

# HOUSE BILL REPORT

## HB 2414

---

### As Reported by House Committee On: Judiciary

**Title:** An act relating to abatement of nuisances involving criminal street gang activity.

**Brief Description:** Authorizing abatement of nuisances involving criminal street gang activity.

**Sponsors:** Representatives Johnson, O'Brien, Ross, Finn, Haler, Klippert, Taylor, Crouse, Angel, Ericksen, Roach, Kristiansen, Hinkle, Chandler, Seaquist, Walsh, Warnick, Rodne, Smith, Nealey, Short, Hope, Ericks, Liias, Campbell, Morrell, Kelley, Maxwell, Sullivan, Conway, Bailey, Schmick and Hurst.

#### **Brief History:**

##### **Committee Activity:**

Judiciary: 1/14/10, 2/1/10 [DPS].

#### **Brief Summary of Substitute Bill**

- Creates a criminal street gang activity nuisance law that permits the filing of an abatement action against a gang-related nuisance.
- Establishes a procedure for courts to issue an order of abatement if a gang-related nuisance exists.

---

### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Kelley, Kirby, Ormsby, Roberts, Ross and Warnick.

**Staff:** Courtney Barnes (786-7194).

#### **Background:**

A variety of public and private nuisance actions are available to stop activity that is illegal, dangerous, or disruptive to neighboring property owners and the general public. Nuisance laws cover such activities as prostitution, exhibition of lewd films, and fighting. Although

---

*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.*

nuisance laws have traditionally developed through common law, the Legislature has enacted specific statutes to deal with certain kinds of nuisances.

For instance, the Legislature enacted a drug nuisance law allowing for private or public prosecution of an abatement action against a drug-related nuisance. Any building or unit within a building that is used for the purpose of unlawfully manufacturing, delivering, selling, storing, or giving away illegal drugs, and any building or unit where such acts take place, is a nuisance. If the existence of the nuisance is established in the action, the court may order an abatement of the nuisance.

---

### **Summary of Substitute Bill:**

A criminal street gang activity nuisance law is created. A building or unit within a building that is used for the purpose of aiding, promoting, or conducting criminal street gang activity is a nuisance. In a multi-unit building, only the offending unit may be declared a nuisance. Property used for certain specified purposes, such as social service or charitable assistance, may not be the subject of a nuisance action. "Criminal street gang activity" is defined.

### **Complaint and Affidavit.**

Any person who resides, works in, or owns property in the same multi-family building, apartment complex, or within a one-block radius of the alleged nuisance may bring a nuisance abatement action by filing a complaint in the county superior court where the property is located. A public agency may also commence an action. The complaint must be verified or accompanied by an affidavit that describes the adverse impact associated with the property on the surrounding neighborhood. "Adverse impact" is described. Upon request, a law enforcement agency must provide the complainant with any relevant information in the agency's possession concerning the property that is alleged to be a nuisance.

Various provisions are created to address service of the complaint on the owner and the occupant of the property.

### **Order of Abatement.**

If existence of the nuisance is established in the action, an order of abatement must be entered. The order of abatement must: (1) direct the removal and forfeiture of all personal property from the building or unit if the property is subject to seizure and forfeiture under the drug forfeiture statutes or other law; and (2) if the building or unit is not subject to the interests of innocent legal owners, provide for the immediate closure of the building or unit against its use for any purpose for a period of one year unless released sooner. While the abatement order is in effect, the building or unit remains in the custody of the court. The plaintiff's costs in the action are a lien upon the building or unit to the extent of the owner's interest.

If the court finds and concludes that the occupant or the owner of the building or unit: (1) had no knowledge of the existence of the nuisance or has been making reasonable efforts to

abate the nuisance; (2) has not been guilty of any contempt of court in the proceedings; and (3) will immediately make reasonable efforts to abate any such nuisance at the building or unit and prevent it from being a nuisance within a period of one year thereafter, then the court may not enter an abatement order. If an order of abatement has been entered and the occupant or the owner subsequently meets these requirements, the order must be canceled.

If the court finds there is insufficient evidence to establish the existence of a nuisance, the court may order the complainant to pay the occupant and the owner their reasonable attorneys' fees and costs to defend the action, any loss of rent or revenue experienced as a result of the action, and damages up to \$500 each.

#### Distribution of Proceeds.

The bill contains specific provisions for how proceeds from any property forfeiture must be distributed. If the proceeds do not fully satisfy the costs, fees, and allowances, the building or unit may be sold if the court finds that the owner of the building or unit had knowledge or notice of the existence of the nuisance.

#### Restraining Orders or Injunctions.

Provisions are created regarding temporary restraining orders and preliminary injunctions. Prior to issuing a temporary restraining order or preliminary injunction, the court may require the applicant to give a bond or security in an amount the court deems proper. A bond or security is not required of the state or political subdivisions.

#### **Substitute Bill Compared to Original Bill:**

The substitute bill modifies the process for filing an abatement action and notifying parties to the action. Other changes are made by the substitute bill to provisions affecting court-ordered temporary restraining orders, preliminary injunctions, and nuisance abatement hearings. The contempt of court provisions created in the original bill are removed. The substitute bill permits the courts to require a bond or security in an amount the court deems proper and allows reasonable attorneys' fees, costs, and damages if the court finds there is insufficient evidence of a nuisance. The substitute bill creates a procedure for liens to be recorded.

---

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) The bill classifies criminal gang activity as a nuisance. This legislation empowers neighbors who are bothered by criminal gang activity to formally file a complaint and affidavit with law enforcement. A court-ordered injunction to stop the nuisance may follow the filing of this complaint. The bill has bi-partisan support.

The city of Yakima has serious problems with gangs and gang-related violence. Many homes in Yakima are empty because of gang activity in neighborhoods. These homes are ideal for first-time homebuyers, but potential buyers are afraid to move into a neighborhood with gang problems. Many innocent people are killed by known gang members, even though they have never associated with the gang. Citizens who live near gang houses are afraid to go outside of their own homes or call the police to report problems. Gangs are terrorizing neighborhoods and taking innocent lives. Law enforcement needs more tools to stop gang activity. The bill will help citizens reclaim their communities. The bill will help limit illegal gang activity in neighborhoods and stop senseless acts of gang violence.

(With concerns) The bill may have some technical issues because it merges criminal and civil law systems and terminology. The bill also requires law enforcement to investigate complaints that are filed, which is an unusual mandate. This mandate may create some fiscal concerns. The sections creating a lien on the property need to be amended to require these liens to be recorded so that land title companies have a way of knowing that a lien exists.

(Opposed) While communities need tools to stop gang violence, the bill may not provide the most appropriate tool. The bill is very broad and its impact may be felt by innocent property owners instead of gang members. The bill does not require an arrest or conviction for the nuisance action to begin. If landlords lack the money to defend against nuisance claims, the property may be abandoned and contribute to the gang problem. At the very least, the bill should require a conviction prior to the commencement of a nuisance action.

**Persons Testifying:** (In support) Representative Johnson, prime sponsor; Representative O'Brien; Anna Aburto; Maria Maravilla; Christine Pelayo, Stop the Violence; Rebecca Withrow, Washington State Federation of Employees; Daniel Roa, Victory Outreach Yakima; Dick Zais, Bill Lover, and Rick Ensey, Yakima City Council; and Ed Radder, Sunnyside Police.

(With concerns) Jo Arlow, Washington Association of Sheriffs and Police Chiefs; and Stu Halsan, Washington Land Title Association.

(Opposed) Shankar Narayan, American Civil Liberties Union of Washington.

**Persons Signed In To Testify But Not Testifying:** None.