

HOUSE BILL REPORT

ESHB 2414

As Passed House:
February 12, 2010

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: House Committee on Judiciary (originally sponsored by 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, Lias, Campbell, Morrell, Kelley, Maxwell, Sullivan, Conway, Bailey, Schmick and Hurst).

Brief History:

Committee Activity:

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

Floor Activity:

Passed House: 2/12/10, 90-6.

Brief Summary of Engrossed Substitute Bill

- Authorizes the legislative authority of a county or municipality to adopt procedures in an ordinance for the filing of a nuisance action against a criminal street gang member or a building or unit used to aid or promote criminal street gang activity.
- Establishes procedures for a court to issue restraining orders, preliminary injunctions, permanent injunctions, and abatement orders in a criminal street gang nuisance action.

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).

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.

Background:

Nuisance Law.

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 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.

Criminal Street Gang Definitions.

A "criminal street gang" is an organization, association, or group of three or more people with a common name or identifying sign or symbol, one of the primary activities of which is the commission of crimes and the members of which engage in a pattern of criminal street gang activity. A "criminal street gang associate or member" is a person who actively participates in a criminal street gang and intentionally promotes, furthers, or assists in a criminal act by the gang.

A "criminal street gang-related offense" is a felony or misdemeanor committed: (1) for the benefit of, at the direction of, or in association with a criminal street gang; (2) with the intent to promote, further, or assist in criminal conduct by the gang; (3) to gain admission or promotion in the gang; (4) to increase the gang's size or control in an area; (5) to exact revenge; (6) to obstruct justice; or (7) to give the gang an advantage in a criminal market sector.

Summary of Engrossed Substitute Bill:

Nuisance Action Authorized.

The legislative authority of a county or municipality may adopt procedures in an ordinance for a public agency and certain individuals to file nuisance actions for criminal street gang-related nuisances. A public agency may file an action against a criminal street gang member to enjoin his or her criminal street gang activity or a criminal street gang-related offense. Either a public agency or a person who resides, works in, or owns property in the same multi-family building, apartment complex, or within a one-block radius of an alleged nuisance may file an action against a building or unit that is being used to aid, promote, or conduct criminal street gang activity.

Ex Parte Restraining Order or Preliminary Injunction.

Upon a showing of good cause, a court may issue an ex parte restraining order or preliminary injunction to prevent people, other than the legal owner, from interfering with the personal property and contents of the place where the nuisance is alleged to exist. Provisions are created to address service of the order or injunction.

Permanent Injunction and Abatement Order.

If a nuisance is established in an action against a criminal street gang member, the final order must include entry of a permanent injunction. If a nuisance is established in an action against a building or unit, the court must enter an abatement order as part of the final judgment.

If the building or unit is not subject to the interests of innocent legal owners, the abatement order shall provide for immediate closure of the building or unit for one year. The plaintiff's costs in the action are a lien on the building or unit to the extent of the owner's interest. A final order of abatement must authorize a law enforcement officer to make an inventory of the personal property and contents located in the building or unit. This inventory must be returned to the court. While the order remains in effect, the building or unit is in the court's custody.

An owner may avoid abatement if he or she: (1) had no knowledge of the existence of the nuisance, was not provided adequate notice of the occurrence of a criminal street gang-related offense at the rental unit, or was making reasonable attempts to abate the nuisance; (2) has not been guilty of any contempt of court in the proceedings; and (3) will immediately abate the nuisance and prevent the nuisance for one year. If an order of abatement has been entered and the owner subsequently meets these requirements, the order must be canceled.

If there is insufficient evidence of a nuisance, the court may order the person who filed the complaint to pay reasonable attorneys' fees, costs, loss of revenue, and damages up to \$500 each.

Other Provisions.

The Residential Landlord-Tenant Act is amended to require a law enforcement agency (agency) to make a reasonable attempt to notify a landlord of a criminal street gang-related offense if the agency has: (1) found that a tenant or occupant committed a criminal street gang-related offense; or (2) been called to rental property to investigate such an offense.

When a nuisance action is brought by a public agency, an intentional violation of an order or injunction is a misdemeanor. If the owner of the building or unit has been found in contempt of court and has been fined, the fine is a lien on the building or unit to the extent of the owner's interest.

Appropriation: None.

Fiscal Note: Available.

Effective Date: 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.