

SENATE BILL REPORT

ESHB 2414

As Reported by Senate Committee On:
Government Operations & Elections, February 25, 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, Liias, Campbell, Morrell, Kelley, Maxwell, Sullivan, Conway, Bailey, Schmick and Hurst).

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

Committee Activity: Government Operations & Elections: 2/25/10 [DPA].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: Do pass as amended.

Signed by Senators Fairley, Chair; Oemig, Vice Chair; Roach, Ranking Minority Member; Benton, McDermott, Pridemore and Swecker.

Staff: Sharon Swanson (786-7447)

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 example, 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 Definition. 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

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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; and (7) to give the gang an advantage in a criminal market sector.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Recommended Amendments): 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.

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.

Complaint and Affidavit. 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 defined as including, but not limited to:

- seizure of property pursuant to search warrants issued as a result of criminal street gang activity;
- recent arrests of persons who frequent the property for purposes of criminal street gang activity;
- a recent increase in the number of complaints made to law enforcement of illegal activity associated with the property which result in arrests for criminal street gang activity; and
- recent increases in arrests for weapons violations of persons who frequent 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:

- 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
- 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 owner subsequently meets these requirements, the order must be canceled.

If the court finds there is insufficient evidence to establish the existence of the nuisance, the court may order the complainant to pay the occupant and the owner their reasonable attorney's 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.

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.

A law enforcement agency that has probable cause to believe that a tenant or other occupant of a rental unit has committed a criminal street gang-related offense must make a reasonable attempt to discover the identity of the landlord and notify the landlord in writing of the criminal street gang related offense on the rental premises.

The law enforcement agency must include the following in the notice:

- the name of the tenant and the individuals who were involved in the criminal street gang related offense;
- the rental unit where the incident occurred;
- the date of the incident;
- actions taken by law the enforcement agency in response to the incident;
- a statement outlining the authority of a landlord to commence an unlawful detainer action against a tenant who has committed or permitted gang related activity at the premises; and
- penalties the landlord may face for failure to abate a nuisance.

EFFECT OF CHANGES MADE BY GOVERNMENT OPERATIONS & ELECTIONS COMMITTEE (Recommended Amendments as Passed Committee): The striking amendment removes the text of the bill as referred in its entirety. The striking amendment as passed by the committee does the following:

A law enforcement agency that has probable cause to believe that a tenant or other occupant of a rental unit has committed a criminal street gang-related offense must make a reasonable

attempt to discover the identity of the landlord and notify the landlord in writing of the criminal street gang related offense on the rental premises.

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- the name of the tenant and the individuals who were involved in the criminal street gang related offense;
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- penalties the landlord may face for failure to abate a nuisance.

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.

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 defined.

If existence of the nuisance is established in the action, an order of abatement must be entered. 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 owner subsequently meets these requirements, the order must be canceled.

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Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Proposed Amendments as Heard in Committee:

PRO: There can be no overstating the level of violence in Yakima County due to gang violence. We have heard from young children caught in the crossfire. People should feel safe and be safe in their homes. We need to find new tools to deal with the ever increasing gang violence in our communities. This bill, although still a work in progress, is a step in the right direction. Landlords need to be able to ensure their tenants that they are safe. Absent landlords need to be made aware if there are problems on their premises. Landlords fully support the notice provisions in the bill. The work on this bill will continue.

CON: This bill is not the right tool to use to combat gang violence. Clearly, gang violence is a huge problem. This bill targets the wrong people. This bill will force the families and perhaps innocent associates of gang members from their homes. There are no studies that will show that this type of approach does anything except further marginalize gang members from the greater community. Intervention works. Providing support so members don't go back to gangs works. Education works. Throwing people out of their homes does not work.

Persons Testifying: PRO: Representative Norm Johnson, prime sponsor; Ron Newbry, Washington Rental Housing Industry/Landlord Assn.; Sheriff Ken Irwin, Yakima County Sheriff's Office.

CON: Shankar Narayan, American Civil Liberties Union of Washington.