

SENATE BILL REPORT

SB 6608

As of March 7, 2008

Title: An act relating to criminal street gangs.

Brief Description: Concerning criminal street gangs.

Sponsors: Senators Kline, Honeyford, Carrell, Brandland, Roach, Regala, Shin, King, Rasmussen and Holmquist.

Brief History:

Committee Activity: Judiciary: 1/30/08.

Brief Summary of Bill

- Requires the Governor's Juvenile Justice Advisory Committee to issue a request for proposal to implement five pilot projects designed to prevent, intervene, and suppress street gangs and gang violence and appropriates \$10 million for the purpose.
- Requires the Washington Association of Sheriffs and Police Chiefs (WASPC) to establish a gang grant program for local law enforcement agencies with the goal of targeting gang crime and appropriates \$2 million for the purpose.
- Requires the WASPC to establish a grant program to support local graffiti and tagging abatement programs and appropriates \$1 million for the purpose.
- Requires the Washington State Patrol to create a statewide gang database for law enforcement and criminal justice agencies to use for assessing and addressing the problems associated with criminal street gangs.
- Authorizes local jurisdictions to seek civil injunctions to prevent criminal street gang activity.
- Creates the crime of "Criminal Gang Recruiting" and increases the sentence when an adult, convicted of a felony, has solicited a minor in order to involve that minor in the commission of a felony.
- Expands the list of illustrative aggravating factors in the Sentencing Reform Act to include any crime that is committed for the benefit of a criminal street gang.

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.

- Requires community custody for those convicted for unlawful possession of a firearm.
- Increases the penalty for third degree malicious mischief offenses when the offender has multiple convictions.
- Authorizes special civil penalties and costs that may be recovered by a property owner from the person causing the physical damage to the property.
- Requires the courts to notify the Department of Corrections (DOC) of a defendant who is a gang member.
- Requires the Office of Crime Victims Advocacy to establish a gang relocation assistance program for witnesses of gang-related felony offenses.
- Requires the DOC to study the best practices to reduce gang involvement and recruitment among its incarcerated offenders.

SENATE COMMITTEE ON JUDICIARY

Staff: Dawn Noel (786-7472)

Background: In 2007 the Legislature passed legislation (SSB 5987) that required the Washington Association of Sheriffs and Police Chiefs (WASPC) to establish a workgroup to evaluate the problem of gang-related crime in Washington. The workgroup included members from both the House of Representatives and the Senate as well as representatives from the following groups: the Office of the Attorney General, local law enforcement, prosecutors and municipal attorneys, criminal defense attorneys, court administrators, prison or detention administrators and probation officers, and experts in gang or delinquency prevention.

The workgroup 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 a civil anti-gang injunction. The WASPC and the workgroup met monthly during the 2007 interim and on December 11, 2007, provided a report to the Legislature on its findings and recommendations regarding criminal gang activity.

I. 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 a 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 illustrative 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 he or she knowingly and maliciously causes physical damage to the property of another in an amount less than \$250. It is a gross misdemeanor offense if the damage to the property exceeds \$50 or writes, paints, or draws on any property without permission. A gross misdemeanor offense is punishable by a fine of not more than \$5,000, or by imprisonment of not more than one year in jail, or both. 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: I. Sentencing. Penalty Increases for Adult Gang Members Recruiting Juveniles to Commit Crimes. The crime of "Criminal Gang Recruiting" is created. It occurs when an adult, convicted of a felony, has compensated, threatened, or solicited a minor in order to involve that minor in the commission of the felony. The adult offender's standard sentencing range is determined by multiplying the general standard sentencing range for the completed offense by 125 percent.

Aggravating Factors. The list of illustrative aggravating factors in the SRA 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. In the instance of an offender convicted of an offense involving the unlawful possession of a firearm the court must sentence the offender to a term of community custody.

Malicious Mischief. The penalty for a malicious mischief in the third degree offense is increased to a gross misdemeanor if: (1) a person causes damage to property that is valued at \$50 or less; and (2) the offender has multiple current convictions for a malicious mischief in the third degree offense or has previously been convicted of an offense involving malicious mischief in the third degree.

When a defendant is prosecuted in a criminal action for a misdemeanor malicious mischief in the third degree offense, for which the person injured by the act constituting the offense has a remedy by a civil action, the offense may not be compromised.

Civil Penalties. In addition to actual damages to the property, penalties and costs may be recovered by the property owner from the person causing the physical damage to the property. If the defendant is an adult or emancipated minor, those additional penalties and costs include:

the value of the damaged property, to a maximum of \$1,000; a penalty of at least \$100 but not more than \$200; and reasonable attorney's fees and court costs. In the case of parental liability, the additional property value penalty maximum of \$1,000 is reduced to \$500.

Definitions. The following terms are defined: "criminal street gang" is defined as, any ongoing organization, association, or group of three or more persons, whether formal or informal, having a common name or common identifying sign or symbol, having as one of its primary activities the commission of criminal acts, and whose members or associates individually or collectively engage in or have engaged in a pattern of criminal street gang activity.

"Criminal street gang associate or member" is defined as, any person who actively participates in any criminal street gang and who intentionally promotes, furthers, or assists in any criminal act by the criminal street gang.

"Criminal street gang-related offense" is defined as, the conviction of any felony or misdemeanor offense, whether in this state or elsewhere, that is committed for one or more of the following reasons:

- for the benefit of or at the direction of any criminal street gang, with the intent to gain admission or promotion within the gang or with the intent to promote, further, or assist in any criminal act by the gang;
- to increase or maintain the gang's size, membership, prestige, dominance, or control in any geographical area;
- to exact revenge or retribution for the gang or any member of the gang;
- to obstruct justice, or intimidate or eliminate any witness against the gang or any member of the gang;
- to directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage for the gang, its reputation, influence, or membership; or
- to provide the gang with any advantage in, or any control or dominance over any criminal market sector, including, but not limited to, manufacturing, delivering, or selling any controlled substance, arson, trafficking in stolen property, promoting prostitution, human trafficking, or promoting pornography.

"Pattern of criminal street gang activity" is defined as:

- any attempt, commission, or conspiracy to commit, two or more of the following criminal street gang-related offenses: a serious violent felony offense (excluding Homicide by Abuse and Assault of a Child 1), a violent offense (excluding Assault of a Child 2), delivering or possessing with intent to deliver a controlled substance, any violation of the Firearms and Dangerous Weapon Act, Theft of a Firearm, Possession of a Stolen Firearm, Malicious Harassment, Harassment where a subsequent violation or deadly threat is made, Criminal Gang Intimidation, Criminal Gang Recruiting, Involving a Juvenile in a Criminal Offense; Residential Burglary, Burglary 2, Malicious Mischief 1 and 2, Theft of a Motor Vehicle, Possession of a Stolen Motor Vehicle, Taking a Motor Vehicle Without Permission 1 and 2, Extortion 1 and 2, Intimidating a Witness, Tampering with a Witness, Reckless Endangerment, Coercion, Harassment, or Malicious Mischief 3;
- the conviction for at least one of the offenses must have occurred after July 1, 2008;

- the offender's current conviction for the most recent committed offense must have occurred within three years of his or her prior offense; and
- of the offenses that were committed, the offenses must have occurred on separate occasions or by two or more persons.

II. Grants. Five Pilot Projects Funded by the Governor's Juvenile Justice Advisory Committee. The Governor's Juvenile Justice Advisory Committee (GJJAC) must issue a request for proposal to implement five pilot projects designed to prevent, intervene, and suppress street gangs and gang violence. Consideration for grant awards must be given to those applicants that show that gang violence is an increasing problem and that addressing gang activity is a priority within their community. Grant applications must include project processes and protocols for defining objections and measurable results.

The GJJAC must convene and consult quarterly with a 20-member gang workgroup to provide oversight of the pilot projects. The workgroup must include one member from each of the two largest caucuses from both the House of Representatives and the Senate, as well as representatives from the Office of the Attorney General, the Washington Association of Prosecuting Attorneys, the Washington Defender Association or the Washington Association of Criminal Defense Lawyers, the Office of the Superintendent of Public Instruction, the DOC, the Department of Social and Health Services (DSHS), the Washington State Patrol (WSP), the Washington Association of Cities, the Washington State Association of Counties, and other such members, appointed by the Governor, that include but are not limited to representing law enforcement, court administrators, and experts in gang or delinquency prevention. Members of the workgroup are eligible for reimbursement for limited travel and mileage expenses related to the workgroup.

A total of \$10 million is appropriated from the General Fund to the DSHS for purposes of implementing the five pilot projects. No more than 4 percent of the appropriated funding may be used for administrative purposes for implementing the grant program.

Washington Association of Sheriffs and Police Chiefs' Gang Grant Program. The Washington Association of Sheriffs and Police Chiefs (WASPC) must establish a gang grant program for local law enforcement agencies with the goal of targeting gang crime. Grant applicants are encouraged to utilize multi-jurisdictional efforts and each applicant must show, within their jurisdiction that:

- a significant gang problem exists;
- grants awarded would be sufficient to cover prosecution and jail costs;
- the enforcement program being proposed in the application would specifically suit their gang problem; and
- there is community coordination focusing on prevention, intervention, and suppression of gang activity.

A total of \$2 million is appropriated from the Public Safety and Education Account to the WASPC for the purpose of establishing the grant program. No more than \$60,000 may be used for administering the grants. Grant applications must be reviewed and awarded through peer review panels.

Graffiti/Tagging Abatement Grant. The WASPC must establish a grant program for law enforcement to support local graffiti and tagging abatement programs. Grant applicants are

encouraged to utilize multi-jurisdictional efforts and each applicant must:

- demonstrate that a significant gang problem exists within the community;
- show how the funds awarded will be used to reduce, dispose of, or eliminate any current or ongoing tagging or graffiti in the community; and
- show how the local citizens and business owners will benefit from the proposed graffiti or tagging abatement process being presented in the application.

The cost of administrating the program must not exceed \$25,000. A total of \$1 million is appropriated from the Public Safety and Education Account to the WASPC for the purpose of implementing the grant program.

III. Database. The Washington State Patrol is required to create or contract with a vendor to create and administer a statewide gang database for assessing and addressing the problems associated with criminal street gangs.

The database must provide an Internet-based multi-agency, multi-location, information-sharing application. Information in the gang database must be available to all local, state, and federal law enforcement and criminal justice agencies solely for gang enforcement and for tracking gangs, gang members, and gang incidents. Information in the database is not available for public use.

Information about specific individuals in the database must be automatically expunged every five years if: (1) the individual's file in the database has been inactive for a minimum of five years; (2) no new or updated information has been entered into the database within the previous five years; (3) there are no pending criminal charges against such person in any court; (4) the person has not been convicted of a new crime; and (5) it has been five years since the person completed his or her sentence, including all legal financial obligations and community supervision requirements. Information entered into the database may only include data on gang members that are 12 years or older.

Each law enforcement and criminal justice agency using the database is required to ensure that all users of the database receive training on the use of the database before granting the users access to the database.

IV. Civil Injunctions. Local jurisdictions may seek a civil injunction to prevent criminal street gang activity, whether it is a private or public nuisance, upon a showing of the following elements by a preponderance of the evidence: a gang is named as a defendant and contains at least five members, at least two of whom possess active leadership roles at the time of application, and that any person sought to be enjoined is an active or current member of the gang; the gang is a cohesive organization with a historical relationship to the described geographical area for at least the past five years with known leadership, membership, and criminal practices; the defendants and other gang members have committed, during the five years immediately prior to the filing of the petition, a pattern of criminal street gang activity; a significant number of non-gang members residing within the described geographical area are in reasonable fear of their physical security or of significant damage to their property; and the plaintiffs have engaged in prevention and intervention services to divert gang members from gang activity.

The complaint for equitable relief must contain a statement of specific relief requested and specified activities sought to be enjoined, which may include such activities as: associating with other gang members; confronting, intimidating, harassing, threatening, or assaulting any person; possessing or knowingly remaining in the presence of anyone who is in possession of any firearm or deadly weapon in a public place; possessing or knowingly remaining in the presence of anyone who is in possession of any controlled substance or drug paraphernalia; consuming alcohol in public; being on any private property without the written consent of the owner; defacing property; violating any court defined curfew; using hand or other gestures associated with the gang; wearing colors or symbols associated with the gang; or any other activity or behavior contributing to an atmosphere that has in the past caused the intimidation of non-gang members.

A court of competent jurisdiction must conduct an evidentiary hearing on the complaint for equitable relief filed under this act. The hearing may be conducted ex parte. However, the injunction is not effective as to any person unless that person has been personally served with a copy of the summons.

A person served in the representative capacity of the gang, if indigent, may request that an attorney be appointed to represent him or her at public expense. If the court grants the request, the plaintiff must pay the cost of representation. The person must receive notice of his or her right to request counsel in the summons. It is not necessary for the person to testify, but he or she may testify, cross-examine witnesses, and present testimony and other evidence on his or her own behalf.

The final order of injunction must contain an opt-out provision, by which an alleged member previously included in the order may petition at any time for removal from the injunction after a period of five years in which no act by the alleged member has resulted in either a contempt finding or a conviction of crime, and there is no criminal charge pending at the time of the hearing. In the petition, the alleged member may request a court hearing on the matter. Any violation of the injunction is to be prosecuted as a contempt of court offense.

V. Requiring Courts to Notify the Department of Corrections (DOC) of Gang Members. In a felony trial, if the court finds by a preponderance of the evidence that the defendant is a criminal street gang associate or member or is convicted of a criminal street gang-related offense, the court must notify the DOC of the defendant's gang membership and crime of conviction.

VI. Witness Relocation Program. The Office of Crime Victims Advocacy (OCVA) within the Department of Community, Trade and Economic Development is required, within available funds, to establish a gang relocation assistance program. The OCVA must work with each local prosecuting agency to determine how funding and temporary relocation and shelter assistance should be provided to witnesses of felony gang-related offenses.

VII. The Department of Corrections' 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. Such programs can include, but are not limited to, tattoo removal, anger management, and obtaining a GED. The DOC must provide a report on its findings to the Legislature by January 1, 2009.

Appropriation: \$13 million.

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: PRO: This bill is the result of a diverse work group that traveled to six cities during the interim. The bill constantly incorporated changes from representative groups. This bill will provide guidance to cities regarding their ordinances and provide them with tools to address gang activity. We need to help people get out of gangs, and help parents help their kids avoid gangs. The temporary witness assistance program is important. It is difficult for witnesses to stay in their communities during a trial because gang members may try to scare them away from testifying. This bill integrates prevention, intervention, and suppression, and is reasoned and balanced. We know which programs will help our kids get out of gangs. This bill provides important resources to community organizations, and we encourage the Legislature to create a more permanent funding stream.

CON: Laws like this are used to target minorities. The civil injunction process limits civil liberties. The bill attempts to solve long-standing problems by incarcerating people, which creates more damage within communities. Longer prison sentences result in kids losing family support. The grants should go towards community building and rehabilitating offenders, as well as cultural education.

OTHER: We need more therapeutic intervention. A lot of kids see a lot of ugly things at an early age. A conversation is all it takes sometimes to turn a youngster's life around. Civil injunctions haven't worked. They create more fear and harassment in communities, and result in racial profiling.

We have several recommendations for the bill. In the state gang work group, it should have a juvenile court administrator participate. We view the 125 percent sentence increase and the addition of an aggravating factor as duplicative. The 125 percent increase takes away judicial discretion to impose an appropriate sentence. Community custody for unlawful possession of a firearm should be permissive, rather than mandatory. The section requiring courts to notify DOC that a defendant is a gang member should be removed. We want more time to examine the civil injunction part of the bill.

Persons Testifying: PRO: Representative Charles Ross; Mayor Dave Edler, City of Yakima; Sheriff Ken Irwin, Yakima County; Steve Lowe, Franklin County Prosecutor's Office; Dan Fessler, Yakima County Department of Assigned Counsel; Janice O'Mahoney, Governor's Juvenile Justice Advisory Committee; Terry Hayes, City of Seattle Youth Programs; Mark Okazaki, Neighborhood House; Jerry Cummins, City of Walla Walla.

CON: Korrina Jordan, citizen.

OTHER: Dennis Turner, Larry Bennett, Building the Bridges; Martha Harden Cesar, Superior Court Judges Association.