
**Public Safety & Emergency Preparedness
Committee**

HB 1126

Brief Description: Concerning criminal street gangs.

Sponsors: Representatives Ross, Hurst, Pearson, Angel, Dahlquist and Haler; by request of Attorney General.

Brief Summary of Bill

- Establishes a grant program for gang prevention and intervention programs.
- Modifies terms of community custody, eligibility for a juvenile deferred disposition, and the offenses of Criminal Gang Intimidation and Criminal Street Gang Tagging and Graffiti.
- Creates special allegation procedures and a sentencing enhancement for criminal street gang-related offenses.
- Authorizes a nuisance abatement action for property where multiple criminal street gang-related offenses have occurred.
- Permits county prosecutors and municipal attorneys to seek a protection order against a criminal street gang associate or member.

Hearing Date: 1/19/11

Staff: Alexa Silver (786-7190).

Background:

Offenses & Sentencing.

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

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participates in a criminal street gang and intentionally 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 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.

Sentencing Enhancements & Special Allegations: Felony offenders are generally sentenced to a term of confinement within a standard range. Under certain circumstances, the court is required to add a period of time to the offender's standard range. A sentencing enhancement of 125 percent of the standard range is available where an adult convicted of a criminal street gang related-felony compensated, threatened, or solicited a minor to involve the minor in the offense.

Gang-Related Offenses: A person is guilty of Criminal Gang Intimidation, a class C felony with a seriousness level of III, if the person threatens another with bodily injury because the other person refuses to join or attempts to withdraw from a gang if either person is a student. A person is guilty of Criminal Street Gang Tagging or Graffiti, a gross misdemeanor, where: (1) the person has multiple current convictions for Malicious Mischief involving marking a building without permission; or (2) the current offense is a criminal street gang-related offense and the person has previous convictions for Malicious Mischief involving marking a building without permission.

Community Custody: Community custody is the portion of an offender's sentence served in the community subject to supervision by the Department of Corrections. The court must order community custody for an offender who is convicted of specified crimes. While on community custody, offenders are subject to a variety of conditions imposed by the court and the Department of Corrections. If the offender violates the conditions, the offender may be required to serve up to the remaining portion of the sentence in confinement.

Juvenile Deferred Disposition: A deferred disposition allows a juvenile to complete probation and certain conditions set by the court in exchange for having the charges dismissed. A juvenile is ineligible if the offense is a sex offense or a violent offense or if the juvenile has a felony criminal history, a prior deferred disposition, or multiple adjudications.

Nuisance Abatement Actions.

Nuisance is the substantial and unreasonable interference with the use and enjoyment of land. An action to abate a nuisance may be filed if the nuisance interferes with the comfortable enjoyment of life and property or if it injures another's health. The Legislature has enacted nuisance laws regarding prostitution, exhibition of lewd films, fighting, and drugs.

Under the drug nuisance statute, every building or unit in a building that is used to unlawfully manufacture, deliver, sell, store, or give away a controlled substance is a nuisance that can be enjoined, abated, and prevented. If a nuisance is established, the court may issue an abatement order providing for immediate closure of the building or unit for one year. An owner may be able to avoid abatement if the owner had no knowledge of the nuisance or was making reasonable attempts to abate the nuisance, and the owner will immediately abate the nuisance and prevent the nuisance for one year. Intentional violation of a preliminary injunction or order of abatement is contempt of court.

Protection Orders.

There are several different types of civil no-contact, protection, and restraining orders. For example, a court may issue a domestic violence protection order imposing conditions and prohibitions on the respondent. The order may: (1) prohibit the respondent from having contact with the petitioner; (2) prohibit the respondent from coming within a certain distance of specified locations; (3) exclude the respondent from the petitioner's residence, workplace, or school; (4) require the respondent to obtain treatment; and (5) restrain the respondent from harassing the petitioner or committing acts of domestic violence.

The victim files a petition and affidavit to obtain a protection order. Personal service must be made on the respondent not less than five court days prior to the hearing. Following the hearing, the respondent must be personally served with the protection order, unless he or she appeared at the hearing. Detailed provisions address when and how service by publication or mail is permissible. A victim may also seek an *ex parte* temporary domestic violence protection order if the petition alleges that irreparable injury from domestic violence could result if an order is not immediately issued without notice to the respondent. The temporary order is generally effective for 14 days.

Violation of a domestic violence protection order may constitute contempt of court, a gross misdemeanor, or a class C felony, depending on the circumstances.

Punishment for Contempt of Court.

Sanctions imposed for contempt of court may be either punitive or remedial. After a hearing, the court may impose a punitive sanction of a fine of up to \$5,000, and imprisonment for not more than one year. Remedial sanctions are imposed to coerce performance with a court order.

Hospital Reporting.

Taking emergency care needs into consideration, a hospital must report to law enforcement as soon as reasonably possible when providing treatment for bullet wound, gunshot wound, or stab wound when the victim is unconscious.

Summary of Bill:

Grant Program.

The Office of Juvenile Justice in the Department of Social and Health Services must seek federal funding to establish a statewide grant program. Grant applications must identify a significant gang problem in the jurisdiction, propose offering services to prevent gang expansion or support gang intervention, and propose providing services to a targeted population. Priority is given to applications where gang violence is an increasing problem in the jurisdiction and addressing that impact is a high local priority. In addition, priority is given to applications that propose conducting a gang assessment using evidence-based practices or that propose implementing a program using evidence-based or innovative and culturally relevant practices.

Organizations that are eligible for grants are non-profits, non-governmental organizations, and coalitions. In addition, non-profits and government entities that work in partnerships with such organizations are eligible. The entities that sit on the grant review committee are the Office of Juvenile Justice, the Washington State Partnership Council on Juvenile Justice, the Washington

Association of Sheriffs and Police Chiefs, the Office of the Attorney General, and representatives from local government and non-governmental organizations.

Offenses & Sentencing.

Offenses: A person commits Criminal Gang Intimidation (a class C felony, seriousness level III) if he or she threatens another with bodily injury because the person refuses to join or attempts to withdraw from a criminal street gang. The former offense of Criminal Gang Intimidation is renamed School Criminal Gang Intimidation.

"Criminal street gang-related offense" includes an offense committed to provide the gang with an advantage in or control over Commercial Sexual Exploitation of a Minor. "Pattern of criminal street gang activity" includes two or more commissions, attempts, or convictions for School Criminal Gang Intimidation or Criminal Gang Intimidation.

When a person is convicted of Criminal Street Gang Tagging and Graffiti, the court may impose 100 hours of community service as a condition of the sentence.

Special Allegation: Procedures are created for a special allegation that an offense is a criminal street gang-related offense. The prosecutor may present evidence if the supporting facts are part of the events of the crime or are otherwise admissible and if the probative value is not outweighed by the prejudicial effect.

Enhancement: A sentencing enhancement is created for a criminal street gang-related offense. The following times are added to the offender's sentence: 24 months for a class A felony, 18 months for a class B felony, and 12 months for a class C felony. The enhancement is unavailable if the prosecution seeks an exceptional sentence based on the criminal street gang-related aggravating factor.

Juvenile Deferred Dispositions: A juvenile is ineligible for a deferred disposition if he or she is charged with a firearm offense and there is an allegation that it was a criminal street gang-related offense.

Community Custody: If an offender is convicted of a criminal street gang-related offense and the sentence is less than one year, the court may impose up to one year of community custody.

Nuisance Abatement Action.

Any real property, building, or unit within a building where three or more unrelated criminal street gang-related offenses have occurred over the prior year is a nuisance that may be enjoined, abated, and prevented. A county or municipal government entity may file a complaint in superior court to enjoin the nuisance. The complaint must be accompanied by an affidavit containing a description of attempts to locate the property owner and a detailed description of the adverse impact on the neighborhood. The court must grant a hearing within three business days. The complaint and notice of the hearing must be served on the defendant one business day prior to the hearing. Service may be made by posting.

The nuisance action has priority over other actions, except those of the same character, criminal actions, election contests, temporary restraining order and injunction hearings, and drug forfeitures.

Ex Parte Restraining Order: For good cause, the court may issue an *ex parte* restraining order or preliminary injunction to prevent the removal of or interference with personal property on the premises, as well as any other equitable relief to prevent the continuation of the nuisance. Service is made by handing to and leaving a copy with any person in charge of or residing at the place or by posting in a conspicuous place, or both.

Abatement Order: If a nuisance is established, the court enters an abatement order. The plaintiffs' costs are a lien on the property, building, or unit. No order is entered if: the owner had no knowledge of or was making reasonable efforts to abate the nuisance; the owner was not guilty of contempt of court; the owner will immediately abate and prevent the nuisance for one year; and the court is satisfied with the owner's good faith. The abatement order can close the property for one year, state that the court maintains custody over the property while the order is in effect, and provide any other necessary relief. If the property owner is found in contempt, the fine is a lien on the property to the extent of the owner's interest. An intentional violation of a restraining order, preliminary injunction, or order of abatement is contempt of court.

Protection Order.

A county prosecutor or municipal attorney may bring an action for a protection order against a criminal street gang associate or member by filing an action in superior court. The petition must be accompanied by an affidavit containing a description of the protection zone, a list of activities to enjoin, and the factual bases supporting issuance of the order as to each respondent.

Service of Petition: The petitioner must serve the petition on the persons to whom the protection order would apply. They must be personally served with the petition and notice of the date and time of the hearing, as well as notice that they are entitled to appear and respond. They must be served not less than five court days before the hearing. If no timely personal service can be made, the court may set a new hearing date and either require personal service or service by publication. If service is made by publication, the hearing date is set not later than 24 days from the date service by publication was allowed.

Hearing: A hearing on the petition must be held within 14 days. The petitioner must show by clear and convincing evidence that: a criminal street gang exists in a specified geographic area; a substantial amount of the gang's activities have occurred in that area; and the respondent is a member or associate of that gang.

Protection Order: A protection order issued by the court must specifically describe the geographic boundaries where it applies. The order may provide all relief necessary and proper, including prohibiting the respondent from:

1. directly or indirectly associating or communicating with any other person found by the court to be a criminal street gang associate or member;
2. directly or indirectly contacting minors going to or from school or specified individuals, such as persons on probation;
3. going on the grounds of a school or any other designated locations;
4. violating a curfew;
5. wearing gang clothing in public;
6. engaging in gang-related graffiti or possessing graffiti tools;
7. intimidating any person;

8. forcibly recruiting any person into the gang or preventing a gang member from leaving;
9. trespassing;
10. violating any law;
11. possessing firearms, imitation firearms, or dangerous weapons; and
12. possessing or consuming drugs or alcohol.

Exceptions apply for:

1. communicating with another gang member if the two: are married; have a child together; have a parent-child, grandparent-child, or sibling relationship; or reside together and are related or have a dating relationship;
2. communicating with a gang member or a minor on schools grounds where necessary for legitimate educational purposes, or going on school grounds where the visit is for legitimate educational purposes; and
3. communicating with a gang member in a church where necessary for religious purposes, or going on the grounds of a church where the visit is for religious purposes.

All persons subject to the protection order must be personally served with a copy, unless they appeared in person before the court. If personal service cannot be made, the petitioner may request permission from the court to serve a copy of the order by publication.

Modification & Continuation: The petitioner or any person to whom the protection order applies can petition the court for a modification. All affected parties must receive notice. The court may grant any modifications deemed necessary and proper. The protection order is effective for one year, but the petitioner may apply for a continuation by filing a new petition no more than 30 days prior to expiration of the order.

Violation of Protection Order: The protection order must also provide that a respondent who knows of the order may be found in contempt of court if he or she willfully violates it. A respondent over the age of 18 may be fined \$5,000, and imprisoned not more than one year. A respondent under the age of 18 may be committed to juvenile detention for not more than seven days.

A respondent who willfully disobeys a protection order is guilty of a gross misdemeanor. The sentence must include at least seven days in jail or juvenile detention if the violation occurs in a school, on a school bus, within 300 feet of a school bus route stop, within 1,000 feet of school grounds, or in a public park.

Hospital Reporting.

Taking emergency care needs into consideration, a hospital shall report to law enforcement as soon as reasonably possible when providing treatment for a bullet wound, gunshot wound, or stab wound.

Appropriation: None.

Fiscal Note: Available.

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