiti and Tagging Abatement Grant. When funded, the WASPC must establish a grant program to assist local law enforcement in support of graffiti and tagging abatement programs in local communities. Each graffiti or tagging abatement grant applicant must meet certain criteria. WASPC is required to develop performance measures, collect information, and evaluate the effectiveness of the gang emphasis and graffiti/tagging abatement grant programs.

Statewide Gang Information Database. The WASPC must work with the Washington State Patrol (WSP) to coordinate, designate, and recommend the use of a statewide database accessible by law enforcement that utilizes existing resources, networks, or structures for assessing and addressing the problems associated with criminal street gangs. The database must comply with federal regulations for shared databases, including auditing and access to data, and comply with other criteria.

The WSP, in consultation with the WASPC, must adopt uniform state criteria for entering gangs, gang members, and gang associates into the database. Data on individuals entered must be based on reasonable suspicion of criminal activity or actual criminal activity and must be supported by documentation, where documentation is available. The database must be used solely as a law enforcement intelligence tool and must not be used as evidence in any criminal, civil, or administrative proceeding. Information about individuals in the database must be automatically expunged under certain circumstances such as if no new or updated information has been entered into the database within the previous five years.

The database and all contents are confidential and exempt from public disclosure. Any public employee or public agency, local government and its employees, and the WASPC and its employees are immune from civil liability for damages arising from incidents involving a person included in the database, unless it is shown that the employee acted with gross negligence or bad faith.

Civil Injunctions. Equitable relief is authorized to enjoin, abate, and prevent criminal street gang activity, whether it is a public or private nuisance. Relief is authorized to enjoin criminal street gang-related offenses and associated non-criminal acts or acts which are known precursors to criminal acts upon a showing that the individual gang member sought to be enjoined must have been convicted of a crime included within the definition of "pattern of criminal street gang activity," and of certain elements by a preponderance of the evidence.

The Attorney General, prosecuting attorney, or city attorney or city prosecutor may apply for relief under this act. If a city applies, it must seek and obtain approval of the prosecuting attorney of the county in which the city is located.

A person served in a representative capacity and who appears may request, if indigent, that an attorney be appointed at public expense. If a court appoints counsel, the plaintiff must pay the cost of representation.

An injunction is not effective as to any person unless the plaintiff shows to the court, which may be made ex parte, that the person is an active or current gang member or associate, and after court authorization the person is served with personal notice of the injunction.

The final injunction order must contain an opt-out provision, by which an alleged member previously included in the order may petition for removal under certain circumstances.

Punishment for violation of the injunction must be by prosecution of criminal contempt of court.

Temporary Witness Assistance Program. Subject to available funds, the Department of Community, Trade and Economic Development (DCTED) must establish a temporary witness assistance grant program for witnesses of felony gang-related offenses.

The DOC's Study to Reduce Gang Involvement. The DOC is required to study the best practices to reduce gang involvement and recruitment among its incarcerated offenders. The study and recommendations must include intervention and successful re-entry programs for gang members seeking to opt-out of gangs.

If specific funding is not provided for this act by June 30, 2008, it is null and void.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Amendments): Deletes the intent section and Governor's Juvenile Justice Advisory Council grant program, adds requirements for establishing performance measures, data collection, reporting and evaluation to the special emphasis and graffiti/tagging abatement grant programs in the Washington Association of Sheriffs and Police Chiefs and deletes the section requiring the Gangs in Schools Task Force to make recommendations for a brochure.

EFFECT OF CHANGES MADE BY JUDICIARY COMMITTEE (Recommended Amendments): Specifies that the cost to WASPC to administer grants to law enforcement to target gang crime must not exceed \$60,000 or 4 percent of appropriated funding, whichever is greater. Specifies that the cost to WASPC to administer grants to law enforcement for support of graffiti and tagging abatement programs must not exceed \$25,000 or 4 percent of funding, whichever is greater.

Adds an additional criterion for obtaining a civil injunction to prevent criminal street gang-related offenses and associated acts. This additional criterion is that the individual gang member sought to be enjoined must have been convicted of a crime included within the definition of "pattern of criminal street gang activity."

Eliminates the provision limiting administrative costs for the temporary witness assistance program to be administered by DCTED.

Makes technical amendments.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: Yes.

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

Staff Summary of Public Testimony Engrossed Second Substitute (Judiciary): PRO: In each city the work group visited, the citizens were crying out for help. This bill will deliver help and hope. It is extremely important that funding is attached to this bill. Preventing kids from entering gangs is very important. The work group was diverse and informed by various community groups. It tried to build into the legislation protections for the individual. Police know they can't arrest their way out of the gang problem. In the striking amendment, a gang injunction can't be applied to someone who has not been convicted of a serious offense under the definition of "pattern of criminal street gang activity." Even with the restriction, the bill still provides counsel to defendants against whom the injunction is sought. This makes the injunction process pretty restrictive, and I think it will be used narrowly. The temporary witness assistance program is small but very important. It will help diffuse the situation, help relocate someone for a couple of months. Most of the bill is not criminal. We have evidence-based programs to prevent kids from entering gangs. The protections for respondents to injunctions in this bill are stronger than in current laws on protection and harassment orders.

CON: This bill will impact communities of color and increase racial profiling. The wording of the bill is overly broad, and there are few checks on those entering individuals into the database. Individuals who have not been adjudicated of a crime could be entered. The police already have the tools they need. Gang activity is wrong, but we don't want a police state. The intervention and prevention pieces of the bill are essentially unfunded; the root causes of the problem must be addressed. We need a more humane bill that will truly alleviate social ills. The work group's report is to be commended; it was a lot of work. There could be a future time when the money is not there to fund prevention and intervention, but the laws will still be there. The research shows that gang suppression tactics don't work. They operate under the wrong assumption that gang membership is a rational choice, but it grows out of desperate circumstances. Incarceration builds cohesion within a gang. These laws could be used to target and harass people, and create a hostile environment.

Persons Testifying (Judiciary): PRO: Representative Ross, co-sponsor; Rebecca Lambert, citizen; Terry Hayes, City of Seattle; Brad Blackburn, Fife Police Department; Tom McBride, Washington Association of Prosecuting Attorneys; Janice O'Mahoney, Governor's Juvenile Justice Advisory Committee; James McMahan, Washington Association of Sheriffs and Police Chiefs.

CON: Peggy Wolf, citizen; K.L. Shannon, Seattle-King County National Association for the Advancement of Colored People; Alton McDonald, National Action Network; Tajuan LaBec, Justice Works; Priest Amen, citizen.

Staff Summary of Public Testimony on JUD Recommended Amendments (Recommended Amendments): PRO: The gang crime work group spent eight months working on this bill. This bill represents the unanimous agreement for doing something about gangs. It's not possible to arrest our way out of the gang problem; rather it requires prevention and other programs. This bill lays the foundation for future progress. The \$2.38 million in the House budget will get the program up and running.

CON: The bill does not work; it's really nothing more than a suppression bill.

Persons Testifying (Ways & Means): PRO: Representative Christopher Hurst, prime sponsor; James McMahan, WA Association of Sheriffs and Police Chiefs.

CON: Bob Cooper, WA Defenders Association and WA Association of Criminal Defense Lawyers.